Execution version

OTS2 Project Deed

Sydney Metro
ABN 12 354 063 515

and

NRT CSW Pty Ltd
ACN 635 509 036

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14A Principal's Representative's Test Procedure certificate

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15A Principal's Representative's Test Result certificate

16 Greenfield Independent Certifier's Certificate of Readiness for First Passenger Service

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19 Not used

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THIS DEED is made on 21 November 2019

BETWEEN:

(1) **Sydney Metro** ABN 12 354 063 515 a New South Wales Government agency constituted by section 38 of the *Transport Administration Act 1988* (NSW) and located at Level 43, 680 George Street, Sydney NSW 2000 (**Principal**); and

(2) **NRT CSW Pty Ltd** ACN 635 509 036 of 'Rialto South Tower' Level 43, 525 Collins Street, Melbourne VIC 3000, in its personal capacity and in its capacity as trustee of the NRT CSW Unit Trust (**OpCo2**).

RECITALS:

(A) In September 2014, Transport for NSW and OpCo entered into the OTS Project Deed to deliver the OTS PPP as part of the Sydney Metro Northwest. The Sydney Metro Northwest includes 13 stations between Tallawong and Chatswood and is currently under construction. The Sydney Metro Northwest is expected to become operational in 2019.

(B) The OTS Project Deed contains provisions providing for Transport for NSW and OpCo to establish a cooperative and consultative process by which they can discuss and work together on the project definition, planning, development and delivery of an augmentation of the Sydney Metro Northwest.

(C) All assets, rights and liabilities of Transport for NSW arising from or in connection with the Project (including from or in connection with the OTS Project Deed) were transferred to, and became assets, rights and liabilities of, the Principal on 1 July 2018 under section 94 of the Transport Administration Act following the establishment of the Principal as a NSW Government agency under the *Transport Administration Amendment (Sydney Metro) Act 2018* (NSW).

(D) The Principal wishes to augment the Sydney Metro Northwest as part of the Project to create a single end to end metro system from Tallawong to Bankstown.

(E) The Project is to be delivered in the following major contract packages:

(1) the tunnels and station excavation works package, which is being delivered by the TSE Contractor under the TSE Deed;

(2) the Central Station main works package, which is being delivered by the CSM Contractor under the CSM Contract;

(3) the southwest design, stations and corridor works packages, which are being delivered by the Southwest Contractors under the Southwest Contracts;

(4) the Sydenham Station and junction works package, which is being delivered by the SSJ Contractor under the SSJ Contract;

(5) the stations, mechanical and electrical works packages for the City Stations, which are being delivered by the City Station Contractors under the City Station Contracts;

(6) the line-wide works package relating to tunnel ventilation, track (including tunnel services), power supply, overhead line and traction supply, which are being delivered by the Line-wide Contractor under the Line-wide Contract;

(7) the platform screen doors and mechanical gap fillers for the Sydney Metro Southwest, to be delivered by the PSD/MGF Contractor under the PSD/MGF Contract;

(8) the systems packages relating to station central control systems, radio communications and platform screen doors and platform edge barriers for the Sydney Metro City, which are being delivered under this deed and by the Integrator under the Integrator Deed, via the OpCo2 Systems Contractors under the OpCo2 Systems Contracts; and

(9) the trains and the systems for the Sydney Metro City and the Sydney Metro Southwest and the operations and maintenance package for the Sydney Metro which are being delivered under this deed.

The packages described in (8) and (9) are otherwise known as the OTS2 PPP, which is being delivered under this deed.

(F) Following the completion of the successful CSW Augmentation Process, the Principal selected OpCo2 to deliver the OTS2 PPP.

(G) Finance Co has agreed to securitise the Licence Payments and will do so by entry into the Securitisation Agreement and Payment Directions Deed with the Principal and OpCo2 and by entry into the Debt Financing Documents with the Debt Financiers.

(H) The Principal and OpCo2 now wish to enter into this deed to record the terms on which the OTS2 PPP will be carried out.

THE PARTIES AGREE AS FOLLOWS:

1. INTERPRETATION

1.1 Definitions

The following definitions apply in this document.

Acceptable means a defect in the Foundation Infrastructure Works that does not:

(a) prevent, delay or disrupt OpCo2 from complying with its obligations under this deed;

(b) affect any warranty provided by OpCo2 under this deed;

(c) affect OpCo2's performance against any performance indicator or requirement which could result in a Service Payment Deduction; and

(d) increase OpCo2's costs of carrying out OpCo2's Activities or cause OpCo2 to incur any loss, in each case other than in a de minimis manner.

Accepted City Station Defect means a defect in the City Stations Works that has been accepted by the Principal under the relevant City Station Contract, by notice in writing from the Principal to the relevant City Station Contractor, and which is listed in the relevant City Station Notice of Completion as an "Accepted Defect".

Accepted CSM Defect means a defect in the CSM Works that the Principal has directed under the CSM Contract does not need to be rectified and which is listed in the CSM Notice of Completion as an "Accepted Defect".

Accepted Foundation Infrastructure Works Change means any change or variation to the Foundation Infrastructure Works that does not:

(a) prevent, delay or disrupt OpCo2 from complying with its obligations under this deed;

(b) affect any warranty provided by OpCo2 under this deed;

(c) affect OpCo2's performance against any performance indicator or requirement which could result in a Service Payment Deduction; and

(d) increase OpCo2's costs of carrying out OpCo2's Activities or cause OpCo2 to incur any loss, in each case other than in a de minimis manner.

Accepted Foundation Infrastructure Works Defect means an Accepted TSE Defect, Accepted CSM Defect, Accepted Southwest Defect, Accepted SSJ Defect, Accepted City Station Defect, Accepted Line-wide Defect or Accepted PSD/MGF Defect.

Accepted Line-wide Defect means a defect in the Line-wide Works that the Principal has directed under the Line-wide Contract does not need to be rectified and which is listed in a Line-wide Notice of Construction Completion as an "Accepted Defect".

Accepted PSD/MGF Defect means a defect in the PSD/MGF Works that the Principal has directed under the PSD/MGF Contract does not need to be rectified and which is listed in a PSD/MGF Notice of Construction Completion and/or a PSD/MGF Notice of Completion as an "Accepted PSD/MGF Defect".

Accepted Southwest Defect means a defect in the Southwest Works that the Principal has directed under the relevant Southwest Contract does not need to be rectified and which is listed in the relevant Southwest Notice of Completion as an "Accepted Defect".

Accepted SSJ Defect means a defect in the SSJ Works that the Principal has directed under the SSJ Contract does not need to be rectified and which is listed in the SSJ Notice of Completion as an "Accepted Defect".

Accepted TSE Defect means a defect in the TSE Works that the Principal has directed under the TSE Deed does not need to be rectified and which is listed in the TSE Notice of Completion as an "Accepted Defect".

Accessible means in respect of a part of the Foundation Infrastructure Works Site, OpCo2's access to that part of the Foundation Infrastructure Works Site is capable of safe, clean and clear use.

Account Bank means, at any time, the person appointed as account bank under the OTS2 Security Trust Deed. At the date of this deed the Account Bank is [redacted]

Accreditation means accreditation (including provisional accreditation, conditions or restrictions in respect of accreditation or any variation to the accreditation) under Part 3 of the Rail Safety National Law (or an exemption from same).

Actual Consumption means the aggregate metered amount of electricity consumed through the Connection Points during a Forecast Period.

Actual Headway has the meaning given in Schedule 2 (*Service Payment calculation*).

[redacted]

Additional Draft FIW Contract has the meaning given in clause 14A.2A(b)(i).

Additional Maintained Asset means an Additional Maintained Asset (City), Additional Maintained Asset (Southwest) and an Additional Maintained Asset (Northwest).

Additional Maintained Asset (City) means an asset identified in section 3 of SPR Appendix 3 (*Licensed Maintenance Area*) as an "Additional Maintained Asset (City)".

Additional Maintained Asset (Northwest) means from the OTS Incorporation Date, an asset identified in section 3 of SPR Appendix 3 (*Licensed Maintenance Area*) as an "Additional Maintained Asset (Northwest)".

Additional Maintained Asset (Southwest) means an asset identified in section 3 of SPR Appendix 3 (*Licensed Maintenance Area*) as an "Additional Maintained Asset (Southwest)".

Additional Planned Service Disruption means a service disruption for the purpose of carrying out Asset Management Activities, other than a Planned Service Disruption, in respect of which OpCo2 is entitled to claim a reduction in the Availability Deduction and Timeliness Deduction under clause 20.14(b).

Adjusted Indexed Availability Fee has the meaning given in Schedule 2 (*Service Payment calculation*).

Adjustment Date means each of Adjustment Date 1, Adjustment Date 2, Adjustment Date 3 and Adjustment Date 4.

Adjustment Date 1 means [redacted], as extended in accordance with clause 12A.10 (*Principal Adjustment Dates*).

Adjustment Date 2 means [redacted] as extended in accordance with clause 12A.10 (*Principal Adjustment Dates*).

Adjustment Date 3 means [redacted] as extended in accordance with clause 12A.10 (*Principal Adjustment Dates*).

Adjustment Date 4 means [redacted] as extended in accordance with clause 12A.10 (*Principal Adjustment Dates*).

Adjustment Note has the meaning given in the GST Act.

AEO or **Authorised Engineering Organisation** means an organisation providing a defined engineering service or product that has been assessed and granted authorised engineering status for the Project by Transport for NSW.

Agent means at any time, the person appointed as "Agent" under the Facility Agreement. At the date of this deed the Agent is [redacted] and for the purpose of item 4 of Schedule 1 of the GSF Act Deed Poll of Guarantee, includes the Security Trustee.

Agreed City Station Defect means, in respect of a City Station Non-Trackway Portion, a City Station Defect (other than a Minor City Station Defect) that:

(a) the Principal and the relevant City Station Contractor agree in writing; or

(b) the Principal otherwise directs under the relevant City Station Contract,

does not need to be rectified in order to achieve City Station Completion of the City Station Non-Trackway Portion, and which is listed in the relevant City Station Notice of Completion as an "Agreed Defect".

[redacted]

Agreed Foundation Infrastructure Works Defect means an Agreed Line-wide Defect, Agreed City Station Defect or Agreed PSD/MGF Defect.

Agreed Line-wide Defect means a Line-wide Defect (other than a Minor Line-wide Defect) that:

(a) the Principal and the Line-wide Contractor agree in writing; or

(b) the Principal otherwise directs under the Line-wide Contract,

does not need to be rectified in order to achieve Line-wide Construction Completion of the Line-wide Portion, and which is listed in the relevant Line-wide Notice of Construction Completion as an "Agreed Defect".

Agreed Modification Cost means a Modification Cost Proposal that has been accepted by the Principal and set out in a Modification Order.

Agreed PSD/MGF Defect means a PSD/MGF Defect (other than a Minor PSD/MGF Defect) that:

(a) the Principal and the PSD/MGF Contractor agree in writing; or

(b) the Principal otherwise directs under the PSD/MGF Contract,

does not need to be rectified in order to achieve PSD/MGF Construction Completion of a PSD/MGF Portion, and which is listed in the relevant PSD/MGF Notice of Construction Completion as an "Agreed Defect".

Alstom D&C Significant Contract means the contract titled "OTS2 Alstom D&C Significant Contract (Trains and CBTC)" dated on or about the date of this deed between the Integrator and the Alstom Significant Contractor.

Alstom D&C Significant Contract Side Deed means the deed titled "OTS2 Alstom D&C Significant Contract Side Deed" dated on or about the date of this deed between the Principal, the Integrator and the Alstom Significant Contractor.

Alstom Direct Deed means the deed titled "Sydney Metro Augmentation Supply Direct Deed" between OpCo2, the Principal and the Alstom Significant Contractor dated on or about the date of this deed.

Alstom Guarantee means each of:

(a) the deed titled "Alstom Significant Contractor D&C Guarantee" dated on or about the date of this deed between the Integrator and Alstom Holdings; and

(b) the deed titled "Alstom Significant Contractor O&M Guarantee" dated on or about the date of this deed between the O&M Contractor and Alstom Holdings.

Alstom Holdings means ALSTOM Holdings, Registration number: 347951238 RCS Bobigny of 48 rue Albert Dhalenne 93400 Saint Ouen, France.

[redacted]

[redacted]

Alstom O&M Significant Contract means the contract titled "Sydney Metro - Through Life Support Deed (Trains and Signalling)" dated on or about the date of this deed between the O&M Contractor and the Alstom Significant Contractor.

Alstom O&M Significant Contract Side Deed means the deed titled "OTS2 TLS Significant Contract Side Deed" dated on or about the date of this deed between the Principal, the O&M Contractor and the Alstom Significant Contractor.

Alstom Phase 2 Works means the works the Alstom Significant Contractor is required to carry out under the Alstom D&C Significant Contract with respect to Phase 2.

Alstom Significant Contractor means Alstom Transport Australia Pty Limited ABN 68 165 157 451 of Level 4, 16 Giffnock Avenue, North Ryde, NSW.

Another Entity means a government or semi-government entity including any agency, statutory corporation, statutory authority, department or state owned corporation.

Applicable Cure Period has the meaning given in clause 40.3(c)(i) and includes any extension granted under clause 40.3(g).

Appointed Principal Contractor means:

(a) with respect to the Delivery Activities:

(i) in respect of any construction work performed by the OCC Contractor or any of its contractors on the Sydney Metro Trains Facility (North), the OCC Contractor that has been engaged as the principal contractor by the Principal under a deed of appointment of principal contractor in accordance with the Integrator Deed Side Deed; or

(ii) in respect of any construction work performed by the TLE Contractor or any of its contractors on the Sydney Metro Trains Facility (North), the TLE Contractor that has been engaged as the principal contractor by the Principal under a deed of appointment of principal contractor in accordance with the Integrator Deed Side Deed; or

(iii) otherwise, the O&M Contractor; and

(b) with respect to the Operations Activities, the O&M Contractor or any of its contractors that have been engaged as the principal contractor by the Principal under a deed of appointment of principal contractor in accordance with the O&M Contract Side Deed.

Approval means any licence, permit, consent, approval, determination, exemption, certificate or permission from any Authority or under any law, or any requirement made under any law, which:

(a) must be obtained or satisfied (as the case may be):

(i) to perform OpCo2's Activities;

(ii) in connection with the Sydney Metro Site and Extra Land;

(iii) for the use and occupation of:

(A) the OTS2 Works; and

(B) the Sydney Metro; or

(iv) otherwise to comply with law; or

(b) the Principal, acting reasonably, notifies OpCo2 from time to time is necessary, or is consistent with good industry practice, to be held by the Principal in respect of:

(i) the Principal's ownership of the electrical infrastructure forming part of the Sydney Metro; or

(ii) the Principal's purchase of electricity in accordance with clause 9.17(a)(ii),

and includes:

(c) the Planning Approvals; and

(d) any Environment Protection Licence which applies to OpCo2's Activities,

but does not include:

(e) any Direction given by the Principal or the Principal's Representative pursuant to this deed; or

(f) the exercise by the Principal of its rights under this deed.

Approved Cure Plan has the meaning given in clause 40.3(c).

Approved Foundation Infrastructure Works Change means any Foundation Infrastructure Works Change:

(a) notified to OpCo2 under clause 14A.3 (*Principal initiated Foundation Infrastructure Works Change*) and to which clause 14A.3(c) does not apply;

(b) proposed by OpCo2 and implemented by the Principal pursuant to clause 14A.4 (*OpCo2 initiated Foundation Infrastructure Works Change*); or

(c) deemed to be an Approved Foundation Infrastructure Works Change pursuant to clause 14A.6A(c), 14A.6A(e)(i), 14A.6A(f)(ii) or 18A.9(a)(v).

Approved Prevention Plan has the meaning given in clause 40.4(c).

Artefacts means any fossils, bones, artefacts, coins, articles of antiquity, structures or other remains or things of scientific, geological, historical or archaeological interest.

Asset means:

(a) all fixed assets located within the Licensed Maintenance Area other than the Excluded Assets;

(b) the Moveable Assets;

(c) the Existing ECRL Moveable Assets; and

(d) the Additional Maintained Assets.

Asset Condition Assessment means the assessment of the condition of the Assets described in section 8.10 of the SPR.

Asset Functionality KPI has the meaning given in Schedule 2 (*Service Payment calculation*).

Asset Information System means the system for the storage, processing, transmission and management of Asset information as described in section 8.9 of the SPR.

Asset Maintenance Standards means the standards developed by OpCo2 in accordance with section 8.6 of the SPR.

Asset Management Activities means all activities that OpCo2 performs, or is required to perform, to exercise its rights or comply with its obligations under clause 21 (*Asset Management*) and the SPR, including inspecting, maintaining and repairing the Sydney Metro and the Assets (including the Replacement and Refurbishment of Assets), performing renewals and maintaining Spares, whether or not the performance of such things or tasks is subcontracted by OpCo2 to another person.

Asset Management Failure has the meaning given in clause 21.7(b).

Asset Management Plan means the Project Plan of that name.

Asset Management Policy means the Project Plan of that name.

Asset Management Strategy means the Project Plan of that name.

Asset Management System means the Asset management arrangements described in section 8.2 of the SPR.

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

(a) in the case of OpCo2, includes OpCo2 Contractors, OpCo and their respective Associates to the extent that, and in the capacity in which, they are involved in OpCo2's Activities (but does not include the Principal or any of its Associates);

(b) in the case of the Principal includes Transport for NSW (but does not include OpCo2 or any of its Associates); and

(c) in the case of both parties, does not include the Greenfield Independent Certifier, the TSE Independent Certifier, the Brownfield Independent Certifier, the IDAR Panel, the Environmental Representative, Infrastructure NSW or the Central Barangaroo Developer.

Augmentation means:

(a) a continuous extension to the rail infrastructure (including trains) and/or systems of the Sydney Metro to form a single, integrated, operational extended metro rail line; or

(b) additional rail infrastructure (including trains) and/or systems to accommodate an increase in patronage and/or provide an increase in service frequency on the Sydney Metro.

Augmentation Framework Agreement means the contract titled "Augmentation Framework Agreement" entered into between the Principal and the NRT Parties dated 25 November 2016.

Ausgrid means the Ausgrid Operator Partnership of Level 33, 50 Lonsdale Street Melbourne Victoria 3000, a partnership carried on under that name by:

(a) Blue Op Partner Pty Ltd (ACN 615 217 500) of Level 33, 50 Lonsdale Street Melbourne Victoria 3000 as trustee for the Blue Op Partner Trust;

(b) ERIC Alpha Operator Corporation 1 Pty Ltd (ACN 612 975 096) of C/O NSW Treasury, 52 Martin Place Sydney NSW 2000 as trustee for ERIC Alpha Operator Trust 1;

(c) ERIC Alpha Operator Corporation 2 Pty Ltd (ACN 612 975 121) of C/O NSW Treasury, 52 Martin Place Sydney NSW 2000 as trustee for ERIC Alpha Operator Trust 2;

(d) ERIC Alpha Operator Corporation 3 Pty Ltd (ACN 612 975 185) of C/O NSW Treasury, 52 Martin Place Sydney NSW 2000 as trustee for ERIC Alpha Operator Trust 3; and

(e) ERIC Alpha Operator Corporation 4 Pty Ltd (ACN 612 975 210) of C/O NSW Treasury, 52 Martin Place Sydney NSW 2000 as trustee for ERIC Alpha Operator Trust 4.

Ausgrid Connection Point means the permanent point or points for bulk supply at which the Sydney Metro's electrical infrastructure connects to Ausgrid's electricity distribution network (which includes Ausgrid's transmission assets) but does not include either prior to, or after:

(a) the Date of Completion of Phase 1, any temporary connection points established between the Sydney Metro's electrical infrastructure and Ausgrid's electricity distribution network for the purposes of supplying construction power for Phase 1 prior to the Date of Completion of Phase 1; and

(b) the Date of Completion of Phase 2, any temporary connection points established between the Sydney Metro's electrical infrastructure and Ausgrid's electricity distribution network for the purposes of supplying construction power for Phase 2 prior to the Date of Completion of Phase 2.

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;

(b) any other person having a right to impose a requirement, or whose consent is required, under law with respect to any part of OpCo2's Activities; or

(c) any other person having jurisdiction over, or ownership of, any Utility Services or any Local Areas.

Availability Deduction has the meaning given in Schedule 2 (*Service Payment calculation*).

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 means, in respect of a period, 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 12:00pm (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 the period, provided that if there is a manifest error in the calculation of that average bid rate or if no average bid rate is so published for Bank Bills of that tenor by about 12:00pm, then the Bank Bill Rate will be the bid rate specified by the non-defaulting party reasonably, acting in good faith, having regard to the rates otherwise bid for Bank Bills having a tenor as described above at or around that time.

Barangaroo-OTS2 Cooperation and Integration Deed means each of the following:

(a) the deed titled "Barangaroo-OTS2 (Design Contract) Cooperation and Integration Deed" to be entered into between the Principal, OpCo2 and the Barangaroo Station Design Contractor; and

(b) the deed titled "Barangaroo-OTS2 Cooperation and Integration Deed" to be entered into between the Principal, OpCo2 and the Barangaroo Station Construct Contractor,

substantially in the forms set out in Part A of Schedule 47 (*Form of Project Cooperation and Integration Deeds*).

Barangaroo Cooperation and Collaboration Accession Deed means an accession deed between the Principal, Infrastructure NSW, the Central Barangaroo Developer and OpCo2 substantially in the form of Schedule 1 to the Barangaroo Cooperation and Collaboration Agreement.

Barangaroo Cooperation and Collaboration Agreement means the agreement dated 22 December 2017 between the Principal, Infrastructure NSW, the Central Barangaroo Developer and each party that subsequently accedes to the agreement, a version of which is contained in Exhibit 18 (*Barangaroo Interface Agreement*).

Barangaroo Interface Agreement means the agreement titled "Sydney Metro City & Southwest - Barangaroo/Metro Interface Agreement" between the Principal and Infrastructure NSW dated 16 June 2017, a redacted version of which is contained in Exhibit 18 (*Barangaroo Interface Agreement*).

Barangaroo Interface Works means those parts of the OTS2 Works being carried out in the Central Barangaroo Precinct and which are set out in the SPR, including SPR Appendix 10 (*Station Precincts and Public Domain Spatial and Function Requirements*) to SPR Appendix 15 (*Public Art*).

Barangaroo Station Construct Contract means the contract titled "Sydney Metro City & Southwest Barangaroo Station Development Construct Only Delivery Deed " between the Principal and the Barangaroo Station Construct Contractor, a draft version of which is contained in Exhibit 12E (*City Station Contracts*).

Barangaroo Station Construct Contractor means the person to be engaged by the Principal to deliver the City Stations Works in respect of Barangaroo Station under the Barangaroo Station Construct Contract.

Barangaroo Station Design Contract means the contract titled "Barangaroo Station – Design and Technical Services – Professional Services Contract" between the Principal and the Barangaroo Station Design Contractor, an unpriced version of which is contained in Part D of Exhibit 12E (*City Station Contracts*).

Barangaroo Station Design Contractor means the unincorporated joint venture between Arcadis Australia Pacific Pty Ltd (ABN 76 104 485 289) and Mott MacDonald Australia Pty Ltd (ABN 13 134 120 353).

Base Case Equity Return means, at any time, the nominal after tax blended internal rate of return to Equity Investors (which is after tax paid or payable on project cash flows by OpCo2, and is before any tax paid or payable by Equity Investors) and:

(a) prior to the OTS Incorporation Date, is equal to the percentage set out in cell E15 of the Model Outputs Schedule; and

(b) on and from the OTS Incorporation Date, is equal to the percentage set out in cell F15 of the Model Outputs Schedule.

Base Case Financial Model means the financial model and assumptions prepared by or for OpCo2 and accepted by the Principal pursuant to item 6 of Schedule 1 (*Conditions Precedent*), as updated from time to time in accordance with clause 25.3(e), 49.11 (*Adjustments to Base Case Financial Model upon a Refinancing Gain*) or 50.1 (*Updates to Base Case Financial Model*).

Baseline Residual Assets means

Benchmarked Insurance Component means the insurance component of the Service Payment payable in respect of the relevant Benchmarked Insurances, being the amount specified as such in section 1.1 of Annexure A of Schedule 2 (*Service Payment calculation*).

Benchmarked Insurances means those insurances set out in clauses 38.3(a) (*industrial special risks insurance*), 38.3(c) (*public and products liability insurance*) and 38.3(d) (*professional indemnity insurance*).

Blacktown City Council Interface Agreement means the agreement titled "North West Rail Link – Operations, Trains and System (OTS) Interface Agreement" between the Principal and Blacktown City Council dated 10 September 2014, a copy of which, as at the date of this deed, is contained in Exhibit 15 (*Third Party Agreements*).

BMS means the building management statement for each Over Station Development, the initial form of which are set out in Exhibit 20 (*Form of BMS, SMS and Section 88B Instruments*) and will form the basis of the document to be registered on title or to

otherwise be contractually binding in relation to each Over Station Development and to the Station.

Bond means:

(a) the Handback Security Bond; or

(b) the Extension Security Bond.

[redacted]

Brownfield Independent Certifier means AECOM Australia Pty Ltd ABN 20 093 846 925 or such other person(s) as may be engaged by:

(a) the Principal and the CSM Contractor in accordance with the CSM Independent Certifier Deed;

(b) the Principal and the SSJ Contractor in accordance with the SSJ Independent Certifier Deed; and

(c) the Principal and each Southwest Contractor in accordance with the relevant Southwest Independent Certifier Deed.

Business Day means any day in New South Wales other than a Saturday, Sunday or public holiday or 27, 28, 29, 30 or 31 December or any day on which banks are not open for business generally in New South Wales.

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

Business Hours means between 9.00 am and 5.00 pm on a Business Day.

Capacity Performance Test has the meaning given in the SPR (OTS2).

Car Park means any car park located within the Licensed Maintenance Area.

Category 2 Issues has the meaning given in clause 14A.2(d).

CCS and COM Contract means the contract titled "OTS2 Significant Contract (Central Control System and Communications System)" between the Integrator and the CCS and COM Contractor dated on or about the date of this deed.

CCS and COM Contract Side Deed means the deed titled "CCS and COM Contract Side Deed" dated on or about the date of this deed between the Principal, the Integrator and the CCS and COM Contractor.

CCS and COM Contractor means Thales Australia Limited ABN 66 008 642 751.

CCS and COM Direct Deed means the deed titled "Sydney Metro Augmentation Supply Direct Deed (CCS and COM)" to be entered into between OpCo2, the Principal and the CCS and COM Contractor.

CCS and COM Guarantee means the deed titled "OTS2 Significant Contractor Guarantee" dated on or about the date of this deed between the Integrator and Thales SA.

CCS and COM Phase 2 Works means the works the CCS and COM Contractor is required to carry out under the CCS and COM Contract with respect to Phase 2.

CCU or **Construction Compliance Unit** means the Construction Compliance Unit established within NSW Industrial Relations to undertake auditing and inspection of workplace agreements and practices.

CDPD Amount means the lesser of:

[redacted]

CDPD Conditions means the conditions set out in clause 25.3(b).

CDPD Notice Date means the date of the notice issued by OpCo2 under clause 25.3(c)(ii).

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) such earlier date determined by the Principal in its absolute discretion.

CDPD Period means the period of time beginning on the 2nd anniversary of the Date of Completion of Phase 2 less the Phase 2 Change Event EOT Period and ending on the 4th anniversary of the Date of Completion of Phase 2 less the Phase 2 Change Event EOT Period.

CDPD Receivables has the meaning given to that term in the Securitisation Agreement.

CDPD Satisfaction Notice means the notice delivered pursuant to clause 25.3(c)(iv)(A).

CE Election means the election by OpCo2 to accept the Collaboration Payment by delivering a CE Election Notice.

CE Election Date means the date which is 20 Business Days after the date of achievement of the relevant Collaboration Event.

CE Election Notice means a notice in the form of Part C of Schedule 25 (*Collaboration Payment Schedule*).

CE Locked Date means, for each Collaboration Event, the relevant date identified in Part A of Schedule 25 (*Collaboration Payment Schedule*), as adjusted in accordance with clause 25C.2(e).

Central Barangaroo Developer means the developer who will undertake the Central Barangaroo Development under agreement with Infrastructure NSW at the Central Barangaroo Precinct.

Central Barangaroo Development means the mixed use development at central Barangaroo which includes civil and cultural attractions with commercial and retail buildings, residential apartments and public spaces at Barangaroo.

Central Barangaroo Precinct has the meaning given to that term in the Barangaroo Interface Agreement.

[redacted]

Certificate of Completion means a certificate for Phase 1 or Phase 2 (as applicable) referred to in clause 19.10(a)(i) substantially in the form of Schedule 20 (*Greenfield Independent Certifier's Certificate of Completion*).

Certificate of Final Completion means a certificate for Phase 1 or Phase 2 (as applicable) referred to in clause 19.12(d)(i) substantially in the form of Schedule 22 (*Greenfield Independent Certifier's Certificate of Final Completion*).

Certificate of Milestone Completion means a certificate for a Milestone referred to in clause 19A.3(a)(i) substantially in the form of Schedule 22A (*Certificate of Milestone Completion*).

Certificate of Train Option Acceptance means a certificate for a batch of Option 1 Trains referred to in paragraph (a)(i) of item 16 of Part A of Schedule 30A (*Pre-Agreed Options - Trains*) substantially in the form of Appendix 4 of Part A of Schedule 30A (*Pre-Agreed Options - Trains*).

Certificate of Readiness for First Passenger Service means a certificate for Phase 1 or Phase 2 (as applicable) referred to in clause 19.3(a)(i) substantially in the form of Schedule 16 (*Greenfield Independent Certifier's Certificate of Readiness for First Passenger Service*).

Chair means the chairperson of the IDAR Panel as appointed under the IDAR Panel Agreement from time to time.

Change in Control means, in respect of an entity, any event which occurs such that a change occurs in the Control of that entity.

Change in Disability Law means a Change in Law the terms of which impose requirements relating to the ability of disabled persons to access and use rail facilities.

Change in Environmental Law means a Change in Law:

(a) relating to the storage, handling or transportation of waste, dangerous goods or hazardous chemicals;

(b) relating to work health and safety; or

(c) the purpose of which relates specifically to the protection of the Environment.

Change in Law means a repeal of or change to or the coming into effect or implementation after the date of this deed of:

(a) Legislation; or

(b) any applicable judgment of a relevant court of law which changes a binding precedent,

other than any such repeal, change, coming into effect or implementation which, on the date of this deed:

(c) has been published or of which public notice has been given; or

(d) a party experienced and competent in the delivery of works and/or services similar to the OTS2 Works, the Temporary Works or the Operations Activities would have reasonably foreseen or anticipated,

in substantially the same form as the repeal, change, coming into effect or implementation occurring after the date of this deed.

Change in NSW Government Policy means any one or more of the following which occurs after the date of this deed:

(a) repeal of or change to a NSW Government Policy; or

(b) the coming into effect or implementation of a new NSW Government Policy,

other than any such repeal, change, coming into effect or implementation which, on the date of this deed:

(a) has been published or of which public notice has been given; or

(b) a party experienced and competent in the delivery of works and/or services similar to the OTS2 Works, the Temporary Works or the Operations Activities would have reasonably foreseen or anticipated,

in substantially the same form as the repeal, change, coming into effect or implementation occurring after the date of this deed.

Change in Rail Safety Law means a Change in Law the terms of which impose requirements relating to rail safety.

[redacted]

Change of Ownership has the meaning given in clause 53.2(a).

Chatswood Dive Site means the dive site located south of Chatswood Station and north of Mowbray Road at Chatswood.

City Section PSD Contract means the contract titled "City Section PSD Contract" between the Integrator and the City Section PSD Contractor dated on or about the date of this deed.

City Section PSD Guarantee means the deed titled "OTS2 Significant Contractor Guarantee" dated on or about the date of this deed between the Integrator and Nabtesco Corporation.

City Section PSD Contractor means Gilgen Door Systems AG (UID: CHE-105-981.157).

City Station means in respect of the railway stations at Crows Nest, Victoria Cross, Barangaroo, Martin Place, Pitt Street, Central, Waterloo and Sydenham, the Licensed Maintenance Area (City) within:

(a) the station building; and

(b) any service facilities associated with the station.

City Station Completion has the meaning given to the term "Completion" in the relevant City Station Contract.

City Station Construct Contract means each of the following:

(a) Crows Nest Station Construct Contract;

(b) Barangaroo Station Construct Contract,

and together, the **City Station Construct Contracts**.

City Station Contract means each of the following:

(a) Crows Nest Station Design Contract;

(b) Crows Nest Station Construct Contract;

(c) Victoria Cross Station Contract;

(d) Barangaroo Station Design Contract;

(e) Barangaroo Station Construct Contract;

(f) Martin Place Station Contract;

(g) Pitt Street Station Contract; and

(h) Waterloo Station Contract,

and together, the **City Station Contracts**.

City Station Contractor means each of the following:

(a) Crows Nest Station Design Contractor;

(b) Crows Nest Station Construct Contractor;

(c) Victoria Cross Station Contractor;

(d) Barangaroo Station Design Contractor;

(e) Barangaroo Station Construct Contractor;

(f) Martin Place Station Contractor;

(g) Pitt Street Station Contractor; and

(h) Waterloo Station Contractor,

and together, the **City Station Contractors**.

City Station Date of Completion means, in respect of a City Station Portion:

(a) the date notified by the Greenfield Independent Certifier as the date City Station Completion was achieved; or

(b) where another date is determined in accordance with the dispute resolution procedures under the relevant City Station Contract as the date upon which City Station Completion was achieved, that date.

City Station Defect means:

(a) any defect, deficiency, fault, error or omission in the City Stations Works or the City Station Design Works; and

(b) any:

(i) cracking, shrinkage, movement or subsidence in the City Stations Works; or

(ii) other aspect of the City Stations Works or the City Station Design Works,

which is not in accordance with the requirements of the relevant City Station Contract,

but does not include any Deviations within the Foundation Infrastructure Works Tolerances affecting the City Stations Works, any OpCo2 Systems Defect or any Accepted City Station Defect that is Acceptable.

City Station Design Contract means each of the following:

(a) Crows Nest Station Design Contract; and

(b) Barangaroo Station Design Contract,

and together, the **City Station Design Contracts**.

City Station Design Works means the design completed by the Barangaroo Station Design Contractor or the Crows Nest Station Design Contractor under the relevant City Station Design Contract.

City Station Independent Certifier Deed means each of the following:

(a) the deed titled " Sydney Metro City & Southwest – Independent Certification of the Crows Nest Station Design and Technical Services Independent Certifier Deed" to be entered into between the Crows Nest Station Design Contractor, the Principal, OpCo2 and the Greenfield Independent Certifier (**Crows Nest Station Design Independent Certifier Deed**);

(b) the deed titled "Sydney Metro City & Southwest – Independent Certification of the Crows Nest Works Independent Certifier Deed" to be entered into between the Crows Nest Station Construct Contractor, the Principal, OpCo2 and the Greenfield Independent Certifier (**Crows Nest Station Independent Certifier Deed**);

(c) the deed titled "Sydney Metro City & Southwest – Independent Certification of the Barangaroo Works Independent Certifier Deed" to be entered into between the Barangaroo Station Construct Contractor, the Principal, OpCo2 and the Greenfield Independent Certifier (**Barangaroo Station Independent Certifier Deed**);

(d) the deed titled " Sydney Metro City & Southwest - Independent Certification of the Victoria Cross Works Independent Certifier Deed" entered into between the Victoria Cross Station Contractor, the Principal, OpCo2 and the Greenfield Independent Certifier (**Victoria Cross Independent Certifier Deed**);

(e) the deed titled "Sydney Metro City & Southwest Independent Certification of the Barangaroo Station Design and Technical Services Independent Certifier Deed" entered into between the Principal, OpCo2 and the Greenfield Independent Certifier (**Barangaroo Station Design Independent Certifier Deed**);

(f) the deed titled " Sydney Metro City & Southwest – Independent Certification of the Martin Place Metro Station Project Works Independent Certifier Deed (Station Delivery Deed)" entered into between the Martin Place Station Contractor, the Principal and the Greenfield Independent Certifier (**Martin Place Station Independent Certifier Deed**) to which OpCo2 acceded or will accede under the Martin Place IC Deed of Accession;

(g) the deed titled " Sydney Metro City & Southwest – Independent Certification of the Pitt Street Works Independent Certifier Deed" entered into between the Pitt Street Station Contractor, the Principal, OpCo2 and the Greenfield Independent Certifier (**Pitt Street Station Independent Certifier Deed**); and

(h) the deed titled " Sydney Metro City & Southwest – Independent Certification of the Waterloo Works Independent Certifier Deed" entered into between the Waterloo Station Contractor, the Principal, OpCo2 and the Greenfield Independent Certifier (**Waterloo Station Independent Certifier Deed**),

together, the **City Station Independent Certifier Deeds**.

City Station Non-Trackway Portion means a City Station Portion that is not a City Station Trackway Portion.

City Station Notice of Completion has the meaning given to the term "Notice of Completion" in the relevant City Station Contract.

City Station O&M Manual means the operation and maintenance manuals forming part of the Foundation Infrastructure Works Asset Management Information not rejected by the Principal under the relevant City Station Contract.

City Station Portion has the meaning given to the term "Portion" in the relevant City Station Contract (other than the City Station Design Contracts) and includes a City Station Trackway Portion and a City Station Non-Trackway Portion.

City Station Site has the meaning given to the term "Construction Site" in the relevant City Station Contract (other than the City Station Design Contracts).

City Station Site (OTS2) means that part of the City Station Site that forms part of the Construction Site.

City Station Trackway Portion has the meaning given to the term "Trackway Portion" in the relevant City Station Contract (other than the City Station Design Contracts).

City Stations Works means the physical works to be designed and constructed by the City Station Contractors under the City Station Contracts (other than the City Station

Design Contracts), being the stations, mechanical and electrical works component of the Project for the City Stations (other than Central Station and Sydenham Station), including excavation of remaining station shafts (to the extent not undertaken by the TSE Contractor), station structure and station fitout, including mechanical and electrical and the OSD Works (other than at Barangaroo) but excluding the "Third Party Works" and "Temporary Works" (as those terms are defined in each City Station Contract) .

City Stations Works Change means any change or variation to the City Stations Works or the City Station Design Works following the date of this deed including any addition, reduction, increase, decrease, omission, deletion, demolition or removal to or from them not including any change or variation that a City Station Contractor is entitled to make to the design of the City Stations Works or the City Station Design Works under a City Station Contract without the Principal's consent where, following any such change or variation, the City Stations Works or the City Station Design Works will continue to comply with the requirements of the relevant City Station Contract (in the form contained in Exhibit 12E (*City Station Contracts*), as amended for any Approved Foundation Infrastructure Works Change).

Claim includes any claim, action, demand or proceeding including for an increase in the Service Payment, for payment of money (including damages), for relief from or suspension of obligations or for an extension of time:

(a) under, arising out of, or in any way in connection with, this deed;

(b) arising out of, or in any way in connection with, any task, fact, matter, thing or relationship connected with OpCo2's Activities or either party's conduct prior to the date of this deed; or

(c) otherwise at law including:

(i) under or for breach of any statute;

(ii) in tort for negligence or otherwise, including negligent misrepresentation; or

(iii) for restitution, including restitution based on unjust enrichment.

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

Code of Practice means a code of practice which has been approved as a code of practice for the purposes of the WHS Act.

Collaboration Event means an event described in Part A of Schedule 25 (*Collaboration Payment Schedule*).

Collaboration Event Activities means all of OpCo2's Activities required to be performed in order to achieve the relevant Collaboration Event.

Collaboration Payment means the collaboration payment in relation to the relevant Collaboration Event set out in Part A of Schedule 25 (*Collaboration Payment Schedule*).

Commercial Opportunities means the Northwest Retail Licences and the Northwest Advertising Contracts.

Commercially Sensitive Information means the information identified in or of the type referred to in Schedule 33 (*Commercially Sensitive Information*).

Commitment Deed means the deed titled "OTS2 – Commitment Deed" between the Principal and the NRT Parties dated 7 December 2017.

Community Liaison Implementation Plan means the Project Plan of that name.

Compensable Change in Law means:

(a) a Project-Specific Change in Law (other than a Project-Specific Change in Law of the Commonwealth of Australia with respect to Tax);

(b) a Change in Disability Law;

(c) a Change in Environmental Law;

(d) a Change in Rail Safety Law; or

(e) a General Change in Law (other than with respect to Tax).

Compensable Change in NSW Government Policy means a Change in NSW Government Policy in relation to which the Principal has issued a Direction in accordance with clause 35A.3(a)(i).

Compensation Event means each of the following:

(a) a breach by the Principal of its obligations under this deed or any other Project Agreement;

(b) if:

(i) there is a legal challenge brought about by way of commencement of court proceedings in relation to a Planning Approval; or

(ii) a Planning Approval is modified, withdrawn, revoked, replaced, invalidated or suspended,

except to the extent that the legal challenge, modification, withdrawal, revocation, replacement, invalidation or suspension relates to or arises out of or in connection with (or, in the case of a legal challenge, is upheld due to) any event the subject of clause 6.3 (*Modifications to Planning Approvals*) which is at OpCo2's cost and risk;

(c) if:

(i) the Principal fails to comply with its obligations under clauses 9.11(b) or 9.11(d); or

(ii) the OTS2 Works, the Temporary Works, any part of the Foundation Infrastructure Works during any period in which OpCo2 is responsible for the Foundation Infrastructure Works in accordance with clause 14A.11 (*Care and maintenance of Foundation Infrastructure Works*), the Sydney Metro or the Sydney Metro Site are damaged by an Other Contractor,

except to the extent that OpCo2's non-compliance with the Interface Management Plan or its obligations under this deed in connection with Other Contractors increased the length of any delay caused by the Compensation Event or increased the costs payable, or loss of revenue suffered by OpCo2;

(d) damage is caused by the ETS Contractor to the OTS2 Works, the Temporary Works, any part of the Foundation Infrastructure Works during the period in which OpCo2 is responsible for the Foundation Infrastructure Works in accordance with clause 14A.11 (*Care and maintenance of Foundation Infrastructure Works*), the Sydney Metro Site or the Sydney Metro, whether or not that damage is necessary to install, operate, maintain or replace the ETS and it is necessary to reinstate that

damage to ensure that OpCo2 can comply with all of its obligations under this deed (including if the damage results in any Service Payment Deduction);

(e) not used;

(f) if OpCo2, or an OpCo2 Contractor, is required to comply with an Environmental Notice to the extent that it does not arise out of or in connection with any Contamination for which OpCo2 is responsible under clause 11.4 (*Contamination*);

(g) notwithstanding clause 12.1(c)(i), if the Principal fails to give OpCo2 access to a part of the Construction Site on the Site Access Date for that part of the Construction Site (or such earlier date as accepted by OpCo2 in accordance with clause 12A.1(c)(iii), 12A.1(d)(i) or 12A.1(d)(ii));

(h) the existence, creation or variation of any Easement, restriction on use, covenant, agreement, lease, licence or other similar arrangement burdening or benefiting the land contained in the Construction Site that is not identified in Exhibit 10 (*Land dealings*) that has an adverse effect on OpCo2's Activities;

(i) any change to the Licensed Maintenance Area made pursuant to clause 12.3A(d);

(j) if OpCo2 is directed, ordered or required to cease to perform any of OpCo2's Activities (or to change the way it does so), or to provide reasonable assistance in connection with dealing with a Native Title Claim, as contemplated by clause 12.6 (*Native Title Claims*);

(k) if OpCo2 is directed, ordered or required to cease to perform any of OpCo2's Activities (or to change the way it does so) as contemplated by clause 12.7 (*Artefacts*) and:

(i) with respect to the Sydney Metro Northwest on or after the OTS Incorporation Date, causing OpCo2 to incur additional costs exceeding $[redacted] when aggregated with any costs incurred prior to the OTS Incorporation Date pursuant to the equivalent provision in the OTS Project Deed (in aggregate over the Term); and

(ii) with respect to the Sydney Metro City and the Sydney Metro Southwest, causing OpCo2 to incur additional costs exceeding $[redacted] (in aggregate over the Term);

(l) subject to clause 14.15(a), the occurrence of an OTS Civil Works Compensation Event on or after the OTS Incorporation Date;

(m) subject to clause 14A.16 (*Compensation Event*), the occurrence of a Foundation Infrastructure Works Compensation Event;

(n) subject to clause 18.8(c), the Principal carries out, or directs OpCo2 to carry out, tests pursuant to clause 18.8 (*Additional testing by the Principal*);

(o) if the OTS2 Works, the Temporary Works, the Foundation Infrastructure Works, the Sydney Metro, the Sydney Metro Site or OpCo2's Activities are damaged or adversely affected (including by OpCo2 incurring Loss or delay) by any Proximate Work Activity;

(p) the discovery of Contamination on the Sydney Metro Site that was caused or disturbed by a Foundation Infrastructure Works Contractor or an Other Contractor and, in the case of the Foundation Infrastructure Works Contractor, that was not disposed of or otherwise dealt with by the Foundation Infrastructure Works

Contractor in accordance with the relevant Foundation Infrastructure Works Contract;

(q) the occurrence of a Compensable Change in Law;

(r) the occurrence of a Compensable Change in NSW Government Policy;

(s) a Step-in Party exercises all or any of the Step-in Powers in respect of a Step-in Event, except to the extent that the Step-in Event was an OpCo2 Termination Event; and

(t) the occurrence of an Existing Asset Defect in a Specified Asset:

(i) following commencement of the Construction Site Licence for the Sydney Metro Southwest that has, or is likely to have, a material impact on the Delivery Activities; or

(ii) that has, or is likely to have, a material impact on:

(A) Required Train Services; or

(B) the performance of the Operations Activities relating to a Southwest Station;

[redacted]

(v) the Principal notifies OpCo2 of any changes to OpCo2's obligations specified in Schedule 8A (*Requirements of BMS, SMS and Section 88B Instruments*) pursuant to clause 12.5(aa);

(w) the creation of an Easement (or release, variation, modification or waiver of an Easement) in accordance with clause 3.1 of Schedule 9 (*Easements, Land Arrangements and Retail Licences*);

(x) the occurrence of a Sydney Trains Compensation Event;

(y) rectification work on concrete in the Lane Cove cut and cover tunnel is required on or after the OTS Incorporation Date for reasons of structural integrity and/or impacts to passenger services;

(z) the occurrence of an ECRL Compensation Event on or after the OTS Incorporation Date;

[redacted]

[redacted]

(cc) if the OTS2 Works, the Temporary Works, the Foundation Infrastructure Works, the Sydney Metro, the Sydney Metro Site or OpCo2's Activities are damaged or adversely affected (including by OpCo2 incurring Loss or delay) by any Principal Commercial Opportunities;

(dd) not used;

(ee) not used;

(ff) if:

(i) the Principal approves or directs a Modification in accordance with clause 30.3(a)(i) or clause 30.3(a)(ii); and

(ii) the Modification is required to ensure that the OTS2 Works, the Temporary Works or the Sydney Metro comply with a Compensable Change in Law or a Compensable Change in NSW Government Policy;

(gg) not used;

(hh) not used;

(ii) prior to the OTS Incorporation Date, the occurrence of a Compensation Event (as that term is defined under the OTS Project Deed) and provided that for the purposes of determining whether a Compensation Event has occurred under the OTS Project Deed pursuant to clauses 9.12(a), 12.7(c), 14.15, 34.4(a) and clause 3.5(d) of Schedule 3 of the OTS Project Deed, references to:

(i) OpCo's Activities under the OTS Project Deed will include OpCo2's Activities under this deed;

(ii) OpCo will include OpCo2;

(iii) a Core Contractor under the OTS Project Deed will include Core Contractors under this deed;

(iv) the OTS Works and the Temporary Works under the OTS Project Deed will include the OTS2 Works and the Temporary Works under this deed; and

(v) Sydney Trains' Activities under the OTS Project Deed will include Sydney Trains' Activities under this deed; and

(jj) the occurrence of an Integrated Testing Period Event in respect of which the Principal has not issued a Modification Impact Request pursuant to clause 18B.1(a) and a corresponding Modification Order.

Completion has the meaning given in clause 19.4 (*Requirements for Completion*).

[redacted]

Condition Precedent means a condition precedent set out in Schedule 1 (*Conditions Precedent*).

Condition Precedent Deadline Date means, in respect of a Condition Precedent, the date specified next to that Condition Precedent in Schedule 1 (*Conditions Precedent*), or such other date as the parties may agree.

Connection Point means each of:

(a) the Ausgrid Connection Point; and

(b) the Endeavour Energy Connection Point.

Consequential or Indirect Loss has the meaning given in clause 37.3(a).

Construction Environmental Management Plan means the Project Plan of that name.

Construction Loan Facility has the meaning given in the Debt Financing Documents.

Construction Loan Facility Commitment means the total amount available under the Construction Loan Facility.

Construction Management Plan means the Project Plan of that name.

Construction Payment A means, in respect of a month, the amount for that month specified in the Construction Payment A Schedule.

Construction Payment A Schedule means the Construction Payment A Schedule shown in the Model Outputs Schedule.

Construction Payment B means each payment to be made in accordance with clause 25A.1 (*Construction Payments B*) by the Principal to OpCo2 of an amount equal to the aggregate of the corresponding Receivables Purchase Price payable by Finance Co to the Principal under the Securitisation Agreement.

Construction Payment B Date means each date on which Finance Co pays a Receivables Purchase Payment to the Principal in accordance with the Securitisation Agreement and the Payment Direction Deed.

Construction Site means the Project Site and the Temporary Areas.

Construction Site Licence means the licence granted under clause 12.1 (*Construction Site Licence*).

Consultation has the meaning given in clause 56.5(d).

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

(a) at a concentration above the concentration at which the substance, gas, chemical, liquid or other matter (whether occurring naturally or otherwise) is normally present in, on or under land or any other aspect of the Environment in the same locality, being a presence that presents a risk of harm to human health or any other aspect of the Environment; or

(b) toxic, flammable or otherwise capable of causing harm to humans or damage to the Environment including asbestos, toluene, polychlorine biphenyls, lead based paints, glues, solvents, cleaning agents, paints, water treatment chemicals and stone containing silica.

Contingency Works means OpCo2's alternative plan for performance of the Phase 2 Works when Primary Works for the relevant part of the Construction Site is disrupted, interfered with or adversely impacted, as updated from time to time in accordance with clause 17.3A(a)(ii).

Contract Finalisation Deed means the deed titled "OTS2 – Contract Finalisation Deed" between the Principal, the NRT Parties, the O&M Contractor and the Equity Parties dated 7 December 2018.

Contract Service Level Requirements means the requirements set out in section 4 of SPR Appendix 45 (*Service and System Performance Requirements*), as amended from time to time in accordance with clause 11 of Schedule 2 (*Service Payment calculation*).

Control has the meaning in the Corporations Act.

Cooperation and Integration Control Group has the meaning given to that term in the Project Cooperation and Integration Deeds.

Core Contract means:

(a) the Integrator Deed;

(b) the O&M Contract; and

(c) from the OTS Incorporation Date, the OTS Core Contracts.

Core Contractor means:

(a) the Integrator; and

(b) the O&M Contractor.

Core Contractor Guarantor means:

(a) the Integrator Guarantor; and

(b) the O&M Guarantor.

Core Contractor Interface Deed means each of:

(a) the SMCSW Interface Deed; and

(b) the SMNW Integration Works Interface Deed.

Core Contractor Side Deed means:

(a) the Integrator Deed Side Deed; and

(b) the O&M Contract Side Deed.

Corporate Environmental Management System has the meaning given in the New South Wales Environmental Management Systems Guidelines (3rd Edition) (August 2013).

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

Corridor Security Solution (SW) has the meaning given in clause 13C.1(a)(i).

Council means from the OTS Incorporation Date each of Hills Shire Council, Blacktown City Council and Hornsby Shire Council, and together, the **Councils**.

Council Interface Agreements means from the OTS Incorporation Date the:

(a) Hills Shire Council Interface Agreement;

(b) Hornsby Shire Council Interface Agreement; and

(c) Blacktown City Council Interface Agreement.

Counterparty Details means, in respect of each person who is a party to a Principal Project Agreement (other than the Principal, the Greenfield Independent Certifier, the Foundation Infrastructure Works Contractors, the TSE Independent Certifier, the Brownfield Independent Certifier, the D&C Greenfield Independent Certifier (as defined in the Integrator Deed), the Escrow Agent, the Independent Assessor, the Security Trustee, the Agent, the Account Bank, the members of the IDAR Panel, Infrastructure NSW and the Central Barangaroo Developer):

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

(b) in the case of a trustee, a certified copy of the trust deed of the trust it enters into the Principal Project Agreement as trustee for;

(c) a certified copy of any powers of attorney under which the person executed each Principal Project Agreement to which it is a party;

(d) a certified copy of the extract of minutes or verification from an authorised officer evidencing the resolutions of its board of directors, authorising the entry into, delivery and observance of obligations under each Principal Project Agreement to which it is a party; and

(e) names and specimen signatures of the authorised officers of OpCo2, including OpCo2's Representative and any other person authorised to take action or give notices for or on behalf of OpCo2 under the Principal Project Agreements.

CPI means the "Weighted Average of Eight Capital Cities: All Groups Consumer Price Index" as maintained and published quarterly by the Australia Bureau of Statistics (ABS), or as otherwise determined in accordance with clause 1.11A (*Changes to indexes*).

CPI Indexed means, with respect to an amount, the amount must be adjusted in accordance with the indexation process detailed in clause 1.10 (*CPI Indexed*).

Crows Nest-OTS2 Cooperation and Integration Deeds means each of the following:

(a) the deed titled "Crows Nest-OTS2 (Design Contract) Cooperation and Integration Deed" to be entered into between the Principal, OpCo2 and the Crows Nest Station Design Contractor;

(b) the deed titled "Crows Nest-OTS2 (Construct Contract) Cooperation and Integration Deed" to be entered into between the Principal, OpCo2 and the Crows Nest Station Construct Contractor; and

(c) the deed titled "Crows Nest-OTS2 (Construct Contract) Cooperation and Integration Deed" to be entered into between the Principal, OpCo2 and the Crows Nest Overstation Developer,

substantially in the forms set out in Part C of Schedule 47 (*Form of Project Cooperation and Integration Deeds*).

Crows Nest Overstation Developer means the person to be engaged by the Principal to deliver the Over Station Development in respect of Crows Nest Station.

Crows Nest Station Construct Contract means the contract titled " Sydney Metro City & Southwest Crows Nest Station Development Construct Only Delivery Deed" between the Principal and the Crows Nest Station Construct Contractor, a draft version of which is contained in Part B of Exhibit 12E (*City Station Contracts*).

Crows Nest Station Construct Contractor means the person to be engaged by the Principal to deliver the City Stations Works in respect of Crows Nest Station under the Crows Nest Station Construct Contract.

Crows Nest Station Design Contract means the contract titled "Professional Services Contract – Design and Technical Services Crows Nest Station" between the Principal and the Crows Nest Station Design Contractor dated 28 February 2019, an unpriced version of which is contained in Part A of Exhibit 12E (*City Station Contracts*).

Crows Nest Station Design Contractor means SMEC Australia Pty Ltd ABN 47 065 475 149.

CSM-OTS2 Cooperation and Integration Deed means the deed titled "CSM-OTS2 Cooperation and Integration Deed" to be entered into between the Principal, OpCo2 and the CSM Contractor, substantially in the form of Part G of Schedule 47 (*Form of Project Cooperation and Integration Deeds*).

CSM Completion has the meaning given to the term "Completion" in the CSM Contract.

CSM Contract means the contract titled "Sydney Metro City & Southwest Central Station Main Works Incentivised Target Cost Contract" between the Principal and the CSM Contractor dated 6 March 2018, an unpriced version of which is contained in Exhibit 12B (*CSM Contract*).

CSM Contractor means Laing O'Rourke Australia Construction Pty Ltd ABN 39 112 099 000 of Level 4, 100 Arthur Street, North Sydney NSW 2060.

CSM Date of Completion means:

(a) the date notified by the Brownfield Independent Certifier as the date CSM Completion was achieved for CSM Portion 3; or

(b) where another date is determined in accordance with the dispute resolution procedures under the CSM Contract as the date upon which CSM Completion was achieved for CSM Portion 3, that date.

CSM Defect means:

(a) any defect, deficiency, fault, error or omission in the CSM Works; and

(b) any:

    (i) cracking, shrinkage, movement or subsidence in the CSM Works; or

    (ii) other aspect of the CSM Works,

    which is not in accordance with the requirements of the CSM Contract,

but does not include any Deviations within the Foundation Infrastructure Works Tolerances, any OpCo2 Systems Defect or any Accepted CSM Defect that is Acceptable.

CSM Independent Certifier Deed means the deed so titled entered into between the CSM Contractor, the Principal, OpCo2 and the Brownfield Independent Certifier.

CSM Notice of Completion has the meaning given to the term "Notice of Completion" in the CSM Contract.

CSM O&M Manual means the operation and maintenance manuals forming part of the Foundation Infrastructure Works Asset Management Information not rejected by the Principal under the CSM Contract.

CSM Portion has the meaning given to the term "Portion" in the CSM Contract.

CSM Portion 3 has the meaning given to the term "Portion 3" in the CSM Contract.

CSM Site has the meaning given to the term "Site" in the CSM Contract.

CSM Site (OTS2) means that part of the CSM Site that forms part of the Construction Site.

CSM Works means the physical works to be designed and constructed by the CSM Contractor under the CSM Contract, being the Central Station works component of the Project including the metro box excavation, station structure and fitout, customer continuity works, services relocation and temporary decommissioning of platforms and reinstatement, excluding the "Temporary Works" (as that term is defined in the CSM Contract).

CSM Works Change means any change or variation to the CSM Works following the date of this deed including any addition, reduction, increase, decrease, omission, deletion, demolition or removal to or from them (not including any change or variation that the CSM Contractor is entitled to make to the design of the CSM Works under the CSM Contract without the Principal's consent where, following any such change or variation, the CSM Works will continue to comply with the requirements of the CSM Contract (in the form contained in Exhibit 12B (*CSM Contract*), as amended for any Approved Foundation Infrastructure Works Change)).

CSW Augmentation Process means the augmentation process pursuant to Schedule 46 (*Augmentation*) of the OTS Project Deed, the Augmentation Framework Agreement, the Commitment Deed and the Contract Finalisation Deed to deliver the OTS2 PPP.

CSW Augmentation Proposal means the initial augmentation proposal and the updated augmentation proposal provided by OpCo2 in response to the CSW Notice of Proposed Augmentation.

CSW Notice of Proposed Augmentation means the "Notice of Augmentation" dated 24 November 2016 issued by the Principal pursuant to the CSW Augmentation Process.

Customer means all users and potential users of:

(a) the Sydney Metro; or

(b) services associated with the Sydney Metro.

Customer Delay Measure has the meaning given in Schedule 2 (*Service Payment calculation*).

[redacted]

Date for Acceptance means the applicable date for each batch of Option 1 Trains as set out in Appendix 1 of Part A of Schedule 30A (*Pre-Agreed Options - Trains*).

Date for Completion means:

(a) for Phase 1, [redacted] and

(b) for Phase 2, [redacted]

as extended in accordance with this deed.

Date of Acceptance means the date on which the Train Option Acceptance Requirements are achieved for each batch of Option 1 Trains, being the date stated by the Greenfield Independent Certifier in the Certificate of Option Acceptance for those Option 1 Trains.

Date of Completion means the date on which Completion is achieved for Phase 1 or Phase 2, as applicable, being the date stated by the Greenfield Independent Certifier in the Certificate of Completion of Phase 1 or Phase 2, as applicable.

Date of Final Completion means the date on which Final Completion is achieved for Phase 1 or Phase 2, as applicable, being the date stated by the Greenfield Independent Certifier in the Certificate of Final Completion of Phase 1 or Phase 2, as applicable.

Day 1 Clause has the meaning given in clause 2.1 (*Conditions Precedent*).

Debt Financiers means the providers of any facilities, financial arrangements or accommodation provided from time to time, in accordance with the Debt Financing Documents, to OpCo2 for the purposes of carrying out the OTS2 PPP or to Finance Co for the purpose of financing the Receivables Purchase Price and may, where the context permits, include any agent or trustee of such Debt Financiers.

Debt Financiers' Security means each Security Interest granted in favour of the Debt Financiers to secure the obligations of OpCo2 and Finance Co under the Debt Financing Facilities.

Debt Financing Documents means:

(a) the Facility Agreement;

(b) the OTS2 Security Trust Deed;

(c) the Debt Financiers' Securities;

(d) the OTS2 Consent Deeds (as defined in the Facility Agreement);

(e) the OTS2 Swap Agreement (as defined in the Facility Agreement);

(f) the OTS2 Arranging and Structuring Fee Letter and the OTS2 Agency and Security Trustee Fee Letter (in each case, as defined in the Facility Agreement);

(g) any document entered into in relation to any Refinancing in accordance with clause 49 (*Financing and Refinancing*);

(h) any document entered into in relation to any Modification Facility (as defined in the Facility Agreement); and

(i) any other document that the parties agree is a Debt Financing Document for the purposes of this deed.

Debt Financing Facilities means the facilities, financial arrangements or accommodation provided, or to be provided, in accordance with the Debt Financing Documents, to OpCo2 for the purposes of carrying out the OTS2 PPP or to Finance Co for the purpose of financing the Receivables Purchase Price.

Deed of Assurance has the meaning given in Schedule 34 (*Intellectual Property*).

Deeds of Disclaimer means each deed poll titled "Deed of Disclaimer" executed by OpCo, the Integrator and Plenary Origination Pty Ltd (ACN 161 527 519).

Default Notice has the meaning given in clause 40.2 (*Default Notice*).

Default Rate means, in respect of a period, a rate equivalent to [redacted]% per annum above the Bank Bill Rate for that period.

Defect means:

(a) any defect, deficiency, fault, error or omission in the Temporary Works, the OTS2 Works or the Sydney Metro;

(b) any:

(i) cracking, shrinking, movement or subsidence in the Temporary Works, the OTS2 Works, the Sydney Metro City or the Sydney Metro Southwest; or

(ii) other aspect of the Temporary Works, the OTS2 Works, the Sydney Metro City or the Sydney Metro Southwest,

which is not in accordance with the requirements of this deed; or

(c) on and from the OTS Incorporation Date, any:

(i) cracking, shrinking, movement or subsidence in the OTS Works or the Sydney Metro Northwest; or

(ii) other aspect of the OTS Works or the Sydney Metro Northwest,

which is not in accordance with the requirements of this deed for the Sydney Metro Northwest,

and excluding:

(a) Foundation Infrastructure Works Known Defects or Deviations within the Foundation Infrastructure Works Tolerances; and

(b) OTS Civil Works Defects or Deviations within the OTS Civil Works Tolerances.

Defects Collateral Warranty means the document to be executed by:

(a) the CSM Contractor substantially in the form of Part A of Schedule 48 (*Form of Defects Collateral Warranties*);

(b) the Southwest Design Contractor substantially in the form of Part B of Schedule 48 (*Form of Defects Collateral Warranties*);

(c) the SSJ Contractor substantially in the form of Part C of Schedule 48 (*Form of Defects Collateral Warranties*);

(d) the Victoria Cross Station Contractor substantially in the form of Part D of Schedule 48 (*Form of Defects Collateral Warranties*);

(e) the Crows Nest Station Design Contractor substantially in the form of Part E of Schedule 48 (*Form of Defects Collateral Warranties*);

(f) the Crows Nest Station Construct Contractor substantially in the form of Part F of Schedule 48 (*Form of Defects Collateral Warranties*);

(g) the Martin Place Station Contractor substantially in the form of Part G of Schedule 48 (*Form of Defects Collateral Warranties*);

(h) the Pitt Street Station Contractor substantially in the form of Part H of Schedule 48 (*Form of Defects Collateral Warranties*);

(i) the Line-wide Contractor substantially in the form of Part I of Schedule 48 (*Form of Defects Collateral Warranties*);

(j) the Barangaroo Station Construct Contractor substantially in the form of Part J of Schedule 48 (*Form of Defects Collateral Warranties*);

(k) the Barangaroo Station Design Contractor substantially in the form of Part K of Schedule 48 (*Form of Defects Collateral Warranties*);

(l) the Waterloo Station Contractor substantially in the form of Part L of Schedule 48 (*Form of Defects Collateral Warranties*);

(m) the Southwest Corridor Works Contractor substantially in the form of Part M of Schedule 48 (*Form of Defects Collateral Warranties*),

(n) the Southwest Stations 1 Contractor substantially in the form of Part M of Schedule 48 (*Form of Defects Collateral Warranties*);

(o) the Southwest Stations 2 Contractor substantially in the form of Part M of Schedule 48 (*Form of Defects Collateral Warranties*);

(p) the Southwest Stations 3 Contractor substantially in the form of Part M of Schedule 48 (*Form of Defects Collateral Warranties*); and

(q) the PSD/MGF Contractor substantially in the form of Part N of Schedule 48 (*Form of Defects Collateral Warranties*).

Deferred Equity Subscribers means:

(a) MTR Corporation (UK) NRT Limited;

(b) LNWR Pty Ltd as trustee for the LNWR Trust;

(c) Marubeni NRT Investments Pty Ltd;

(d) CDP Infrastructures Group III Inc.; and

(e) Plenary Investments (NRT) Pty Ltd.

Deferred Loan Note Subscribers means:

(a) Marubeni NRT Investments Pty Ltd;

(b) MTR Northwest Rapid Transit (Sydney) Company Limited; and

(c) CDP Infrastructures Group III Inc.

Delivery Activities means all activities that OpCo2 performs, or is required to perform:

(a) in connection with the design and construction of the OTS2 Works and the design and construction of the Temporary Works (whether such things are performed, or

required to be performed, prior to the date of this deed or during the Delivery Phase or the Operations Phase); or

(b) to exercise its rights or comply with its obligations under this deed during the Delivery Phase,

including the activities described in section 2.1.2 of the SPR, whether or not the performance of such things or tasks is subcontracted by OpCo2 to another person.

Delivery Phase means the period commencing on the date of Financial Close and ending on the Date of Final Completion of Phase 2.

Delivery Phase Progress Report means each progress report to be submitted by OpCo2 under clause 17.13 (*Delivery Phase Progress Reports*).

Delivery Phase Sustainability Plan means the Project Plan of that name.

Delivery Program means the program of the Delivery Activities, as updated from time to time in accordance with clause 17.3 (*Delivery Program*). The initial Delivery Program is contained in Exhibit 4 (*Initial Delivery Program*).

Demand Usage Strategy means the strategy for how OpCo2 draws electricity from the Ausgrid Connection Point and the Endeavour Energy Connection Point to minimise network demand charges (which may be called a capacity charge, demand charge or some other charge measured by kW or kVA) payable for this electricity, as agreed and amended by the parties in accordance with clause 9.17 (*Electricity*).

Design and Management Services means the design and management services procured by the Principal under the Design and Management Services Contract.

Design and Management Services Contract means the agreement titled "Professional Services Contract (PSC No. 00013/10847) Design & Management Services, Sydney Metro City & Southwest" entered into between the Principal and the Integrator dated 14 March 2017.

Design Documentation means all:

(a) design documentation (including design standards, concrete mix designs, design reports, durability reports, specifications, models, samples, prototypes, calculations, drawings, shop drawings, digital records, business rules, system processes and all other relevant data) in electronic, computer readable and written or physical forms, or stored by any other means, which are required for the performance of OpCo2's Activities, or which OpCo2 or any other person creates in performing OpCo2's Activities (including the design of the Temporary Works); and

(b) computer software (including both source code and object code versions) which is Developed Intellectual Property (Sydney Metro) (as defined in Schedule 34 (*Intellectual Property*)).

Design Life means in respect of an Asset that falls within a category referred to in section 3.9 of the SPR, the period specified for that Asset in section 3.9 of the SPR commencing on the Date of Completion of Phase 2 and ending on the day after expiry of the period specified for that Asset in section 3.9 of the SPR, however if the Asset:

(a) is located within:

(i) the Licensed Maintenance Area (City); or

(ii) the Licensed Maintenance Area (Northwest) and designed and constructed or supplied (as applicable) under this deed,

the period will commence on the Date of Completion of Phase 1 and end on the day after expiry of the period specified for that Asset in section 3.9 of the SPR;

(b) is a Train supplied by OpCo2 under this deed, the period will commence on the date the Train is first used to either:

(i) provide Train Services; or

(ii) provide Train Services (as defined in the OTS Project Deed) on the Sydney Metro Northwest,

and end on the day after expiry of the period specified for that Asset in section 3.9 of the SPR; or

(c) is located within:

(i) the Licensed Maintenance Area (Northwest) and designed and constructed or supplied (as applicable) under the OTS Project Deed; or

(ii) an OTS Train,

the term "Design Life" under the OTS Project Deed and section 3.9 of the SPR (OTS) will apply.

Design Management Plan means the Project Plan of that name.

Design Review Panel means the architectural and urban design review panel established as an advisory body to the Principal in relation to the Project.

Design Stage means each of Design Stage 1, Design Stage 2 and Design Stage 3.

Design Stage 1 means stage 1 of the development of the Design Documentation as described in the SPR.

Design Stage 2 means stage 2 of the development of the Design Documentation as described in the SPR.

Design Stage 3 means stage 3 of the development of the Design Documentation as described in the SPR.

Designer means, in respect of an element of the OTS2 Works or the Temporary Works, the OpCo2 Contractor that is responsible for preparing the design for that element of the OTS2 Works or the Temporary Works, as specified in the Design Management Plan.

Destination Station has the meaning given in Schedule 2 (*Service Payment calculation*).

Developed Intellectual Property (Sydney Metro) has the meaning given in Schedule 34 (*Intellectual Property*).

Deviations within the Foundation Infrastructure Works Tolerances means an aspect of the Foundation Infrastructure Works that is not in accordance with the requirements of the relevant Foundation Infrastructure Works Contract but that is within the Foundation Infrastructure Works Tolerances.

Deviations within the OTS Civil Works Tolerances means an aspect of the OTS Civil Works that is not in accordance with the requirements of the relevant OTS Civil Works Contract but that is within the OTS Civil Works Tolerances.

Direction means any decision, demand, determination, direction, instruction, notice, order, rejection or requirement.

Dispute has the meaning given in clause 56.1 (*Disputes generally*).

Distribution means, whether in cash or in kind:

(a) any distribution by OpCo2 to its Equity Investors or their Related Bodies Corporate, or any 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 equity capital of OpCo2, units in a trust or any subordinated debt;

(b) the receipt from OpCo2 by its Equity Investors or their Related Bodies Corporate 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 OpCo2 to a Related Body Corporate of OpCo2; or

(d) the release of any contingent funding liabilities, the amount of such release being deemed to be a gain for the purpose of any calculation of Refinancing Gain.

Draft Contract Change has the meaning given in clause 14A.2A(b).

Draft Cure Plan has the meaning given in clause 40.3(a)(iv).

Draft Foundation Infrastructure Works Contracts has the meaning given in clause 14A.2(a)(i).

Draft Prevention Plan has the meaning given in clause 40.4(a).

Early Handover Payment means the payment to be determined in accordance with clause 12A.3 (*Early completion of Foundation Infrastructure Works for Phase 1*) or 12A.3A (*Early completion of the Foundation Infrastructure Works for Phase 2*).

Early Site Access Date means, in respect of a part of the Construction Site, the date specified as the "Early Site Access Date" for that part of the Construction Site in the Site Access Schedule.

Early Site Access Payment means the payment to be determined in accordance with clause 12A.1 (*Early access*).

Early Warning Notification has the meaning given in clause 45.3(d).

Early Works Activities means those activities carried out by the Integrator under the Early Works Deed prior to the date of this deed.

Early Works Deed means the contract titled "Sydney Metro City & Southwest OTS2 Early Works Deed" between the Principal and the Integrator dated 7 December 2018.

Easements means the easements, restrictions on use, covenants, agreements (including building or strata management statements) or other similar arrangements together with any leases, sub-leases, licences and rights and privileges for any of the purposes set out at clause 3 or 4 of Schedule 9 (*Easements, Land Arrangements and Retail Licences*) to

benefit or burden the Licensed Maintenance Area or provided for access to the Additional Maintained Assets and which have been created pursuant to Schedule 9 of the OTS Project Deed or may be created pursuant to Schedule 9 (*Easements, Land Arrangements and Retail Licences*).

ECRL means the rail link from Epping to Chatswood and associated infrastructure which forms part of the Sydney Metro Northwest.

ECRL Compensation Event means each of the following:

(a) the discovery of an ECRL Latent Condition;

(b) water ingress exceeds the design capacity of a localised water sump within the ECRL; and

(c) a cavern panel or other attachment falls from the ceiling or walls of the ECRL tunnel or an ECRL Station due to failure of one or more fixings, and it could not have been predicted or avoided through the normal inspection and replacement regime.

ECRL Conversion Planning Approval means approval obtained for the conversion of the ECRL in accordance with the EP&A Act, a copy of which appears in Part B of Exhibit 5 (*Planning Approvals*) and includes all:

(a) conditions of such approval; and

(b) documents incorporated by reference,

as the approval may be modified from time to time.

ECRL Latent Conditions means any Site Conditions (as defined in the OTS Project Deed) of the ECRL (excluding any System) which differs materially from what is disclosed in the Information Documents (as defined in the OTS Project Deed) issued or made available by, or on behalf of, the Principal before the date of the OTS Project Deed, except to the extent such difference should have been anticipated by a prudent, competent and experienced contractor if it had done those things required by clause 11.1(a) of the OTS Project Deed.

Effective Date means, in respect of a Pre-Agreed Option, the date specified as the "Effective Date" for that Pre-Agreed Option in Schedule 30 (*Pre-Agreed Options*) or Schedule 30A (*Pre-Agreed Options - Trains*).

Election Date means in respect of a Pre-Agreed Option, the relevant date specified as the "Election Date" in Schedule 30 (*Pre-Agreed Options*) or Schedule 30A (*Pre-Agreed Options - Trains*).

Electricity Connection Agreements has the meaning given in clause 9.16(b)(i).

Electricity Consumption Software Model has the meaning given in SPR Appendix 1 (*Definitions and Acronyms*).

Electricity Purchase Agreement has the meaning given in clause 9.17(a)(ii).

Electricity Purchase Obligation has the meaning given in clause 9.17(a)(ii).

[redacted]

Emissions and Energy Data means:

(a) any data, information, records and reports of the type that a registered corporation or any other person may be required by the NGER Legislation to keep or to provide to the Clean Energy Regulator concerning greenhouse gas emissions, energy production or energy consumption;

(b) any data, information, records and reports of the type that a registered corporation or any other person may be entitled to provide to the Clean Energy Regulator under the NGER Legislation concerning reduction of greenhouse gas emissions, removal of greenhouse gases or offsets of greenhouse gas emissions from any greenhouse gas project; and

(c) any other data, information, records and reports concerning environmental emissions or energy production, use, consumption or efficiency of the type that any person may be required by any other law to keep or to provide to any Authority.

Endeavour Energy means the Endeavour Energy Network Operator Partnership (ABN 11 247 365 823) of Level 7, 50 Martin Place Sydney NSW 2000, a partnership carried on under that name by:

(a) Edwards O Pty Limited (ACN 618 643 486) of Level 7, 50 Martin Place Sydney NSW 2000 as trustee for Edwards O Trust;

(b) ERIC Epsilon Operator Corporation 1 Pty Ltd (ACN 617 221 735) of C/O NSW Treasury, 52 Martin Place Sydney NSW 2000 as trustee for ERIC Epsilon Operator Trust 1;

(c) ERIC Epsilon Operator Corporation 2 Pty Ltd (ACN 617 221 744) of C/O NSW Treasury, 52 Martin Place Sydney NSW 2000 as trustee for ERIC Epsilon Operator Trust 2;

(d) ERIC Epsilon Operator Corporation 3 Pty Ltd (ACN 617 221 753) of C/O NSW Treasury, 52 Martin Place Sydney NSW 2000 as trustee for ERIC Epsilon Operator Trust 3; and

(e) ERIC Epsilon Operator Corporation 4 Pty Ltd (ACN 617 221 771) of C/O NSW Treasury, 52 Martin Place Sydney NSW 2000 as trustee for ERIC Epsilon Operator Trust 4.

Endeavour Energy Connection Point means the permanent point or points at which the Sydney Metro's electrical infrastructure connects to Endeavour Energy's electricity distribution network for bulk supply but does not include either prior to, or after:

(a) the Date of Completion of Phase 1, any temporary connection points established between the Sydney Metro's electrical infrastructure and Endeavour Energy's electricity distribution network for the purposes of supplying construction power for Phase 1 prior to the Date of Completion of Phase 1; and

(b) the Date of Completion of Phase 2, any temporary connection points established between the Sydney Metro's electrical infrastructure and Endeavour Energy's electricity distribution network for the purposes of supplying construction power for Phase 2 prior to the Date of Completion of Phase 2.

Energy Deduction has the meaning given in Schedule 2 (*Service Payment calculation*).

Engineering and Competency Management Plan means the Project Plan of that name.

Environment includes all aspects of the surroundings of human beings including:

(a) the physical characteristics of those surroundings such as the land, the waters and the atmosphere;

(b) the biological characteristics of those surroundings such as the animals, plants and other forms of life; and

(c) the aesthetic characteristics of those surroundings such as their appearance, sounds, smells, tastes and textures.

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

Environmental Documents means the Planning Approvals and any documents listed as such in SPR Appendix 49 (*Additional Environmental Requirements*).

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 Plans means:

(a) the Construction Environmental Management Plan;

(b) the Operations Phase Environmental and Sustainability Plan; and

(c) the Delivery Phase Sustainability Plan.

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

Environmental Representative means Healthy Buildings International Pty Ltd ABN 39 003 270 693 appointed by the Principal under a separate contract and any person appointed by the Principal as a replacement from time to time, as notified to OpCo2.

EOT Period means the number of days determined by the Principal's Representative under clause 17.9A(a).

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

EPBC Act Approval (Northwest) means the Minister for the Environment and Water Resources' approval under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (EPBC reference: 2012/6360) dated 11 April 2013, a copy of which (as at the date of this deed) appears in Part B of Exhibit 5 (*Planning Approvals*), as modified from time to time.

Equity Component has the meaning given in Schedule 2 (*Service Payment calculation*).

Equity Documents means:

(a) the OTS2 Deferred Equity Contribution Deed between the Deferred Loan Note Subscribers, the Deferred Equity Subscribers, OpCo2 HoldCo 2, OpCo2 HoldCo, OpCo2, [redacted] and the Agent dated on or about the date of this deed;

[redacted]

Equity Escrow Account means the account referred to in clause 25.6A. (*Equity escrow*) opened and operated in accordance with clause 10.5B (*Establishment and operation of the Equity Escrow Account*) of the Financiers Tripartite Deed.

Equity Interest means:

(a) each OpCo2 Equity Interest;

Equity Investor means:

(a) an OpCo2 Equity Investor; and

Equity Parties means:

(a) Plenary Investments (NRT) Pty Ltd ABN 34 609 355 277;

(b) Marubeni NRT Investments Pty Ltd ABN 99 601 672 244;

(c) Partners Group NRT Access, L.P.;

(d) LNWR Pty Ltd ACN 601 387 820;

(e) PASIF NRT Holdings Pty Ltd ABN 87 601 763 795;

(f) Commonwealth Superannuation Corporation ABN 48 882 817 243;

(g) Pinnacle Fund Services Limited ABN 29 082 494 362;

(h) CDP Infrastructures Group III Inc; and

(i) MTR Corporation (UK) NRT Limited Company Number 08754902.

Equity Purchase Deed means the deed so titled between the Principal, OpCo2 and OpCo2 HoldCo dated on or about the date of this deed.

Escrow Agent has the meaning given in Schedule 34 (*Intellectual Property*).

Escrow Deed (Alstom) means the contract titled "Escrow Agreement" to be entered into between the Principal, OpCo2, Alstom Significant Contractor and the Escrow Agent.

Escrow Deed (CCS and COM) means the contract titled "Escrow Agreement" to be entered into between the Principal, OpCo2, the CCS and COM Contractor and the Escrow Agent.

Escrow Material means the Escrow Material (Sydney Metro) and Escrow Material (Northwest) as each are defined.

Escrow Material (Northwest) has the meaning given in Schedule 34 (*Intellectual Property*).

Escrow Material (Sydney Metro) has the meaning given in Schedule 34 (*Intellectual Property*).

ETS means the ticketing system for the Sydney Metro, including the ETS Equipment, software, smartcards and all other aspects of the system, as modified or replaced from time to time.

ETS Contractors means:

(a) Cubic Transportation Systems (Australia) Pty Limited ABN 82 003 617 561 and any other contractors engaged by Transport for NSW in relation to the ETS; and

(b) any subcontractors and suppliers at any level of the entities referred to in paragraph (a).

ETS Equipment means all physical equipment forming part of the ETS:

(a) installed on the Sydney Metro by Transport for NSW or the ETS Contractor; or

(b) provided by Transport for NSW or the ETS Contractor and intended to be used by OpCo2, including portable readers,

excluding physical equipment forming part of the ETS at Epping, Chatswood, Sydenham and Central stations and smartcards.

ETS IP has the meaning given in clause 1 of Part A of Schedule 34 (*Intellectual Property*).

Excluded Assets means the assets referred to in section 8.11 of the SPR.

Excluded Presentation Areas means the following areas and structures, within the Licensed Maintenance Area:

(a) the external surfaces of the viaduct structure;

(b) underbridge and overbridge surfaces not facing the rail corridor;

(c) noise wall surfaces not facing the rail corridor;

(d) fencing surfaces not facing the rail corridor;

(e) substations and ancillary sites where these are separate from the Station and immediate environs; and

(f) barriers and gates where these are separate from the Station and immediate environs.

[redacted]

[redacted]

Executive Negotiator means:

(a) for OpCo2, its chief executive officer; and

(b) for the Principal, the Sydney Metro Chief Executive,

(or his or her delegate).

Existing Asset Defect means any defect, deficiency, fault, error, cracking, shrinkages, Structural Defect, movement or subsidence whenever occurring or coming into existence and does not include any Foundation Infrastructure Works Defect.

Existing ECRL Moveable Assets means, from the OTS Incorporation Date, the movable assets listed in Schedule 35 (*Existing ECRL Movable Assets*).

Existing Land Arrangements means the dealings described in clause 2.1 of Schedule 9 (*Easements, Land Arrangements and Retail Licences*) and clause 12.4 (*Existing Land Arrangements, Easements, Land Arrangements, Retail Licences and advertising*).

Expert means the person appointed to determine a Dispute pursuant to clause 56.7 (*Expert determination*).

Expiry Date means:

(a) the Original Expiry Date; or

(b) if the Principal has exercised its option to extend the Term under clause 3.3 (*Term extension*), the date that falls on the last day of the Extension Period.

Extended Design Life means, in respect of an Asset that falls within a category referred to in section 3.9 of the SPR and is replaced or refurbished during the Term, the period commencing on the date that replacement or refurbishment has been completed and ending on the day which occurs after expiry of the period specified for the replaced or refurbished Asset in section 3.9 of the SPR.

Extension Only Relief Event means each of the following (except as provided under paragraphs (a) to (ia) of the definition of Relief Event (Other)):

(a) fire, explosion, storm, tempest, lightning, cyclone, hurricane, mudslide, landslide or drought (where such drought is declared as a state of emergency), except as provided under paragraph (ca) of the definition of Relief Event (Other);

(b) not used;

(c) not used;

(d) not used;

(e) failure by any Authority, or a provider of gas, water, sewerage, electricity or telecommunications utilities, to carry out works or provide services to the Sydney Metro Site which it is obliged by law (including by contract) to carry out or provide, or any interruption permitted by law (including by contract) to the carrying out or provision of those works or services;

(f) any event which causes loss or damage to the OTS2 Works, the Temporary Works or the Sydney Metro;

(g) any industrial action, other than industrial action which only affects OpCo2 and/or one or more OpCo2 Contractors; and

(h) any event or occurrence which deprives OpCo2 of any access to the Sydney Metro Site that it is entitled to under this deed,

except where the event (or its effects):

(i) was within the reasonable control of OpCo2 or an OpCo2 Contractor;

(j) occurs or arises as a result of any act or omission of OpCo2 or an OpCo2 Contractor;

(k) was within the reasonable control of OpCo or an OpCo Contractor prior to the OTS Incorporation Date; or

(l) occurs or arises as a result of any act or omission of OpCo or an OpCo Contractor prior to the OTS Incorporation Date.

Extension Order means a notice issued by the Principal pursuant to clause 3.3(j)(iii).

Extension Period means a period of up to ■ months as set out in the Extension Proposal Request issued by the Principal under clause 3.3(a).

Extension Proposal means a proposal issued by OpCo2 under clause 3.3(b).

Extension Proposal Request means a notice titled "Extension Proposal Request" issued by the Principal under clause 3.3(a).

Extension Security Bond means the bond referred to in clause 22.1(a)(ii) and any replacement bond provided under clause 22.4 (*Issuer ceases to have Required Rating*).

Extra Land means the land referred to in clause 12.9(a).

Facility Agreement means the agreement titled "Sydney Metro City & South West – Operations, Trains & Systems 2 (OTS2) PPP Project – Syndicated Facility Agreement – OTS2" dated on or about the date of this deed between, amongst others, the Debt Financiers, the Agent, OpCo2, Finance Co and the Security Trustee.

Final Completion has the meaning given in clause 19.12(b).

Final Completion Payment means $[redacted]

Final Design Documentation means any Design Documentation which:

(a) OpCo2 is entitled to use for construction in accordance with clause 13.10(a);

(b) has been amended by a Modification directed or approved by the Principal's Representative in accordance with clauses 29 (*Principal initiated Modification*), 30 (*OpCo2 initiated Modifications*) or 31 (*Pre-Agreed Options*); or

(c) has been amended in accordance with clause 20.25 (*Post Final Completion design changes*).

Final Frequent Breaches Notice means a notice issued under clause 40.6(c) which complies with the requirements of clause 40.6(d).

Final Impact Statement means an assessment of the anticipated impact that the Augmentation option is likely to have (both during construction and after completion) on the Sydney Metro.

Final Inspection Auditor has the meaning given in clause 21.14(a).

Final Installation Contract Price has the meaning given in clause 13B.1(m)(ii).

Final Performance Test has the meaning given in SPR Appendix 1 (*Definitions and Acronyms*).

Final Persistent Breach Notice means a notice issued under clause 40.5(c) which complies with the requirements of clause 40.5(d).

Final Procurement Strategy means a strategy developed by OpCo2 outlining those packages of an Augmentation that will be tendered.

Final Shutdown Schedule means the agreed schedule for OpCo2 to access the Sydney Metro Southwest rail corridor to perform OpCo2's Activities with respect to the final conversion.

Finance Co means NRT CSW Finance Pty Ltd ACN 635 984 664.

Finance Co Group means Finance Co and any Related Body Corporate identified as a member of the Finance Co Group in Schedule 36 (*OpCo2 group structure*).

Finance HoldCo means NRT CSW Finance Holdings Pty Ltd ACN 635 983 434.

Financial Close occurs when the last Condition Precedent to be satisfied (or waived under clause 2.3 (*Waiver of Conditions Precedent*)) has been satisfied (or waived under clause 2.3 (*Waiver of Conditions Precedent*)).

Financial Close Protocol means the protocol contained in Exhibit 3 (*Financial Close Protocol*).

Financial Indebtedness means any indebtedness, present or future, actual or contingent, in respect of moneys borrowed or raised, or any financial accommodation whatsoever, including under the Debt Financing Documents, or under or in respect of any bill, acceptance, guarantee, discounting arrangement, redeemable share or stock, hedging/swap arrangements, finance or capital lease, hire purchase arrangement, the deferred purchase cost of any asset or service, or any obligation to deliver goods or provide services paid for in advance by any financier or in respect of any financing transaction.

Financiers Tripartite Deed means the deed so titled dated on or about the date of this deed between the Principal, OpCo2, Finance Co, the Security Trustee, the Agent and the Account Bank.

First Operations Period means:

(a) with respect to:

(i) a CSM Defect;

(ii) a City Station Defect;

(iii) a SSJ Defect in the SSJ Works (Phase 1); or

(iv) a Line-wide Defect in the Line-wide Works (Phase 1),

the period of [redacted] commencing on the day after the earlier of:

(v) the Date of Completion of Phase 1; and

(vi) the Date for Completion of Phase 1;

(b) with respect to:

(i) a SSJ Defect in the SSJ Works (Phase 2);

(ii) a Line-wide Defect in the Line-wide Works (Phase 2);

(iii) a Southwest Defect; or

(iv) a PSD/MGF Defect,

the period of [redacted] commencing on the day after the earlier of:

(v) the Date of Completion of Phase 2; and

(vi) the Date for Completion of Phase 2; and

(c) with respect to a Line-wide Defect in the Line-wide Works in Line-wide Portion 1, the period of [redacted] commencing on the day after the earlier of:

(i) the Date of Completion of Phase 1; and

(ii) the Date for Completion of Phase 1.

First Passenger Service means the first Train Service with Customers on board the Train on:

(a) the Sydney Metro Northwest and the Sydney Metro City; or

(b) the Sydney Metro Southwest,

as applicable.

[redacted]

FIW Electronic Files has the meaning given in clause 14A.2(a)(iv).

[redacted]

FIW Variations has the meaning given in clause 14A.2(a)(v).

Force Majeure Event has the meaning given in clause 28.1 (*Force Majeure Event*).

Forecast Aggregate Consumption means the volume of electricity which OpCo2 estimates it will consume through the Connection Points over a Forecast Period for the purposes of operating and maintaining the Sydney Metro during the Operations Phase, as notified and updated to the Principal in accordance with clause 9.17(b)(iv).

Forecast Demand Usage means the electricity demand (measured in KVA) which OpCo2 will utilise throughout each Forecast Period of the Operations Phase, broken down across:

(a) the Ausgrid Connection Point; and

(b) the Endeavour Energy Connection Point,

as notified and updated to the Principal in accordance with clause 9.17(b)(iv).

Forecast Period means each month during each year of the Operations Phase.

Foundation Infrastructure Works means the TSE Works, the CSM Works, the Southwest Works, the Southwest Design Works, the SSJ Works, the City Stations Works, the City Stations Design Works, the Line-wide Works and the PSD/MGF Works.

Foundation Infrastructure Works Asset Management Information means any "Asset Management Information" (as defined in the TSE Deed, the CSM Contract, the relevant Southwest Contract (other than the Southwest Design Contract), the SSJ Contract, the relevant City Station Contract (other than the City Station Design Contracts), the Line-wide Contract and the PSD/MGF Contract), including any draft "Asset Management Information" submitted to the Principal by:

(a) the TSE Contractor under the TSE Deed;

(b) the CSM Contractor under the CSM Contract;

(c) a Southwest Contractor (other than the Southwest Design Contractor) under the relevant Southwest Contract;

(d) the SSJ Contractor under the SSJ Contract;

(e) a City Station Contractor (other than the Barangaroo Station Design Contractor and the Crows Nest Station Design Contractor) under the relevant City Station Contract;

(f) the Line-wide Contractor under the Line-wide Contract; or

(g) the PSD/MGF Contractor under the PSD/MGF Contract.

Foundation Infrastructure Works Change means a TSE Works Change, a CSM Works Change, a Southwest Works Change, a SSJ Works Change, a City Stations Works Change, a Line-wide Works Change or a PSD/MGF Works Change.

Foundation Infrastructure Works Compensation Event means each of the following:

(a) the Principal fails to comply with its obligation under clause 12A.8 (*Foundation Infrastructure Works Contractor to minimise disruption*);

(b) the occurrence of a Foundation Infrastructure Works Contractor Damage Event;

(c) the occurrence of a Foundation Infrastructure Works Defect and in respect of which the Principal has not directed a Modification as referred to in clause 14B.2(d)(vii);

(d) the occurrence of a Foundation Infrastructure Works Change, other than a Foundation Infrastructure Works Change requested by OpCo2 pursuant to clause 14A.4 (*OpCo2 Initiated Foundation Infrastructure Works Change*);

(e) the OpCo2 Handover (PC) Date with respect to:

(i) each City Station Site (OTS2);

(ii) the CSM Site (OTS2);

(iii) the SSJ Site (OTS2) on the Sydney Metro City; and

(iv) the Line-wide Site (OTS2) on the Sydney Metro City,

does not occur on or before [redacted]

[redacted]

[redacted]

Foundation Infrastructure Works Contract means the TSE Deed, the CSM Contract, each Southwest Contract, the SSJ Contract, each City Station Contract, the Line-wide Contract and the PSD/MGF Contract.

Foundation Infrastructure Works Contractor means the TSE Contractor, the CSM Contractor, each Southwest Contractor, the SSJ Contractor, each City Station Contractor, the Line-wide Contractor and the PSD/MGF Contractor.

Foundation Infrastructure Works Contractor Damage Event means the OTS2 Works, the Temporary Works, any part of the Foundation Infrastructure Works during any period in which OpCo2 is responsible for the Foundation Infrastructure Works in accordance with clause 14A.11 (*Care and maintenance of Foundation Infrastructure Works*), the Sydney Metro or the Sydney Metro Site within that relevant part of the Sydney Metro Site are damaged by a Foundation Infrastructure Works Contractor:

(a) at the City Station Site (OTS2) from the City Station Date of Completion of the last City Station Portion for the relevant Station;

(b) at the CSM Site (OTS2) from the CSM Date of Completion;

(c) at the TSE Site (OTS2), the SSJ Site (OTS2) for Phase 1 and Line-wide Site (OTS2) for Phase 1 from the Line-wide Date of Construction Completion of Line-wide Portion 3;

(d) at the SSJ Site (OTS2) for Phase 2, the Line-wide Site (OTS2) for Phase 2, the Southwest Site (OTS2) and the PSD/MGF Site (OTS2) from the Phase 2 Handover Date;

(e) with respect to Line-wide Portion 1, from the OTS Incorporation Date; and

(f) at any other part of the Sydney Metro Site, on or after the OpCo2 Handover (PC) Date relating to that part of the Sydney Metro Site.

Foundation Infrastructure Works Defect means a TSE Defect, a CSM Defect, a Southwest Defect, a SSJ Defect, a City Station Defect, a Line-wide Defect or a PSD/MGF Defect and includes a Foundation Infrastructure Works Structural Defect and a PSD/MGF Systemic Defect.

Foundation Infrastructure Works Design Documentation means all design documentation for the Foundation Infrastructure Works.

Foundation Infrastructure Works Known Defect means:

(a) in respect of the CSM Works, an Accepted CSM Defect;

(b) in respect of the Southwest Works, an Accepted Southwest Defect;

(c) in respect of the SSJ Works, an Accepted SSJ Defect;

(d) in respect of the TSE Works, an Accepted TSE Defect;

(e) in respect of each City Station Trackway Portion, an Accepted City Station Defect;

(f) in respect of each City Station Non-Trackway Portion, a Minor City Station Defect, Agreed City Station Defect or Accepted City Station Defect;

(g) in respect of the Line-wide Works, a Minor Line-wide Defect, Agreed Line-wide Defect or Accepted Line-wide Defect; and

(h) in respect of the PSD/MGF Works, a Minor PSD/MGF Defect, Agreed PSD/MGF Defect or Accepted PSD/MGF Defect.

Foundation Infrastructure Works Notice of Completion means a TSE Notice of Completion, a CSM Notice of Completion, a Southwest Notice of Completion, a SSJ Notice of Completion, a City Station Notice of Completion, a Line-wide Notice of Construction Completion for Line-wide Portion 3, a Line-wide Notice of Construction Completion for Line-wide Portion 4, a PSD/MGF Notice of Construction Completion or a PSD/MGF Notice of Completion as applicable.

Foundation Infrastructure Works O&M Manual means the TSE O&M Manual, the CSM O&M Manual, a Southwest O&M Manual, the SSJ O&M Manual, a City Station O&M Manual, the Line-wide O&M Manual and the PSD/MGF O&M Manual.

Foundation Infrastructure Works Portion means:

(a) a TSE Portion, CSM Portion 3, a Southwest Portion, a SSJ Phase 1 Portion, a SSJ Phase 2 Portion, a City Station Portion, a Line-wide Phase 1 Portion, a Line-wide Phase 2 Portion or a PSD/MGF Portion; and

(b) for the purposes of clause 14A.10 (*Foundation Infrastructure Works documentation*), includes Line-wide Portion 1.

Foundation Infrastructure Works Site means each of the following:

(a) the CSM Site;

(b) each Southwest Site;

(c) the SSJ Site;

(d) the TSE Site;

(e) each City Station Site;

(f) the Line-wide Site; and

(g) the PSD/MGF Site.

Foundation Infrastructure Works Structural Defect means a Structural Defect in the CSM Works, the Southwest Works, the SSJ Works, any City Stations Works or any Line-wide Structural Asset.

Foundation Infrastructure Works Subcontractor means a contractor, sub-contractor, sub-sub-contractor and so on right down the contracting chain (including all suppliers, tradespersons and consultants) of a Foundation Infrastructure Works Contractor but excludes the Greenfield Independent Certifier and the Brownfield Independent Certifier.

Foundation Infrastructure Works Tolerances means the permitted tolerances for certain aspects of the Foundation Infrastructure Works, as set out in SPR Appendix 35 (*Foundation Infrastructure Works Tolerances*).

Frequent Breach has the meaning given in clause 40.6 (*Frequent Breaches*).

Frequent Breaches Notice means a notice issued under clause 40.6(a) which complies with the requirements of clause 40.6(b).

Full Operations Phase means the period commencing on the date of First Passenger Service on the Sydney Metro Southwest and ending on the last day of the Term.

Functional Integration Group has the meaning given in the Master Interface Protocols Deed Poll.

General Change in Law means a Change in Law which is not:

(a) a Project-Specific Change in Law;

(b) a Change in Disability Law;

(c) a Change in Environmental Law; or

(d) a Change in Rail Safety Law.

Good Industry Practice means that degree of skill, care, prudence, foresight and practice which would reasonably be expected of a skilled and experienced person, engaged in the same or a similar type of undertaking as that of OpCo2 or its Associates, as the case may be, under the same or similar circumstances as the implementation of the OTS2 PPP.

Graffiti means any unauthorised defacement, posting of bills or other marking of any surface of an Asset or the ETS Equipment.

Greenfield Independent Certifier means Advisian Pty Ltd ABN 50 098 008 818 or such other person(s) as may be engaged by:

(a) the Principal and OpCo2 in accordance with the OTS2 Independent Certifier Deed;

(b) the Principal and each City Station Contractor in accordance with the relevant City Station Independent Certifier Deed;

(c) the Principal and the Line-wide Contractor in accordance with the Line-wide Independent Certifier Deed; and

(d) the Principal and the PSD/MGF Contractor in accordance with the PSD/MGF Independent Certifier Deed.

GSF Act means the *Government Sector Finance Act 2018 No 55* (NSW).

GSF Act Guarantee means the guarantee made on or prior to the date of Financial Close pursuant to section 6.27 of the GSF Act in respect of the Principal's obligations under the Principal Project Agreements.

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

GST Return has the meaning given in the GST Act.

Handback Audit has the meaning given to that term in clause 21.10(a).

Handback Audit Asset has the meaning given in clause 21.10(b)(i).

Handback Auditor has the meaning given in clause 21.10(a).

Handback Condition means the required condition of the Sydney Metro as at the Expiry Date (or, if this deed is terminated early, at the end of the Term), as set out in section 8.12 of the SPR and provided that any Foundation Infrastructure Works Known Defects or Deviations within the Foundation Infrastructure Works Tolerances are permitted for the purposes of section 8.12 of the SPR.

Handback Security Bond means the bond referred to in clause 22.1(a)(i) and any replacement bond provided under clause 22.4 (*Issuer ceases to have Required Rating*).

Handover Inspection has the meaning given in Schedule 3 (*Sydney Trains Interface*).

Handover Spares means in respect of each category of Spares the greater of:

(a) the Spares identified to be made available at hand back in the then current Spares and Consumable Strategy; and

(b) the average number of Spares held in each category at the end of the Operating Years falling 2, 3 and 4 years before the end of the Term.

Heavy Vehicle National Law means the *Heavy Vehicle National Law* (NSW) and the regulations and any other legislative instruments under that Act.

Help Point has the meaning given in SPR Appendix 1 (*Definitions and Acronyms*).

High Risk Location has the meaning given in Schedule 2 (*Service Payment calculation*).

Hills Shire Council Interface Agreement means the agreement titled "North West Rail Link – Operations, Trains and System (OTS) Interface Agreement" between the Principal and Hills Shire Council dated 3 September 2014, a copy of which, as at the date of this deed, is contained in Exhibit 15 (*Third Party Agreements*).

Hired Moveable Asset means:

(a) from the date of this deed, any Moveable Asset set out in Part A of Schedule 45 (*Hired Moveable Assets*); and

(b) from the OTS Incorporation Date, any Moveable Asset set out in Part B of Schedule 45 (*Hired Moveable Asset*),

to which OpCo2 will not acquire title.

Hold Point means a point beyond which a work process must not proceed without the authorisation or release of an authority designated by the Principal's Representative pursuant to clause 8.3(f).

Hornsby Shire Council Interface Agreement means the agreement titled "North West Rail Link – Operations, Trains and Systems (OTS) Interface Agreement" between the Principal and Hornsby Shire Council dated 2 September 2014, a copy of which, as at the date of this deed, is contained in Exhibit 15 (*Third Party Agreements*).

Human Resources Plan means the Project Plan of that name.

IC Design Review Period means 20 Business Days of the date on which any Design Documentation for any Design Stage is submitted in accordance with clause 13.4 (*Preparation and submission of Design Documentation*).

IDAR Panel means the Independent Dispute Avoidance and Resolution Panel constituted under the IDAR Panel Agreement, referred to in clause 56 (*Dispute resolution*).

IDAR Panel Agreement means the agreement titled "Independent Dispute Avoidance and Resolution Panel Agreement" between the Principal, the members of the IDAR Panel and any other party that accedes to the agreement from time to time.

IDAR Panel Agreement Accession Deed Poll means an accession deed poll substantially in the form of Schedule 1 of the IDAR Panel Agreement.

Incident means an accident, event or occurrence which:

(a) actually or potentially causes death, serious injury, significant passenger disruption;

(b) affects the operation of the Stations or the Trains on, or operational capacity or efficiency of, the Sydney Metro;

(c) from the OTS Incorporation Date, affects the operation of trains on the Sydney metropolitan rail network near Chatswood or Epping Stations; or

(d) affects the operation of trains on the Sydney metropolitan rail network near Sydenham, Central, Martin Place or Bankstown Stations.

Incident Management Plan means the Project Plan of that name.

Increased Principal Risk Allocation means any increase in the risks or liabilities for the Principal in relation to the OTS2 PPP as a result of the entry into, existence of or application of the Securitised Licence Structure.

Independent Assessor means an independent assessor engaged in accordance with clause 28A.7 (*Independent Assessor*).

Independent Assessor Deed means the deed so titled dated on or about the date of this deed between the Principal, OpCo2 and the Independent Assessor.

Indexed Lifecycle Component has the meaning given in Schedule 2 (*Service Payment calculation*).

Indicative Timetable has the meaning given in SPR Appendix 1 (*Definitions and Acronyms*).

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

(a) is referred to in Exhibit 6 (*Information Documents*);

(b) is issued or made available by, or on behalf of, the Principal, Transport for NSW or the State to OpCo2 or the NRT Parties in connection with the CSW Augmentation Process, the OTS2 Works, the Early Works Activities, the Project or the ETS (including anything issued or made available through the Principal or Transport for NSW's website) regardless of whether at the time of issue (or being made available) was expressly classified or stated to be an "Information Document";

(c) was an Information Document (as that term was defined in the OTS Project Deed); or

(d) is referred to, or incorporated by reference, in an Information Document unless such information, data, document or material is otherwise expressly stated to form part of this deed,

whether issued or made available:

(e) on, before or after the date of submission of the CSW Augmentation Proposal (including any such information, data, document or material made available as part of the expression of interest phase); or

(f) on, before or after the date of execution of this deed,

other than any information, data, document or material which the Principal is obliged by the terms of this deed to provide to OpCo2 and OpCo2 is expressly permitted by the terms of this deed to rely on.

Infrastructure NSW means the independent statutory agency established under the *Infrastructure NSW Act* (2011).

Initial Defects Period means:

(a) with respect to:

(i) a TSE Defect, the period commencing on the Line-wide Date of Construction Completion of Line-wide Portion 3;

(ii) a CSM Defect, the period commencing on the Line-wide Date of Construction Completion of Line-wide Portion 3;

(iii) a Line-wide Defect in the Line-wide Works (Phase 1), the period commencing on the Line-wide Date of Construction Completion of Line-wide Portion 3;

(iv) a City Station Defect, the period commencing on the City Station Date of Completion of that Station; and

(v) a SSJ Defect in the SSJ Works (Phase 1), the period commencing on the SSJ Date of Completion,

and ending on the earlier of:

(vi) the Date of Completion of Phase 1; and

(vii) the Date for Completion of Phase 1; and

(b) with respect to:

(i) a SSJ Defect in the SSJ Works (Phase 2);

(ii) a Southwest Defect;

(iii) a Line-wide Defect in the Line-wide Works for Line-wide Portion 4; or

(iv) a PSD/MGF Defect,

the period commencing on the relevant OpCo2 Handover (C&M) Date and ending on the earlier of:

(v) the Date of Completion of Phase 2; and

(vi) the Date for Completion of Phase 2.

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

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

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

(c) a person passes a resolution for its winding up or deregistration, except for the purpose of a reconstruction, amalgamation, merger or consolidation on terms approved by the Principal 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 any property of a person;

(e) in the case of an OpCo2 Entity, the holder of a Security Interest takes (or appoints an agent to take) possession of any property of that OpCo2 Entity or otherwise enforces its Security Interest;

(f) in the case of a Core Contractor or a Core Contractor Guarantor, the holder of a Security Interest takes (or appoints an agent to take) possession of any property of the Core Contractor or Core Contractor Guarantor that is used for the performance of OpCo2's Activities or otherwise enforces its Security Interest in respect of any such property;

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

(h) a person:

(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 business (other than as a result of UGL Limited becoming a subsidiary of another company listed in a recognised stock exchange);

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

(iv) is deemed insolvent by virtue of its failure to comply with a statutory demand, which is not withdrawn or set aside within 10 Business Days;

(i) a person 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 the Principal, except for the purposes of a solvent reconstruction or amalgamation permitted by this deed; or

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

Insurance Benchmark Date means the date:

(a) of the Date of Completion of Phase 1 and each third, or multiple thereof, anniversary of that date;

(b) falling three months after the date on which OpCo2 receives written notification from the Principal's Representative in accordance with clause 38.5(a) that the insurance limits of indemnity required for the Benchmarked Insurances will be increased; and

(c) falling three months after the date on which OpCo2 receives written notification from the Principal's Representative in accordance with clause 38.6 (*Review of Insurance limits and deductibles*) that the minimum sums insured and/or maximum deductibles should be increased or decreased for a Benchmarked Insurance.

Insurance Proceeds has the meaning given in clause 38.15(a).

Insurance Proceeds Account means the account referred to in clause 38.15(b).

Insurances means the insurances required to be effected and maintained under this deed.

[redacted]

Integrator means MTR Corporation (Sydney) SMCSW Pty Limited ACN 615 158 122.

Integrator Deed means the contract titled "OTS2 Integrator Deed" between OpCo2 and the Integrator dated on or about the date of this deed.

Integrator Deed Side Deed means the contract titled "OTS2 Integrator Deed Side Deed" between the Principal, OpCo2, the Integrator, the D&C Greenfield Independent Certifier (as defined in the Integrator Deed) and the O&M Contractor dated on or about the date of this deed.

Integrator Guarantee means the deed titled "Integrator Guarantee" dated on or about the date of this deed between OpCo2 and the Integrator Guarantor.

Integrator Guarantor means MTR Corporation Limited, a company incorporated in Hong Kong, Hong Kong companies number 714016 of MTR Headquarters Building, Telford Plaza, Kowloon Bay, Hong Kong.

Integrator's Modifications Manager means:

(a) the person engaged by the Integrator in the position of "Modifications Manager" in accordance with clause 9.15(c)(i); or

(b) any other person from time to time engaged by the Integrator to replace that person in accordance with clause 9.15(c)(ii).

[redacted]

Integrator's Representative means [redacted] or any other person from time to time notified by OpCo2 to replace that person.

Intellectual Property has the meaning given in Schedule 34 (*Intellectual Property*).

Interface Access Period means the period:

(a) commencing on the commencement of the Construction Site Licence; and

(b) ending on the relevant OpCo2 Handover (C&M) Date,

for that part of the Foundation Infrastructure Works Site.

Interface Management Plan means the Project Plan of that name.

Interface Protocols has the meaning given in Schedule 3 (*Sydney Trains interface*).

Interface Works means the work to be executed by the Foundation Infrastructure Works Contractors, which will interface with, or affect or be affected by, OpCo2's Activities and the OTS2 Works.

Interim Access Period means the period:

(a) commencing on the date which the Principal notifies OpCo2 that a part of the Foundation Infrastructure Works Site becomes Accessible in accordance with clause 12A.2(a); and

(b) ending on the earlier of:

    (i) commencement of the Construction Site Licence for that part of the Foundation Infrastructure Works Site; and

    (ii) as notified in writing by the Principal to OpCo2.

Interim Inspection Auditor has the meaning given in clause 21.15(a)(ii).

Issuer Co Group means [redacted] and any Related Body Corporate identified as a member of the Issuer Co Group in Schedule 36 (*OpCo2 Group Structure*).

Known Defects Rectification Period means:

(a) in respect of any Agreed Line-wide Defect and Minor Line-wide Defect in Line-wide Portion 3, the [redacted] period commencing on the Line-wide Date of Construction Completion of Line-wide Portion 3;

(b) in respect of any Agreed Line-wide Defect and Minor Line-wide Defect in Line-wide Portion 4, the [redacted] period commencing on the Line-wide Date of Construction Completion of Line-wide Portion 4;

(c) in respect of any Agreed City Station Defect and Minor City Station Defect in a City Station Non-Trackway Portion set out in a City Station Notice of Completion, the [redacted] period commencing on the relevant City Station Date of Completion; and

(d) in respect of any Agreed PSD/MGF Defect and Minor PSD/MGF Defect, the period commencing on the PSD/MGF Date of Construction Completion and ending on the Phase 2 Handover Date.

KPI means a key performance indicator, as specified in Annexure B of Schedule 2 (*Service Payment calculation*).

L&E Contractor means ThyssenKrupp Elevator Australia Pty Limited ABN 12 073 056 149.

L&E Framework Contract means the agreement titled "Sydney Metro City & Southwest – Lifts and Escalators – Framework Contract" between the Principal and the L&E Contractor dated 31 August 2018, as amended by amendment deed dated 2 August 2019.

Land Arrangements has the meaning given in Schedule 9 (*Easements, Land Arrangements and Retail Licences*).

Land Tax means land tax payable in accordance with the provisions of the Land Tax Legislation.

Land Tax Legislation means each of the *Land Tax Act 1956* (NSW) and the *Land Tax Management Act 1956* (NSW).

Legislation means, in relation to New South Wales or the Commonwealth of Australia:

(a) any act of parliament;

(b) any subordinate legislation, rules, regulations or by-laws; and

(c) binding rules, guidelines, regulations, policies, standards, procedures, directives, circulars, codes of practice or requirements relating to or affecting the execution of any part of the OTS2 Works or the provision of a service included in the Operations Activities as may be published by the Commonwealth or New South Wales governments or local councils or Authorities, with which OpCo2 is legally required to comply.

Licence Payment means each licence payment payable by OpCo2 to the Principal under clause 25.2A (*Licence Payments*) identified in the Model Outputs Schedule, as adjusted (if at all) under this deed.

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

Licensed Intellectual Property (Sydney Metro) has the meaning given in Schedule 34 (*Intellectual Property*).

Licensed Maintenance Area means each of the Licensed Maintenance Area (Northwest), Licensed Maintenance Area (City) and Licensed Maintenance Area (Southwest), as applicable.

Licensed Maintenance Area (City) means the land (including subsurface land) and airspace more particularly described as the "Licensed Maintenance Area (City)" in SPR Appendix 3 (*Licensed Maintenance Area*) as amended in accordance with clause 12.3A (*Licensed Maintenance Area*).

Licensed Maintenance Area (Northwest) means the land (including subsurface land) and airspace more particularly described as the "Licensed Maintenance Area (Northwest)" in SPR Appendix 3 (*Licensed Maintenance Area*) as amended in accordance with clause 12.3A (*Licensed Maintenance Area*).

Licensed Maintenance Area (Southwest) means the land (including subsurface land) and airspace more particularly described as the "Licensed Maintenance Area (Southwest)" in SPR Appendix 3 (*Licensed Maintenance Area*) as amended in accordance with clause 12.3A (*Licensed Maintenance Area*).

Line-wide-OpCo Cooperation and Integration Deed means the deed titled "Line-wide-OpCo Cooperation and Integration Deed" to be entered into between the Principal, OpCo and the Line-wide Contractor.

Line-wide-OTS2 Cooperation and Integration Deed means the deed titled "Line-wide-OTS2 Cooperation and Integration Deed" to be entered into between the Principal, OpCo2 and the Line-wide Contractor, substantially in the form set out in Part L of Schedule 47 (*Form of Project Cooperation and Integration Deeds*).

Line-wide Additional Defect Period has the meaning given in clause 14B.2(b)(iii).

Line-wide Completion has the meaning given to the term "Completion" in the Line-wide Contract.

Line-wide Construction Completion has the meaning given to the term "Construction Completion" in the Line-wide Contract.

Line-wide Contract means the contract titled "Sydney Metro City & Southwest Line-wide Works Incentivised Target Cost Contract" between the Principal and the Line-wide Contractor dated 20 November 2018 in relation to the Line-wide Works.

Line-wide Contractor means the unincorporated joint venture between CPB Contractors Pty Limited (ABN 98 000 893 667) and UGL Engineering Pty Limited (ABN 96 096 365 972).

Line-wide Date of Construction Completion of Line-wide Portion 1 means:

(a) the date notified by the Greenfield Independent Certifier as the date Line-wide Construction Completion was achieved for Line-wide Portion 1; or

(b) where another date is determined in accordance with the dispute resolution procedures under the Line-wide Contract as the date upon which Line-wide Construction Completion was achieved for Line-wide Portion 1, that date.

Line-wide Date of Construction Completion of Line-wide Portion 3 means:

(a) the date notified by the Greenfield Independent Certifier as the date Line-wide Construction Completion was achieved for Line-wide Portion 3; or

(b) where another date is determined in accordance with the dispute resolution procedures under the Line-wide Contract as the date upon which Line-wide Construction Completion was achieved for Line-wide Portion 3, that date.

Line-wide Date of Construction Completion of Line-wide Portion 4 means:

(a) the date notified by the Greenfield Independent Certifier as the date Line-wide Construction Completion was achieved for Line-wide Portion 4; or

(b) where another date is determined in accordance with the dispute resolution procedures under the Line-wide Contract as the date upon which Line-wide Construction Completion was achieved for Line-wide Portion 4, that date.

Line-wide Defect means:

(a) any defect, deficiency, fault, error or omission in the Line-wide Works; and

(b) any:

(i) cracking, shrinkage, movement or subsidence in the Line-wide Works; or

(ii) other aspect of the Line-wide Works,

which is not in accordance with the requirements of the Line-wide Contract,

but does not include any Deviations within the Foundation Infrastructure Works Tolerances or any Accepted Line-wide Defect that is Acceptable.

Line-wide IC Deed of Accession means the deed of accession executed by OpCo2 on or about the date of this deed, providing for OpCo2 to accede to the Line-wide Independent Certifier Deed.

Line-wide Independent Certifier Deed means the deed so titled entered into between the Principal, the Line-wide Contractor and the Greenfield Independent Certifier, to which OpCo2 acceded under the Line-wide IC Deed of Accession dated on or about the date of this deed.

Line-wide Milestone Performance Payment Milestone 41 has the meaning given to the term "Milestone Performance Payment Milestone 41" in the Line-wide Contract.

Line-wide Milestone Performance Payment Milestone 42 has the meaning given to the term "Milestone Performance Payment Milestone 42" in the Line-wide Contract.

Line-wide Milestone Performance Payment Milestone 43 has the meaning given to the term "Milestone Performance Payment Milestone 43" in the Line-wide Contract.

Line-wide Milestone Performance Payment Milestone 46 has the meaning given to the term "Milestone Performance Payment Milestone 46" in the Line-wide Contract.

Line-wide Notice of Completion has the meaning given to the term "Notice of Completion" in the Line-wide Contract.

Line-wide Notice of Construction Completion has the meaning given to the term "Notice of Construction Completion" in the Line-wide Contract.

Line-wide O&M Manual means the operation and maintenance manuals forming part of the Line-wide Asset Management Information not rejected by the Principal under the Line-wide Contract.

Line-wide Phase 1 Portion means each of Line-wide Portion 2 and Line-wide Portion 3 and together, the **Line-wide Phase 1 Portions**.

Line-wide Phase 2 Portion has the meaning given to the term "Portion 4" in the Line-wide Contract.

Line-wide Portion has the meaning given to the term "Portion" in the Line-wide Contract.

Line-wide Portion 1 has the meaning given to the term "Portion 1" in the Line-wide Contract.

Line-wide Portion 2 has the meaning given to the term "Portion 2" in the Line-wide Contract.

Line-wide Portion 3 has the meaning given to the term "Portion 3" in the Line-wide Contract.

Line-wide Site has the meaning given to the term "Construction Site" in the Line-wide Contract.

Line-wide Site (OTS2) means that part of the Line-wide Site that forms part of the Construction Site.

Line-wide Specified Milestone 20 has the meaning given to the term "Specified Milestone 20" in the Line-wide Contract.

Line-wide Structural Asset means each of the following Line-wide Works:

(a) the Artarmon substation service building;

(b) the Sydney Metro Trains Facility South, including the water treatment plant facility;

(c) the infrastructure and modifications to the Sydney Metro Trains Facility (North) which are necessary to accommodate the additional Trains;

(d) the Sydney Metro Trains Facility (North) depot loco shed service building;

(e) the northern dive and southern dive service buildings at the tunnel portal; and

(f) the piling and retaining wall leading from the existing Chatswood turn-back buffer stops to the northern dive.

Line-wide Works means the physical works to be designed, constructed, installed and commissioned by the Line-wide Contractor under the Line-wide Contract, including the following line-wide components of the Project:

(a) tunnel ventilation;

(b) track including tunnel services (drainage, lighting, fire systems, LV supplies), stabling, combined services cable brackets;

(c) high voltage power supply;

(d) overhead line and traction supply;

(e) upgrade works at the Sydney Metro Trains Facility (North); and

(f) Sydney Metro Trains Facility (South).

Line-wide Works (Phase 1) means the Line-wide Works forming part of the Line-wide Phase 1 Portions.

Line-wide Works (Phase 2) means the Line-wide Works forming part of the Line-wide Phase 2 Portions.

Line-wide Works Change means any change or variation to the Line-wide Works following the date of this deed including any addition, reduction, increase, decrease, omission, deletion, demolition or removal to or from them not including any change or variation that the Line-wide Contractor is entitled to make to the design of the Line-wide Works under the Line-wide Contract without the Principal's consent where, following any such change or variation, the Line-wide Works will continue to comply with the requirements of the Line-wide Contract (in the form contained in Exhibit 12F (*Line-wide Contract*), as amended for any Approved Foundation Infrastructure Works Change).

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

(a) are adjacent to;

(b) connect to;

(c) intersect;

(d) cross; or

(e) are in any way affected by,

the OTS2 Works or Temporary Works, including those sections of public spaces, parks, pedestrian ways, pedal cycle paths, local roads, state highways, regional roads and main

roads, including any associated road reserves, that are made redundant or become service roads as part of the road network.

Longstop Date means each of Longstop Date (Phase 1) and Longstop Date (Phase 2), as applicable.

Longstop Date (Phase 1) means the date that falls 2 years and four months after the Date for Completion of Phase 1, as extended in accordance with this deed.

Longstop Date (Phase 2) means the date that falls 2 years after the Date for Completion of Phase 2, as extended in accordance with this deed.

Loss means:

(a) any cost, expense, loss, damage, liability or other amount; and

(b) without being limited by paragraph (a) and only to the extent not prohibited by law, any fine or penalty,

whether direct, indirect, consequential, present, future, fixed, unascertained, actual or contingent and, for the avoidance of doubt, includes Consequential or Indirect Loss.

LW Contractor's Activities has the meaning given in the Line-wide–OTS2 Cooperation and Integration Deed.

Maintenance Works Program means the works program required under the Asset Management Plan defining the Asset Management Activities required in the following 2 years as set out in the SPR.

Major Australian Bank means Australia and New Zealand Banking Group Limited, Westpac Banking Corporation, National Australia Bank Limited and Commonwealth Bank of Australia.

Marrickville Dive Site means the dive site located north of Sydenham Station and south of Bedwin Road at Marrickville.

Martin Place-OTS2 Cooperation and Integration Deeds means:

(a) the deed titled "Martin Place-OTS2 Cooperation and Integration Deed" to be entered into between the Principal, OpCo2, the Martin Place Station Contractor; and

(b) the deed titled "Martin Place-OTS2 Cooperation and Integration Deed" to be entered into between the Principal, OpCo2 and the Martin Place Station Contractor and the Martin Place Overstation Developer,

substantially in the forms set out in Part J of Schedule 47 (*Form of Project Cooperation and Integration Deeds*).

Martin Place IC Deed of Accession means the deed of accession executed by OpCo2 on or about the date of this deed, providing for OpCo2 to accede to the Martin Place Independent Certifier Deed.

Martin Place Overstation Developer means Lendlease Building Pty Limited (ABN 97 000 098 162).

Martin Place Station Contract means the contract titled "Martin Place Metro Station Project Station Delivery Deed" between the Principal and the Martin Place Station

Contractor dated 12 September 2018, an unpriced version of which is contained in Part F of Exhibit 12E (*City Station Contracts*).

Martin Place Station Contractor means Macquarie Group Limited ABN 94 122 169 279 of Level 6, 50 Martin Place, Sydney NSW 2000.

Master Interface Protocols means the protocols set out in Schedule 1 to the Master Interface Protocols Deed Poll.

Master Interface Protocols Deed Poll means the deed poll titled "Sydney Metro City & Southwest Master Interface Protocols Deed" executed by OpCo2 on or about the date of this deed.

Master SPR means the master scope and performance requirements for the Project as set out in Exhibit 21 (*Master SPR*).

Materials means any equipment, plant, materials, fixtures, fittings, furniture, machinery, goods, parts, components and other items incorporated or to be incorporated into the OTS2 Works.

Maximum Headway has the meaning given in Schedule 2 (*Service Payment calculation*).

Maximum Train Journey Time has the meaning given in Schedule 2 (*Service Payment calculation*).

Milestone means each of the milestones set out in Schedule 10 (*Milestones*).

Milestone Completion has the meaning given in clause 19A.1 (*Requirements for Milestone Completion*).

Milestone Date for Completion means the date for completion of each Milestone as set out in Schedule 10 (*Milestones*), as extended in accordance with this deed.

Milestone Payment has the meaning given in clause 19A.4(a).

Minimum Operating Standards has the meaning given in SPR Appendix 1 (*Definitions and Acronyms*).

Minor City Station Defect means, in respect of a City Station Non-Trackway Portion, a City Station Defect that:

(a) does not prevent the relevant City Stations Works from being fit for their intended purpose; and

(b) can be corrected after the relevant part of the Construction Site has been handed over to OpCo2 without causing delay or disruption to OpCo2's Activities within the relevant part of the Construction Site,

and which is listed in the relevant City Station Notice of Completion as a "Minor Defect".

Minor Foundation Infrastructure Works Defect means a Minor Line-wide Defect, Minor City Station Defect or Minor PSD/MGF Defect.

Minor Defect means a Defect:

(a) which:

(i) does not:

(A) prevent the Sydney Metro from being fit for its intended purpose;

(B) prevent the achievement of the system performance requirements specified in the SPR;

(C) prevent access to the Station Precincts or Stations; or

(D) in the Principal's reasonable opinion, affect the public image of the Sydney Metro; and

(ii) the Greenfield Independent Certifier determines that OpCo2 has reasonable grounds for not promptly rectifying; or

(b) which the parties agree is a Minor Defect.

Minor Line-wide Defect means, in respect of a Line-wide Portion, a Line-wide Defect that:

(a) does not prevent the relevant Line-wide Works from being fit for their intended purpose; and

(b) can be corrected after the relevant part of the Construction Site has been handed over to OpCo2 without causing delay or disruption to OpCo2's Activities within the relevant part of the Construction Site,

and which is listed in the relevant Line-wide Notice of Construction Completion as a "Minor Defect".

Minor Modification means:

(a) a Modification that:

(i) is not of a complex nature;

(ii) will not affect the risk profile of the OTS2 PPP (other than in a de minimis manner);

(iii) will not cause delay to the OTS2 Works (where applicable);

(iv) will not:

(A) jeopardise the Accreditation of OpCo2 (or any Core Contractor), or an application for Accreditation by OpCo2 (or any Core Contractor); or

(B) adversely affect OpCo2's (or any Core Contractor's) compliance with its Accreditation obligations under the Rail Safety National Law and Rail Safety Regulations; and

(v) will not adversely affect OpCo2's ability to perform its obligations under this deed (other than in a de minimis manner); or

(b) any other Modification the parties may agree is a Minor Modification.

Minor Non-Compliance means a minor error, minor omission or minor non-compliance:

(a) which:

(i) does not:

(A) prevent the Sydney Metro from being fit for its intended purpose;

(B) prevent the achievement of the system performance requirements specified in the SPR; or

(C) affect the safety of the Sydney Metro; and

(ii) the Greenfield Independent Certifier determines that OpCo2 has reasonable grounds for not promptly correcting prior to the certification required to be obtained under this deed; or

(b) which the parties agree is a Minor Non-Compliance.

Minor PSD/MGF Defect means, in respect of the PSD/MGF Works, a PSD/MGF Defect that:

(a) does not prevent the relevant PSD/MGF Works from being fit for their intended purpose; and

(b) can be corrected after the PSD/MGF Works have achieved PSD/MGF Construction Completion without causing delay or disruption to OpCo2's Activities,

and which is listed in the Certificate of PSD/MGF Completion as a "Minor Defect".

Missed Platform has the meaning given in Schedule 2 (*Service Payment calculation*).

Missed Train Service has the meaning given in Schedule 2 (*Service Payment calculation*).

Model Outputs Schedule means the Schedule produced in accordance with the Financial Close Protocol and initialled for identification by the Principal, the Security Trustee and OpCo2, a pro forma of which appears as Schedule 1 to the Financial Close Protocol, as updated from time to time pursuant to clause 50.1(b).

Modification means any change to the requirements of this deed for:

(a) the OTS2 Works;

(b) the Temporary Works;

(c) the Sydney Metro; or

(d) OpCo2's Activities (or the sequencing or timing of them),

including:

(e) any addition, reduction, increase, decrease or omission to or from them;

(f) without prejudice to the generality of paragraph (a), the reduction, decrease or omission of all or any part of OpCo2's Activities with respect to Phase 2; and

(g) any design works, surveys or site investigations in respect of a potential or proposed change referred to in paragraphs (a) to (d) in order to:

(i) better understand the feasibility of the potential or proposed change referred to in paragraphs (a) to (d); or

(ii) advance progress in respect of a potential or proposed change referred to in paragraphs (a) to (d) to ensure that, if approved, implementation of the change would not be unreasonably delayed,

but excluding any changes that are required as a result of a Pre-Agreed Option which the Principal has directed pursuant to clause 31(a).

Modification Approval means a notice titled "Modification Approval" issued by the Principal under clause 30.2(a)(ii)(A) or 30.2(d)(i).

Modification Cost Proposal has the meaning given in clause 29.2(e)(i).

Modification Impact Proposal means a proposal submitted by OpCo2 under clause 29.1(a).

Modification Impact Request means a notice titled "Modification Impact Request" issued by the Principal under clause 29.1(a).

Modification KPI means a key performance indicator specified in section 2 of Schedule 24 (*Modifications*), as amended from time to time in accordance with clause 28A.12(e) or clause 28A.13(c)(ii).

Modification Order means a notice titled "Modification Order" issued by the Principal under clause 29 (*Principal initiated Modifications*).

Modification Payment Schedule has the meaning given in clause 29.2(e)(iii).

Modification Performance Deduction has the meaning given in section 2 of Schedule 24 (*Modifications*).

Modifications Personnel Fee means the amount specified as the "Modifications Personnel Fee" in section 1.1 of Schedule 24 (*Modifications*).

Modifications Review has the meaning given in clause 28A.13(a).

Modifications Review Date means each anniversary of the date of Financial Close.

Modifications Working Group means the working group established in accordance with clause 28A.5(a) to manage Modifications during the Delivery Phase and includes:

(a) the Principal's Modifications Manager; and

(b) OpCo2's Modifications Personnel.

Monthly Modifications Payment means, in respect of a month, the payment calculated in accordance with section 1 of Schedule 24 (*Modifications*).

Monthly Operations Performance Report means the monthly report prepared in accordance with, and containing the information required by, SPR Appendix 53b (*Operations Phase Reporting Requirements*).

Monthly Service Payment Report means the monthly report prepared in accordance with, and containing the information required by, SPR Appendix 53b (*Operations Phase Reporting Requirements*) and submitted in accordance with clause 25.13 (*Service Payment Monitoring System*).

Moral Rights Consent has the meaning given in Schedule 34 (*Intellectual Property*).

Moveable Assets means:

(a) the Trains;

(b) the Spares, including the Handover Spares;

(c) the Special Tools and Equipment and

(d) all other chattels:

(i) forming part of the OTS2 Works;

(ii) from the OTS Incorporation Date, forming part of the OTS Works;

(iii) used by OpCo2 or OpCo2 Contractors for the purpose of carrying out the Operations Activities and permanently stored within the Licensed Maintenance Areas; or

(iv) which are vehicles with the primary function of transporting equipment to, from and within the Licensed Maintenance Areas for the purpose of carrying out the Operations Activities,

but excluding any chattels used for Commercial Opportunities.

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

Net Financial Impact means the net financial impact of a NFI Event calculated in accordance with Schedule 29 (*Net Financial Impact*).

Network Charges means all charges payable to Ausgrid and Endeavour Energy:

(a) under the Electricity Connection Agreements; or

(b) by the electricity retailer from which the Principal purchases electricity for the Sydney Metro, and which are passed through to the Principal by that electricity retailer in respect of that electricity,

but does not include any charges relating to:

(c) augmentation of Ausgrid's or Endeavour Energy's electricity networks (which includes any consequential work required by Ausgrid or Endeavour Energy to their respective network); or

(d) connection to facilitate the Ausgrid Connection Point and the Endeavour Energy Connection Point being constructed or commissioned,

which augmentation and connection charges are not to be factored into the ongoing charges payable on and from:

(e) the Date of Completion of Phase 1 with respect to the Sydney Metro Northwest and the Sydney Metro City; and

(f) the Date of Completion of Phase 2 with respect to the Sydney Metro Southwest.

NFI Event means has the meaning given in Schedule 29 (*Net Financial Impact*).

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

Nominated Independent Certifier has the meaning given in clause 5.4A(a).

Nominated Member has the meaning given in clause 56.4 (*Executive Negotiation*).

Nominated Test has the meaning given to that term in the OTS2 Independent Certifier Deed.

Non-Reviewable Temporary Works means Temporary Works that:

(a) do not have an impact upon the amenity of any members of the public; and

(b) do not involve any potential risk to the health or safety of members of the public or property.

Northwest Advertising Contracts means those advertising contracts approved by the Principal pursuant to clause 6.2 of Schedule 9 (*Easements, Land Arrangements and Retail Licences*) of the OTS Project Deed or if OpCo's rights are novated to OpCo2, the OTS2 Project Deed (as applicable).

Northwest Final Design Documentation means the final as built designs certified by the OTS Independent Certifier in accordance with the OTS Project Deed.

Northwest Retail Licences means those retail licences approved by the Principal pursuant to clause 6.1 of Schedule 9 (*Easements, Land Arrangements and Retail Licences*) of the OTS Project Deed.

Northwest Station means from the OTS Incorporation Date, in respect of the railway stations at Tallawong, Rouse Hill, Kellyville, Bella Vista, Norwest, Showground, Castle Hill, Cherrybrook, Macquarie University, Macquarie Park, North Ryde, Epping and Chatswood, the Licensed Maintenance Area (Northwest) within:

(a) the station building; and

(b) any service facilities associated with the station.

Notice of Dispute means a notice given under clause 56.6(b).

Notice of Issue means a notice given under clause 56.3 (*Notice of Issue*).

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

NRT Parties means OpCo, the Integrator and Plenary Origination Pty Ltd (ACN 161 527 519).

NSW Government Policy means any policy or guideline of the NSW Government, as published from time to time.

NSW Guidelines means the NSW Government's Implementation Guidelines to the New South Wales Code of Practice for Procurement: Building and Construction (as issued on 1 July 2013).

NSW Trains means the corporation constituted by section 37(1) of the *Transport Administration Act 1988* (NSW).

NSWTI means the centralised New South Wales Transport Information service that communicates and receives data and information in relation to public transport services through the 131500 transport infoline (or any replacement service that serves a similar function).

NWRL Site has the meaning given to it in the OTS Project Deed.

O&M Contract means the contract titled "Sydney Metro Trains, Systems, Operations and Maintenance O&M Contract" between OpCo2 and the O&M Contractor dated on or about the date of this deed.

O&M Contract Side Deed means the contract titled "OTS2 O&M Contract Side Deed" between the Principal, OpCo2, the O&M Contractor, the O&M Guarantors and the Integrator dated on or about the date of this deed.

O&M Contractor means Metro Trains Sydney Pty Ltd ACN 600 820 737 of Level 3, 65 Pirrama Road, Pyrmont NSW 2009.

O&M Guarantee means, in respect of an O&M Guarantor, the deed titled "O&M Guarantee" dated on or about the date of this deed between OpCo2 and that O&M Guarantors.

O&M Guarantors means:

(a) MTR Corporation Limited (a company incorporated in Hong Kong, Hong Kong companies number 071416);

(b) CCCC International Holding Limited (a company incorporated in Hong Kong, Hong Kong companies number 0248473); and

(c) CIMIC Group Limited (ACN 004 482 982).

OCC Contract means the contract titled 'Operations Control Centre Expansion and Fit-Out Works D&C Contract' between the Integrator and the OCC Contractor for expansion works at the Operations Control Centre.

OCC Contractor means the contractor engaged by the Integrator to perform the Operations Control Centre expansion works that form part of the Delivery Activities.

OCC Contractor Deed of Appointment means the deed titled "Appointment of OCC Contractor as Principal Contractor" to be entered into between the Principal, OpCo2, the Integrator and the OCC Contractor.

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

OpCo means NRT Pty Ltd ACN 166 610 313 whose registered office is at 'Rialto South Tower' Level 43, 525 Collins Street, Melbourne VIC 3000, in its personal capacity and in its capacity as trustee of the NRT Unit Trust.

OpCo/OpCo2 Interface Deed means the deed titled "OpCo/OpCo2 Interface Deed" between OpCo and OpCo2 dated on or about the date of this deed.

OpCo2 CCB Acceptance Notice means a notice issued by the OpCo2 Change Control Board certifying those parts of the Design Documentation that this deed requires to be submitted to the assurance committee established by OpCo2, in a form acceptable to the Principal acting reasonably.

OpCo2 Change Control Board means the assurance committee established by OpCo2 as part of the OpCo2 network assurance process.

OpCo Contractor has the meaning given to that term in the OTS Project Deed.

OpCo2 Contractor means a contractor, sub-contractor, sub-sub-contractor and so on right down the contracting chain (including all suppliers, tradespersons and consultants) of OpCo2 involved in performing OpCo2's Activities but excludes the Greenfield Independent Certifier, the Brownfield Independent Certifier, Infrastructure NSW and the Central Barangaroo Developer.

OpCo2 Corridor Security Activities has the meaning given in clause 13C.1(a)(ii)(A).

OpCo2 Entity means OpCo2 and Finance Co, or either of them, as the context requires.

OpCo2 Equity Interest means:

(a) a share or unit or other interest in the nature of equity in any member of OpCo2 Group; and

(b) any right or interest (including any interest in the nature of debt) in any member of OpCo2 Group which is exercisable or convertible into an interest referred to in paragraph (a).

OpCo2 Equity Investor means a person who:

(a) holds shares or units or other interests in the nature of equity in any member of OpCo2 Group; or

(b) provides a shareholder loan (or other loan in the nature of equity funding) to or for the benefit of any member of OpCo2 Group (but excluding any funding referred to in paragraphs (b)-(c) of the definition of Equity Interest).

OpCo2 ETS Works has the meaning given in Schedule 4 (*ETS Interface*).

OpCo2 Event of Default means any event specified in clause 40.1 (*OpCo2 Events of Default*).

OpCo2 Group means OpCo2 and any Related Body Corporate identified as a member of the OpCo2 Group in Schedule 36 (*OpCo2 group structure*), and any Related Body Corporate which becomes a member of the OpCo2 Group pursuant to a consent given in accordance with clause 53.2 (*Change of Ownership of OpCo2 Group Member*).

OpCo2 Handover (C&M) Date means:

(a) with respect to the City Stations Works within the City Station Site (OTS2), the City Station Date of Completion of the last City Station Portion for that Station;

(b) with respect to the CSM Works within the CSM Site (OTS2), the CSM Date of Completion;

(c) with respect to the SSJ Works (Phase 1) within the SSJ Site (OTS2), the Line-wide Date of Construction Completion of Line-wide Portion 3;

(d) with respect to the SSJ Works (Phase 2) within the SSJ Site (OTS2), the Phase 2 Handover Date;

(e) with respect to the TSE Works within the TSE Site (OTS2), the Line-wide Date of Construction Completion of Line-wide Portion 3;

(f) with respect to the Line-wide Works (Phase 1) within the Line-wide Site (OTS2), the Line-wide Date of Construction Completion of Line-wide Portion 3;

(g) with respect to the Line-wide Works (Phase 2) within the Line-wide Site (OTS2), the Phase 2 Handover Date;

(h) with respect to the Southwest Works within the Southwest Site (OTS2), the Phase 2 Handover Date; and

(i) with respect to the PSD/MGF Works, the Phase 2 Handover Date.

OpCo2 Handover (PC) Date means:

(a) with respect to each City Station Site (OTS2), the City Station Date of Completion of the last City Station Portion for that Station;

(b) with respect to the CSM Site (OTS2), the CSM Date of Completion of the last CSM Portion;

(c) with respect to the SSJ Site (OTS2) on the Sydney Metro City, the Line-wide Date of Construction Completion of Line-wide Portion 3;

(d) with respect to the Line-wide Site (OTS2) on the Sydney Metro City, the Line-wide Date of Construction Completion of Line-wide Portion 3;

(e) with respect to the Sydney Metro Trains Facility (North) where OTS2 Works are occurring, the Line-wide Date of Construction Completion of Line-wide Portion 1;

(f) with respect to the SSJ Site (OTS2) on the Sydney Metro Southwest, the Phase 2 Handover Date;

(g) with respect to the Line-wide Site (OTS2) on the Sydney Metro Southwest, the Phase 2 Handover Date;

(h) with respect to the Southwest Site (OTS2), the Phase 2 Handover Date;

(i) with respect to the PSD/MGF Site (OTS2), the Phase 2 Handover Date;

(j) with respect to any remaining part of the Construction Site for Phase 1 outside the sites referred to in paragraphs (a) to (d) of this definition, the Line-wide Date of Construction Completion of Line-wide Portion 3; and

(k) with respect to any remaining part of the Construction Site for Phase 2 outside the sites referred to in paragraphs (f) to (k) of this definition, the Phase 2 Handover Date.

OpCo2 HoldCo means NRT CSW Holdings Pty Ltd ACN 635 508 440 in its personal capacity and as trustee of the OpCo2 Hold Trust.

OpCo2 HoldCo 2 means NRT CSW Holdings 2 Pty Ltd ACN 635 505 092 in its personal capacity and as trustee of the OpCo2 Hold 2 Trust.

OpCo2 Integration Contracts means each of the following:

(a) the SMNW Integration Works Interface Deed;

(b) the SMCSW Interface Deed; and

(c) the contract titled "SMCSW (OpCo1/OpCo2) Interface Deed" between OpCo2 and OpCo dated on or about the date of this deed.

[redacted]

OpCo2 SISC Members means those members of the Systems Integration Steering Committee identified in paragraphs (iii) and (iv) of clause 18A.1(a).

OpCo2 Systems Contract means each of the following contracts:

(a) CCS and COM Contract;

(b) City Section PSD Contract; and

(c) Radio Contract,

and together, the **OpCo2 Systems Contracts**.

OpCo2 Systems Contractor means each of the following:

(a) CCS and COM Contractor;

(b) City Section PSD Contractor;

(c) Radio Contractor,

and together, the **OpCo2 Systems Contractors**.

OpCo2 Systems Defect means:

(a) any defect, deficiency, fault, error or omission in the OpCo2 Systems Works; and

(b) any:

(i) cracking, shrinkage, movement or subsidence in the OpCo2 Systems Works; or

(ii) other aspect of the OpCo2 Systems Works,

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

OpCo2 Systems Guarantor means each of the following:

(a) Thales, a French "Société Anonyme" (Public Limited Company) whose registered office is at Tour Carpe Diem - 31 Place des Corolles - Esplanade Nord 92400 Courbeyoie France;

(b) Gilgen Door Systems AG [CH-ID: 0353007678D] [UID: CHE-105-981.157] of Freiburgstrasse 34, CH-3150 Shwarzenburg, Switzerland;; and

(c) UGL Engineering Pty Ltd ACN 096 365 972 of Level 8, 40 Miller Street, North Sydney NSW 2060,

and together, the **OpCo2 Systems Guarantors**.

OpCo2 Systems Works means the physical works to be designed, constructed, installed and commissioned by the OpCo2 Systems Contractors under the OpCo2 Systems Contracts, being the following systems components of the Project:

(a) station central control systems;

(b) radio communications;

(c) platform screen doors on the Sydney Metro City; and

(d) platform edge barriers on the Sydney Metro City.

OpCo2 Termination Event means any event specified in clause 42.1 (*OpCo2 Termination Events*).

OpCo2's Activities means all activities that OpCo2 performs, or is required to perform, to exercise its rights or comply with its obligations under this deed, whether or not the performance of such things or tasks is subcontracted by OpCo2 to another person, including the Delivery Activities and the Operations Activities.

OpCo2's Emissions and Energy Data means any Emissions and Energy Data relating to any aspect of OpCo2's Activities, or the activities of OpCo2 Contractors in connection with OpCo2's Activities, including any such Emissions and Energy Data that:

(a) OpCo2 is or may be required at any time to keep or to provide to the Principal or to any Authority (or both) pursuant to an obligation under this deed;

(b) OpCo2 or any entity which is a "controlling corporation" (within the meaning of the NGER Legislation) of OpCo2 is or may be required at any time to keep or to provide to the Principal or to any Authority (or both) pursuant to an obligation at law (including an obligation under the NGER Legislation); or

(c) OpCo2 or any entity which is a "controlling corporation" (within the meaning of the NGER Legislation) of OpCo2 is or may be entitled at any time to provide to the Clean Energy Regulator under NGER Legislation concerning any greenhouse gas project.

OpCo2's Modifications Manager means:

(a) the person employed by OpCo2 in the position of "Modifications Manager" in accordance with clause 9.15(c)(i); or

(b) any other person from time to time employed by OpCo2 to replace that person in accordance with clause 9.15(c)(ii).

OpCo2's Modifications Personnel means:

(a) during the Delivery Phase:

  (i) OpCo2's Modifications Manager;

  (ii) the Integrator's Modifications Manager; and

  (iii) any additional personnel employed in accordance with clause 28A.3(g) or 28A.13(c)(i); and

(b) during the Operations Phase, any personnel engaged in accordance with clause 28A.3(g),

but not including any personnel that are no longer required pursuant to a notice given by the Principal under clause 28A.3(h) or 28A.13(c)(i).

OpCo2's Privacy Plan means the plan of that name to be prepared by OpCo2 in accordance with clause 45.10(e).

OpCo2's Representative means [redacted] or any other person from time to time appointed by OpCo2 to replace that person in accordance with clause 9.15 (*Personnel*).

Open Book Basis means the provision of:

(a) any pricing, costing and other information on an open book basis to enable an assessment of actual costs and profit margins, including a breakdown of all relevant:

(i) preliminaries;

(ii) insurances;

(iii) labour;

(iv) equipment;

(v) materials;

(vi) subcontract costs;

(vii) indexation adjustments for inflation;

(viii) currency components;

(ix) margins; and

(x) discount rates used to calculate net present values,

in a clear and transparent manner and consistent with the requirements set out in clause 3.10 of Schedule 29 (*Net Financial Impact*); and

(b) [redacted]

[redacted]

(ii) the number [redacted]

[redacted]

Operating Hours has the meaning given in Schedule 2 (*Service Payment calculation*).

Operating Year means a calendar year commencing on 1 July which falls (as a whole or in part) within the Operations Phase, except that:

(a) the first Operating Year will commence on the Date of Completion of Phase 1 and will end on 30 June following the Date of Completion of Phase 1; and

(b) the last Operating Year will end on the last day of the Term.

Operational Financial Model means the updated Base Case Financial Model provided to the Principal from time to time in accordance with clause 50.2(a)(i).

Operations Activities means all activities that OpCo2 performs, or is required to perform:

(a) in connection with the operation or asset management of the Sydney Metro or the ETS (whether such things are performed, or required to be performed, during the Delivery Phase or the Operations Phase); or

(b) to exercise its rights or comply with its obligations under this deed during the Operations Phase,

whether or not the performance of such things or tasks is subcontracted by OpCo2 to another person, including:

(c) the activities described in section 2.1.3 of the SPR; and

(d) the maintenance of the Foundation Infrastructure Works during the Delivery Phase in accordance with clause 14A.11 (*Care and maintenance of Foundation Infrastructure Works*).

Operations Activities Review has the meaning given in clause 20.3(a).

Operations and Maintenance Manuals has the meaning given in SPR Appendix 1 (*Definitions and Acronyms*).

Operations Control Centre has the meaning given in SPR Appendix 1 (*Definitions and Acronyms*).

Operations Phase means the period commencing on the date of First Passenger Service on the Sydney Metro City and ending on the last day of the Term and includes the Phase 1 Operations Phase and the Full Operations Phase.

Operations Phase Environmental and Sustainability Plan means the Project Plan of that name.

Operations Plan means the Project Plan of that name.

Operative Provisions means the operative provisions of this deed, being clauses 1 (*Interpretation*) to 62 (*General*) and excluding all Schedules and exhibits.

Operator Maintenance Services Contract means the maintenance services contract which may be formed between the O&M Contractor and the L&E Contractor in accordance with clause 3.3 (*Maintenance Services Contracts*) of the L&E Framework Contract.

Option 1 Trains means the 14 trains which OpCo2 is required to provide to the Principal in accordance with Part A of Schedule 30A (*Pre-Agreed Options - Trains*) following the exercise of the Option 1 Trains Option.

[redacted]

Option 1 Trains Option means the pre-agreed option for the Option 1 Trains in Part A of Schedule 30A (*Pre-Agreed Options - Trains*).

Option 1 Trains Option Exercise Date means the date on which the Principal directs OpCo2 to implement the Option 1 Trains Option by notice pursuant to clause 31(a).

Option 1 Trains Payment means each payment for the Option 1 Trains and rotable spares and other agreed spares determined in accordance with paragraph 11 of Part A of Schedule 30A (*Pre-Agreed Options - Trains*).

Original Date for Completion means the Original Date for Completion of Phase 1 and the Original Date for Completion of Phase 2, as applicable.

Original Date for Completion of Phase 1 means the Date for Completion of Phase 1 as at Financial Close and stated as the "Original Date for Completion of Phase 1" in the Model Outputs Schedule.

Original Date for Completion of Phase 2 means the Date for Completion of Phase 2 as at Financial Close and stated as the "Original Date for Completion of Phase 2" in the Model Outputs Schedule.

Original Expiry Date means 5 May 2034.

Origin Station has the meaning given in Schedule 2 (*Service Payment calculation*).

OSD Works the physical works to be designed and constructed by a City Station Contractor for an Over Station Development.

Other Contractors means any contractor, consultant, tradesperson, supplier or other person engaged or authorised by the Principal to do work on or about the Sydney Metro Site but excluding OpCo2, OpCo2 Contractors, OpCo, OpCo's Contractors, Foundation Infrastructure Works Contractors, Foundation Infrastructure Works Subcontractors, Sydney Trains, the ETS Contractor, the OTS Civil Works Contractors, Infrastructure NSW, the Central Barangaroo Developer, the Victoria Cross Overstation Developer, the Crows Nest Overstation Developer, the Pitt Street Overstation Developer (North), the Pitt Street Overstation Developer (South), the Martin Place Overstation Developer and the Waterloo Overstation Developer.

Other Contractors' Activities means any activities undertaken by an Other Contractor which interface with or affect, or are affected by, OpCo2's Activities, the Temporary Works, the OTS2 Works or the Sydney Metro, including any Proximate Work Activities undertaken by an Other Contractor.

OTS and OTS2 Incorporation Deed means the deed titled "OTS and OTS2 Incorporation Deed" between the Principal, OpCo and OpCo2 dated on or about the date of this deed.

OTS Approved Civil Works Change has the meaning given to the term "Approved Civil Works Change" under the OTS Project Deed.

OTS Civil Works means the SVC Works and the TSC Works.

OTS Civil Works Compensation Event means each of the following:

(a) the Principal fails to comply with its obligation under clause 14.14 (*OTS Civil Works Contractor to minimise disruption*); and

(b) the discovery of an OTS Civil Works Defect in respect of which the Principal has not directed a Modification as referred to in clause 14.11(b)(ii).

OTS Civil Works Contract means the SVC Project Deed or the TSC Project Deed.

OTS Civil Works Contractor means the SVC Contractor or the TSC Contractor.

OTS Civil Works Defect means a SVC Defect or a TSC Defect.

OTS Civil Works O&M Manuals means the operation and maintenance manuals forming part of the Civil Works Asset Management Information certified by the:

(a) the TSC Independent Certifier under the TSC Project Deed; or

(b) the SVC Independent Certifier under the SVC Project Deed,

(as applicable).

OTS Civil Works Tolerances means the permitted tolerances for certain aspects of the OTS Civil Works, as set out in SPR Appendix 35 (*Civil Works Tolerances*) of SPR (OTS).

OTS Cooperation and Integration Deed means:

(a) the deed titled "SVC-OTS Cooperation and Integration Deed" between the Principal, OpCo and the SVC Contractor, which will be novated to OpCo2 on the OTS Incorporation Date; and

(b) the deed titled "TSC-OTS Cooperation and Integration Deed" between the Principal, OpCo and the TSC Contractor, which will be novated to OpCo2 on the OTS Incorporation Date.

OTS Core Contracts means the Core Contracts as defined under the OTS Project Deed.

OTS Incorporation Date means the Date of Completion of Phase 1.

OTS Independent Certifier has the meaning given to the term "OTS Independent Certifier" under the OTS Project Deed and at the date of this deed means GHD Pty Limited ABN 39 008 488 373 and SYSTRA SA ABN 68 557 615 546.

OTS Licensed Maintenance Area has the meaning given to the term "Licensed Maintenance Area" under the OTS Project Deed.

OTS PPP has the meaning given to the term "OTS PPP" in the OTS Project Deed.

OTS Project Deed means the "North West Rail Link Operations, Trains and Systems Project Deed" between the Principal and OpCo dated 15 September 2014.

OTS Project Deed Amendment Deed means the amendment deed to the OTS Project Deed entered into between the Principal and OpCo on or about the date of this deed incorporating modifications required to facilitate the OTS2 PPP.

OTS Train means those trains supplied, operated and maintained by OpCo under the OTS Project Deed for the purposes of conveying Customers on the Sydney Metro Northwest.

OTS Works means the physical works, assets, systems and deliverables that OpCo was required to design and construct under the OTS Project Deed, excluding the "Third Party Works" and the "Temporary Works" (as those terms are defined in the OTS Project Deed).

OTS2 Construction Proceeds Account has the meaning given in the Facility Agreement.

OTS2 Independent Certifier Deed means the deed so titled dated on or about the date of this deed between the Principal, OpCo2 and the Greenfield Independent Certifier.

OTS2 PPP means:

(a) the financing, design and construction of the OTS2 Works and the Temporary Works and the performance of the other Delivery Activities, including the integration of the Sydney Metro Northwest with the Sydney Metro City and the Sydney Metro Southwest;

(b) the operation and maintenance of the Sydney Metro and the ETS Equipment and the performance of the other Operations Activities; and

(c) the handback to the Principal of the Sydney Metro and the ETS Equipment,

in accordance with this deed.

OTS2 Security Trust Deed means the deed so titled dated on or about the date of this deed between the Security Trustee, the Agent, Finance Co and OpCo2.

OTS2 Train means those trains supplied by OpCo2 under this deed.

OTS2 Works means the physical works, assets, systems and deliverables that OpCo2 must design and construct under this deed including:

(a) the OpCo2 ETS Works;

(b) the Trains and rail systems;

(c) the Phase 2 Works and the OpCo2 Systems Works;

(d) integration requirements for the Sydney Metro Northwest;

(e) integration requirements between the OTS2 Works and the Foundation Infrastructure Works;

(f) communications and central control system related works at the Sydney Metro Trains Facility (North) including expansion of the Operations Control Centre and systems integration activities;

(g) the Early Works Activities;

(h) to the extent relevant to such works, assets, systems and deliverables, any Modifications directed or approved in accordance with clause 29 (*Principal initiated Modifications*), 30 (*OpCo2 initiated Modifications*); and

(i) pursuant to the exercise of a Pre-Agreed Option pursuant to clause 31 (*Pre-Agreed Options*),

but excluding the Temporary Works.

[redacted]

Over Station Developments means the proposed works to design and construct over station developments, which may include works at:

(a) Chatswood Dive Site;

(b) Crows Nest Station;

(c) Victoria Cross Station;

(d) Pitt Street Station North;

(e) Pitt Street Station South;

(f) Martin Place Station North;

(g) Martin Place Station South;

(h) Waterloo; and

(i) Marrickville Dive Site,

that are intended, once complete, to fully integrate with the Project.

Parramatta Rail Link Planning Approval means the approval granted by the (former) Minister for Planning under the EP&A Act dated February 2002, a copy of which (as at the date of this deed) appears in Part B of Exhibit 5 (*Planning Approvals*), as modified from time to time.

Payment Directions Deed means the deed titled "Payment Directions Deed" dated on or about the date of this deed, between the Principal, the Agent, OpCo2, Finance Co and the Security Trustee.

PCID Breach has the meaning given in clause 12A.4A(a)(iii).

PDCS means the Principal's web based TeamBinder project data and collaboration system, or such other electronic project data and collaboration system notified by the Principal's Representative under clause 58(b).

Permitted Change in Control means a Change in Control described in Part B of Schedule 37 (*Permitted Change of Ownership and Permitted Change in Control*).

Permitted Change of Ownership means a Change of Ownership described in Part A of Schedule 37 (*Permitted Change of Ownership and Permitted Change in Control*).

Permitted Security Interest means:

(a) a Security Interest created under any Project Agreement;

(b) a lien that arises by operation of law in the ordinary course of ordinary business, where the amount secured is not overdue or is being diligently contested in good faith;

(c) each Debt Financiers Security;

(d) any title retention arrangement which is entered into in the ordinary course of day-to-day trading on arm's length and customary terms, as long as the obligation it secures is discharged when due or is being diligently contested in good faith;

(e) any other Security Interest that is expressly permitted under the Principal Project Agreements, the Financiers Tripartite Deed or the Debt Financing Documents; and

(f) any other Security Interest to which the Principal has given its prior written consent, but only to the extent it secures Financial Indebtedness in amounts to which the Principal has given its consent.

Permitted Use means a use:

(a) to remedy or otherwise overcome any failure by OpCo2 to:

  (i) satisfy the requirements for First Passenger Service under clause 19.1(a); or

  (ii) achieve Completion of Phase 1 under clause 19.4 (*Requirements for Completion*),

  that is not an Excluded Use; or

(b) that is otherwise permitted by the Principal, in its absolute discretion.

Persistent Breach has the meaning given in clause 40.5(a).

Persistent Breach Notice means a notice issued under clause 40.5(a) which complies with the requirements of clause 40.5(b).

Personal Information means:

(a) while the PPIP Act is in force, that term as defined in the PPIP Act; and

(b) if the PPIP Act is repealed, that term as defined in any Commonwealth or New South Wales Legislation that replaces the PPIP Act in whole or in part.

Phase means each of Phase 1 and Phase 2.

Phase 1 means the Delivery Activities OpCo2 is required to perform for the Sydney Metro City.

Phase 1 Operations Phase means the period commencing on the date of First Passenger Service on the Sydney Metro City and ending on the date of First Passenger Service on the Sydney Metro Southwest.

Phase 2 means the Delivery Activities OpCo2 is required to perform for the Sydney Metro Southwest.

Phase 2 Access Plan means the Project Plan setting out OpCo2's plan for Primary Works and Contingency Works, as updated from time to time in accordance with clause 17.3A(a)(ii).

Phase 2 Change Event means each of the following:

(a) completion of:

(i) the Southwest Stage 3 Design; and

[redacted]

(b) execution by all parties of:

(i) a Southwest Contract which the Principal determines results in changes to the Southwest Baseline Scope and/or the Site Access Schedule; and

(ii) the final Southwest Contract;

(c) execution by all parties of the PSD/MGF Contract, agreement on the Final Shutdown Schedule and completion of the PSD/MGF Stage 3 Design;

(d) [redacted]

(e) the Principal providing the final PSD/MGF O&M Manual to OpCo2 pursuant to clause 20.23(e)(i);

(f) the Corridor Security Solution (SW) requires OpCo2 to deliver all or part of the OpCo2 Corridor Security Activities (SW); and

(g) the occurrence of a [redacted]

Phase 2 Change Event EOT Period means the aggregate number of days by which the Date for Completion of Phase 2 is extended in accordance with clause 17.10(a) as a result of a Phase 2 Change Event, up to a maximum of 180 days.

Phase 2 Construction Payment Schedule means the Phase 2 Construction Payment Schedule set out in Schedule 50 (*Phase 2 Construction Payments Schedule*).

Phase 2 Construction Payments means the payments to be made for the Phase 2 Works being the:

(a) Phase 2 Payment Drawdowns; and

(b) Phase 2 Milestone Payments.

Phase 2 Delivery Phase means the period commencing on the date OpCo2 commences the Phase 2 Works and ending on the Date of Completion of Phase 2.

Phase 2 Handover Date means the date on which all of the following have been achieved:

(a) PSD/MGF Construction Completion;

(b) Southwest Completion of all the Southwest Works;

(c) Line-wide Completion of the Line-wide Works (Phase 2);

(d) SSJ Completion of the SSJ Works (Phase 2);

(e) completion of any works by a Foundation Infrastructure Works Contractor or an other contractor as part of the Corridor Security Solution (SW); and

(f) completion of all systems integration acceptance tests from Sydenham Station to Bankstown Station.

Phase 2 Installation Works means the installation of the Alstom Phase 2 Works and the CCS and COM Phase 2 Works.

Phase 2 Installation Works Contract means each of the following:

(a) the contract to be entered into between the Alstom Significant Contractor and a contractor to perform the Phase 2 Installation Works for the Alstom Phase 2 Works; and

(b) the contract to be entered into between the CCS and COM Contractor and a contractor to perform the Phase 2 Installation Works for the CCS and COM Phase 2 Works,

together, the **Phase 2 Installation Contracts**.

[redacted]

Phase 2 Milestone means a milestone set out in the Phase 2 Construction Payment Schedule.

Phase 2 Milestone (CBTC) means a Phase 2 Milestone referred to in the section of the Phase 2 Construction Payment Schedule labelled "Interim Payment – Signalling System (CBTC)".

Phase 2 Milestone (Integrator) means a Phase 2 Milestone referred to in the section of the Phase 2 Construction Payment Schedule labelled "Interim Payment – Integrator".

Phase 2 Milestone Payment means an amount specified in the Phase 2 Construction Payment Schedule that is payable following the achievement of a Phase 2 Milestone (other than a Phase 2 Payment Drawdown).

Phase 2 Payment Drawdown means an amount identified as a "Payment Drawdown" in the Phase 2 Construction Payment Schedule.

Phase 2 Payment Drawdown (CBTC) means a Phase 2 Payment Drawdown referred to in the section of the Phase 2 Construction Payment Schedule labelled "Interim Payment – Signalling System (CBTC)".

Phase 2 Payment Drawdown (Integrator) means a Phase 2 Payment Drawdown referred to in the section of the Phase 2 Construction Payment Schedule labelled "Interim Payment – Integrator".

Phase 2 Works means the OTS2 Works for Phase 2.

Pitt Street-OTS2 Cooperation and Integration Deeds means:

(a) the deed titled "Pitt Street-OTS2 Cooperation and Integration Deed" to be entered into between the Principal, OpCo2 and the Pitt Street Station Contractor,; and

(b) the deed titled "Pitt Street-OTS2 Cooperation and Integration Deed" to be entered into between the Principal, OpCo2, the Pitt Street Contractor and the Pitt Street Overstation Developer (North); and

(c) the deed titled "Pitt Street-OTS2 Cooperation and Integration Deed" to be entered into between the Principal, OpCo2, the Pitt Street Contractor and the Pitt Street Overstation Developer (South),

substantially in the forms set out in Part K of Schedule 47 (*Form of Project Cooperation and Integration Deeds*).

Pitt Street Overstation Developer (North) means Pitt Street Developer North Pty Ltd (ACN 635 396 824).

Pitt Street Overstation Developer (South) means Pitt Street Developer South Pty Ltd (ACN 635 396 815).

Pitt Street Station Contract means the contract titled "Pitt Street Integrated Station Development Station Delivery Deed " between the Principal and the Pitt Street Station Contractor, an unpriced version of which is contained in Part G of Exhibit 12E (*City Station Contracts*).

Pitt Street Station Contractor means CPB Contractors Pty Limited (ABN 98 000 893 667).

Planned Service Disruption means a service disruption for the purpose of carrying out Asset Management Activities specified in the Contract Service Level Requirements.

Planning Approvals means:

(a) the Planning Approvals (City and Southwest);

(b) from the OTS Incorporation Date, the Planning Approvals (Northwest); and

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

Planning Approvals (City and Southwest) means:

(a) Project Planning Approval (City);

(b) Project Planning Approval (Southwest);

(c) any determination under Part 5 of the EP&A Act from time to time relating to OpCo2's Activities; and

(d) any complying development certificate granted under Part 4 of the EP&A Act from time to time relating to OpCo2's Activities.

Planning Approvals (Northwest) means:

(a) Project Planning Approval 1;

(b) Project Planning Approval 2;

(c) the EPBC Act Approval (Northwest);

(d) the ECRL Conversion Planning Approval;

(e) the Sydney Metro Trains Facility (North) Planning Approval; and

(f) the Parramatta Rail Link Planning Approval.

Platform has the meaning given in Schedule 2 (*Service Payment calculation*).

Platform Closure has the meaning given Schedule 2 (*Service Payment calculation*).

Post-Handover Observation Period means the period commencing on the Phase 2 Handover Date and ending on the date 1 year following the Phase 2 Handover Date.

PPIP Act means the *Privacy and Personal Information Protection Act 1998* (NSW).

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

Preliminary Impact Statement means a preliminary draft of the Final Impact Statement.

Pre-Agreed Option means any of the pre-agreed options specified in Schedule 30 (*Pre-Agreed Options*) and Schedule 30A (*Pre-Agreed Options - Trains*).

Pre-Agreed Option Construction Payment means, in respect of a month and a Pre-Agreed Option (other than a Pre-Agreed Option in respect of an Option 1 Train) which the Principal has directed pursuant to clause 31(a), the amount (if any) for that month for that Pre-Agreed Option specified in the "Pre-Agreed Option Construction Payment" Schedule in the Model Outputs Schedule.

[redacted]

Primary Works means for a part of the Construction Site for Phase 2, OpCo2's primary plan for performance of the Phase 2 Works during the period OpCo2 is entitled to access that part of the Construction Site for Phase 2 in accordance with the Site Access Schedule, as updated from time to time in accordance with clause 17.3A(ii).

Principal Commercial Opportunities has the meaning given in Schedule 9 (*Easements, Land Arrangements and Retail Licences*).

Principal Construction Payments Account means the account opened and operated in accordance with clause 10.4 (*Establishment and operation of Principal Construction Accounts*) and 10.5 (*Drawdown and withdrawal from Principal Construction Payments Account*) of the Financiers Tripartite Deed.

Principal Construction Payments (Phase 2) Account means the account opened and operated in accordance with clauses 10.4 (*Establishment and operation of Principal Construction Accounts*) and 10.5A (*Withdrawals and payments from the Principal Construction Payments (Phase 2) Account*) of the Financiers Tripartite Deed.

Principal Deed of Charge means each of:

(a) the deed of charge dated on or about the date of this deed between the Principal as chargee and OpCo2 as chargor; and

(b) the deed of charge dated on or about the date of this deed between the Principal as chargee and Finance Co as chargor to secure performance of Finance Co's obligations under the Securitisation Agreement.

Principal ETS Activities has the meaning given in Schedule 4 (*ETS interface*).

Principal Project Agreements means those Project Agreements to which the Principal is a party.

Principal Refinancing Share has the meaning given in clause 49.9(a).

Principal Termination Event means any event specified in clause 42.5 (*Principal Termination Events*).

Principal's Activities has the meaning given in Schedule 3 (*Sydney Trains interface*).

Principal's Modifications Manager means the person appointed by the Principal and notified to OpCo2 in writing or any other person from time to time appointed by the Principal to replace that person in accordance with clause 28A.2 (*Principal's Modifications Manager*).

Principal's Representative means [redacted] or any other person from time to time appointed by the Principal to replace that person in accordance with clause 5.1(a).

Professional Service Provider Costs has the meaning given in Schedule 29 (*Net Financial Impact*).

Professional Service Providers has the meaning given in Schedule 29 (*Net Financial Impact*).

Project means the Sydney Metro City & Southwest project which will include the integration of Sydney Metro Northwest to form a single end to end metro system from Tallawong to Bankstown and the operation and maintenance of the same.

Project Agreements means:

(a) this deed;

(b) the OTS2 Independent Certifier Deed;

(c) the TSE Independent Certifier Deed;

(d) the CSM Independent Certifier Deed;

(e) each Southwest Independent Certifier Deed;

(f) the SSJ Independent Certifier Deed;

(g) each City Station Independent Certifier Deed;

(h) the Line-wide Independent Certifier Deed;

(i) the TSE IC Deed of Accession;

(j) the SSJ IC Deed of Accession;

(k) the Martin Place Station IC Deed of Accession;

(l) the Line-wide IC Deed of Accession;

(m) the TSE-OTS2 Cooperation and Integration Deed;

(n) the CSM-OTS2 Cooperation and Integration Deed;

(o) the Southwest-OTS2 Cooperation and Integration Deed;

(p) the SSJ-OTS2 Cooperation and Integration Deed;

(q) the Crows Nest-OTS2 Cooperation and Integration Deeds;

(r) the Victoria Cross-OTS2 Cooperation and Integration Deeds;

(s) the Barangaroo-OTS2 Cooperation and Integration Deed;

(t) the Martin Place-OTS2 Cooperation and Integration Deeds;

(u) the Pitt Street-OTS2 Cooperation and Integration Deeds;

(v) the Waterloo-OTS2 Cooperation and Integration Deeds;

(w) the Line-wide-OTS2 Cooperation and Integration Deed;

(x) the Master Interface Protocols Deed Poll;

(y) the Integrator Deed;

(z) the Integrator Deed Side Deed;

(aa) the Integrator Guarantee;

(bb) the O&M Contract;

(cc) the O&M Contract Side Deed;

(dd) the O&M Guarantee;

(ee) each Core Contractor Interface Deed;

(ff) the OpCo/OpCo2 Interface Deed;

(gg) the Alstom Guarantees;

(hh) the Alstom D&C Significant Contract Side Deed;

(ii) the Alstom O&M Significant Contract Side Deed;

(jj) the Alstom Direct Deed;

(kk) the CCS and COM Contract Side Deed;

(ll) the CCS and COM Direct Deed;

(mm) the CCS and COM Guarantee;

(nn) the City Section PSD Contract Side Deed;

(oo) the City Section PSD Guarantee;

(pp) the Radio Contract Side Deed;

(qq) the Radio Direct Deed;

(rr) the Radio Guarantee;

(ss) the Equity Purchase Deed;

(tt) the Debt Financing Documents;

(uu) the Equity Documents;

(vv) the Financiers Tripartite Deed;

(ww) the OTS and OTS2 Incorporation Deed;

(xx) the Principal Deed of Charge;

(yy) the GSF Act Guarantee;

(zz) any Deeds of Assurance;

(aaa) any Moral Rights Consents;

(bbb) the Escrow Deed (Alstom);

(ccc) the Escrow Deed (CCS and COM);

(ddd) the Independent Assessor Deed;

(eee) each Rail Safety Interface Agreement;

(fff) the IDAR Panel Agreement;

(ggg) IDAR Panel Agreement Accession Deed Poll;

(hhh) the Securitisation Agreement;

(iii) the Payment Directions Deed;

(jjj) the Barangaroo Cooperation and Collaboration Agreement;

(kkk) the Barangaroo Cooperation and Collaboration Accession Deed;

(lll) the OCC Contractor Deed of Appointment; and

(mmm) the TLE Contractor Deed of Appointment.

Project Briefing has the meaning given in the IDAR Panel Agreement.

Project Cooperation and Integration Deed mean each of the following:

(a) the TSE-OTS2 Cooperation and Integration Deed;

(b) the CSM-OTS2 Cooperation and Integration Deed;

(c) the Southwest-OTS2 Cooperation and Integration Deeds;

(d) the SSJ-OTS2 Cooperation and Integration Deed;

(e) the Crows Nest-OTS2 Cooperation and Integration Deeds;

(f) the Victoria Cross-OTS2 Cooperation and Integration Deeds;

(g) the Barangaroo-OTS2 Cooperation and Integration Deeds;

(h) the Martin Place-OTS2 Cooperation and Integration Deeds;

(i) the Pitt Street-OTS2 Cooperation and Integration Deeds;

(j) the Waterloo-OTS2 Cooperation and Integration Deeds;

(k) the Line-wide-OTS2 Cooperation and Integration Deed; and

(l) the PSD/MGF-OTS2 Cooperation and Integration Deed.

Project Debt means the Financial Indebtedness of OpCo2 under the Debt Financing Documents.

Project Documentation means:

(a) from the OTS Incorporation Date, the NWRL Documentation (as that term is defined under the OTS Project Deed);

(b) all drawings, plans, manuals, software designs, reports, computer records, specifications, calculations and any other documents (whether in hard copy or electronic form) prepared or required to be prepared by or on behalf of OpCo2 or OpCo2 Contractors in performing OpCo2's Activities; and

(c) without limiting paragraph (b), the Design Documentation and the Project Plans.

Project Integration Group has the meaning given to that term in the Master Interface Protocols Deed Poll.

Project Management Plan means the Project Plan of that name.

Project Planning Approval (City):

(a) means the approval granted by the Minister for Planning under section 115ZB of the EP&A Act dated 9 January 2017, a copy of which (as at the date of this deed) appears in Part A of Exhibit 5 (*Planning Approvals*); and

(b) includes all:

(i) conditions to such approval; and

(ii) documents incorporated by reference,

as modified from time to time.

Project Planning Approval (Southwest):

(a) means the approval granted by the Minister for Planning under section 115ZB of the EP&A Act dated 19 December 2018, a copy of which (as at the date of this deed) appears in Part A of Exhibit 5 (*Planning Approvals*); and

(b) includes all:

(i) conditions to such approval; and

(ii) documents incorporated by reference,

as modified from time to time.

Project Planning Approval 1:

(a) means the approval granted by the Minister for Planning and Infrastructure under section 115ZB of the EP&A Act dated 25 September 2012 (SSI-5100), a copy of which (as at the date of this deed) appears in Part B of Exhibit 5 (*Planning Approvals*); and

(b) includes all:

(i) conditions to such approval; and

(ii) documents incorporated by reference,

as modified from time to time.

Project Planning Approval 2:

(a) means the approval granted by the Minister for Planning and Infrastructure under section 115ZB of the EP&A Act dated 8 May 2013 and modified on 20 May 2014, a copy of which (as at the date of this deed) appears in Part B of Exhibit 5 (*Planning Approvals*); and

(b) includes all:

(i) conditions to such approval; and

(ii) documents incorporated by reference,

as modified from time to time.

Project Plans means the plans listed in SPR Appendix 54 (*Project Plan Requirements*), including all subsidiary plans and supporting documents and information.

Project Site means the land (including subsurface land) and airspace more particularly described as the "Project Site" in SPR Appendix 2 (*Construction Site*).

Project Values means the values that will guide the delivery of the Project, being:

(a) safety and wellbeing;

(b) collaboration;

(c) integrity;

(d) innovation;

(e) excellence; and

(f) achievement.

Project-Specific Change in Law means a Change in Law, the terms of which apply to:

(a) all or part of the Sydney Metro, and not to other railways in Australia;

(b) OpCo2, and not to other persons;

(c) the Sydney Metro Site and not to any other:

    (i) similarly situated land or facilities; or

    (ii) land or facilities where similar activities to OpCo2's Activities are undertaken; or

(d) projects procured or established under the:

    (i) NSW Working with Government Guidelines for Privately Financed Projects or other policies of the State in respect of privately financed projects; or

    (ii) National Public Private Partnership Guidelines or other policies of the Commonwealth in respect of privately financed projects,

and not to other projects.

Proposed Accepted Foundation Infrastructure Works Change has the meaning given in clause 14A.6A(a).

Proposed Phase 1 Early Completion Date means the date (if any) nominated and updated (where applicable) by OpCo2 in its Delivery Phase Progress Report, by which OpCo2 proposes to achieve Completion of Phase 1, being a date that is prior to the Original Date for Completion of Phase 1.

Proposed Phase 2 Early Completion Date means the date (if any) nominated and updated (where applicable) by OpCo2 in its Delivery Phase Progress Report, by which OpCo2 proposes to achieve Completion of Phase 2, being a date that is prior to the Original Date for Completion of Phase 2.

Proximate Work Activity means any activities that the Principal wishes to carry out (or have carried out by an Other Contractor) within, adjacent to, over or under the Sydney

Metro Site), including the activities listed in clause 34.1 (*Right to carry out Proximate Work Activities*), but excluding:

(a) the Principal ETS Activities;

(b) the construction of the Foundation Infrastructure Works;

(c) the rectification of a Foundation Infrastructure Works Defect by a Foundation Infrastructure Works Contractor or an Other Contractor;

(d) the rectification of an OTS Civil Works Defect by an OTS Civil Works Contractor or an Other Contractor;

(e) activities undertaken by the Victoria Cross Overstation Developer, the Crows Nest Overstation Developer, the Pitt Street Overstation Developer (North), the Pitt Street Overstation Developer (South), the Martin Place Overstation Developer or the Waterloo Overstation Developer; and

(f) OpCo2's Activities.

PSD/MGF-OTS2 Cooperation and Integration Deed means the deed titled "PSD/MGF-OTS2 Cooperation and Integration Deed" to be entered into between the Principal, OpCo2 and the PSD/MGF Contractor substantially in the form set out in Part E of Schedule 47 (*Form of Project Cooperation and Integration Deeds*)

PSD/MGF Completion has the meaning given to the term "Completion" in the PSD/MGF Contract.

PSD/MGF Construction Completion has the meaning given to the term "Construction Completion" in the PSD/MGF Contract.

PSD/MGF Contract means the contract titled "Sydney Metro City & Southwest – Southwest Metro – Platform Screen Doors (PSD) and Mechanical Gap Fillers (MGF) – Design, Supply and Install Contract" between the Principal and the PSD/MGF Contractor, a draft version of which is contained in Exhibit 12G (*PSD/MGF Contract*)

PSD/MGF Contractor means the person to be engaged by the Principal to deliver the PSD/MGF Works under the PSD/MGF Contract.

PSD/MGF Date of Completion has the meaning given to the term "Date of Completion" in the PSD/MGF Contract.

PSD/MGF Date of Construction Completion means, in respect of a PSD/MGF Portion:

(a) the date notified by the Greenfield Independent Certifier as the date PSD/MGF Construction Completion was achieved for a PSD/MGF Portion; or

(b) where another date is determined in accordance with the dispute resolution procedures under the PSD/MGF Contract as the date upon which PSD/MGF Construction Completion was achieved for a PSD/MGF Portion, that date.

PSD/MGF Defect means:

(a) any defect, deficiency, fault, error or omission in the PSD/MGF Works; and

(b) any:

(i) cracking, shrinkage, movement or subsidence in the PSD/MGF Works; or

(ii) other aspect of the PSD/MGF Works including software, componentry and interfaces,

which is not in accordance with the requirements of the PSD/MGF Contract,

but does not include any Deviations within the Foundation Infrastructure Works Tolerances or any Accepted PSD/MGF Defect that is Acceptable.

PSD/MGF Independent Certifier Deed means the deed so titled entered into between the PSD/MGF Contractor, the Principal, OpCo2 and the Greenfield Independent Certifier.

PSD/MGF Notice of Completion has the meaning given to the term "Notice of Completion" in the PSD/MGF Contract.

PSD/MGF Notice of Construction Completion has the meaning given to the term "Notice of Construction Completion" in the PSD/MGF Contract.

PSD/MGF O&M Manual means the operation and maintenance manuals forming part of the Foundation Infrastructure Works Asset Management Information not rejected by the Principal under the PSD/MGF Contract.

PSD/MGF Portion has the meaning given to the term "Portion" in the PSD/MGF Contract.

PSD/MGF Product Proving Activities means all things and tasks which a PSD/MGF Product Proving Proponent is or may be required to carry out or do under a PSD/MGF Product Proving Deed.

PSD/MGF Product Proving Deed means the deed titled "Sydney Metro City & Southwest – Sydney Metro Mechanical Gap Fillers (MGF) and Platform Screen Doors (PSD) Product Proving Deed" between the Principal and a PSD/MGF Product Proving Proponent.

PSD/MGF Product Proving Proponent means a proponent engaged by the Principal under a PSD/MGF Product Proving Deed.

[redacted]

PSD/MGF Site has the meaning given to the term "Site" in the PSD/MGF Contract.

PSD/MGF Site (OTS2) means that part of the PSD/MGF Site that forms part of the Construction Site.

PSD/MGF Stage 3 Design means the third stage of design undertaken by the PSD/MGF Contractor and which has been certified by the Greenfield Independent Certifier in accordance with the PSD/MGF Contract.

PSD/MGF Systemic Defect means a PSD/MGF Defect which, over a rolling [redacted] period, arises from the same cause and affects the same function with respect to at least [redacted]% of the PSD/MGF Systems on the Sydney Metro Southwest.

PSD/MGF Systems means each unit incorporating a platform screen door, mechanical gap filler unit and obstacle detection system.

PSD/MGF Works means the physical works to be designed and constructed by the PSD/MGF Contractor under the PSD/MGF Contract, being the platform screen doors and mechanical gap fillers (including associated software, componentry and interfaces) for the Sydney Metro Southwest.

PSD/MGF Works Change means any change or variation to the PSD/MGF Works following the date of this deed including any addition, reduction, increase, decrease, omission, deletion, demolition or removal to or from the PSD/MGF Works (not including any change or variation that the PSD/MGF Contractor is entitled to make to the design of the PSD/MGF Works under the PSD/MGF Contract without the Principal's consent where, following any such change or variation, the PSD/MGF Works will continue to comply with the requirements of the PSD/MGF Contract, as amended for any Approved Foundation Infrastructure Works Change).

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

Public Disclosure Obligations has the meaning given in clause 47.3(a).

Public Transport Agency means the Principal, Transport for NSW (and each of its divisions), RailCorp, Sydney Trains and NSW Trains.

Quality Plan means the Project Plan of that name.

Quarter means each 3 month period ending 31 March, 30 June, 30 September or 31 December.

Quarter End means the last day of each 3 month period ending 31 March, 30 June, 30 September or 31 December.

Radio Contract means the contract titled "Radio Contract" between the Integrator and the Radio Contractor dated on or about the date of this deed.

Radio Contractor means UGL Engineering Pty Ltd ABN 96 096 365 972.

Radio Direct Deed means the deed titled "Sydney Metro Augmentation Supply Direct Deed (Radio)" to be entered into between OpCo2, the Principal and the Radio Contractor.

Radio Guarantee means the deed titled "OTS2 Significant Contractor Guarantee" dated on or about the date of this deed between the Integrator and UGL Pty Ltd ACN 009 180 287.

RailCorp means Rail Corporation New South Wales, the NSW Government agency constituted by section 4 of the *Transport Administration Act* 1988 (NSW).

Rail Entity means RailCorp, Sydney Trains, NSW Trains and any other NSW Authority that owns or operates railway infrastructure.

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

Rail Safety Interface Agreement means an interface agreement, as defined in the Rail Safety National Law, to which OpCo2 or one or more Core Contractors is, or is required to be, a party.

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

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

RailCorp means Rail Corporation New South Wales a NSW Government agency constituted by section 4 of the *Transport Administration Act* 1988 (NSW).

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

Rates means all rates, taxes or charges or other amounts which any Authority levies by reference to the Sydney Metro or the Sydney Metro Site, but excluding head works costs or other contributions levied by reference to the OTS2 Works or the Operations Activities and excluding any Land Tax.

Receivables Purchase Payment has the meaning given to it in the Securitisation Agreement.

Receivables Purchase Price has the meaning given to it in the Securitisation Agreement.

Receivables Refund Payment has the meaning given to it in the Securitisation Agreement.

Recommendation has the meaning given in clause 56.6(a).

Reference Design means the reference design for Sydney Metro City & Southwest prepared by or on behalf of the Principal and provided as an Information Document.

Reference Pictures has the meaning given in Schedule 2 (*Service Payment calculation*).

Reference Price has the meaning given in clause 28A.7(b)(i)(B).

Refinancing means any of the following:

(a) any amendment to, or restatement or replacement of, any Debt Financing Document;

(b) the exercise of any right (including the giving of a waiver or consent) under any Debt Financing Document; or

(c) any other step or arrangement or new contractual or financing arrangement that has a substantially similar effect to that described in paragraph (a) or (b),

that is likely to change the type, amount, pricing, tenor, terms for payment or repayment or hedging of the financial accommodation in connection with the OTS2 PPP, but does not include:

(d) the syndication or subscription of any debt under the Debt Financing 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, or restatement or replacement of, or waiver or consent under, any Debt Financing Document which is a direct result of an amendment, restatement, replacement, waiver or consent to cure any actual or potential event of default or review event under any Debt Financing Document; or

(h) the entry into of derivative transactions contemplated to be entered into on or before Financial Close by the Debt Financing Documents or, following a Refinancing, contemplated to be entered into in connection with that Refinancing.

Refinancing Gain has the meaning given in clause 49.8 (*Calculation of Refinancing Gain or Refinancing Loss*).

Refinancing Loss has the meaning given in clause 49.8 (*Calculation of Refinancing Gain or Refinancing Loss*).

Related Body Corporate:

(a) in relation to the Principal, means any Rail Entity and any other entity controlled by the Secretary of Transport; and

(b) in relation to any other person, has the same meaning as in the Corporations Act.

Release Date means the date on which the Principal makes payment of the Collaboration Payment to OpCo2.

Relief Event means a Relief Event (PPP) or a Relief Event (Other), as applicable.

Relief Event (Other) means each of the following occurring during the Phase 2 Delivery Phase:

(a) a Compensation Event;

(aa) flood or earthquake;

(ab) a Terrorist Act;

(b) war (declared or undeclared), armed conflict, riot or civil commotion;

(c) chemical or biological contamination, ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel (excluding Contamination for which OpCo2 is responsible under clause 11.4 (*Contamination*));

(d) any blockade or embargo, other than a blockade or embargo which only affects OpCo2 and/or one or more OpCo2 Contractor;

(ca) fire or explosion resulting from an event referred to in paragraphs (aa), (ab), (b) or (c) of this definition;

(e) an act or omission by the Principal or Sydney Trains not being an act or omission:

(i) expressly permitted or allowed by the Project Agreements;

(ii) which is within a timeframe expressly permitted or allowed by the Project Agreements;

(iii) which is a breach by the Principal of its obligations under this deed or any other Project Agreement (without prejudice to clause 26 (*Compensation Events*)); or

(iv) which is caused or contributed to by a breach of OpCo2 of the Project Agreements or any negligent or other wrongful act or omission of OpCo2 or its Associates;

(f) the Principal directs an amendment to the ETS Program in accordance with clause 3.1(d) of Schedule 4 (*ETS Interface*);

(g) a direction by the Minister under Part 2 of the *Public Health Act 1991* (NSW) to the extent that OpCo2 cannot, in compliance with law, comply with a material part of its obligations under this deed;

(h) a delay to Completion of Phase 1 as a result of a Relief Event (PPP) for which OpCo2 has been granted an extension of time to the Date for Completion of Phase 1 in accordance with clause 17.9A (*Determination and grant of extension of time – Completion of Phase 1*) or any extension of time to the Date for Completion of Phase 1 in accordance with clause 17.11 (*Unilateral extension*);

(ha) any event which causes loss or damage to the OTS2 Works, the Temporary Works or the Sydney Metro caused by a Foundation Infrastructure Works Contractor;

[redacted]

(j) an Extension Only Relief Event,

except where the event (or its effects):

(k) was within the reasonable control of OpCo2 or an OpCo2 Contractor;

(l) occurs or arises as a result of any act or omission of OpCo2 or OpCo2 Contractors;

(m) was within the reasonable control of OpCo or an OpCo Contractor prior to the OTS Incorporation Date; or

(n) occurs or arises as a result of any act or omission of OpCo or an OpCo Contractor prior to the OTS Incorporation Date.

Relief Event (PPP) means each of the following:

(a) a Compensation Event;

(b) fire, explosion, flood, storm, tempest, lightning, cyclone, hurricane, mudslide, landslide, earthquake and drought (where such drought is declared as a state of emergency);

(c) a Terrorist Act;

(d) war (declared or undeclared), armed conflict, riot or civil commotion;

(e) chemical or biological contamination, ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel (excluding Contamination for which OpCo2 is responsible under clause 11.4 (*Contamination*));

(f) failure by any Authority, or a provider of gas, water, sewerage, electricity or telecommunications utilities, to carry out works or provide services to the Sydney Metro Site which it is obliged by law (including by contract) to carry out or provide, or any interruption permitted by law (including by contract) to the carrying out or provision of those works or services;

(g) any event which causes loss or damage to the OTS2 Works, the Temporary Works or the Sydney Metro;

(h) any blockade or embargo, other than a blockade or embargo which only affects OpCo2 and/or one or more OpCo2 Contractor;

(i) any industrial action, other than industrial action which only affects OpCo2 and/or one or more OpCo2 Contractors;

(j) any event or occurrence which deprives OpCo2 of any access to the Sydney Metro Site that it is entitled to under this deed;

(k) an act or omission by the Principal or Sydney Trains not being an act or omission:

(i) expressly permitted or allowed by the Project Agreements;

(ii) which is within a timeframe expressly permitted or allowed by the Project Agreements;

(iii) which is a breach by the Principal of its obligations under this deed or any other Project Agreement (without prejudice to clause 26 (*Compensation Events*)); or

(iv) which is caused or contributed to by a breach of OpCo2 of the Project Agreements or any negligent or other wrongful act or omission of OpCo2 or its Associates;

(l) the Principal directs an amendment to the ETS Program in accordance with clause 3.1(d) of Schedule 4 (*ETS Interface*);

(m) a direction by the Minister under Part 2 of the *Public Health Act 1991* (NSW) to the extent that OpCo2 cannot, in compliance with law, comply with a material part of its obligations under this deed;

(ma) [redacted]

(mb) [redacted]

(mc) [redacted]

[redacted]

(md) [redacted]

except where the event (or its effects):

(n) was within the reasonable control of OpCo2 or an OpCo2 Contractor;

(o) occurs or arises as a result of any act or omission of OpCo2 or OpCo2 Contractors;

(p) was within the reasonable control of OpCo or an OpCo Contractor prior to the OTS Incorporation Date; or

(q) occurs or arises as a result of any act or omission of OpCo or an OpCo Contractor prior to the OTS Incorporation Date.

Remaining Adjustment Period means a period of [redacted] days minus the number of days by which:

(a) any Adjustment Date has been extended by the Principal by written notice pursuant to clause 12A.10(b);

(b) any Adjustment Date has been deemed to be extended pursuant to clause 12A.10(d); and/or

(c) the Principal has applied to reduce any extension of time that would otherwise have been granted as referred to in clause 29.2(ea)(iii)(B).

Remediation Period has the meaning given in clause 21.7(d).

Remedy means, in respect of an OpCo2 Event of Default, to remedy or cure the OpCo2 Event of Default or otherwise overcome the consequences of the OpCo2 Event of Default.

Replacement and Refurbishment has the meaning given in SPR Appendix 1 (*Definitions and Acronyms*).

Reputable Insurer means an insurance company having the Required Rating.

Required Employees means all:

(a) OpCo2 employees;

(b) O&M Contractor employees; and

(c) Significant Contractor employees employed to manage the maintenance of the Trains.

Required Rating means a credit rating (or in the case of an insurer, a financial security 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 the Principal 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.

Required Train Services means, at any time, the railway passenger services which OpCo2 is required to provide set out in clause 5 of Annexure A of Schedule 2 (*Service*

Payment calculation), that must as a minimum meet the requirements in sections 4.4 and 4.5 of SPR Appendix 45 (*Service and System Performance Requirements*).

Residual Asset means all assets located:

(a) during the Delivery Phase, within the Construction Site for Phase 2; and

(b) during the Operations Phase, within the Licensed Maintenance Area (Southwest),

excluding the OTS2 Works and the Foundation Infrastructure Works.

Residual Assets (Other) means Residual Assets that are not Specified Assets or Baseline Residual Assets.

Resolution Institute means the Resolution Institute, Australia.

Retail Licence has the meaning given in Schedule 9 (*Easements, Land Arrangements and Retail Licences*).

[redacted]

Risk Management Plan means the Project Plan of that name.

Risk Register means a register of risks which OpCo2 has notified in accordance with clause 45.4A (*Early warning risk register*).

RL Condition Report has the meaning given in clause 3.6(a) of [redacted]

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

Rolling Stock Operator has the meaning given in the Rail Safety National Law.

RSNL Safety Management System means a safety management system as required by section 99 of the Rail Safety National Law.

Safety Accreditation Plan means the Project Plan of that name.

Safety Management Plan means the Project Plan of that name.

Schedule of Rates means the Schedules of rates in Schedule 27 (*Schedule of Rates*).

Second Operations Period means:

(a) with respect to:

(i) a Foundation Infrastructure Works Structural Defect, a Line-wide Defect in the Line-wide Works (Phase 1), a TSE Defect or a PSD/MGF Systemic Defect; and

(ii) for the purposes of clause 14B.5 (*OpCo2's entitlements during Second Operations Period*) only, a Foundation Infrastructure Works Defect (other than a TSE Defect, a Foundation Infrastructure Works Structural Defect or a PSD/MGF Systemic Defect),

the period commencing on the day after expiry of the period described in paragraph (a) of the definition of First Operations Period until the end of the Term;

(b) with respect to:

(i) a SSJ Defect in the SSJ Works (Phase 2);

(ii) a Line-wide Defect in the Line-wide Works (Phase 2);

(iii) a Southwest Defect; or

(iv) a PSD/MGF Defect,

the period commencing on the day after expiry of the period described in paragraph (b) of the definition of First Operations Period until the end of the Term; and

(c) with respect to a Line-wide Defect in the Line-wide Works in Line-wide Portion 1, the period commencing on the date after expiry of the period described in paragraph (c) of the definition of First Operations Period until the end of the Term.

Section 88B Instrument means the section 88B instrument for each Over Station Development, the initial form of which are set out in Exhibit 20 (*Form of BMS, SMS and Section 88B Instruments*) and will form the basis of the document to be registered on title or to otherwise be contractually binding in relation to each Over Station Development and to the applicable Station.

Securitisation Agreement means the agreement titled "Securitisation Agreement" dated on or about the date of this deed, between the Principal, OpCo2 and Finance Co.

Securitised Licence Structure means the securitisation structure relating to the Licence Payments contained in the Securitisation Agreement, the Payment Directions Deed, the Licence Payment Schedule, clause 25.2A (*Licence Payments*) and clause 25A (*Securitised licence structure*) (other than clause 25A.3 (*No change in risk allocation*)).

Securitised NFI Event Payment means an amount equal to the corresponding payment of the Receivables Purchase Price in respect of the Additional Receivables purchased by Finance Co from the Principal under the Securitisation Agreement resulting from an NFI Event.

Security Interest means any mortgage, charge, pledge, lien, encumbrance, assignment, hypothecation, security interest, title retention, preferential right, trust arrangement, contractual right of set-off or any other security agreement or arrangement in favour of any person or any interest in relation to personal property provided for by a transaction that in substance secures payment or performance of an obligation or otherwise would be considered to be a "security interest" under the PPS Act.

Security Management Plan means the Project Plan of that name.

Security Trustee means, at any time, the person appointed as security trustee under the OTS2 Security Trust Deed. At the date of this deed the Security Trustee is National Australia Bank Limited ACN 004 044 937.

Senior Project Group means the group established under clause 5.5 (*Senior Project Group*).

Service Change means an amendment to the Contract Service Level Requirements.

Service Change Limitations has the meaning given in Schedule 2 (*Service Payment calculation*).

Service Failure Points has the meaning given in Schedule 2 (*Service Payment calculation*).

Service Level Adjustment Amount has the meaning given in Schedule 2 (*Service Payment calculation*).

Service Payment means, in respect of a month, the service payment for that month (if any) payable by the Principal to OpCo2, calculated in accordance with Schedule 2 (*Service Payment calculation*), as adjusted in accordance with this deed.

Service Payment Deduction means:

(a) an Availability Deduction;

(b) a Timeliness Deduction;

(c) a Service Quality Deduction;

(d) an Asset Functionality Deduction;

(e) an Energy Deduction; or

(f) a negative Asset Management Adjustment,

all as defined in Schedule 2 (*Service Payment calculation*).

Service Payment Monitoring System means the system referred to in clause 25.13 (*Service Payment Monitoring System*).

Service Quality Deduction has the meaning given in Schedule 2 (*Service Payment calculation*).

Service Quality KPI has the meaning given in Schedule 2 (*Service Payment calculation*).

SFAIRP means the requirement to ensure, so far as is reasonably practicable, the safety of the railway operations as required under the Rail Safety National Law.

Shareholders Agreement means the agreement in respect of NRT Group Holdings Pty Ltd and the NRT Group Holdings Unit Trust, which will be entered into between the date of this deed and Financial Close by (among others) the OpCo2 Equity Investors.

Significant Contractor means a party (other than OpCo2) to a Significant Contract.

Significant Contracts means:

(a) the Core Contracts;

(b) the Alstom D&C Significant Contract;

(c) the Alstom O&M Significant Contract;

(d) each OpCo2 Systems Contract;

(e) the contracts listed in Schedule 38 (*Significant Contracts*); and

(f) any other contract that the parties agree from time to time is a Significant Contract.

Site Access Date means, in respect of a part of the Construction Site, the date specified as a "Site Access Date" for that part of the Construction Site in the Site Access Schedule.

Site Access Expiry Date means, in respect of a part of the Construction Site, the date specified as a "Site Access Expiry Date" for that part of the Construction Site in the Site Access Schedule, as extended in accordance with this deed.

Site Access Schedule means Exhibit 2 (*Site Access Schedule*).

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

(a) Artefacts and any other natural and artificial conditions;

(b) physical and structural conditions, including old footings, underground structures, buildings, improvements, partially completed structures and in-ground works;

(c) all improvements, including any artificial things, foundations, retaining walls and other structures installed by or on behalf of the Principal or others;

(d) surface water, ground water, ground water hydrology and the effects of any dewatering;

(e) any Contamination, hazardous chemical or other spoil or waste;

(f) topography of the Sydney Metro Site and any Extra Land, ground surface conditions and geology, including rock and sub-surface conditions or other materials encountered at the Sydney Metro Site or Extra Land;

(g) geological, geotechnical and subsurface conditions or characteristics;

(h) any underground strata;

(i) all Utility Services, systems and facilities, above or below ground level and all facilities with which such Utility Services and systems are connected;

(j) the Environment, water, weather or climatic conditions, or the effects of the Environment, water, weather or climatic conditions, including rain, surface water runoff and drainage, water seepage, wind-blown dust and sand, seasons and physical conditions that are a consequence of weather or climatic conditions; and

(k) any latent conditions.

Site Facilities has the meaning given in clause 9.15A(a).

Site Interface Work has the meaning given in clause 9.2(a)(ii).

SM/ST Sub-NAC Acceptance Notice means a notice issued by the Sydney Metro and Sydney Trains Sub-Network Assurance Committee certifying the Sydney Trains Design Documentation.

SMCSW Interface Deed means the deed titled "SMCSW Interface Deed" between OpCo2, the O&M Contractor and the Integrator dated on or about the date of this deed.

SMCSW Safety Case has the meaning given in clause 18C.1(a)(i).

SMNW Integration Works Interface Deed means the deed titled "SMNW Integration Works Interface Deed" between OpCo2, OpCo, the O&M Contractor and the Integrator dated on or about the date of this deed.

SMS means the strata management statement for each Over Station Development, the initial form of which is set out in Exhibit 20 (*Form of BMS, SMS and Section 88B Instruments*) and will form the basis of the document to be registered on title or to otherwise be contractually binding in relation to each Over Station Development and Station.

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

Southwest-OTS2 Cooperation and Integration Deed means each of the following:

(a) the deed titled "Southwest-OTS2 (Design Contract) Cooperation and Integration Deed" to be entered into between the Principal, OpCo2 and the Southwest Design Contractor;

(b) the deed titled "Southwest-OTS2 (Corridor Works Contract) Cooperation and Integration Deed" to be entered into between the Principal, OpCo2 and the Southwest Corridor Works Contractor;

(c) the deed titled "Southwest-OTS2 (Stations 1 Contract) Cooperation and Integration Deed" to be entered into between the Principal, OpCo2 and the Southwest Stations 1 Contractor;

(d) the deed titled "Southwest-OTS2 (Stations 2 Contract) Cooperation and Integration Deed" to be entered into between the Principal, OpCo2 and the Southwest Stations 2 Contractor; and

(e) the deed titled "Southwest-OTS2 (Stations 3 Contract) Cooperation and Integration Deed" to be entered into between the Principal, OpCo2 and the Southwest Stations 3 Contractor,

substantially in the forms set out in Part D of Schedule 47 (*Form of Project Cooperation and Integration Deeds*).

Southwest Baseline Scope means the:

(a) scope and assumptions for the Southwest Works;

(b) scope and assumptions for the PSD/MGF Works; and

(c) assumptions and pricing for corridor security for Phase 2,

as at the date of this deed and which is set out in Exhibit 9 (*Southwest Baseline Scope*), as amended in accordance with this deed.

Southwest Completion has the meaning given to the term "Completion" in the relevant Southwest Contract.

Southwest Contract means each of the following:

(a) Southwest Design Contract;

(b) Southwest Corridor Works Contract;

(c) Southwest Stations 1 Contract;

(d) Southwest Stations 2 Contract; and

(e) Southwest Stations 3 Contract,

and together, the **Southwest Contracts**.

Southwest Contractor means each of the following:

(a) Southwest Design Contractor;

(b) Southwest Corridor Works Contractor;

(c) Southwest Stations 1 Contractor;

(d) Southwest Stations 2 Contractor; and

(e) Southwest Stations 3 Contractor,

and together, the **Southwest Contractors**.

Southwest Corridor Works means the Southwest Works to be delivered under the Southwest Corridor Works Contract.

Southwest Corridor Works Contract means the contract to be entered into between the Principal and the Southwest Corridor Works Contractor with respect to the Southwest Corridor Works.

Southwest Corridor Works Contractor means the person engaged by the Principal to deliver the Southwest Works under the Southwest Corridor Works Contract.

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

(a) the date notified by the Brownfield Independent Certifier as the date Southwest Completion was achieved; or

(b) where another date is determined in accordance with the dispute resolution procedures under the relevant Southwest Contract as the date upon which Southwest Completion was achieved, that date.

Southwest Defect means:

(a) any defect, deficiency, fault, error or omission in the Southwest Works or the Southwest Design Works; and

(b) any:

(i) cracking, shrinkage, movement or subsidence in the Southwest Works; or

(ii) other aspect of the Southwest Works or the Southwest Design Works,

which is not in accordance with the requirements of the Southwest Contract,

but does not include any Deviations within the Foundation Infrastructure Works Tolerances affecting the Southwest Works, any OpCo2 Systems Defect or any Accepted Southwest Defect that is Acceptable.

Southwest Design Contract means the contract titled "Southwest Metro Design Services" between the Principal and the Southwest Design Contractor dated 1 April 2019, an unpriced version of which is contained in Part A Exhibit 12C (*Southwest Contracts*).

Southwest Design Contractor means Arcadis Australia Pacific Pty Ltd ABN 76 104 485 289 and Mott MacDonald Australia Pty Ltd ABN 13 134 120 535.

Southwest Design Works means the design completed by the Southwest Design Contractor under the Southwest Design Contract.

Southwest Independent Certifier Deed means each deed so titled entered into between the relevant Southwest Contractor, the Principal, OpCo2 and the Brownfield Independent Certifier and together, the **Southwest Independent Certifier Deeds**.

Southwest Notice of Completion has the meaning given to the term "Notice of Completion" in the relevant Southwest Contract.

Southwest O&M Manual means the operation and maintenance manuals forming part of the Foundation Infrastructure Works Asset Management Information not rejected by the Principal under the relevant Southwest Contract.

Southwest Portion has the meaning given to the term "Portion" in the relevant Southwest Stations Contract or the Southwest Corridor Works Contract.

Southwest Site has the meaning given to the term "Site" in the relevant Southwest Contract.

Southwest Site (OTS2) means that part of the Southwest Site that forms part of the Construction Site.

Southwest Stage 3 Design means the third stage of design undertaken by the Southwest Design Contractor and which has been certified by the Brownfield Independent Certifier in accordance with the Southwest Design Contract.

Southwest Station means in respect of the railway stations at Marrickville, Dulwich Hill, Hurlstone Park, Canterbury, Campsie, Belmore, Lakemba, Wiley Park, Punchbowl and Bankstown, the Licensed Maintenance Area (Southwest) within:

(a) the station building; and

(b) any service facilities associated with the station.

Southwest Stations 1 Contract means the contract titled " Sydney Metro City & Southwest – Southwest Metro Station Upgrade Works – Construct Only Delivery Deed" between the Principal and the Southwest Stations 1 Contractor, a draft version of which is contained in Part C of Exhibit 12C (*Southwest Contracts*).

Southwest Stations 1 Contractor means the person to be engaged by the Principal to deliver the Southwest Works in respect of Marrickville Station, Canterbury Station and Lakemba Station under the Southwest Stations 1 Contract.

Southwest Stations 2 Contract means the contract titled "Sydney Metro City & Southwest – Southwest Metro Station Upgrade Works – Construct Only Delivery Deed" between the Principal and the Southwest Stations 2 Contractor, a draft version of which is contained in Part D of Exhibit 12C (*Southwest Contracts*).

Southwest Stations 2 Contractor means the person to be engaged by the Principal to deliver the Southwest Works in respect of Dulwich Hill Station, Campsie Station and Punchbowl Station under the Southwest Stations 2 Contract.

Southwest Stations 3 Contract means the contract titled "Sydney Metro City & Southwest – Southwest Metro Station Upgrade Works – Construct Only Delivery Deed" between the Principal and the Southwest Stations 3 Contractor, a draft version of which is contained in Part E of Exhibit 12C (*Southwest Contracts*).

Southwest Stations 3 Contractor means the person to be engaged by the Principal to deliver the Southwest Works in respect of Hurlstone Park Station, Belmore Station and Wiley Park Station under the Southwest Stations 3 Contract.

Southwest Stations Contract means each of the following:

(a) Southwest Stations 1 Contract;

(b) Southwest Stations 2 Contract; and

(c) Southwest Stations 3 Contract,

and together, the **Southwest Stations Contracts**.

Southwest Stations Works means the Southwest Works to be delivered under a Southwest Stations Contract.

Southwest Track Formation has the meaning given in [redacted]

Southwest TS Works Period has the meaning given in [redacted]

Southwest TS Works Program has the meaning given in [redacted]

Southwest Works means the physical works to be designed and constructed by the Southwest Contractors under the Southwest Contracts, being the upgrade of the existing railway line between Sydenham and Bankstown, including bridge and non-station civil works, station works including modifications at the Southwest Stations, electrical works, overhead catenary works and other rail infrastructure, excluding the "Third Party Works" and "Temporary Works" (as those terms are defined in the relevant Southwest Contract).

Southwest Works Change means any change or variation to the Southwest Works following the date of this deed including any addition, reduction, increase, decrease, omission, deletion, demolition or removal to or from them (not including any change or variation that the relevant Southwest Contractor is entitled to make to the design of the Southwest Works under the relevant Southwest Contract without the Principal's consent where, following any such change or variation, the Southwest Works will continue to comply with the requirements of the relevant Southwest Contract (in the form contained in Exhibit 12C (*Southwest Contracts*), as amended for any Approved Foundation Infrastructure Works Change)).

Spares has the meaning given in SPR Appendix 1 (*Definitions and Acronyms*).

Spares and Consumables Strategy means the plan developed as part of the Asset Management Plan.

Special Event means:

(a) a special event specified in section 4.7 of the SPR Appendix 45 (*Service and System Performance Requirements*); or

(b) a special event in respect of which the Principal directs a Service Change under clause 20.4 (Service Changes required by the Principal).

Special Tools and Equipment means the special tools and equipment listed in the Operations and Maintenance Manuals.

Specified Asset means those Assets listed in Schedule 43 (*Specified Assets*).

Specified OpCo2 Contractors means:

(a) the Alstom Significant Contractor;

(b) the CCS and COM Contractor;

(c) the Radio Contractor; and

(d) the City Section PSD Contractor.

SPR means the SPR (OTS) and the SPR (OTS2), as applicable.

SPR (OTS) means the Scope and Performance Requirements contained in Part B of Exhibit 1 (*Scope and Performance Requirements*) as amended by agreement of the parties in accordance with the OTS Project Deed.

SPR (OTS2) means the Scope and Performance Requirements contained in Part A of Exhibit 1 (*Scope and Performance Requirements*).

SPR Appendix mean an Appendix of the SPR.

SSJ-OTS2 Cooperation and Integration Deed means the deed titled "SSJ-OTS2 Cooperation and Integration Deed" to be entered into between the Principal, OpCo2 and the SSJ Contractor, substantially in the form set out in Part H of Schedule 47 (*Form of Project Cooperation and Integration Deeds*).

SSJ Completion has the meaning given to the term "Completion" in the SSJ Contract.

SSJ Contract means the contract titled "Sydney Metro City & Southwest Sydenham Station and Junction Works Incentivised Target Cost Contract" between the Principal and the SSJ Contractor dated 20 September 2017, an unpriced version of which is contained in Exhibit 12D (*SSJ Contract*).

SSJ Contractor means John Holland Pty Ltd (ABN 11 004 282 268) and Laing O'Rourke Australia Construction Pty Ltd (ABN 39 112 099 000).

SSJ Date of Completion means, in respect of a SSJ Phase 1 Portion or a SSJ Phase 2 Portion:

(a) the date notified by the Brownfield Independent Certifier as the date SSJ Completion was achieved; or

(b) where another date is determined in accordance with the dispute resolution procedures under the SSJ Contract as the date upon which SSJ Completion was achieved, that date.

SSJ Defect means:

(a) any defect, deficiency, fault, error or omission in the SSJ Works; and

(b) any:

    (i) cracking, shrinkage, movement or subsidence in the SSJ Works; or

    (ii) other aspect of the SSJ Works,

    which is not in accordance with the requirements of the SSJ Contract,

but does not include any Deviations within the Foundation Infrastructure Works Tolerances, any OpCo2 Systems Defect or any Accepted SSJ Defect that is Acceptable.

SSJ IC Deed of Accession means the deed of accession executed by OpCo2 on or about the date of this deed, providing for OpCo2 to accede to the SSJ Independent Certifier Deed.

SSJ Independent Certifier Deed means the deed so titled entered into between the SSJ Contractor, the Principal and the Brownfield Independent Certifier, to which OpCo2 acceded under the SSJ IC Deed of Accession dated on or about the date of this deed.

SSJ Notice of Completion has the meaning given to the term "Notice of Completion" in the SSJ Contract.

SSJ O&M Manual means the operation and maintenance manuals forming part of the Foundation Infrastructure Works Asset Management Information not rejected by the Principal under the SSJ Contract.

SSJ Phase 1 Portion means each of SSJ Portion 2, SSJ Portion 5, SSJ Portion 6, SSJ Portion 7 and SSJ Portion 9 and together, the **SSJ Phase 1 Portions**.

SSJ Phase 2 Portion means each of SSJ Portion 10 and SSJ Portion 11 and together, the **SSJ Phase 2 Portions**.

SSJ Portion 2 has the meaning given to the term "Portion 2" in the SSJ Contract.

SSJ Portion 5 has the meaning given to the term "Portion 5" in the SSJ Contract.

SSJ Portion 6 has the meaning given to the term "Portion 6" in the SSJ Contract.

SSJ Portion 7 has the meaning given to the term "Portion 7" in the SSJ Contract.

SSJ Portion 9 has the meaning given to the term "Portion 9" in the SSJ Contract.

SSJ Portion 10 has the meaning given to the term "Portion 10" in the SSJ Contract.

SSJ Portion 11 has the meaning given to the term "Portion 11" in the SSJ Contract.

SSJ Site has the meaning given to the term "Construction Site" in the SSJ Contract.

SSJ Site (OTS2) means that part of the SSJ Site that forms part of the Construction Site.

SSJ Works means the physical works to be designed and constructed by the SSJ Contractor under the SSJ Contract, being trackwork, changes to existing Sydney Trains signalling and train control system, changes to Sydney Trains existing overhead systems, civil works for Sydenham Station and associated electrical works and new concourse but excluding the "Third Party Works" and "Temporary Works" (as those terms are defined in the SSJ Contract).

SSJ Works (Phase 1) means the SSJ Works forming part of the SSJ Phase 1 Portions.

SSJ Works (Phase 2) means the SSJ Works forming part of the SSJ Phase 2 Portions.

SSJ Works Change means any change or variation to the SSJ Works following the date of this deed including any addition, reduction, increase, decrease, omission, deletion, demolition or removal to or from them (not including any change or variation that the SSJ Contractor is entitled to make to the design of the SSJ Works under the SSJ Contract without the Principal's consent where, following any such change or variation, the SSJ Works will continue to comply with the requirements of the SSJ Contract (in the form

contained in Exhibit 12D (*SSJ Contract*), as amended for any Approved Foundation Infrastructure Works Change)).

Staff means all persons whether officers, employees, agents or contractors of OpCo2 or OpCo2 Contractors engaged in or in connection with the performance of OpCo2's Activities.

Stage 1 Design means the:

(a) first stage of design for the OTS2 Works and the Line-wide Works undertaken by the Integrator;

(b) first stage of design for the City Stations (other than Central Station) prepared by the USDTS Designer;

(c) reference design for Central Station prepared by Parsons Brinckerhoff/AECOM;

(d) first stage of design for Martin Place Station prepared by Arup;

(e) reference design for the Southwest Works by Parsons Brinckerhoff/AECOM;

(f) reference design for the works at the Sydney Metro Trains Facility (North) undertaken by the Integrator; and

(g) first stage of design for the OCC undertaken by the Integrator.

Stakeholder and Community Involvement Plan means the Project Plan of that name.

State means the Crown in right of the State of New South Wales.

Station means a Northwest Station, a City Station or a Southwest Station.

Station Precinct has the meaning given in SPR Appendix 1 (*Definitions and Acronyms*).

Step-in Event has the meaning given in clause 41.1 (*Step-In Events*).

Step-in Party means an agent, attorney or nominee of the Principal, and may be more than one person appointed to act jointly.

Step-in Powers has the meaning given in clause 41.3 (*Step-In Powers*).

Step-in Rights has the meaning given in clause 41.2(a).

Strategic Business Plan means the Project Plan of that name.

Structural Defect means any defect in any internal or external load bearing component of a Specified Asset, the CSM Works, the Southwest Works, the SSJ Works, the City Stations Works or a Line-wide Structural Asset that is essential to the structural integrity or stability of a Specified Asset, the CSM Works, the Southwest Works, the SSJ Works, the City Stations Works or a Line-wide Structural Asset that:

(a) results in a Specified Asset, the CSM Works, the Southwest Works, the SSJ Works, the City Stations Works or a Line-wide Structural Asset or any part of it being required by or under any law to be closed or prohibited from being used;

(b) in the written opinion of a Structural Engineer is likely to result in a Specified Asset, the CSM Works, the Southwest Works, the SSJ Works, the City Stations Works or a Line-wide Structural Asset or any part of it being required by or under any law to

be closed or prohibited from being used if not rectified, repaired or replaced expeditiously;

(c) results in the destruction or failure (in part or in full of a Specified Asset, the CSM Works, the Southwest Works, the SSJ Works, the City Stations Works or a Line-wide Structural Asset) so as to require rectification, repair or replacement of a Specified Asset, the CSM Works, the Southwest Works, the SSJ Works, the City Stations Works or a Line-wide Structural Asset (or any part of it);

(d) in the written opinion of a Structural Engineer is likely to result in the destruction or failure (in part of in full of a Specified Asset, the CSM Works, the Southwest Works, the SSJ Works, the City Stations Works or a Line-wide Structural Asset) so as to require rectification, repair or replacement of a Specified Asset, the CSM Works, the Southwest Works, the SSJ Works, the City Stations Works or a Line-wide Structural Asset (or any part of it) if not rectified, repaired or replaced expeditiously;

(e) results in physical damage to a Specified Asset, the CSM Works, the Southwest Works, the SSJ Works, the City Stations Works or a Line-wide Structural Asset or any part of it such that it no longer meets the required level of performance or service and/or requires rectification, repairs or replacement under the SPR to maintain the functional performance of the Sydney Metro;

(f) in the written opinion of an appropriately qualified independent expert (appointed jointly by the Principal and OpCo2 with the costs shared on an equal basis) is likely to result in physical damage to a Specified Asset, the CSM Works, the Southwest Works, the SSJ Works, the City Stations Works or a Line-wide Structural Asset or any part of it such that it no longer meets the required level of performance or service and/or requires rectification, repairs or replacement under the SPR to maintain the functional performance of the Sydney Metro if not rectified, repaired or replaced expeditiously; or

(g) in the written opinion of a Structural Engineer results in a threat of imminent collapse that may reasonably be considered to cause destruction of, or physical damage to, a Specified Asset, the CSM Works, the Southwest Works, the SSJ Works, the City Stations Works or a Line-wide Structural Asset (or any part of it) or require the immediate or foreseeable closure of a Specified Asset, the CSM Works, the Southwest Works, the SSJ Works, the City Stations Works or a Line-wide Structural Asset or any dependent or adjacent property which is supported by or dependent upon a Specified Asset, the CSM Works, the Southwest Works, the SSJ Works, the City Stations Works or a Line-wide Structural Asset,

other than to the extent a Defect is caused, exacerbated or contributed to, including by way of any breach of its obligations, by OpCo2 or its Associates.

Structural Engineer means an independent structural engineer appointed jointly by the Principal and OpCo2 with the costs shared on an equal basis.

Subcontract means a contract with an OpCo2 Contractor relating to OpCo2's Activities, including a Core Contract and any other Significant Contract.

Successor OpCo2 means the entity that will perform all or any part of OpCo2's Activities after the expiry or termination of the Term and includes its proposed subcontractors.

SVC Defect means:

(a) any defect, deficiency, fault, error or omission in the SVC Works; and

(b) any:

(i) cracking, shrinkage, movement or subsidence in the SVC Works; or

(ii) other aspect of the SVC Works,

which is not in accordance with the requirements of the SVC Project Deed,

but does not include any Deviation within the OTS Civil Works Tolerances.

SVC Project Deed means the contract between the Principal and the SVC Contractor dated 17 December 2013, an unpriced version of which is contained in Exhibit 12 (*SVC Project Deed*).

SVC Works means the physical works designed and constructed by the SVC Contractor under the SVC Project Deed, being the surface and viaduct civil works component of the Sydney Metro Northwest including the earthworks, formation works, viaduct and bridges, road and Utility Service diversion between Bella Vista and the Rapid Transit Rail Facility, excluding the "Third Party Works" and "Temporary Works" (as those terms are defined in the SVC Project Deed).

Sydney Metro means the Sydney Metro City and the Sydney Metro Southwest and includes from the OTS Incorporation Date, the Sydney Metro Northwest.

Sydney Metro Australian Industry Participation Plan means the "Australian Industry Participation Plan" (as defined in the *Australian Jobs Act 2013* (Cth)) developed by the Principal for Sydney Metro, as amended from time to time.

Sydney Metro City means the railway line from Chatswood to Sydenham including the OTS2 Works for Phase 1, the TSE Works, the CSM Works, the SSJ Works (Phase 1), the City Stations Works and the Line-wide Works (Phase 1) during delivery and as constructed and the Sydney Metro Trains Facility (South), but excluding the ETS and the Over Station Developments.

Sydney Metro City (Northern Corridor) means the section of the Sydney Metro City rail corridor between Chatswood station and Chatswood dive building.

Sydney Metro Northwest means the railway line from Tallawong to Chatswood including the OTS Works (as more particularly described in the OTS Project Deed, including the Sydney Metro Trains Facility (North)), the TSC Works and the SVC Works as constructed, but excluding the ETS.

Sydney Metro Northwest Assets has the meaning given to the term "Asset" in the OTS Project Deed.

Sydney Metro Programming Protocol means the document titled "SM PD-PW-307 - Sydney Metro Basis of Schedule & Management Procedure" referred to in SPR Appendix 57 (*General Standards and Guidelines*).

Sydney Metro Site means:

(a) during the Delivery Phase, the Construction Site; and

(b) during the Operations Phase, the Licensed Maintenance Area.

Sydney Metro (Southern Corridor) means the section of the Sydney Metro rail corridor between Marrickville dive building and Bankstown Station, including the Sydney Metro Trains Facility (South).

Sydney Metro Southwest means the railway line from Sydenham to Bankstown including the Phase 2 Works, the SSJ Works (Phase 2), the Line-wide Works (Phase 2),

the PSD/MGF Works and the Southwest Works during delivery and as constructed, but excluding the ETS.

Sydney Metro Trains Facility (North) means the stabling and maintenance facility (including the Operations Control Centre) designed and constructed by OpCo under the OTS Project Deed and includes any modifications to the facility.

Sydney Metro Trains Facility (North) Planning Approval means any approval granted by the Minister for Planning and Infrastructure under section 115ZB of the EP&A Act or its equivalent in respect of the Sydney Metro Trains Facility (North), a copy of which appears in Part B of Exhibit 5 (Planning Approvals), and includes all:

(a) conditions to such approval; and

(b) documents incorporated by reference,

as the approval may be modified from time to time.

Sydney Metro Trains Facility (South) means the stabling facility at Marrickville to be designed and constructed by the Principal as part of the Line-wide Works.

Sydney Trains means the corporation constituted by section 36(1) of the *Transport Administration Act 1988* (NSW).

Sydney Trains Compensation Event means each of the following:

(a) if during the Delivery Phase:

(i) damage is caused to the OTS2 Works, the Temporary Works or the Construction Site by Sydney Trains' Activities, whether or not that damage is necessary to carry out the Principal's Activities; and

(ii) it is necessary to reinstate or rectify that damage to ensure that OpCo2 can and will continue to be able to comply with all of its obligations under this deed (including if the damage results in any Service Payment Deduction),

as referred to in clause 18(d) of Schedule 3 (*Sydney Trains Interface*);

(b) if during the Operations Phase:

(i) damage is caused to the Sydney Metro by Sydney Trains' Activities; and

(i) it is necessary to reinstate or rectify that damage to ensure that OpCo2 can and will continue to be able to comply with all of its obligations under this deed (including if the damage results in any Service Payment Deduction),

as referred to in clause 8(c) of Schedule 3 (*Sydney Trains Interface*);

(c) the Principal fails to comply with its obligations under clauses 10(b) and 10(c) of Schedule 3 (*Sydney Trains Interface*);

(d) the Principal fails to comply with its obligations under clause 13.4(b) of Schedule 3 (*Sydney Trains Interface*);

(e) the Principal or any Rail Entity enters into, varies or extends a lease, licence or related agreement referred to in clause 15.1(a) of Schedule 3 (*Sydney Trains Interface*);

(f) the Nominated Independent Certifier certifies as part of the Phase 2 Handover Inspection that Sydney Trains is not in compliance with the Sydney Trains' BL Asset Maintenance Plan but only with respect to the maintenance of the Residual Assets (Other) (including because any non-conformances identified in clause 21A.1(d)(ii) of Schedule 3 (*Sydney Trains Interface*) have not been rectified) as at the Phase 2 Handover Date as per clause 21A.1(h) of Schedule 3 (*Sydney Trains Interface*);

(g) Sydney Trains cancels or reduces the duration of a Track Possession as referred to in clause 21(c) of Schedule 3 (*Sydney Trains Interface*); and

(h) the Principal fails to comply with its obligations under clause 19.4(b) of Schedule 3 (*Sydney Trains Interface*) as referred to in clause 19.4(c) of Schedule 3 (*Sydney Trains Interface*); and

(i) Sydney Trains breaches its obligations under the Rail Safety Interface Agreements (as defined in clause 2.2(a) of Schedule 3 (*Sydney Trains Interface*)).

Sydney Trains Design Documentation means all Design Documentation created or submitted by OpCo2 which is required for the OTS2 Works which will interface with or otherwise affect:

(a) Sydney Trains' Facilities;

(b) Sydney Trains' operations or activities; or

(c) the operations of third party operators using Sydney Trains' Facilities.

Sydney Trains' Activities has the meaning given in Schedule 3 (*Sydney Trains interface*).

Sydney Trains' BL Asset Maintenance Plan means the maintenance plan for the Construction Site for Phase 2 prior to the Phase 2 Handover Date contained in Exhibit 19 (*Sydney Trains' BL Asset Maintenance Plan*) or such other plan as may be agreed between the Principal, OpCo2 and Sydney Trains.

Sydney Trains' Facilities has the meaning given in Schedule 3 (*Sydney Trains interface*).

Sydney Trains' Representative has the meaning given in clause 3.6(b) of Schedule 3 (*Sydney Trains interface*).

System means the components that constitute the ECRL signalling system, control system, telephone communication system, radio communications system, data network system, HV electrical system, LV electrical system, electrical traction system, fire system, security and access control system, ventilation system, vertical transport system, HVAC system, tunnel drainage system, water treatment system, track system, noise attenuation system, the ECRL tunnel walkway and architectural elements including fixtures and fittings.

System Integration and Operational Readiness Group has the meaning given in the Master Interface Protocols Deed Poll.

Systems Integration Steering Committee means the group established in accordance with [redacted]

Tax means any present or future tax, levy, impost, duty, deduction, fee, charge, compulsory loan or withholding plus any interest, penalty, charge, fees or other amounts payable in respect thereof.

Tax Invoice has the meaning given in the GST Act.

Taxable Supply has the meaning given in the GST Act.

Temporary Areas means the land more particularly described as the "Temporary Areas" in SPR Appendix 2 (*Construction Site*).

Temporary Works means any temporary physical works required for the purpose of performing the Delivery Activities, but which do not form part of the OTS2 Works.

Tendered Works means all or part of the works which would be required to effect a Modification in respect of which the Principal requires OpCo2 to conduct a tender process in accordance with clause 29.4 (*Tender for works*).

Term means the period:

(a) commencing on the date of Financial Close; and

(b) ending on the earlier of:

(i) the Expiry Date; or

(ii) the date on which this deed is terminated.

Termination Payment means an amount payable by the Principal to OpCo2 under clause 42.12 (*Termination Payments*), in each case calculated in accordance with Schedule 31 (*Termination Payments*) and clause 42.14 (*Option to assume Project Debt*) (if applicable).

Terrorist Act has the meaning given in section 5 of the *Terrorism Insurance Act 2003* (Cth) as at the date of this deed.

Test means:

(a) a test required by SPR Appendix 56 (*Testing and Commissioning*) or the Testing and Commissioning Plan; and

(b) an additional test which OpCo2 is directed to carry out under clause 18.8(a).

Testing means the carrying out of the Tests.

Testing and Commissioning Plan means the Project Plan of that name.

Test Procedure means a detailed procedure for the conduct of a Test.

Test Program has the meaning given in clause 18.3(a)(iv)(A).

Test Report means a report on the conduct of a Test, including supporting documentation.

Third Party Agreements means:

(a) the agreements referred to in Schedule 8 (*Requirements of Third Party Agreements*) entered into by the Principal with the parties referred to in Schedule 8 (*Requirements of Third Party Agreements*). Copies of the Third Party Agreements, as at the date of this deed are contained in Exhibit 15 (*Third Party Agreements*); and

(b) any Additional Third Party Agreements entered into by the Principal in accordance with clause 9.20(c).

Third Party Design Documentation means design documentation submitted under a Third Party Agreement.

Third Party Preparation Costs means, in respect of a Modification proposed by the Principal, the costs incurred by a third party engaged on arm's length terms by OpCo2 or a Core Contractor to provide services or the incremental costs incurred by a Core Contractor in relation to:

(a) the preparation of a Modification Impact Proposal;

(b) where applicable, the performance of OpCo2's obligations under clause 29.4 (*Tender for works*); and

(c) where applicable, the performance of OpCo2's obligations under clause 29.6 (*Principal rejects Modification Impact Proposal*),

but not including any costs directly incurred by OpCo2 or which form part of the Modifications Monthly Payment.

Timeliness Deduction has the meaning given in Schedule 2 (*Service Payment calculation*).

TLE Contract means the contract to be entered into between the Integrator and the TLE Contractor for the supply and installation of train lifting equipment at the Sydney Metro Trains Facility (North).

TLE Contractor means the contractor engaged by the Integrator to supply and install the train lifting equipment under the TLE Contract at the Sydney Metro Trains Facility (North).

TLE Contractor Deed of Appointment means the deed titled "Appointment of TLE Contractor as Principal Contractor" to be entered into between the Principal, OpCo2, the Integrator and the TLE Contractor.

TPPC Cap means, in respect of a Modification proposed by the Principal:

(a) for a Minor Modification, $[redacted];

(b) the amount set out in the relevant Modification Impact Request; or

(c) such higher amount as is approved by the Principal under clause 29.3(d)(i) or agreed by the parties in accordance with clause 29.3(f).

Track Possession has the meaning given in Schedule 3 (*Sydney Trains interface*).

[redacted]

Train Option Acceptance Requirements has the meaning given to the term "Train Option Acceptance Requirements" in item 14(b) of Part A of Schedule 30A (*Pre-Agreed Options - Trains*).

Train Services means the train services which OpCo2 actually provides (as distinct from the Required Train Services).

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

Training Management Plan means the Project Plan of that name.

Trains means each of:

(a) the trains which OpCo2 must supply under this deed and operate and maintain for the purpose of conveying Customers under this deed, which include the trains used to provide Train Services (as defined in the OTS Project Deed) on the Sydney Metro Northwest prior to the OTS Incorporation Date;

(b) from the OTS Incorporation Date, the OTS Trains; and

(c) from the Effective Date for the Option 1 Trains Option, the Option 1 Trains.

Transaction Party means OpCo2, OpCo2 HoldCo, OpCo2 HoldCo 2, Finance Co and Finance HoldCo.

Transition Out Plan means the Project Plan of that name.

Transitional Handover Services has the meaning given in the Southwest Contracts and the Line-wide Contract (as applicable).

Transport Administration Act means the *Transport Administration Act 1988* (NSW).

Transport for NSW means the NSW Government agency constituted by section 3C of the *Transport Administration Act 1988* (NSW).

Transport Integration Plan means the Project Plan of that name.

Trial Running has the meaning given in SPR Appendix 1 (*Definitions and Acronyms*).

[redacted]

Trust means the trust known as the NRT CSW Unit Trust, constituted by the Trust Deed.

Trust Deed means NRT CSW Unit Trust Deed dated 2 October 2019 signed by OpCo2.

Trust Property means all present and future undertakings, assets, property and rights comprising the trust fund of the Trust.

Trustee means OpCo2 in its capacity as trustee of the Trust.

Trustee's Indemnity means, in relation to a Trustee and a Trust, the present and future rights and interest of the Trustee in respect of:

(a) the administration of the Trust;

(b) the Trustee's right of indemnity from the Trust Property of the Trust or from any beneficiary of the 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 Trust or any beneficiary of the Trust,

and all moneys paid or payable under or in respect of any such right or interest.

TSC Contractor means:

(a) Thiess Pty Limited (ABN 87 010 221 486);

(b) John Holland Pty Limited (ABN 11 004 282 268); and

(c) Dragados Australia Pty Limited (ABN 20 151 632 665).

TSC Defect means:

(a) any defect, deficiency, fault, error or omission in the TSC Works; and

(b) any:

(i) cracking, shrinkage, movement or subsidence in the TSC Works; or

(ii) other aspect of the TSC Works,

which is not in accordance with the requirements of the TSC Project Deed,

but does not include any Deviations within the OTS Civil Works Tolerances.

TSC Project Deed means the contract between the Principal and the TSC Contractor dated 24 June 2013, an unpriced version of which is contained in Exhibit 11 (*TSC Project Deed*).

TSC Works means the physical works designed and constructed by the TSC Contractor under the TSC Project Deed, being the tunnels and station civil component of the Sydney Metro Northwest, excluding the "Third Party Works" and "Temporary Works" (as those terms are defined in the TSC Project Deed).

TSE-OTS2 Cooperation and Integration Deed means the deed titled "TSE-OTS2 Cooperation and Integration Deed" to be entered into between the Principal, OpCo2 and the TSE Contractor, substantially in the form of Part F of Schedule 47 (*Form of Project Cooperation and Integration Deeds*).

TSE Completion has the meaning given to the term "Completion" in the TSE Deed.

TSE Contractor means:

(a) John Holland Pty Ltd (ABN 11 004 282 268);

(b) CPB Contractors Pty Ltd (ABN 98 000 893 667); and

(c) Ghella Pty Ltd (ABN 85 142 392 461).

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

(a) the date notified by the TSE Independent Certifier as the date TSE Completion was achieved; or

(b) where another date is determined in accordance with the dispute resolution procedures under the TSE Deed as the date upon which TSE Completion was achieved, that date.

TSE Deed means the deed titled "Sydney Metro City & Southwest Tunnel and Station Excavation Works Design and Construction Deed" between the Principal and the TSE Contractor dated 22 June 2017, an unpriced version of which is contained in Exhibit 12A (*TSE Project Deed*).

TSE Defect means:

(a) any defect, deficiency, fault, error or omission in the TSE Works; and

(b) any:

(i) cracking, shrinkage, movement or subsidence in the TSE Works; or

(ii) other aspect of the TSE Works,

which is not in accordance with the requirements of the TSE Deed,

but does not include any Deviations within the Foundation Infrastructure Works Tolerances, any OpCo2 Systems Defect or any Accepted TSE Defect that is Acceptable.

TSE IC Deed of Accession means the deed of accession executed by OpCo2 on or about the date of this deed, providing for OpCo2 to accede to the TSE Independent Certifier Deed.

TSE Independent Certifier means APP Corporation (ABN 29 003 764 770) or such other person(s) as may be engaged by the Principal and the TSE Contractor in accordance with the TSE Independent Certifier Deed.

TSE Independent Certifier Deed means the deed so titled entered into between the TSE Contractor, the Principal and the TSE Independent Certifier, to which OpCo2 acceded under the TSE IC Deed of Accession dated on or about the date of this deed.

TSE Notice of Completion has the meaning given to the term "Notice of Completion" in the TSE Deed.

TSE O&M Manual means the operation and maintenance manuals forming part of the Foundation Infrastructure Works Asset Management Information certified by the TSE Independent Certifier under the TSE Deed.

TSE Portion has the meaning given to the term "Portion" in the TSE Deed.

TSE Site has the meaning given to the term "Construction Site" in the TSE Deed.

TSE Works means the physical works to be designed and constructed by the TSE Contractor under the TSE Deed, being the tunnel and station excavation component of the Project, including demolition and site preparation, tunnel boring and lining, cavern mining and lining, excavation of station shafts and, at Barangaroo only, the station structure, earthworks and drainage associated with the Sydney Metro Trains Facility (South) and tunnel portal structures at Sydenham and Chatswood, excluding the "Third Party Works" and "Temporary Works" (as those terms are defined in the TSE Deed) .

TSE Works Change means any change or variation to the TSE Works following the date of this deed including any addition, reduction, increase, decrease, omission, deletion, demolition or removal to or from them (not including any change or variation that the TSE Contractor is entitled to make to the design of the TSE Works under the TSE Deed without the Principal's consent where, following any such change or variation, the TSE Works will continue to comply with the requirements of the TSE Deed (in the form contained in Exhibit 12A (*TSE Deed*), as amended for any Approved Foundation Infrastructure Works Change)).

Underground Station Design and Technical Services Contract means the agreement entered into between the Principal and the USDTS Designer for the Underground Station Design and Technical Services.

Underground Station Design and Technical Services means the design and technical services procured by the Principal (with the involvement of the Integrator) to develop parts of the Stage 1 Design.

Uninsurable Risk means a risk in respect of which:

(a) insurance is not available in the international insurance market with any Reputable Insurer for projects in Australia in respect of that risk and coverage is not available under the *Terrorism Insurance Act 2003* (Cth) or a similar legislative scheme; or

(b) the insurance premium payable for insuring that risk is at such a level, or the terms and conditions are such, that the risk is not generally being insured against in the international insurance market with Reputable Insurers by prudent, competent and experienced providers in Australia of services similar to OpCo2's Activities,

at the time that the insurance is sought to be obtained or renewed.

USDTS Designer means the party jointly procured by the Principal and the Integrator and engaged by the Principal to perform the Underground Station Design and Technical Services under the Underground Station Design and Technical Services Contract.

Utility Service means any service, facility or item of infrastructure, for the provision and (if necessary) measurement of water, electricity, gas, ethane, fuel, telephone, drainage, sewerage, industrial waste disposal and electronic communications service.

Vandalism means any malicious, reckless or deliberate damage to any part of an Asset, excluding Graffiti.

Victoria Cross-OTS2 Cooperation and Integration Deeds means:

(a) the deed titled "Victoria Cross-OTS2 Cooperation and Integration Deed" to be entered into between the Principal, OpCo2 and the Victoria Cross Station Contractor; and

(b) the deed titled "Victoria Cross-OTS2 Cooperation and Integration Deed" to be entered into between the Principal, OpCo2, the Victoria Cross Station Contractor and the Victoria Cross Overstation Developer,

substantially in the forms set out in Part I of Schedule 47 (*Form of Project Cooperation and Integration Deeds*).

Victoria Cross Overstation Developer means Lendlease (Victoria Cross) Pty Limited as trustee for Lendlease Victoria Cross Trust (ABN 26 397 448 085).

Victoria Cross Station Contract means the contract titled "Victoria Cross Integrated Station Development – Station Delivery Deed (Contract No: 504)" between the Principal and the Victoria Cross Station Contractor dated 20 December 2018, an unpriced version of which is contained in Part C of Exhibit 12E (*City Station Contracts*).

Victoria Cross Station Contractor means the unincorporated joint venture comprising Lendlease Building Pty Limited (ABN 97 000 098 162) and Lendlease Engineering Pty Limited (ABN 40 000 201 516).

Waterloo-OTS2 Cooperation and Integration Deeds means:

(a) the deed titled "Waterloo-OTS2 Cooperation and Integration Deed" to be entered into between the Principal, OpCo2 and the Waterloo Station Contractor; and

(b) the deed titled "Waterloo-OTS2 Cooperation and Integration Deed" to be entered into between the Principal, OpCo2, the Waterloo Station Contractor and the Waterloo Overstation Developer,

substantially in the forms set out in Part B of Schedule 47 (*Form of Project Cooperation and Integration Deeds*).

Waterloo Overstation Developer means the contractor to be engaged by the Principal to deliver the OSD Works at Waterloo Station.

Waterloo Station Contract means the contract titled "Waterloo Integrated Station Development – Station Delivery Deed (Contract No: 503)" between the Principal and the Waterloo Station Contractor, a draft version of which is contained in Part H of Exhibit 12E (*City Station Contracts*).

Waterloo Station Contractor means John Holland Pty Limited (ABN 11 004 282 268).

WHS Incident means an accident, event or occurrence involving health or safety issues which:

(a) actually or potentially causes death, serious injury or significant passenger disruption;

(b) must be reported to SafeWork NSW, the ONRSR or other work health and safety regulator; or

(c) involves damage to persons or property occurring at the Sydney Metro Site, any other premises where OpCo2's Activities are being carried out or in the supply chain where the Heavy Vehicle National Law applies.

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

WHS Legislation means:

(a) the WHS Act and the *Work Health and Safety Regulation 2017* (NSW); and

(b) any legislation in other States and Territories of Australia addressing work health and safety which applies to the OTS2 Works.

Wilful Misconduct means an act or failure to act by the relevant party or its Associates that was intended to cause, or was in reckless disregard of or wanton indifference to, harmful consequences, excluding any innocent act, omission, mistake or error of judgement.

Witness Point means a point in a work process for which OpCo2 must give prior notice to the Principal's Representative to allow the Principal's Representative to attend and witness the point in the work process should it choose to do so.

Workforce Development and Industry Participation Plan means the Project Plan of that name.

Working Group means each working group established pursuant to clause 5.6 (*Working Groups*).

Workplace Relations Management Plan means the Project Plan of that name.

WPI means the "Wage Price Index: Total Hourly Rates of Pay Excluding Bonuses" as maintained and published quarterly by the Australian Bureau of Statistics, or as otherwise determined in accordance with clause 1.11A (*Changes to Indexes*).

WPI Indexed means, with respect to an amount, the amount must be adjusted in accordance with the indexation process detailed in clause 1.11 (*WPI Indexed*).

1.2 **SPR definitions**

The definitions and abbreviations in sections 1.2 and 1.3 of SPR Appendix 1 (*Definitions and Acronyms*) apply in this deed unless the relevant term is defined differently in the Operative Provisions.

1.3 **Schedule definitions**

The definitions in the Schedules apply in this deed unless the relevant term is defined differently in the Operative Provisions.

1.4 **Interpretation**

In this deed:

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

and the following rules apply in interpreting this deed unless the context makes it clear that a rule is not intended to apply:

(b) person includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;

(c) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or an additional trustee;

(ca) a reference to a person, entity or contractor (including a Core Contractor, Significant Contractor, Foundation Infrastructure Works Contractor or OTS Civil Works Contractor) includes that person, entity or contractor's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or an additional trustee;

(d) a reference to a document, contract or agreement (including this deed, a Core Contract, a Significant Contract, a Foundation Infrastructure Works Contract, the OTS Project Deed or a OTS Civil Works Contract) is to that document, contract or agreement as varied, novated, ratified or replaced from time to time;

(e) a reference to any Authority, institute, association or body is:

(i) if that Authority, institute, association or body is reconstituted, renamed or replaced or if the powers or functions of that Authority, institute, association or body are transferred to another organisation, deemed to refer to the reconstituted, renamed or replaced organisation or the organisation to which the powers or functions are transferred, as the case may be; and

(ii) if that Authority, institute, association or body ceases to exist, deemed to refer to the organisation which serves substantially the same purposes or object as that Authority, institute, association or body;

(f) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or any section or provision of either of these includes:

(i) all ordinances, by-laws, regulations of and other statutory instruments (however described) issued under the statute or delegated legislation; and

(ii) any consolidations, amendments, re-enactments and replacements;

(g) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;

(h) a reference to:

(i) a part, Schedule, exhibit, attachment or annexure is a reference to a part, Schedule, exhibit, attachment or annexure to or of this deed;

(ii) this deed includes all Schedules, exhibits, attachments and annexures to it, including the SPR; and

(iii) the SPR includes all SPR Appendices;

(i) a reference in:

(i) the Operative Provisions to a clause is a reference to a clause of the Operative Provisions; and

(ii) a Schedule, exhibit, attachment, annexure or Appendix to a clause, paragraph or annexure, is a reference to a clause, paragraph or annexure of that Schedule, exhibit, attachment, annexure or Appendix;

(j) any reference to:

(i) the OTS2 Works, the Temporary Works or the Sydney Metro;

(ii) the Operations Activities;

(iii) the Project Plans;

(iv) the SPR;

(v) the Design Documentation and the Project Documentation; or

(vi) any other document or thing,

or any part of any of them:

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

(viii) as having an intended use,

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

(ix) the Principal's intention that the OTS2 Works will be used as an integral part of an operating and integrated rail system intended to provide frequent high speed mass transit services between Tallawong and Bankstown, and which may:

(A) be required to accommodate and utilise various rolling stock, railway track, rail systems and related equipment;

(B) be subject to continuous operation;

(C) be operated by either the State of New South Wales or by private operator(s) on its behalf;

(D) involve further development of rail stations, including station structures and fit out to the extent referred to in this deed;

(E) be upgraded, augmented, extended and expanded to the extent referred to in this deed;

(F) be connected to and/or integrated with other transport infrastructure to the extent referred to in this deed; and

(G) involve future construction and development of buildings, over station developments and/or other infrastructure on, over, under or adjacent to railway stations and other parts of the Sydney Metro to the extent referred to in this deed; and

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

(A) this deed, including:

(aa) the principles and drivers referred to in sections 1.1 and 1.2 of the SPR; and

(bb) the requirement that the OTS2 Works, when completed, and the Sydney Metro City and the Sydney Metro Southwest will be designed and constructed in compliance with all health and safety requirements of the WHS Legislation; or

(B) (to the extent relevant for determining the purpose, intended purpose or intended use in connection with a Modification) any document provided by the Principal to OpCo2 specifically in connection with the Modification (excluding any Information Documents);

(k) 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;

(l) **includes** in any form is not a word of limitation;

(m) a reference to **$** or **dollar** is to Australian currency;

(n) a reference to **construction** includes development, manufacture, supply, installation, integration, testing and commissioning;

(o) any reference to **information** will be read as including information, representations, statements, data, samples, bore logs, calculations, assumptions, deductions, determinations, drawings, design, specifications, models, plans and other documents in all forms including the electronic form in which it was generated;

(p) any obligation of OpCo2 under this deed with respect to a **Project Plan**, will be read as an obligation with respect to the version of the relevant Project Plan last submitted by OpCo2 to the Principal's Representative under clause 8 (*Project Plans*) in respect of which:

(i) during the Delivery Phase, the Principal's Representative has certified under clause 8.5(a)(ii)(B); or

(ii) during the Operations Phase, the Principal's Representative has not given a notice under clause 8.5(b)(ii),

(as applicable); and

(q) any obligation of OpCo2 under this deed to mitigate will be read as an obligation to mitigate having regard to:

(i) OpCo2's obligations under this deed and the OTS2 PPP; and

(ii) OpCo's obligations under the OTS Project Deed and the OTS PPP.

1.5 **Resolution of ambiguities**

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

(i) if the ambiguity, discrepancy or inconsistency is in or between the documents comprising this deed, the documents will be given precedence in accordance with the following:

(A) this deed (excluding the SPR); and

(B) the SPR;

(ii) to the extent clause 1.5(a)(i) does not apply to or resolve the ambiguity, discrepancy or inconsistency and the ambiguity, discrepancy or inconsistency is between different codes, standards, specifications or guidelines with which OpCo2 must comply, the order of precedence set out in section 1.1(f) of SPR Appendix 57 (*General Standards and Guidelines*) will apply;

(iii) to the extent clauses 1.5(a)(i) and 1.5(a)(ii) do not apply to or resolve the ambiguity, discrepancy or inconsistency and the ambiguity, discrepancy or inconsistency is between different requirements of the SPR, the order of precedence set out in section 1.3(d) of the SPR will apply;

(iv) to the extent clauses 1.5(a)(i) to 1.5(a)(iii) do not apply to or resolve the ambiguity, discrepancy or inconsistency and the ambiguity, discrepancy or inconsistency is between the SPR and the Environmental Documents, the document which prescribes or requires the highest standard of compliance consistent with complying with all Approvals will take precedence (unless the Principal's Representative directs otherwise);

(v) to the extent clauses 1.5(a)(i) to 1.5(a)(iv) do not apply or resolve the ambiguity, discrepancy or inconsistency and the ambiguity, discrepancy or inconsistency is in or between the documents comprising the Environmental Documents, the order of precedence in paragraph 1 of Schedule 5 (*Environmental Documents and Planning Approval Conditions*) will apply;

(vi) to the extent clauses 1.5(a)(i) to 1.5(a)(v) do not apply or resolve the ambiguity, discrepancy or inconsistency and the ambiguity, discrepancy or inconsistency relates to the required quality or standard of the OTS2 Works, the Temporary Works or OpCo2's Activities, OpCo2 must comply with the highest quality or standard specified or perform the more onerous obligation;

(vii) to the extent clauses 1.5(a)(i) to 1.5(a)(vi) do not apply or resolve the ambiguity, discrepancy or inconsistency and the ambiguity, discrepancy, or inconsistency is between figured and scaled dimensions, figured will prevail over the scaled dimensions; and

(viii) to the extent there is any inconsistency between this deed and the Interface Protocols, this deed will prevail over the Interface Protocols.

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

(c) If an ambiguity, discrepancy or inconsistency is discovered by OpCo2, OpCo2 must notify the Principal within 5 Business Days of such discovery.

(d) the Principal's Representative must, within 10 Business Days of receipt of a notice under clause 1.5(c), instruct OpCo2 as to the interpretation to be followed so as to resolve the ambiguity, discrepancy or inconsistency in accordance with the rules set out in this clause 1.5 (*Resolution of ambiguities*).

1.6 **National Public Private Partnership Policy and Guidelines**

In respect of the principles and other guidance materials published from time to time by the Australian government under its National Public Private Partnership Policy and Guidelines or the State under its Working with Government Guidelines, or any related policies, however named, which deal with public private partnerships and arrangements for the provision of infrastructure and services (collectively the **Principles**):

(a) the Project Agreements do not purport to, and do not incorporate, the Principles;

(b) to the extent any particular Principles are expressly incorporated into the provisions of the Project Agreements, they may not be, and are not required to be, incorporated in identical terms to the Principles as published by the Australian government or the State; and

(c) except to the extent expressly incorporated in the Project Agreements, the Principles will not be implied into the terms of the Project Agreements.

1.7 **No bias against drafter**

No provision of this deed is to be interpreted to the disadvantage of a party because that party (or its representative) drafted that provision.

1.8 **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, except for:

(a) a Shutdown (as defined in Schedule 3 (*Sydney Trains interface*)); and

(b) a Track Possession,

which must occur on the day required by this deed irrespective of whether that day is not a Business Day.

1.9 **Excluding liability**

Any provision of this deed which seeks to limit or exclude a liability of a party is to be construed as doing so only to the extent permitted by law.

1.10 **CPI Indexed**

Unless otherwise expressly provided, a reference to "CPI Indexed" after a monetary amount in a Principal Project Agreement means that the amount will be indexed for movements in the CPI in accordance with the following formula:

$$A\ (\text{CPI Indexed}) = A \times \frac{CPI_{q-2}}{CPI_{Base}}$$

Where:

A is the monetary amount originally specified;

CPI_{Q-2} is the CPI published for the Quarter End ending three months prior to the start of Quarter q (where Quarter q is the Quarter during which the relevant calculation is being made); and

CPI_{Base} is the CPI published for the Quarter End ending June 2019, being the Quarter End preceding the Quarter most recently ended prior to financial close of the OTS2 PPP.

1.11 **WPI Indexed**

Unless otherwise expressly provided, a reference to "WPI Indexed" after a monetary amount in a Principal Project Agreement means that the amount will be indexed for movements in the WPI in accordance with the following formula:

$$A\ (\text{WPI Indexed}) = A \times \frac{WPI_{q-2}}{WPI_{Base}}$$

Where:

A is the monetary amount originally specified;

WPI_{Q-2} is the WPI published for the Quarter End ending three months prior to the start of Quarter q (where Quarter q is the Quarter during which the relevant calculation is being made); and

WPI_{Base} is the WPI published for the Quarter End ending June 2019, being the Quarter End preceding the Quarter most recently ended prior to financial close of the OTS2 PPP.

1.11A **Changes to indexes**

The following rules apply to all indexation under this deed unless otherwise specified in Schedule 2 (*Service Payment calculation*):

(a) if there is a change in the coverage of the index from that applying at the date of this deed and the new index is linked to another index, the defined term is to be referable to the new index;

(b) if the index is published and:

(i) there is a change in its coverage and it is not linked to another index; or

(ii) there is a change in its periodicity,

the parties must request the President of the Actuaries Institute (or the President's nominee) to determine:

(iii) whether the index remains appropriate as a general indicator of the rate of price change for the relevant goods and services; and

(iv) if it is not, what other index should be used as a substitute index for the purpose of the defined term's use in this deed,

and that determination is final and binds the parties;

(c) if there is a change in the reference base of the index from that applying at the date of this deed and the Australian Bureau of Statistics (or the Australian Information Industry Association, as relevant) provides a conversion factor, that conversion factor must be applied to calculate revised figures for the purposes of the defined term's use in this deed, in terms of the new reference base;

(d) if there is a change in the reference base of the index from that applying at the date of this deed and the Australian Bureau of Statistics (or the Australian Information Industry Association, as relevant) does not provide a conversion factor, the parties must request the President of the Institute of Actuaries (or the President's nominee) to calculate a revised index for the purposes of the defined term's use in this deed, and that calculation is final and binds the parties;

(e) if the index ceases to be published and the Australian Bureau of Statistics (or the Australian Information Industry Association, as relevant) publishes another index which is:

(i) a replacement of that index; and

(ii) linked to the index,

the defined term must be re-calculated to the same reference base as the replacement index;

(f) if the index ceases to be published and the Australian Bureau of Statistics (or the Australian Information Industry Association, as relevant) does not publish another index which is linked to the index, the parties must request the President of the Institute of Actuaries (or the President's nominee) to calculate a revised index for the purpose of the defined term's use in this deed, and that calculation is final and binds the parties;

(g) if the index ceases to be published and the Australian Bureau of Statistics (or the Australian Information Industry Association, as relevant) does not publish another index in place of the index, the parties must request the President of the Institute of Actuaries (or the President's nominee) to determine an appropriate index which is a general indicator of the rate of price change for the relevant goods and services, and that determination is final and binds the parties; and

(h) if a Change in Law causes a material aberration in the index, the index will be adjusted to remove the impact of that material aberration in accordance with any such methodology published by a responsible Authority for adoption in business or, in the absence of such publication, within 6 months of the occurrence of the material aberration as agreed by the parties or, in the absence of agreement, as determined in accordance with clause 56 (*Dispute resolution*).

1.12 **Authorities**

(a) The Principal Project Agreements will not in any way unlawfully restrict or otherwise unlawfully affect the unfettered discretion of the Principal to exercise any of its statutory functions or powers pursuant to any law.

(b) OpCo2 acknowledges that, without limiting clause 1.12(a), anything the Principal does, fails to do or purports to do pursuant to its functions and powers under any law (but to avoid doubt, excluding the GSF Act insofar as it authorises the execution of and exercise of powers under a Project Agreement) will be deemed not to be an act or omission by the Principal (including a breach of contract) under or in connection with the Principal Project Agreements and will not entitle OpCo2 to make any Claim against the Principal.

(c) Clauses 1.12(a) and 1.12(b) do not limit any liability which the Principal would have to OpCo2 under any Principal Project Agreement as a result of a breach by the Principal of a term of any Principal Project Agreement but for clauses 1.12(a) and 1.12(b).

(d) OpCo2 acknowledges that:

(i) there are many Authorities (other than the Principal) with jurisdiction over aspects of OpCo2's Activities, parts of the Sydney Metro Site and other areas affected by OpCo2's Activities (including Extra Land);

(ii) such Authorities may from time to time exercise their statutory functions and powers in such a way as to disrupt, interfere with or otherwise affect OpCo2's Activities; and

(iii) except to the extent expressly stated otherwise in this deed, OpCo2 bears the risk of all occurrences of the kind referred to in clause 1.12(d)(ii) and will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in any way in connection with such occurrences.

1.13 Reasonable endeavours

If the Principal is required under the terms of this deed to exercise best or reasonable endeavours, OpCo2 acknowledges that:

(a) the Principal will only be obliged to bring about the relevant outcome to the extent that it is reasonably able to do so, having regard to its resources and other responsibilities;

(b) the Principal cannot guarantee the relevant outcome; and

(c) the Principal, by undertaking to exercise reasonable endeavours, does not agree to:

(i) interfere with or influence the exercise by any person of a statutory power or discretion;

(ii) exercise a power or discretion or otherwise act in a manner that promotes the objectives and expected outcomes of the Project Agreements if the Principal regards that exercise as not in the public interest;

(iii) develop policy or legislate by reference only or predominantly to the objectives and expected outcomes of the Project Agreements;

(iv) procure legislation in the future in a manner that is only consistent with the objectives and expected outcomes of the Project Agreements; or

(v) act in any other way that the Principal regards as not in the public interest.

1.14 **Standards**

A reference to any standard, code, guideline, specification, rule, policy, procedure, directive, circular, code of practice or requirement relating to or affecting the execution of any part of the OTS2 Works or the provision of a service included in the Operations Activities, that does not constitute Legislation or NSW Government Policy, is a reference to the version stated in this deed or, if no version is stated, the version as at the date of this deed.

1.15 **Capacity of OpCo2**

(a) Insofar as OpCo2 enters into this document in its capacity as trustee of the Trust, it must remain trustee of the Trust, subject to clause 55.5(e), until the expiry or satisfaction of all of OpCo2's obligations under this deed.

(b) A liability of OpCo2 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 OpCo2 both in its own right and in its capacity as trustee of the Trust, unless the liability relates only to an asset which OpCo2 holds in its personal capacity and not as trustee, in which case the liability can only be enforced against OpCo2 in its personal capacity.

1.16 **SPR**

(a) The parties acknowledge that the requirements for:

(i) the OTS Works and the Operations Activities (as that term is defined under the OTS Project Deed) which are performed by OpCo under the OTS Project Deed are set out in the SPR (OTS); and

(ii) the OTS2 Works and the Operations Activities which are performed by OpCo2 under this deed and include:

(A) the operation and maintenance of the Sydney Metro Northwest from the OTS Incorporation Date (which includes the maintenance of the Sydney Metro Northwest Assets) and the Sydney Metro City; and

(B) the operation and maintenance of the Sydney Metro from the Date of Completion of Phase 2,

are set out in the SPR (OTS2).

(b) The parties agree that:

(i) from the date of this deed, the SPR (OTS2) will determine the requirements for the OTS2 Works; and

(ii) from the OTS Incorporation Date:

(A) the SPR (OTS) will form part of the SPR under this deed for the purpose of determining the requirements for the OTS Works only, including whether a Defect has occurred on the Sydney Metro Northwest; and

(B) the requirements in the SPR (OTS2) with respect to the Operations Activities will supersede those requirements within the SPR (OTS) and specifically the sections of the SPR (OTS) relating to the Operations Activities (as that term is defined under the OTS Project Deed) will have no further effect.

(c) In accordance with clauses 1.16(a) and 1.16(b) and unless expressly provided otherwise:

(i) the parties acknowledge that where this deed refers to the SPR or a section of the SPR then this may be a reference to:

(A) the SPR (OTS);

(B) the SPR (OTS2); or

(C) both the SPR (OTS) and the SPR (OTS2),

as the context requires; and

(ii) where a provision includes a reference to the SPR and that provision refers, relates to or the context otherwise implies a reference to:

(A) the Delivery Activities or the OTS2 Works, then the reference to the SPR is deemed to be a reference to the SPR (OTS2);

(B) the OTS Works, then from the OTS Incorporation Date the reference to the SPR is deemed to be a reference to the SPR (OTS); and

(C) the Operations Activities, then the reference to the SPR is deemed to be a reference to the SPR (OTS2).

(d) Following the OTS Incorporation Date, the Principal may (but is not obliged to) prepare a consolidated version of the SPR which reflects the principles in this clause 1.16 (*SPR*) (**Amended SPR**) and provide the Amended SPR to OpCo2 for OpCo2's review.

(e) Where the Principal provides OpCo2 with the Amended SPR in accordance with clause 1.16(d), OpCo2 must within 20 Business Days of receipt of the Amended SPR:

(i) review the Amended SPR; and

(ii) provide the Principal with any initial comments on the Amended SPR.

(f) OpCo2 must within 20 Business Days after submitting any initial comments pursuant to clause 1.16(e)(ii) (or such longer period as agreed by the parties having regard to the nature of the initial comments and the complexity of the issues identified) submit a final set of comments on the Amended SPR.

(g) If no comments are received by the Principal within the time specified in clause 1.16(e), OpCo2 is deemed to have accepted the Amended SPR.

(h) The Principal will, acting reasonably, consider comments received from OpCo2 on the Amended SPR and the parties agree to work together to finalise any outstanding matters with respect to the Amended SPR.

(i) The SPR (OTS) and the SPR (OTS2) will be replaced by the Amended SPR as agreed between the parties.

(j) Where the parties are unable to agree a final Amended SPR, outstanding matters will be determined in accordance with clause 56 (*Dispute resolution*).

(k) Without limiting OpCo2's warranties under clauses 11A.1(b) and 14A.2(b), the Principal will within 12 months from Financial Close complete the remaining

mapping process in respect of the Foundation Infrastructure Works SWTCs (as amended up to the date falling 12 months after Financial Close) to the Master SPR through the IBM Rational DOORS master database.

1.17 Electronic files

Where this deed refers to an electronic file which forms part of this deed, such electronic files are contained in the discs or other electronic storage device included in Schedule 49 (*Electronic files*).

2. CONDITIONS PRECEDENT

2.1 Conditions Precedent

This deed will not commence unless and until each of the Conditions Precedent have been satisfied (or waived under clause 2.3 (*Waiver of Conditions Precedent*)), except for the provisions contained in:

(a) clause 1 (*Interpretation*);

(b) this clause 2 (*Conditions Precedent*);

(c) clause 11.1 (*Physical conditions*);

(d) clause 11.2 (*Information Documents*)

(e) clause 11.3 (*Condition of the Sydney Metro Site, Sydney Metro Northwest and structures*);

(f) clause 47 (*Disclosure, confidentiality and publicity*);

(g) clause 49 (*Financing and Refinancing*);

(h) clause 52 (*Restrictions*);

(i) clause 53 (*Change of Ownership / Control*);

(j) clause 54 (*Subcontracting*);

(k) clause 55 (*Representations, warranties and undertakings*);

(l) clause 56 (*Dispute resolution*);

(m) clause 57 (*Notice of Claims*);

(n) clause 58 (*Notices*);

(o) clause 60 (*Proportionate liability*);

(p) clause 61 (*Taxes*); and

(q) clause 62 (*General*),

(each a Day 1 Clause) which will commence on the date of this deed.

2.2 Satisfaction of Conditions Precedent

(a) The Principal must:

(i) apply for the consents and approvals under section 6.23 of the GSF Act; and

(ii) otherwise use all reasonable endeavours to satisfy each Condition Precedent which is expressed to be included for the benefit of OpCo2 (or OpCo2 and the Principal),

by the relevant Condition Precedent Deadline Date.

(b) OpCo2 must use all reasonable endeavours to satisfy each Condition Precedent which is expressed to be for the benefit of the Principal (or the Principal and OpCo2) by the relevant Condition Precedent Deadline Date.

(c) When a party is of the opinion that a Condition Precedent has been satisfied it must give the other party notice of its opinion.

(d) The party receiving a notice given under clause 2.2(c) will notify the other party whether or not it agrees that the Condition Precedent has been satisfied, such agreement not to be unreasonably withheld.

(e) If the party receiving a notice given under clause 2.2(c) fails to give the other party a notice under clause 2.2(d) within 5 Business Days, the Condition Precedent will be deemed to have been satisfied.

(f) Upon the satisfaction (or waiver under clause 2.3 (*Waiver of Conditions Precedent*)) of all Conditions Precedent, the parties must promptly acknowledge in writing the fact that Financial Close has occurred.

2.3 Waiver of Conditions Precedent

A Condition Precedent is waived if, and only if:

(a) where the Condition Precedent is included for the benefit of a particular party, that party gives notice in writing of the waiver of the Condition Precedent to the other party; and

(b) where the Condition Precedent is included for the benefit of both parties, both parties agree in writing to waive the Condition Precedent.

2.4 Condition Precedent Deadline Dates

(a) If a Condition Precedent has not been satisfied (or waived under clause 2.3 (*Waiver of Conditions Precedent*)) by 11.59 pm on the relevant Condition Precedent Deadline Date, then the party listed as the "Benefiting Party" in Schedule 1 (*Conditions Precedent*) in respect of that Condition Precedent (or, if both parties are the "Benefiting Party" in respect of that Condition Precedent, either party) may give notice in writing to the other party that it is terminating this deed if the Condition Precedent in question is not satisfied (or waived under clause 2.3 (*Waiver of Conditions Precedent*)) within the period specified in its notice (which must not be less than 5 Business Days).

(b) If a party gives notice under clause 2.4(a) and the Condition Precedent in question is not satisfied (or waived under clause 2.3 (*Waiver of Conditions Precedent*)) within the period specified in that notice (or such longer period as the parties may agree) then this deed will terminate upon the expiry of that period.

(c) If this deed is terminated pursuant to this clause 2.4 (*Conditions Precedent Deadline Dates*) then no party will have any Claim against any other party under or in respect of the Principal Project Agreements or in respect of any Loss suffered or incurred in connection with the OTS2 PPP, except for any Claim arising from or in relation to a breach of any Day 1 Clause.

3. TERM

3.1 Commencement date

Except for the Day 1 Clauses which commence on the date of this deed, this deed commences on the date of Financial Close.

3.2 End of Term

Unless terminated early, the Term will end on the Expiry Date.

3.3 Term extension

(a) The Principal's Representative may, at any time prior to the date that is 30 months before the Original Expiry Date, issue to OpCo2 an Extension Proposal Request seeking to extend the Term by the Extension Period.

(b) Within 40 Business Days after receipt of the Extension Proposal Request, OpCo2 must provide the Principal with a proposal to extend the Term for the Extension Period (**Extension Proposal**).

(c) The Extension Proposal must set out detailed particulars of:

(i) the program of Asset Management Activities, including Replacements and Refurbishments, for the Extension Period;

(ii) the direct costs incurred by OpCo2 in carrying out OpCo2's Activities in the current Operating Year;

(iii) the projected direct costs that OpCo2 reasonably expects to incur in carrying out OpCo2's Activities in the Extension Period (including the costs of procuring the Extension Security Bond); and

(iv) the:

(A) Adjusted Indexed Availability Fee; and

(B) the Indexed Lifecycle Component,

for each month during the Extension Period and the basis on which they have been calculated.

(d) The Adjusted Indexed Availability Fee and Indexed Lifecycle Component proposed by OpCo2 in the Extension Proposal must:

(i) be calculated on the basis of the projected direct costs that OpCo2 reasonably expects to incur in carrying out OpCo2's Activities in the Extension Period; and

(ii) not include a margin (on account of risk, profit or contribution to overheads) greater than [redacted]% on those costs.

(e) OpCo2 must allow the Principal to review and audit OpCo2's records on an open book basis to verify the information contained in the Extension Proposal.

(f) Within 30 Business Days after receiving the Extension Proposal, the Principal's Representative may:

(i) accept the Extension Proposal;

(ii) reject the Extension Proposal; or

(iii) inform OpCo2 that it does not wish to proceed with the Term extension,

by written notice to OpCo2.

(g) If the Principal accepts the Extension Proposal in accordance with clause 3.3(f)(i):

(i) subject to the balance of this clause 3.3(g), the terms of this deed will continue to apply until the expiry of the Extension Period;

(ii) from the Original Expiry Date, the:

(A) Adjusted Indexed Availability Fee; and

(B) the Indexed Lifecycle Component,

will be amended as agreed in the Extension Proposal for the Extension Period;

(iii) the reference to "Expiry Date" in the definition of "Handback Condition" will be replaced by "Original Expiry Date and the Expiry Date";

(iv) the reference to "Expiry Date" in section 8.12 of the SPR will be replaced by "Original Expiry Date and the Expiry Date";

(v) from the Original Expiry Date, clauses 42.12(a) and 42.12(b) will be deleted; and

(vi) if this deed is terminated during the Extension Period, the Principal must pay OpCo2 the Termination Payment determined in accordance with clause 7 of Schedule 31 (*Termination Payments*).

(h) If the Principal rejects the Extension Proposal in accordance with clause 3.3(f)(ii), the Principal may require that OpCo2 consult in good faith and use its reasonable endeavours to reach agreement with the Principal on a mutually acceptable resolution to the matters set out in the Extension Proposal which are not agreed.

(i) If the parties reach agreement on the terms of the Extension Proposal by the date that is 24 months before the Original Expiry Date, clause 3.3(g) will apply as if the Principal had accepted the Extension Proposal as varied by the agreement of the parties.

(j) If:

(i) the parties are unable to reach agreement by the date that is 24 months before the Original Expiry Date; or

(ii) OpCo2 fails to provide the Extension Security Bond in accordance with clause 22.1(a)(ii),

the Principal may elect:

(iii) to direct OpCo2 to implement the Extension Proposal by issuing an Extension Order; or

(iv) that the Term will expire on the Original Expiry Date.

(ja) If the Principal issues an Extension Order pursuant to clause 3.3(j)(iii):

(i) clause 3.3(g) will apply as if the Principal had accepted the Extension Proposal in accordance with clause 3.3(f)(i);

(ii) either party may refer any outstanding matters to dispute resolution in accordance with clause 56 (*Dispute resolution*);

(iii) any disputed matters will, until the Principal and OpCo2 otherwise agree or a determination is made in accordance with clause 56 (*Dispute resolution*), be reasonably determined by the Principal's Representative. In making his or her determination, the Principal's Representative will determine all matters required to be implemented to enable the Term to be extended by the Extension Period;

(iv) OpCo2 must proceed with the Term extension on the basis determined by the Principal's Representative (notwithstanding that any matters in dispute have not been agreed or determined in accordance with clause 56 (*Dispute resolution*)); and

(v) any necessary adjustments will be made following the determination of a dispute (where applicable).

(k) If OpCo2 prepares an Extension Proposal in accordance with this clause 3.3 (*Term Extension*) then the Principal must reimburse the reasonable third party costs incurred by OpCo2 in:

(i) preparing the Extension Proposal; and

(ii) performing its obligations under clause 3.3(h).

4. OBJECTIVES, PRIMARY OBLIGATIONS AND RISK ALLOCATION

4.1 Objectives for the Sydney Metro

The Principal's strategic objectives for the Sydney Metro are to:

(a) improve the quality of the transport experience for Customers;

(b) provide a transport system that is able to satisfy long-term demand;

(c) grow public transport patronage and mode share;

(d) support the global economic corridor;

(e) serve and stimulate urban development;

(f) improve the resilience of the transport network;

(g) improve the efficiency and cost effectiveness of the public transport system; and

(h) implement a feasible solution recognising impacts, constraints and delivery risk.

Each party will, subject to and in accordance with this deed, perform its obligations under this deed having regard to the achievement of these objectives.

4.2 Objectives for the OTS2 PPP

The Principal's objectives for the OTS2 PPP are:

(a) to deliver world class metro services which will provide Customers with a safe, high quality, reliable, efficient and affordable public transport solution and meet the specified performance requirements;

(b) to provide a Customer experience with:

(i) a fully-integrated transport solution with convenient and seamless connections between transport modes;

(ii) high quality Stations, Station Precincts and Trains which are safe, easy to use, and highly accessible;

(iii) high quality and reliable information, and intuitive and clear wayfinding and signage consistent with the Sydney Metro brand; and

(iv) retailing and services close to Stations, integration with adjacent land uses, environmentally friendly transport interchange facilities, and car parking;

(c) to develop a long term, collaborative working relationship between the Principal and OpCo2 and OpCo2 Contractors;

(d) to design, deliver, test and commission, and operate a safe metro system, including the development of an effective safety culture;

(e) to set new benchmarks for the future development and operation of Sydney's transport network;

(f) to provide a holistic approach to design, construction, operations and asset management throughout the duration of the contract;

(g) that OpCo2 will engage with the community and implement proactive stakeholder and community liaison strategies to minimise disruption and develop community ownership of the Sydney Metro;

(h) that OpCo2 will deliver sustainable social and environmental outcomes by minimising energy use and maximising sustainability, minimising impacts on the environment, and promoting workforce development;

(i) that OpCo2 will deliver a sound financing strategy for the OTS2 PPP which provides value for money to the State, and a robust and financially sustainable business for the operation of the Sydney Metro;

(j) to deliver the OTS2 PPP without impacting on the delivery or operations of Sydney Metro Northwest; and

(k) to integrate the operation of Sydney Metro Northwest and the Sydney Metro City on and from the OTS Incorporation Date.

Each party will, subject to and in accordance with this deed, perform its obligations under this deed, having regard to the achievement of these objectives.

4.3 **Customer is at the centre**

(a) OpCo2 acknowledges the Principal's vision statement, namely "Transforming Sydney with a world class metro".

(b) Each party will, subject to and in accordance with this deed, perform its obligations under this deed, having regard to this vision statement.

4.3A **Achievement of Project Values**

The parties:

(a) acknowledge that adherence to and upholding of the Project Values is of fundamental importance to the Principal; and

(b) agree to:

(i) adhere to and uphold the Project Values; and

(ii) work collaboratively in a spirit of mutual trust and cooperation in the performance of their obligations under this deed.

4.4 **OpCo2's primary obligations**

Without limiting OpCo2's obligations under this deed, OpCo2 must:

(a) finance, or procure the financing of the OTS2 PPP;

(b) design and construct the OTS2 Works;

(c) operate and maintain the Sydney Metro and the ETS during the Operations Phase in order to provide a safe, secure, continuous, reliable, effective and efficient metro service that from a Customer perspective integrates with the rest of Sydney's public transport system; and

(d) hand the Sydney Metro and the ETS Equipment back to the Principal at the end of the Term,

subject to, and in accordance with, this deed.

4.5 **Principal's primary obligations**

Without limiting the Principal's obligations under this deed, the Principal must:

(a) grant OpCo2 the licences under clauses 12.1 (*Construction Site Licence*) and 12.3 (*Licence to use Licensed Maintenance Area and to access Additional Maintained Assets*);

(b) procure the design and construction of the Foundation Infrastructure Works in accordance with the Foundation Infrastructure Works Contracts (in the form contained in Exhibit 12A (*TSE Deed*), Exhibit 12B (*CSM Contract*), Exhibit 12C (*Southwest Contracts*), Exhibit 12D (*SSJ Contract*), Exhibit 12E (*City Station Contracts*), Exhibit 12F (*Line-wide Contract*) and Exhibit 12G (*PSD/MGF Contract*)) as amended to reflect any Foundation Infrastructure Works Change; and

(c) pay OpCo2 in accordance with clauses 25 (*Payment Provisions*), 25A (*Securitised Licence Structure*) and 25B (*Phase 2 Construction Payments and Option 1 Trains Payment*),

subject to, and in accordance with, this deed.

4.6 **Project risks**

Except as stated in the Principal Project Agreements, OpCo2 accepts all risks associated with the OTS2 PPP and will not be entitled to make any Claim against the Principal arising out of or in connection with such risks.

4.7 **Principal's rights don't affect risk allocation**

(a) The Principal has various rights under this deed which are designed to give the Principal the ability to monitor the performance of OpCo2's obligations. Such rights include:

(i) the right to review Project Plans, Design Documentation, Delivery Programs, Delivery Phase Progress Reports, Monthly Operations Performance Reports, Test Procedures, Test Reports, Base Case Financial Models, Operational Financial Models and other documents which OpCo2 must submit to the Principal (**OpCo2 Submissions**);

(ii) rights to inspect, monitor or audit OpCo2's Activities; and

(iii) rights to attend Tests.

(b) Neither the exercise of, nor the failure to exercise, such rights will:

(i) relieve OpCo2 from, or alter or affect, OpCo2's liabilities, obligations or responsibilities whether under this deed or otherwise according to law;

(ii) prejudice or limit the Principal's rights against OpCo2 whether under this deed or otherwise according to law; or

(iii) without limiting clause 4.7(b)(ii), preclude the Principal from subsequently asserting that OpCo2 has not fulfilled its obligations whether under this deed or otherwise according to law.

(c) Without limiting clause 4.7(b):

(i) neither the Principal nor the Principal's Representative assumes or owes any duty of care to OpCo2 to review, or if it does review it in reviewing, any OpCo2 Submission for errors, omissions or compliance with this deed;

(ii) no review of, comments upon, or notice in respect of, or any failure to review, comment upon or give any notice in respect of, any OpCo2 Submission will:

(A) relieve OpCo2 from, or alter or affect, OpCo2's liabilities, obligations or responsibilities whether under this deed or otherwise according to law;

(B) prejudice or limit the Principal's rights against OpCo2 whether under this deed or otherwise according to law;

(C) constitute an instruction to accelerate, disrupt, prolong or vary any of OpCo2's Activities; or

(D) affect the time for the performance of the Principal's obligations;

(iii) OpCo2 will not be relieved from compliance with any of its obligations under this deed or from any of its liabilities whether under this deed or otherwise according to law as a result of:

(A) compliance with any Project Plan;

(B) any audits or other monitoring by the Principal of OpCo2's compliance with any Project Plan; or

(C) any failure by the Principal, or anyone acting on behalf of the Principal, to detect any non-compliance including where any failure arises from any negligence on the part of the Principal or such other person;

(iv) neither the Principal nor the Principal's Representative assumes or owes any duty of care to OpCo2 to inspect, or if it does so inspect in inspecting, OpCo2's Activities, the OTS2 Works, the Sydney Metro Northwest, the Sydney Metro City or the Sydney Metro Southwest for errors, omissions or compliance with the requirements of this deed; and

(v) any inspection of OpCo2's Activities (or lack of inspection) by or on behalf of the Principal will not in any way:

(A) relieve OpCo2 from, or alter or affect, OpCo2's liabilities, obligations or responsibilities whether under this deed or otherwise according to law; or

(B) prejudice or limit the Principal's rights against OpCo2 whether under this deed or otherwise according to law.

(d) This clause 4.7 (*Principal's rights do not affect risk allocation*) does not affect OpCo2's rights in respect of any breach of clause 44.1(b).

5. GOVERNANCE

5.1 Principal's Representative

(a) The Principal may at any time by written notice to OpCo2 replace the Principal's Representative with another person.

(b) The Principal's Representative will carry out all of its functions under this deed as the agent of the Principal (and not as an independent certifier, assessor or valuer).

(c) OpCo2 must comply with all Directions given by the Principal's Representative in accordance with this deed.

5.2 Appointees of Principal's Representatives

The Principal's Representative may:

(a) by written notice to OpCo2 appoint persons to exercise any of the functions of the Principal's Representative under this deed;

(b) not appoint more than one person to exercise a specific function at any one time;

(c) revoke any appointment under clause 5.2(a) by written notice to OpCo2; and

(d) continue to exercise a function under this deed despite appointing another person to exercise the function under clause 5.2(a) (provided that any directions of the Principal's Representative take precedence over those of any representatives to the extent of any inconsistency).

All references in this deed to the Principal's Representative include a reference to an appointee under this clause 5.2 (*Appointees of Principal's Representatives*).

5.3 **OpCo2's Representative**

OpCo2 must ensure that OpCo2's Representative is available at all reasonable times for communications with the Principal's Representative.

5.4 **Greenfield Independent Certifier**

(a) (**OTS2 Independent Certifier Deed**): The Greenfield Independent Certifier will be engaged on the terms of the OTS2 Independent Certifier Deed.

(b) (**Role**): The Greenfield Independent Certifier is required to perform the functions set out in the OTS2 Independent Certifier Deed which includes, amongst other things, independently certifying in accordance with the OTS2 Independent Certifier Deed:

(i) that the Design Stage 3 Design Documentation which is provided to the Greenfield Independent Certifier in accordance with clause 13.4(bb) complies with the requirements of this deed;

(ii) if the Principal notifies OpCo2 that the Nominated Independent Certifier is the Greenfield Independent Certifier, whether or not the [redacted] comply with the [redacted]

(iii) if the Principal notifies OpCo2 that the Nominated Independent Certifier is the Greenfield Independent Certifier, whether or not Sydney Trains has complied with the Sydney Trains' BL Asset Maintenance Plan;

(iv) that the Nominated Tests have been achieved;

(v) that the requirements for First Passenger Service on the Sydney Metro City and the Sydney Metro Southwest, as applicable, have been satisfied;

(vi) the achievement of Completion of Phase 1 and Completion of Phase 2; and

(vii) the achievement of Final Completion of Phase 1 and Final Completion of Phase 2.

(c) (**Independent**): The Greenfield Independent Certifier is obliged to act independently of the Principal, OpCo2 and OpCo2 Contractors.

(d) (**Conduct does not affect obligations**): Without limiting clause 5.4(j), an act or omission (including negligence) of the Greenfield Independent Certifier will not:

(i) relieve a party from, or alter or affect, a party's liabilities, obligations or responsibilities to the other party whether under this deed or otherwise according to law; or

(ii) prejudice or limit a party's rights against the other party whether under this deed or otherwise according to law.

(e) (**Provision of information**): The Principal and OpCo2 must provide the Greenfield Independent Certifier with all information and documents and allow the Greenfield Independent Certifier:

(i) to attend meetings (including any Senior Project Group meetings); and

(ii) access to all premises,

as may be necessary or reasonably required by the Greenfield Independent Certifier to allow the Greenfield Independent Certifier to perform its obligations under the OTS2 Independent Certifier Deed.

(f) (**Copy all information to other party**): All notices and documents provided by a party to the Greenfield Independent Certifier must be copied to the other party. If a party is required to provide a notice or document to the Greenfield Independent Certifier within a specified time period, that notice or document must be provided to the other party within the same time period.

(g) (**Principal may provide comments**): The Principal's Representative may provide comments to the Greenfield Independent Certifier in respect of OpCo2's Activities.

(h) (**Effect of determinations**): Without limiting clauses 5.4(d) or 5.4(j), in the absence of manifest error on the face of the determination notice, the following determinations of the Greenfield Independent Certifier are final and binding on the parties:

(i) a determination under clauses 13.8(d)(ii) or 13.8(f)(ii) in relation to Design Stage 3 Design Documentation;

(ii) a determination under clause 18.2(b)(iii)(B) in relation to Test Procedures;

(iii) a determination under clause 18.5(b)(ii) in relation to a Test being passed or failed;

(iv) a determination under clause 19.3 (*Certification of Readiness for First Passenger Service*) in relation to First Passenger Service on the Sydney Metro City or the Sydney Metro Southwest;

(v) a determination under clause 19.10(a) in relation to Completion of Phase 1 or Completion of Phase 2; and

(vi) a determination under clause 19.12(d) in relation to Final Completion of Phase 1 or Final Completion of Phase 2.

(i) (**Dispute of determination**): If either party:

(i) believes that there is a manifest error on the face of the determination notice from the Greenfield Independent Certifier referred to in clause 5.4(h) and wishes to dispute the determination on that basis; or

(ii) wishes to dispute any other determination by the Greenfield Independent Certifier not referred to in clause 5.4(h),

it must do so in accordance with clause 56 (*Dispute resolution*). Determinations of the Greenfield Independent Certifier referred to in clause 5.4(h) will be immediately binding on the parties, who must give effect to such determinations unless and until they are revised pursuant to the dispute resolution process in clause 56 (*Dispute resolution*).

(j) (**Not approval or evidence**):

(i) A certification or determination by the Greenfield Independent Certifier will not:

(A) constitute an approval by the Principal of OpCo2's performance of its obligations under this deed;

(B) constitute an approval by OpCo2 of the Principal's performance of its obligations under this deed;

(C) be taken as an admission or evidence that the OTS2 Works or any other matters certified or determined by the Greenfield Independent Certifier comply with this deed (including in relation to whether or not any direction by the Principal's Representative under clause 13.8(h) involves or constitutes a Modification); or

(D) prejudice any rights or powers of the Principal or OpCo2 under this deed or otherwise according to law, including any rights which the Principal may have in respect of Defects.

(ii) No act or omission of the Greenfield Independent Certifier, including any certification or determination by the Greenfield Independent Certifier, whether or not such certification or determination:

(A) is final and binding;

(B) contains a manifest error; or

(C) is overturned in subsequent dispute resolution proceedings,

will:

(D) be deemed to be an act or omission by the Principal or OpCo2 (including a breach of contract) under or in connection with the Principal Project Agreements; or

(E) entitle OpCo2 to make any Claim against the Principal.

(k) (**Greenfield Independent Certifier's costs**): If the Principal becomes liable to the Greenfield Independent Certifier for any additional costs in respect of the matters set out in paragraph 4(a) of Schedule 2 of the OTS2 Independent Certifier Deed and the fact, matter or thing which gave rise to the liability to pay such additional costs arose out of an act or omission of OpCo2, such costs will be a debt due and payable by OpCo2 to the Principal.

5.4A **Nominated Independent Certifier**

(a) The parties acknowledge and agree that as at the date of this deed, it is contemplated that either the Greenfield Independent Certifier or the Brownfield Independent Certifier will be engaged by the Principal to provide the certification services set out in clause 11A (*Residual Assets*) and Schedule 3 (*Sydney Trains Interface*) (**Nominated Independent Certifier**).

(b) The Principal will notify OpCo2 in writing of the identity of the Nominated Certifier and once the Principal has provided this notification, all references in this deed will apply with regard to such notification.

(c) If the Principal nominates the Brownfield Independent Certifier as the Nominated Independent Certifier, the parties agree to work together in good faith to agree the terms of the appointment of the Brownfield Independent Certifier.

5.5 **Senior Project Group**

(a) (**Delivery Phase Composition**): During the Delivery Phase, a Senior Project Group must be established consisting of:

(i) the Principal's Representative;

(ii) OpCo2's Representative;

(iii) the Integrator's Representative;

(iv) 2 persons from each party holding positions more senior than the persons referred to in clauses 5.5(a)(i) and 5.5(a)(ii) (as applicable to the relevant party); and

(v) such other persons as the parties agree.

(b) (**Operations Phase Composition**): During the Operations Phase, a Senior Project Group must be established consisting of:

(i) the Principal's Representative;

(ii) OpCo2's Representative;

(iii) the O&M Contractor's representative;

(iv) the Deputy Chief Executive of the Principal or his or her nominee;

(v) the Chief Executive Officer of OpCo2 (if different to OpCo2's Representative);

(vi) the Chief Executive Officer of the O&M Contractor; and

(vii) such other persons as the parties agree.

(c) (**Delegates**): The persons referred to in clause 5.5(a) may appoint delegates (of an equivalent level of seniority or experience) to attend Senior Project Group meetings in their absence. The persons referred to in clause 5.5(b) may appoint delegates to attend in their absence if the parties agree.

(d) (**Objectives**): The objectives of the Senior Project Group are to:

(i) facilitate the development of a long term, collaborative working relationship between the parties;

(ii) monitor the overall progress of the OTS2 PPP;

(iii) assist with the resolution of any matters referred to the Senior Project Group by a party, including issues arising out of the subject of the Third Party Agreements;

(iv) review each Delivery Phase Progress Report provided by OpCo2 during the Delivery Phase;

(v) review each Monthly Operations Performance Report provided by OpCo2 during the Operations Phase; and

(vi) review and consider such other matters relating to the OTS2 PPP or the Sydney Metro as are agreed between the parties from time to time.

(e) (**Frequency of meetings**): The Senior Project Group will meet monthly during the Delivery Phase and quarterly thereafter, unless the parties agree otherwise.

(f) (**Administration**): The Principal's Representative will convene the meetings of the Senior Project Group. The meetings will be chaired by the most senior attendee of the Principal.

(g) (**Principal may require certain representatives to attend**): At the Principal's request, OpCo2 must procure the attendance of representatives of any Significant Contractor (which will include, where the Significant Contractor is not a Core Contractor, the Core Contractor of whom such Significant Contractor is a subcontractor (of any level)) and/or the Debt Financiers at meetings of the Senior Project Group. The Principal is also entitled to have representatives of the State, any Authority or any Public Transport Agency attend meetings.

(h) (**OpCo2 may bring certain representatives**): OpCo2 may, with the Principal's consent, have a representative of each Core Contractor attend any meeting of the Senior Project Group.

5.6 **Working Groups**

(a) (**Disciplines**): Working Groups will be established in relation to particular aspects of OpCo2's Activities and, in particular, in accordance with the Design Management Plan. There will be a Working Group with respect to:

(i) delivery of the Phase 2 Works;

(ii) interfaces with the Foundation Infrastructure Works, including coordination of the handover of the Foundation Infrastructure Works from the Foundation Infrastructure Works Contractors to OpCo2; and

[redacted]

(iv) the Sydney Trains interface.

(b) (**Composition**): The composition of each Working Group will include a nominated representative of the Principal, OpCo2, the Integrator, the O&M Contractor, and, in relation to the Working Group established under clause 5.6(a)(iii) only, the Nominated Independent Certifier and Sydney Trains, and representatives nominated in accordance with the Design Management Plan as relevant. Attendance by others will be agreed by the Senior Project Group, or in the absence of agreement as directed by the Principal having regard to the particular solutions being discussed. If the Principal requests, OpCo2 must procure the attendance of representatives of any Significant Contractor at a Working Group meeting.

(c) (**Purpose**): The purpose of each Working Group meeting is to:

(i) in relation to the Working Groups established under clause 5.6(a)(i) and clause 5.6(a)(ii), provide a non-binding forum for OpCo2 to present its proposed solutions, for the Principal to understand those solutions and for the parties to discuss the solutions; and

[redacted]

[redacted]

(d) (**Frequency of meetings**): Each Working Group will meet monthly unless otherwise agreed by the Senior Project Group.

(e) (**Administration**): OpCo2 must convene and chair meetings of each Working Group unless otherwise agreed between the parties.

(f) (**Agenda and program**): OpCo2 must prepare and issue a three month rolling program of meetings.

(g) (**Information only**): Documentation prepared for Working Group meetings, documentation developed in Working Group meetings and information discussed in Working Group meetings are Information Documents and cannot be relied upon by either party.

5.6A **Quarterly whole of project reviews**

(h) In each quarter in a calendar year at any time prior to the Date of Completion of Phase 2, the Principal may require that OpCo2 attend and participate in one or more meetings with the Principal and its other contractors. The purpose of these meetings is for the Principal, OpCo2 and the Principal's other contractors to work together in good faith on a co-operative and collaborative basis to identify and consider:

(i) issues and potential issues that have, or which may have, an adverse impact upon the successful delivery of the Project or any part of the Project;

(ii) solutions to such issues or potential issues which may mitigate, remedy or avoid any adverse impact upon the successful delivery of the Project or any part of the Project;

(iii) improvements that can be implemented to save time, reduce cost or improve the quality of the Project or any part of the Project;

(iv) the manner in which any such solutions and improvements can be implemented; and

(v) any other matters that the Principal may require.

(i) If the Principal requires OpCo2 to attend and participate in any meeting contemplated by clause 5.6A(a), the Principal's Representative must provide OpCo2 with at least 10 Business Days prior written notice of any such meeting.

(j) If the Principal's Representative provides OpCo2 with a notice under clause 5.6A(b):

(i) the Integrator and the O&M Contractor will also be entitled to attend such meeting; and

(ii) OpCo2 must ensure that the following personnel attend and participate in the meeting:

(A) OpCo2's Representative;

(B) representatives of any Significant Contractors which the Principal's Representative reasonably requires; and

(C) any other person directed by the Principal's Representative.

5.6B **Risk management meetings**

(a) OpCo2 must attend risk management meetings with the Principal's Representative on a monthly basis or as otherwise directed by the Principal's Representative.

(ab) The Integrator and the O&M Contractor will also be entitled to attend any risk management meeting.

(b) At risk management meetings, the parties agree to:

(i) review the current Risk Register;

(ii) develop proposals and seek solutions for avoiding or mitigating the risks listed on the Risk Register;

(iii) decide upon any specific action to be taken by the parties in response to the risks listed on the Risk Register; and

(iv) remove from the Risk Register those risks which have been avoided or passed.

(c) OpCo2 must advise the Principal at the risk management meetings if it considers that any proposal or solution discussed at the meeting would be a Modification or could give rise to a Claim.

5.6C **Master Interface Protocols**

(a) In order to enable successful delivery of the Project, OpCo2:

(i) must cooperate and co-ordinate OpCo2's Activities with the Foundation Infrastructure Works Contractors on a Project-wide basis; and

(ii) acknowledges that a failure by OpCo2 to co-operate with the Foundation Infrastructure Works Contractors and to properly coordinate OpCo2's Activities may adversely impact upon or delay the Project.

(b) The Master Interface Protocols therefore set out the governance arrangements on a Project-wide basis and govern the cooperation and coordination of the activities of OpCo2 and the Foundation Infrastructure Works Contractors in the delivery of the Project.

(c) As at the date of this deed OpCo2:

(i) has executed, and is bound by, the terms of the Master Interface Protocols Deed Poll; and

(ii) must attend meetings as required in accordance with the Master Interface Protocols Deed Poll.

(d) The Principal will procure that each Foundation Infrastructure Works Contractor executes a Master Interface Protocols Deed Poll in substantially the same form as that executed by OpCo2.

(e) The Principal will ensure that the System Integration and Operational Readiness Group will meet throughout the Delivery Phase with the invitees identified in Schedule 2D of the Master Interface Protocols Deed Poll. As a member of that group, the Principal will share with OpCo2 any relevant information which it receives from the Foundation Infrastructure Works Contractors and which it is entitled to share under the terms of the relevant Foundation Infrastructure Works Contract.

5.7 **IDAR Panel**

The members of the IDAR Panel may, by invitation of either party, attend any meeting of the Senior Project Group or any Working Group.

5.8 **No legal effect**

The Senior Project Group, the Modifications Working Group, any meeting held pursuant to clause 5.6A(a) or 5.6B(a), any meeting held pursuant to the Master Interface Protocols and each Working Group are consultative and advisory only and nothing which occurs during a meeting of any such group will:

(a) affect the rights or obligations of either party under the Project Agreements;

(b) entitle a party to make any Claim against the other;

(c) relieve a party from, or alter or affect, a party's liabilities or responsibilities whether under this deed or otherwise according to law;

(d) prejudice a party's rights against the other whether under this deed or otherwise according to law; or

(e) be construed as a direction by a party to do or not do anything.

5.9 **Annual relationship review**

(a) As soon as practicable after the end of each calendar year, the Principal and OpCo2 must conduct an annual relationship review.

(b) The annual relationship review will:

(i) review the health and quality of the working relationship between the parties during the previous year; and

(ii) identify opportunities to improve the working relationship between the parties during the forthcoming year.

5.10 **Call-in**

(a) If, in the Operations Phase:

(i) the Principal is dissatisfied with OpCo2's performance;

(ii) OpCo2 is in breach of an obligation under this deed or, in the Principal's reasonable view, OpCo2 will be in breach of an obligation if its current performance continues unchanged; and

(iii) in the Principal's reasonable view, its concerns are not being addressed in the various governance mechanisms referred to in this clause 5 (*Governance*),

the Principal may issue a notice to OpCo2 stating that it is a notice under this clause 5.10(a) and outlining the nature of the Principal's dissatisfaction.

(b) If required by the Principal in the notice under clause 5.10(a), OpCo2 must:

(i) provide information;

(ii) attend meetings with the Principal; and

(iii) prepare and implement remedial plans to improve performance in the areas identified by the Principal.

5.11 Sydney Metro office accommodation

The Principal will establish and maintain office accommodation for use by Staff in accordance with SPR Appendix 7 (*Site Facilities*).

6. LAW AND APPROVALS

6.1 Compliance with laws

(a) OpCo2 must:

(i) in performing OpCo2's Activities, comply with all applicable laws;

(ii) ensure that OpCo2 Contractors, in performing OpCo2's Activities, comply with all applicable laws;

(iii) ensure that the OTS2 Works, Temporary Works and:

(A) from the OTS Incorporation Date, the Sydney Metro Northwest and the Sydney Metro City; and

(B) from the Date of Completion of Phase 2, the Sydney Metro,

comply with all applicable laws;

(iv) give the Principal's Representative copies of:

(A) all material documents given to OpCo2 or a Significant Contractor by an Authority (including Approvals and other notices) as soon as possible; and

(B) all material documents (other than documents required to be prepared pursuant to a Planning Approval) given by OpCo2 or a Significant Contractor to an Authority at the time that those documents are given to the Authority; and

(C) details of any other material communications between OpCo2 or a Significant Contractor and an Authority,

in connection with OpCo2's Activities;

(v) in relation to any document required to be prepared pursuant to a Planning Approval, which is also required to be submitted to an Authority:

(A) provide the Principal's Representative with copies of any such documents;

(B) provide the Principal with an opportunity to comment on any such documents;

(C) consider any comments made by the Principal in relation to any such documents; and

(D) deliver a final version of any such documents in order to enable the Principal to submit the relevant document to any Authority; and

(vi) provide the Principal with such assistance as may be reasonably required by the Principal to enable the Principal to comply with all applicable laws.

(b) The Principal must comply with all laws applicable to its obligations in respect of the OTS2 PPP.

6.2 **Approvals**

(a) The Principal has obtained and provided, or must obtain and provide, to OpCo2 the Planning Approvals.

(b) OpCo2 must:

(i) obtain and maintain, and ensure that OpCo2 Contractors obtain and maintain, all Approvals required to perform OpCo2's Activities (other than those Approvals which this deed expressly states that the Principal has obtained or requires the Principal to obtain or maintain);

(ii) except to the extent otherwise expressly specified in Schedule 5 (*Environmental Documents and Planning Approval Conditions*):

(A) in performing OpCo2's Activities, comply with, carry out and fulfil, and ensure that OpCo2 Contractors comply with, carry out and fulfil; and

(B) ensure that the OTS2 Works, the Temporary Works and:

(aa) from the OTS Incorporation Date, the Sydney Metro Northwest and the Sydney Metro City; and

(bb) from the Date of Completion of Phase 2, the Sydney Metro,

comply with,

the conditions and requirements of all Approvals (including those which the Principal is expressly or impliedly under the terms of the Approval required to comply with, carry out or fulfil);

(iii) except to the extent prohibited by law, indemnify the Principal against any Loss suffered by the Principal arising out of or in any way in connection with a failure by OpCo2 to comply with its obligations under clauses 6.2(b)(i) and 6.2(b)(ii);

(iv) except to the extent otherwise expressly specified in clause 38.1(a) and Schedule 5 (*Environmental Documents and Planning Approval Conditions*), pay all fees, effect all insurances, provide any bonds and execute any undertakings or agreements or any other document required by any relevant Authority in respect of any Approval which OpCo2 must obtain or comply with (and ensure that OpCo2 Contractors do likewise in relation to any Approvals which they must maintain or comply with in connection with OpCo2's Activities); and

(v) without limiting clause 6.2(b)(ii), provide the Principal with such assistance as may reasonably be required by the Principal to enable it to obtain or satisfy or fulfil the conditions and requirements in respect of any:

(A) Approvals which are obtained by the Principal or Transport for NSW after the date of this deed; or

(B) conditions and requirements of Approvals which are required to be satisfied or fulfilled by the Principal pursuant to Schedule 5 (*Environmental Documents and Planning Approval Conditions*).

6.3 Modifications to Planning Approvals

Notwithstanding clause 35 (*Change in Law*), if, arising out of or in connection with a Modification requested by OpCo2 (other than a request made in response to a Compensable Change in Law) or any failure by OpCo2 to comply with its obligations under this deed or any other Project Agreement:

(a) any further environmental impact assessment is required under Part 4 or Part 5.1 of the EP&A Act (or their equivalents) in connection with the OTS2 PPP;

(b) the Principal determines that it is necessary to carry out any further environmental impact assessment under Part 5 of the EP&A Act (or its equivalents) in connection with the OTS2 PPP;

(c) a Planning Approval is modified and/or amended under the EP&A Act or the EPBC Act;

(d) a new Approval is issued under the EP&A Act or the EPBC Act in respect of the Sydney Metro, either in substitution for or replacement of a Planning Approval or otherwise; or

(e) any such new Approval is modified under the EP&A Act or the EPBC Act,

then any such events and any actions or additional work arising out of or in connection with any such events will be at OpCo2's cost and risk, irrespective of who is required to, or does, carry out any such assessment.

6.4 Legal challenge to Planning Approvals

If there is a legal challenge brought about by way of commencement of court proceedings in relation to the grant of, or compliance with, the Planning Approvals, OpCo2 must continue to perform OpCo2's Activities unless, as a result of that legal challenge, it is otherwise ordered by a court or directed by the Principal.

6.5 Not used

6.6 Environment Protection Licence

(a) Subject to clause 6.6(b), OpCo2 must ensure that OpCo2 or the Core Contractors:

(i) obtain an Environment Protection Licence:

(A) in respect of OpCo2's Activities; and

(B) which includes all parts of the Construction Site in respect of which the Construction Site Licence has commenced,

from the first date on which OpCo2 undertakes:

(C) construction activities;

(D) "railway systems activities" within the meaning of the *Protection of the Environment Operations Act 1997* (NSW); or

(E) any other activity which triggers an obligation for an Environment Protection Licence to be obtained,

on any part of the Construction Site from the relevant OpCo2 Handover (PC) Date;

(ii) ensure that, from each date after the date referred to in clause 6.6(a)(i) on which the Construction Site Licence commences in accordance with clause 12.1(c) in respect of a part or parts of the Construction Site, OpCo2's Environment Protection Licence is varied so as to include each such part of the Construction Site to which OpCo2 has been given access; and

(iii) hold an Environment Protection Licence in respect of OpCo2's Activities until the end of the Term.

(b) OpCo2 must ensure that any application for an Environment Protection Licence which is required in respect of the development which is the subject of the Planning Approvals (City and Southwest) is substantially consistent with those approvals.

(c) In the event that an Environment Protection Licence is not substantially consistent with any such approval, OpCo2 must use its best endeavours to procure that the Environment Protection Licence be amended to achieve substantial consistency.

(d) To the extent that OpCo2's Activities are such that they are performed on land which is subject to an Environment Protection Licence held by a person other than OpCo2, OpCo2 must comply with the terms of that Environment Protection Licence.

6.7 Crown Building Work

(a) OpCo2 must, in relation to any part of the OTS2 Works or Temporary Works that is Crown Building Work (as defined in section 6.1 of the EP&A Act), certify (on behalf of the Principal) as required by section 6.28 of the EP&A Act.

(b) Any certification under clause 6.7(a) will not lessen or otherwise affect:

(i) OpCo2's other liabilities or responsibilities under this deed or otherwise according to law; or

(ii) the Principal's rights against OpCo2, whether under this deed or otherwise according to law.

6.8 Environmental Representative

(a) The Principal must engage the Environmental Representative as required by the Planning Approvals.

(b) OpCo2 acknowledges that the Environmental Representative:

(i) is independent of the parties;

(ii) is required to discharge certain functions as identified in the Planning Approvals;

(iii) is required to oversee the implementation of all environmental management plans and monitoring programs required under the Planning Approvals and shall advise the Principal upon achievement of the outcomes contemplated in the Planning Approvals; and

(iv) is required to advise the Principal and the Principal's Representative on OpCo2's compliance with the Planning Approvals.

(c) OpCo2 must co-operate with the Environmental Representative and provide the Environmental Representative with:

(i) all information and documents (including licences and approvals relating to environmental performance and environmental impacts); and

(ii) allow the Environmental Representative:

(A) to attend meetings; and

(B) access to such premises,

all as may be:

(iii) necessary or reasonably required by the Environmental Representative or the Principal's Representative to allow the Environmental Representative to perform its functions in connection with this deed; or

(iv) lawfully requested by the Environmental Representative or directed by the Principal's Representative.

(d) OpCo2 must:

(i) comply with the lawful requirements of the Environmental Representative, including so as to allow the Environmental Representative to discharge any functions of the Environmental Representative provided for in the Planning Approvals; and

(ii) not interfere with or improperly influence the Environmental Representative in the performance of any of its functions in connection with this deed.

(e) Nothing that the Environmental Representative does or fails to do pursuant to the purported exercise of its functions in connection with this deed will entitle OpCo2 to make any Claim against the Principal.

6.9 Long service leave levy

Before commencing construction of the OTS2 Works or the Temporary Works, OpCo2 must:

(a) 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 and/or construction work under the *Building and Construction Industry Long Service Payments Act 1986* (NSW); and

(b) produce to the Principal's Representative the document evidencing payment of the levy.

7. RAIL SAFETY

7.1 Principal's Accreditation

OpCo2 acknowledges that:

(a) the Foundation Infrastructure Works (other than Line-wide Portion 1 to the extent it is situated on the OTS Licensed Maintenance Area) are being carried out by the Foundation Infrastructure Works Contractors for and on behalf of the Principal under the Principal's Accreditation;

(b) the Principal will continue to be the Rail Infrastructure Manager in respect of any Foundation Infrastructure Works carried out after the relevant OpCo2 Handover (PC) Date for that Foundation Infrastructure Works Portion;

(c) with respect to Sydney Metro Northwest, OpCo or one of its Core Contractors holds the Accreditation prior to the OTS Incorporation Date; and

(d) no part of OpCo2's Activities will be carried out under the Principal's Accreditation.

7.2 OpCo2 to assist

OpCo2 must, to the extent relevant to the OTS2 PPP, provide all reasonable assistance requested by the Principal in relation to the Principal's Accreditation or its obligations under the Rail Safety National Law and Rail Safety Regulations.

7.3 OpCo2's rail safety obligations

(a) (**OpCo2 or Core Contractor to hold Accreditation**): Without limiting clause 6.2 (*Approvals*), OpCo2 must ensure that OpCo2 or one or more of its Core Contractors:

(i) holds the necessary Accreditation for OpCo2 or OpCo2 Contractors to carry out any Railway Operations that form part of OpCo2's Activities; and

(ii) complies with all conditions of such Accreditation and all obligations of accredited persons under the Rail Safety National Law and Rail Safety Regulations.

(b) (**Rail transport operator**): OpCo2 must ensure that OpCo2 or one or more of its Core Contractors, in relation to the carrying out of OpCo2's Activities, acts as and complies with applicable obligations of a rail transport operator under the Rail Safety National Law and Rail Safety Regulations.

(c) (**OpCo2 Contractors**): OpCo2 must ensure that OpCo2 Contractors engaged in or in connection with OpCo2's Activities comply with their obligations under the Rail Safety National Law and Rail Safety Regulations.

(d) (**Utilising Accreditation**): OpCo2 must ensure that it is able to comply at all times with clause 7.3(a) if an OpCo2 Contractor is engaged in or in connection with OpCo2's Activities in circumstances where subsection 62(1)(b) of the Rail Safety National Law applies.

(e) (**Copy of RSNL Safety Management System**): OpCo2 must:

(i) ensure that its or the Core Contractor's RSNL Safety Management System contemplates and provides for the continuance of OpCo2's Activities following the occurrence of a Step-In Event;

(ii) provide the Principal with the then current version of the RSNL Safety Management System for OpCo2's Activities promptly upon request by the Principal; and

(iii) provide the Principal with an updated version of such RSNL Safety Management System within 5 Business Days of any update.

(f) (**Notices**): OpCo2 must provide the Principal with a copy of any notice, report or other correspondence given or received by OpCo2 or its Associates under or in connection with:

(i) the Rail Safety National Law;

(ii) the Rail Safety Regulations; or

(iii) any Accreditation held or to be held by OpCo2 or its Associates,

which:

(iv) may adversely affect the ability of OpCo2 or its Associates to perform OpCo2's Activities;

(v) relates to any category A notifiable occurrence listed in section 57 of the Rail Safety Regulations in connection with OpCo2's Activities; or

(vi) is in connection with any safety case for Sydney Metro Southwest and the ONRSR's consideration and acceptance of the safety case,

promptly after it is given or received. The notice, report or other correspondence must be provided as soon as possible, but in any event no later than 5 Business Days after it is given or received by OpCo2 or its Associates.

(g) (**Meetings**): OpCo2 must in connection with any Accreditation held or to be held by OpCo2 or its Associates:

(i) give reasonable notice of, and invite the Principal to, any meetings with the ONRSR; and

(ii) provide the Principal with any information or material prepared by OpCo2 which is to be provided to the ONRSR and give the Principal a reasonable opportunity to review and provide comments prior to such information being provided,

which:

(iii) may adversely affect the ability of OpCo2 or its Associates to perform OpCo2's Activities;

(iv) relates to any category A notifiable occurrence listed in section 57 of the Rail Safety Regulations in connection with OpCo2's Activities; or

(v) is in connection with any safety case for Sydney Metro Southwest and the ONRSR's consideration and acceptance of the safety case.

7.4 **Staff**

Without limiting clauses 6.1 (*Compliance with laws*) and 6.2 (*Approvals*), OpCo2 must ensure that all Staff:

(a) are competent to carry out the work for which they are engaged for the purposes of sections 52 and 117 of the Rail Safety National Law; and

(b) comply with their obligations under the Rail Safety National Law.

7.5 **Principal to provide information**

If requested by OpCo2 to do so, the Principal must provide OpCo2 with any information then held by the Principal, Transport for NSW or Sydney Trains that:

(a) OpCo2 or one or more of its Core Contractors reasonably requires to obtain any Accreditation, or a variation to its Accreditation, or to fulfil its obligations under the Rail Safety National Law, in connection with OpCo2's Activities; and

(b) OpCo2 or the relevant Core Contractor cannot obtain from another source.

7.6 **Concurrent Railway Operations**

Without limitation to the provisions of Schedule 3 (*Sydney Trains Interface*), to the extent that the Principal (or a Foundation Infrastructure Works Contractor pursuant to the Principal's Accreditation) and OpCo2 (or one or more OpCo2 Contractors) are each carrying out Railway Operations in proximity to each other:

(a) the Principal and OpCo2 acknowledge and agree that they will enter (or OpCo2 will procure that the relevant Core Contractor enters) into a Rail Safety Interface Agreement in respect of those Railway Operations as required by the Rail Safety National Law; and

(b) without limitation to clause 9.12B (*Cooperation and coordination with Foundation Infrastructure Works Contractor*):

(i) the Principal will procure that any relevant Foundation Infrastructure Works Contractor carrying out those Railway Operations or a portion of those Railway Operations complies with:

(A) that Rail Safety Interface Agreement; and

(B) the Principal's obligations under the Rail Safety National Law; and

(ii) OpCo2 will comply, or procure that the relevant Core Contractor carrying out those Railway Operations or a portion of those Railway Operations complies, with:

(A) that Rail Safety Interface Agreement; and

(B) the obligations of OpCo2 or the relevant Core Contactor (as the case may be) under the Rail Safety National Law.

8. **PROJECT PLANS**

8.1 **Purpose**

The intended purposes of the Project Plans include:

(a) to demonstrate to the Principal that OpCo2 has the understanding, capacity and capability at all times to perform OpCo2's Activities safely and in accordance with the requirements of this deed;

(b) to ensure that the Sydney Metro and, to the extent applicable, the ETS Equipment comply with the requirements of this deed;

(c) to define responsibilities, resources and processes for planning, performing and verifying that OpCo2's Activities satisfy the requirements of this deed; and

(d) to allow the Principal to understand how OpCo2 will achieve the performance outcomes specified in this deed, the objectives set out in clauses 4.1 (*Objectives for the Sydney Metro*) and 4.2 (*Objectives for the OTS2 PPP*) and otherwise fulfil its obligations under this deed.

8.2 **Initial Project Plans**

(a) Initial versions of certain Project Plans are included in SPR Appendix 67 (*Initial Project Plans*).

(b) OpCo2 must submit initial versions of the remaining Project Plans at the times required by SPR Appendix 54 (*Project Plan Requirements*).

8.3 **Updated Project Plans**

OpCo2 may update its Project Plans. OpCo2 must:

(a) review and, if necessary, update each Project Plan to take account of events or circumstances which will, or may, affect OpCo2's Activities relevant to the Project Plan, including:

(i) Modifications;

(ii) Service Changes;

(iii) Additional Planned Service Disruptions;

(iv) changes in law;

(v) the commencement of new phases or stages of design, construction, testing, commissioning or operations; and

(vi) any breach or potential breach of the warranty in clause 8.4 (*Fitness for purpose*);

(b) without limiting clause 8.3(a), update each Project Plan at the times required by SPR Appendix 54 (*Project Plan Requirements*);

(c) promptly submit each updated Project Plan to the Principal's Representative;

(d) not update any Project Plan in a manner which makes the Principal's obligations under the Principal Project Agreements more onerous or increases any liability or potential liability, or reduces any right, of the Principal in connection with the OTS2 Works, the Sydney Metro, the ETS or the Over Station Developments;

(e) ensure that any updated Project Plans:

(i) impose standards, levels of service, scope and requirements that are equal to, greater than or higher than those imposed by; and

(ii) provide an equal or greater level of detail than,

the initial versions of the Project Plans contained in the SPR (where applicable) and any version of the Project Plan which has been either:

(iii) certified by the Principal's Representative under clause 8.5(a)(ii)(B); or

(iv) submitted to the Principal's Representative and the time specified in clause 8.5(b) has expired without the Principal's Representative having issued a notice under that clause during that time,

(as applicable); and

(f) provide the Principal's Representative with all information and documents and allow the Principal's Representative, acting reasonably, to insert Hold Points or Witness Points in the Project Plans and designate the authority to release the Hold Points.

8.4 **Fitness for purpose**

OpCo2 warrants that each Project Plan will at all times be fit for its purposes.

8.5 **Review of Project Plans**

(a) During the Delivery Phase, the Principal's Representative must:

(i) review each Project Plan submitted under this clause 8 (*Project Plans*); and

(ii) determine whether the Project Plan complies with the requirements of this deed and either:

(A) if the Principal's Representative considers that the Project Plan does not comply with the requirements of this deed (Minor Non-Compliances excepted), notify OpCo2 of the non-compliances (with detailed reasons); or

(B) certify the Project Plan by providing to OpCo2 a certificate in the form of Schedule 10A (*Principal's Representative's Project Plan certificate*),

within 20 Business Days following submission of the Project Plan to the Principal's Representative.

(b) During the Operations Phase, the Principal's Representative may (but is not obliged to):

(i) review any Project Plan submitted under this clause 8 (*Project Plans*); and

(ii) notify OpCo2 if, in the opinion of the Principal's Representative, the Project Plan does not comply with the requirements of this deed (with detailed reasons),

within 20 Business Days following submission of the Project Plan to the Principal's Representative.

(c) If OpCo2 receives a notice in accordance with clauses 8.5(a)(ii)(A) or 8.5(b)(ii) OpCo2 must, within 20 Business Days, submit a revised Project Plan (or, where a Project Plan is comprised of a head-plan and one or more sub-plans the non-compliance relates only to (i) the head-plan, (ii) one or more sub-plans, or (iii) the head-plan and one or more sub-plans (in each case the "**affected plans**"), submit a revised version of the affected plans) to the Principal's Representative

whereupon the provisions of this clause 8.5 (*Review of Project Plans*) will reapply to the revised Project Plan or affected plans (as applicable).

(d) If the certificate provided by the Principal's Representative pursuant to clause 8.5(a)(ii)(B) lists any Minor Non-Compliances:

(i) the Principal's Representative may, in the certificate, recommend the action that could be taken by OpCo2 to address the Minor Non-Compliances; and

(ii) OpCo2 must complete the recommended action, or take any other action OpCo2 deems reasonable in the circumstances to correct the Minor Non-Compliances to the extent required for that Project Plan to comply with this deed, within the time frame (if any) specified by the Principal's Representative.

8.6 **Principal may request updates**

If:

(a) any Project Plan does not comply with the requirements of this deed; or

(b) OpCo2 has not updated any Project Plan in accordance with the requirements of clause 8.3(a),

the Principal's Representative may by written notice request that OpCo2 amend or update the Project Plan specifying:

(c) the reasons why such updating is required (or why the Project Plan does not comply with this deed); and

(d) the time within which such updating must occur (which must be reasonable, having regard to the amount of work required),

and OpCo2 must:

(e) amend or update the Project Plan as requested by the Principal to comply with the requirements of this deed; and

(f) submit the amended or updated Project Plan to the Principal within the time specified under clause 8.6(d).

8.7 **Implementation and compliance**

(a) OpCo2 must implement and comply with each Project Plan which has been:

(i) during the Delivery Phase, certified by the Principal's Representative under clause 8.5(a)(ii)(B); or

(ii) during the Operations Phase, submitted to the Principal's Representative and the time specified in clause 8.5(a) has expired without the Principal's Representative having issued a notice under that clause during that time,

(as applicable).

(b) During the Delivery Phase, if the Principal's Representative does not, in respect of a Project Plan referred to in clause 15.1(b)(i), either certify or reject the Project Plan within the 20 Business Day period referred to in clause 8.5(a)(ii)(B), OpCo2 may use the Project Plan at OpCo2's own risk.

(c) OpCo2 must comply with the Hold Point and Witness Point procedures required by this deed, including as set out in the SPR or inserted in the Project Plans by the Principal's Representative pursuant to clause 8.3(f).

9. OPCO2'S GENERAL OBLIGATIONS

9.1 All work included

Except as stated in this deed, OpCo2 has allowed for the provision of all work and materials necessary for OpCo2's Activities, whether or not expressly mentioned in this deed. All such work and materials:

(a) must be undertaken and provided by OpCo2 at its own cost;

(b) form part of OpCo2's Activities and will not constitute a Modification; and

(c) will not entitle OpCo2 to make a Claim except as provided for in this deed.

9.2 Principal contractor

(a) (**Definitions**): In this clause 9.2 (*Principal contractor*) and clause 9.4 (*Work health and safety*) the terms "principal contractor", "workplace" and "construction work" have the same meanings assigned to those terms in the WHS Legislation. For the purposes of the WHS Legislation and this deed:

(i) construction work involved in OpCo2's Activities; and

(ii) any construction work carried out on the Sydney Metro Site by the Principal, Sydney Trains, a Foundation Infrastructure Works Contractor, the ETS Contractor or an Other Contractor during any period in which the Appointed Principal Contractor has been engaged as principal contractor in respect of the Construction Site or the Licensed Maintenance Area (**Site Interface Work**),

are taken to be part of the same "construction project".

(b) (**Engagement as principal contractor**): Without limiting OpCo2's obligations under any other provision of this deed, the parties acknowledge and agree that under the Core Contractor Side Deeds and in accordance with the corresponding periods set out in clauses 9.2(c) and 9.2(d) and subject to clause 9.2(g):

(i) to the extent that OpCo2's Activities or any Site Interface Work includes construction work, the Principal:

(A) engages the Appointed Principal Contractor as the principal contractor in respect of OpCo2's Activities and the Site Interface Work;

(B) authorises the Appointed Principal Contractor to have management and control of each workplace at which OpCo2's Activities and the Site Interface Work is to be carried out and to discharge the duties of a principal contractor under the WHS Legislation;

(C) must give the Appointed Principal Contractor prior notice of any Other Contractor, ETS Contractor or Sydney Trains contractor undertaking Site Interface Work before such Site Interface Work commences; and

(D) must provide the Appointed Principal Contractor with executed deeds poll in favour of the Appointed Principal Contractor substantially in the form of Schedule 6 (*Sydney Metro Site Interface Deed Poll*) from

each Other Contractor undertaking Site Interface Work, the ETS Contractor and each Sydney Trains contractor;

(ii) the Appointed Principal Contractor accepts the engagement as principal contractor and agrees to discharge the duties imposed on a principal contractor under the WHS Legislation and this deed;

(iii) if the Principal agrees to engage one of the Integrator's contractors or one of the O&M Contractor's contractors as principal contractor pursuant to clause 9 of the Integrator Deed Side Deed or O&M Contract Side Deed (as applicable), such that the relevant Integrator's contractor or O&M Contractor's contractor (as applicable) is the Appointed Principal Contractor during the Delivery Phase or the Operations Phase and with respect to the Construction Site or the Licensed Maintenance Area (as applicable), then:

(A) the Principal will engage the relevant contractor as principal contractor under a deed of appointment executed in accordance with the Integrator Deed Side Deed or O&M Contract Side Deed (as applicable);

(B) the Principal will authorise the relevant contractor to have management and control of each workplace at which OpCo2's Activities and the Site Interface Work is to be carried out and to discharge the duties of a principal contractor under the WHS Legislation;

(C) the relevant contractor will accept, under a deed of appointment executed in accordance with the Integrator Deed Site Deed or O&M Contract Side Deed (as applicable), the engagement as principal contractor and agree to discharge the duties imposed on a principal contractor by the WHS Legislation; and

(D) once the contractor's engagement as principal contractor is effective, the Integrator or O&M Contractor (as applicable) will be released from its obligations under clause 9 of the Integrator Deed Side Deed or the O&M Contract Side Deed (as applicable) to the extent that the contractor has been appointed as principal contractor.

(c) (**Period of engagement – Delivery**): The Appointed Principal Contractor's engagement and authorisation as a principal contractor will:

(i) with respect to each City Station Site (OTS2):

(A) commence from the City Station Date of Completion of the last City Station Portion for that Station; and

(B) continue until the earlier of:

(aa) termination of this deed; and

(bb) the Date of Completion of Phase 1;

(ii) with respect to the CSM Site (OTS2):

(A) commence from the CSM Date of Completion; and

(B) continue until the earlier of:

(aa) termination of this deed; and

(bb) the Date of Completion of Phase 1;

(iii) with respect to the Line-wide Site (OTS2) that forms part of the Construction Site for Phase 1:

(A) commence from the Line-wide Date of Construction Completion of Line-wide Portion 3; and

(B) continue until the earlier of:

(aa) termination of this deed; and

(bb) the Date of Completion of Phase 1;

(iv) with respect to the SSJ Site (OTS2) that forms part of the Construction Site for Phase 1:

(A) commence from the Line-wide Date of Construction Completion of Line-wide Portion 3; and

(B) continue until the earlier of:

(aa) termination of this deed; and

(bb) the Date of Completion of Phase 1;

(v) with respect to that part of the Operations Control Centre where the expansion works are occurring:

(A) commence from the date when the OCC Contractor has been granted access to that part of the Operations Control Centre to perform the expansion works pursuant to the OCC Contract; and

(B) continue until the earlier of:

(aa) termination of this deed;

(bb) in respect of level 1 and those parts of the ground floor of the Operations Control Centre where the expansion works are complete, the Date of Practical Completion of Separable Portion 1 (as that term is defined under the OCC Contract) pursuant to the OCC Contract; and

(cc) in respect of the remainder of the ground floor of the Operations Control Centre, the Date of Final Completion (as that term is defined under the OCC Contract) pursuant to the OCC Contract.

(vi) with respect to that part of the Sydney Metro Trains Facility (North) where the train lifting equipment is being installed:

(A) commence from the date when the TLE Contractor has been granted access to that part of the Sydney Metro Trains Facility (North) where the train lifting equipment is being installed; and

(B) continue until the earlier of:

(aa) termination of this deed; and

(bb) the date of completion of the TLE Contractor's activities pursuant to the TLE Contract;

(vii) with respect to the Southwest Site (OTS2), SSJ Site (OTS2), Line-wide Site (OTS2) and PSD/MGF Site (OTS2) that forms part of the Construction Site for Phase 2:

(A) commence from the Phase 2 Handover Date;

(B) continue until the earlier of:

(aa) termination of this deed; and

(bb) the Date of Completion of Phase 2;

(viii) with respect to that part of the Sydney Metro Trains Facility (North) where OTS2 Works are occurring:

(A) commence from the Line-wide Date of Construction Completion of Line-wide Portion 1; and

(B) continue until the earlier of:

(aa) termination of this deed; and

(bb) the Date of Completion of Phase 1; and

(ix) with respect to any remaining part of the Construction Site for Phase 1 not otherwise within a site described in clauses 9.2(c)(i) to 9.2(c)(vi):

(A) commence from the Line-wide Date of Construction Completion of Line-wide Portion 3; and

(B) continue until the earlier of:

(aa) termination of this deed; and

(bb) the Date of Completion of Phase 1; and

(x) with respect to any remaining part of the Sydney Metro Site not otherwise within a site described in clause 9.2(c)(vii):

(A) commence from the Phase 2 Handover Date; and

(B) continue until the earlier of:

(aa) termination of this deed; and

(bb) the Date of Completion of Phase 2.

(d) (**Period of engagement - O&M Contractor or O&M Contractor's contractor**): The O&M Contractor's (or its contractor's) engagement and authorisation as a principal contractor will:

(i) with respect to the Licensed Maintenance Area (Northwest) and Licensed Maintenance Area (City):

(A) commence on the Date of Completion of Phase 1; and

(B) continue until the earlier of:

(aa) the termination of this deed; and

(bb) the Expiry Date; and

(ii) with respect to the Licensed Maintenance Area (Southwest):

(A) commence on the Date of Completion of Phase 2; and

(B) continue until the earlier of:

(aa) the termination of this deed; and

(bb) the Expiry Date.

(e) (**Authorisations and licences**): OpCo2 must:

(i) ensure that if any law, including in the State or Territory in which the OTS2 Works are situated or OpCo2's Activities are carried out (as the case may be) requires that:

(A) a person:

(aa) be authorised or licensed (in accordance with the WHS Legislation) to carry out any work at that workplace, that person is so authorised or licensed and complies with any conditions of such authorisation or licence; and/or

(bb) has prescribed qualifications or experience or, if not, is to be supervised by a person who has prescribed qualifications or experience (as defined in the WHS Legislation), that person has the required qualifications or experience or is so supervised; or

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

(ii) to the extent relevant to OpCo2's Activities or during the periods set out in clauses 9.2(c) and 9.2(d), not direct or allow a person to carry out work or use plant or substance at a workplace unless the requirements of clause 9.2(e)(i) are met (including any requirement to be authorised, licensed, qualified or supervised); and

(iii) if requested by the Principal or required by the WHS Legislation, produce evidence of any approvals, certificates, authorisations, licences, prescribed qualifications or experience or any other information relevant to work health and safety (as the case may be) to the reasonable satisfaction of the Principal before OpCo2 or an OpCo2 Contractor (as the case may be) commences such work.

(f) (**If engagement not effective**): If the engagement of an Appointed Principal Contractor as principal contractor under the Core Contractor Side Deeds is not effective for any reason, OpCo2 agrees that it will ensure that the Appointed Principal Contractor exercises and fulfils the functions and obligations of the principal contractor under the WHS Legislation as if the Appointed Principal Contractor had been validly engaged and authorised as principal contractor as contemplated by clause 9.2(b).

(g) (**Other principal contractors**): At any time:

(i) when the Site Access Schedule provides that OpCo2 will not have control of a part of the Construction Site, including during the Interface Access Period;

(ii) during the period when the Appointed Principal Contractor is not engaged and authorised as the principal contractor in accordance with clauses 9.2(c) and 9.2(d); or

(iii) during a Track Possession for which the Principal has notified the Appointed Principal Contractor (with a copy to OpCo2) that another entity will be, or has been, appointed as the principal contractor for construction work to be undertaken,

OpCo2:

(iv) acknowledges that the Other Contractor or Foundation Infrastructure Works Contractor who is specified in:

(A) the Site Access Schedule, and which during the Interface Access Period may include the relevant Foundation Infrastructure Works Contractor(as applicable); or

(B) a notice from the Principal,

as being in control of the part of the Construction Site (**Other Principal Contractor**) is the principal contractor in respect of all construction work carried out by or on behalf of the Principal on the part of the Construction Site during the period in which that Other Principal Contractor is in control of the part of the Construction Site; and

(v) must comply with any exercise by the Other Principal Contractor referred to in clause 9.2(g)(iv) of such authority as is necessary to enable that Other Principal Contractor to discharge the responsibilities imposed on a principal contractor by the WHS Legislation.

(h) (**Indemnity**) To the extent not prohibited by law, OpCo2 must indemnify the Principal from and against any Claims against the Principal, or Loss suffered or incurred by the Principal, arising out of or in any way in connection with the failure of an Appointed Principal Contractor to exercise or fulfil the functions and responsibilities of the principal contractor under the WHS Legislation or if OpCo2 otherwise fails to comply with this clause 9.2 (*Principal Contractor*), clause 9.3 (*Protection of persons and property*) and clause 9.4 (*Work health and safety*).

9.3 Protection of persons and property

OpCo2 must carry out OpCo2's Activities:

(a) safely and in a manner that, insofar as is reasonably practicable, does not put the health or safety of persons at risk; and

(b) in a manner that protects property.

9.4 Work health and safety

OpCo2 must:

(a) (**WHS Legislation**): ensure that in carrying out OpCo2's Activities under this deed:

(i) it complies with all laws, Codes of Practice and other requirements of this deed for work health, safety and rehabilitation management;

(ii) all OpCo2 Contractors comply with their respective obligations under all laws, Codes of Practice and other requirements of this deed for work, health safety and rehabilitation management; and

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

(b) (**Corporate work health and safety management system**): have a corporate work health and safety management system which complies with the law and is otherwise in accordance with the Office of the Federal Safety Commissioner's Audit Criteria Guidelines and New South Wales Government Work Health and Safety Management Systems and Auditing Guidelines (5th Edition) (September 2013, updated May 2014);

(c) (**Notify**): notify the Principal's Representative in accordance with the PSMP of all WHS Incidents arising out of, or in any way in connection with OpCo2's Activities;

(d) (**Assurances from Significant Contractors**): institute systems to obtain regular written assurances from all Significant Contractors about their ongoing compliance with WHS Legislation, Codes of Practice and other requirements of this deed for work, health safety and rehabilitation management;

(e) (**Assurances to Principal**): provide the Principal's Representative with the written assurances referred to in clause 9.4(d), together with written assurances from OpCo2 about OpCo2's ongoing compliance with laws, Codes of Practice and other requirements of this deed for work, health safety and rehabilitation management;

(f) (**Report**): provide the Principal's Representative with a written report of all work health, safety and rehabilitation matters in connection with OpCo2's Activities as the Principal's Representative may require from time to time;

(g) (**Cooperate**): consult, cooperate and co-ordinate activities with the Foundation Infrastructure Works Contractors and the Principal to ensure that all parties are able to comply with their respective obligations under the WHS Legislation;

(h) (**Duty**): carry out OpCo2's duties under the WHS Legislation to enable the Principal to discharge its duties under the WHS Legislation and other applicable laws;

(i) (**Ensure Principal does not breach WHS Legislation**): ensure that it does not do anything or fail to do anything that would cause the Principal to be in breach of the WHS Legislation or other law concerning work health and safety;

(j) (**Significant Contracts**): ensure that each Significant Contract includes provisions equivalent to clauses 9.2(e), 9.3 (*Protection of persons and property*) and this clause 9.4 (*Work health and safety*) and requiring the Significant Contractor to prepare a safety management plan in accordance with the requirements in clause 9.5(b);

(k) (**Safety Leadership**): provide strong safety leadership and continuously promote safety as a core value;

(l) (**PSMP**): comply with those parts of the Sydney Metro Principal Contractor Health and Safety Standard (SM PS-ST-221), as amended from time to time, that the Principal notifies OpCo2 in writing that it must comply with as if it was a principal contractor for the purposes of that standard; and

(m) (**Direction to cease work**): if the Principal's Representative reasonably considers there is a risk to the health or safety of people or damage to property arising from OpCo2's Activities:

(i) the Principal's Representative may direct OpCo2 to change its manner of working or to cease working; and

(ii) OpCo2 must, at its cost, comply with any direction by the Principal's Representative under this paragraph (m).

9.4A **Application of Sydney Metro Principal Contractor Health and Safety Standard (SM PS-ST-221)**

Nothing in clauses 9.4(l), 9.5(b)(vi) or 9.5(c), requires OpCo2 to be a principal contractor for the purposes of this deed or the WHS Legislation.

9.5 **Safety Management Plan**

(a) OpCo2 acknowledges that preparation of the Safety Management Plan in accordance with clause 8 (*Project Plans*) is a condition precedent to the Principal's obligations under clause 12.1 (*Construction Site Licence*).

(b) Without limiting any requirement of the WHS Legislation or this deed, the Safety Management Plan must:

(i) set out in adequate detail the policies and procedures OpCo2 will implement to manage OpCo2's Activities from a work health and safety perspective;

(ii) describe how OpCo2 proposes to ensure that OpCo2's Activities are performed consistently with the WHS Legislation, Codes of Practice, Australian Standards and any other applicable law;

(iii) address the matters specified in the WHS Legislation, Rail Safety National Law, Rail Safety Regulations, Codes of Practice, Australian Standards and any other applicable law;

(iv) comply with the requirements applicable to a "Project WHS Management Plan" and "Project Safety Plan" set out in the New South Wales Government Work Health & Safety Management Systems and Auditing Guidelines (5th edition) (September 2013, updated May 2014) and the Office of the Federal Safety Commissioner's Audit Criteria Guidelines;

(v) comply with the requirements applicable to a "Work Health Safety Management Plan" or "Site Specific Safety Management Plan" set out in section 9 of the NSW Guidelines; and

(vi) comply with the requirements applicable to a "Safety Management Plan" set out in the Sydney Metro Principal Contractor Health and Safety Standard (SM PS-ST-221), as amended from time to time.

(c) Without limiting clause 8 (*Project Plans*), OpCo2 must:

(i) continue to correct any defects in or omissions from the Safety Management Plan (whether identified by the Principal's Representative or OpCo2); and

(ii) regularly review and, as necessary, revise the Safety Management Plan in accordance with the WHS Legislation, Rail Safety National Law, Rail Safety Regulations, any other law concerning work health and safety, applicable

Codes of Practice and the Sydney Metro Principal Contractor Health and Safety Standard (SM PS-ST-221), as amended from time to time,

and submit an amended draft of its Safety Management Plan (or, where the non-compliance relates only to (i) the head-plan, (ii) one or more sub-plans, or (iii) the head-plan and one or more sub-plans (in each case the "**affected plans**"), submit a revised version of the affected plans) to the Principal's Representative, after which clauses 8.3 (*Updated Project Plans*), 8.5 (*Review of Project Plans*) and 8.7 (*Implementation and compliance*) will reapply to the revised Safety Management Plan or affected plans (as applicable).

(d) OpCo2 must document and maintain detailed records of inspections or audits undertaken as part of the Safety Management Plan.

(e) OpCo2 must carry out OpCo2's Activities in accordance with, and otherwise implement, the latest Safety Management Plan.

(f) OpCo2 acknowledges and agrees that:

(i) the Principal will update the Sydney Metro Principal Contractor Health and Safety Standard (SM PS-ST-221) from time to time, including to address work health and safety issues relating to OpCo2's Activities and the Sydney Metro; and

(ii) subject to clause 35A (*NSW Government Policy*), OpCo2 will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in any way in connection with:

(A) any update or amendment to the Sydney Metro Principal Contractor Health and Safety Standard (SM PS-ST-221); or

(B) any act or omission of the Principal in relation to the Sydney Metro Principal Contractor Health and Safety Standard (SM PS-ST-221) (including any failure of the Principal to do anything specified in the Sydney Metro Principal Contractor Health and Safety Standard (SM PS-ST-221) as the obligation of the Principal or an Associate of the Principal).

9.6 Prevention of nuisance and interference

In performing OpCo2's Activities, OpCo2 must:

(a) prevent nuisance (except to the extent arising solely as a result of the existence or location of the Sydney Metro) and unreasonable noise, dust, vibration and disturbances; and

(b) not interfere with the passage of people and vehicles, access to any premises, car parks, roads or pedestrian ways or the operations or activities carried out on or adjacent to the Sydney Metro Site, except to the extent that such interference is required for purposes of public health or safety or is not reasonably avoidable or is permitted by Legislation.

9.7 Control of traffic

OpCo2:

(a) during the periods set out in clauses 9.2(c) and 9.2(d):

(i) is responsible for the control, direction and protection of all road, waterborne and pedestrian traffic, in any way affected by the carrying out of OpCo2's Activities; and

(ii) must manage all such traffic to ensure:

(A) its continuous, safe and efficient movement;

(B) the traffic carrying capacity of Local Areas is maintained; and

(C) that any delays and disruptions to:

(aa) road traffic and the movement of road traffic; and

(bb) waterborne traffic and the movement of waterborne traffic,

are kept to an absolute minimum;

(b) at all other times:

(i) is responsible for coordinating with the relevant principal contractor who has control and management of the Construction Site (including the surrounding traffic management) to minimise the impact of OpCo2's Activities on all road, waterborne and pedestrian traffic; and

(ii) must coordinate with the relevant principal contractor (as applicable) to allow the relevant principal contractor to manage all such traffic to ensure:

(A) its continuous, safe and efficient movement;

(B) the traffic carrying capacity of Local Areas is maintained; and

(C) that any delays and disruptions to:

(aa) road traffic and the movement of road traffic; and

(bb) waterborne traffic and the movement of waterborne traffic,

are kept to an absolute minimum;

(c) must at all times comply with the Construction Environmental Management Plan, Transport Integration Plan and the requirements of the SPR and any Third Party Agreement in respect of:

(i) road traffic management and safety; and

(ii) waterborne traffic and the movement of waterborne traffic; and

(d) must comply with the directions of any relevant Authority and the Principal's Representative with respect to such management.

9.8 **Industrial relations**

OpCo2 must, in performing OpCo2's Activities:

(a) assume sole responsibility for and manage all aspects of industrial relations;

(b) develop a greenfield industrial relations agreement for the Operations Phase in line with then contemporary Australian industrial relations legislation;

(c) comply with its Human Resources Plan;

(d) comply with its Workplace Relations Management Plan;

(e) comply with the NSW Code and NSW Guidelines in respect of industrial relations;

(f) keep the Principal fully and promptly informed of all industrial relations problems or issues which materially affect or are likely to materially affect the carrying out of OpCo2's Activities or the activities of Sydney Trains or other public transport operators; and

(g) use its best endeavours to minimise potential redundancy and termination costs by, without limitation, formulating and administering terms and conditions of employment which minimise potential termination and redundancy costs.

9.9 **Workforce development and industry participation**

(a) OpCo2 must:

(i) ensure that workforce development is addressed throughout the performance of OpCo2's Activities;

(ii) comply with the workforce development requirements set out in SPR Appendix 50b (*Workforce Development and Industry*);

(iii) achieve the "Workforce Development and Industry Participation Outputs" required by SPR Appendix 50b (*Workforce Development and Industry*); and

(iv) develop, implement and maintain a Workforce Development and Industry Participation Plan in accordance with the requirements in SPR Appendix 50b (*Workforce Development and Industry*).

(b) Without limiting clause 9.9(a), OpCo2 must:

(i) at all times comply with the requirements of the Workforce Development and Industry Participation Plan and the Training Management Plan that OpCo2 is permitted to use in accordance with clause 8.7 (*Implementation and compliance*);

(ii) cooperate with the Principal and provide any assistance or documentation that the Principal may reasonably require in relation to the implementation of its workforce development and industry participation initiatives for the Project;

(iii) attend and participate in working groups and forums established by the Principal in relation to its workforce development and industry participation initiatives for the Project;

(iv) maintain records evidencing OpCo2's compliance with the requirements of SPR Appendix 50b (*Workforce Development & Industry Participation Plan*); and

(v) make available all records maintained in accordance with clause 9.9(b)(iv) to the Principal or its nominees.

9.9A **Australian Jobs Act**

OpCo2 must:

(a) take reasonable steps, and must ensure that the OpCo2 Contractors take reasonable steps, to ensure that Australian companies have full, fair and reasonable opportunities to bid for the supply of key goods and services that OpCo2 requires in order to perform OpCo2's Activities; and

(b) without limiting clause 6.1 (*Compliance with laws*), cooperate with the Principal in relation to:

(i) compliance with the requirements of the *Australian Jobs Act 2013* (Cth); and

(ii) the implementation of the Sydney Metro Australian Industry Participation Plan.

9.10 **Community relations**

OpCo2:

(a) acknowledges that the areas where OpCo2's Activities are being carried out are of great importance to many people, including local residents and businesses; and

(b) must manage and participate in all community relations and involvement programs and activities as:

(i) required by the SPR, including SPR Appendix 51 (*Stakeholder and Community Liaison*);

(ii) required by any Approvals;

(iii) contained in the Stakeholder and Community Involvement Plan;

(iv) contained in the Community Liaison Implementation Plan; and

(v) reasonably required by the Principal from time to time.

9.11 **Cooperation and coordination with Other Contractors**

(a) OpCo2:

(i) acknowledges that:

(A) the Principal may engage Other Contractors to carry out Other Contractors' Activities upon or in the vicinity of the Sydney Metro Site at the same time as OpCo2;

(B) OpCo2's Activities may interface with the Other Contractors' Activities;

(C) Other Contractors may be executing work on parts of the Sydney Metro Site, or adjacent to the Sydney Metro Site, at the same time as OpCo2 is performing OpCo2's Activities; and

(D) Other Contractors may require OpCo2 to provide information to them to coordinate the Other Contractors' Activities with OpCo2's Activities, and this must be provided in a timely manner by OpCo2 subject to the relevant Other Contractors providing such confidentiality undertakings as OpCo2 may reasonably require;

(ii) must at all times:

(A) permit Other Contractors to carry out the Other Contractors' Activities on the applicable parts of the Sydney Metro Site or any adjacent property to the Sydney Metro Site:

(aa) at the same time as OpCo2 is performing OpCo2's Activities; and

(bb) at the times agreed with the Other Contractor, or failing agreement at times determined by the Principal's Representative,

and for this purpose ensure they have safe, clean and clear access to those parts of the Sydney Metro Site, or property adjacent to the Sydney Metro Site (to the extent that OpCo2 has access to the Sydney Metro Site or that property and for the period of such access), required by them for the purpose of carrying out their work, subject to:

(cc) the Other Contractor complying with OpCo2's reasonable site access and work health and safety procedures; and

(dd) where the relevant Other Contractor is carrying out Site Interface Work, the Other Contractor executing a deed poll in favour of the Appointed Principal Contractor substantially in the form of Schedule 6 (*Sydney Metro Site Interface Deed Poll*);

(B) take all reasonably necessary precautions to ensure that the OTS2 Works, the Temporary Works, any part of the Foundation Infrastructure Works during the period in which OpCo2 is responsible for the Foundation Infrastructure Works, the Sydney Metro Site, the Sydney Metro is protected from accidental damage by the Other Contractor;

(C) not damage the work performed by the Other Contractor or its plant and equipment except to the minimum extent necessary to perform OpCo2's Activities;

(D) fully co-operate with Other Contractors, and do everything reasonably necessary to:

(aa) facilitate the Other Contractors' Activities, including providing Other Contractors with such assistance as may be directed by the Principal's Representative; and

(bb) ensure the effective coordination of OpCo2's Activities with the Other Contractors' Activities;

(E) carefully coordinate and interface OpCo2's Activities with the Other Contractors' Activities;

(F) perform OpCo2's Activities so as to minimise any interference with or disruption or delay to the Other Contractors' Activities;

(G) be responsible for coordinating OpCo2's Activities, including work sequencing, construction methods, safety and industrial relations matters with those affecting, and influenced by, Other Contractors' Activities; and

(H) attend coordination meetings chaired by the Principal's Representative with Other Contractors and others at such times as may be reasonably required by the Principal's Representative, to review current and future issues; and

(iii) must promptly advise the Principal's Representative if OpCo2 becomes aware of any matter arising out of the Other Contractors' Activities that may have an adverse effect upon OpCo2's Activities or the safety of Customers or any other persons.

(b) The Principal must ensure that Other Contractors' Activities are carried out to minimise any disruption, interference or adverse impact (including OpCo2 incurring Loss) on or to, and without unreasonably disrupting or interfering with, or adversely impacting on, OpCo2's Activities.

(c) To the extent that OpCo2 is required to:

(i) carry out safety or site inductions for Other Contractors in order to comply with its obligations under clause 9.11(a); or

(ii) provide personnel to accompany Other Contractors in order to comply with its obligations under clause 9.11(a),

the Principal must pay OpCo2 for the provision of such services:

(iii) where the services are carried out on the Construction Site during the Delivery Phase, at the following rates:

Activity	**Rate (excluding GST)**
Carrying out safety or site inductions for Other Contractors in order to comply with OpCo2's obligations under clause 9.11 (*Cooperation and coordination with Other Contractors*)	$[redacted] per induction (WPI Indexed)
Providing personnel to accompany Other Contractors in order to comply with OpCo2's obligations under clause 9.11 (*Cooperation and coordination with Other Contractors*)	$[redacted] per hour (WPI Indexed)

(iv) where the services are carried out on the Licensed Maintenance Area during the Operations Phase, in accordance with the Schedule of Rates.

(ca) To the extent that OpCo2 is required to:

(i) create information that did not previously exist for the purposes of clause 9.11(a)(i)(D);

(ii) provide safe, clean and clear access to areas of the Sydney Metro Site to which there is no previously existing safe, clean or clear access for the purposes of clause 9.11(a)(ii)(A); or

(iii) comply with a direction by the Principal's Representative given pursuant to clause 9.11(a)(ii)(D)(aa),

the Principal must compensate OpCo2 for the Net Financial Impact of providing such services which will be calculated and paid in accordance with Schedule 29 (*Net Financial Impact*).

(d) The Principal must ensure that Other Contractors:

(i) cooperate with OpCo2 and the Core Contractors in relation to OpCo2's (or any Core Contractor's) compliance with its Accreditation obligations under the Rail Safety National Law and Rail Safety Regulations;

(ii) do not put OpCo2 (or any Core Contractor) in breach of its obligations as a Rail Infrastructure Manager or Rolling Stock Operator under the Rail Safety National Law and Rail Safety Regulations;

(iii) comply with all reasonable requirements of OpCo2 (or any Core Contractor) in relation to compliance with the Accreditation of OpCo2 (or any Core Contractor); and

(iv) do not do anything (or fail to do anything) which jeopardises the Accreditation of OpCo2 (or any Core Contractor) or an application for Accreditation by OpCo2 (or any Core Contractor), including anything that may be grounds for the ONRSR to refuse an application for Accreditation by OpCo2 (or any Core Contractor), or to suspend or revoke (in whole or in part) or impose or vary conditions or restrictions on the Accreditation of OpCo2 (or any Core Contractor).

9.12 **Compensation Event**

Subject to clauses 9.11(c) and clause 26 (*Compensation Events*), the Principal will not be liable upon any Claim by OpCo2 arising out of or in any way in connection with any Other Contractors' Activities.

9.12A **Project Cooperation and Integration Deeds**

(a) As at the date of this deed, a form of each Project Cooperation and Integration Deed is set out in Schedule 47 (*Form of Project Cooperation and Integration Deeds*).

(b) OpCo2 must within 5 Business Days of receipt of a request from the Principal, provide to the Principal a copy of the relevant Project Cooperation and Integration Deed duly executed by OpCo2 in the number of counterparts required by the Principal.

(c) OpCo2 must at all times comply with the terms of the Project Cooperation and Integration Deeds and attend coordination meetings as required in accordance with the Project Cooperation and Integration Deeds.

9.12B **Cooperation and coordination with Foundation Infrastructure Works Contractor**

(a) The Principal acknowledges that OpCo2 will require access to the Foundation Infrastructure Works Site to perform the OTS2 Works and achieve Completion.

(b) Without limiting OpCo2's rights or obligations under each Project Cooperation and Integration Deed, the Master Interface Protocols Deed Poll, clause 9.12A (*Project Cooperation and Integration Deeds*) and this clause 9.12B (*Cooperation and coordination with Foundation Infrastructure Works Contractor*), OpCo2:

(i) acknowledges that:

(A) the Foundation Infrastructure Works form part of the Sydney Metro City and the Sydney Metro Southwest;

(B) OpCo2's Activities and the OTS2 Works interface with the Foundation Infrastructure Works;

(C) the Foundation Infrastructure Works Contractors will be executing the Foundation Infrastructure Works on the Foundation Infrastructure Works Site, which:

(aa) includes some parts of the Construction Site or Extra Land; or

(bb) is adjacent to the Construction Site or Extra Land,

at the same time as OpCo2 is performing OpCo2's Activities;

(D) the Foundation Infrastructure Works Contractors will be principal contractor of the Foundation Infrastructure Works Site (including those parts which forms part of the Construction Site) prior to the OpCo2 Handover (PC) Date and will require access to the Construction Site in order to perform their obligations under their respective contracts with the Principal;

(E) to the extent OpCo2 requires access to any part of the Construction Site before the relevant OpCo2 Handover (PC) Date for that part of the Construction Site:

(aa) such access will be subject to OpCo2 providing; and

(bb) if directed by the Principal, OpCo2 must provide,

the Principal with an executed deed poll substantially in the form of Schedule 6 (*Sydney Metro Site Interface Deed Poll*) in favour of the relevant principal contractor;

(F) OpCo2 may require certain design and work methodology input from the Foundation Infrastructure Works Contractors to coordinate the design of the OTS2 Works with the Foundation Infrastructure Works;

(G) the Foundation Infrastructure Works Contractors may require OpCo2 to provide design and work methodology information to them to coordinate the design or conduct of the Foundation Infrastructure Works with the OTS2 Works, and this must be provided in a timely manner by OpCo2; and

(H) any delay in the performance of OpCo2's Activities or OpCo2 providing information to, or cooperating and coordinating with any Foundation Infrastructure Works Contractor, may adversely impact upon, delay or disrupt any one or more Foundation Infrastructure Works Contractors or Foundation Infrastructure Works in a way which may lead to the Principal suffering or incurring additional costs, Losses and damages;

(ii) must at all times:

(A) protect the OTS2 Works from accidental damage by the Foundation Infrastructure Works Contractors;

(B) cooperate with the Foundation Infrastructure Works Contractors, and do everything reasonably necessary to facilitate the execution of Foundation Infrastructure Works, including providing the Foundation Infrastructure Works Contractors with such assistance as may be directed by the Principal's Representative;

(C) carefully coordinate and interface the OTS2 Works with the Foundation Infrastructure Works and for this purpose:

(aa) make proper allowance in all programs for the Foundation Infrastructure Works;

(bb) review all programs provided by the Foundation Infrastructure Works Contractors and confirm that they adequately allow for the OTS2 Works and the interfaces of the Foundation Infrastructure Works with the OTS2 Works;

(cc) monitor the progress or conduct of the Foundation Infrastructure Works;

(dd) notify the Principal's Representative of any interface or sequence of activities that may affect the commencement, progress or Completion of the OTS2 Works; and

(ee) provide the Foundation Infrastructure Works Contractors with sufficient information about current and expected OpCo2's Activities to assist them to coordinate the Foundation Infrastructure Works with OpCo2's Activities;

(D) cooperate, meet with, liaise and share information so that OpCo2 and the relevant Foundation Infrastructure Works Contractor each comply with the provisions of the relevant Environment Protection Licence (if applicable);

(E) perform OpCo2's Activities so as to minimise any interference with or disruption or delay to, or otherwise adversely affect, the Foundation Infrastructure Works;

(F) be responsible for coordinating OpCo2's Activities, including work sequencing, construction methods, safety and industrial relations matters with those affecting, and influenced by, the Foundation Infrastructure Works Contractors' personnel and work, including providing to the Principal's Representative copies of working method statements for those parts of the OTS2 Works which are adjacent to or interface with any Foundation Infrastructure Works, at least 15 Business Days prior to commencing the work described in the work method statement;

(G) work directly with the Foundation Infrastructure Works Contractors where required to complete the design of the OTS2 Works and:

(aa) provide all necessary information to the Foundation Infrastructure Works Contractors in respect of the OTS2 Works to permit the Foundation Infrastructure Works Contractors to complete the design of the Foundation Infrastructure Works so that they are acceptable to the Principal; and

(bb) otherwise comply with this deed;

(H) attend interface coordination meetings chaired by the Principal's Representative with Foundation Infrastructure Works Contractors and others every 10 Business Days, or at other times to be advised by the Principal's Representative, to review current and future issues, including the exchange of information, status, problems, solutions, and newly identified interfaces;

(I) when information is required from a Foundation Infrastructure Works Contractor, provide reasonable written notice which must be at least 10 days (except in special circumstances) or any longer period of notice required under the SPR to that Foundation Infrastructure Works Contractor requesting such information and specifying the date by which such information is required, with a copy to the Principal's Representative;

(J) ensure that any written notice given under clause 9.12B(a)(ii)(J) provides the Foundation Infrastructure Works Contractor with the longest possible time for the provision of the information;

(K) when any information is requested by the Principal or the Foundation Infrastructure Works Contractors, including confirming the compatibility or suitability of the design of, work methods to be used in, or any other aspect of, the Foundation Infrastructure Works with the OTS2 Works or OpCo2's Activities:

(aa) provide the information to the Principal's Representative or the Foundation Infrastructure Works Contractor, with a copy to the Principal's Representative (as the case may be), within the time requested by the Principal or the Foundation Infrastructure Works Contractor, provided that this time is reasonable; and

(bb) ensure and warrant (as at the date the information is provided) that the information provided is accurate; and

(L) use its best endeavours to resolve any problems, and work closely and iteratively, with the Foundation Infrastructure Works Contractors, including providing design options, iterations, and work methodologies, to achieve the best solution to such problems, related to:

(aa) the provision of information;

(bb) the obtaining of information;

(cc) the adequacy of information provided to, or received from, Foundation Infrastructure Works Contractors;

(dd) the compatibility of the OTS2 Works with the Foundation Infrastructure Works;

(ee) coordination in accordance with this clause 9.12B(b); and

(ff) technical issues with the information provided to, or received from, Foundation Infrastructure Works Contractors;

(iii) must during the periods set out in clauses 9.2(c) and 9.2(d):

(A) permit the Foundation Infrastructure Works Contractors to execute the Foundation Infrastructure Works on the applicable parts of the Construction Site or Extra Land, or on any adjacent property to the Construction Site or Extra Land:

(aa) at the same time as OpCo2 is performing the OTS2 Works; and

(bb) at the times agreed with the Foundation Infrastructure Works Contractor, or failing agreement at the times determined by the Principal's Representative,

and for this purpose ensure the Foundation Infrastructure Works Contractors have safe, clean and clear access to those parts of the Construction Site or Extra Land, or property adjacent to the Construction Site or Extra Land, required by them for the purpose of carrying out their work subject to:

(cc) the relevant Foundation Infrastructure Works Contractor complying with OpCo2's reasonable site access and work health and safety procedures; and

(dd) the relevant Foundation Infrastructure Works Contractor executing a deed poll in favour of the Appointed Principal Contractor substantially in the form of Schedule 6 (*Sydney Metro Site Interface Deed Poll*);

(B) protect improvements on the Construction Site or Extra Land from accidental damage by the Foundation Infrastructure Works Contractors; and

(C) provide means of receiving, storing and protecting goods and equipment supplied by the Foundation Infrastructure Works Contractors;

(iv) must promptly advise the Principal's Representative of all matters arising out of the liaison with Foundation Infrastructure Works Contractors that may involve a change to design or construction work under this deed or otherwise have an adverse effect upon the Foundation Infrastructure Works; and

(v) acknowledges that conditions similar to those in this clause 9.12B(b) applying to OpCo2 will apply to all Foundation Infrastructure Works Contractors engaged by the Principal, whether working on the Construction Site or on any other site.

(c) The Principal must procure that conditions that are substantially the same as those in this clause 9.12B (*Cooperation and coordination with Foundation Infrastructure Works Contractors*) applying to OpCo2 will apply to the Foundation Infrastructure Works Contractors engaged by the Principal working on the Foundation Infrastructure Works Site.

9.13 **ETS**

(a) OpCo2 and the Principal acknowledge and agree that:

(i) the Principal will be responsible for providing the ETS for the Sydney Metro;

(ii) the ETS will be the only ticketing or fare system for the Sydney Metro; and

(iii) the Principal will be responsible for setting fares and establishing fare policies.

(b) OpCo2 must:

(i) carry out all tasks and activities required to facilitate the provision of the ETS by the Principal;

(ii) provide resources and attend meetings as required for the purposes of the delivery, operation, maintenance and replacement of the ETS in relation to the Sydney Metro;

(iii) integrate the ETS with the Sydney Metro and the Operations Activities in accordance with the SPR;

(iv) provide the Principal with any information the Principal may require in relation to the Sydney Metro for the purposes of the delivery, operation, maintenance and replacement of the ETS;

(v) not damage the ETS Equipment, the work performed by the ETS Contractor or the ETS Contractor's plant and equipment;

(vi) comply with its obligations in Schedule 4 (*ETS Interface*); and

(vii) comply with its obligations under the SPR regarding the ETS.

(c) The Principal will ensure that the ETS Contractor does not damage the OTS2 Works, the Temporary Works, any parts of the Foundation Infrastructure Works during the period in which OpCo2 is responsible for the Foundation Infrastructure Works in accordance with clause 14A.11 (*Care and Maintenance of Foundation Infrastructure Works*), the Sydney Metro Site or the Sydney Metro, except to the minimum extent necessary to install, operate, maintain and replace the ETS.

9.14 **Sydney Trains**

(a) OpCo2 and the Principal acknowledge and agree that there are physical and operational interfaces between the Sydney Metro and the Sydney metropolitan rail network operated by Sydney Trains.

(b) OpCo2 and the Principal must comply with their respective obligations in relation to the Sydney Metro and Sydney Trains:

(i) as specified in Schedule 3 (*Sydney Trains interface*); and

(ii) otherwise as required by this deed (including the SPR).

(c) The parties acknowledge and agree that the Principal may:

(i) require amendments to the parties' respective obligations in relation to the Sydney Metro and Sydney Trains; and

(ii) give OpCo2 a copy of amendments to:

(A) Schedule 3 (*Sydney Trains interface*); and

(B) this deed (including the SPR),

(as applicable) (**Revised Sydney Trains Requirements**).

(d) OpCo2 must carry out its obligations under this deed:

(i) on the basis of the Revised Sydney Trains Requirements; and

(ii) subject to clause 9.14(e), at its own cost, without any extension to the Date for Completion of Phase 1, the Date for Completion of Phase 2, a Milestone Date for Completion or a Date for Acceptance and without any entitlement to make any other Claim.

(e) To the extent the Revised Sydney Trains Requirements imposes greater or different obligations on OpCo2 (including with respect to time) such that:

(i) OpCo2 is no longer able to comply with its obligations under this deed;

(ii) it affects OpCo2's performance against any performance indicator or requirement which could result in a Service Payment Deduction;

(iii) it increases OpCo2's costs of carrying out OpCo2's Activities or causes OpCo2 to incur any loss, in each case other than in a de minimis manner;

(iv) it prevents OpCo2 being granted access to the Construction Site in accordance with the Site Access Schedule (as applicable); or

(v) it adversely affects OpCo2's right of access to, or use of, the Licensed Maintenance Area or access to any Additional Maintained Asset,

the Principal will promptly issue a Modification Impact Request under clause 29.1(a) and clause 29.2 (*Modification Impact Proposal*) will apply and to the extent the Revised Sydney Trains Requirements impose greater or different obligations such that any of the matters referred to in paragraph (e)(i), (ii), (iv) or (v) apply, OpCo2 will be relieved of those greater or different obligations (as applicable) until such time as the Principal issues a Modification Order in respect of the relevant Modification.

(f) Where the Principal issues a Modification Impact Request in accordance with clause 9.14(e), the Principal's right to reject the Modification Impact Proposal in accordance with clause 29.5(b)(iv) or elect not to proceed with the proposed Modification in accordance with clause 29.5(b)(v) will not apply.

9.14A **Barangaroo Precinct**

(a) OpCo2 and the Principal acknowledge and agree that there are physical and operational interfaces between the OTS2 Works, the Sydney Metro City and the buildings and precinct at Barangaroo being developed and managed by Infrastructure NSW.

(aa) OpCo2 acknowledges that it has reviewed and carefully considered the Barangaroo Interface Agreement (in the form contained in Exhibit 18 (*Barangaroo Interface Agreement*)).

(b) OpCo2 must comply with the obligations in relation to the Sydney Metro and Infrastructure NSW:

(i) as specified in Schedule 3A (*Barangaroo Delivery Authority interface*); and

(ii) otherwise as required by this deed (including the SPR).

(ba) The Principal must:

(i) comply with the obligations set out in the table in Schedule 3A (*Barangaroo Delivery Authority interface*); and

(ii) ensure that Infrastructure NSW complies with its obligations under the Barangaroo Interface Agreement.

(bb) Subject to clauses 9.14A(bc) to 19.14A(be), the Principal must not:

(i) make or permit an amendment to, replacement of or waiver of a provision of;

(ii) terminate, surrender, rescind or accept repudiation of;

(iii) except as permitted under the Barangaroo Interface Agreement, permit the novation, assignment or substitution of any counterparty's right, obligation or interest in; or

(iv) enter into any agreement or arrangement which affects the operation of,

the Barangaroo Interface Agreement where it may impact the rights or obligations of OpCo2 or the ability of OpCo2 or the Principal to satisfy their obligations under this deed, without OpCo2's prior written consent (which consent will not be unreasonably withheld or delayed).

(bc) The parties acknowledge and agree that the Principal may:

(i) require amendments to the parties' respective obligations in relation to the Sydney Metro and Infrastructure NSW; and

(ii) promptly give OpCo2 a copy of amendments to:

(A) the Barangaroo Interface Agreement;

(B) Schedule 3A (*Barangaroo Delivery Authority interface*); and

(C) this deed (including the SPR),

(as applicable) (**Revised Barangaroo Requirements**).

(bd) OpCo2 must carry out its obligations under this deed:

(i) on the basis of the Revised Barangaroo Requirements; and

(ii) subject to clause 9.14A(be), at its own cost, without any extension to the Date for Completion of Phase 1, the Date for Completion of Phase 2, a Milestone Date for Completion or a Date for Acceptance and without any entitlement to make any other Claim.

(be) To the extent the Revised Barangaroo Requirements impose greater or different obligations (including with respect to time) on OpCo2 such that:

(i) OpCo2 is no longer able to comply with its obligations under this deed;

(ii) it affects OpCo2's performance against any performance indicator or requirement which could result in a Service Payment Deduction;

(iii) it increases OpCo2's costs of carrying out OpCo2's Activities or causes OpCo2 to incur any loss, in each case other than in a de minimis manner;

(iv) it prevents OpCo2 being granted access to the Construction Site in accordance with the Site Access Schedule (as applicable); or

(v) it adversely affects OpCo2's right of access to, or use of, the Licensed Maintenance Area or access to any Additional Maintained Asset,

the Principal will promptly issue a Modification Impact Request under clause 29.1(a) and clause 29.2 (*Modification Impact Proposal*) will apply and to the extent the Revised Barangaroo Requirements impose greater or different obligations such that any of the matters referred to in paragraph (be)(i), (ii), (iv) or (v) apply, OpCo2 will be relieved of those greater or different obligations (as applicable) until such time as the Principal issues a Modification Order in respect of the relevant Modification.

(bf) Where the Principal issues a Modification Impact Request in accordance with clause 9.14A(be), the Principal's right to reject the Modification Impact Proposal in accordance with clause 29.5(b)(iv) or elect not to proceed with the proposed Modification in accordance with clause 29.5(b)(v) will not apply.

(c) Upon request by the Principal, OpCo2 must within a reasonable time execute the Barangaroo Cooperation and Collaboration Accession Deed in the number of counterparts required by the Principal and return the executed counterparts to the Principal.

(d) The Principal will within a reasonable time execute, and procure that the relevant counterparties execute within a reasonable time, the Barangaroo Cooperation and Collaboration Accession Deed in the same form that is executed by OpCo2.

(e) OpCo2:

(i) must, following execution of the Barangaroo Cooperation and Collaboration Accession Deed, at all times comply with the terms of the Barangaroo Cooperation and Collaboration Agreement; and

(ii) will not be entitled to make, and the Principal will not be liable upon, any Claim against the Principal arising out of or in connection with the performance of OpCo2 or the Principal's obligations under the Barangaroo Cooperation and Collaboration Agreement.

9.15 **Personnel**

(a) OpCo2 must provide experienced and skilled personnel to perform its obligations under this deed.

(b) OpCo2 must notify the Principal:

(i) within 4 months of Financial Close, of the names and experience of the personnel to be employed by OpCo2, the Integrator and the Alstom Significant Contractor in the positions set out in Part A of Schedule 7 (*Key personnel*); and

(ii) 9 months prior to the Date of Completion of Phase 1, the names and experience of the personnel to fill the roles set out in Part B of Schedule 7 (*Key personnel*),

for the Principal's approval (which must not be unreasonably withheld).

(c) OpCo2 must:

(i) employ, and ensure that the Core Contractors and the Alstom Significant Contractor (as applicable) employ, those personnel approved by the Principal under clause 9.15(b) in the positions specified in Schedule 7 (*Key personnel*) for which they are approved;

(ii) if any of the personnel referred to in clause 9.15(c)(i):

(A) die;

(B) become seriously ill;

(C) resign from the employment of OpCo2, a Core Contractor or the Alstom Significant Contractor (as applicable); or

(D) become the subject of a direction under clause 9.15(e),

replace them with personnel of at least equivalent experience, ability and expertise.

(d) The personnel referred to in clause 9.15(c)(i) must:

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

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

(e) The Principal's Representative may, acting reasonably, direct OpCo2 to remove any person from the performance of OpCo2's Activities.

(f) OpCo2 must ensure that any person the subject of a direction under clause 9.15(e) is not again involved in the performance of OpCo2's Activities.

9.15A **Site Facilities**

(a) The parties acknowledge that under the Foundation Infrastructure Works Contracts, the Foundation Infrastructure Works Contractors are required to provide certain site facilities which can be used by OpCo2 to carry out OpCo2's Activities during the Interface Access Period and are set out in SPR Appendix 7 (*Site Facilities*) (**Site Facilities**).

(b) The parties agree that to the extent the Site Facilities (which may include Utility Services including electricity) are required by OpCo2 to carry out OpCo2's Activities during the Interface Access Period, OpCo2 will not be responsible for the cost of the Site Facilities.

(c) Other than as expressly set out in this deed (including OpCo2's rights with respect to the Compensation Event in paragraph (g) of the definition of Compensation Event), the Principal is not required to ensure that the Site Facilities referred to in SPR Appendix 7 (*Site Facilities*):

(i) are provided to OpCo2; or

(ii) will continue to be provided to OpCo2,

for OpCo2 to carry out OpCo2's Activities during the Interface Access Period.

9.16 **Utility Services**

(a) OpCo2:

(i) subject to clause 9.15A (*Site Facilities*), must obtain, pay for, contract for the provision of, acquire or otherwise procure or provide any Utility Services (subject to clause 9.17(a)(ii)) and all connections for all Utility Services (including, subject to clause 9.16(b), electricity) it requires to perform OpCo2's Activities;

(ii) must make:

(A) all Utility Services available subject to Schedule 3 (*Sydney Trains interface*), to any tenants at the Stations with which OpCo2 enters into any sub-lease or licence arrangements, which services are not to be charged for separately but instead are to be incorporated into sub-lease or licence fees;

(B) all Utility Services available to the tenants under the leases, licences or agreements in or around the ECRL described in clause 13.4(a) of Part B of Schedule 3 (*Sydney Trains interface*) where:

(aa) the relevant lease, licence or agreement relates to an area within the Licensed Maintenance Area (in respect of the period from the OTS Incorporation Date until the end of the Operations Phase) (as relevant); and

(bb) the Principal or the Rail Entity which is the counterparty to the relevant lease, licence or agreement provides, or facilitates the provision of, those services to the relevant tenant immediately prior to the OTS Incorporation Date,

which services are to be provided by OpCo2 at no charge; and

(C) electricity available to Sydney Trains as contemplated by Schedule 3 (*Sydney Trains interface*) and the OpCo2 Shared Asset Activities (as defined in Schedule 3 (*Sydney Trains interface*)) which services are to be provided by OpCo2 at no charge to Sydney Trains;

(iii) subject to clause 9.15A (*Site Facilities*), must investigate, protect, relocate, modify and provide for all Utility Services necessary for it to comply with its obligations under the Project Agreements;

(iv) must not, without the Principal's Representative's prior written consent, obtain any Utility Services or connect any Utility Services to the OTS2 Works, the Sydney Metro or the ETS Equipment that are not necessary to allow OpCo2 to carry out OpCo2's Activities;

(v) must obtain the Principal's Representative's prior written consent (such consent not to be unreasonably withheld or delayed) in respect of any new connections for Utility Services or changes or modifications to existing connections for Utility Services;

(vi) must consult with and keep the Principal fully informed as to OpCo2's dealings with the Authorities providing Utility Services;

(vii) must ensure there are no unplanned disruptions to the Utility Services in carrying out OpCo2's Activities and that planned disruptions to the Utility Services are minimised and that otherwise no Utility Services are damaged,

destroyed, disconnected, disrupted, interfered with or interrupted by reason of the performance of OpCo2's Activities;

(viii) to the extent applicable to the OTS2 Works or OpCo2's Activities, must ensure that maintenance points for Utility Services are located within the Project Site and only with the prior written consent of the Principal's Representative (such consent not to be unreasonably withheld or delayed);

(ix) subject to clauses 17.9A (*Determination and grant of extension of time – Completion of Phase 1*), 17.10 (*Determination and grant of extension of time –Completion of Phase 2*), 26 (*Compensation Events*) and 27 (*Relief Events*), assumes the risk of the existence, location, condition and availability of Utility Services (in so far as they affect OpCo2's Activities); and

(x) must, to the extent not prohibited by law, indemnify the Principal from and against any claims against the Principal, or Loss suffered by the Principal arising out of or in connection with:

(A) any damage to, disconnection or destruction of, disruption to or interference with or interruption to, any Utility Service arising out of or in connection with:

(aa) a failure by OpCo2 to comply with any obligations under this deed; or

(bb) any act or omission of OpCo2 or its Associates; or

(B) a failure by OpCo2 to comply with any obligations under this deed with respect to the Utility Services.

(aa) The Principal must reimburse OpCo2 for the cost of electricity made available by OpCo2 to, and consumed by, Sydney Trains as contemplated by clause 9.16(a)(ii)(C):

(i) on the Sydney Metro City, prior to the Date of Completion of Phase 1; and

(ii) on the Sydney Metro Southwest, prior to the Date of Completion of Phase 2.

The parties acknowledge and agree that in accordance with clause 9.17(a), the Principal is responsible for purchasing, and making available to OpCo2 at no charge, any electricity made available by OpCo2 to, and consumed by, Sydney Trains as contemplated by clause 9.16(a)(ii)(C):

(iii) on the Sydney Metro Northwest and the Sydney Metro City, from the Date of Completion of Phase 1; and

(iv) on the Sydney Metro Southwest, from the Date of Completion of Phase 2.

(b) OpCo2:

(i) acknowledges that the Principal will be the counterparty to the electricity connection agreements with Ausgrid and Endeavour Energy respectively pursuant to which the Sydney Metro is connected to their networks through the Ausgrid Connection Point and the Endeavour Energy Connection Point (including any connection and augmentation works required for this purpose) (**Electricity Connection Agreements**);

(ii) must ensure, subject to clause 9.16(ba), that the Electricity Connection Agreements are executed by the parties and have commenced operation in sufficient time for the Ausgrid Connection Point and Endeavour Energy Connection Point to be operational for commencement of the Tests;

(iii) acknowledges that the Principal's obligations and liabilities under the Electricity Connection Agreements are to be limited to payment of any ongoing Network Charges and the reversion of control of the electricity infrastructure forming part of the Sydney Metro) from OpCo2 to the Principal at the end of the Operations Phase;

(iv) must negotiate all aspects of the Electricity Connection Agreements with Ausgrid and Endeavour Energy, other than any ongoing Network Charges in respect of the period after the Date of Completion of Phase 1, provisions relating to the reversion of control of the electricity infrastructure forming part of the Sydney Metro from OpCo2 to the Principal at the end of the Operations Phase or liability provisions affecting the Principal;

(v) must not finalise the Electricity Connection Agreements for execution by the Principal unless and until the Principal has advised in writing that it is comfortable with the content of these agreements (such advice not to be unreasonably withheld or delayed); and

(vi) is responsible for paying all charges relating to augmentation of Ausgrid's network or Endeavour Energy's network and any other connection costs to facilitate the Ausgrid Connection Point and the Endeavour Energy Connection Point being constructed or commissioned provided for in the Electricity Connection Agreements, and all other payments under those agreements other than ongoing Network Charges, which ongoing Network Charges will be borne:

(A) with respect to the Sydney Metro City, by OpCo2 up until the Date of Completion of Phase 1 and by the Principal immediately after the Date of Completion of Phase 1; and

(B) with respect to the Sydney Metro Southwest, by OpCo2 up until the Date of Completion of Phase 2 and by the Principal immediately after the Date of Completion of Phase 2.

(ba) The Principal must provide, and ensure that each Foundation Infrastructure Works Contractor provides, such assistance and information as is reasonably requested by OpCo2 in order to comply with its obligation under clause 9.16(b)(ii).

(c) Subject to Schedule 2 (*Service Payment calculation*) and clause 9.17 (*Electricity*), the Principal will not be liable under this deed or otherwise in relation to any Utility Services required or used for the OTS2 PPP.

(d) Subject to clauses 17.9A (*Determination and grant of extension of time – Completion of Phase 1*), 17.10 (*Determination and grant of extension of time – Completion of Phase 2*), 26 (*Compensation Events*) and 27 (*Relief Events*), OpCo2 is responsible for, and assumes the risk of all additional work, increased costs and any other Loss, delay or disruption (including any delay in achieving Completion of Phase 1 or Completion of Phase 2) it suffers or incurs arising out of or in any way in connection with the existence, location, condition and availability of all Utility Services required for the execution of OpCo2's Activities.

(e) OpCo2 must obtain the prior consent of the Principal (such consent not to be unreasonably withheld or delayed) in relation to:

(i) any proposal to construct any infrastructure in connection with the Utility Services outside the Project Site; and

(ii) the exact location of any infrastructure in connection with the Utility Services within or outside of the Project Site.

(f) The Principal must comply with its obligations under the Electricity Connection Agreements.

(fa) OpCo2 must comply with the Electricity Connection Agreements to the extent applicable to OpCo2's Activities.

(g) If the Principal breaches any of its obligations under an Electricity Connection Agreement, OpCo2 agrees that its sole remedy will be under this deed in relation to the breach of clause 9.16(f) and that it will not bring a claim for damages against the Principal under the relevant Electricity Connection Agreement.

9.17 **Electricity**

(a) (**Purchase of electricity**):

(i) Subject to clause 9.15A (*Site Facilities*):

(A) OpCo2 must purchase all electricity required to perform the Delivery Activities; and

(B) the Principal will purchase all electricity required for testing and commissioning, including all electricity on and from the OpCo2 Handover (PC) Date (as applicable).

(ii) The Principal must at all times between the Date of Completion of Phase 1 and the end of the Operations Phase have in place an agreement with a retailer of electricity (which may be a different agreement for each Connection Point) to:

(A) purchase all electricity required to be consumed through the Connection Points (**Electricity Purchase Agreement**) by OpCo2; and

(B) allow OpCo2 to use at no charge all electricity purchased pursuant to the Electricity Purchase Agreement,

to operate and maintain:

(C) the Sydney Metro Northwest, the Sydney Metro City and the ETS Equipment on the Sydney Metro Northwest and the Sydney Metro City immediately after the Date of Completion of Phase 1; and

(D) the Sydney Metro Southwest and the ETS Equipment on the Sydney Metro Southwest immediately after the Date of Completion of Phase 2,

until the end of the Operations Phase.

(iii) The Principal's obligations under this clause are fully discharged by the Principal having the Electricity Purchase Agreement in place and not being in breach of that agreement (**Electricity Purchase Obligation**). Provided the Principal discharges the Electricity Purchase Obligation, the Principal is not

liable under this deed if electricity is for any reason unavailable to be consumed by OpCo2 through the Connection Points.

(iv) The Principal must:

(A) comply with its obligations under the Electricity Purchase Agreement; and

(B) provide any consents reasonably requested by OpCo2 which are needed for electricity to be sold and supplied through the Connection Points.

(b) (**Demand Usage**):

(i) The Principal and OpCo2 must agree:

(A) not later than 6 months prior to commencement of the Phase 1 Operations Phase, on changes to the Demand Usage Strategy to reflect operations during the Phase 1 Operations Phase;

(B) not later than 6 months prior to commencement of the Full Operations Phase, on changes to the Demand Usage Strategy to reflect operations during the Full Operations Phase; and

(C) on changes to the Demand Usage Strategy within 1 month following a request by a party during the Operations Phase, including as a result of changes to the Network Charges of Ausgrid and/or Endeavour Energy.

The Demand Usage Strategy and any changes to the Demand Usage Strategy agreed under this clause 9.17(b)(i) or notified by the Principal under clause 9.17(b)(ii) must not adversely impact on OpCo2's ability to comply with this deed or its obligations to make electricity available to any tenants at the Stations.

(ii) Failing agreement by the dates specified under clause 9.17(b)(i)(A), 9.17(b)(i)(B) or 9.17(b)(i)(C), the Demand Usage Strategy (or amendments to that strategy) will be as notified by the Principal to OpCo2 subject to the electricity infrastructure forming part of the Sydney Metro being physically able to deliver the strategy, or amended strategy, notified by the Principal. For the avoidance of doubt, OpCo2 must ensure that the electricity infrastructure forming part of the Sydney Metro is able:

(A) to draw electricity from each of the Ausgrid and Endeavour Energy Connection Points and to switch consumption between these Connection Points;

(B) to power the Sydney Metro entirely from electricity drawn from only Ausgrid's electricity distribution network or Endeavour Energy's electricity distribution network if needed.

(iii) OpCo2 must:

(A) with respect to the Sydney Metro Northwest and the Sydney Metro City, from the Date of Completion of Phase 1; and

(B) with respect to the Sydney Metro Southwest, from the Date of Completion of Phase 2,

consume electricity through the Connection Points in accordance with the Demand Usage Strategy and any Direction received from time to time from the Principal in relation to how electricity should be drawn from these Connection Points. OpCo2 is not required to consume electricity in accordance with any Direction:

(C) with which the electricity infrastructure forming part of the Sydney Metro is physically unable to perform; or

(D) if doing so would adversely impact on OpCo2's ability to comply with this deed or its obligations to make electricity available to any tenants at the Stations.

(iv) No later than 6 months prior to commencement of the Operations Phase OpCo2 must use reasonable endeavours to provide to the Principal a reasonably accurate forecast of the Forecast Aggregate Consumption and Forecast Demand Usage (calculated in accordance with the Demand Usage Strategy) through the Connection Points for each Forecast Period during the Operations Phase. OpCo2 must use reasonable endeavours to provide to the Principal a reasonably accurate revised forecast of the Forecast Aggregate Consumption and Forecast Demand Usage (calculated in accordance with the Demand Usage Strategy) by no later than 1 April each year for each Forecast Period during the following Operating Year (taking into account any Directions it has received from the Principal prior to that date). The forecasts must be:

(A) updated by the first Business Day of each Forecast Period for that Forecast Period and all remaining Forecast Periods during that Operating Year;

(B) if requested by the Principal, broken down across such peak, shoulder and off-peak periods as the Principal has notified to OpCo2 (being the relevant periods used by the electricity tariffs of the electricity retailer from which the Principal will be purchasing electricity for Sydney Metro); and

(C) in relation to the Forecast Aggregate Consumption, prepared by the Electricity Consumption Software Model.

(v) OpCo2 must (except in circumstances which are outside OpCo2's control) comply with:

(A) the Demand Usage Strategy (except to the extent that the Demand Usage Strategy is contradicted by a Direction from the Principal); or

(B) a Direction by the Principal,

during a Forecast Period.

(vi) If OpCo2 fails to comply with clause 9.17(b)(v), there will be an adjustment (known as the Energy Deduction) to the Service Payment(s) payable for that Forecast Period in accordance with Schedule 2 (*Service Payment calculation*).

(c) (**Data and audits**): OpCo2 must promptly provide to the Principal such electricity demand and consumption data as is requested by the Principal from time to time, and must participate at no cost in any audit undertaken by or on behalf of the Principal of OpCo2's electricity consumption (in addition to any electricity audits

which OpCo2 is itself required to conduct). the Principal may make available to the public the results of any such audit.

(d) (**No customer connection services**): The Principal does not, and OpCo2 acknowledges that the Principal does not, provide any customer connection services in respect of the Sydney Metro or the ETS Equipment. The Principal is not, and OpCo2 acknowledges that the Principal is not, responsible for:

(i) the connection of the Sydney Metro to the electricity supply network;

(ii) the maintenance of that connection;

(iii) the supply of electricity from the electricity supply network to the Sydney Metro or the ETS Equipment; and

(iv) the quality and other characteristics of electricity supplied.

(e) (**OpCo2's customer connection contracts**): OpCo2 acknowledges that in respect of the Sydney Metro, OpCo2 will have the Electricity Connection Agreements with Ausgrid and Endeavour Energy for the provision of customer connection services to the Sydney Metro under which Ausgrid and Endeavour Energy are responsible for:

(i) the connection of the Sydney Metro to the electricity supply network;

(ii) the maintenance of that connection;

(iii) the supply of electricity from the electricity supply network to the Sydney Metro; and

(iv) the quality and other characteristics of electricity supplied.

(f) (**Principal not liable**): While the Principal is responsible for performing the Electricity Purchase Obligations, as the Principal is not responsible for the connection or supply of electricity to the Sydney Metro:

(i) the Principal does not undertake to provide or maintain any particular quality, voltage, frequency, waveform or system of supply;

(ii) all warranties, terms and conditions (implied by statute or otherwise) in relation to the supply of electricity are, to the extent permitted by law, excluded;

(iii) the Principal is not liable for any loss suffered by OpCo2 as a consequence of any supply or lack of supply of electricity to the Sydney Metro (other than as a result of a breach of the Electricity Purchase Obligation);

(iv) the Principal is not liable for any damage to OpCo2's equipment, or any loss suffered by OpCo2 as a result of the equipment being unsuitable for connection to the supply network; and

(v) the Principal is not responsible for any act, omission or default of Ausgrid or Endeavour Energy or any other person (including a generation entity or a transmission entity) in relation to the connection and supply of electricity to the Sydney Metro;

(vi) OpCo2 must satisfy itself that the electrical capacity of the connection for the Sydney Metro is adequate for OpCo2's purposes, with the Principal having no responsibility or liability in this respect; and

(vii) OpCo2 must ensure that the electrical capacity of the connection for the ETS Equipment is adequate to enable operation of the ETS Equipment in the manner contemplated by this deed.

(g) (**No implied warranties**): To the extent that a warranty, term or condition is implied by the *Competition and Consumer Act 2010* (Cth) or any other statute the exclusion of which would contravene any such statute or cause any part of clause 9.17(f) to be void, the Principal's liability for breach of such warranty, term or condition is limited, at the Principal's option, to refunding the price of the goods or services in respect of which the breach occurred or to providing, replacing or repairing those goods or providing those services again (except for goods or services of a kind ordinarily acquired for personal, domestic or household use or consumption, in respect of which the Principal's liability is not limited under this deed).

(h) (**Interruption to customer connection services**): OpCo2 acknowledges that the provision of customer connection services to the Sydney Metro and the ETS Equipment may be interrupted or limited in certain circumstances in accordance with laws or in accordance with the conditions of any applicable network tariff and that, in circumstances set out in the customer connection contract, Ausgrid and/or Endeavour Energy may disconnect the Sydney Metro and the ETS Equipment.

(i) (**Approvals and obligations under law**):

(i) Without limiting clause 6.1 (*Compliance with laws*), if the Principal, as owner of the Sydney Metro and the ETS Equipment, has obligations under any law relating to electricity, OpCo2 will, until the end of the Operations Phase, perform all obligations and carry out all tasks and activities required for the Principal to comply with the relevant law insofar as it is relevant to the Sydney Metro and the ETS Equipment. The Principal must provide such assistance and cooperation as OpCo2 may reasonably require in order for OpCo2 to ensure that the Principal is in compliance with relevant law. For the avoidance of doubt, it is OpCo2's responsibility to identify all relevant laws.

(ii) Without limiting OpCo2's obligations under clause 9.17(i)(i) and clause 6.2 (*Approvals*), OpCo2 must:

(A) if a network management plan in relation to the electricity infrastructure forming part of the Sydney Metro is required by the Director General of the NSW Department of Industry, develop, implement, maintain and submit to the Principal and, subject to clause 9.17(i)(v), the Director General of the NSW Department of Industry, a network management plan;

(B) perform any obligations imposed on the Principal or OpCo2 in connection with the electrical infrastructure of the Sydney Metro if either or both entities is characterised as a "distribution network service provider" for the purposes of the *Electricity Supply Act 1995* (NSW) (including if the Act is amended to specifically identify the Principal or the owner and/or operator of the Principal's rail network electricity system as a "distribution network service provider" for the purposes of the Act);

(C) prior to carrying out Testing, prepare an application for, and obtain, an exemption from the requirement to register as a distribution network service provider under the National Electricity Law (which forms a Schedule to the *National Electricity (South Australia) Act*

1996 (SA) and which applies in the state of New South Wales under the *National Electricity (NSW) Act 1997*) for the benefit of both the Principal and OpCo2; and

(D) assist the Principal to prepare an application for, and obtain (if needed), an exemption from the requirement to hold a retailer authorisation under the National Energy Retail Law (which forms a Schedule to the *National Energy Retail Law (South Australia) Act 2011* (SA) and which applies in the state of New South Wales under the *National Energy Retail Law (Adoption) Act 2012* (NSW) for the benefit of the Principal.

(iii) OpCo2 must provide the Principal with:

(A) any documents (including any applications for Approvals or changes to Approvals) prepared for the purpose of satisfying OpCo2's obligations under clause 9.17(i)(ii), including the then current version of the network management plan or exemption application (as the case may be) promptly upon request by the Principal; and

(B) an updated version of the network management plan or exemption application within 5 Business Days of any update.

(iv) In relation to electricity, OpCo2 must:

(A) liaise and cooperate with the Principal and any relevant Authority;

(B) provide any reasonable assistance and information required by the Principal or any relevant Authority within any reasonable timeframe required by the Principal (if so specified); and

(C) if required by the Principal or any relevant Authority, procure the attendance of representatives of OpCo2 at the meetings of any Authority in relation to electricity matters.

(v) The Principal may, but is not obliged to, comment on any documents submitted by OpCo2 to the Principal under this clause 9.17 (*Electricity*). OpCo2:

(A) must allow and notify the Principal that it has a period of 20 Business Days or such shorter period as is reasonable in the circumstances having regard to OpCo2's obligations under Legislation, after the date of submission of documents to the Principal (**Review Period**) to review and comment on drafts of the documents;

(B) if the Principal makes any comments on the drafts of the documents within the Review Period, must address the Principal's comments on the documents and promptly resubmit the draft relevant documents to the Principal, whereupon the provisions of this clause 9.17(i)(v) will reapply to such resubmitted documents; and

(C) must not submit the relevant documents to any Authority unless the Review Period has expired without the Principal:

(aa) making any comments on the documents or, if the Principal does provide comments, after OpCo2 has complied with clause 9.17(i)(v)(B); and

(bb) advising that the Principal (rather than OpCo2) will submit the relevant documents to the relevant Authority.

(vi) The Principal appoints OpCo2 to act as the Principal's agent and agrees that OpCo2 may appoint one or more Core Contractors as its sub-agent to the extent:

(A) necessary for OpCo2 to comply with its obligations under this clause 9.17 (*Electricity*); and

(B) that OpCo2 is not entitled by law to comply with such obligations in its own capacity (including in its capacity as a contractor to the Principal).

9.18 **Project Documentation**

OpCo2 warrants that the Project Documentation:

(a) will sufficiently, adequately and accurately document the Sydney Metro, the operation of the Sydney Metro and any interfaces with the Sydney Metro during the Operations Phase and will be capable of sufficiently, adequately and accurately documenting the Sydney Metro, the operation of the Sydney Metro and any interfaces with the Sydney Metro after the Operations Phase;

(b) will be sufficient, adequate and accurate so as to enable the Principal or a third party to operate and maintain the Sydney Metro and otherwise carry out OpCo2's Activities during the Operations Phase and will be capable of being sufficient, adequate and accurate so as to enable the Principal or a third party to operate and maintain the Sydney Metro after the Operations Phase; and

(c) will be fit for its purposes.

For the purposes of this clause 9.18 (*Project Documentation*), the Project Documentation does not include any documentation prepared by or on behalf of any Other Contractor, the ETS Contractor, a Foundation Infrastructure Works Contractor or an OTS Civil Works Contractor.

9.19 **AEO status**

(a) OpCo2 must ensure that it or one or more of its Core Contractors maintain AEO status during the Term in accordance with SPR Appendix 59 (*Authorised Engineering Organisation*).

(b) The parties acknowledge that the O&M Contractor has obtained and maintains AEO status in accordance with the requirements of clause 9.19 (*AEO status*) of the OTS Project Deed and, subject to clause 9.19(c), the O&M Contractor will maintain that AEO status following the OTS Incorporation Date.

(c) For the purpose of fulfilling its obligation under clause 9.19(a), OpCo2 must ensure that the O&M Contractor will continue to maintain AEO status in accordance with SPR Appendix 59 (*Authorised Engineering Organisation*) following the OTS Incorporation Date for the Term.

9.20 **Third Party Agreements**

(a) OpCo2:

(i) acknowledges that it has reviewed and carefully considered the Third Party Agreements (in the forms contained in Exhibit 15 (*Third Party Agreements*)); and

(ii) must comply with its obligations in Schedule 8 (*Requirements of Third Party Agreements*).

(b) The Principal:

(i) has entered into, or intends to enter into, the Third Party Agreements; and

(ii) must:

(A) comply with the obligations set out in the tables in clause 1 (*Sydney Water Interface Agreement*) in Part A of Schedule 8 (*Requirements of Third Party Agreements*);

(B) comply with the obligations set out in the Part B of Schedule 8 (*Requirements of Third Party Agreements*); and

(C) ensure that each party (other than the Principal) to a Third Party Agreement complies with its obligations under that Third Party Agreement.

(c) The parties acknowledge and agree that as at the date of this deed there may be additional Third Party Agreements which the Principal may, in its absolute discretion, enter into (each an **Additional Third Party Agreement**) and the Principal may require amendments to the Third Party Agreements.

(d) Following:

(i) finalisation of any Draft Third Party Agreement;

(ii) the execution of any Additional Third Party Agreement; or

(iii) any amendment to a Third Party Agreement,

after the date of this deed, the Principal must promptly give OpCo2 a copy of the:

(iv) final (and, where applicable, executed) version of the Draft Third Party Agreement or the Additional Third Party Agreement (as applicable);

(v) amended version of the Third Party Agreement; and

(vi) amendments to this deed (if any) (including Schedule 8 (*Requirements of Third Party Agreements*) and the SPR) arising out of the execution of the Draft Third Party Agreement, any Additional Third Party Agreement or any amended Third Party Agreement (as applicable) (**Revised Allocation**).

(e) OpCo2 must carry out its obligations under this deed on the basis of:

(i) the final version of the Draft Third Party Agreement, any Additional Third Party Agreement or any amended Third Party Agreement (as applicable); and

(ii) the Revised Allocation,

and subject to clause 9.20(f), at its own cost, without any extension to the Date for Completion of Phase 1, the Date for Completion of Phase 2, a Milestone Date for

Completion or a Date for Acceptance and without any entitlement to make any other Claim.

(f) To the extent the final version of the Draft Third Party Agreement, any Additional Third Party Agreement or any amended Third Party Agreement imposes greater or different obligations (including with respect to time) on OpCo2 such that:

(i) OpCo2 is no longer able to comply with its obligations under this deed;

(ii) it affects OpCo2's performance against any performance indicator or requirement which could result in a Service Payment Deduction;

(iii) it increases OpCo2's costs of carrying out OpCo2's Activities or causes OpCo2 to incur any loss, in each case other than in a de minimis manner;

(iv) it prevents OpCo2 being granted access to the Construction Site in accordance with the Site Access Schedule (as applicable); or

(v) adversely affects OpCo2's rights of access to or use of the Licensed Maintenance area or access to any Additional Maintained Asset,

the Principal will promptly issue a Modification Impact Request under clause 29.1(a) and clause 29.2 (*Modification Impact Proposal*) will apply and to the extent the final version of the Draft Third Party Agreement, any Additional Third Party Agreement or any amended Third Party Agreement imposes greater or different obligations such that any of the matters referred to in paragraph (f)(i), (ii), (iv) or (v) apply, OpCo2 will be relieved of those greater or different obligations (as applicable) until such time as the Principal issues a Modification Order in respect of the relevant Modification.

(g) Where the Principal issues a Modification Impact Request in accordance with clause 9.20(f), the Principal's right to reject the Modification Impact Proposal in accordance with clause 29.5(b)(iv) or elect not to proceed with the proposed Modification in accordance with clause 29.5(b)(v) will not apply.

(h) Subject to clauses 9.20(c) to 9.20(f), the Principal must not:

(i) make or permit an amendment to, replacement of or waiver of a provision of;

(ii) terminate, surrender, rescind or accept repudiation of;

(iii) except as permitted under the relevant Third Party Agreement, permit the novation, assignment or substitution of any counterparty's right, obligation or interest in; or

(iv) enter into any agreement or arrangement which affects the operation of,

any Third Party Agreement where it may impact the rights or obligations of OpCo2 or the ability of OpCo2 or the Principal to satisfy their obligations under this deed, without OpCo2's prior written consent (which consent will not be unreasonably withheld or delayed).

9.20A **Not used**

9.20B **Not used**

9.20C **Assistance in respect of Over Station Developments**

(a) Without prejudice to clause 12.5 (*Building management statement, strata management statements and section 88B instruments*), OpCo2 must provide all reasonable assistance to the Principal in respect of the Over Station Developments and support the Principal's objective of undertaking such Over Station Developments concurrently with the Project.

(b) In circumstances where any BMS or SMS is no longer registered on title or is no longer contractually binding, OpCo2 must do everything both before and after such occurrence as the Principal may reasonably require to assist and advise the Principal and any prospective over station developer, contractor or nominee of the Principal including the provision of information and records, the provision of access and the entering into of any requisite documents.

9.21 **Sustainability**

(a) OpCo2 must comply with the sustainability requirements set out in the SPR, including those in SPR Appendix 50a (*Sustainability*).

(b) OpCo2 acknowledges and agrees that the TSE Contractor, the Southwest Contractors, the SSJ Contractor and the Line-wide Contractor will each be required to achieve from the Infrastructure Sustainability Council Australia (**ISCA**):

(i) a "Design" rating score of at least 65 for the design of the relevant Foundation Infrastructure Works; and

(ii) an "As Built" rating score of at least 65 for the construction of the relevant Foundation Infrastructure Works.

(c) In order to achieve the ratings referred to in clause 9.21(b), OpCo2 must:

(i) cooperate and liaise with the ISCA, the Principal and the relevant Foundation Infrastructure Works Contractors as required; and

(ii) provide any documentation required by the ISCA, the Principal and the relevant Foundation Infrastructure Works Contractors.

(d) OpCo2 acknowledges and agrees that the CSM Contractor and each City Station Contractor will be required to achieve from the Green Building Council of Australia (**GBCA**):

(i) a "Green Star Design and As Built - Design" rating of at least 5 stars for the design of the City Stations forming part of the CSM Works or the relevant City Stations Works or City Station Design Works (as applicable); and

(ii) a "Green Star Design and As Built - As Built" rating of at least 5 stars for the construction of the City Stations forming part of the CSM Works or the relevant City Stations Works (as applicable).

(e) In order to achieve the ratings referred to in clause 9.21(d), OpCo2 must:

(i) cooperate and liaise with the GBCA, the Principal, the CSM Contractor and the City Station Contractors as required; and

(ii) provide any documentation required by the GBCA, the Principal, the CSM Contractor and the City Station Contractors.

10. NSW CODE AND NSW GUIDELINES

10.1 NSW Code and NSW Guidelines

In addition to terms defined in this deed, terms used in this clause 10 (*NSW Code and NSW Guidelines*) have the same meaning as is attributed to them in the NSW Guidelines. The NSW Code and NSW Guidelines are available at www.industrialrelations.nsw.gov.au.

10.2 Primary obligation

(a) In carrying out OpCo2's Activities, OpCo2 must at all times comply with, and meet any obligations imposed by, the NSW Code and the NSW Guidelines.

(b) OpCo2 must notify the Construction Compliance Unit (**CCU**) and the Principal of any possible non-compliance with the NSW Code and NSW Guidelines and of remedial action taken, within 24 hours of becoming aware of the possible non-compliance.

(c) Where OpCo2 engages a subcontractor or consultant, OpCo2 must ensure that the contract with the subcontractor or consultant imposes on the subcontractor or consultant equivalent obligations to those in this clause 10 (*NSW Code and NSW 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) OpCo2 must not appoint or engage another party in relation to OpCo2's Activities where that appointment or engagement would breach a sanction imposed on the other party in relation to the NSW Code or NSW Guidelines.

10.3 Access and information

(a) OpCo2 must maintain adequate records of compliance with the NSW Code and NSW Guidelines by it and its subcontractors and consultants.

(b) OpCo2 must allow, and take reasonable steps to facilitate, authorised personnel (including personnel of the CCU) to:

(i) enter and have access to sites and premises controlled by OpCo2, including the Construction Site;

(ii) inspect any work, material, machinery, appliance, article or facility;

(iii) access information and documents;

(iv) inspect and copy any record relevant to the project;

(v) have access to personnel; and

(vi) interview any person,

as is necessary for the authorised personnel to monitor and investigate compliance with the NSW Code and NSW Guidelines by OpCo2 and its subcontractors and consultants.

(c) OpCo2 must agree to, and comply with, any request from authorised personnel (including personnel of the CCU) for the production of specified documents by a certain date, whether in person, by post or electronic means.

10.4 **Sanctions**

(a) OpCo2 warrants that, at the time of entering into this deed, neither it, nor any of its Related Bodies Corporate, are subject to a sanction in connection with the NSW Code or NSW Guidelines that would have precluded it from responding to a procurement process for work to which the NSW Code and NSW Guidelines apply.

(b) If OpCo2 does not comply with, or fails to meet any obligation imposed by, the NSW Code or NSW Guidelines, a sanction may be imposed against it in connection with the NSW Code or NSW Guidelines.

(c) Where a sanction is imposed:

(i) it is without prejudice to any rights that would otherwise accrue to the parties; and

(ii) the State (through its agencies, Ministers and the CCU) is entitled to:

(A) record and disclose details of non-compliance with the NSW Code or NSW Guidelines and the sanction; and

(B) take them into account in the evaluation of future procurement processes and responses that may be submitted by OpCo2, or its related entities, in respect of work to which the NSW Code and NSW Guidelines apply.

10.5 **Compliance**

(a) OpCo2 bears the cost of ensuring its compliance with the NSW Code and NSW Guidelines, including in respect of any positive steps it is obliged to take to meet its obligations under the NSW Guidelines. OpCo2 is not entitled to make, and the Principal and the State will not be liable upon, any Claim against the Principal or the State arising out of or in any way in connection with OpCo2's compliance with the NSW Code and the NSW Guidelines.

(b) Compliance with the NSW Code and NSW Guidelines does not relieve OpCo2 from responsibility to perform OpCo2's Activities or any other obligation under this deed, or from liability for any Defect in the OTS2 Works, the Temporary Works or the Sydney Metro or from any other legal liability, whether or not arising from its compliance with the NSW Code and NSW Guidelines.

(c) Where a Modification is proposed that may be likely to affect compliance with the NSW Code and NSW Guidelines, OpCo2 must immediately notify the Principal of:

(i) the extent to which compliance with the NSW Code and NSW Guidelines will be, or is likely to be, affected by the Modification; and

(ii) the steps (if any) OpCo2 proposes to take to mitigate any adverse impact of the Modification (including any amendments it proposes to the Workplace Relations Management Plan).

11. INFORMATION DOCUMENTS AND ENVIRONMENTAL ISSUES

11.1 Physical conditions

(a) (**Examination and investigation**): OpCo2 warrants and for all purposes it will be deemed to be the case that, prior to the date of this deed, OpCo2:

(i) examined this deed (including the SPR), the Sydney Metro Site and its surroundings and any other information that was made available in writing by the Principal or any other person on the Principal's behalf, to OpCo2 or its Associates for the purpose of submitting the CSW Augmentation Proposal;

(ii) examined, and relied solely upon its own assessment, skill, expertise and enquiries in respect of, all information relevant to the risks, contingencies and other circumstances having an effect on the CSW Augmentation Proposal and its obligations under this deed;

(iii) satisfied itself as to the correctness and sufficiency of the CSW Augmentation Proposal and that it has made adequate allowance for the costs of complying with all of its obligations under this deed and of all matters and things necessary for the due and proper performance and completion of OpCo2's Activities;

(iv) informed itself of all matters relevant to the employment of labour and all industrial matters on the Sydney Metro Site;

(v) was given the opportunity prior to submitting the CSW Augmentation Proposal to itself undertake, and to request others to undertake, tests, enquiries and investigations:

(A) relating to the subject matter of the Information Documents; and

(B) for design purposes and otherwise;

(vi) had a sufficient opportunity to obtain and obtained all necessary legal, geotechnical and other technical advice in relation to the terms of this deed, each Deed of Disclaimer, the Information Documents, the Site Conditions, as well as the risks, contingencies and other circumstances having an effect on the CSW Augmentation Proposal, the performance of its obligations and its potential liabilities under this deed; and

(vii) had sufficient access to the Sydney Metro Site, undertook sufficient tests, enquiries and investigations, had sufficient information and obtained a sufficient understanding of the risks involved to enable it to make an informed decision about whether or not to enter into this deed and assume the obligations and potential risks and liabilities which it imposes on OpCo2.

(aa) (**Examination and investigation in respect of Sydney Metro Northwest**) OpCo2 further warrants and for all purposes it will be deemed to be the case that:

(i) prior to the date of this deed, OpCo2:

(A) examined this deed (including the SPR) in respect of its obligations in relation to the Sydney Metro Northwest and any other information that was made available in writing by the Principal or any other person on the Principal's behalf, to OpCo2 or its Associates for the purpose of submitting the CSW Augmentation Proposal;

(B) examined, and relied solely upon its own assessment, skill, expertise and enquiries in respect of, all information relevant to the risks, contingencies and other circumstances in respect of the Sydney Metro Northwest having an effect on the CSW Augmentation Proposal and its obligations under this deed;

(C) satisfied itself as to the correctness and sufficiency of the CSW Augmentation Proposal and that it has made adequate allowance for the costs of complying with all of its obligations under this deed and of all matters and things necessary for the due and proper performance and completion of OpCo2's Activities in respect of the Sydney Metro Northwest;

(D) informed itself of all matters relevant to the employment of labour and all industrial matters on the Sydney Metro Site in respect of the Sydney Metro Northwest; and

(E) had sufficient access to the Sydney Metro Northwest, undertook sufficient tests, enquiries and investigations, had sufficient information and obtained a sufficient understanding of the risks involved to enable it to make an informed decision about whether or not to enter into this deed and assume the obligations and potential risks and liabilities which it imposes on OpCo2 in respect of the Sydney Metro Northwest; and

(ii) on the OTS Incorporation Date, OpCo2 will accept the Sydney Metro Northwest having satisfied itself that it is fit for purpose,

and OpCo2 agrees that, except where expressly provided under this deed, OpCo2 will have no Claim or assert any right whatsoever against the Principal arising out of, or in relation to, the Sydney Metro Northwest.

(b) (**Site Conditions**): Subject to clauses 11A (*Baseline Residual Assets*), 14.11 (*OTS Civil Works Defects*), 14B (*Foundation Infrastructure Works Defects*), 17.9A (*Determination and grant of extension of time –Completion of Phase 1*), 17.10 (*Determination and grant of extension of time –Completion of Phase 2*), 26 (*Compensation Events*), 27 (*Relief Events*) and 28 (*Force Majeure*), OpCo2 is responsible for, and assumes the risk of:

(i) all Loss or delay it suffers or incurs; and

(ii) any adverse effect on the OTS2 Works,

arising out of, or in any way in connection with the Site Conditions encountered in performing OpCo2's Activities.

11.2 **Information Documents**

(a) (**Deeds of Disclaimer**): Prior to the date of this deed, the Deeds of Disclaimer were signed and provided to the Principal in respect of Information Documents provided by the Principal or Transport for NSW to OpCo2.

(b) (**No warranty**): Without limiting clause 11.2(c) or the warranties or acknowledgements in any Deed of Disclaimer:

(i) the Principal does not warrant, guarantee, assume any duty of care or other responsibility for or make any representation about the accuracy, adequacy, suitability or completeness of the Information Documents;

(ii) OpCo2 acknowledges that:

(A) whether or not an Information Document or any part thereof forms an exhibit to this deed, the Information Document or part thereof does not form part of this deed and clause 11.2(c) applies to the Information Document or part thereof; and

(B) where an Information Document or any part thereof forms an exhibit to this deed, it does so only for the purposes of identification of that document or part thereof; and

(iii) the Principal will not be liable upon any Claim by OpCo2 arising out of or in any way in connection with:

(A) the provision of, or the purported reliance upon, or use of the Information Documents to or by OpCo2 or any other person to whom the Information Documents are disclosed; or

(B) a failure by the Principal to provide any information to OpCo2.

(c) (**No reliance**): OpCo2:

(i) warrants that it did not in any way rely upon:

(A) any Information Document or any other information, data, representation, statement or document made, or provided to OpCo2, by the Principal or anyone on behalf of the Principal or any other information, data, representation, statement or document for which the Principal is responsible or may be responsible whether or not obtained from the Principal or anyone on behalf of the Principal; or

(B) the accuracy, adequacy, suitability or completeness of such Information Document or other information, data, representation, statement or document,

for the purposes of entering into this deed or carrying out OpCo2's Activities but nothing in this subparagraph will limit or otherwise affect OpCo2's obligations under this deed;

(ii) warrants that it enters into this deed based on its own investigations, interpretations, deductions, information and determinations; and

(iii) acknowledges that it is aware that the Principal has entered into this deed relying upon:

(A) the warranties, acknowledgements and agreements in clauses 11.2(c)(i) and 11.2(c)(ii); and

(B) the warranties and acknowledgements in the Deeds of Disclaimer and the CSW Augmentation Proposal.

(d) (**Release and indemnity**): OpCo2 releases and indemnifies the Principal from and against:

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

(ii) (without being limited by clause 11.2(d)(i)) any Loss incurred by the Principal,

arising out of or in any way in connection with:

(iii) the provision of, or the purported reliance upon, or use of, the Information Documents to or by OpCo2 or any other person to whom the Information Documents are disclosed by OpCo2 or a failure by the Principal to provide any information to OpCo2;

(iv) any breach by OpCo2 of clause 11.1 (*Physical conditions*) or this clause 11.2 (*Information Documents*); or

(v) the Information Documents being relied upon or otherwise used by OpCo2, or by any other person to whom the Information Documents are disclosed by OpCo2, in the preparation of any information or document, including any Information Document which is "misleading or deceptive" or "false and misleading" (within the meaning of those terms in sections 18 and 29 (respectively) of the Australian Consumer Law in Schedule 2 to the *Competition and Consumer Act 2010* (Cth) or any equivalent provision of State or Territory legislation).

11.3 **Condition of the Sydney Metro Site, Sydney Metro Northwest and structures**

(a) The Principal makes no representations and gives no warranty to OpCo2 in respect of:

(i) the Site Conditions likely to be encountered during the execution of OpCo2's Activities or otherwise in respect of the condition of:

(A) the Sydney Metro Site, Extra Land or their surroundings; or

(B) any structure or other thing on, under, above or adjacent to the Sydney Metro Site or Extra Land;

(ii) the adequacy or suitability of the Sydney Metro Site for the OTS2 PPP;

(iii) the infrastructure of the Sydney Metro Northwest, including the OTS Works;

(iv) the existence, location, condition or availability of Utility Services on, under, above, adjacent to or related to the Sydney Metro Site or Extra Land; or

(v) the feasibility or fitness for purpose of the Stage 1 Design including in respect of the constructability of the Stage 1 Design having regard to the physical conditions and characteristics of the Sydney Metro Site.

(b) Subject to clauses 11A (*Baseline Residual Assets*), 14.11 (*OTS Civil Works Defects*), 14B (*Foundation Infrastructure Works Defects*), 17.9A (*Determination and grant of extension of time – Completion of Phase 1*), 17.10 (*Determination and grant of extension of time – Completion of Phase 2*), 26 (*Compensation Events*), 27 (*Relief Events*) and 28 (*Force Majeure*), OpCo2 accepts:

(i) the Sydney Metro Site and any Extra Land;

(ii) on the OTS Incorporation Date, the Sydney Metro Northwest; and

(iii) any structures or other things on, above or adjacent to, or under the surface of, the Sydney Metro Site and any Extra Land,

in their present condition subject to all defects and Site Conditions and agrees that it is responsible for, and assumes the risk of:

(iv) all Loss, delay or disruption it suffers or incurs; and

(v) any adverse effect on the OTS2 Works, OpCo2's Activities, the Temporary Works, any part of the Foundation Infrastructure Works during the period in which OpCo2 is responsible for them in accordance with clause 14A.11 (*Care and maintenance of Foundation Infrastructure Works*) or the Sydney Metro,

arising out of, or in any way in connection with any defects or Site Conditions encountered in performing OpCo2's Activities.

(c) OpCo2 must investigate, design and construct the OTS2 Works and Temporary Works in accordance with this deed and will not be relieved of its obligations under this deed, irrespective of:

(i) the Site Conditions encountered in performing OpCo2's Activities;

(ii) whatever may be the condition or characteristics (including all sub-surface conditions) of:

(A) the Sydney Metro Site or any Extra Land, the Environment or their surroundings; or

(B) any structure or other thing on, above or adjacent to, or under the surface of, the Sydney Metro Site or any Extra Land, the Environment or their surroundings; and

(iii) any assumptions, projections, estimates, contingencies or otherwise that OpCo2 may have made in relation to the Site Conditions or the conditions or the characteristics of any of the matters referred to in clause 11.3(c)(ii).

11.4 Contamination

In addition to the requirements of the Environmental Documents and without limiting clause 11.3 (*Condition of the Sydney Metro Site, Sydney Metro Northwest and structures*), OpCo2 is responsible for all Contamination on, in, over, under or about the Sydney Metro Site or any Extra Land which:

(a) is disturbed by or interfered with in the carrying out of OpCo2's Activities;

(b) migrates to or from the Sydney Metro Site or any Extra Land as a result of OpCo2's Activities; or

(c) otherwise arises out of or in connection with OpCo2's Activities,

and OpCo2 must:

(d) dispose of, or otherwise deal with, such Contamination in accordance with law and the Environmental Documents;

(e) remediate, to the standard required by law, the Sydney Metro Site and any Extra Land (and any other land to which any Contamination has migrated as contemplated by clause 11.4(b)) to the extent to which:

(i) it is in any way degraded by such Contamination; and

(ii) such Contamination is of such a nature that an Authority could issue a statutory notice requiring it to be remediated; and

(f) except to the extent prohibited by law, indemnify the Principal against any Loss incurred by the Principal arising out of or in any way in connection with such Contamination for which OpCo2 is responsible under clause 11.4(a), 11.4(b) or 11.4(c) or any failure by OpCo2 to comply with any obligation under this deed in connection with such Contamination.

11.5 **Environmental compliance**

OpCo2 must:

(a) (**no improper use of Sydney Metro Site or Extra Land**): not use the Sydney Metro Site or Extra Land, or allow OpCo2 Contractors to use the Sydney Metro Site or Extra Land, so that:

(i) any hazardous chemical is abandoned or dumped on the Sydney Metro Site or Extra Land;

(ii) any hazardous chemical is handled in a manner which is likely to cause an Environmental Hazard; or

(iii) any other substance is released from, deposited to, or emanates from, the Sydney Metro Site or Extra Land such that a state of Contamination occurs;

(b) (**be environmentally responsible**): at all times carry out, and ensure that OpCo2 Contractors carry out, OpCo2's Activities in an environmentally responsible manner, in accordance with Good Industry Practice, and so as to protect the Environment and keep the Sydney Metro Site in a good and safe condition;

(c) (**comply with Environmental laws**): without limiting clause 6 (*Law and Approvals*):

(i) comply with, and ensure that OpCo2 Contractors in performing OpCo2's Activities comply with:

(A) all laws relating to the Environment;

(B) the Planning Approvals; and

(C) all Environmental Notices; and

(ii) obtain and comply with all requirements of, and ensure that OpCo2 Contractors in performing OpCo2's Activities obtain and comply with all requirements of, any Approvals required in order to release or emit anything from the Sydney Metro Site into the air or water or onto the ground or otherwise into the Environment or to emit any substantial noise or vibrations;

(d) (**Corporate Environmental Management System**): have a Corporate Environmental Management System which complies with the law and is otherwise in accordance with the New South Wales Government Environmental Management System Guidelines (3rd Edition) (August 2013);

(e) (**notification**): immediately notify the Principal in writing as soon as OpCo2:

(i) becomes aware of any non-compliance with the requirements of any law or Approval regarding the Environment, or any Environmental Document, in the performing of OpCo2's Activities;

(ii) becomes aware of any information, fact or circumstance where, if the Principal were to be aware of such information, fact or circumstance, the Principal would be required to notify any Authority of that information, fact or circumstance pursuant to any law relating to the Environment (without limiting any other obligation of OpCo2 in relation to the information, fact or circumstances); or

(iii) notifies any Authority of any matter pursuant to any law relating to the Environment, in which case OpCo2 must provide to the Principal a copy of such notification and of any subsequent correspondence with the Authority in relation to the subject of the notification; and

(f) (**indemnity**): indemnify the Principal against any Loss incurred by the Principal arising out of or in any way in connection with an Environmental Notice received by the Principal to the extent that it arises out of or in connection with any Contamination:

(i) for which OpCo2 is responsible under this deed; or

(ii) that occurs as a result of a breach by OpCo2 of this deed.

11.6 **Not used**

11.7 **Environmental Management Plans**

OpCo2:

(a) must prepare the Environmental Management Plans in accordance with the requirements applicable to an "Environmental Management Plan" set out in the New South Wales Government Environmental Management System Guidelines (3rd Edition) (August 2013);

(b) must comply with, and ensure that OpCo2 Contractors in performing OpCo2's Activities comply with, the Environmental Management Plans; and

(c) will not be relieved from compliance with any of its obligations under this deed or from any of its liabilities whether under this deed or otherwise according to law as a result of:

(i) compliance with the Environmental Management Plans;

(ii) any audits or other monitoring by the Principal's Representative of OpCo2's compliance with the Environmental Management Plans; or

(iii) any failure by the Principal's Representative, or anyone else acting on behalf of the Principal, to detect any non-compliance including where any failure arises from any negligence on the part of the Principal's Representative or other person.

11.8 **Liability under the NGER Legislation**

(a) Without limiting any other clause in this deed, OpCo2 acknowledges and agrees that if OpCo2's Activities constitute a "facility" within the meaning of the NGER Legislation, then for the purposes of the NGER Legislation, it has operational control of that facility or facilities and will comply with any obligations arising in respect of OpCo2's Activities under the NGER Legislation.

(b) If, for the purpose of the NGER Legislation, OpCo2 is not taken to have operational control of the facility or facilities referred to in clause 11.8(a):

(i) OpCo2 must comply with any obligations arising under the NGER Legislation in respect of OpCo2's Activities as if it was the person with operational control of such facility or facilities; and

(ii) where section 11B(1) of the *National Greenhouse and Energy Reporting Act 2007* (Cth) applies, OpCo2 agrees that upon written request by the Principal the parties will, for the purposes of the NGER Legislation, jointly nominate OpCo2 as the person with operational control of such facility or facilities (with such nomination continuing until the completion of OpCo2's Activities) and will do all things reasonably necessary to give effect to such nomination (including providing all relevant information and completing and executing all relevant documents and forms).

(c) If, despite the operation of clauses 11.8(a) and 11.8(b), the Principal incurs, or but for this clause would incur, a liability under or in connection with the NGER Legislation as a result of or in connection with OpCo2's Activities, and the NGER Legislation provides:

(i) that such liability can be transferred by the Principal to OpCo2; or

(ii) for a declaration or other mechanism by which OpCo2 can become the person with such liability under the NGER Legislation,

OpCo2 must, upon written request by the Principal, do all things reasonably necessary to achieve such outcome (including providing all relevant information and completing and executing all relevant documents and forms).

11.9 **Provision of Emissions and Energy Data to the Principal**

(a) OpCo2 must provide OpCo2's Emissions and Energy Data to the Principal's Representative:

(i) at such times as may be agreed by the Principal and OpCo2, or, if no such agreement is reached, within 10 Business Days of receiving written notice from the Principal indicating that it requires OpCo2's Emissions and Energy Data to be provided; and

(ii) on each occasion that OpCo2 is required to provide OpCo2's Emissions and Energy Data to an Authority under the NGER Legislation or any other applicable law.

(b) The Principal may use OpCo2's Emissions and Energy Data for any purpose as it sees fit.

11.10 **Reporting Emissions and Energy Data**

(a) This clause 11.10 (*Reporting Emissions and Energy Data*) applies if despite the operation of clause 11.8 (*Liability under the NGER Legislation*), the Principal incurs a liability under or in connection with the NGER Legislation as a result of or in connection with OpCo2's Activities.

(b) OpCo2 must assist the Principal to comply with the NGER Legislation in relation to any aspect of OpCo2's Activities.

(c) Without limiting clause 11.10(b), if the Principal notifies OpCo2 in writing that OpCo2 is required to provide OpCo2's Emissions and Energy Data to the Principal, then OpCo2 must:

(i) provide OpCo2's Emissions and Energy Data to the Principal in the same manner, form and level of detail, based on the same methods and at the same times:

(A) as if OpCo2 were obliged under the NGER Legislation or any other applicable law to provide Emissions and Energy Data to an Authority and the Principal was that Authority;

(B) in accordance with the requirements or approvals of any Authority and any directions given by the Principal; and

(C) without limiting clauses 11.10(c)(i)(A) or 11.10(c)(i)(B), as may be required to enable the Principal:

(aa) to discharge, as and when they fall due, any obligations that it may have to provide OpCo2's Emissions and Energy Data to any Authority; and

(bb) to provide to any Authority any OpCo2's Emissions and Energy Data concerning any greenhouse gas project;

(ii) keep all such OpCo2's Emissions and Energy Data as may be required to enable it to discharge its obligations under clause 11.10(c)(i);

(iii) retain records of its activities that are the basis of OpCo2's Emissions and Energy Data for any financial year, for a period of not less than 7 years from the end of the year in which the relevant activities take place; and

(iv) permit OpCo2's Emissions and Energy Data to be examined, monitored, measured, copied, audited and verified by any persons appointed or authorised for that purpose by the Principal or any Authority, and co-operate with and provide all reasonable assistance to any such persons, including giving access to premises, plant and equipment, producing and giving access to documents (including any records kept and retained under clauses 11.10(c)(ii) and 11.10(c)(iii)) and answering questions.

(d) OpCo2 acknowledges and agrees that:

(i) OpCo2's Emissions and Energy Data is provided to the Principal:

(A) to discharge any obligations that the Principal may have to provide such Emissions and Energy Data to an Authority; and

(B) so that the Principal may provide to any Authority any OpCo2's Emissions and Energy Data concerning any greenhouse gas project;

(ii) the Principal may provide or otherwise disclose OpCo2's Emissions and Energy Data to any Authority; and

(iii) nothing in this clause 11.10 (*Reporting Emissions and Energy Data*) is to be taken as meaning that the Principal has agreed to perform on behalf of OpCo2, any obligation that OpCo2 itself may have under any legislative requirement regarding the provision of Emissions and Energy Data to any Authority (including any obligation under the NGER Legislation).

11A RESIDUAL ASSETS

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

11B **SOUTHWEST TRACK FORMATION**

The parties agree that the process set out in [redacted] will apply with respect to the maintenance and monitoring of the Southwest Track Formation from the Phase 2 Handover Date.

12. **LAND**

12.1 **Construction Site Licence**

(a) OpCo2 acknowledges and agrees that access to the Construction Site will be provided progressively to OpCo2 as set out in the Site Access Schedule and such access is subject to the terms of this clause 12 (*Land*), clause 12A (*Access and handover*) and any other provision of this deed affecting access.

(b) Subject to this clause 12 (*Land*), clause 12A (*Access and handover*) and any other provision of this deed affecting access, the Principal grants to OpCo2 a non-exclusive licence to use and occupy, and to permit OpCo2 Contractors to use and

occupy, the Construction Site for the purpose of performing OpCo2's Activities in accordance with this deed.

(c) The licence referred to in clause 12.1(b):

(i) commences in respect of each part of the Construction Site:

(A) on the Site Access Date for that part of the Construction Site;

(B) if a period is specified in the Site Access Schedule in relation to access to a part of the Construction Site, by the last day of that period; or

(C) on such earlier date in accordance with clause 12A.1(c)(iii), 12A.1(d)(i) or 12A.1(d)(ii);

(ii) subject to clause 12.1(c)(iii), terminates in respect of each part of the Construction Site:

(A) where a Site Access Expiry Date is specified for that part of the Construction Site, on the later of:

(aa) the Site Access Expiry Date for that part of the Construction Site; and

(bb) the date on which OpCo2 vacates that part of the Construction Site in accordance with clause 12.1(g); or

(B) where a Site Access Expiry Date is not specified:

(aa) for that part of the Construction Site for Phase 1, the Date of Completion of Phase 1; and

(bb) for that part of the Construction Site for Phase 2, the Date of Completion of Phase 2; and

(iii) terminates on the termination of this deed.

(d) OpCo2 acknowledges that in general its access to the Construction Site is subject to:

(i) restrictions upon the access, possession and use of the Construction Site (including the terms of any Third Party Agreement as required by Schedule 8 (*Requirements of Third Party Agreements*)) referred to in the Site Access Schedule;

(ii) this clause 12 (*Land*) and clause 12A (*Access and handover*); and

(iii) any other provision of this deed relating to access including clauses 9.12A (*Project Cooperation and Integration Deeds*) and 9.12B (*Cooperation and coordination with Foundation Infrastructure Works Contractor*).

(e) Without prejudice to the generality of clause 12.1(d), OpCo2 acknowledges and agrees that in accessing the Construction Site OpCo2 must comply with:

(i) the Project Cooperation and Integration Deeds;

(ii) the terms of the Third Party Agreements; and

(iii) the appointment and obligations of the Appointed Principal Contractor under clause 9.2 (*Principal Contractor*).

(f) OpCo2 acknowledges and agrees that:

[redacted]

(ii) on and from the relevant OpCo2 Handover (PC) Date, access to the relevant part of the Construction Site or any part thereof will confer on OpCo2 and the Appointed Principal Contractor a right to such management and control of that part of the Construction Site as is necessary to enable OpCo2 to execute OpCo2's Activities in accordance with this deed and to discharge its responsibilities under the WHS Legislation, including for the Appointed Principal Contractor to discharge its responsibilities as principal contractor;

(iii) consistent with clauses 12.1(b), 12.1(d) and 12.1(e) the Principal is not obliged to provide, and OpCo2 may not be given, exclusive use or occupation to or possession of any part of the Construction Site;

(iv) the Principal is not obliged to carry out any work or provide any facilities to OpCo2 which may be necessary to enable OpCo2 to obtain access to any part of the Construction Site or carry out OpCo2's Activities;

(v) the Principal, without limiting its obligations under clauses 9.11 (*Cooperation and coordination with Other Contractors*) 9.12A (*Project Cooperation and Integration Deeds*) and 9.12B (*Cooperation and coordination with Foundation Infrastructure Works Contractors*), has engaged or may engage Other Contractors and the Foundation Infrastructure Works Contractors to work or operate upon or in the vicinity of the Construction Site and Extra Land at the same time as OpCo2; and

(vi) it will cooperate with the Other Contractors and the Foundation Infrastructure Works Contractors and coordinate OpCo2's Activities with the work or operations of any Other Contractors and the Foundation Infrastructure Works Contractors in accordance with clauses 9.11 (*Cooperation and coordination with Other Contractors*) 9.12A (*Project Cooperation and Integration Deeds*) and 9.12B (*Cooperation and coordination with Foundation Infrastructure Works Contractors*).

(g) If, prior to the termination of the Construction Site Licence for part of the Construction Site, OpCo2 requires access to that part of the Construction Site to continue after the Site Access Expiry Date in order to carry out the Delivery Activities, OpCo2 must:

(i) use its reasonable endeavours to notify the Principal:

(A) as soon as practicable; and

(B) in any event no less than 40 Business Days,

prior to the Site Access Expiry Date:

(C) that OpCo2 requires access to that part of the Construction Site after the Site Access Expiry Date; and

(D) of the date on which OpCo2 will vacate that part of Construction Site;

(ii) continue to use its reasonable endeavours to notify the Principal every 20 Business Days of the date on which OpCo2 will vacate that part of the Construction Site until OpCo2 vacates that part of the Construction Site; and

(iii) use its best endeavours to vacate that part of the Construction Site as soon as practicable after the Site Access Expiry Date.

(h) OpCo2 is responsible for gaining access to and from the Construction Site and, except as expressly provided in this deed, will not be entitled to make any Claim against the Principal in connection with access, or failure to gain or delay in gaining access, to and from the Construction Site.

(i) OpCo2:

(i) must access the Construction Site only at the points of entry and exit and via the routes set out in the Environmental Documents; and

(ii) bears the risk of coordinating its access to the Construction Site with any other person that uses the access ways to the Construction Site.

(j) OpCo2 must comply with the Easements and the terms of any easements, restrictions on use, covenants, agreements, leases, licences or other similar arrangements burdening or benefiting the land contained in the Construction Site that are identified in Exhibit 10 (*Land dealings*).

(k) OpCo2 must not use the Construction Site, or permit it to be used, for any purpose other than OpCo2's Activities, without the Principal's prior consent.

12.2 **Not used**

12.3 **Licence to use Licensed Maintenance Area and to access Additional Maintained Assets**

(a) The Principal grants to OpCo2 a non-exclusive licence to use and occupy and to permit:

(i) OpCo2 Contractors to use and occupy the Licensed Maintenance Area for the purpose of performing OpCo2's Activities; and

(ii) OpCo2 Contractors and OpCo to use and occupy the Licensed Maintenance Area to carry out the Commercial Opportunities.

(b) The Principal grants to OpCo2 a non-exclusive licence to access, and to permit OpCo2 Contractors to access, the Additional Maintained Assets for the purpose of performing Operations Activities in relation to Additional Maintained Assets:

(i) only to the extent the Principal and its authorised persons are permitted to do so under; and

(ii) subject to and in accordance with the terms of,

any Existing Land Arrangements, Easements or Land Arrangements concerning, benefiting or burdening any Additional Maintained Assets.

(c) These licences:

(i) with respect to the Licensed Maintenance Area (Northwest) and the Licensed Maintenance Area (City), commence on the Date of Completion of Phase 1;

(ii) with respect to the Licensed Maintenance Area (Southwest), commence on the Date of Completion of Phase 2; and

(iii) terminate on the earlier of:

(A) the Expiry Date; and

(B) the termination of this deed.

(d) The rights conferred by these licences are personal rights in contract only and do not create any tenancy or any estate or interest in the Licensed Maintenance Area or any land on which any Additional Maintained Assets are located and in any event does not arise until the dates referred to in clause 12.3(c).

12.3A **Licensed Maintenance Area**

(a) The Principal and OpCo2 acknowledge that:

(i) the Licensed Maintenance Area (Northwest) shown in SPR Appendix 3 (*Licensed Maintenance Area*) at the date of this deed is based on the Northwest Final Design Documentation;

(ii) the Licensed Maintenance Area (City) and the Licensed Maintenance Area (Southwest) are based on the Stage 1 Design;

(iii) the Design Documentation will be developed and finalised in accordance with clause 13 (*Design*);

(iv) the OTS2 Works will be constructed in accordance with the Design Documentation that OpCo2 is entitled to use for construction purposes under clause 13.10(a) and otherwise in accordance with this deed; and

(v) the location of:

(A) the Sydney Metro Northwest when constructed may differ from the Northwest Final Design Documentation; and

(B) the Sydney Metro City, the Sydney Metro Southwest and the Assets when constructed may differ from the Stage 1 Design,

and changes may be required to the Licensed Maintenance Area as a result.

(b) Prior to the Date of Completion of Phase 1, the Principal and OpCo2 will review the Licensed Maintenance Area (Northwest) and the Licensed Maintenance Area (City) shown in SPR Appendix 3 (*Licensed Maintenance Area*) and either party may propose changes to the Licensed Maintenance Area (Northwest) and the Licensed Maintenance Area (City) by notice in writing to the other party.

(ba) Prior to the Date of Completion of Phase 2, the Principal and OpCo2 will review the Licensed Maintenance Area (Southwest) shown in SPR Appendix 3 (*Licensed Maintenance Area*) and either party may propose changes to the Licensed Maintenance Area (Southwest) by notice in writing to the other party.

(c) The Principal must consent to a change proposed by OpCo2 to add land to the Licensed Maintenance Area if:

(i) the additional land is necessary for the maintenance and operation of the Sydney Metro or the ability of OpCo2 to undertake the OTS2 PPP in accordance with the Project Agreements;

(ii) the Principal is the owner of the estate in fee simple of the additional land; and

(iii) there are no inconsistent interests in the additional land.

(d) OpCo2 must consent to a change to the Licensed Maintenance Area proposed by the Principal unless that change would have a material and adverse effect on the maintenance or operation of the Sydney Metro or the ability of OpCo2 to undertake the OTS2 PPP in accordance with the Project Agreements.

12.4 **Existing Land Arrangements, Easements, Land Arrangements, Retail Licences and advertising**

Provisions regarding Existing Land Arrangements, Easements, Land Arrangements, Retail Licences and advertising in respect of the Licensed Maintenance Area and the Additional Maintained Assets are set out in Schedule 9 (*Easements, Land Arrangements and Retail Licences*).

12.5 **Building management statements, strata management statements and section 88B instruments**

(a) OpCo2 acknowledges that it has reviewed and considered each BMS, SMS and Section 88B Instrument (in the forms contained in Exhibit 20 (*Form of BMS, SMS and Section 88B Instruments*)) and must comply with the obligations specified in Schedule 8A (*Requirements of BMS, SMS and Section 88B Instruments*).

(aa) The Principal may notify OpCo2 of any changes to Schedule 8A *(Requirements of BMS, SMS and Section 88B Instruments)* whether arising from a change to any BMS, SMS or Section 88B Instrument or otherwise and following such notice, OpCo2 must comply with the obligations contained in such revised Schedule 8A *(Requirements of BMS, SMS and Section 88B Instruments)*.

(b) Without limiting clauses 12.5(a) and 12.5(aa), OpCo2 must:

(i) refrain from breaching;

(ii) to the extent an obligation is imposed on the Station Lot Owner (as defined in the relevant BMS, SMS or Section 88B Instrument), on the Principal as grantee or grantor under a Section 88B Instrument or on an Occupier (as defined in the relevant BMS, SMS or Section 88B Instrument) of the Construction Site or the Licensed Maintenance Area or on an occupier of land or a contractor who accesses any Additional Maintained Assets, comply with any obligation under; and

(iii) not do, or allow anything to be done, which would cause the Principal or any Related Body Corporate of the Principal to be in breach of any of its obligations under,

any:

(iv) BMS;

(v) SMS;

(vi) Section 88B Instrument;

(vii) building management statement or strata management statement to which the Principal or any Related Body Corporate of the Principal is a member as at the date of this deed; or

(viii) section 88B instrument under which the Principal or any Related Body Corporate of the Principal is grantee or grantor as at the date of this deed.

(ba) The Principal must promptly provide OpCo2 with any new, or changes to any such, BMS, SMS, Section 88B Instrument or existing building management statements, strata management statements or section 88B instruments.

(c) If:

(i) any BMS, SMS, Section 88B Instrument, building management statement, strata management statement or section 88B instrument to which the Principal or any Related Body Corporate of the Principal is (or becomes) a member, grantee or grantor provides for the registration of one or more stratum plans or strata plans in respect of any Over Station Development or building the subject of (or contemplated by) that BMS, SMS, Section 88B Instrument, building management statement, strata management statement or section 88B instrument; and

(ii) otherwise if requested by the Principal,

OpCo2 will do everything necessary to, if required for the purpose of registration on title, sign any stratum plan or strata plan or strata management statement (or related documents) contemplated by that BMS, SMS, Section 88B Instrument, building management statement, strata management statement or section 88B instrument (as may be varied or replaced from time to time).

(d) OpCo2 will, if required by the Principal, procure the consent of any of OpCo2's mortgagees and licensees to any of the documents referred to in clause 12.5(c) without unreasonable delay.

12.6 **Native Title Claims**

(a) If there is a Native Title Claim with respect to the Sydney Metro Site or any part of the Sydney Metro Site, OpCo2 must:

(i) continue to perform OpCo2's Activities, except to the extent otherwise:

(A) directed by the Principal's Representative;

(B) ordered by a court or tribunal; or

(C) required by law; and

(ii) at the request of the Principal, or if required to do so under any law or by order of a court or tribunal, provide all reasonable assistance in connection with dealing with the Native Title Claim (including giving the Principal and any other persons authorised by the Principal access to the Sydney Metro Site or that part of the Sydney Metro Site which is the subject of the Native Title Claim when reasonably required by the Principal for that purpose).

(b) For the purposes of clause 12.6(a)(i)(A), the Principal may by written notice direct OpCo2 to suspend performance of any or all of OpCo2's Activities until such time as the Principal gives OpCo2 further notice.

12.7 **Artefacts**

(a) All Artefacts found on or under the surface of the Sydney Metro Site will, as between the parties, be the absolute property of the Principal.

(b) Where such an Artefact is found, OpCo2 must:

(i) immediately notify the Principal's Representative;

(ii) ensure that the Artefact is protected and not disturbed further;

(iii) comply with all requirements of Authorities and any Directions of the Principal's Representative in relation to the Artefact; and

(iv) continue to perform OpCo2's Activities, except to the extent otherwise:

(A) directed by the Principal's Representative;

(B) ordered by a court or tribunal; or

(C) required by law.

12.8 **Working hours**

Unless otherwise agreed between OpCo2 and the Principal's Representative, the hours of work applicable to OpCo2's Activities to be carried out on the Sydney Metro Site are those permitted by relevant law and relevant Authorities.

12.9 **Extra Land**

(a) OpCo2 must procure for itself and at its own cost the occupation or use of or relevant rights over any land or buildings in addition to the Sydney Metro Site which is necessary or which it requires for the execution of OpCo2's Activities.

(b) As a condition precedent to Final Completion of Phase 1 and Final Completion of Phase 2, OpCo2 must:

(i) rehabilitate any Extra Land as applicable to the relevant Phase in accordance with the requirements of all relevant Authorities and any owner, occupier and any other relevant persons having an interest in the land; and

(ii) provide to the Principal's Representative:

(A) a properly executed release, on terms satisfactory to the Principal's Representative, from all Claims from the owner or occupier of, and from any other persons having an interest in, such Extra Land; or

(B) if OpCo2 is unable to obtain such a release, despite using best endeavours to do so, a statement signed by OpCo2 to the effect that, such owner or occupier or other person having an interest in Extra Land, has failed or refused to execute such a release within 15 Business Days of it being provided by OpCo2 to the owner, occupier or other person following completion of the work on the Extra Land.

(c) OpCo2 must indemnify the Principal against any Loss incurred by the Principal in connection with a claim by the owner or occupier of any part of the Extra Land where:

(i) the owner or occupier has not executed such a release; or

(ii) the claim arises out of or in connection with OpCo2's Activities.

(d) OpCo2 acknowledges that:

(i) integration of the requirements for access to Extra Land is at the sole risk of OpCo2; and

(ii) the Principal will not be liable upon any Claim by OpCo2 arising out of or in any way in connection with:

(A) identifying and obtaining access to Extra Land; or

(B) any delay, additional costs or other effects on OpCo2's Activities related to the ability of OpCo2 or OpCo2 Contractors to obtain access to Extra Land or integrate such Extra Land with the Sydney Metro Site.

12.10 Permitted use

OpCo2 must not:

(a) undertake the OTS2 Works such that the final location of such works is outside the Project Site; or

(b) undertake the Temporary Works outside the Construction Site.

12.11 Temporary Areas

OpCo2 must, as a condition precedent to Final Completion of Phase 1 or Final Completion of Phase 2, as applicable, reinstate the Temporary Areas to a condition at least equivalent to the condition existing before that occupation or use.

12A ACCESS AND HANDOVER

12A.1 Early access

(a) The Principal's Representative must give OpCo2:

(i) 6 months;

(ii) 3 months;

(iii) 1 month; and

(iv) 1 week,

prior notice of the estimated date that part of the Construction Site will achieve the specified degrees of activities completion set out in the Site Access Schedule.

(b) If the Foundation Infrastructure Works Portion forming part of the Construction Site has achieved the specified degrees of activities completion set out in the Site Access Schedule earlier than the Site Access Date for that Foundation Infrastructure Works Portion, the Principal's Representative may (but is not obliged

to) give written notice offering OpCo2 access to the relevant part of the Construction Site from a specified date prior to the Site Access Date.

(c) Subject to clause 12A.1(ca), if the date specified in the notice given by the Principal's Representative pursuant to clause 12A.1(b) is:

(i) on or later than the Early Site Access Date; and

(ii) earlier than the Site Access Date,

for the part of the Construction Site on which the Foundation Infrastructure Works Portion is located:

(iii) OpCo2 must accept the relevant part of the Construction Site from the date specified in the notice given by the Principal's Representative pursuant to clause 12A.1(b); and

(iv) the licence under clause 12.1(b) will commence with respect to the relevant part of the Construction Site from the date specified in the Principal's Representative's notice.

(ca) If the Principal's Representative issues a notice to OpCo2 pursuant to clause 12A.1(b), the Principal will be deemed to have also issued a notice under clause 29.1(a)(i) and clause 29 (*Principal initiated Modification*) will apply to determine the amount for the Early Site Access Payment.

(d) If:

(i) the parties agree the Early Site Access Payment and a corresponding Modification Order is issued pursuant to clause 29 (*Principal initiated Modification*); or

(ii) the Principal directs a Modification Order pursuant to clause 29 (*Principal initiated Modification*),

OpCo2 must accept the offer of early access by written notice, in which case the licence under clause 12.1(b) will commence with respect to the relevant part of the Construction Site from the date specified in the Principal's Representative's notice or such other date as may be agreed by the parties.

(e) If OpCo2 accepts any part of the Construction Site earlier than the Site Access Date in accordance with clause 12A.1(c)(iii), 12A.1(d)(i) or 12A.1(d)(ii), then the Principal will pay OpCo2 the Early Site Access Payment for each day during the period:

(i) commencing on the date the licence under clause 12.1(b) will commence for the relevant part of the Construction Site pursuant to clause 12A.1(d); and

(ii) ending on the Site Access Date for the relevant part of the Construction Site.

12A.2 **Interim Access**

(a) The Principal will notify OpCo2 when a part of the Foundation Infrastructure Works Site is Accessible. Such notice must:

(i) set out the date on which the relevant part of the Foundation Infrastructure Works Site is, or will be, Accessible;

(ii) state whether the Principal anticipates that the relevant part of the Foundation Infrastructure Works Site will cease to be Accessible at any point following the date set out in paragraph (i); and

(iii) where paragraph (ii) applies, the minimum period for which the relevant part of the Foundation Infrastructure Works Site will remain Accessible.

(aa) Within 10 Business Days of receiving a copy of the notice under clause 12A.2(a) OpCo2 may provide detailed reasons as to why it does not propose to make use of such area, including:

(i) if the condition of the Foundation Infrastructure Works Site is not Accessible;

(ii) if the relevant part of the Foundation Infrastructure Works Site has not achieved the relevant specified degree of activities completion and use by OpCo2 would require it to incur costs and expense which are materially in excess of those it would have incurred if that part of the Foundation Infrastructure Works Site had achieved the relevant specified degree of completion;

(iii) if the timing or duration of the period which the relevant part of the Foundation Infrastructure Works Site was Accessible was objectively insufficient to make worthwhile and efficient use of the Accessible part;

(iv) if the subsequent work required to be carried out by the relevant Foundation Infrastructure Works Contractor to finalise any incomplete Foundation Infrastructure Work poses a risk of damage, other than accidental damage, to the OTS2 Works; and

(v) if the Principal's notice of the date the relevant part of the Foundation Infrastructure Works is or will be Accessible does not provide sufficient advance notice, having regard to the resources, materials and personnel ready and available to complete works in such location.

(b) Subject to clauses 12.1(d), 12.1(e) and 12.1(f), the Principal grants to OpCo2 a non-exclusive licence to use and occupy, and to permit OpCo2 Contractors to use and occupy, that part of the Foundation Infrastructure Works Site as notified by the Principal under clause 12A.2(a) for the purpose of performing OpCo2's Activities during an Interim Access Period.

(c) Without limiting OpCo2's rights or obligations under the Master Interface Protocols Deed Poll or the Project Cooperation and Integration Deeds, OpCo2:

(i) acknowledges that during an Interim Access Period:

(A) OpCo2's Activities interface with the Foundation Infrastructure Works; and

(B) the Foundation Infrastructure Works Contractors may be executing work on parts of, or adjacent to, the Foundation Infrastructure Works Site, at the same time as OpCo2 is performing OpCo2's Activities;

(ii) must at all times during an Interim Access Period:

(A) fully co-operate with the Foundation Infrastructure Works Contractors;

(B) carefully coordinate and interface OpCo2's Activities with the Foundation Infrastructure Works; and

(C) perform OpCo2's Activities so as to minimise any interference with or disruption or delay to the Foundation Infrastructure Works; and

(iii) must promptly advise the Principal's Representative of all matters arising out of OpCo2's access to any part of the Foundation Infrastructure Works Site during an Interim Access Period that may have an adverse effect upon OpCo2's Activities.

(d) OpCo2 agrees that, except where expressly provided under this deed, OpCo2 will have no Claim or assert any right whatsoever against the Principal arising out of, or in relation to, OpCo2 accessing any part of the Foundation Infrastructure Works Site during an Interim Access Period.

12A.3 **Early completion of the Foundation Infrastructure Works for Phase 1**

(a) The Principal's Representative must give OpCo2:

(i) 6 months;

(ii) 3 months;

(iii) 1 month; and

(iv) 1 week,

prior notice of the estimated CSM Date of Completion, each City Station Date of Completion and Line-wide Date of Construction Completion of Line-wide Portion 3.

(b) If the CSM Date of Completion, a City Station Date of Completion or Line-wide Date of Construction Completion of Line-wide Portion 3 (as applicable) is earlier than [redacted] the Principal's Representative may (but is not obliged to) give written notice offering to handover:

(i) the Construction Site for Phase 1 excluding the City Stations, the Sydney Metro Trains Facility (North) and the Sydney Metro Trains Facility (South);

(ii) a City Station; or

(iii) the Sydney Metro Trains Facility (South),

from a specified date.

(ba) If the Principal's Representative issues a notice to OpCo2 pursuant to clause 12A.3(b), the Principal will be deemed to have also issued a notice under clause 29.1(a)(i) and clause 29 (*Principal initiated Modification*) will apply to the extent applicable to determine the amount for the Early Handover Payment which will be based on the Schedule of Rates.

(c) Subject to clause 12A.3(ca), if the date specified in the notice given by the Principal's Representative pursuant to clause 12A.3(b):

(i) is earlier than [redacted] and

(ii) the Principal's Representative has provided notice of the estimated CSM Date of Completion, City Station Date of Completion or Line-wide Date of

Construction Completion of Line-wide Portion 3 (as applicable) in accordance with clause 12A.3(a),

for the part of the Construction Site set out in the Principal's notice pursuant to clause 12A.3(b):

(iii) OpCo2 must accept the relevant part of the Construction Site from the date specified in the notice given by the Principal's Representative pursuant to clause 12A.3(b); and

(iv) OpCo2 will become responsible for the care and maintenance of a Foundation Infrastructure Works Portion in accordance with clause 14A.11 (*Care and maintenance of Foundation Infrastructure Works*) from the date specified in the Principal's Representative's notice given under clause 12A.3(b).

(ca) OpCo2 is not required to accept early handover pursuant to clause 12A.3(c)(iii) of:

(v) the Construction Site for Phase 1 (excluding the City Stations, the Sydney Metro Trains Facility (North) and the Sydney Metro Trains Facility (South)) unless all the City Stations have been handed over;

(vi) the Sydney Metro Trains Facility (South) unless:

(A) the Sydney Metro Trains Facility (South) is operationally ready including the OCC being able to conduct power switching; and

(B) Line-wide Portion 2 has achieved Line-wide Construction Completion; and

(vii) any part of the Construction Site set out in the Principal's notice pursuant to clause 12A.3(b) unless:

(A) the parties agree the Early Handover Payment and a corresponding Modification Order is issued pursuant to clause 29 (*Principal initiated Modification*); or

(B) the Principal directs a Modification Order pursuant to clause 29 (*Principal initiated Modification*).

(d) If OpCo2 accepts handover of any part of the Construction Site for Phase 1 earlier than [redacted] in accordance with clause 12A.3(c)(iv), then the Principal will pay OpCo2 the Early Handover Payment for each day during the period:

(i) commencing on the date OpCo2 will become responsible for the care and maintenance of a Foundation Infrastructure Works Portion in accordance with clause 14A.11 (*Care and maintenance of Foundation Infrastructure Works*) pursuant to clause 12A.3(c)(iii); and

(ii) ending on [redacted] for the relevant part of the Construction Site.

12A.3A **Early completion of the Foundation Infrastructure Works for Phase 2**

[redacted]

[redacted]

[redacted]

12A.4 **Disputes between OpCo2 and Foundation Infrastructure Works Contractors**

(a) If, despite OpCo2 having complied with all of its obligations in clause 9.12B (*Cooperation and coordination with Foundation Infrastructure Works Contractors*) and under the Master Interface Protocols Deed Poll and the Project Cooperation and Integration Deeds, OpCo2 and any Foundation Infrastructure Works Contractor fail to resolve any interface issue or dispute between them after having raised the relevant issue or dispute at the relevant Functional Integration Group under the Master Interface Protocols Deed Poll, OpCo2 must:

(i) promptly give the Principal's Representative written notice of any interface issue or dispute with any Foundation Infrastructure Works Contractor (with a copy to the Foundation Infrastructure Works Contractor); and

(ii) to the extent the relevant dispute gives rise to a risk referred to in clause 45.3(d), report on the Early Warning Notification as contemplated by clause 45.3(d).

(b) Following receipt of OpCo2's notice under clause 12A.4(a):

(i) the Principal's Representative must convene a meeting between OpCo2, the relevant Foundation Infrastructure Works Contractor and any other relevant person (as reasonably determined by the Principal's Representative);

(ii) the Principal's Representative must work in good faith with OpCo2 and the relevant Foundation Infrastructure Works Contractor to resolve the issue or dispute; and

(iii) OpCo2 must work in good faith with the Principal's Representative and the relevant Foundation Infrastructure Works Contractor to resolve the issues or dispute.

12A.4A **Breach by Foundation Infrastructure Works Contractor**

[redacted]

[redacted]

[redacted]

[redacted]

12A.7 **Access by Foundation Infrastructure Works Contractors**

From the OpCo2 Handover (PC) Date, OpCo2 must provide each Foundation Infrastructure Works Contractor (and any person authorised by a Foundation Infrastructure Works Contractor) with such access to the relevant part of the Sydney Metro Site as may be required by the Foundation Infrastructure Works Contractor, in order to meet its obligations under the Master Interface Protocols Deed Poll and each Project Cooperation and Integration Deed and:

(a) in the case of the TSE Contractor, the TSE Deed;

(b) in the case of the CSM Contractor, the CSM Contract;

(c) in the case of a Southwest Contractor, the relevant Southwest Contract;

(d) in the case of the SSJ Contractor, the SSJ Contract;

(e) in the case of a City Station Contractor, the relevant City Station Contract;

(f) in the case of the Line-wide Contractor, the Line-wide Contract; and

(g) in the case of the PSD/MGF Contractor, the PSD/MGF Contract,

including:

(h) the rectification of any Foundation Infrastructure Works Known Defect during the applicable Known Defects Rectification Period;

(i) the rectification of any Foundation Infrastructure Works Defect pursuant to clause 14B.2(d)(vi);

(j) not used; and

(k) to undertake Post Construction Completion Activities or Post Construction Activities (as applicable) (as those terms are defined in the relevant Foundation Infrastructure Works Contract) in accordance with the relevant contract,

subject to the Foundation Infrastructure Works Contractors complying with OpCo2's site access and work, health and safety procedures in accordance with the Master Interface Protocols Deed Poll and Project Cooperation and Integration Deeds.

12A.8 **Foundation Infrastructure Works Contractors to minimise disruption**

From the OpCo2 Handover (PC) Date, the Principal must ensure that each Foundation Infrastructure Works Contractor carries out its activities on any part of the Sydney Metro Site which OpCo2 is occupying pursuant to clause 12.1 (*Construction Site Licence*) or 12.3 (*Licence to use Licensed Maintenance Area and to access Additional maintained Assets*) so as to minimise any disruption, interference or adverse impact (including OpCo2 incurring Loss) on or to, and without unreasonably disrupting or interfering with, or adversely impacting on, OpCo2's Activities.

12A.9 **LV Power On**

(a) The parties agree that the Principal may substitute any of the Sydney Metro City locations set out in the table at section 1.2 of Part E of Exhibit 2 (*Site Access Schedule*) (**LV Power On Table**) with another Sydney Metro City location in accordance with this clause 12A.9 (*LV Power On*).

(b) The Principal may, at any time and with written notice to OpCo2 substitute:

(i) one of the Sydney Metro City locations set out in the LV Power On Table (**Affected Location**); and

(ii) the corresponding LV power on date (**Affected Power On Date**),

with:

(iii) another Sydney Metro City location set out in the LV Power On Table (**Substituted Location**); and

(iv) its corresponding LV power on date (**Substituted Power On Date**),

such that the Affected Location will have the Substituted Power On Date, and the Substituted Location will have the Affected Power On Date (**Substitution**) and provided that:

(iii) the Principal's notice under this clause 12A.9(b) is given to OpCo2 at least 30 days (or a lesser period as the parties may agree) prior to the Affected Power On Date;

(iv) the Principal may effect the Substitution of a location more than once; and

(v) the effect of any Substitution is that the energisation of the LV power supply system from a reliable source (including HV/LV services transformers and LV incoming cables) to enable OpCo2 to carry out required testing and commissioning of those parts of the OTS2 Works that require LV power supply must be completed at:

(A) 5 locations by [redacted]

(B) 9 locations by [redacted] and

(C) 12 locations by [redacted]

12A.10 **Principal Adjustment Dates**

(a) The parties agree that an Adjustment Date may be extended in accordance with this clause 12A.10 (*Principal Adjustment Dates*).

(b) The Principal:

(i) may at any time extend an Adjustment Date by providing written notice to OpCo2 at least 10 Business Days (or a lesser period as the parties may agree) prior to the applicable Adjustment Date; and

(ii) must, if clause 12A.10(b)(i) applies, use reasonable endeavours to notify OpCo2 at least 10 Business Days before the Principal provides the notice under clause 12A.10(b)(i) and consult OpCo2 prior to determining the period of extension of an Adjustment Date.

(c) The Principal may extend an Adjustment Date more than once.

(d) If:

(i) Adjustment Date 1 has occurred and the Line-wide Contractor has failed to achieve completion of the overhead wire energisation from Sydenham Station to Campsie Station (including Campsie turnback);

(ii) Adjustment Date 2 has occurred and the Line-wide Contractor has failed to achieve completion of the overhead wire energisation from Belmore Station to Bankstown Station;

(iii) Adjustment Date 3 has occurred and the Foundation Infrastructure Works Contractors have failed to achieve completion of all systems integration acceptance tests and certification between each component of the Foundation Infrastructure Works with respect to the Sydney Metro Southwest, including all mechanical gap fillers with the platform screen doors and the obstacle detection system from Sydenham Station to Campsie Station (including Campsie turnback); or

(iv) Adjustment Date 4 has occurred and the Foundation Infrastructure Works Contractors have failed to achieve completion of all systems integration acceptance tests and certification between each component of the Foundation Infrastructure Works with respect to the Sydney Metro Southwest, including all mechanical gap fillers with the platform screen doors and the obstacle detection system from Belmore Station to Bankstown Station,

and the Principal has not issued a notice to OpCo2 to extend the relevant Adjustment Date in accordance with clause 12A.10(b), then the relevant Adjustment Date will be deemed to be extended until:

(v) with respect to Adjustment Date 1, the Line-wide Contractor has achieved completion of the overhead wire energisation from Sydenham Station to Campsie Station (including Campsie turnback);

(vi) with respect to Adjustment Date 2, the Line-wide Contractor has achieved completion of the overhead wire energisation from Belmore Station to Bankstown Station;

(vii) with respect to Adjustment Date 3, the Foundation Infrastructure Works Contractors have achieved completion of all systems integration acceptance tests and certification between each component of the Foundation Infrastructure Works with respect to the Sydney Metro Southwest, including all mechanical gap fillers with the platform screen doors and the obstacle detection system from Sydenham Station to Campsie Station (including Campsie turnback); and

(viii) with respect to Adjustment Date 4, the Foundation Infrastructure Works Contractors have achieved completion of all systems integration acceptance tests and certification between each component of the Foundation Infrastructure Works with respect to the Sydney Metro Southwest, including all mechanical gap fillers with the platform screen doors and the obstacle detection system from Belmore Station to Bankstown Station,

provided that the period of any deemed extension under this clause 12A.10(d) may never be greater than the Remaining Adjustment Period. As a result, if any of the scenarios in clauses 12A.10(d)(i), (ii), (iii) or (iv) occur and the Remaining Adjustment Period is zero then the relevant Adjustment Date will not be deemed to be extended. In the event that more than one of the scenarios in clauses 12A.10(d)(i), (ii), (iii) or (iv) occur concurrently, then the Principal must by written

notice to OpCo2 elect how the Remaining Adjustment Period is to be allocated between the relevant Adjustment Dates.

(e) The number of days by which Adjustment Date 1, Adjustment Date 2. Adjustment Date 3 and Adjustment Date 4 may be extended pursuant to this clause 12A.10 (*Principal Adjustment Dates*) is limited to [redacted] days minus the number of days by which the Principal has applied to reduce any extension of time that would otherwise have been granted as referred to in clause 29.2(ea)(iii)(B) in aggregate.

[redacted]

[redacted]

[redacted]

[redacted]

13. DESIGN

13.1 Design obligations

OpCo2 must design the OTS2 Works, the Temporary Works and any works carried out as part of the Operations Activities in accordance with:

(a) the SPR;

(b) any Modification:

(i) directed by the Principal by a Modification Order; or

(ii) approved by the Principal by a Modification Approval; and

(c) the other requirements of this deed.

13.2 Reference Design and Stage 1 Design

(aa) Prior to the date of this deed:

(i) the Principal prepared the Reference Design;

(ii) the Principal:

(A) and the Integrator entered into the Design and Management Services Contract; and

(B) procured (with the involvement of the Integrator) the USDTS Designer to provide the Underground Station Design and Technical Services,

to develop and finalise certain elements of the Stage 1 Design; and

(iii) the Integrator provided progressive sign-offs with respect to the Foundation Infrastructure Works in accordance with the Commitment Deed and the Contract Finalisation Deed in order to facilitate OpCo2 accepting clause 14A.2 (*Foundation Infrastructure Works are fit for OpCo2's purposes*).

(b) OpCo2 agrees that it bears absolutely all risks howsoever they may arise as a result of the use by OpCo2 of, or the reliance by OpCo2 upon, the Reference Design or the Stage 1 Design in performing OpCo2's Activities and that such use and reliance will not limit any of its obligations under this deed.

(c) OpCo2 is responsible for, and assumes the risk of, any Loss it suffers or incurs arising out of or in connection with:

(i) the design and construction of the OTS2 Works and the Temporary Works in accordance with the Reference Design or Stage 1 Design costing more or taking longer than anticipated; and

(ii) any differences between the Reference Design or Stage 1 Design and the OTS2 Works and the Temporary Works which OpCo2 is required to design and construct (ignoring for this purpose any differences which are the subject of a Modification Order) to satisfy the requirements of this deed including:

(A) differences necessitated by any Site Conditions encountered; and

(B) differences required to ensure that the OTS2 Works and the Temporary Works will be and remain fit for their intended purposes and satisfy the requirements of this deed,

and irrespective of any assumptions, projections, estimates, contingencies or otherwise that OpCo2 may have made in relation to the Reference Design or Stage 1 Design.

(d) OpCo2 warrants that:

(i) prior to the date of this deed:

(A) the Stage 1 Design for the OTS2 Works and the Line-wide Works has been prepared by the Integrator; and

(B) the Stage 1 Design for the Foundation Infrastructure Works (other than the Line-wide Works) has been reviewed by the Integrator;

(ii) in preparing the Design Documentation for the OTS2 Works in accordance with this deed, OpCo2 will take into account the Stage 1 Design for the Foundation Infrastructure Works, as further developed in accordance with the relevant Foundation Infrastructure Works Contract and provided to OpCo2 in accordance with clause 14A.6 (*Foundation Infrastructure Works Design Documentation*);

(iii) if the OTS2 Works and the Temporary Works are designed and constructed in accordance with the Stage 1 Design for the OTS2 Works, the OTS2 Works and the Temporary Works will satisfy the requirements of this deed (but nothing in this clause 13.2(d)(iii) affects or limits clauses 13.2(b) or 13.2(c), which will prevail to the extent of any inconsistency);

(iv) it will carry out and complete OpCo2's Activities in accordance with the Stage 1 Design for the OTS2 Works (as further developed in accordance with this deed) (but nothing in this clause 13.2(d)(iv) affects or limits clauses 13.2(b) or 13.2(c), which will prevail to the extent of any inconsistency);

(v) it will not depart from the Stage 1 Design for the OTS2 Works in a manner that is prohibited by section 3.8(b) of the SPR; and

(vi) it remains responsible for ensuring that the OTS2 Works and the Temporary Works will satisfy the requirements of this deed notwithstanding that the Stage 1 Design was prepared or reviewed by the Integrator (as applicable).

13.3 **Design warranties**

(a) OpCo2 warrants that:

(i) it has checked, examined, analysed and carefully considered the SPR and Environmental Documents and that:

(A) it has satisfied itself as to the completeness, correctness, accuracy, appropriateness, suitability and adequacy of the SPR;

(B) it has satisfied itself that there are no omissions, ambiguities, discrepancies or inconsistencies in or between the SPR and Environmental Documents;

(C) the SPR is proper, adequate and fit for the purpose of enabling OpCo2 to carry out OpCo2's Activities in accordance with, and to ensure that the OTS2 Works and the Temporary Works comply with, this deed;

(D) it will be fully and exclusively responsible and liable for all risks howsoever they may arise as a result of the use by OpCo2 of, or reliance upon, the SPR; and

(E) the use of, or reliance upon, the SPR does not affect any of its obligations under this deed or entitle OpCo2 to make any Claim against the Principal arising out of or in any way in connection with the SPR; and

(ii) the Design Documentation will:

(A) satisfy the applicable requirements of the SPR and the other requirements of this deed; and

(B) be fit for its intended purpose.

(b) The warranties given in clauses 13.2(d) and 13.3(a) will not be affected by:

(i) any design work carried out by others prior to the date of this deed and incorporated in this deed; or

(ii) the termination (for any reason) of this deed.

13.4 **Preparation and submission of Design Documentation**

During the Delivery Phase:

(a) subject to clause 13.4(aa), OpCo2 must prepare the Design Documentation in the following three Design Stages:

(i) Design Stage 1 (unless the design for the relevant part of the OTS2 Works was included in the Stage 1 Design);

(ii) Design Stage 2; and

(iii) Design Stage 3,

or as otherwise contemplated by the Design Management Plan;

(aa) where any Design Documentation relates solely to an OTS2 Train:

(i) to the extent that the design in respect of the OTS2 Train has not changed from the applicable OTS Train Northwest Final Design Documentation, OpCo2 will not be required to proceed through Design Stage 1 or Design Stage 2 and may automatically proceed to Design Stage 3; and

(ii) to the extent that elements of the design in respect of the OTS2 Train, including hardware or software, differ from the applicable OTS Train Northwest Final Design Documentation, then those elements of the design that have changed from the applicable OTS Train Northwest Final Design Documentation, and any integration elements that may be further impacted by those changes, will be required to proceed through Design Stage 2 and Design Stage 3;

(b) OpCo2 must submit all Design Documentation (not including any Design Documentation to the extent that it relates solely to Non-Reviewable Temporary Works or which is Stage 1 Design) to the Principal's Representative:

(i) in accordance with the Design Management Plan;

(ii) in a manner and at a rate which, having regard to the quantum of Design Documentation submitted, will give the Principal's Representative and the Greenfield Independent Certifier (in respect of Design Stage 3 Design Documentation) a reasonable opportunity to review the submitted Design Documentation; and

(iii) in accordance with the requirements of the SPR;

(ba) OpCo2 must, at the same time that OpCo2 submits any Sydney Trains Design Documentation to the Principal's Representative, submit that Sydney Trains Design Documentation to Sydney Trains' Representative as required;

(bb) the Principal will, within 1 Business Day of receiving any Design Stage 3 Design Documentation from OpCo2, provide to the Greenfield Independent Certifier the Design Stage 3 Design Documentation (if any) to be reviewed by the Greenfield Independent Certifier;

(c) within 5 Business Days of a request by the Principal's Representative, OpCo2 must provide the Principal's Representative with any Design Documentation to the extent that it relates solely to Non-Reviewable Temporary Works; and

(d) OpCo2 must ensure the Design Stage 3 Design Documentation submitted is of a level of detail which is sufficient to permit the Greenfield Independent Certifier to determine whether:

(i) the Design Documentation complies with this deed; and

(ii) the OTS2 Works or Temporary Works which will be constructed in accordance with the Design Documentation will comply with this deed.

13.5 **Not used**

13.6 **Certification of Design Documentation**

(a) All Design Stage 1 Design Documentation and Design Stage 2 Design Documentation submitted pursuant to clause 13.4 (*Preparation and submission of Design Documentation*) must be accompanied by a certificate in the form of Schedule 11 (*OpCo2 and O&M Contractor's design certificate – Design Stages 1 & 2*):

(i) from OpCo2 certifying that the Design Stage 1 Design Documentation or Design Stage 2 Design Documentation, as applicable, complies with all requirements of this deed including the SPR; and

(ii) from the O&M Contractor certifying that the Design Stage 1 Design Documentation or Design Stage 2 Design Documentation, as applicable, is acceptable to the O&M Contractor.

(b) All Design Stage 3 Design Documentation submitted pursuant to clause 13.4 (*Preparation and submission of Design Documentation*) must be accompanied by a certificate in the form of Schedule 12 (*OpCo2, Designer and O&M Contractor's design certificate – Design Stage 3*):

(i) from OpCo2 certifying that the Design Stage 3 Design Documentation:

(A) complies with all requirements of this deed including the SPR; and

(B) is suitable for construction;

(ii) from each relevant Designer certifying that the Design Stage 3 Design Documentation complies with all requirements of its respective contract including the SPR, to the extent those requirements are relevant to the Designer's scope of work; and

(iii) from the O&M Contractor certifying that the Design Stage 3 Design Documentation is acceptable to the O&M Contractor.

13.7 **Explanation of Design Documentation**

OpCo2 must, whenever it submits Design Stage 1 Design Documentation, Design Stage 2 Design Documentation or Design Stage 3 Design Documentation pursuant to clause 13.4 (*Preparation and submission of Design Documentation*):

(a) deliver a design presentation workshop within 5 Business Days of its submission; and

(b) if required by the Principal (and in respect of Design Stage 3 Design Documentation, the Greenfield Independent Certifier), make available the appropriate design personnel to:

(i) explain the Design Documentation; and

(ii) provide such information regarding the Design Documentation as the Principal or the Greenfield Independent Certifier reasonably requests.

13.8 **Review of Design Documentation**

This clause 13.8 (*Review of Design Documentation*) applies during the Delivery Phase.

(a) (**Principal's Representative review – Design Stage 1 and Design Stage 2**): The Principal's Representative must, within 20 Business Days of the date on which any Design Stage 1 Design Documentation or Design Stage 2 Design Documentation is submitted to it in accordance with clause 13.4 (*Preparation and submission of Design Documentation*):

(i) review the Design Stage 1 Design Documentation or Design Stage 2 Design Documentation, as applicable, and, in so doing, consider any non-compliances or potential non-compliances raised by any Authorities; and

(ii) notify OpCo2 in writing of any actual non-compliances with the requirements of this deed (with detailed reasons).

(b) (**Non-compliance in Design Stage 1 Design Documentation or Design Stage 2 Design Documentation**): If the Principal's Representative notifies OpCo2 under clause 13.8(a)(ii) that any Design Stage 1 Design Documentation or Design Stage 2 Design Documentation contains an actual non-compliance with the requirements of this deed:

(i) OpCo2:

(A) must, at the same time or within 20 Business Days of receiving such notice, give the Principal's Representative a written response which:

(aa) explains how OpCo2 will address the non-compliance in sufficient detail to satisfy the Principal's Representative that compliance will be achieved prior to submitting the Design Stage 3 Design Documentation; or

(bb) sets out any matters in relation to which it disagrees with the Principal's Representative opinion, together with its reasons for doing so;

(B) must, prior to submitting Design Stage 3 Design Documentation that relates to a Design Stage 2 Design Documentation actual non-compliance, give the Principal's Representative a written statement which explains how the non-compliance has been addressed; and

(C) is not obliged to respond to any comments received from the Principal's Representative regarding any potential non-compliance with the requirements of this deed or any other observation or comment which the Principal's Representative has on the Design Documentation which does not concern an actual non-compliance; and

(ii) following the receipt of a notice under clause 13.8(b)(i)(A)(bb), the parties will meet in good faith to seek to resolve the disagreement.

(c) (**Principal's Representative review – Design Stage 3 Design Documentation**): The Principal's Representative must, within 10 Business Days of the date on which any Design Stage 3 Design Documentation is submitted to it in accordance with clause 13.4 (*Preparation and submission of Design Documentation*):

(i) review the Design Stage 3 Design Documentation and, in so doing, consider any non-compliances or potential non-compliances raised by any Authorities; and

(ii) either:

(A) reject the Design Documentation (in writing, with detailed reasons, to OpCo2 with a copy to the Greenfield Independent Certifier) if it considers that the Design Documentation:

(aa) does not comply with the requirements of this deed (Minor Non-Compliances excepted); or

(bb) is not sufficiently complete to enable the Principal's Representative to form a view on whether it is compliant; or

(B) notify OpCo2 in writing (with a copy to the Greenfield Independent Certifier) that the Design Documentation is not rejected, together with a list of:

(aa) any non-compliances which the Principal's Representative considers to be Minor Non-Compliances; and

(bb) proposed actions that OpCo2 may take to address those Minor Non-Compliances.

(d) (**Greenfield Independent Certifier review – Design Stage 3 Design Documentation**): The Greenfield Independent Certifier:

(i) must review any Design Stage 3 Design Documentation which is provided to the Greenfield Independent Certifier in accordance with clause 13.4(bb), addressing the comments received by it from the Principal's Representative under clause 13.8(c);

(ii) must within the IC Design Review Period determine whether or not the Design Documentation complies with the requirements of this deed and either:

(A) reject the Design Documentation (in writing, with detailed reasons, to OpCo2 with a copy to the Principal's Representative) if the Greenfield Independent Certifier considers that the Design Documentation:

(aa) does not comply with the requirements of this deed (Minor Non-Compliances excepted); or

(bb) is not sufficiently complete to enable the Greenfield Independent Certifier to form a view on whether it is compliant; or

(B) if the Greenfield Independent Certifier considers that the Design Documentation complies with the requirements of this deed, certify the Design Documentation by:

(aa) including a notation on each document forming part of the Design Documentation;

(bb) providing to the Principal's Representative and OpCo2 a certificate in the form of Schedule 13 (*Greenfield Independent Certifier's design certificate*);

(cc) not used; and

(dd) where the Design Documentation relates to Barangaroo Interface Works, providing to the Principal's Representative and OpCo2 a certificate in the form of Schedule 11 of the Barangaroo Interface Agreement; and

(iii) will have access to all comments given by the Principal's Representative to OpCo2 pursuant to clauses 13.8(a) and 13.8(b).

(e) (**Rejection of Design Documentation**): If any Design Stage 3 Design Documentation is rejected by:

(i) the Principal's Representative under clause 13.8(c)(ii)(A), OpCo2 may (but is not obliged to):

(A) promptly amend the relevant non-compliant element of the Design Documentation and re-submit it to the Principal in accordance with clause 13.4 (*Preparation and submission of Design Documentation*), in which case the process in this clause 13.8 (*Review of Design Documentation*) will be reapplied to the amended element of the Design Documentation; or

(B) provide the Principal's Representative with a notice setting out any matters in relation to which it disagrees with the Principal's Representative's opinion, together with its reasons for doing so; or

(ii) the Greenfield Independent Certifier under clause 13.8(d)(ii)(A), OpCo2 must either:

(A) promptly amend the relevant non-compliant element of the Design Documentation and re-submit it to the Greenfield Independent Certifier within 5 Business Days of receiving the notice under clause 13.8(d)(ii)(A), in which case the process in clause 13.8(d) will be reapplied to the amended element of the Design Stage 3 Design Documentation; or

(B) provide the Greenfield Independent Certifier (with a copy to the Principal's Representative) with a notice setting out any matters in relation to which it disagrees with the Greenfield Independent Certifier's opinion, together with its reasons for doing so,

but OpCo2 may, at its own risk and subject to clause 13.10 (*Design Documentation for construction*), commence or continue construction of those elements of the Design Documentation that the Greenfield Independent Certifier has not identified as being non-compliant with this deed.

(f) (**Response by the Principal or Greenfield Independent Certifier**): If OpCo2 gives a notice under:

(i) clause 13.8(e)(i)(B), the Principal's Representative must, promptly after receipt of the notice, determine and notify the parties as to whether or not the notice satisfactorily addresses its concerns, together with its reasons for forming that opinion and:

(A) if the Principal's Representative considers that OpCo2's notice satisfactorily addresses its concerns, it must provide the notice under clause 13.8(c)(ii)(B) as part of its notice; or

(B) if the Principal's Representative considers that OpCo2's notice does not satisfactorily address its concerns, OpCo2 and the Principal will meet in good faith to seek to resolve the disagreement (whether by a Modification or otherwise) within 10 Business Days of receiving the notice under clause 13.8(e)(i)(B); and

(ii) clause 13.8(e)(ii)(B), the Greenfield Independent Certifier must, promptly after receipt of the notice, determine and notify the parties as to whether or not the notice satisfactorily addresses the Greenfield Independent Certifier's concerns together with its reasons for forming that opinion and:

(A) if the Greenfield Independent Certifier considers that OpCo2's notice satisfactorily addresses the Greenfield Independent Certifier's concerns, the Greenfield Independent Certifier must provide the certification under clause 13.8(d)(ii)(B) as part of its notice; or

(B) if the Greenfield Independent Certifier considers that the notice does not satisfactorily address the Greenfield Independent Certifier's concerns, the Greenfield Independent Certifier, OpCo2 and the Principal will meet in good faith to seek to resolve the disagreement (whether by a Modification or otherwise) within 10 Business Days of receiving the notice under clause 13.8(e)(ii)(B).

(g) (**Resubmission of Design Documentation**): If:

(i) the relevant parties reach resolution under clause 13.8(f)(i)(B) or 13.8(f)(ii)(B) and OpCo2 is required to resubmit any Design Documentation; or

(ii) any Design Documentation is the subject of a direction by the Principal's Representative under clause 13.8(h),

then:

(iii) OpCo2 must promptly amend the relevant non-compliant element of the Design Documentation and re-submit the relevant element to the Principal's Representative and, in respect of Design Stage 3 Design Documentation, the Greenfield Independent Certifier; and

(iv) the process in clause 13.8(c) or 13.8(d) (as applicable) will be reapplied to the amended element of the Design Documentation.

(h) (**Principal Direction**): The Principal's Representative may at any time (including after the Greenfield Independent Certifier has certified the Design Documentation pursuant to clause 13.8(d)(ii)(B) or 13.8(f)(ii)(A)) direct OpCo2 to make amendments to the Design Documentation which the Principal considers to be required to ensure the Design Documentation complies with this deed and, if it does so, clause 13.8(g) will apply.

(i) (**Modifications**): If OpCo2 considers that any Design Documentation which is the subject of a direction by the Principal's Representative under clause 13.8(h) constitutes or involves a Modification, OpCo2 must if it wishes to make a Claim in relation to the matter give a notice and submit a claim in accordance with, and otherwise comply with, clause 57.1 (*Notice of Modification*).

(j) (**Minor Non-Compliance**): If the certificate provided by the Greenfield Independent Certifier pursuant to clause 13.8(d)(ii)(B)(bb) lists any Minor Non-Compliances:

(i) the Greenfield Independent Certifier may, in the certificate, recommend the action that could be taken by OpCo2 to address the Minor Non-Compliance; and

(ii) OpCo2 must complete the recommended action, or take any other action OpCo2 deems reasonable in the circumstances to correct the Minor Non-Compliance to the extent required for the Design Documentation to comply with this deed, within the timeframe (if any) specified by the Greenfield Independent Certifier and, in any event, as a pre-condition to commencing the Tests specified in section 3.5 of SPR Appendix 56 (*Testing and Commissioning*).

(k) (**Greenfield Independent Certifier response to the Principal**): If the Principal's Representative's notice under clause 13.8(c)(ii)(B) proposed any Minor Non-Compliances in the Design Stage 3 Design Documentation, the Greenfield Independent Certifier must, within 5 Business Days after certifying Design Stage 3 Design Documentation under clause 13.8(d)(ii)(B) or 13.8(f)(ii)(A)), provide the Principal's Representative with detailed written reasons of why it did not include any of the Principal's Representative's proposed Minor Non-Compliances in the certification of the Design Stage 3 Design Documentation.

13.9 Design Review Panel

This clause 13.9 (*Design Review Panel*) applies during the Delivery Phase.

(a) The Principal may, in respect of any Design Documentation submitted by OpCo2:

(i) provide copies of any such Design Documentation received from OpCo2 to; and

(ii) seek comments from and take into account the views of,

the Design Review Panel.

(b) Without limiting any other provision of this deed:

(i) the Design Review Panel does not represent the Principal for the purposes of this deed;

(ii) nothing which occurs during any workshop or meeting at which members of the Design Review Panel are present will:

(A) relieve OpCo2 of its obligations, or constitute a waiver of any of the Principal's rights, under this deed; or

(B) be construed as a direction or notice by the Principal to do or not to do anything and the parties confirm that all discussions on any matters raised at any workshop or meeting at which members of the Design Review Panel are present, or any comments made by the Design Review Panel, will not give rise to any obligation on the part of OpCo2 to comply with anything which the members of the Design Review Panel say or do during such workshops or meetings;

(iii) OpCo2 must not comply with any directions given or purported to be given by the Design Review Panel or a member of the Design Review Panel unless the Principal's Representative has given OpCo2 a written Direction to the same effect; and

(iv) if OpCo2 considers that any direction by the Principal's Representative under clause 13.9(b)(iii) constitutes or involves a Modification, OpCo2 must if it wishes to make a Claim in relation to the matter give a notice and submit a claim in accordance with, and otherwise comply with, clause 57.1 (*Notice of Modification*).

13.10 Design Documentation for construction

(aa) This clause 13.10 (*Design Documentation for construction*) applies during the Delivery Phase.

(a) Subject to clause 13.10(c) and 13.10(d)(ii), unless otherwise approved in writing by the Principal's Representative, OpCo2 must not use for construction purposes any Design Documentation (not including any Design Documentation to the extent it relates solely to Non-Reviewable Temporary Works, unless requested by the Principal's Representative under clause 13.4(c)), unless:

(i) it has been certified by OpCo2, the Designer who prepared it and by the O&M Contractor under clause 13.6(b);

(ii) it has been submitted to the Principal's Representative and the Greenfield Independent Certifier under clause 13.4 (*Preparation and submission of Design Documentation*);

(iii) it has been certified by the Greenfield Independent Certifier under clause 13.8(d)(ii)(B) or clause 13.8(f)(ii)(A);

(iv) with respect to Sydney Trains Design Documentation, a SM/ST Sub-NAC Acceptance Notice has been issued in respect of that Sydney Trains Design Documentation; and

(v) with respect to Design Documentation that this deed requires to be submitted to the OpCo2 Change Control Board, an OpCo2 CCB Acceptance Notice has been issued in respect of that Design Documentation; and,

save that the parties acknowledge that this clause 13.10(a) does not in any way restrict OpCo2 from carrying out procurement.

(b) OpCo2 must give the Principal's Representative one electronic copy, of:

(i) all Design Documentation which it is entitled pursuant to clause 13.10(a) to use for construction purposes in accordance with the requirements of the SPR; and

(ii) surveys and work as executed Design Documentation in accordance with the requirements of the SPR.

(c) If the Greenfield Independent Certifier does not, in respect of Design Stage 3 Design Documentation, either certify or reject the Design Documentation within the IC Design Review Period referred to in clause 13.8(d)(ii), OpCo2 may use the Design Documentation for construction purposes at OpCo2's own risk.

(d) If OpCo2 exercises its right under clause 13.10(c) and the Greenfield Independent Certifier subsequently rejects the Design Documentation, then (unless otherwise approved in writing by the Principal):

(i) OpCo2 must immediately cease any construction being carried out in accordance with the relevant non-compliant element of the Design Documentation, but OpCo2 may commence or continue construction in accordance with any element of the Design Documentation that the Greenfield Independent Certifier has not identified as being non-compliant with this deed; and

(ii) clause 13.8(e)(ii) will apply in relation to the non-compliant element of the Design Documentation.

13.11 Amendments to Final Design Documentation

(a) Subject to clauses 29 (*Principal initiated Modifications*), 30 (*OpCo2 initiated Modifications*) and 31 (*Pre-Agreed Options*), if OpCo2 wishes to amend Final Design Documentation prior to the Date of Final Completion of Phase 1 or the Date of Final Completion of Phase 2 to which the Final Design Documentation relates:

(i) OpCo2 must submit the amended Design Documentation to the Principal's Representative and the Greenfield Independent Certifier together with:

(A) the certifications referred to in clause 13.10(a); and

(B) an explanation as to why it is seeking to amend the Final Design Documentation; and

(ii) clause 13.8 (*Review of Design Documentation*) will apply as if the Design Documentation is Design Stage 3 Design Documentation; and

(b) OpCo2 may, at its own risk, use the amended Final Design Documentation (that is not Third Party Design Documentation or Sydney Trains Design Documentation)

submitted in accordance with clause 13.11(a) for construction purposes prior to certification by the Greenfield Independent Certifier under clause 13.8(d)(ii)(B) if, and only if, the amendment to the Final Design Documentation:

(i) is minor;

(ii) does not adversely impact the OTS2 Works; and

(iii) is necessary to overcome an issue which:

(A) prevents or adversely affects OpCo2 proceeding with construction; and

(B) has arisen or become evident since the Final Design Documentation was submitted to the Greenfield Independent Certifier.

(c) If OpCo2 exercises its right under clause 13.11(b) and the Greenfield Independent Certifier subsequently rejects the amended Final Design Documentation in accordance with clause 13.8(d)(ii)(A), then (unless otherwise approved in writing by the Principal's Representative):

(i) OpCo2 must immediately cease any construction being carried out in accordance with the relevant non-compliant element of the amended Final Design Documentation, but OpCo2 may commence or continue construction in accordance with any element of the amended Final Design Documentation that the Greenfield Independent Certifier has not identified as being non-compliant with this deed; and

(ii) clause 13.8(d) to 13.8(e) will reapply in relation to the non-compliant element of the amended Final Design Documentation.

(d) OpCo2 must submit any Sydney Trains Design Documentation to Sydney Trains' Representative at the same time as that Sydney Trains Design Documentation is submitted to the Principal's Representative under clause 13.11(a)(i).

13.12 **Design Life**

(a) OpCo2 represents and warrants that:

(i) from the OTS Incorporation Date, each Asset located within the Licensed Maintenance Area (Northwest) that falls within a category referred to in section 3.9 of the SPR (OTS) and each OTS Train:

(A) is fit for its intended purpose;

(B) will be maintained during the Term so that it is fit for its intended purpose at all times during the Term; and

(C) will be capable of remaining fit for its intended purpose at all times during its Design Life provided it is maintained in accordance with the Asset Management System;

(ii) each Asset that falls within a category referred to in section 3.9 of the SPR (OTS2) will:

(A) be designed and constructed so that:

(aa) with respect to Assets located within the Licensed Maintenance Area (City), at the Date of Completion of Phase 1;

(bb) with respect to Assets located within the Licensed Maintenance Area (Southwest), at the Date of Completion of Phase 2;

(cc) with respect to Trains (other than OTS Trains), as at the date the Train is first used to convey Customers, including on the Sydney Metro Northwest prior to the OTS Incorporation Date; and

(dd) with respect to all other Assets forming part of the OTS2 Works, at the Date of Completion of Phase 2,

it is fit for its intended purpose;

(B) be maintained during the Term so that it is fit for its intended purpose at all times during the Term; and

(C) be capable of remaining fit for its intended purpose at all times during its Design Life provided it is maintained in accordance with the Asset Management System;

(iii) where an Asset that falls within a category referred to in:

(A) section 3.9 of the SPR (OTS2) is replaced or refurbished during the Term; or

(B) section 3.9 of the SPR (OTS) is replaced or refurbished during the Term but after the OTS Incorporation Date,

the replacement or refurbished Asset will:

(C) be designed and constructed so that, at the time of its replacement or refurbishment, it is fit for its intended purpose;

(D) be maintained during the Term so that it is fit for its intended purpose at all times during the Term; and

(E) be capable of remaining fit for its intended purpose at all times during its Extended Design Life provided it is maintained in accordance with the Asset Management System.

(b) The representations and warranties made by OpCo2 under clause 13.12(a) are made, and will be deemed to have been made, in respect of each Asset that falls within a category referred to in section 3.9 of the SPR:

(i) in the case of the representations and warranties made under clause 13.12(a)(i), on:

(A) the OTS Incorporation Date; and

[redacted]

(ii) in the case of the representations and warranties made under clause 13.12(a)(ii), on:

(A) the date of this deed; and

[redacted]

[redacted]

(iii) in the case of the representations and warranties made under clause 13.12(a)(iii), on:

(A) the date that replacement or refurbishment of the relevant Asset has been completed; and

[redacted]

(c) Clauses 13.12(b) and 13.12(g) will survive the rescission, termination or expiration of this deed.

(d) OpCo2:

(i) waives any right to; and

(ii) must not,

assert, make or rely on a plea, defence, claim or argument in any forum whatsoever that a cause of action that the Principal has or may have against OpCo2 arising out of or in connection with any false representation, or breach of warranty, under this clause 13.12 (*Design Life*) in respect of an Asset is statute-barred, before:

(iii) in the case of clauses 13.12(a)(ii)(A) and 13.12(a)(ii)(B) (to the extent clause 13.12(a)(ii)(B) applies to the period before the Date of Completion of Phase 1 or the Date of Completion of Phase 2, as applicable, with respect to an Asset), the Expiry Date; or

(iv) in the case of clauses 13.12(a)(i) and 13.12(a)(ii)(B) (to the extent clause 13.12(a)(ii)(B) applies to the period after the Date of Completion of Phase 1 or the Date of Completion of Phase 2, as applicable, with respect to an Asset), clause 13.12(a)(ii)(C) and clause 13.12(a)(iii), the date falling 3 years after the Expiry Date.

(e) OpCo2 must not enforce any judgment or award obtained on the basis of a plea, defence, claim or argument asserted, made or relied on by OpCo2 in breach of clause 13.12(d).

(f) OpCo2 must indemnify the Principal against any Loss suffered by the Principal as a result of:

(i) any action by OpCo2 in breach of clause 13.12(d); and

(ii) the enforcement of any judgment or award by OpCo2 in breach of clause 13.12(e).

(g) The Principal releases OpCo2 from and against any Claim that the Principal may have against OpCo2 under this clause 13.12 (*Design Life*), clause 15.2(d) (to the extent it relates to Design Life or Extended Design Life), clause 21.1(f) or under any indemnity in clause 37.1 (*Indemnity from OpCo2*) (to the extent it relates to Design Life or Extended Design Life), to the extent that the Claim has not been made by the Principal before:

[redacted]

[redacted]

13.13 **Principal audit rights**

Without limiting the Principal's rights under clause 44 (*Access, inspections and audits*) and clause 45.1 (*Records*), if requested by the Principal, OpCo2 must provide to the Principal any documentation or information (including any documentation or information prepared by an OpCo2 Contractor) relating to the OpCo2 Network Assurance Committee's certification of those parts of the Design Documentation that this deed requires to be submitted to the OpCo2 Network Assurance Committee.

13A EARLY WORKS ACTIVITIES

13A.1 Early Works Activities

(a) Prior to the date of this deed, the Integrator carried out the Early Works Activities in accordance with the Early Works Deed.

(b) The parties agree that from the date of this deed, the Early Works Activities form part of the OTS2 Works and will be treated as though they had been performed by and on behalf of OpCo2 under this deed, notwithstanding that the Early Works Activities were performed prior to the date of this deed by the Integrator under the Early Works Deed.

13B NOT USED

13C CORRIDOR SECURITY

13C.1 Corridor Security Solution for Sydney Metro (Southern Corridor)

(a) The parties acknowledge and agree that:

(i) as at the date of this deed, the solution for corridor security on the Sydney Metro (Southern Corridor) has not been finalised and the Principal and OpCo2 will work together in good faith to determine an appropriate solution

for corridor security on the Sydney Metro (Southern Corridor) (**Corridor Security Solution (SW)**); and

(ii) the Corridor Security Solution (SW) may require a combination of any or all of the following:

(A) OpCo2 to deliver additional corridor security works as part of the OTS2 Works or carry out additional activities as part of OpCo2's Activities (**OpCo2 Corridor Security Activities (SW)**);

(B) a Foundation Infrastructure Works Contractor to deliver additional works; or

(C) an other contractor to deliver additional works.

[redacted]

13C.2 **Corridor Security Solution for Sydney Metro City (Northern Corridor)**

(a) The parties acknowledge and agree that subject to clause 13C.2(b), OpCo2 is responsible for preparing and leading the overall safety case for the Sydney Metro City and as part of this, delivering the corridor security solution for the Sydney Metro City (Northern Corridor) (**Corridor Security Solution (City)**), including all works and activities (including operations and maintenance) that relate to systems, the OCC or critical interfaces with the OTS2 Works.

[redacted]

13C.3 **Information**

(a) OpCo2 must:

(i) provide any information requested by the Principal concerning corridor security for the Sydney Metro City and the Sydney Metro Southwest, including the OpCo2 Corridor Security Activities (SW), including any related communication provided to or received from the ONRSR;

(ii) provide the Principal with any information or material prepared by OpCo2 which is to be provided to the ONRSR concerning corridor security for the Sydney Metro City and the Sydney Metro Southwest, including the OpCo2 Corridor Security Activities (SW) and give the Principal a reasonable opportunity to review and provide comments prior to such information being provided; and

(iii) give reasonable notice of and invite the Principal to any meetings with the ONRSR in relation to corridor security for the Sydney Metro City and the Sydney Metro Southwest, including the OpCo2 Corridor Security Activities (SW).

14. OTS CIVIL WORKS

14.1 OTS Cooperation and Integration Deeds

(a) As at the date of this deed:

(i) the Principal and OpCo have entered into the OTS Cooperation and Integration Deeds; and

(ii) OpCo has executed, and is bound by, the terms of the Master Interface Protocols Deed Poll.

(b) From the OTS Incorporation Date:

(i) subject to clause 14.1(c), OpCo2 must ensure that the OTS Cooperation and Integration Deeds are novated from OpCo to OpCo2; and

(ii) OpCo2 is bound by the terms of the OTS Cooperation and Integration Deeds.

(c) The Principal must use its best endeavours to procure the consent of the relevant OTS Civil Works Contractors to each of the novations referred to in clause 14.1(b).

14.2 **OTS Civil Works are fit for OpCo2's purposes**

(a) OpCo2 warrants that it has reviewed and carefully considered the OTS Civil Works Contracts (in the form contained in Exhibit 11 (*TSC Project Deed*) and Exhibit 12 (*SVC Project Deed*)).

(b) Subject to clauses 14.11 (*OTS Civil Works Defects*), 14.12 (*OTS Temporary Repairs*) and 14.15 (*Compensation Events*), OpCo2 will not be entitled to:

(i) make (nor will the Principal be liable upon) any Claim arising out of or in any way in connection with the OTS Civil Works (as amended by any OTS Approved Civil Works Change), including in relation to the OTS Civil Works (as amended by any OTS Approved Civil Works Change) not being fit for the purposes of enabling OpCo2 to comply with its obligations under this deed; or

(ii) any relief from any obligation under this deed.

14.3 **Not used**

14.4 **Not used**

14.5 **Not used**

14.6 **Not used**

14.7 **Not used**

14.8 **Not used**

14.9 **OTS Civil Works documentation**

OpCo2 warrants that it does not require any further documents in relation to the OTS Civil Works Contracts or the OTS Civil Works to enable OpCo2 to carry out its obligations under this deed.

14.10 **Not used**

14.11 **OTS Civil Works Defects**

(a) OpCo2 must promptly give written notice to the Principal upon becoming aware of any matter it considers to be an OTS Civil Works Defect.

(b) If OpCo2 gives the Principal a notice under clause 14.11(a) in respect of an OTS Civil Works Defect located within a part of the Licensed Maintenance Area (Northwest) which OpCo2 has, at that time, a licence to use pursuant to clause 12.3 (*Licence to use Licensed Maintenance Area and to access Additional Maintained Assets*), the Principal's Representative must, within 10 Business Days or such longer period as the parties may agree (acting reasonably), issue a notice to OpCo2 that contains one of the following:

(i) an undertaking by the Principal to procure the rectification of the OTS Civil Works Defect by the relevant OTS Civil Works Contractor or an Other Contractor;

(ii) a direction to OpCo2 to carry out a Modification pursuant to clause 29 (*Principal initiated Modifications*) to:

(A) rectify the OTS Civil Works Defect; or

(B) modify the Sydney Metro Northwest or OpCo2's Activities to accommodate the impact (if any) of the OTS Civil Works Defect on the Project; or

(iii) a notification to OpCo2 that the Principal does not consider the alleged defect to be an OTS Civil Works Defect.

(c) OpCo2 must provide the Principal's Representative with any information reasonably requested in relation to the OTS Civil Works Defect.

(d) If there is any dispute between:

(i) OpCo2, the Principal and the relevant OTS Civil Works Contractor as to whether an alleged defect in the OTS Civil Works referred to in clause 14.11(b) constitutes a OTS Civil Works Defect, the dispute resolution process in the applicable OTS Cooperation and Integration Deed will apply; and

(ii) OpCo2 and the Principal as to whether an alleged defect in the OTS Civil Works referred to in clause 14.11(b) constitutes a OTS Civil Works Defect, which is not covered by clause 14.11(d)(i), the dispute resolution process in clause 56 (*Dispute resolution*) will apply.

(e) If clause 14.11(d) applies and it is determined that an alleged defect in the OTS Civil Works referred to in clause 14.11(b) constitutes an OTS Civil Works Defect, the Principal must, within 5 Business Days of such determination, issue a notice pursuant to clauses 14.11(b)(i) or 14.11(b)(ii).

14.12 **OTS Temporary Repairs**

(a) If an alleged OTS Civil Works Defect the subject of a notice by OpCo2 under clause 14.11(a) will have an adverse effect on:

(i) the safe and secure performance of OpCo2's Activities; or

(ii) OpCo2's ability to perform OpCo2's Activities in a manner that does not result in any Availability Deduction or Timeliness Deduction,

OpCo2 may carry out any temporary repairs or other works it considers necessary (acting reasonably) to overcome the adverse effect (**OTS Temporary Repairs**).

(b) Before carrying out any OTS Temporary Repairs, OpCo2 must provide the Principal with:

(i) at least 24 hours' prior written notice (or such shorter period of notice as the Principal may agree);

(ii) the opportunity to inspect the alleged OTS Civil Works Defect; and

(iii) a detailed report of the alleged OTS Civil Works Defect (including photographs).

(c) Within 3 Business Days of completing the OTS Temporary Repairs (but no later than within 10 Business Days of commencing the OTS Temporary Repairs), OpCo2

must provide the Principal with a detailed report of the OTS Temporary Repairs undertaken.

(d) OpCo2 must only carry out any OTS Temporary Repairs that are strictly necessary to overcome the adverse effect referred to in clause 14.12(a).

14.13 **Access by OTS Civil Works Contractors**

OpCo2 must provide each OTS Civil Works Contractor (and any person authorised by an OTS Civil Works Contractor) with such access to the Sydney Metro Site as may be required by the OTS Civil Works Contractor in order to meet its obligations under the relevant OTS Cooperation and Integration Deed (as applicable), including to rectify any OTS Civil Works Defects pursuant to clause 14.11(b), subject to each OTS Civil Works Contractor complying with OpCo2's site access and work, health and safety procedures.

14.14 **OTS Civil Works Contractor to minimise disruption**

The Principal must ensure that each OTS Civil Works Contractor carries out its activities on any part of the Sydney Metro Site which OpCo2 is occupying pursuant to clauses 12.1 (*Construction Site Licence*) or 12.3 (*Licence to use Licensed Maintenance Area and to access Additional Maintained Assets*) so as to minimise any disruption, interference or adverse impact (including OpCo2 incurring Loss) on or to, and without unreasonably disrupting or interfering with, or adversely impacting on, OpCo2's Activities.

14.15 **Compensation Events**

(a) OpCo2's entitlement to compensation in relation to the Compensation Event referred to in paragraph (l) of the definition of Compensation Event will be reduced to the extent that OpCo2's non-compliance with:

(i) the Interface Management Plan;

(ii) an OTS Cooperation and Integration Deed; or

(iii) its obligations under this deed in connection with the OTS Civil Works Contractors, the OTS Civil Works and any OTS Civil Works Defects,

increased the length of any delay caused by the Compensation Event or increased the costs payable, or loss of revenue suffered, by OpCo2 as a result of the Compensation Event.

(b) Subject to clauses 14.11 (*OTS Civil Works Defects*), 14.12 (*OTS Temporary Repairs*), 17 (*Time*), 26 (*Compensation Events*) and 27 (*Relief Events*):

(i) the Principal will not be liable upon any Claim by OpCo2 arising out of or in any way in connection with:

(A) the OTS Civil Works Contractors carrying out the OTS Civil Works; or

(B) any act or omission of an OTS Civil Works Contractor; and

(ii) OpCo2 warrants that the Base Case Financial Model contains sufficient allowances for the assumption by OpCo2 of the obligations and risks under this clause 0 (*OTS Civil Works*).

14.16 **OTS Civil Works O&M Manuals**

OpCo2:

(a) acknowledges that under the terms of each OTS Civil Works Contract, the OTS Civil Works Contractor warrants that the OTS Civil Works will be capable of remaining at all relevant times fit for their intended purpose, subject to OpCo operating and maintaining the OTS Civil Works in accordance with the OTS Civil Works O&M Manuals; and

(b) from the OTS Incorporation Date, must operate and maintain the OTS Civil Works in accordance with the OTS Civil Works O&M Manuals.

14A INTEGRATION WITH FOUNDATION INFRASTRUCTURE WORKS

14A.1 Not used

14A.2 Foundation Infrastructure Works are fit for OpCo2's purposes

(a) OpCo2 warrants that it has reviewed and carefully considered:

(i) the Foundation Infrastructure Works Contracts (in the form and to the extent contained in Exhibit 12A (*TSE Deed*), Exhibit 12B (*CSM Contract*), Exhibit 12C (*Southwest Contracts*), Exhibit 12D (*SSJ Contracts*), Exhibit 12E (*City Station Contracts*), Exhibit 12F (*Line-wide Contract*) and Exhibit 12G (*PSD/MGF Contract*)) which includes draft forms of the:

(A) Crows Nest Station Construct Contract;

(B) Barangaroo Station Construct Contract;

(C) Waterloo Station Contract; and

(D) PSD/MGF Contract,

together the contracts referred to in paragraphs (A) to (D) being the **Draft Foundation Infrastructure Works Contracts**;

(ii) upon receipt from the Principal pursuant to clause 14A.2A(a)(ii), the final form of the:

(A) Crows Nest Station Construct Contract;

(B) Barangaroo Station Construct Contract;

(C) Waterloo Station Contract;

(D) Southwest Corridor Works Contract;

(E) Southwest Stations 1 Contract;

(F) Southwest Stations 2 Contract;

(G) Southwest Stations 3 Contract; and

(H) PSD/MGF Contract;

(iii) the Southwest Baseline Scope;

(iv) upon receipt from the Principal pursuant to clause 14A.2C, any electronic files to each of the Foundation Infrastructure Works Contracts provided under clause 14A.2(a)(i) (**FIW Electronic Files**); and

(v) within the time period set out under clause 14A.2C(b), any variation, modification or change orders to each of the Foundation Infrastructure Works Contracts provided under clause 14A.2(a)(i) which have been provided to OpCo2 prior to the date of this deed but which have not been previously reviewed and commented on by OpCo2 (**FIW Variations**).

(b) Subject to clauses 14A.2A (*Draft Foundation Infrastructure Works Contracts*), 14A.2B (*Southwest Baseline Scope*); 14A.3 (*Principal initiated Foundation Infrastructure Works Change*), 14B (*Foundation Infrastructure Works Defects*), 18A (*Integration Risk Share Allowance*), 26 (*Compensation Events*) 27 (*Relief Events*) and 29 (*Principal initiated Modifications*), OpCo2 will not be entitled to:

(i) make (nor will the Principal be liable upon) any Claim arising out of or in any way in connection with the Foundation Infrastructure Works, including in relation to the Foundation Infrastructure Works not being fit for the purposes of enabling OpCo2 to comply with its obligations under this deed; or

(ii) any relief from any obligation under this deed,

if:

(iii) the TSE Works achieve TSE Completion and, except for any Foundation Infrastructure Works Known Defects or any Deviations within the Foundation Infrastructure Works Tolerances, comply with the requirements of the TSE Deed (in the form and to the extent contained in Exhibit 12A (*TSE Deed*)) as amended for any Approved Foundation Infrastructure Works Change;

(iv) the CSM Works achieve CSM Completion and, except for any Foundation Infrastructure Works Known Defects or any Deviations within the Foundation Infrastructure Works Tolerances, comply with the requirements of the CSM Contract (in the form and to the extent contained in Exhibit 12B (*CSM Contract*)) as amended for any Approved Foundation Infrastructure Works Change;

(v) the Southwest Works achieve Southwest Completion and, except for any Foundation Infrastructure Works Known Defects or any Deviations within the Foundation Infrastructure Works Tolerances:

(A) comply with the requirements of the Southwest Contracts (in the forms and to the extent contained in Exhibit 12C (*Southwest Contract*) and with respect to the Southwest Works under the Southwest Corridor Works Contract, Southwest Stations 1 Contract, Southwest Stations 2 Contract and Southwest Stations 3 Contract, the final form of the relevant Southwest Contract provided to OpCo2 pursuant to clause 14A.2A(a)); and

(B) are consistent with section 2 and section 3 of the Southwest Baseline Scope,

as amended for any Approved Foundation Infrastructure Works Change;

(vi) the SSJ Works achieve SSJ Completion and, except for any Foundation Infrastructure Works Known Defects or any Deviations within the Foundation Infrastructure Works Tolerances, comply with the requirements of the **SSJ** Contract (in the form and to the extent contained in Exhibit 12D (*SSJ Contract*)) as amended for any Approved Foundation Infrastructure Works Change;

(vii) the City Stations Works achieve City Station Completion and, except for any Foundation Infrastructure Works Known Defects or any Deviations within the Foundation Infrastructure Works Tolerances, comply with the requirements of the relevant City Station Contract (in the form and to the extent contained in Exhibit 12E (*City Station Contract*) and with respect to the City Stations Works at Barangaroo and Waterloo, the final form Barangaroo Station Construct Contract and the final form Waterloo Station Contract provided to OpCo2 pursuant to clause 14A.2A(a) and clause 14A.2A(ab) respectively), as amended for any Approved Foundation Infrastructure Works Change; and

(viii) the Line-wide Works achieve Line-wide Completion and, except for any Foundation Infrastructure Works Known Defects or any Deviations within the Foundation Infrastructure Works Tolerances, comply with the requirements of the Line-wide Contract (in the form and to the extent contained in Exhibit 12F (*Line-wide Contract*)) as amended for any Approved Foundation Infrastructure Works Change; and

(ix) the PSD/MGF Works achieve PSD/MGF Completion and, except for any Foundation Infrastructure Works Known Defects or any Deviations within the Foundation Infrastructure Works Tolerances:

(A) comply with the requirements of the PSD/MGF Contract (in the form and to the extent contained in Exhibit 12G (*PSD/MGF Contract*)); and

(B) are consistent with section 3 of the Southwest Baseline Scope,

as amended for any Approved Foundation Infrastructure Works Change.

(c) The parties acknowledge that the Foundation Infrastructure Works Contracts provided to OpCo2 pursuant to clause 14A.2(a)(i) are:

(i) subject to redactions; and

(ii) in respect of the Draft Foundation Infrastructure Works Contracts, in draft form only and are not final forms of the relevant Foundation Infrastructure Works Contracts.

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

14A.3 **Principal initiated Foundation Infrastructure Works Change**

(a) The Principal's Representative may at any time issue to OpCo2 written notice of a proposed Foundation Infrastructure Works Change.

(b) Within 20 Business Days (or such longer period as the Principal's Representative reasonably agrees, having regard to the size and complexity of the proposed Foundation Infrastructure Works Change) of receipt of a notice under clause 14A.3(a), OpCo2 must:

(i) provide the Principal's Representative with a written notice including:

(A) subject to clause 14A.3(c), confirmation that the Foundation Infrastructure Works will remain fit for the purpose of enabling OpCo2 to comply with its obligations under this deed if the Foundation Infrastructure Works Change is implemented;

(B) details of any Net Financial Impact that the Foundation Infrastructure Works Change would have if implemented and how such Net Financial Impact has been calculated; and

(C) details of any extension of time required to the Date for Completion of Phase 1, the Date of Completion of Phase 2, a Milestone Date for Completion or a Date for Acceptance as a result of the Foundation Infrastructure Works Change; or

(ii) if OpCo2 declines to give the confirmation pursuant to clause 14A.3(b)(i) provide the Principal's Representative with a written notice including:

(A) detailed written reasons explaining why the proposed Foundation Infrastructure Works Change will prevent OpCo2 from complying with its obligations under this deed; and

(B) details of any modification it requires to the proposed Foundation Infrastructure Works Change in order to give the confirmation, including details regarding any change to the timing of the proposed Foundation Infrastructure Works Change or to the manner in which the Foundation Infrastructure Works Change is proposed to be implemented) to reduce or avoid the impact of the proposed Foundation Infrastructure Works Change on the OTS2 Works, the Temporary Works, the Sydney Metro or OpCo2's Activities (as applicable).

(c) OpCo2's confirmation under clause 14A.3(b)(i) can only be withheld if the proposed Foundation Infrastructure Works Change will prevent OpCo2 from complying with its obligations under this deed.

(d) If OpCo2 provides a notice pursuant to clause 14A.3(b)(ii) the Principal must within 10 Business Days either:

(i) refer the determination of whether the proposed Foundation Infrastructure Works Change will prevent OpCo2 from complying with its obligations under this deed to be decided in accordance with clause 56 (*Dispute resolution*);

(ii) notify OpCo2 of any changes to the proposed Foundation Infrastructure Works Change, in which case this clause 14A.3 (*Principal initiated Foundation Infrastructure Works Change*) will reapply;

(iii) withdraw the proposed Foundation Infrastructure Works Change; or

(iv) notify OpCo2 that it agrees that the proposed Foundation Infrastructure Works Change will prevent OpCo2 from complying with its obligations under this deed.

(e) If it is determined under clause 56 (*Dispute resolution*) or the parties agree that:

(i) the proposed Foundation Infrastructure Works Change will prevent OpCo2 from complying with its obligations under this deed, the Principal may:

(A) withdraw the proposed Foundation Infrastructure Works Change;

(B) modify the proposed Foundation Infrastructure Works Change, in which case this clause 14A.3 (*Principal initiated Foundation Infrastructure Works Change*) will reapply;

(C) proceed with the proposed Foundation Infrastructure Works Change on the basis that:

(aa) clause 14A.2(b) will not apply in relation to the Foundation Infrastructure Works Change to the extent determined under clause 56 (*Dispute resolution*) or agreed by the parties; and

(bb) in addition to any claim under clause 26 (*Compensation Events*), OpCo2 will be entitled, under clauses 17 (*Time*) and 27 (*Relief Events*), to claim relief from its obligations that are affected by the Foundation Infrastructure Works Change; or

(D) issue a Modification Impact Request or instruct OpCo2 to implement a Modification to accommodate the Foundation Infrastructure Works Change; or

(ii) the proposed Foundation Infrastructure Works Change will not prevent OpCo2 from complying with its obligations under this deed:

(A) OpCo2 will be deemed to agree that clause 14A.2(b)(i) will continue to apply with respect to the modified Foundation Infrastructure Works if the Foundation Infrastructure Works Change is implemented; and

(B) OpCo2 will not be entitled to claim any relief from any obligations under this deed (but this will not prejudice any entitlement which OpCo2 may have to make a claim under clause 17.8 (*Claim for extension of time*) or clause 26 (*Compensation Events*)).

(f) The Principal must reimburse OpCo2 for all costs reasonably incurred by OpCo2 in assessing each Foundation Infrastructure Works Change pursuant to this clause 14A.3 (*Principal initiated Foundation Infrastructure Works Change*).

14A.4 **OpCo2 initiated Foundation Infrastructure Works Change**

(a) If OpCo2 wishes to request the Principal to procure a Foundation Infrastructure Works Change, including any Foundation Infrastructure Works Change that OpCo2 considers is required as a result of or in connection with a Modification proposed by OpCo2 under clause 30.1 (*OpCo2 may propose a Modification*), it must give the Principal a written notice with full details of:

(i) the proposed Foundation Infrastructure Works Change; and

(ii) the reason for the proposed Foundation Infrastructure Works Change.

(b) Upon receipt of a notice under clause 14A.4(a) and subject to clause 14A.4(c), the Principal must not unreasonably refuse to procure the relevant Foundation Infrastructure Works Contractor to carry out the Foundation Infrastructure Works Change, provided that OpCo2 agrees to pay all additional costs incurred by the Principal in connection with the Foundation Infrastructure Works Change or its assessment, including all amounts payable to the relevant Foundation Infrastructure Works Contractor in connection with the Foundation Infrastructure Works Change or its assessment.

(c) The Principal's refusal to procure the Foundation Infrastructure Works Change will be deemed to be reasonable if the implementation of the Foundation Infrastructure Works Change would:

(i) not promote the objectives and expected outcomes of the Project Agreements;

(ii) not, in the Principal's opinion, be in the public interest;

(iii) result in a delay to a Date of Completion;

(iv) result in a delay to a Site Access Date; or

(v) have any other effect which the Principal considers to be unreasonable in the circumstances of the OTS2 PPP.

(d) If required by the Principal, and without limiting OpCo2's obligations under clause 28A.8 (*Consultation with Foundation Infrastructure Works Contractors*), OpCo2 must attend any meetings with the relevant Foundation Infrastructure Works Contractor regarding the Foundation Infrastructure Works Change and provide such further information regarding the Foundation Infrastructure Works Change as may be required by the Principal or the relevant Foundation Infrastructure Works Contractor.

(e) The Principal must notify OpCo2 within 25 Business Days (or such longer period as the Principal reasonably requires, having regard to the size and complexity of the proposed Foundation Infrastructure Works Change) after receiving a notice from OpCo2 under clause 14A.4(a):

(i) that it will direct the relevant Foundation Infrastructure Works Contractor to carry out the Foundation Infrastructure Works Change; or

(ii) that it will not direct the relevant Foundation Infrastructure Works Contractor to carry out the Foundation Infrastructure Works Change.

(f) OpCo2 must pay any additional costs referred to in clause 14A.4(b) within 20 Business Days of being requested to do so by the Principal.

(g) Subject to clauses 14A.11 (*Care and maintenance of Foundation Infrastructure Works*) and 14B (*Foundation Infrastructure Works Known Defects*), OpCo2:

(i) will not be entitled to make any Claim against the Principal arising out of or in connection with:

(A) any Foundation Infrastructure Works Change implemented by the Principal and a Foundation Infrastructure Works Contractor pursuant to this clause 14A.4 (*OpCo2 initiated Foundation Infrastructure Works Change*); or

(B) a permitted refusal by the Principal under this clause 14A.4 (*OpCo2 initiated Foundation Infrastructure Works Change*) to direct a Foundation Infrastructure Works Contractor to carry out the Foundation Infrastructure Works Change; and

(ii) agrees that the refusal by the Principal to direct a Foundation Infrastructure Works Change requested by OpCo2 will not affect the operation of clause 14A.2(b).

(h) OpCo2 warrants that if a Foundation Infrastructure Works Change requested by OpCo2 is implemented, the Foundation Infrastructure Works will, if designed and constructed in accordance with the Foundation Infrastructure Works Contracts (amended to incorporate the Foundation Infrastructure Works Change), be fit for the purposes of enabling OpCo2 to comply with its obligations under this deed.

(i) The parties acknowledge that they are bound by the certifications given by:

(i) the TSE Independent Certifier;

(ii) the Brownfield Independent Certifier; and

(iii) the Greenfield Independent Certifier,

in accordance with, and subject to the relevant Project Cooperation and Integration Deed, as applicable.

14A.5 **Foundation Infrastructure Works design team meetings**

The Principal must:

(a) notify OpCo2 of, and provide OpCo2 with a reasonable opportunity to attend, meetings of the Foundation Infrastructure Works Contractors' design teams; and

(b) give OpCo2:

(i) the agenda for each meeting within a reasonable time prior to each meeting; and

(ii) the minutes of each meeting within a reasonable time after each meeting,

if such documents are submitted by the Foundation Infrastructure Works Contractors to the Principal.

14A.6 **Foundation Infrastructure Works Design Documentation**

(a) The Principal must provide OpCo2 with a copy of all Foundation Infrastructure Works Design Documentation submitted by the Foundation Infrastructure Works Contractors to the Principal, promptly following receipt by the Principal.

(b) OpCo2 may:

(i) review the Foundation Infrastructure Works Design Documentation provided to it pursuant to clause 14A.6(a); and

(ii) to the extent that the Foundation Infrastructure Works Design Documentation does not comply with the requirements of the relevant Foundation Infrastructure Works Contract, provide written comments to the Principal within 10 Business Days of the date on which OpCo2 received the Foundation Infrastructure Works Design Documentation (as applicable) pursuant to clause 14A.6(a).

(c) The Principal must provide OpCo2 with a copy of any comments the Principal receives from the TSE Independent Certifier, the Brownfield Independent Certifier or the Greenfield Independent Certifier (as applicable) in response to any comments made by OpCo2 under clause 14A.6(b) promptly and in any event no later than 10 Business Days after receipt.

14A.6A **Accepted Foundation Infrastructure Works Change**

(a) The Principal may provide OpCo2 with details of any Foundation Infrastructure Works Change it considers to be an Accepted Foundation Infrastructure Works Change (**Proposed Accepted Foundation Infrastructure Works Change**).

(b) OpCo2 may, within 10 Business Days (or such longer period as the Principal's Representative reasonably agrees, having regard to the size and complexity of the Foundation Infrastructure Works Change) of receipt of a notice under clause

14A.6A(a), provide the Principal's Representative with a written notice stating that it:

(i) agrees the Proposed Accepted Foundation Infrastructure Works Change is an Accepted Foundation Infrastructure Works Change; or

(ii) does not consider the Proposed Accepted Foundation Infrastructure Works Change to be an Accepted Foundation Infrastructure Works Change.

(c) If OpCo2 gives the Principal a notice in accordance with clause 14A.6A(b)(i) then the Proposed Foundation Infrastructure Works Change will be deemed to be an Approved Foundation Infrastructure Works Change.

(d) If OpCo2 gives the Principal a notice in accordance with clause 14A.6A(b)(ii), the Modifications Working Group must, at the next Modifications Working Group meeting (or as many additional meetings as agreed by the parties):

(i) discuss the Proposed Accepted Foundation Infrastructure Works Change; and

(ii) use their reasonable endeavours to agree whether the Proposed Accepted Foundation Infrastructure Works Change is an Accepted Foundation Infrastructure Works Change.

(e) If the Modifications Working Group:

(i) agrees that the Proposed Accepted Foundation Infrastructure Works Change is an Accepted Foundation Infrastructure Works Change, then the Proposed Accepted Foundation Infrastructure Works Change will be deemed to be an Approved Foundation Infrastructure Works Change; or

(ii) does not agree that the Proposed Accepted Foundation Infrastructure Works Change is an Accepted Foundation Infrastructure Works Change, then the Principal may issue a notice to OpCo2 pursuant to clause 14A.3(a).

(f) If a notice is not received by the Principal within the time specified in clause 14A.6A(a):

(i) OpCo2 is deemed to have accepted the Proposed Accepted Foundation Infrastructure Works Change is an Accepted Foundation Infrastructure Works Change; and

(ii) the Proposed Accepted Foundation Infrastructure Works Change will be deemed to be an Approved Foundation Infrastructure Works Change.

(g) If requested by OpCo2, the Principal must attend any meetings with OpCo2 and the relevant Foundation Infrastructure Works Contractor regarding the Proposed Accepted Foundation Infrastructure Works Change and provide such further information as may be reasonably required by OpCo2.

14A.7 **Not used**

14A.8 **Foundation Infrastructure Works Asset Management Information**

(a) The Principal must provide OpCo2 with a copy of any Foundation Infrastructure Works Asset Management Information submitted by the Foundation Infrastructure Works Contractors to the Principal, promptly following receipt by the Principal.

(b) OpCo2 may, or if requested by the Principal must:

(i) review the Foundation Infrastructure Works Asset Management Information provided to it pursuant to clause 14A.8(a); and

(ii) provide comments to the Principal, within 5 Business Days of the date on which OpCo2 received the Foundation Infrastructure Works Asset Management Information pursuant to clause 14A.8(a).

14A.9 **Inspection of Foundation Infrastructure Works**

(a) If OpCo2 wishes to inspect the Foundation Infrastructure Works, OpCo2 must submit a written request to the Principal's Representative:

(i) with respect to Foundation Infrastructure Works other than the PSD/MGF Works, a minimum of 10 Business Days; and

(ii) with respect to the PSD/MGF Works, a minimum of 2 Business Days,

in advance of the date it wishes to carry out the inspection (or such other period of time as the Principal's Representative may agree).

(b) OpCo2 may only inspect the Foundation Infrastructure Works when accompanied by the Principal's Representative (or its nominee).

(c) The Principal's Representative must:

(i) facilitate all reasonable requests by OpCo2 to inspect the Foundation Infrastructure Works; and

(ii) notify OpCo2 of, and provide OpCo2 with a reasonable opportunity to attend, all joint inspections of:

(A) the TSE Works carried out in accordance with clauses 15.14, 17.11 and 17.11A of the TSE Deed;

(B) the CSM Works carried out in accordance with clauses 16.2, 16.4 and 17.2 of the CSM Contract;

(C) the Southwest Stations Works carried out in accordance with clauses 12.3 and 12.8 of the relevant Southwest Stations Contract;

(D) the Southwest Corridor Works carried out in accordance with the relevant clauses of the Southwest Corridor Works Contract;

(E) the SSJ Works carried out in accordance with clauses 17.2 and 17.4 of the SSJ Contract;

(F) the City Stations Works carried out in accordance with:

(aa) in the case of the Barangaroo Station Construct Contractor or the Crows Nest Station Construct Contractor, clauses 12.1A, 12.2 and 12.3 of the relevant City Station Construct Contract;

(bb) in the case of the Martin Place Station Contractor, clauses 25.1, 27.1, 27.2, 28.1 and 30.13 of the Martin Place Station Contract; or

(cc) in the case of each other City Station Contractor, clause 23.1 of the relevant City Station Contract;

(G) the Line-wide Works carried out in accordance with clauses 12.14, 16.2, 16.4 and 17.2 of the Line-wide Contract; and

(H) the PSD/MGF Works carried out in accordance with clauses 13.2 and 13.3 of the PSD/MGF Contract.

(d) To the extent that the Foundation Infrastructure Works do not comply with the requirements of the relevant Foundation Infrastructure Works Contract, OpCo2 may provide written comments to the Principal:

(i) in the case of an inspection carried out in accordance with:

(A) clause 17.11(b) of the TSE Deed;

(B) clauses 16.2(c), 16.4(b)(ii) and 17.2(b) of the CSM Contract;

(C) clause 12.3(a) of a Southwest Stations Contract;

(D) the relevant clause of the Southwest Corridor Works Contract;

(E) clause 17.2(b) of the SSJ Contract;

(F) clauses 12.1A(b), 12.2(b) and 12.3(b) of a City Station Construct Contract;

(G) clauses 25.1(b), 27.1(b), 27.2(b) and 28.1(b) of the Martin Place Station Contract;

(H) clause 23.1(b) of a City Station Contract (other than the City Station Construct Contracts and the Martin Place Station Contract);

(I) clauses 16.2(c), 16.4(b) and 17.2(b) of the Line-wide Contract; or

(J) clauses 13.2(b) and 13.3(b) of the PSD/MGF Contract,

within 1 Business Day of the date of the relevant inspection;

(ii) in the case of an inspection carried out in accordance with:

(A) clauses 17.11(d) and 17.11A(a) of the TSE Deed;

(B) clauses 16.2(e), 16.4(a)(i), 16.4(b)(vii) and 17.2(d) of the CSM Contract;

(C) clause 12.3(d) of a Southwest Stations Contract;

(D) the relevant clause of the Southwest Corridor Works Contract;

(E) clauses 17.2(d) and 17.4(a) of the SSJ Contract;

(F) clauses 12.1A(d), 12.2(d) and 12.3(d) of a City Station Construct Contract;

(G) clauses 25.1(d), 27.1(d), 27.2(d) and 28.1(d) of the Martin Place Station Contract;

(H) clause 23.1(e) of a City Station Contract (other than the City Station Construct Contracts and the Martin Place Station Contract);

(I) clauses 16.2(e), 16.4(g) and 17.2(d) of the Line-wide Contract; or

(J) clauses 13.2(d) and 13.3(d) of the PSD/MGF Contract,

within 2 Business Days of the date of the relevant inspection; and

(iii) in the case of any other inspection under this clause 14A.9 (*Inspection of Foundation Infrastructure Works*), within 5 Business Days of the date of the relevant inspection.

(e) The Principal must provide OpCo2 with a copy of any comments the Principal receives from the TSE Independent Certifier, the Brownfield Independent Certifier or the Greenfield Independent Certifier (as applicable) in response to any comments made by OpCo2 under clause 14A.9(d) promptly and in any event no later than 10 Business Days after receipt.

(f) OpCo2 may (acting reasonably) provide to the Principal any comments in relation to non-compliance by a Foundation Infrastructure Works Contractor with any completion requirements under the relevant Foundation Infrastructure Works Contract if such non-compliance would not subsequently be a Foundation Infrastructure Works Defect and the Principal agrees to pass such comments to the TSE Independent Certifier, the Brownfield Independent Certifier or the Greenfield Independent Certifier (as applicable).

14A.10 **Foundation Infrastructure Works documentation**

If requested by OpCo2, the Principal must:

(a) make available to OpCo2 through its project data and collaboration system (or by such other method notified by the Principal's Representative to OpCo2); or

(b) otherwise provide OpCo2 with,

copies of:

(c) all documents or other information in respect of the design, construction, occupation, use and maintenance of the Foundation Infrastructure Works which:

(i) the Foundation Infrastructure Works Contractors must provide to the Principal as a condition precedent to TSE Completion, CSM Completion of CSM Portion 3, a Southwest Completion, a SSJ Completion, a City Station Completion, a Line-wide Construction Completion or PSD/MGF Construction Completion (as applicable) of each Foundation Infrastructure Works Portion; or

(ii) must necessarily be provided to the Principal before each Foundation Infrastructure Works Portion can be used for its intended purpose;

(d) any correspondence with, or certificates issued by, the TSE Independent Certifier, the Brownfield Independent Certifier or the Greenfield Independent Certifier in relation to the Foundation Infrastructure Works (excluding any confidential commercial information regarding the Foundation Infrastructure Works Contractors);

(e) any notices of Foundation Infrastructure Works Defects notified to the Principal by the Foundation Infrastructure Works Contractors, or by the Principal to the Foundation Infrastructure Works Contractors, after the Date of Completion (as that term is defined in the relevant Foundation Infrastructure Works Contract, as applicable) of the relevant Foundation Infrastructure Works Portion;

(f) any warranties provided by the Foundation Infrastructure Works Contractors to the Principal from any subcontractors to the Foundation Infrastructure Works Contractors; and

(g) any documents the Principal is entitled to, and actually, receives from:

(i) the Foundation Infrastructure Works Contractors in relation to the quality of the Foundation Infrastructure Works or the maintenance of those Foundation Infrastructure Works by the Foundation Infrastructure Works Contractors;

(ii) the proponents for the Southwest Works in relation to the quality of the Southwest Works; and

(iii) a PSD/MGF Product Proving Proponent and the proponents for the PSD/MGF Works in relation to the quality of the PSD/MGF Works and the development, design, product proving, testing and delivery program of the PSD/MGF Works,

to the extent that any documentation is not provided directly to OpCo2 by a Foundation Infrastructure Works Contractor, the TSE Independent Certifier, the Brownfield Independent Certifier or the Greenfield Independent Certifier.

OpCo2 warrants that it does not require any further documents in relation to the Foundation Infrastructure Works Contracts or the Foundation Infrastructure Works to enable OpCo2 to carry out its obligations under this deed.

14A.11 **Care and maintenance of Foundation Infrastructure Works**

(aa) The Principal will be responsible for the care and maintenance of the Foundation Infrastructure Works located within the Construction Site for Phase 2 in accordance with the Foundation Infrastructure Works O&M Manuals up to the Phase 2 Handover Date.

(a) OpCo2 is responsible for the care and maintenance of any parts of the Foundation Infrastructure Works located within the Construction Site, in accordance with the Foundation Infrastructure Works O&M Manuals, commencing from the relevant OpCo2 Handover (C&M) Date for that part of the Construction Site and for the period of the Construction Site Licence.

(b) If:

(i) OpCo2 fails to occupy a part of the Construction Site from the relevant OpCo2 Handover (C&M) Date for that part of the Construction Site (**Relevant Date**); and

(ii) the Principal incurs a liability to a Foundation Infrastructure Works Contractor in relation to Transitional Handover Services carried out by the Foundation Infrastructure Works Contractor on that part of the Construction Site on or after the Relevant Date,

OpCo2 must indemnify the Principal from and against such liability.

14A.12 **Not used**

14A.13 **Not used**

14A.14 **Not used**

14A.15 **Not used**

14A.16 **Compensation Event**

OpCo2's entitlement to compensation in relation to the Compensation Event referred to in paragraph (m) of the definition of Compensation Event will be reduced to the extent that:

(a) OpCo2's non-compliance with:

(i) the Interface Management Plan;

(ii) the Master Interface Protocols Deed Poll;

(iii) a Project Cooperation and Integration Deed; or

(iv) its obligations under this deed in connection with the Foundation Infrastructure Works Contractors, the Foundation Infrastructure Works and any Foundation Infrastructure Works Defects; or

(b) OpCo's non-compliance with the Line-wide-OpCo Cooperation and Integration Deed,

increased the length of any delay caused by the Compensation Event or increased the costs payable, or loss of revenue suffered, by OpCo2 as a result of the Compensation Event.

14A.17 **Claims**

Subject to clauses 14A.3 (*Principal initiated Foundation Infrastructure Works Change*), 14B (*Foundation Infrastructure Works Known Defects*), 17 (*Time*), 18A (*Integration Risk Share Allowance*), 25C (*Collaboration Payments*), 26 (*Compensation Events*) and 27 (*Relief Events*):

(a) the Principal will not be liable upon any Claim by OpCo2 arising out of or in any way in connection with:

(i) the Foundation Infrastructure Works Contractors carrying out the Foundation Infrastructure Works; or

(ii) any act or omission of a Foundation Infrastructure Works Contractor; and

(b) OpCo2 warrants that the Base Case Financial Model and the Delivery Program contain sufficient allowances for the assumption by OpCo2 of the obligations and risks under this clause 14A (*Integration with Foundation Infrastructure Works Contractors*), including the cost of all the design iterations required to accommodate the Foundation Infrastructure Works.

14B **FOUNDATION INFRASTRUCTURE WORKS DEFECTS**

14B.1 **Foundation Infrastructure Works Known Defects**

(a) OpCo2 acknowledges that:

(i) the CSM Works for CSM Portion 3 may achieve CSM Completion and be handed over to OpCo2 with Accepted CSM Defects;

(ii) the Southwest Works may achieve Southwest Completion and be handed over to OpCo2 with Accepted Southwest Defects;

(iii) the SSJ Works may achieve SSJ Completion and be handed over to OpCo2 with Accepted SSJ Defects;

(iv) the TSE Works may achieve TSE Completion and be handed over to OpCo2 with Accepted TSE Defects;

(v) the City Stations Works comprised in each City Station Trackway Portion may achieve City Station Completion and be handed over to OpCo2 with Accepted City Station Defects;

(vi) the City Stations Works comprised in each City Station Non-Trackway Portion may achieve City Station Completion and be handed over to OpCo2 with Minor City Station Defects, Agreed City Station Defects and Accepted City Station Defects;

(vii) the Line-wide Works may achieve Line-wide Completion and be handed over to OpCo2 with Minor Line-wide Defects, Agreed Line-wide Defects and Accepted Line-wide Defects; and

(viii) the PSD/MGF Works may:

(A) achieve PSD/MGF Construction Completion with Minor PSD/MGF Defects, Agreed PSD/MGF Defects and Accepted PSD/MGF Defects; and

(B) be handed over to OpCo2 with Accepted PSD/MGF Defects.

(b) OpCo2 may, at any time prior to the OpCo2 Handover (C&M) Date, give written notice to the Principal if it reasonably considers that a Foundation Infrastructure Works Defect is located within a part of the Sydney Metro Site which OpCo2 has, at that time, a licence to use pursuant to clauses 12.1 (*Construction Site Licence*).

(c) Without limiting clauses [redacted] or 14A.2 (*Foundation Infrastructure Works are fit for OpCo2's purpose*), OpCo2 must accept control of each Foundation Infrastructure Works Portion in accordance with clause [redacted] notwithstanding the presence of any Foundation Infrastructure Works Known Defects.

14B.1A **Principal notification of Foundation Infrastructure Works Known Defects**

(a) The Principal may:

(i) prior to the TSE Date of Completion, give OpCo2 a written notice setting out details of any defects in the TSE Works that are proposed to be listed in the TSE Notice of Completion as an Accepted TSE Defect;

(ii) prior to the CSM Date of Completion, give OpCo2 a written notice setting out details of any defects in the CSM Works that are proposed to be listed in the CSM Notice of Completion as an Accepted CSM Defect;

(iii) prior to the SSJ Date of Completion of each SSJ Phase 1 Portion, give OpCo2 a written notice setting out details of any defects in the relevant SSJ Phase

1 Portion that are proposed to be listed in the SSJ Notice of Completion as an Accepted SSJ Defect;

(iv) prior to the SSJ Date of Completion of each SSJ Phase 2 Portion, give OpCo2 a written notice setting out details of any defects in the relevant SSJ Phase 2 Portion that are proposed to be listed in the SSJ Notice of Completion as an Accepted SSJ Defect;

(v) prior to the Line-wide Date of Construction Completion of each Line-wide Phase 1 Portion and the Line-wide Date of Construction Completion of the Line-wide Phase 2 Portion, give OpCo2 a written notice setting out details of any defects in the Line-wide Works that are proposed to be listed in the Line-wide Notice of Construction Completion of the relevant Line-wide Phase 1 Portion or the Line-wide Notice of Construction Completion of the Line-wide Phase 2 Portion as an Agreed Line-wide Defect, a Minor Line-wide Defect or an Accepted Line-wide Defect;

(vi) prior to the Line-wide Date of Completion of each Line-wide Phase 1 Portion and the Line-wide Date of Completion of the Line-wide Phase 2 Portion, give OpCo2 a written notice setting out details of any defects in the Line-wide Works that are proposed to be listed in the Line-wide Notice of Completion of each Line-wide Phase 1 Portion or the Line-wide Notice of Completion of the Line-wide Phase 2 Portion 4 as an Accepted Line-wide Defect;

(vii) prior to each City Station Date of Completion, give OpCo2 a written notice setting out details of any defects in the relevant City Stations Works that are proposed to be listed in a City Station Notice of Completion as:

(A) in respect of the City Station Portions, an Agreed City Station Defect; and

(B) in respect of the City Station Non-Trackway Portions, a Minor City Station Defect or an Accepted City Station Defect;

(viii) prior to each Southwest Date of Completion, give OpCo2 a written notice setting out details of any defects in the relevant Southwest Works that are proposed to be listed in a Southwest Notice of Completion as an Accepted Southwest Defect;

(ix) prior to the PSD/MGF Date of Construction Completion, give OpCo2 a written notice setting out details of any defects in the PSD/MGF Works that are proposed to be listed in a PSD/MGF Notice of Construction Completion as an Agreed PSD/MGF Defect, a Minor PSD/MGF Defect or an Accepted PSD/MGF Defect; and

(x) prior to the PSD/MGF Date of Completion, give OpCo2 a written notice setting out details of any defects in the PSD/MGF Works that are proposed to be listed in a PSD/MGF Notice of Completion as an Accepted PSD/MGF Defect.

(b) OpCo2 must promptly, and in any event no later than 20 Business Days from the date on which OpCo2 receives a notice from the Principal:

(i) in accordance with clause 14B.1A(a)(v), 14B.1A(a)(vii), or 14B.1A(a)(ix), give written notice to the Principal if it reasonably considers that:

(A) a proposed Agreed Foundation Infrastructure Works Defect:

(aa) will, or is likely to, have an impact on OpCo2's ability to perform its obligations under this deed during the relevant Known Defects Rectification Period; and/or

(bb) is unlikely to be capable of correction within the relevant Known Defects Rectification Period; or

(B) a proposed Minor Foundation Infrastructure Works Defect:

(aa) will, or is likely to, prevent the Line-wide Works, City Stations Works or PSD/MGF Works (as applicable) from being fit for its intended purpose; and/or

(bb) in respect of:

(a) a proposed Minor Line-wide Defect or Minor City Station Defect, is not capable of being corrected after the relevant part of the Construction Site has been handed over to OpCo2 without causing delay or disruption to those OpCo2's Activities that are to be performed within the relevant part of the Construction Site; or

(b) a proposed Minor PSD/MGF Defect, is not capable of being corrected after the PSD/MGF Works have achieved PSD/MGF Construction Completion without causing delay or disruption to OpCo2's Activities,

and should therefore be rectified as a pre-condition to the achievement of Line-wide Construction Completion of Portion 3, Line-wide Construction Completion of Portion 4, City Station Completion or PSD/MGF Construction Completion (as applicable); and

(ii) in accordance with clauses 14B.1A(a)(i) to 14B.1A(a)(x) (each inclusive) in respect of a proposed Accepted Foundation Infrastructure Works Defect, give written notice to the Principal if it reasonably considers that the proposed Accepted Foundation Infrastructure Works Defect is not Acceptable.

(c) OpCo2 acknowledges that:

(i) a TSE Notice of Completion may contain Accepted TSE Defects;

(ii) a CSM Notice of Completion may contain Accepted CSM Defects;

(iii) a SSJ Notice of Completion for a SSJ Phase 1 Portion may contain Accepted SSJ Defects;

(iv) a SSJ Notice of Completion for a SSJ Phase 2 Portion may contain Accepted SSJ Defects;

(v) a Line-wide Notice of Construction Completion for a Line-wide Phase 1 and a Line-wide Notice of Construction Completion for the Line-wide Phase 2 Portion may contain Accepted Line-wide Defects, Agreed Line-wide Defects and Minor Line-wide Defects;

(vi) a Line-wide Notice of Completion for a Line-wide Phase 1 Portion and a Line-wide Notice of Completion for the Line-wide Phase 2 Portion may contain Accepted Line-wide Defects;

(vii) a City Station Notice of Completion for a City Station Non-Trackway Portion may contain Accepted City Station Defects, Agreed City Station Defects and Minor City Station Defects;

(viii) a City Station Notice of Completion for a City Station Trackway Portion may contain Accepted City Station Defects;

(ix) a Southwest Notice of Completion may contain Accepted Southwest Defects;

(x) a PSD/MGF Notice of Construction Completion may contain Accepted PSD/MGF Defects, Agreed PSD/MGF Defects and Minor PSD/MGF Defects; and

(xi) a PSD/MGF Notice of Completion may contain Accepted PSD/MGF Defects,

notwithstanding that OpCo2 may have given notice to the Principal in accordance with clause 14B.1A(b).

(d) OpCo2 agrees that, except where expressly provided under this deed, if OpCo2 does not give notice to the Principal under clause 14B.1A(b) within the period required by that clause:

(i) the Principal will not be liable (insofar as it is possible to exclude such liability) upon any Claim by OpCo2; and

(ii) OpCo2 will be absolutely barred from making any Claim against the Principal,

in relation to the Delivery Activities arising out of, or in relation to:

(iii) any Accepted Foundation Infrastructure Works Defects the subject of a notice by the Principal under clause 14B.1A(a); and

(iv) any Agreed Foundation Infrastructure Works Defect or Minor Foundation Infrastructure Works Defect the subject of a notice by the Principal under clause 14B.1A(a) during the relevant Known Defects Rectification Period.

(e) The Principal must promptly, and in any event no later than 10 Business Days from the date on which the Principal receives the notice from the Greenfield Independent Certifier, the Brownfield Independent Certifier or the TSE Independent Certifier (as applicable), provide to OpCo2:

(i) any TSE Notice of Completion containing any Accepted TSE Defects;

(ii) any CSM Notice of Completion containing any Accepted CSM Defects;

(iii) any SSJ Notice of Completion for a SSJ Phase 1 Portion containing Accepted SSJ Defects;

(iv) any SSJ Notice of Completion for a SSJ Phase 2 Portion containing Accepted SSJ Defects;

(v) any Line-wide Notice of Construction Completion for a Line-wide Phase 1 Portion and a Line-wide Notice of Construction Completion for the Line-wide Phase 2 Portion containing any Accepted Line-wide Defects, Agreed Line-wide Defects or Minor Line-wide Defects;

(vi) any Line-wide Notice of Completion for a Line-wide Phase 1 Portion and a Line-wide Notice of Completion for the Line-wide Phase 2 Portion containing any Accepted Line-wide Defects;

(vii) any City Station Notice of Completion for a City Station Non-Trackway Portion containing any Accepted City Station Defects, Agreed City Station Defects or Minor City Station Defects;

(viii) any City Station Notice of Completion for a City Station Trackway Portion containing any Accepted City Station Defects;

(ix) any Southwest Notice of Completion containing any Accepted Southwest Defects;

(x) any PSD/MGF Notice of Construction Completion containing any Accepted PSD/MGF Defects, Agreed PSD/MGF Defects or Minor PSD/MGF Defects; and

(xi) any PSD/MGF Notice of Completion containing any Accepted PSD/MGF Defects.

14B.1B **OpCo2 notification of Foundation Infrastructure Works Known Defects**

(a) OpCo2 must promptly, and in any event no later than 30 Business Days from the date on which OpCo2 receives a Foundation Infrastructure Works Notice of Completion in accordance with clause 14B.1A(e), give written notice to the Principal if it reasonably considers that:

(i) an Accepted Foundation Infrastructure Works Defect listed in that Foundation Infrastructure Works Notice of Completion is not Acceptable; or

(ii) an Agreed Foundation Infrastructure Works Defect or a Minor Foundation Infrastructure Works Defect (as applicable) listed in that Foundation Infrastructure Works Notice of Completion has, or will have, an impact on OpCo2's ability to perform its obligations under this deed during the relevant Known Defects Rectification Period.

(b) If OpCo2 gives the Principal a notice under clause 14B.1B(a)(i), the Principal's Representative must, within 10 Business Days or such longer period as the parties may agree (acting reasonably), issue a notice to OpCo2 that contains one of the following:

(i) a direction to OpCo2 to carry out a Modification pursuant to clause 29 (*Principal initiated Modifications*) to modify the OTS2 Works or OpCo2's Activities to make the relevant Accepted Foundation Infrastructure Works Defect Acceptable; or

(ii) a notification to OpCo2 that the Principal considers the Accepted Foundation Infrastructure Works Defect to be Acceptable.

(c) If OpCo2 gives the Principal a notice under clause 14B.1B(a)(ii), the Principal's Representative must, within 10 Business Days or such longer period as the parties may agree (acting reasonably), issue a notice to OpCo2 that contains one of the following:

(i) a direction to OpCo2 to carry out a Modification pursuant to clause 29 (*Principal initiated Modifications*) to modify the OTS2 Works or OpCo2's Activities to accommodate the impact (if any) of the relevant Agreed Foundation Infrastructure Works Defect or Minor Foundation Infrastructure

Works Defect (as applicable) on the OTS2 PPP during the relevant Known Defects Rectification Period; or

(ii) a notification to OpCo2 that the Principal does not consider the relevant Agreed Foundation Infrastructure Works Defect or Minor Foundation Infrastructure Works Defect (as applicable) to have, or will have, an impact on OpCo2's ability to perform its obligations under this deed during the relevant Known Defects Rectification Period.

(d) If there is any dispute between OpCo2 and the Principal as to whether:

(i) an Accepted Foundation Infrastructure Works Defect is Acceptable; or

(ii) an Agreed Foundation Infrastructure Works Defect or a Minor Foundation Infrastructure Works Defect (as applicable) has, or will have, an impact on OpCo2's ability to perform its obligations under this deed during the relevant Known Defects Rectification Period,

the dispute resolution process in clause 56 (*Dispute resolution*) will apply.

(e) OpCo2 agrees that, except where expressly provided under this deed, if OpCo2 does not give notice to the Principal under clause 14B.1B(a) within the period required by that clause:

(i) the Principal will not be liable (insofar as it is possible to exclude such liability) upon any Claim by OpCo2; and

(ii) OpCo2 will be absolutely barred from making any Claim against the Principal:

in relation to the Delivery Activities arising out of, or in relation to:

(iii) any Accepted Foundation Infrastructure Works Defects; and

(iv) any Agreed Foundation Infrastructure Works Defect or Minor Foundation Infrastructure Works Defect during the relevant Known Defects Rectification Period.

14B.2 **Foundation Infrastructure Works Defects**

(a) This clause 14B.2 (*Foundation Infrastructure Works Defects*) does not apply to:

(i) any Accepted Foundation Infrastructure Works Defect to the extent such Accepted Foundation Infrastructure Works Defect impacts the performance of the Delivery Activities; and

(ii) any Agreed Foundation Infrastructure Works Defect or Minor Foundation Infrastructure Works Defect during the applicable Known Defects Rectification Period.

(b) Subject to clause 14B.2(ba), OpCo2 must promptly give written notice to the Principal, and in any case within 20 Business Days, after OpCo2 first became aware, if it considers there to be:

(i) during the First Operations Period, an Accepted Foundation Infrastructure Works Defect that is not Acceptable in relation to the performance of the Operations Activities;

(ii) a Foundation Infrastructure Works Defect (including any Agreed Foundation Infrastructure Works Defect or Minor Foundation Infrastructure Works Defect that was not rectified during the Known Defects Rectification Period) which is discovered by OpCo2 during the Initial Defects Period or the First Operations Period;

(iii) a Line-wide Defect in the relevant Line-wide Portion which is discovered by OpCo2 during the period commencing on the first day of the Second Operations Period and expiring on the date that is three years later (**Line-wide Additional Defect Period**); or

(iv) a TSE Defect, a Foundation Infrastructure Works Structural Defect or a PSD/MGF Systemic Defect which is discovered by OpCo2 during the Second Operations Period.

(ba) Where, prior to the date on which OpCo2 becomes responsible for the care and maintenance of a Foundation Infrastructure Works Portion in accordance with clause 14A.11 (*Care and maintenance of Foundation Infrastructure Works*), OpCo2 has given a written notice under clause 14B.1(b) in respect of a Foundation Infrastructure Works Defect located within a part of the Sydney Metro Site which OpCo2 had, at the time of that notice, a licence to use pursuant to clauses 12.1 (*Construction Site Licence*) and, in OpCo2's opinion, the Foundation Infrastructure Works Defect has not been rectified by the date on which OpCo2 becomes responsible for the care and maintenance of a Foundation Infrastructure Works Portion in accordance with clause 14A.11 (*Care and maintenance of Foundation Infrastructure Works*) and which OpCo2 has, at that time, a licence to use pursuant to clauses 12.1 (*Construction Site Licence*) or 12.3 (*Licence to use Licensed Maintenance Area and to access Additional Maintained Assets*), OpCo2 must give a written notice to the Principal.

(c) OpCo2 must:

(i) provide the Principal's Representative with any information reasonably requested in relation to the Foundation Infrastructure Works Defect; and

(ii) together with any notice under clause 14B.2(b)(iii), provide the Principal's Representative with up to date maintenance records for the relevant Asset within which OpCo2 considers there to be a Line-wide Defect.

(ca) OpCo2:

(i) must use all reasonable endeavours to mitigate the effects of the Foundation Infrastructure Works Defect; and

(ii) will have its entitlement to compensation or relief in relation to a Foundation Infrastructure Works Defect reduced to the extent that OpCo2 fails to comply with its obligations under paragraph (i).

(d) If OpCo2 gives the Principal a notice:

(i) under clause 14B.2(b)(i), 14B.2(b)(ii) or 14B.2(b)(iv) in respect of a Foundation Infrastructure Works Defect located within a part of the Sydney Metro Site from the date on which OpCo2 becomes responsible for the care and maintenance of a Foundation Infrastructure Works Portion in accordance with clause 14A.11 (*Care and maintenance of Foundation Infrastructure Works*) and which OpCo2 has, at that time, a licence to use pursuant to clauses 12.1 (*Construction Site Licence*) or 12.3 (*Licence to use Licensed Maintenance Area and to access Additional Maintained Assets*); or

(ii) under clause 14B.2(ba) in respect of a Foundation Infrastructure Works Defect that, in OpCo2's opinion, has not been rectified by the date on which OpCo2 becomes responsible for the care and maintenance of a Foundation Infrastructure Works Portion in accordance with clause 14A.11 (*Care and maintenance of Foundation Infrastructure Works*) and which OpCo2 has, at that time, a licence to use pursuant to clauses 12.1 (*Construction Site Licence*) or 12.3 (*Licence to use Licensed Maintenance Area and to access Additional Maintained Assets*),

the Principal's Representative must within:

(iii) 10 Business Days of OpCo2's notice under clause 14B.2(b)(i), 14B.2(b)(ii), 14B.2(b)(iv) or 14B.2(ba);

(iv) if the Principal has requested any information under clause 14B.2(c)(i), 10 Business Days of receiving the additional information from OpCo2; or

(v) such longer period as the parties may agree (acting reasonably),

issue a notice to OpCo2 that contains one of the following:

(vi) an undertaking by the Principal to procure the rectification of:

(A) during the Initial Defects Period and the First Operations Period, the Foundation Infrastructure Works Defect; or

(B) during the Second Operations Period, the TSE Defect, the Foundation Infrastructure Works Structural Defect or the PSD/MGF Systemic Defect,

by the relevant Foundation Infrastructure Works Contractor or an Other Contractor;

(vii) a direction to OpCo2 to carry out a Modification pursuant to clause 29 (*Principal initiated Modifications*) to:

(A) rectify:

(aa) during the Initial Defects Period and the First Operations Period, the Foundation Infrastructure Works Defect; or

(bb) during the Second Operations Period, the TSE Defect, the Foundation Infrastructure Works Structural Defect or the PSD/MGF Systemic Defect; or

(B) modify the OTS2 Works or OpCo2's Activities to accommodate the impact (if any) of the Foundation Infrastructure Works Defect on the OTS2 PPP; or

(viii) a notification to OpCo2 that the Principal:

(A) does not consider the alleged defect to be:

(aa) during the Initial Defects Period and the First Operations Period, a Foundation Infrastructure Works Defect; or

(bb) during the Second Operations Period, a TSE Defect, a Foundation Infrastructure Works Structural Defect or a PSD/MGF Systemic Defect; or

(B) does not consider the alleged defect to be:

(aa) during the Initial Defects Period and the First Operations Period, a Foundation Infrastructure Works Defect; or

(bb) during the Second Operations Period, a TSE Defect, a Foundation Infrastructure Works Structural Defect or a PSD/MGF Systemic Defect,

and considers the alleged defect to be a Defect,

and if applicable, the process in clauses 14B.3 (*Urgent Repairs*) and 14B.4 (*Temporary Repairs*) will apply.

(da) If OpCo2 gives the Principal a notice under clause 14B.2(b)(iii), the Principal's Representative must within:

(i) 10 Business Days of OpCo2's notice under clause 14B.2(b)(iii);

(ii) if the Principal has requested any information under clause 14B.2(c)(i), 10 Business Days of receiving the additional information from OpCo2; or

(iii) such longer period as the parties may agree (acting reasonably),

issue a notice to OpCo2 that contains one of the following:

(iv) a notification to OpCo2 that the Principal agrees there is a Line-wide Defect discovered by OpCo2 during the Line-wide Additional Defect Period;

(v) a notification to OpCo2 that the Principal does not consider the alleged defect to be:

(A) a Line-wide Defect; or

(B) a Line-wide Defect discovered by OpCo2 during the Line-wide Additional Defect Period; or

(vi) a notification to OpCo2 that the Principal does not consider the alleged defect to be a Line-wide Defect and considers the alleged defect to be a Defect.

(e) If there is any dispute between:

(i) OpCo2, the Principal and the relevant Foundation Infrastructure Works Contractor as to whether an alleged defect in the Foundation Infrastructure Works referred to in clause 14B.2(b) constitutes a Foundation Infrastructure Works Defect (as applicable), the dispute resolution process in relevant Project Cooperation and Integration Deed will apply; and

(ii) OpCo2 and the Principal as to whether an alleged defect in the Foundation Infrastructure Works referred to in clause 14B.2(b) constitutes a Foundation Infrastructure Works Defect (as applicable), which is not covered by clause 14B.2(e)(i), the dispute resolution process in clause 56 (*Dispute resolution*) will apply.

(f) If clause 14B.2(e) applies and it is determined that an alleged defect in the Foundation Infrastructure Works referred to in clause 14B.2(b)(i), 14B.2(b)(ii) or 14B.2(b)(iv) constitutes:

(i) during the Initial Defects Period and the First Operations Period, a Foundation Infrastructure Works Defect; or

(ii) during the Second Operations Period, a TSE Defect, a Foundation Infrastructure Works Structural Defect or a PSD/MGF Systemic Defect,

the Principal must, within 5 Business Days of such determination, issue a notice pursuant to clause 14B.2(d)(vi) or 14B.2(d)(vii).

(g) If clause 14B.2(e) applies and it is determined that an alleged defect in the Foundation Infrastructure Works referred to in clause 14B.2(b)(iii) constitutes a Line-wide Defect discovered during the Line-wide Additional Defect Period, clause 14B.6(a) will apply.

14B.3 **Urgent Repairs**

(a) If an alleged Foundation Infrastructure Works Defect (other than a TSE Defect or a Line-wide Defect referred to in clause 14B.2(b)(iii)) the subject of a notice by OpCo2 under clause 14B.2(b) poses an actual or potential risk:

(i) to the health or safety of any person; or

(ii) of loss of or damage to property,

OpCo2 may, subject to clause 14B.3(b) and clause 14B.3(d)(i), carry out any urgent repairs or other works it considers necessary (acting reasonably) to overcome the effect of the alleged Foundation Infrastructure Works Defect (**Urgent Repairs**).

(b) Before carrying out any Urgent Repairs, OpCo2 must:

(i) where practicable provide the Principal with:

(A) at least 24 hours' prior written notice (or such shorter period of notice as the Principal may agree acting reasonably);

(B) details of the alleged Foundation Infrastructure Works Defect (including photographs) and why Urgent Repairs are required;

(C) the opportunity to inspect the alleged Foundation Infrastructure Works Defect; and

(D) the estimated cost of the Urgent Repairs; and

(ii) obtain the Principal's written approval for the cost of the Urgent Repairs (which must not be unreasonably withheld or delayed).

(ba) Where OpCo2 was unable to provide to the Principal any details required by clause 14B.3(b)(i) prior to carrying out any Urgent Repairs, OpCo2 must provide those details to the Principal as soon as possible.

(c) Within 3 Business Days of completing the Urgent Repairs (but no later than within 10 Business Days of commencing the Urgent Repairs), OpCo2 must provide the Principal with a detailed report of the Urgent Repairs undertaken including the cost of the Urgent Repairs.

(d) OpCo2:

(i) must only carry out any Urgent Repairs that are strictly necessary to overcome the adverse effect referred to in clause 14B.3(a); and

(ii) subject to clauses 14B.3(e) and 14B.3(f), is responsible for funding the cost of any Urgent Repairs.

(e) Where the cost of the Urgent Repairs for an alleged Foundation Infrastructure Works Defect as approved by the Principal under clause 14B.3(b)(ii), is $[redacted] or greater, the Principal will fund the cost of the Urgent Repairs.

(f) To the extent that OpCo2 carries out any Urgent Repairs under this clause 14B.3 (*Urgent Repairs*) and:

(i) the alleged defect in the Foundation Infrastructure Works is:

(A) during the Initial Defects Period and the First Operations Period, a Foundation Infrastructure Works Defect; or

(B) during the Second Operations Period a Foundation Infrastructure Works Structural Defect or a PSD/MGF Systemic Defect,

and the cost of the Urgent Repairs:

(C) is less than $[redacted] (in aggregate for all Urgent Repairs), OpCo2 will be responsible for the costs of the Urgent Repairs; or

(D) is $[redacted] or greater (in aggregate for all Urgent Repairs), the Principal will be responsible for the costs of the Urgent Repairs up to the amount approved by the Principal in accordance with clause 14B.3(b)(ii) and the Principal must pay OpCo2 those costs within 20 Business Days of receipt of a notice from OpCo2 requiring such payment; or

(ii) the alleged defect in the Foundation Infrastructure Works is not a Foundation Infrastructure Works Defect, OpCo2 will be responsible for the costs of the Urgent Repairs.

14B.4 **Temporary Repairs**

(a) Subject to clause 14B.4(b), OpCo2 may carry out temporary repairs or other works to temporarily overcome the effect of an alleged Foundation Infrastructure Works Defect (other than a TSE Defect or a Line-wide Defect referred to in clause 14B.2(b)(iii)) the subject of a notice by OpCo2 under clause 14B.2(b) (**Temporary Repairs**).

(b) Before carrying out any Temporary Repairs, OpCo2 must:

(i) provide the Principal with:

(A) the opportunity to inspect the alleged Foundation Infrastructure Works Defect;

(B) a detailed report of the alleged Foundation Infrastructure Works Defect (including photographs) and why Temporary Repairs are required; and

(C) the estimated cost of the Temporary Repairs; and

(ii) obtain the Principal's written approval:

(A) to carry out the Temporary Repairs; and

(B) for the cost of carrying out the Temporary Repairs.

(c) Within 3 Business Days of completing the Temporary Repairs (but no later than within 10 Business Days of commencing the Temporary Repairs), OpCo2 must provide the Principal with a detailed report of the Temporary Repairs undertaken including the cost of the Temporary Repairs.

(d) Subject to clause 14B.4(e), OpCo2 is responsible for funding the cost of any Temporary Repairs.

(e) To the extent that OpCo2 carries out any Temporary Repairs under this clause 14B.6 (*Temporary Repairs*) and:

(i) the alleged Foundation Infrastructure Works Defect is a Foundation Infrastructure Works Defect, the Principal will be responsible for the costs of the Temporary Repairs as approved by the Principal in accordance with clause 14B.4(b)(ii) and the Principal must pay OpCo2 those costs within 15 Business Days of receipt of a notice from OpCo2 requiring such payment; and

(ii) the alleged Foundation Infrastructure Works Defect is not a Foundation Infrastructure Works Defect, OpCo2 will be responsible for the costs of the Temporary Repairs.

14B.5 **OpCo2's entitlements during Second Operations Period**

(a) To the extent that:

(i) OpCo2 incurs any costs during the Second Operations Period in pursuing the rectification of a Foundation Infrastructure Works Defect (other than a TSE Defect, a Foundation Infrastructure Works Structural Defect or a PSD/MGF Systemic Defect) by the relevant Foundation Infrastructure Works Contractor; and

(ii) OpCo2 is unable to recover those costs from the relevant Foundation Infrastructure Works Contractor as a result of an Insolvency Event occurring in relation to that Foundation Infrastructure Works Contractor,

the Principal must pay OpCo2 those costs within 20 Business Days of receipt of a notice from OpCo2 requiring such payment.

(b) Except where expressly set out in this deed, during the Second Operations Period, the Principal will not be liable to OpCo2 for any costs or Claim in respect of a Foundation Infrastructure Works Defect (other than a TSE Defect, a Foundation Infrastructure Works Structural Defect or a PSD/MGF Systemic Defect) and OpCo2 will retain all risk and liability as between the Principal and OpCo2 in relation to such Foundation Infrastructure Works Defects (other than a TSE Defect, a Foundation Infrastructure Works Structural Defect or a PSD/MGF Systemic Defect).

14B.6 **Liability for Service Payment Deductions**

(a) Where:

(i) the Principal issues a notice under clause 14B.2(d)(vi); or

(ii) clause 14B.2(e) applies and it is determined that an alleged defect referred to in OpCo2's notice under clause 14B.2(b)(i), 14B.2(b)(ii) or 14B(b)(iv) constitutes:

(A) during the First Operations Period, a Foundation Infrastructure Works Defect; or

(B) during the Second Operations Period, a TSE Defect, a Foundation Infrastructure Works Structural Defect or a PSD/MGF Systemic Defect;

(iii) the Principal issues a notice under clause 14B.2(da)(iv); or

(iv) clause 14B.2(e) applies and it is determined that an alleged defect in the Foundation Infrastructure Works referred to in clause 14B.2(b)(iii) constitutes a Line-wide Defect discovered during the Line-wide Additional Defect Period,

any Missed Train Service, Customer Delay Measure or Availability Deduction for Platform Closures occurring as a direct result of the Foundation Infrastructure Works Defect will be excluded from the calculation of Availability Deductions and Timeliness Deductions in accordance with clause 16.3 of Schedule 2 (*Service Payment Regime*).

(b) Where clause 14B.6(a) applies and subject to clause 16.3 of Schedule 2 (*Service Payment Regime*), the Principal will reimburse OpCo2 to the extent any Missed Train Service, Customer Delay Measure or Availability Deduction for Platform Closures occurring as a direct result of the Foundation Infrastructure Works Defect was included in the calculation of Availability Deductions and Timeliness Deductions with respect to that Foundation Infrastructure Works Defect.

14B.7 **Defects Collateral Warranty**

The Principal must, prior to the expiry of the First Operations Period, procure from each Foundation Infrastructure Works Contractor, the relevant Defects Collateral Warranty in favour of OpCo2.

[redacted]

[redacted]

[redacted]

15. CONSTRUCTION

15.1 Construction obligations

(a) OpCo2 must construct the OTS2 Works and the Temporary Works in accordance with:

(i) the SPR;

(ii) any Design Documentation which OpCo2 is entitled to use for construction purposes under clause 13.10(a);

(iii) any Modification Order or Modification Approval issued by the Principal; and

(iv) the other requirements of this deed.

(b) Subject to clause 8.7 (*Implementation and compliance*), OpCo2 must not commence any work upon the Construction Site:

(i) until each of the following Project Plans have been certified by the Principal's Representative under clause 8.5 (*Review of Project Plans*);

(A) Project Management Plan;

(B) Risk Management Plan;

(C) Safety Management Plan;

(D) Delivery Phase Sustainability Plan;

(E) Safety Accreditation Plan;

(F) Quality Plan;

(G) Construction Management Plan;

(H) Incident Management Plan covering the Delivery Phase;

(I) Human Resources Plan; and

(J) Security Management Plan covering the Delivery Phase; and

(ii) until all Hold Points required to be released prior to commencement of work upon the Construction Site have been released in accordance with the requirements of this deed, including the Quality Plan.

(c) Not used.

(d) OpCo2 accepts full responsibility for all construction means, methods and techniques used in the performance of the Delivery Activities.

15.2 **Construction warranties**

OpCo2 warrants that:

(a) construction will be carried out in accordance with the Design Documentation which OpCo2 is entitled to use for construction purposes in accordance with clause 13.10(a);

(b) construction carried out in accordance with the Design Documentation which OpCo2 is entitled to use in accordance with clause 13.10(a) will satisfy the requirements of this deed;

(c) the OTS2 Works and the Temporary Works will be completed in accordance with, and satisfy the requirements of, this deed; and

(d) the OTS2 Works will, upon Completion of Phase 1 and Completion of Phase 2, as applicable, and thereafter at all relevant times during the Term, be safe and fit for their intended purposes.

16. **QUALITY**

OpCo2 must, in performing OpCo2's Activities:

(a) use workmanship:

(i) of:

(A) the standard set out in the SPR; or

(B) to the extent it is not so set out, a standard consistent with Good Industry Practice for work of a similar nature to the applicable OpCo2's Activities; and

(ii) which is fit for its intended purpose; and

(b) use Materials:

(i) which:

(A) comply with the requirements of the SPR; or

(B) if not fully described in the SPR, are consistent with the Good Industry Practice for work of a similar nature to the applicable OpCo2's Activities; and

(ii) which:

(A) are free from defects and other imperfections; and

(B) are safe and fit for their intended purpose.

17. **TIME**

17.1 **Commencement**

OpCo2 must promptly commence performance of the Delivery Activities following Financial Close.

17.2 **Dates for Completion and Milestone Completion**

(a) OpCo2 must:

(i) use its best endeavours to:

(A) achieve Completion of Phase 1 by the Date for Completion of Phase 1 or as soon as possible thereafter; and

(B) achieve Final Completion of Phase 1 as soon as practicable after the Date of Completion of Phase 1;

(ii) achieve Completion of Phase 2 by the Date for Completion of Phase 2;

(iii) achieve Final Completion of Phase 2 as soon as practical after the Date of Completion of Phase 2; and

(iv) use its best endeavours to achieve Milestone Completion of each Milestone by the relevant Milestone Date for Completion.

(b) Subject to clause 19.14 (*Early opening of Sydney Metro City*), OpCo2 must not achieve Completion earlier than the Original Date for Completion unless the Principal agrees otherwise.

17.3 **Delivery Program**

(a) The initial Delivery Program is contained in Exhibit 4 (*Initial Delivery Program*).

(b) OpCo2 must:

(i) prepare the Delivery Program in accordance with the Sydney Metro Programming Protocol, which must:

(A) be based upon the initial Delivery Program; and

(B) contain details required by the Sydney Metro Programming Protocol;

(ii) update the Delivery Program periodically at intervals no less than monthly to take account of:

(A) changes to the program;

(B) delays which have occurred;

(C) any corrective action plan submitted by OpCo2 under clause 17.5 (*Delays*) for which the Principal does not issue any comments under clause 17.6(b);

(D) key interface activities identified by the Cooperation and Integration Control Group or the Project Integration Group;

(E) a part of the Foundation Infrastructure Works Site becoming Accessible as notified by the Principal in accordance with clause 12A.2(a); and

(F) the occurrence of any Phase 2 Change Events;

(iii) ensure that each update of the Delivery Program contains the details required by the SPR and any other details which the Principal's Representative reasonably directs;

(iv) explain any changes to the critical path in the Delivery Program;

(v) ensure that each update of the Delivery Program makes allowance for the Project Plans and Design Documentation to be submitted to the Principal's Representative in a manner and at a rate which will give the Principal's Representative a reasonable opportunity to review the submitted Project Plans or Design Documentation within the 20 Business Day period referred to in clause 8.5 (*Review of Project Plans*) or the periods referred to in clause 13 (*Design*) (as the case may be);

(vi) with respect to the Phase 2 Change Events, provide the Principal with the Delivery Program on an Open Book Basis; and

(vii) give the Greenfield Independent Certifier copies of each update of the Delivery Program.

(c) Nothing in the Delivery Program will bind the Principal or otherwise affect the time for the performance of the Principal's obligations under this deed.

17.3A **Phase 2 Access Plan**

(a) OpCo2 must:

(i) prepare the Phase 2 Access Plan which must:

(A) reflect the Delivery Program;

(B) reflect the Site Access Schedule;

(C) contain OpCo2's lookahead plan template for the Primary Works and Contingency Works for each part of the Construction Site for Phase 2; and

(D) detail the strategy for maximising efficiency of the Phase 2 Works during operational hours, possessions and closures;

(ii) update the Phase 2 Access Plan periodically to take account of:

(A) changes to the program;

(B) delays which have occurred;

(C) any corrective action plan submitted by OpCo2 under clause 17.5 (*Delays*) for which the Principal does not issue any comments under clause 17.6(b);

(D) key interface activities identified by the Cooperation and Integration Control Group or the Project Integration Group;

(E) a part of the Foundation Infrastructure Works Site becoming Accessible as notified by the Principal in accordance with clause 12A.2(a); and

(F) the occurrence of any Phase 2 Change Events; and

(iii) ensure that each update of the Phase 2 Access Plan contains any details which the Principal's Representative reasonably directs.

(b) Nothing in the Phase 2 Access Plan will bind the Principal or otherwise affect the time for the performance of the Principal's obligations under this deed.

[redacted]

[redacted]

17.4 **Acceleration by OpCo2**

If OpCo2 chooses to accelerate progress of the Delivery Activities then:

(a) the Principal may assist OpCo2 but will not be obliged to take any action to assist or enable OpCo2 to achieve:

(i) Completion of Phase 1 before the Date for Completion of Phase 1;

(ii) Completion of Phase 2 before the Date for Completion for Phase 2;

(iii) Milestone Completion of a Milestone before the relevant Milestone Date for Completion; or

(iv) the Train Option Acceptance Requirements for any batch of Option 1 Trains by the Date for Acceptance for those Option 1 Trains;

(b) the time for the performance of the Principal's or the Principal's Representative's obligations will not be affected; and

(c) OpCo2 will not be entitled to make any Claim against the Principal in relation to such acceleration (or any failure or inability by OpCo2 or the Principal to accelerate).

17.5 **Delays**

(a) Without limiting OpCo2's obligations under clause 17.8 (*Claim for extension of time*), if OpCo2 becomes aware of any matter which will, or is likely to, give rise to a delay in:

(i) providing the First Passenger Service on the Sydney Metro City or the Sydney Metro Southwest;

(ii) achieving Completion of Phase 1;

(iii) achieving Completion of Phase 2;

(iv) achieving Milestone Completion of a Milestone; or

(v) achieving the Train Option Acceptance Requirements for any batch of Option 1 Trains by the Date for Acceptance for those Option 1 Trains,

(other than as a result of a Relief Event or a Modification), OpCo2 must give the Principal:

(vi) a notice setting out detailed particulars of the delay; and

(vii) a detailed corrective action plan in accordance with clause 17.6 (*Corrective action plan*),

in each case as soon as reasonably practicable.

(b) If the Principal reasonably believes that OpCo2 will be delayed in:

(i) providing the First Passenger Service;

(ii) achieving Completion of Phase 1;

(iii) achieving Completion of Phase 2;

(iv) achieving Milestone Completion of a Milestone; or

(v) achieving the Train Option Acceptance Requirements for any batch of Option 1 Trains by the Date for Acceptance for those Option 1 Trains,

(other than as a result of a Relief Event or a Modification), the Principal may give notice to that effect to OpCo2, and OpCo2 must then give the Principal a detailed corrective action plan in accordance with clause 17.6 (*Corrective action plan*).

(c) OpCo2 must take all reasonable steps to:

(i) prevent the cause of any delay to the Delivery Activities; and

(ii) avoid or minimise the consequences or duration of any delay,

including any delay arising from a Relief Event or a Modification, provided OpCo2 is not required to incur any additional expense or apply any additional resources in order to comply with its obligations under this clause 17.5(c).

17.6 **Corrective action plan**

(a) Each corrective action plan which OpCo2 must provide pursuant to clause 17.5 (*Delays*) must:

(i) include full details of:

(A) the actions that OpCo2 proposes to take to avoid, mitigate or minimise the consequences of the delay consistent with its obligations under clause 17.2 (*Dates for Completion*);

(B) the additional resources, labour, plant and/or equipment (if any) that OpCo2 will dedicate to implementing the actions described in clause 17.6(a)(i)(A); and

(C) the time period within which OpCo2 will implement each of the actions described in clause 17.6(a)(i)(A);

(ii) be provided together with a proposed updated Delivery Program that reflects the actions and time periods described in clause 17.6(a)(i); and

(iii) include any further information reasonably requested by the Principal.

(b) The Principal may, within 20 Business Days of receipt of a corrective action plan reject the corrective action plan (with detailed reasons) if the corrective action plan does not comply with the requirements of clause 17.6(a).

(c) If the Principal rejects the corrective action plan under clause 17.6(b), OpCo2 must amend and resubmit the corrective action plan to the Principal, after which clause 17.6(b) and this clause 17.6 will reapply.

(d) OpCo2 must comply with any corrective action plan which is not rejected under clause 17.6(b), including:

(i) implementing each of the actions set out in the corrective action plan within the relevant time period specified in the corrective action plan; and

(ii) dedicating the additional resources, labour, plant and/or equipment specified in the corrective action plan.

(e) OpCo2 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 notice given by the Principal under clause 17.6(b); or

(ii) the implementation of any corrective action plan.

(f) OpCo2 will not be entitled to make any Claim against the Principal arising out of or in connection with any notice by the Principal under clause 17.6(b) or any Loss suffered or incurred by OpCo2 in preparing, or complying with, a corrective action plan.

17.7 **Delays entitling claim**

(a) If:

(i) a Relief Event (PPP) delays or will delay OpCo2 in achieving Completion of Phase 1;

(ii) a Relief Event (PPP) delays or will delay OpCo2 in achieving Milestone Completion of a Milestone;

(iii) a Relief Event (Other) delays or will delay OpCo2 in achieving Completion of Phase 2; or

(iv) a Relief Event (PPP) delays or will delay OpCo2 in achieving the Train Option Acceptance Requirements for any batch of Option 1 Trains,

OpCo2 may make a Claim under clause 17.8 (*Claim for extension of time*).

(b) OpCo2 acknowledges that it is only entitled to make a claim for an extension of time under this clause 17 (*Time*) in relation to:

(i) Completion of Phase 1 due to the occurrence of a Relief Event (PPP);

(ii) Milestone Completion of a Milestone due to the occurrence of a Relief Event (PPP);

(iii) Completion of Phase 2 due to the occurrence of a Relief Event (Other); or

(iv) achievement of the Train Option Acceptance Requirements for any batch of Option 1 Trains due to the occurrence of a Relief Event (PPP).

17.8 **Claim for extension of time**

(a) Subject to clause 57.5A (*Temporary waiver of notification requirements*), if OpCo2 wishes to make a Claim under this clause 17.8 (*Claim for extension of time*) it must:

(i) within 20 Business Days after the date OpCo2 first became aware of:

(A) a Relief Event (PPP) which delays or will delay OpCo2 in achieving:

(aa) Completion of Phase 1;

(bb) Milestone Completion of a Milestone; or

(cc) achievement of the Train Option Acceptance Requirements for any batch of Option 1 Trains; or

(B) a Relief Event (Other) which delays or will delay OpCo2 in achieving Completion of Phase 2,

submit a written claim for an extension to the Date for Completion of Phase 1, the Date for Completion of Phase 2, the relevant Milestone Date for Completion or the relevant Date for Acceptance to the Principal's Representative which:

(C) contains detailed particulars of the Relief Event causing the delay and the parts of the Delivery Activities that have been delayed;

(D) contains detailed particulars of the delay caused by the relevant Relief Event;

(E) states the number of days extension of time to the Date for Completion of Phase 1, the Date for Completion of Phase 2, the relevant Milestone Date for Completion or the relevant Date for Acceptance, together with the basis of calculating the total number of days claimed, including evidence that it will be delayed in achieving Completion of Phase 1, Completion of Phase 2, the relevant Milestone or the Train Option Acceptance Requirements for the relevant batch of Option 1 Trains;

(F) not used;

(G) where the claim is for an extension of time to the Date for Completion of Phase 1, the Date for Completion of Phase 2, a Milestone Date for Completion or a Date for Acceptance and the Relief Event is a Compensation Event, contains details of the Net Financial Impact arising from the Compensation Event to which it believes it will be entitled, including any additional Net Financial Impact which may be payable if the Principal exercises its discretion under clause 17.9A(f) or clause 17.10(e);

[redacted]

[redacted]

(I) to the extent the Principal has issued any notices to OpCo2 in accordance with clause 12A.2(a) with respect to any part of the Foundation Infrastructure Works Site becoming Accessible, contains detailed particulars of how OpCo2 has used Accessible parts of the

Foundation Infrastructure Works Site to mitigate the delay to the extent relevant and having regard to the Delivery Activities that are delayed, including:

(aa) where it considered (acting reasonably) that the length of the period which the Principal anticipated that a part of the Foundation Infrastructure Works Site would continue to be Accessible, as set out in a notice issued by the Principal to OpCo2 in accordance with clause 12A.2(a), was objectively insufficient for OpCo2 or any OpCo2 Contractors to make worthwhile use of that Accessible part of the Foundation Infrastructure Works Site (with detailed reasons); or

(bb) whether the relevant part of the Foundation Infrastructure Works Site ceased to be Accessible before the expiry of the minimum period set out in a notice issued by the Principal to OpCo2 in accordance with clause 12A.2(a) for which the relevant part of the Foundation Infrastructure Works Site will remain Accessible; and

(ii) if the effects of the delay continue beyond the period of 20 Business Days after the commencement of the relevant Relief Event causing the delay and OpCo2 wishes to claim an extension of time to the Date for Completion of Phase 1, the Date for Completion of Phase 2, the relevant Milestone Date for Completion or the relevant Date for Acceptance in respect of the further delay, submit a further written claim to the Principal's Representative:

(A) every 20 Business Days after the first written claim until 10 Business Days after the relevant Relief Event ceases to cause the delay; and

(B) containing the information required by clause 17.8(a)(i).

(b) The Principal's Representative may, within 10 Business Days of receiving OpCo2's claim or further claim for an extension of time to the Date for Completion of Phase 1, the Date for Completion of Phase 2, a Milestone Date for Completion or a Date for Acceptance, by written notice to OpCo2, request additional information in relation to the claim or further claim, [redacted]

[redacted]

[redacted]

OpCo2 must, within 10 Business Days of receiving such request, provide the Principal's Representative with the information requested.

[redacted]

[redacted]

[redacted]

17.9 **Conditions precedent to extension**

It is a condition precedent to OpCo2's entitlement to an extension of time to:

(a) the Date for Completion of Phase 1 that:

(i) OpCo2 has submitted the written claim or claims required by clause 17.8 (*Claim for extension of time*);

(ii) the cause of the delay was beyond the reasonable control of OpCo2 and OpCo2 Contractors;

(iii) OpCo2 has been, or will be, delayed in achieving Completion of Phase 1 by the Relief Event (PPP) described in the claim; and

(iv) OpCo2 has complied with clause 57.5A(e);

(b) a Milestone Date for Completion of a Milestone that:

(i) OpCo2 has submitted the written claim or claims required by clause 17.8 (*Claim for extension of time*);

(ii) the cause of the delay was beyond the reasonable control of OpCo2 and OpCo2 Contractors;

(iii) OpCo2 has been, or will be, delayed in achieving Milestone Completion of the relevant Milestone by the Relief Event (PPP) described in the claim; and

(iv) OpCo2 has complied with clause 57.5A(e);

(c) the Date for Completion of Phase 2 that:

(i) OpCo2 has submitted the written claim or claims required by clause 17.8 (*Claim for extension of time*);

(ii) the cause of the delay was beyond the reasonable control of OpCo2 and OpCo2 Contractors;

(iii) OpCo2 has been, or will be, delayed in achieving Completion of Phase 2 by the Relief Event (Other) described in the claim; and

(iv) OpCo2 has complied with clause 57.5A(e); and

(d) a Date for Acceptance for a batch of Option 1 Trains that:

(i) OpCo2 has submitted the written claim or claims required by clause 17.8 (*Claim for extension of time*);

(ii) the cause of the delay was beyond the reasonable control of OpCo2 and OpCo2 Contractors;

(iii) OpCo2 has been, or will be, delayed in achieving the Train Option Acceptance Requirements for the relevant batch of Option 1 Trains by the Relief Event (PPP) described in the claim; and

(iv) OpCo2 has complied with clause 57.5A(e).

17.9A **Determination and grant of extension of time – Completion of Phase 1**

(a) Subject to clauses 17.9A(c) and 17.9A(f), if the conditions precedent in clause 17.9(a) have been satisfied, the Principal's Representative will:

(i) determine the reasonable period by which the Date for Completion of Phase 1 may be extended; and

(ii) notify OpCo2 of the period by which the Date for Completion of Phase 1 may be extended in accordance with clause 17.9A(d) within 20 Business Days after the latter of:

(A) receipt of the last written claim under clause 17.8 (*Claim for extension of time*); or

(B) provision by OpCo2 of any additional information requested by the Principal's Representative under clause 17.8 (*Claim for extension of time*).

(b) In determining any extension of time under clause 17.9A(a), the Principal's Representative:

(i) will not be bound by the Delivery Program or any Delivery Phase Progress Report;

(ii) may consider the minutes of:

(A) any Cooperation Integration Control Group meeting; and

(B) any meeting held pursuant to the Master Interface Protocols Deed Poll or any Project Cooperation and Integration Deed;

(iii) to the extent the Principal has issued any notices to OpCo2 in accordance with clause 12A.2(a) with respect to any part of the Foundation Infrastructure Works Site becoming Accessible, may consider how OpCo2 has used Accessible parts of the Foundation Infrastructure Works Site to mitigate the delay, taking into account:

(A) the length of the period which the relevant part of the Foundation Infrastructure Works Site was Accessible;

(B) any reasons given by OpCo2 in accordance with clauses 12A.2(aa) or 17.8(a)(i)(I)(aa) as to why OpCo2 or any OpCo2 Contractors did not make use of any Accessible part of the Foundation Infrastructure Works Site; and

(C) whether the relevant part of the Foundation Infrastructure Works Site ceased to be Accessible before the expiry of the minimum period set out in a notice issued by the Principal to OpCo2 in accordance with clause 12A.2(a) for which the relevant part of the Foundation Infrastructure Works Site will remain Accessible.; and

[redacted]

(c) The Principal's Representative will reduce any extension to the Date for Completion of Phase 1 that it would have otherwise granted to OpCo2 under clause 17.9A(a) to

the extent that OpCo2 contributed to the delay or has not taken all proper and reasonable steps to prevent the cause of the delay and to avoid or minimise the consequences or duration of the delay in accordance with clause 17.5(c).

(d) If OpCo2 has been notified of an extension of time under clause 17.9A(a) and:

(i) Completion of Phase 1 has not occurred by the Date for Completion of Phase 1; or

(ii) the Date for Completion has already passed,

the Date for Completion of Phase 1 will be extended by the EOT Period.

If there is an extension of time granted to the Date for Completion of Phase 1 under this clause 17.9A(d), there will be a corresponding extension to the Site Access Expiry Date for any affected part of the Construction Site.

(e) If the Date for Completion of Phase 1 is extended pursuant to clause 17.9A(d) and the relevant Relief Event (PPP) for which the extension was granted is a Compensation Event, OpCo2 may make a claim for compensation in accordance with clause 26 (*Compensation Events*) in respect of the Net Financial Impact for the EOT Period.

(f) The Principal may, in its absolute discretion but subject to clause 17.9A(fa), by notice to OpCo2, in lieu of granting an extension of time to the Date for Completion of Phase 1 under clause 17.9A(d), elect to compensate OpCo2 in accordance with Schedule 29 (*Net Financial Impact*) for the negative Net Financial Impact which will be incurred by OpCo2 arising from not granting OpCo2 an extension of time to the Date for Completion of Phase 1 by the number of days determined by the Principal's Representative under clause 17.9A(a).

[redacted]

(g) If the Principal exercises its discretion under clause 17.9A(f) not to grant an extension of time to the Date for Completion of Phase 1, the Longstop Date (Phase 1) and, where applicable, the Site Access Expiry Date for any affected part of the Site will nonetheless be extended by the number of days determined by the Principal's Representative under clause 17.9A(a).

17.9B **Determination and grant of extension of time – Milestone Completion and Train Option Acceptance Requirements**

(a) Subject to clause 17.9B(c) and 17.9B(d):

(i) with respect to a Milestone Date for Completion, if the conditions precedent in clause 17.9(b) have been satisfied, the Milestone Date for Completion of the relevant Milestone will be extended by a reasonable period determined by the Principal's Representative; and

(ii) with respect to a Date for Acceptance, if the conditions precedent in clause 17.9(d) have been satisfied, the Date for Acceptance for the relevant batch

of Option 1 Trains will be extended by a reasonable period determined by the Principal's Representative,

and notified to OpCo2 within 20 Business Days after the latter of:

(iii) receipt of the last written claim under clause 17.8 (*Claim for extension of time*); or

(iv) provision by OpCo2 of any additional information requested by the Principal's Representative under clause 17.8 (*Claim for extension of time*).

(b) In determining any extension of time under clause 17.9B(a), the Principal's Representative:

(i) will not be bound by the Delivery Program or any Delivery Phase Progress Report;

(ii) may consider the minutes of:

(A) any Cooperation Integration Control Group meeting; and

(B) any meeting held pursuant to the Master Interface Protocols Deed Poll or any Project Cooperation and Integration Deed; and

(iii) to the extent the Principal has issued any notices to OpCo2 in accordance with clause 12A.2(a) with respect to any part of the Foundation Infrastructure Works Site becoming Accessible, may consider how OpCo2 has used Accessible parts of the Foundation Infrastructure Works Site to mitigate the delay, taking into account:

(A) the length of the period which the relevant part of the Foundation Infrastructure Works Site was Accessible;

(B) any reasons given by OpCo2 in accordance with clause 17.8(a)(i)(I)(aa) as to why OpCo2 or any OpCo2 Contractors did not make use of any Accessible part of the Foundation Infrastructure Works Site; and

(C) whether the relevant part of the Foundation Infrastructure Works Site ceased to be Accessible before the expiry of the minimum period set out in a notice issued by the Principal to OpCo2 in accordance with clause 12A.2(a) for which the relevant part of the Foundation Infrastructure Works Site will remain Accessible.

(c) The Principal's Representative will reduce any extension to the Milestone Date for Completion of the relevant Milestone or the Date for Acceptance for the relevant batch of Option 1 Trains that it would have otherwise granted to OpCo2 under clause 17.9B(a) to the extent that OpCo2 contributed to the delay or has not taken all proper and reasonable steps to prevent the cause of the delay and to avoid or minimise the consequences or duration of the delay in accordance with clause 17.5(c).

(d) In determining any extension of time to the Date for Acceptance for a batch of Option 1 Trains under clause 17.9B(a), it is deemed that each Option 1 Train affected by the Relief Event (PPP) forms part of the last batch of Options 1 Trains, up to the maximum number of Option 1 Trains for that batch. In the event that the number of affected Option 1 Trains exceeds the number of Option 1 Trains in the final batch of Option 1 Trains, each subsequent Option 1 Train affected by the Relief Event (PPP) forms part of the preceding batch or batches of Option 1 Trains.

17.10 **Determination and grant of extension of time –Completion of Phase 2**

(a) Subject to clauses 17.10(c) and 17.10(e), if the conditions precedent in clause 17.9(c) have been satisfied, the Date for Completion of Phase 2 will be extended by a reasonable period determined by the Principal's Representative and notified to OpCo2 within 20 Business Days after the latter of:

(i) receipt of the last written claim under clause 17.8 (*Claim for extension of time*); or

(ii) provision by OpCo2 of any additional information requested by the Principal's Representative under clause 17.8 (*Claim for extension of time*).

If there is an extension of time to the Date for Completion of Phase 2 under this clause 17.10(a), there will be a corresponding extension to the Site Access Expiry Date for any affected part of the Construction Site.

(b) In determining any extension of time under clause 17.10(a), the Principal's Representative:

(i) will not be bound by the Delivery Program or any Delivery Phase Progress Report; and

(ii) may consider the minutes of:

(A) any Cooperation Integration Control Group meeting;

(B) any meeting held pursuant to the Master Interface Protocols Deed Poll or any Project Cooperation and Integration Deed;

(iii) to the extent the Principal has issued any notices to OpCo2 in accordance with clause 12A.2(a) with respect to any part of the Foundation Infrastructure Works Site becoming Accessible, may consider how OpCo2 has used Accessible parts of the Foundation Infrastructure Works Site to mitigate the delay, taking into account:

(A) the length of the period which the relevant part of the Foundation Infrastructure Works Site was Accessible;

(B) any reasons given by OpCo2 in accordance with 17.8(a)(i)(I)(aa) as to why OpCo2 or any OpCo2 Contractors did not make use of any Accessible part of the Foundation Infrastructure Works Site; and

(C) whether the relevant part of the Foundation Infrastructure Works Site ceased to be Accessible before the expiry of the minimum period set out in a notice issued by the Principal to OpCo2 in accordance with clause 12A.2(a) for which the relevant part of the Foundation Infrastructure Works Site will remain Accessible; and

(iv) must, if applicable, give effect to the Principal's determination under clause 17.8(c)(i)(E)(bb).

(c) The Principal's Representative will reduce any extension to the Date for Completion of Phase 2 that it would have otherwise granted to OpCo2 under clause 17.10(a) to the extent that OpCo2 contributed to the delay or has not taken all proper and reasonable steps to prevent the cause of the delay and to avoid or minimise the consequences or duration of the delay in accordance with clause 17.5(c).

(d) If the Date for Completion of Phase 2 is extended pursuant to clause 17.10(a) and the relevant Relief Event (Other) for which the extension was granted is a Compensation Event, OpCo2 may make a claim for compensation in accordance with clause 26 (*Compensation Events*) in respect of the Net Financial Impact of the period of time for which the extension of time was granted.

(e) The Principal may, in its absolute discretion but subject to clause 17.10(ea), by notice to OpCo2, in lieu of granting an extension of time to the Date for Completion of Phase 2 under clause 17.10(a), elect to compensate OpCo2 in accordance with Schedule 29 (*Net Financial Impact*) for the negative Net Financial Impact which will be incurred by OpCo2 arising from not granting OpCo2 an extension of time to the Date for Completion of Phase 2 for the period of time for which the Date for Completion of Phase 2 was otherwise to be extended.

[redacted]

(f) If the Principal exercises its discretion under clause 17.10(e) not to grant an extension of time to the Date for Completion of Phase 2, the Longstop Date (Phase 2) and, where applicable, the Site Access Expiry Date for any affected part of the Site will nonetheless be extended by the period of time for which the Date for Completion of Phase 2 was otherwise to be extended.

17.10A **Liquidated damages and indemnity for delay**

(a) OpCo2 acknowledges and agrees that its failure to achieve Completion of Phase 2 by the Date for Completion of Phase 2 will not only result in direct losses to the Principal, but will also lead to the failure of the Principal to achieve its policy objectives to the immediate detriment of the Principal and of those on whose behalf the policy objectives are pursued. The loss arising from this failure of the Principal to achieve its policy objectives is not capable of easy or precise calculation.

(b) OpCo2 agrees that if it does not achieve Completion of Phase 2 by the Date for Completion of Phase 2 it must pay the Principal by way of liquidated damages $[redacted] per day (exclusive of GST) in respect of each day after the [redacted] up to and including:

(i) the Date of Completion of Phase 2; or

(ii) the date that this deed is validly terminated,

whichever first occurs.

(c) The Principal and OpCo2 acknowledge and agree that if the Relief Event (Other) is an Extension Only Relief Event:

(i) any extension to the Date for Completion of Phase 2 granted to OpCo2 under clause 17.10(a) will be disregarded for the purposes of clause 17.10A(b); and

(ii) OpCo2 will be liable for the relevant amounts under clause 17.10A(b) as if the extension of time for the relevant Extension Only Relief Event had not been granted.

(d) The parties agree that the liquidated damages provided for in clause 17.10A(b):

(i) are a genuine pre-estimate of the anticipated or actual Loss that will be suffered or incurred by the Principal if Completion of Phase 2 occurs after the Date for Completion of Phase 2 and OpCo2 has freely agreed that these liquidated damages represent proper, fair and reasonable amounts recoverable by the Principal for both its own Loss and for its failure to achieve its policy objectives arising from the failure of OpCo2 to achieve Completion of Phase 2 by the Date for Completion of Phase 2 and do not constitute, and are not intended to be, a penalty; and

(ii) will be recoverable from OpCo2 as a debt due and payable by the Principal.

(e) The Principal and OpCo2 acknowledge and agree that they are both parties contracting at arms' length, have equal bargaining power, possess extensive commercial experience and expertise and are being advised by their own legal, accounting, technical, financial, economic and other commercial professionals in relation to their rights and obligations pursuant to this deed.

(f) OpCo2 agrees to pay the liquidated damages and amounts under this clause 17.10A (*Liquidated damages and indemnity for delay*) without any duress, coercion, undue influence or any other form of unconscionable conduct or impermissible or objectionable persuasion on the part of the Principal.

(g) OpCo2 entered into the obligation to pay the amounts specified in clauses 17.10A(b) and 17.10A(c) with the intention that it is a legally binding, valid and enforceable contractual provision against OpCo2 in accordance with its terms.

(h) OpCo2 agrees:

(i) to exclude and expressly waives the right of the benefit of, to the extent permissible, the application or operation of any legal rule or norm, including under statute, equity and common law, relating to the characterisation of liquidated amounts payable under a deed upon a breach occurring as penalties or the enforceability or recoverability of such liquidated amounts; and

(ii) that if clauses 17.10A(b), 17.10A(f) and 17.10A(g) are found for any reason to be void, invalid or otherwise inoperative so as to disentitle the Principal from recovering liquidated damages, the Principal will be entitled to recover general damages (including loss of revenue and loss of profits from the loss of use of the OTS2 Works) as a result of OpCo2 failing to achieve Completion of Phase 2 by the Date for Completion of Phase 2, but OpCo2's liability for such damages (whether per day or in the aggregate) shall not exceed the liability OpCo2 would have had under this clause 17.10A (*Liquidated damages and indemnity for delay*) if clauses 17.10A(b), 17.10A(f) and 17.10A(g) had not been void, invalid or otherwise inoperative.

(i) The Principal's Representative, when issuing a payment schedule pursuant to clause 25B.2(c) or 25B.2(d), may include a provisional assessment of the amount then provisionally due under this clause 17.10A (*Liquidated damages and indemnity for delay*), including by way of liquidated damages then accruing, to the date of the payment schedule.

(j) Subject to clauses 40 (*Default*) and 42 (*Termination*), the Principal will not be entitled to make, nor will OpCo2 be liable upon, any Claim for any delay to Completion of Phase 2 other than for the amount for which OpCo2 is liable under this clause 17.10A (*Liquidated damages and indemnity for delay*) (including where applicable common law damages under clause 17.10A(h)(ii)).

(k) If OpCo2 has paid liquidated damages or any amount in accordance with this clause 17.10A (*Liquidated damages and indemnity for delay*) and OpCo2 is subsequently granted an extension of time pursuant to clause 17.10 (*Grant of extension of time – Completion of Phase 2*) in respect of the event giving rise to the liability for such liquidated damages, then the Principal will repay those liquidated damages or amounts to OpCo2 to the extent such extension of time was granted, other than where the extension of time was granted as the result of an Extension Only Relief Event.

17.10B **Extension to Site Access Expiry Date**

(a) If a Relief Event (PPP):

(i) causes or will cause OpCo2 to require access to part of the Construction Site for Phase 1 after the Site Access Expiry Date for that part of the Construction Site; and

(ii) will not delay OpCo2 in achieving Completion of Phase 1,

OpCo2 may make a claim under this clause 17.10B (*Extension to Site Access Expiry Date*).

(aa) If a Relief Event (Other):

(i) causes or will cause OpCo2 to require access to part of the Construction Site for Phase 2 after the Site Access Expiry Date for that part of the Construction Site; and

(ii) will not delay OpCo2 in achieving Completion of Phase 2,

OpCo2 may make a claim under this clause 17.10B (*Extension to Site Access Expiry Date*).

(b) If OpCo2 wishes to make a Claim under this clause 17.10B (*Extension to Site Access Expiry Date*), it must:

(i) within 20 Business Days after the date OpCo2 first became aware of a Relief Event which causes or will cause OpCo2 to require access to part of the Construction Site after the Site Access Expiry Date for that part of the Construction Site, submit a written claim for an extension to the Site Access Expiry Date, which:

(A) contains detailed particulars of the Relief Event, the delay and the Delivery Activities that have been delayed; and

(B) states the number of days extension of time to the Site Access Expiry Date, together with a basis for calculating the total number of days claimed; and

(ii) if the effects of the delay continue beyond the period of 20 Business Days after the Relief Event, and OpCo2 wishes to claim an extension to the Site Access Expiry Date in respect of the further delay, submit an updated Claim

to the Principal containing the information required by clause 17.10B(b)(i) promptly.

(c) If OpCo2 satisfies the requirements of this clause 17.10B (*Extension to Site Access Expiry Date*), the relevant Site Access Expiry Date will be extended by a reasonable period determined by the Principal's Representative and notified to OpCo2 within 20 Business Days of receipt of the last written claim under clause 17.10B(b).

(d) The Principal will reduce any extension to the relevant Site Access Expiry Date that it would otherwise have granted to OpCo2 under clause 17.10B(c) to the extent that OpCo2 contributed to the delay or has not taken all proper and reasonable steps to prevent the cause of the delay and to avoid or minimise the consequences or duration of the delay in accordance with clause 17.5(c).

17.11 Unilateral extension

Where OpCo2 has been delayed in achieving Completion of Phase 1, Completion of Phase 2 or any Date for Acceptance by a breach of contract by the Principal, the Principal's Representative may, whether or not OpCo2 has made a claim under clause 17.8 (*Claim for extension of time*), in its absolute discretion at any time, from time to time, unilaterally issue a notice to OpCo2 extending the Date for Completion of Phase 1, the Date for Completion of Phase 2 or any Date for Acceptance, as applicable, by the period specified in the notice to OpCo2.

17.12 Concurrent delays

OpCo2 is not entitled to make a Claim under clause 17.8 (*Claim for extension of time*) for an extension of time in respect of a delay to:

(a) Completion of Phase 1 caused by a Relief Event (PPP) to the extent that the delay is contemporaneous with a delay to Completion of Phase 1 caused by an event which is not a Relief Event (PPP); or

(b) Completion of Phase 2 caused by a Relief Event (Other) to the extent that the delay is contemporaneous with a delay to Completion of Phase 2 caused by an event which is not a Relief Event (Other).

17.13 Delivery Phase Progress Reports

In addition to OpCo2's obligations under clauses 17.5 (*Delays*) and 17.6 (*Corrective action plan*), OpCo2 must give the Principal a Delivery Phase Progress Report containing the details required by SPR Appendix 53a (*Reporting Requirements – Delivery Phase*) each month during the Delivery Phase.

18. TESTING AND COMMISSIONING

18.1 Testing and Commissioning Plan

OpCo2 must carry out the Tests in accordance with the Testing and Commissioning Plan.

18.2 Test Procedures

(a) For each Test, OpCo2 must:

(i) prepare a Test Procedure which complies with clause 2.4 of SPR Appendix 56 (*Testing and Commissioning*); and

(ii) submit the Test Procedure to the Principal's Representative at least 60 Business Days prior to the date on which OpCo2 proposes to conduct the Test.

(b) With respect to a Test Procedure for a Nominated Test:

(i) OpCo2 must also submit the Test Procedure to the Greenfield Independent Certifier at the same time the Test Procedure is submitted to the Principal's Representative under clause 18.2(a)(ii);

(ii) the Principal's Representative may (but is not obliged to):

(A) review the Test Procedure submitted under this clause 18.2 (*Test Procedures*); and

(B) notify the Greenfield Independent Certifier in writing (with a copy to OpCo2) of any comments which the Principal has in respect of the Test Procedure,

within 15 Business Days of the date on which it is submitted to the Principal's Representative;

(iii) the Greenfield Independent Certifier must, within 20 Business Days of the date on which it receives the Test Procedure under clause 18.2(b)(i):

(A) review each Test Procedure and, in doing so, must consider any comments received from the Principal's Representative under clause 18.2(b)(ii)(B); and

(B) determine whether such Test Procedure complies with the requirements of this deed and either:

(aa) if the Greenfield Independent Certifier considers that the Test Procedure does not comply with the requirements of this deed, notify OpCo2 and the Principal of the non-compliances (with detailed reasons); or

(bb) certify the Test Procedure by providing to OpCo2 and the Principal's Representative a certificate in the form of Schedule 14 (*Greenfield Independent Certifier's Test Procedure certificate*);

(iv) if OpCo2 receives a notice in accordance with clause 18.2(b)(iii)(B)(aa) OpCo2 must submit a revised Test Procedure to the Greenfield Independent Certifier whereupon the provisions of this clause 18.2 (*Test Procedures*) (other than clause 18.2(a)(ii)) will reapply to the revised Test Procedure;

(v) OpCo2 may not conduct a Test until the Test Procedure has been certified by the Greenfield Independent Certifier;

(vi) OpCo2 may update any Test Procedure whereupon this clause 18.2 (*Test Procedures*) (other than clause 18.2(a)(ii)) will reapply;

(vii) the Greenfield Independent Certifier must, within 5 Business Days of:

(A) giving a notice under clause 18.2(b)(iii)(B)(aa), to the extent that the Greenfield Independent Certifier did not include in its notice to OpCo2 any comments received from the Principal under clause 18.2(b)(ii)(B) regarding non-compliances in OpCo2's Test Procedure, provide the

Principal with detailed written reasons of why it did not include such comments; and

(B) certifying a Test Procedure under clause 18.2(b)(iii)(B)(bb), to the extent that the Greenfield Independent Certifier received comments from the Principal under clause 18.2(b)(ii)(B) regarding non-compliances in OpCo2's Test Procedure, provide the Principal with detailed written reasons of why it certified the Test Procedure despite the Principal's comments; and

(viii) if the certificate provided by the Greenfield Independent Certifier pursuant to clause 18.2(b)(iii)(B)(bb) lists any Minor Non-Compliances:

(A) the Greenfield Independent Certifier may, in the certificate, recommend the action that could be taken by OpCo2 to address the Minor Non-Compliance; and

(B) OpCo2 must complete the recommended action, or take any other action OpCo2 deems reasonable in the circumstances to correct the Minor Non-Compliance to the extent required for the Test Procedure to comply with this deed, within the time frame (if any) specified by the Greenfield Independent Certifier.

(c) With respect to a Test Procedure for all other Tests:

(i) the Principal's Representative must, within 20 Business Days of the date on which it receives the Test Procedure under clause 18.2(a)(ii), determine whether such Test Procedure complies with the requirements of this deed and either:

(A) if the Principal's Representative considers that the Test Procedure does not comply with the requirements of this deed, notify OpCo2 of the non-compliances (with detailed reasons); or

(B) certify the Test Procedure by providing to OpCo2 a certificate in the form of Schedule 14A (*Principal Representative's Test Procedure certificate*);

(ii) if OpCo2 receives a notice in accordance with clause 18.2(c)(i)(A) OpCo2 must submit a revised Test Procedure to the Principal's Representative whereupon the provisions of this clause 18.2 (*Test Procedures*) (other than clause 18.2(a)(ii)) will reapply to the revised Test Procedure;

(iii) OpCo2 may not conduct a Test until the Test Procedure has been certified by the Principal's Representative;

(iv) OpCo2 may update any Test Procedure whereupon this clause 18.2 (*Test Procedures*) (other than clause 18.2(a)(ii)) will reapply; and

(v) if the certificate provided by the Principal's Representative pursuant to clause 18.2(c)(i)(B) lists any Minor Non-Compliances:

(A) the Principal's Representative may, in the certificate, recommend the action that could be taken by OpCo2 to address the Minor Non-Compliance; and

(B) OpCo2 must complete the recommended action, or take any other action OpCo2 deems reasonable in the circumstances to correct the Minor Non-Compliance to the extent required for the Test Procedure

to comply with this deed, within the time frame (if any) specified by the Greenfield Independent Certifier.

18.3 **Notice of Tests**

(a) With respect to a Nominated Test:

(i) OpCo2 must give the Greenfield Independent Certifier and the Principal at least 20 Business Days' notice of the date, time and place of each Test;

(ii) OpCo2 may postpone a Test in respect of which it has given the Greenfield Independent Certifier notice in accordance with clause 18.3(a)(i);

(iii) if OpCo2 postpones a Test in accordance with clause 18.3(a)(ii), OpCo2 must give the Principal and the Greenfield Independent Certifier at least 5 Business Days' notice of the rescheduled date, time and place of that Test;

(iv) OpCo2 must give the Greenfield Independent Certifier and the Principal:

(A) a program that specifies the date, time and place of each Test to be conducted for the following 25 Business Day period (**Test Program**); and

(B) an updated Test Program each week during the period that OpCo2 is carrying out Tests; and

(v) unless otherwise agreed by the Principal's Representative, OpCo2 will be deemed to have failed a Test if it fails to give the Greenfield Independent Certifier and the Principal the required notice of when the Test will be conducted.

(b) With respect to all other Tests:

(i) OpCo2 must give the Principal at least 20 Business Days' notice of the date, time and place of each Test;

(ii) OpCo2 may postpone a Test in respect of which it has given the Principal notice in accordance with clause 18.3(b)(i);

(iii) if OpCo2 postpones a Test in accordance with clause 18.3(b)(ii), OpCo2 must give the Principal at least 5 Business Days' notice of the rescheduled date, time and place of that Test;

(iv) OpCo2 must give the Principal:

(A) a Test Program; and

(B) an updated Test Program each week during the period that OpCo2 is carrying out Tests; and

(v) unless otherwise agreed by the Principal's Representative, OpCo2 will be deemed to have failed a Test if it fails to give the Principal the required notice of when the Test will be conducted.

18.4 **Conduct of Tests**

(a) OpCo2 must conduct all Tests in accordance with:

(i) the relevant Test Procedure, as certified by the Principal's Representative or the Greenfield Independent Certifier in accordance with clause 18.2 (*Test Procedures*); and

(ii) the other requirements of this deed (including section 6.6 of the SPR).

(b) The Principal and the Greenfield Independent Certifier may (but are not obliged to) attend and witness the conduct of all Tests.

18.5 **Test Reports**

(a) Each Test Report must comply with and be submitted in accordance with the requirements of SPR Appendix 56 (*Testing and Commissioning*).

(b) With respect to a Nominated Test:

(i) OpCo2 must, within 10 Business Days of carrying out a Test, submit a Test Report to the Greenfield Independent Certifier and the Principal for that Test, irrespective of the result of the Test;

(ii) the Greenfield Independent Certifier must, within 10 Business Days of the date on which it receives the Test Report, determine whether or not the Test has been passed or failed and either:

(A) certify that the Test has been passed in accordance with the Test Procedure by issuing a certificate in the form of Schedule 15 (*Greenfield Independent Certifier's Test Result certificate*); or

(B) notify OpCo2 and the Principal that:

(aa) the Test has been failed; and/or

(bb) the Test Report does not comply with the requirements of this deed,

(Minor Non-Compliances excepted); and

(iii) if the certificate provided by the Greenfield Independent Certifier pursuant to clause 18.5(b)(ii)(A) lists any Minor Non-Compliances:

(A) the Greenfield Independent Certifier may, in the certificate, recommend the action that could be taken by OpCo2 to address the Minor Non-Compliance; and

(B) OpCo2 must complete the recommended action, or take any other action OpCo2 deems reasonable in the circumstances to correct the Minor Non-Compliance to the extent required for the Test Report to comply with this deed, within the time frame (if any) specified by the Greenfield Independent Certifier.

(c) With respect to all other Tests:

(i) OpCo2 must, within 10 Business Days of carrying out a Test, submit a Test Report to the Principal for that Test, irrespective of the result of the Test;

(ii) the Principal must, within 10 Business Days of the date on which it receives the Test Report, determine whether or not the Test has been passed or failed and either:

(A) certify that the Test has been passed in accordance with the Test Procedure by issuing a certificate in the form of Schedule 15A (*Principal's Representative Test Result certificate*); or

(B) notify OpCo2 that:

(aa) the Test has been failed; and/or

(bb) the Test Report does not comply with the requirements of this deed,

(Minor Non-Compliances excepted); and

(iii) if the certificate provided by the Principal pursuant to clause 18.5(c)(ii)(A) lists any Minor Non-Compliances:

(A) the Principal may, in the certificate, recommend the action that could be taken by OpCo2 to address the Minor Non-Compliance; and

(B) OpCo2 must complete the recommended action, or take any other action OpCo2 deems reasonable in the circumstances to correct the Minor Non-Compliance to the extent required for the Test Report to comply with this deed, within the time frame (if any) specified by the Principal.

18.6 **Failure of Test**

If the Principal's Representative or the Greenfield Independent Certifier (as applicable) notifies OpCo2 that a Test has been failed (or that a Test has been failed and the Test Report is non-compliant), OpCo2 must:

(a) carry out all necessary rectification work; and

(b) when it believes it has completed all necessary rectification work, give a further notice in accordance with clause 18.3(a) whereupon clauses 18.4 (*Conduct of Tests*) and 18.5 (*Test Reports*) will re-apply.

18.7 **Non-compliant Test Report**

If the Principal's Representative or the Greenfield Independent Certifier (as applicable) notifies OpCo2 that a Test Report is non-compliant (Minor Non-Compliances excepted), OpCo2 must amend and re-submit the Test Report whereupon clause 18.5 (*Test Reports*) will re-apply.

18.8 **Additional testing by the Principal**

(a) The Principal's Representative may carry out, or direct OpCo2 to carry out, additional tests in respect of the OTS2 Works and the Sydney Metro. The Principal's Representative must give OpCo2 and, where the additional tests are in respect of the Nominated Tests, the Greenfield Independent Certifier, reasonable prior notice of these tests (being at least 24 hours). OpCo2 must provide all reasonable assistance required by the Principal's Representative and the Greenfield Independent Certifier in relation to these tests.

(b) The Principal's Representative may, in relation to these tests, direct that any part of the OTS2 Works not be covered up or made inaccessible for a period of not more than 5 Business Days without the Principal's Representative's prior written approval.

(c) If the Principal carries out, or directs OpCo2 to carry out, tests pursuant to this clause 18.8 (*Additional testing by the Principal*) and:

(i) the results of the test show:

(A) the work is not in accordance with this deed (other than a Minor Defect); or

(B) that there is a Defect in respect of the work tested, other than:

(aa) a Foundation Infrastructure Works Defect in respect of which the Principal has:

(a) not provided an undertaking pursuant to clause 14B.2(d)(vi);

(b) provided an undertaking pursuant to clause 14B.2(d)(vi) and has not rectified; or

(c) not directed a Modification as referred to in clause 14B.2(d)(vii); or

(bb) a Minor Defect;

(ii) the test is in respect of work covered up or made inaccessible without the prior written approval of the Principal's Representative where such was required; or

(iii) the test is upon work undertaken to correct or overcome a Defect, other than:

(A) a Foundation Infrastructure Works Defect in respect of which the Principal has:

(aa) not provided an undertaking pursuant to clause 14B.2(d)(vi);

(bb) provided an undertaking pursuant to clause 14B.2(d)(vi) and has not rectified; or

(cc) not directed a Modification as referred to in clause 14B.2(d)(vii); or

(B) a Minor Defect,

a Compensation Event will not occur and any reasonable costs incurred by the Principal in connection with these tests will be a debt due and payable from OpCo2 to the Principal.

(d) Results of tests carried out by OpCo2 under this clause 18.8 (*Additional testing by the Principal*) must be submitted to the Principal in accordance with clause 18.5 (*Test Reports*).

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18C **PSD/MGF SYSTEMS - PHASE 2**

18C.1 [redacted]

[redacted]

[redacted]

[redacted]

18C.2 **PSD/MGF Product Proving**

(a) Once the Principal has entered into a PSD/MGF Product Proving Deed it will provide the final form of that PSD/MGF Product Proving Deed to OpCo2.

(b) The Principal will provide OpCo2 with any documents the Principal is entitled to, and actually, receives from a PSD/MGF Product Proving Proponent in relation to the product proving of the PSD/MGF Works in accordance with clause 14A.10(g)(iii).

(c) OpCo2 may:

(i) request an inspection by OpCo2 or one or more of its Core Contractors of the PSD/MGF Product Proving Activities for the purpose of assisting OpCo2 or one of its Core Contractors to develop and present to the ONRSR the SMCSW Safety Case; and

(ii) provide comments to the Principal for its consideration in respect of the PSD/MGF Product Proving Activities.

(d) Upon receipt of any request by OpCo2 under clause 18C.2(c), the Principal must use reasonable endeavours to organise the inspection within a reasonable time.

(e) OpCo2 agrees that any inspection by OpCo2 or one or more of its Core Contractors of the PSD/MGF Product Proving Activities (or lack of inspection) will not in any way:

(i) relieve OpCo2 from, or alter or affect, OpCo2's liabilities, obligations or responsibilities whether under this deed or otherwise according to law; or

(ii) prejudice or limit the Principal's rights against OpCo2 whether under this deed or otherwise according to law.

19. FIRST PASSENGER SERVICE, COMPLETION AND FINAL COMPLETION

19.1 Requirements for First Passenger Service

(a) The following requirements must be satisfied before OpCo2 provides the First Passenger Service on the Sydney Metro City:

(i) not used;

(ii) (**Works are complete**): the OTS2 Works for Phase 1 (excluding any Option 1 Trains) are complete and comply with the requirements of this deed, except for Minor Defects;

(iii) not used;

(iv) (**Conditions of Planning Approvals**): OpCo2 has:

(A) fulfilled all conditions of the Project Planning Approval (City) and implemented all mitigation measures which OpCo2 must fulfil or implement prior to commencement of operations on the Sydney Metro City; and

(B) complied with all obligations imposed on OpCo2 under Schedule 5 (*Environmental Documents and Planning Approval Conditions*) in respect of any conditions of the Project Planning Approvals (City) and the mitigation measures which must be fulfilled or implemented prior to commencement of operations on the Sydney Metro City;

(v) (**Approvals**): OpCo2 has provided the Greenfield Independent Certifier and the Principal's Representative with copies of all Approvals which this deed requires OpCo2 to obtain (or contemplates OpCo2 will obtain) prior to First Passenger Service on the Sydney Metro City (including any variation required to OpCo2's or a Core Contractor's Accreditation);

(vi) (**Certifications**): OpCo2 has provided the Greenfield Independent Certifier and the Principal's Representative with a certificate in the form of Schedule 17 (*OpCo2, Designer and O&M Contractor's First Passenger Service certificate*):

(A) from each Designer certifying that the OTS2 Works for Phase 1 (excluding any Option 1 Trains) have been constructed in accordance with the Design Documentation which OpCo2 is entitled to use for construction purposes under clause 13.10(a), except for Minor Defects;

(B) from OpCo2 certifying that the OTS2 Works for Phase 1 (excluding any Option 1 Trains) comply with all the requirements of this deed (including the SPR), except for Minor Defects; and

(C) from the O&M Contractor certifying that the OTS2 Works for Phase 1 (excluding any Option 1 Trains) are acceptable;

(vii) (**Tests**): the Greenfield Independent Certifier has certified that:

(A) the OTS2 Works (excluding any Option 1 Trains) have passed the Tests for Phase 1 referred to in sections 4.3 (*Sydney Metro City Performance Tests*) and 4.4 (*Sydney Metro City Capacity Performance Test*) of SPR Appendix 56 (*Testing and Commissioning*); and

(B) not less than 23 OTS2 Trains have passed the Tests for Phase 1 referred to in section 4 of SPR Appendix 20 (*Rolling Stock*);

(viii) (**Service Payment Monitoring System**): the Service Payment Monitoring System as it relates to the Sydney Metro Northwest and the Sydney Metro City is operational;

(ix) (**Asset Management System**): OpCo2 has developed and implemented the Asset Management System that:

(A) is in accordance with the requirements of section 8.2(b) of the SPR; and

(B) includes all information required for Sydney Metro Northwest;

(x) (**SPR**): the conditions precedent to First Passenger Service on the Sydney Metro City set out in section 6.8 of the SPR have been satisfied; and

(xi) (**Everything else**): OpCo2 has done everything else which this deed requires it to have done as a condition precedent or precondition to the First Passenger Service on the Sydney Metro City, except for Minor Non-Compliances.

(b) The following requirements must be satisfied before OpCo2 provides the First Passenger Service on the Sydney Metro Southwest:

(i) (**Phase 1 Completion**): OpCo2 has achieved Completion of Phase 1;

(ii) (**Works are complete**): the OTS2 Works for Phase 2 (excluding the Option 1 Trains) are complete and comply with the requirements of this deed, except for Minor Defects;

(iii) not used;

(iv) (**Conditions of Planning Approvals**): OpCo2 has:

(A) fulfilled all conditions of the Project Planning Approval (Southwest) and implemented all mitigation measures which OpCo2 must fulfil or implement prior to commencement of operations on the Sydney Metro Southwest; and

(B) complied with all obligations imposed on OpCo2 under Schedule 5 (*Environmental Documents and Planning Approval Conditions*) in respect of any conditions of the Project Planning Approval (Southwest) and mitigation measures which must be fulfilled or implemented prior to commencement of operations on the Sydney Metro Southwest;

(v) (**Approvals**): OpCo2 has provided the Greenfield Independent Certifier and the Principal's Representative with copies of all Approvals which this deed requires OpCo2 to obtain (or contemplates OpCo2 will obtain) prior to First Passenger Service on the Sydney Metro Southwest (including any variation required to OpCo2's or a Core Contractor's Accreditation);

(vi) (**Certifications**): OpCo2 has provided the Greenfield Independent Certifier and the Principal's Representative with a certificate in the form of Schedule 17 (*OpCo2, Designer and O&M Contractor's First Passenger Service certificate*):

(A) from each Designer certifying that the OTS2 Works for Phase 2 (excluding the Option 1 Trains) have been constructed in accordance with the Design Documentation which OpCo2 is entitled to use for construction purposes under clause 13.10(a), except for Minor Defects;

(B) from OpCo2 certifying that the OTS2 Works for Phase 2 (excluding the Option 1 Trains) comply with all the requirements of this deed (including the SPR), except for Minor Defects; and

(C) from the O&M Contractor certifying that the OTS2 Works for Phase 2 (excluding the Option 1 Trains) are acceptable;

(vii) (**Tests**): the Greenfield Independent Certifier has certified that the OTS2 Works (excluding the Option 1 Trains) have passed the Tests for Phase 2 referred to in sections 5.3 (*Sydney Metro Southwest Performance Tests*) and 5.4 (*Sydney Metro Southwest Capacity Performance Test*) of SPR Appendix 56 (*Testing and Commissioning*);

(viii) (**Service Payment Monitoring System**): the Service Payment Monitoring System as it relates to the Sydney Metro Southwest is operational;

(ix) (**Asset Management System**): OpCo2 has updated the Asset Management System in accordance with the requirements of section 8.2(b) of the SPR;

(x) (**SPR**): the conditions precedent to First Passenger Service on the Sydney Metro Southwest set out in section 6.8 of the SPR have been satisfied; and

(xi) (**Everything else**): OpCo2 has done everything else which this deed requires it to have done as a condition precedent or precondition to the First Passenger Service on the Sydney Metro Southwest, except for Minor Non-Compliances.

19.2 **Notice of First Passenger Service**

(a) OpCo2 must give the Principal's Representative and the Greenfield Independent Certifier at least 5 Business Days' notice of the date on which it expects to satisfy the requirement for First Passenger Service on the Sydney Metro City referred to in clause 19.1(a) or First Passenger Service on the Sydney Metro Southwest referred to in clause 19.1(b), as applicable.

(b) OpCo2 must give the Greenfield Independent Certifier a written request for:

(i) a Certificate of Readiness for First Passenger Service on the Sydney Metro City when it believes it has satisfied the requirements for the First Passenger Service on the Sydney Metro City referred to in clause 19.1(a) (which request must not be given earlier than 5 Business Days after the date on which OpCo2 gives notice under clause 19.2(a)); and

(ii) a Certificate of Readiness for First Passenger Service on the Sydney Metro Southwest when it believes it has satisfied the requirements for the First Passenger Service on the Sydney Metro Southwest referred to in clause 19.1(b) (which request must not be given earlier than 5 Business Days after the date on which OpCo2 gives notice under clause 19.2(a)).

19.3 **Certification of Readiness for First Passenger Service**

(a) Within 5 Business Days of receipt of the request under clause 19.2(b), the Greenfield Independent Certifier must determine whether or not the requirements for First Passenger Service on the Sydney Metro City referred to in clause 19.1(a) or First Passenger Service on the Sydney Metro Southwest referred to in clause 19.1(b), as applicable, have been satisfied and either:

(i) if the requirements for First Passenger Service on the Sydney Metro City referred to in clause 19.1(a) or First Passenger Service on the Sydney Metro Southwest referred to in clause 19.1(b), as applicable, have been satisfied, issue a Certificate of Readiness for First Passenger Service to OpCo2 and the Principal; or

(ii) if the requirements for First Passenger Service on the Sydney Metro City referred to in clause 19.1(a) or First Passenger Service on the Sydney Metro Southwest referred to in clause 19.1(b) have not been satisfied, issue a notice to OpCo2 and the Principal which:

(A) lists the items which remain to be completed to satisfy the requirements for First Passenger Service on the Sydney Metro City or First Passenger Service on the Sydney Metro Southwest, as applicable; or

(B) states that OpCo2 is so far from satisfying the requirements for First Passenger Service on the Sydney Metro City or First Passenger Service on the Sydney Metro Southwest, as applicable, that it is not practicable to provide the list referred to in clause 19.3(a)(ii)(A).

(b) If the Greenfield Independent Certifier issues a notice under clause 19.3(a)(ii):

(i) in respect of the Sydney Metro City, OpCo2 must continue with the Delivery Activities to satisfy the requirements in clause 19.1(a); or

(ii) in respect of the Sydney Metro Southwest, OpCo2 must continue with the Delivery Activities to satisfy the requirements in clause 19.1(b),

and clause 19.2 (*Notice of First Passenger Service*) and this clause 19.3 (*Certification of Readiness for First Passenger Service*) will reapply.

19.4 **Requirements for Completion**

Completion of Phase 1 and Completion of Phase 2, as applicable, will be achieved when:

(a) (**Final Performance Test passed**): the Greenfield Independent Certifier has certified that the OTS2 Works for the relevant Phase (excluding the Option 1 Trains) have passed the Final Performance Test;

(b) (**Certifications**): OpCo2 has provided the Greenfield Independent Certifier and the Principal's Representative with a certificate in the form of Schedule 17A (*OpCo2, Designer and O&M Contractor's Completion certificate*):

(i) from each Designer re-certifying that the OTS2 Works for the relevant Phase (excluding the Option 1 Trains) have been constructed in accordance with the Design Documentation which OpCo2 is entitled to use for construction purposes under clause 13.10(a), except for Minor Defects;

(ii) from OpCo2 re-certifying that the OTS2 Works for the relevant Phase (excluding the Option 1 Trains) comply with all the requirements of this deed (including the SPR), except for Minor Defects; and

(iii) from the O&M Contractor re-certifying that the OTS2 Works for the relevant Phase (excluding the Option 1 Trains) are acceptable;

(c) not used;

(d) (**Phase 2**): with respect to Phase 2, OpCo2 has achieved Completion of Phase 1; and

(e) (**Everything else**): OpCo2 has done everything else which this deed requires it to have done as a condition precedent or precondition to Completion of the relevant Phase, except for Minor Non-Compliances.

19.5 **Not used**

19.6 **Not used**

19.7 **Not used**

19.8 **Not used**

19.9 **Notice of Completion**

OpCo2 must give the Greenfield Independent Certifier:

(a) at least 5 Business Days' notice of the date on which it expects to achieve Completion of Phase 1 or Completion of Phase 2; and

(b) a written request for:

(i) a Certificate of Completion of Phase 1 when it believes Completion of Phase 1 has been achieved (which request must not be given earlier than 5 Business Days after the date on which OpCo2 gives notice under clause 19.9(a)); and

(ii) a Certificate of Completion of Phase 2 when it believes Completion of Phase 2 has been achieved (which request must not be given earlier than 5 Business Days after the date on which OpCo2 gives notice under clause 19.9(a)).

19.10 **Certification of Completion**

(a) Within 1 Business Day of receipt of the request under clause 19.9(b), the Greenfield Independent Certifier must determine whether Completion of Phase 1 or Completion of Phase 2, as applicable, has been achieved and either:

(i) if Completion of Phase 1 has been achieved, issue a Certificate of Completion of Phase 1 to OpCo2 and the Principal:

(A) stating as the Date of Completion of Phase 1, the date on which Completion of Phase 1 was achieved;

(B) specifying any Minor Defects; and

(C) specifying any Minor Non-Compliances,

and:

(D) provide to the Principal's Representative and Infrastructure NSW a certificate in the form of Schedule 13 to the Barangaroo Interface Agreement with respect to the Barangaroo Interface Works; or

(ii) if Completion of Phase 1 has not been achieved, issue a notice to OpCo2 and the Principal which:

(A) lists the items which remain to be completed before Completion of Phase 1 can be achieved; or

(B) states that the OTS2 Works for Phase 1 are so far from achieving Completion of Phase 1 that it is not practicable to provide the list referred to in clause 19.10(a)(ii)(A); and

(iii) if Completion of Phase 2 has been achieved, issue a Certificate of Completion of Phase 2 to OpCo2 and the Principal:

(A) stating as the Date of Completion of Phase 2, the date on which Completion of Phase 2 was achieved;

(B) specifying any Minor Defects; and

(C) specifying any Minor Non-Compliances; or

(iv) if Completion of Phase 2 has not been achieved, issue a notice to OpCo2 and the Principal which:

(A) lists the items which remain to be completed before Completion of Phase 2 can be achieved; or

(B) states that the OTS2 Works for Phase 2 are so far from achieving Completion of Phase 2 that it is not practicable to provide the list referred to in clause 19.10(a)(iv)(A).

(b) If the Greenfield Independent Certifier issues a notice under clause 19.10(a)(ii) or 19.10(a)(iv), OpCo2 must continue with the Delivery Activities to achieve Completion of Phase 1 or Completion of Phase 2, as applicable, and clause 19.9 (*Notice of Completion*) and this clause 19.10 (*Certification of Completion*) will reapply.

19.11 **Not used**

19.12 **Final Completion**

(a) (**OpCo2 to achieve Final Completion**): Immediately after:

(i) the Date of Completion of Phase 1, OpCo2 must expeditiously and diligently progress the Delivery Activities required to achieve Final Completion of Phase 1; and

(ii) the Date of Completion of Phase 2, OpCo2 must expeditiously and diligently progress the Delivery Activities required to achieve Final Completion of Phase 2.

(b) (**Requirements for Final Completion**): Final Completion of Phase 1 or Final Completion of Phase 2, as applicable, will be achieved when:

(i) (**Minor Defects**): the Minor Defects specified in the Certificate of Completion of the relevant Phase have been corrected;

(ii) (**Extra Land**): OpCo2 has rehabilitated any Extra Land, as applicable to the relevant Phase, and provided the Principal's Representative with a document in relation to the Extra Land as required by clause 12.9(b);

(iii) (**Temporary Areas**): OpCo2 has reinstated all Temporary Areas, as applicable to the relevant Phase, in accordance with clause 12.11 (*Temporary Areas*);

(iv) (**Documentation**): OpCo2 has provided the Principal with all documentation required by section 6.5.9 of the SPR, as applicable to the relevant Phase;

(v) (**Final Performance Test**): in respect of Final Completion of Phase 2 only, if relevant, OpCo2 has complied with the requirements of sections 4.5(e) and 5.5(e) of SPR Appendix 56 (*Testing and Commissioning*);

(vi) (**Intellectual Property report**): OpCo2 has provided the Principal with a detailed Intellectual Property report:

(A) listing all separate items of Intellectual Property that have been developed or licensed by OpCo2 in carrying out OpCo2's Activities up to Completion of the relevant Phase or in preparation for OpCo2's Activities to be carried out after Completion of the relevant Phase;

(B) for each item, specifying whether it is Developed Intellectual Property (Sydney Metro) or Licensed Intellectual Property (Sydney Metro) and:

(aa) if it is Developed Intellectual Property (Sydney Metro), by whom it has been developed and the steps taken by OpCo2 to procure that the intellectual property is assigned to, and vests in, the Principal; and

(bb) if it is Licensed Intellectual Property (Sydney Metro):

(a) from whom it has been licensed;

(b) the basis upon which the licensor has licensed it (i.e. as owner or as a sub-licensor);

(c) if applicable, the ultimate owner of the Intellectual Property;

(d) the steps taken to procure a sub-licence for the Principal; and

(e) whether a Deed of Assurance is in place with the ultimate owner of the intellectual property;

(vii) (**Minor Non-Compliances**): the Minor Non-Compliances specified in the Certificate of Completion of the relevant Phase have been corrected; and

(viii) (**Everything else**): OpCo2 has done everything else which this deed requires OpCo2 to have done as a condition precedent or precondition to Final Completion of the relevant Phase.

(c) (**Request for Final Completion**): When OpCo2 considers that Final Completion of Phase 1 or Final Completion of Phase 2, as applicable, has been achieved, OpCo2 must:

(i) notify the Greenfield Independent Certifier of its opinion; and

(ii) request the Greenfield Independent Certifier to issue a Certificate of Final Completion.

(d) (**Certification of Final Completion**): Within 15 Business Days of OpCo2's request under clause 19.12(c), the Greenfield Independent Certifier must determine whether Final Completion of Phase 1 or Final Completion of Phase 2, as applicable, has been achieved and either:

(i) if Final Completion of the relevant Phase has been achieved, issue to the Principal and OpCo2 a Certificate of Final Completion of the relevant Phase stating as the Date of Final Completion of the relevant Phase the date on which Final Completion of the relevant Phase was achieved; or

(ii) if Final Completion of the relevant Phase has not been achieved, issue a notice to the Principal and OpCo2 listing the work remaining to be performed to achieve Final Completion of the relevant Phase.

(e) (**If Final Completion not achieved**): If the Greenfield Independent Certifier issues a notice under clause 19.12(d)(ii) OpCo2 must continue with the Delivery Activities to achieve Final Completion of Phase 1 or Final Completion of Phase 2, as applicable, and clauses 19.12(c) and 19.12(d) will reapply.

(f) (**No restriction**): The Greenfield Independent Certifier, in making a determination as to whether Final Completion of Phase 1 or Final Completion of Phase 2, as applicable, has been achieved:

(i) will not be restricted by any:

(A) certification, notice, list or opinion already provided under this deed; or

(B) obligation of OpCo2 under this deed to correct any Defects which may be discovered after Final Completion of Phase 1 or Final Completion of Phase 2, as applicable; and

(ii) will be entitled to raise any items of work as a ground for determining that Final Completion of Phase 1 or Final Completion of Phase 2, as applicable, has not been achieved.

19.13 **Not used**

19.14 **Early opening of Sydney Metro City**

(a) OpCo2 may request to achieve Completion of Phase 1 earlier than the Original Date for Completion in accordance with this clause 19.14 (*Early Opening of Sydney Metro City*).

(b) OpCo2 must, as part of its Delivery Phase Progress Report, notify the Principal as soon as reasonably practicable of any Proposed Phase 1 Early Completion Date.

(c) OpCo2 must not achieve Completion of Phase 1 earlier than the Original Date for Completion of Phase 1 unless:

(i) OpCo2 has provided the Principal's Representative with at least 9 months' written notice (or another period as agreed by the parties) that OpCo2 anticipates it will achieve Completion of Phase 1 on the Proposed Phase 1 Early Completion Date;

(ii) if the Proposed Phase 1 Early Completion Date is in a different financial year to the Original Date for Completion of Phase 1, OpCo2 has provided the written notice by 1 March of the financial year prior to the financial year the Proposed Phase 1 Early Completion Date falls in; and

(iii) the Principal has provided OpCo2 with its written consent that OpCo2 is permitted to achieve Completion of Phase 1 on or after the Proposed Phase 1 Early Completion Date.

(d) The Principal may, in its absolute discretion, accept or reject any Proposed Phase 1 Early Completion Date.

(e) Subject to clause 19.12 (*Final Completion*), if OpCo2 achieves and the Principal accepts Completion of Phase 1 prior to the Original Date for Completion of Phase 1, OpCo2 must commence Operations Activities on the Sydney Metro City on the date that is the later of:

(i) the Proposed Phase 1 Early Completion Date; and

(ii) the Date of Completion of Phase 1.

(f) The Principal may assist OpCo2, but will not be obliged to take any action to assist or enable OpCo2, to achieve early Completion of Phase 1.

(g) Except as set out in Schedule 2 (*Service Payment calculation*), OpCo2 will not be entitled to any payment and must not make any Claim against the Principal in connection with any costs, losses, damages suffered or incurred by OpCo2 arising out of or in connection with OpCo2 accelerating, compressing, resequencing or reorganising OpCo2's Activities to achieve early Completion of Phase 1.

19.15 **Early opening of Sydney Metro Southwest**

(a) OpCo2 may request to achieve Completion of Phase 2 earlier than the Original Date for Completion of Phase 2 in accordance with this clause 19.15 (*Early Opening of Sydney Metro Southwest*).

(b) OpCo2 must, as part of its Delivery Phase Progress Report, notify the Principal as soon as reasonably practicable of any Proposed Phase 2 Early Completion Date.

(c) OpCo2 must not achieve Completion of Phase 2 earlier than the Original Date for Completion of Phase 2 unless:

(i) OpCo2 has provided the Principal's Representative with at least 9 months' written notice (or another period as agreed by the parties) that OpCo2 anticipates it will achieve Completion of Phase 2 on the Proposed Phase 2 Early Completion Date;

(ii) if the Proposed Phase 2 Early Completion Date is in a different financial year to the Original Date for Completion of Phase 2, OpCo2 has provided the written notice by 1 March of the financial year prior to the financial year the Proposed Phase 2 Early Completion Date falls in; and

(iii) the Principal has provided OpCo2 with its written consent that OpCo2 is permitted to achieve Completion of Phase 1 on or after the Proposed Phase 2 Early Completion Date.

(d) The Principal may, in its absolute discretion, accept or reject any Proposed Phase 2 Early Completion Date.

(e) Subject to clause 19.12 (*Final Completion*), if OpCo2 achieves and the Principal accepts Completion of Phase 2 prior to the Original Date for Completion of Phase 2, OpCo2 must commence Operations Activities on the Sydney Metro City on the date that is the later of:

(i) the Proposed Phase 2 Early Completion Date; and

(ii) the Date of Completion of Phase 2.

(f) The Principal may assist OpCo2, but will not be obliged to take any action to assist or enable OpCo2, to achieve early Completion of Phase 2.

(g) Except as set out in Schedule 2 (*Service Payment calculation*), OpCo2 will not be entitled to any payment and must not make any Claim against the Principal in connection with any costs, losses, damages suffered or incurred by OpCo2 arising out of or in connection with OpCo2 accelerating, compressing, resequencing or reorganising OpCo2's Activities to achieve early Completion of Phase 2.

19A MILESTONES

19A.1 Requirement for Milestones

Milestone Completion of a Milestone will be achieved when the Delivery Activities for that Milestone are complete and comply with the requirements of this deed, except for Minor Non-Compliances.

19A.2 Notice of Milestone Completion

OpCo2 must give the Principal's Representative:

(a) at least 5 Business Days' notice of the date on which it expects to achieve Milestone Completion of a Milestone; and

(b) a written request for a Certificate of Milestone Completion when it believes Milestone Completion of a Milestone has been achieved (which request must not be given earlier than 5 Business Days after the date on which OpCo2 gives notice under clause 19A.2(a)).

19A.3 Certification of Milestone Completion

(a) Within 10 Business Days of receipt of the request under clause 19A.2(a), the Principal's Representative must determine whether Milestone Completion of a Milestone has been achieved and either:

(i) if Milestone Completion of that Milestone has been achieved, issue a Certificate of Milestone Completion of that Milestone to OpCo2 and the Principal:

(A) stating the date on which Milestone Completion of that Milestone was achieved; and

(B) specifying any Minor Non-Compliances; or

(ii) if Milestone Completion of a Milestone has not been achieved, issue a notice to OpCo2 and the Principal which:

(A) lists the items which remain to be completed before Milestone Completion of that Milestone can be achieved; or

(B) states that OpCo2 is so far from achieving Milestone Completion of that Milestone that it is not practicable to provide the list referred to in clause 19A.3(a)(ii)(A).

(b) If the Principal's Representative issues a notice under clause 19A.3(a)(ii), OpCo2 must continue with the Delivery Activities to achieve Milestone Completion of the relevant Milestone and clause 19A.2 (*Notice of Milestone Completion*) and this clause 19A.3 (*Certification of Milestone Completion*) will reapply.

(c) (**Not approval or evidence**): A certification by the Principal's Representative that Milestone Completion of a Milestone has been achieved will not:

(i) constitute an approval by the Principal of OpCo2's performance of its obligations under this deed;

(ii) be taken as an admission or evidence that the Delivery Activities, the OTS2 Works or any other matters certified or determined by the Principal's Representative comply with this deed; or

(iii) prejudice any rights or powers of the Principal or OpCo2 under this deed or otherwise according to law, including any rights which the Principal may have in respect of Defects.

19A.4 **Milestone Payments**

(a) The Principal agrees to pay OpCo2:

(i) $[redacted] if OpCo2 achieves Milestone 28 on or before [redacted]; and

(ii) $[redacted] if OpCo2 achieves Milestone 29 on or before [redacted],

each a **Milestone Payment**.

(b) The dates in clause 19A.4(a) will not be adjusted for any reason (including if OpCo2 is delayed in achieving Milestone 28 or Milestone 29 by a Relief Event).

(c) The payment by the Principal of an amount under this clause 19A.4 (*Milestone payments*) will be made in accordance with the procedure set out in clause 25 (*Payment Provisions*).

(d) Whether or not a Milestone Payment is paid, the Principal is not liable for, and OpCo2 will have no Claim in relation to, OpCo2 choosing to take steps to:

(i) accelerate progress of the Delivery Activities;

(ii) compress OpCo2's Activities; or

(iii) overcome or absorb any delay,

in an effort to achieve Milestone 28 or Milestone 29, whether or not:

(iv) OpCo2 achieves Milestone 28 or Milestone 29 by the relevant date; or

(v) the delay is caused by a Relief Event.

20. OPERATIONS

20.1 Operations Activities

OpCo2 must:

(a) perform the Operations Activities in accordance with the SPR and the other requirements of this deed;

(b) perform the Operations Activities:

(i) in a professional, timely, safe and environmentally responsible manner;

(ii) in accordance with Good Industry Practice; and

(iii) so that the Sydney Metro:

(A) remains fit for its purposes during the Operations Phase; and

(B) is capable of remaining fit for its purpose after the Operations Phase, provided the Sydney Metro is operated and maintained in accordance with the Operations and Maintenance Manuals; and

(c) report on the Operations Activities in accordance with clause 45.3(b).

20.2 Required Train Services

From the date of First Passenger Service on the Sydney Metro City, OpCo2 must:

(a) provide the Required Train Services without any Missed Platforms; and

(b) to the extent reasonably possible (having regard to all relevant factors including safety, ride comfort and energy efficiency), minimise the journey time in the Indicative Timetable for each Required Train Service measured from the time that the doors are closed and locked at the Origin Station to the time that the doors are enabled at the Destination Station.

20.3 Operations Activities Review

(a) Either party may request that the other party participates in a review of the Operations Activities at any time (**Operations Activities Review**).

(b) OpCo2 and the Principal must cooperate with each other in any Operations Activities Review.

(c) Factors that may be addressed in an Operations Activities Review include:

(i) data generated from Customer feedback records;

(ii) measures to improve the reliability of the Train Services;

(iii) measures to reflect patronage demand;

(iv) measures to improve modal coordination;

(v) measures to address seasonality issues particular to the provision of the Train Services;

(vi) trends or changes in the demographics, land use and infrastructure that impacts on the Train Services;

(vii) measures to overcome any identified inefficiencies;

(viii) requests for:

(A) Additional Planned Service Disruptions;

(B) changes to Planned Service Disruptions;

(C) additional Special Events;

(D) changes to existing Special Events;

(E) changes to the Indicative Timetable;

(F) changes to the Minimum Operating Standards;

(G) changes to staffing levels;

(H) changes to the Maximum Train Journey Time;

(ix) measures to reflect dwell impact as a result of the operation of the PSD/MGF Systems (including a review 2 years after the Date of Completion of Phase 2 to reflect impacts (if any) up to that time); and

(x) any other factors that the Principal or OpCo2 consider relevant.

(d) Following any Operations Activities Review, the Principal may:

(i) approve or reject a request by OpCo2 for an Additional Planned Service Disruption under clause 20.14 (*Additional Planned Service Disruptions*);

(ii) direct a Service Change in accordance with clause 11 of Schedule 2 (*Service Payment calculation*); or

(iii) direct a Modification to change the Contract Service Level Requirements in accordance with clause 29 (*Principal initiated Modifications*).

(e) Without prejudice to clause 20.3(d), the Principal will update the Maximum Train Journey Time to overcome dwell impact referred to in 20.3(c)(ix) that is beyond the reasonable control of OpCo2 such that the period available to OpCo2 between the available door fully open times (arising from the Dwell Times (as defined in clause 3.1.2 of SPR Appendix 45 (*Service and System Performance Requirements*)) less the door opening and closing times) and the minimum door fully open times of 15 seconds (stated in clause 4.2(b) of SPR Appendix 45 (*Service and System Performance Requirements*)) remains unaffected for operational resilience purposes.

(f) Following an approval or direction contemplated by clause 20.3(d), OpCo2 must update the Operations Plan in accordance with clause 8.3 (*Updated Project Plans*).

20.4 **Service Changes required by the Principal**

(a) The Principal may direct a Service Change in accordance with clause 11 of Schedule 2 (*Service Payment calculation*) (whether or not the Service Change has been discussed during an Operations Activities Review).

(b) If the Principal directs a Service Change in accordance with clause 11 of Schedule 2 (*Service Payment calculation*) the Service Payment will be adjusted for the associated Service Level Adjustment Amount in accordance with Schedule 2 (*Service Payment calculation*).

(c) This clause does not limit the Principal's right to direct a Modification under clause 29 (*Principal initiated Modifications*).

20.5 **Service Changes proposed by OpCo2**

(a) OpCo2 may propose a Service Change at any time during the Operations Phase (whether or not the Service Change has been discussed during an Operations Activities Review).

(b) The Principal may approve or reject, in its absolute discretion, a Service Change proposed by OpCo2.

(c) If the Principal approved the Service Change, the Principal's Representative will issue a "Service Change Notice" in accordance with clause 11.2 of Schedule 2 (*Service Payment calculation*).

(d) This clause does not limit OpCo2's right to propose a Modification under clause 30 (*OpCo2 initiated Modifications*).

20.6 **Not used**

20.7 **Provision of real-time information**

(a) OpCo2 must provide real time information to the Principal, in accordance with SPR Appendix 32 (*Communications Systems*). The Principal may make this information available to Customers through such channels and via such means as the Principal may deem appropriate.

(b) OpCo2 must:

(i) actively participate in the governance processes for NSWTI through the monthly project liaison group or as otherwise reasonably required by the Principal's Representative;

(ii) promote NSWTI as the primary Customer interface for service information, trip planning and Customer feedback, particularly on published information such as website, promotional material and other literature at Stations and within Trains in a format reasonably required by the Principal; and

(iii) not compete with or duplicate NSWTI services or Customer information channels.

(c) The Principal may use data provided by OpCo2 for any purpose whatsoever, including planning and marketing purposes, and purposes required by the Principal's Associates.

20.8 **Publication and display of information**

(a) OpCo2 must ensure that current, accurate, up to date and relevant information relating to:

(i) Train Services and the Sydney Metro; and

(ii) to the extent that relevant information is provided to OpCo2 by the Principal or other public transport providers, the interface of Train Services and the Sydney Metro with other public transport services (including as to disruptions),

is provided to Customers in accordance with the requirements of the SPR.

(b) OpCo2 must facilitate the delivery of that information to Customers at locations including on the Trains, at the Stations and Station Precincts via systems and technologies:

(i) specified in the SPR, including SPR Appendix 18 (*Branding, Wayfinding, Signage and Customer Information*); or

(ii) as may be determined and directed from time to time by the Principal's Representative as a Modification.

(c) Any initiative by OpCo2 to enhance passenger information must be developed in consultation with the Principal.

20.9 **Cooperation with other transport providers**

(a) OpCo2 must cooperate, coordinate and share information with other public transport providers in accordance with the procedures and requirements of the SPR, including section 3 of SPR Appendix 46 (*Operations and Customer Service Requirements*).

(b) This clause does not limit OpCo2's obligations under Schedule 3 (*Sydney Trains interface*).

20.10 **Customer feedback**

(a) OpCo2 must comply with the procedures and requirements of the SPR (including SPR Appendix 46 (*Operations and Customer Service Requirements*)) with respect to Customer feedback.

(b) OpCo2 must advise the Principal the category of feedback received and action taken by OpCo2 to resolve the matter in the Monthly Operations Performance Report.

20.11 **Ticketing, fare collection and revenue protection**

(a) Subject to the terms of this deed, the Principal will be responsible for the collection and protection of fare revenue.

(b) Without limiting clause 20.11(a), OpCo2 must:

(i) provide Customers with ticketing and fare information and directions;

(ii) operate fare gates;

(iii) work collaboratively with the Principal to minimise fare evasion to the Principal;

(iv) give Transport Officers and NSW Police access to the Sydney Metro; and

(v) report any faults with the ETS and ETS Equipment to the ETS Contractor,

in accordance with the SPR, including SPR Appendix 46 (*Operations and Customer Service Requirements*).

20.12 **Customer security**

OpCo2 must:

(a) operate and maintain:

(i) a CCTV system;

(ii) Help Points;

(iii) passenger emergency alarms;

(iv) an access control system; and

(v) lighting of the Trains, Stations and Station Precincts; and

(b) provide CCTV surveillance of Help Points,

in accordance with the requirements of the SPR (including SPR Appendices 32 (*Communications Systems*) and 46 (*Operations and Customer Service Requirements*)).

20.13 **NSW Police**

OpCo2 must:

(a) report incidents to, provide intelligence to, cooperate with and interface with the NSW Police regarding operational security and crime prevention interfaces; and

(b) provide the NSW Police with all assistance, information, access, accommodation, data, equipment, resources and/or materials as the NSW Police may reasonably require.

20.14 **Additional Planned Service Disruptions**

(a) Where OpCo2 requires a service disruption in addition to the Planned Service Disruptions to carry out Asset Management Activities, OpCo2 may make a request for an Additional Planned Service Disruption during an Operations Activities Review.

(b) The Principal may approve or reject OpCo2's request for an Additional Planned Service Disruption in its absolute discretion.

(c) If the Principal approves OpCo2's request for an Additional Planned Service Disruption, OpCo2 will be entitled to claim a reduction in the Availability Deduction and Timeliness Deduction in accordance with clause 15(b) of Schedule 2 (*Service Payment calculation*).

20.15 **Management of Incidents, emergencies and unplanned service disruptions**

OpCo2 must manage Incidents, emergencies and unplanned service disruptions in accordance with the requirements of the SPR, including section 3.2.5 of SPR Appendix 46 (*Operations and Customer Service Requirements*) and SPR Appendix 53b (*Operations Phase Reporting Requirements*) and the Principal will be responsible for any costs incurred by the Principal or Transport for NSW in connection with providing any required replacement bus services.

20.16 **Station Precincts**

OpCo2 must operate and maintain:

(a) from the OTS Incorporation Date, the Station Precincts located within the Licensed Maintenance Area (Northwest);

(b) from the Date of Completion of Phase 1, the Station Precincts located within the Licensed Maintenance Area (City); and

(c) from the Date of Completion of Phase 2, the Licensed Maintenance Area (Southwest),

so that they:

(d) are safe, clean and in a good state of repair; and

(e) comply with the requirements of the SPR, including SPR Appendix 46 (*Operations and Customer Service Requirements*).

20.17 **Car Parks**

From the OTS Incorporation Date, OpCo2 must operate and maintain the Car Parks located within the Licensed Maintenance Area (Northwest):

(a) so that they are safe, clean and efficient environments for Customers to park their cars and transition to the Sydney Metro Northwest; and

(b) so that they comply with the requirements of the SPR, including section 4.1 of SPR Appendix 46 (*Operations and Customer Service Requirements*).

20.18 **Cleaning and presentation**

OpCo2 must ensure that the Trains, Stations, ETS Equipment, Station Precincts and any other Licensed Maintenance Area (other than the Excluded Presentation Areas) meet the cleanliness and presentation standards set out in the SPR, including SPR Appendix 46 (*Operations and Customer Service Requirements*), at all times.

20.19 **Graffiti removal and Vandalism**

(a) OpCo2 must:

(i) operate the Sydney Metro so as to minimise the occurrence of Graffiti and Vandalism;

(ii) maintain the Trains, Stations, ETS Equipment, Station Precincts and any other Licensed Maintenance Area (other than the Excluded Presentation Areas) so that:

(A) Graffiti is removed; and

(B) Vandalism is rectified,

in accordance with the SPR, including SPR Appendix 46 (*Operations and Customer Service Requirements*);

(iii) monitor the Excluded Presentation Areas for the presence of Graffiti and Vandalism, and report to the Principal's Representative any observed

incidents of Graffiti and Vandalism, in accordance with the Minimum Operating Standards; and

(iv) otherwise comply with the Security Management Plan and the requirements of section 7.7 of the SPR.

(b) Promptly after receipt of a request from the Principal's Representative, OpCo2 must submit to the Principal's Representative a proposal for the removal of Graffiti or rectification of Vandalism on the Excluded Presentation Areas which specifies:

(i) the timeframe within which the work will be completed; and

(ii) the amount which OpCo2 will charge for the work.

(c) Within 20 Business Days of receiving a proposal from OpCo2 under clause 20.19(b), the Principal may accept the proposal by giving written notice to OpCo2, in which case:

(i) OpCo2 must remove the Graffiti or rectify the Vandalism within the timeframe set out in the proposal; and

(ii) the Principal must pay OpCo2 the amount set out in the proposal in accordance with clause 25 (*Payment Provisions*).

20.20 **ETS**

OpCo2 must operate and maintain the ETS in accordance with the SPR, including SPR Appendix 46 (*Operations and Customer Service Requirements*).

20.21 **Customer service assistants**

OpCo2 must:

(a) ensure that:

(i) each Station is staffed as required by the SPR; and

(ii) Customer service assistants are trained and, where appropriate, accredited or certified in the areas specified in the SPR; and

(b) otherwise comply with the requirements of the SPR, including SPR Appendix 46 (*Operations and Customer Service Requirements*).

20.22 **Customer-facing Staff**

OpCo2 must ensure that all Customer facing Staff:

(a) are properly qualified, accredited, trained and experienced to discharge their duties;

(b) are attired in a clean, well maintained and appropriate uniform that complies with work health and safety laws;

(c) possess a thorough knowledge of ticketing, including ticketing and fares related to the wider Transport for NSW transport network;

(d) are provided with a formal induction and staff handbook, which must include appropriate policies dealing with equal employment, discrimination, harassment and work health and safety issues; and

(e) are provided with passenger service training on at least annual intervals and, in particular, training with regard to:

(i) service requirements of passengers with disabilities or from culturally or linguistically diverse backgrounds;

(ii) the management of confrontation, difficult passengers and personal safety; and

(iii) work health and safety issues.

20.23 **Foundation Infrastructure Works O&M Manuals**

(a) OpCo2:

(i) acknowledges that under the terms of each Foundation Infrastructure Works Contract (other than the City Station Design Contracts and the Southwest Design Contract), the relevant Foundation Infrastructure Works Contractor warrants that the Foundation Infrastructure Works will be capable of remaining at all relevant times fit for their intended purpose, subject to OpCo2 operating and maintaining:

(A) the City Stations Works in accordance with the relevant City Station O&M Manual from the City Station Date of Completion of the last City Station Portion of the relevant Station;

(B) the CSM Works in accordance with the CSM O&M Manual from the CSM Date of Completion;

(C) the TSE Works, the SSJ Works (Phase 1) and the Line-wide Works (Phase 1), in accordance with the TSE O&M Manual, the SSJ O&M Manual and the Line-wide O&M Manual (as applicable) from the Line-wide Date of Construction Completion of Portion 3;

(D) the Southwest Works in accordance with the Southwest O&M Manual from the Phase 2 Handover Date;

(E) the SSJ Works (Phase 2) and the Line-wide Works (Phase 2), in accordance with the SSJ O&M Manual and the Line-wide O&M Manual (as applicable) from the Phase 2 Handover Date; and

(F) the PSD/MGF Works in accordance with the PSD/MGF O&M Manual from the Phase 2 Handover Date; and

(ii) must operate and maintain the Foundation Infrastructure Works in accordance with the Foundation Infrastructure Works O&M Manuals.

(b) The Principal and OpCo2 acknowledge that the Foundation Infrastructure Works O&M Manuals will be:

(i) prepared by the Foundation Infrastructure Works Contractors; and

(ii) provided to OpCo2,

after the date of this deed.

(ba) The Principal may provide OpCo2 with draft tender versions of the PSD/MGF O&M Manual prior to award of the PSD/MGF Contract and OpCo2 may provide written

comments to the Principal within 20 Business Days of the date on which OpCo2 received the draft tender versions of the PSD/MGF O&M Manual.

(c) The Principal

(i) may provide OpCo2 with draft submissions of the Foundation Infrastructure Works O&M Manuals submitted by the Foundation Infrastructure Works Contractors to the Principal in accordance with the Foundation Infrastructure Works Contracts prior to TSE Completion, CSM Completion of CSM Portion 3, each Southwest Completion (other than under the Southwest Design Contract), SSJ Completion of the SSJ Works (Phase 1), SSJ Completion of the SSJ Works (Phase 2), each City Station Completion (other than under the City Station Design Contracts), Line-wide Construction Completion of the Line-wide Works (Phase 1), Line-wide Construction Completion of the Line-wide Works (Phase 2) and PSD/MGF Construction Completion of the PSD/MGF Works (as applicable); and

(ii) must provide OpCo2 with a draft PSD/MGF O&M Manual submitted by the PSD/MGF Contractor to the Principal in accordance with the PSD/MGF Contract at least 150 Business Days prior to PSD/MGF Completion.

(d) OpCo2 must, within 20 Business Days of receipt of a draft TSE O&M Manual from the Principal, notify the Principal if the draft TSE O&M Manual contains any material departures from the assumptions for the TSE O&M Manual set out in Schedule 39 (*Assumptions for TSE O&M Manual*).

(da) In respect of each draft Foundation Infrastructure Works O&M Manual (other than a draft TSE O&M Manual), OpCo2 may:

(i) review the draft Foundation Infrastructure Works O&M Manual provided to it pursuant to clause 20.23(c); and

(ii) to the extent that the draft Foundation Infrastructure Works O&M Manual does not comply with the requirements of the relevant Foundation Infrastructure Works Contract, provide written comments to the Principal within 20 Business Days of the date on which OpCo2 received the draft Foundation Infrastructure Works O&M Manual from the Principal.

(e) The Principal must provide OpCo2 with:

(i) each final Foundation Infrastructure Works O&M Manual (other than the TSE O&M Manual):

(A) promptly following the Principal advising the relevant Foundation Infrastructure Works Contractor that the Foundation Infrastructure Works O&M Manual has not been rejected by the Principal in accordance with the relevant Foundation Infrastructure Works Contract; and

(B) with respect to the PSD/MGF O&M Manual, at least 60 Business Days prior to PSD/MGF Completion; and

(ii) the final TSE O&M Manual promptly following its certification by the TSE Independent Certifier in accordance with the TSE Deed.

(f) If the final TSE O&M Manual contains any material departure from the assumptions for the TSE O&M Manual set out in Schedule 39 (*Assumptions for TSE O&M Manual*):

(i) the Principal must compensate OpCo2 for any negative Net Financial Impact of that departure; and

(ii) OpCo2 must compensate the Principal for any positive Net Financial Impact of that departure,

which will be calculated and paid in accordance with Schedule 29 (*Net Financial Impact*).

20.24 **Operations Phase construction warranties**

OpCo2 warrants that:

(a) the construction of any works carried out as part of the Operations Activities will satisfy the requirements of this deed; and

(b) the works carried out as part of the Operations Activities will, when complete and thereafter at all relevant times during the Term, be safe and fit for their purposes.

20.25 **Post Final Completion design changes**

(a) Subject to clauses 28A (*Modifications*), 29 (*Principal initiated Modifications*) and 30 (*OpCo2 initiated Modifications*), OpCo2 may only amend:

(i) Final Design Documentation relating to a Phase after the Date of Final Completion of the relevant Phase; and

(ii) Northwest Final Design Documentation after the OTS Incorporation Date,

if:

(iii) OpCo2 submits the amended Design Documentation to the Principal's Representative together with:

(A) certifications equivalent to those referred to in clause 13.10(a)(i); and

(B) an explanation as to why it is seeking to amend the Final Design Documentation;

(iv) a period of 20 Business Days after submission of the amended Design Documentation has expired; and

(v) the Principal's Representative has not notified OpCo2 that, in the Principal's Representative's opinion, the amended Design Documentation does not comply with the requirements of this deed (with reasons).

(b) The exercise (or failure to exercise) by the Principal's Representative of any of its rights under this clause 20.25 (*Post Final Completion design changes*) will not preclude the Principal from subsequently asserting that the Design Documentation does not comply with the requirements of this deed.

20.26 **Terms and conditions - Customer**

OpCo2 must not impose or attempt to impose any terms and conditions between it and Customers for the Train Services without the Principal's prior written consent.

21. ASSET MANAGEMENT

21.1 OpCo2's asset management obligations

OpCo2 must perform the Asset Management Activities in accordance with:

(a) the Asset Management System;

(b) the SPR; and

(c) the other requirements of this deed,

so that:

(d) the Assets and the Licensed Maintenance Area comply with the requirements of this deed;

(e) the Sydney Metro remains fit for purpose during the Term; and

(f) provided each Asset is operated and maintained after the end of the Term in accordance with the Asset Management System, each Asset is capable of remaining fit for its intended purpose throughout:

(i) the Design Life of that Asset; or

(ii) in the case of a replacement or refurbished Asset, the Extended Design Life of that Asset.

21.2 Asset Management System

(a) OpCo2 must develop and implement the Asset Management System in accordance with the SPR.

(b) The Asset Management System will include the:

(i) Asset Management Policy;

(ii) Asset Management Strategy;

(iii) Asset Management Plan;

(iv) Operations and Maintenance Manuals; and

(v) Asset Maintenance Standards.

(c) The Asset Management System must:

(i) be supported by the Asset Information System; and

(ii) comply with the review and reporting processes set out in section 8.2 of the SPR.

21.3 Spares

OpCo2 must maintain the minimum specified stock of Spares in accordance with:

(a) the Spares and Consumables Strategy; and

(b) the SPR.

21.4 **Asset Management Plan**

(a) OpCo2 must prepare and update the Asset Management Plan in accordance with clause 8 (*Project Plans*) and the SPR.

(b) The Asset Management Plan must:

(i) cover all Assets;

(ii) otherwise comply with the requirements of the SPR; and

(iii) include the Maintenance Works Program, which must:

(A) describe the Asset Management Activities for the following 2 year period;

(B) be of sufficient detail to facilitate effective monitoring of Asset Management Activities;

(C) take into account all works required to ensure the Handback Condition is achieved; and

(D) include the Southwest TS Works Program.

21.5 **Rectification of Defects**

Subject to clauses 14.11 (*OTS Civil Works Defects*), 14.12 (*OTS Temporary Repairs*), 14.15 (*Compensation Events*), 14A.16 (*Compensation Events*), 14B (*Foundation Infrastructure Works Defects*) and 20.19 (*Graffiti removal and Vandalism*):

(a) from the OTS Incorporation Date, OpCo2 must rectify all Defects (fair wear and tear excepted) on the Sydney Metro Northwest and the Sydney Metro City within a reasonable time; and

(b) from the Date of Completion of Phase 2, OpCo2 must rectify all Defects (fair wear and tear excepted) on the Sydney Metro Southwest within a reasonable time.

21.6 **Asset Information System**

(a) OpCo2 must provide and maintain the Asset Information System in accordance with the SPR.

(b) The Asset Information System must:

(i) cover all Assets;

(ii) record OpCo2's compliance with the Asset Management Plan including:

(A) the condition of Assets;

(B) changes to the condition of Assets; and

(C) remaining life of Assets;

(iii) be capable of producing periodic reports that allow OpCo2 and the Principal to monitor Asset condition and OpCo2's compliance with its obligations under this deed; and

(iv) at all times accurately represent the true status and condition of all Assets and all Asset Management Activities.

(c) The Principal:

(i) is the owner of all information held within the Asset Information System; and

(ii) may access the Asset Information System at any time in accordance with the SPR.

21.7 **Asset Management Failures**

(a) The parties will meet annually within 3 months of the end of each Operating Year to review OpCo2's compliance with the Maintenance Works Program during the previous Operating Year.

(b) An **Asset Management Failure** will occur if:

(i) either:

(A) OpCo2 failed to comply with the Maintenance Works Program; or

(B) the Maintenance Works Program included in the Asset Management Plan submitted by OpCo2 failed to comply with clause 21.4(b)(iii); and

(ii) in the Principal's reasonable opinion, OpCo2's failure to comply with the Maintenance Works Program or the failure of the Maintenance Works Program to comply with clause 21.4(b)(iii) (as applicable) constitutes a material non-compliance with the Asset Management Plan.

(c) If an Asset Management Failure occurs the Principal may give OpCo2 a notice stating the nature of the Asset Management Failure.

(d) OpCo2 must remedy the Asset Management Failure within:

(i) 3 months of the date on which the notice referred to in clause 21.7(c) is issued; or

(ii) such other period agreed between the parties (acting reasonably),

(the **Remediation Period**).

(e) If OpCo2 fails to remedy the Asset Management Failure within the Remediation Period, the Principal may withhold $[redacted] from the Service Payment each month from the expiry of the Remediation Period until OpCo2 remedies the Asset Management Failure.

(f) If OpCo2 remedies the Asset Management Failure after the Remediation Period, the Principal:

(i) must reimburse OpCo2; and

(ii) will retain any interest accrued on,

all amounts retained pursuant to clause 21.7(e).

21.8 **Asset Condition Assessment**

OpCo2 must conduct Asset Condition Assessments, and report to the Principal on the results of those Asset Condition Assessments, in accordance with section 8.10 of the SPR.

21.9 **Reporting**

During the Operations Phase, OpCo2 must provide to the Principal's Representative, monthly, quarterly and annual reports on the Asset Management Activities in accordance with, and including the information specified in, SPR Appendix 53b (*Operations Phase Reporting Requirements*).

21.10 **Handback Audit**

(a) Without limiting clause 44 (*Access, Inspections and Audits*):

(i) no earlier than 30 months; and

(ii) no later than 6 months,

prior to the Original Expiry Date, the Principal's Representative may procure the carrying out of an audit of the Sydney Metro (**Handback Audit**) by an independent expert (**Handback Auditor**):

(iii) appointed by agreement between the parties; or

(iv) failing agreement within 10 Business Days of a request made in writing by the Principal, nominated by the President of Engineers Australia.

(b) The Principal's Representative must:

(i) notify OpCo2 at least 10 Business Days in advance of the date it wishes to procure the carrying out of a Handback Audit and specify the Assets that will be the subject of the Handback Audit (**Handback Audit Assets**); and

(ii) consider in good faith any reasonable request by OpCo2 for the Handback Audit to be carried out on a different date.

(c) The Handback Auditor will inspect and assess the Handback Audit Assets and notify the Principal and OpCo2 in writing of:

(i) whether the Handback Audit Assets have been and are being maintained by OpCo2 in accordance with this deed, including whether all works scheduled to have been carried out under the current Maintenance Works Program prior to the date of the Handback Audit have been satisfactorily completed; and

(ii) any rectification, maintenance and remediation works required to be carried out by OpCo2 to bring the condition of the Handback Audit Assets to the condition it would have been in had OpCo2 complied with its obligations under this deed.

(d) OpCo2 must, at its cost, co-operate with the Handback Auditor and provide the Handback Auditor with any reasonable assistance required by the Handback Auditor.

(e) The Principal's Representative must use its reasonable endeavours to procure that the Handback Auditor minimises any disruption caused to OpCo2's Activities by the Handback Audit.

(f) The cost of the Handback Audit will be borne by the Principal.

21.11 **Rectification work**

OpCo2 must carry out any required rectification, maintenance and remediation work notified pursuant to clause 21.10(c)(ii):

(a) to the satisfaction of the Handback Auditor;

(b) in accordance with all applicable laws; and

(c) so as to satisfy the standards and other requirements applicable to the Sydney Metro under this deed,

prior to the Original Expiry Date and any costs it incurs in carrying out such rectification, maintenance or remediation work will be at its own expense.

21.12 **Handback obligations**

At the end of the Term, OpCo2 must:

(a) surrender and return to the Principal or the Principal's nominee the Sydney Metro and, to the extent it has been installed, the ETS Equipment;

(b) transfer all of OpCo2's rights, title and interest (if any) in the Assets (including the Handover Spares) to the Principal or the Principal's nominee free from any Security Interests;

(c) ensure that the Assets are in a state and condition which complies with the requirements of this deed including, if Completion has occurred, the Handback Condition (fair wear and tear excepted);

(d) if the OTS Incorporation Date has occurred, have completed all works scheduled to be carried out under the current Maintenance Works Program for the Sydney Metro Northwest and the Sydney Metro City;

(e) if Completion of Phase 2 has occurred, have completed all works scheduled to be carried out under the current Maintenance Works Program for the Sydney Metro Southwest;

(f) if the First Passenger Service on the Sydney Metro City has been provided, ensure that:

(i) all Trains meet the "Level 3" requirements on the "Car Exterior Assessment Scale" and the "Car Interior Assessment Scale" as set out in Schedule 2 (*Service Payment calculation*) Annexure B Part A: KPI Tables KPI No. 1;

(ii) all Northwest Stations and City Stations meet the "Level 3" requirements on the "Station Views Assessment Scale" as set out in Schedule 2 (*Service Payment calculation*) Annexure B Part A: KPI Tables KPI No. 2;

(iii) all Station Precincts within the Sydney Metro Northwest and the Sydney Metro City (excluding the Stations), Car Parks within the Licensed Maintenance Area (Northwest), Additional Maintained Assets (Northwest) and Additional Maintained Assets (City) meet the "Level 3" requirements on the "Public Area Assessment Scale" as set out in Schedule 2 (*Service Payment calculation*) Annexure B Part A: KPI Tables KPI No. 3; and

(iv) the rail corridor within the Sydney Metro Northwest and the Sydney Metro City (excluding the Excluded Presentation Areas) meets the "Level 3"

requirements on the "Corridor Assessment Scale" as set out in Schedule 2 (*Service Payment calculation*) Annexure B Part A: KPI Tables KPI No. 3;

(fa) if the First Passenger Service on the Sydney Metro Southwest has been provided, ensure that:

(i) all Southwest Stations meet the "Level 3" requirements on the "Station Views Assessment Scale" as set out in Schedule 2 (*Service Payment calculation*) Annexure B Part A: KPI Tables KPI No. 2;

(ii) all Station Precincts within the Sydney Metro Southwest (excluding the Stations), Car Parks within the Licensed Maintenance Area (Southwest) and Additional Maintained Assets (Southwest) meet the "Level 3" requirements on the "Public Area Assessment Scale" as set out in Schedule 2 (*Service Payment calculation*) Annexure B Part A: KPI Tables KPI No. 3; and

(iii) the rail corridor within the Sydney Metro Southwest (excluding the Excluded Presentation Areas) meets the "Level 3" requirements on the "Corridor Assessment Scale" as set out in Schedule 2 (*Service Payment calculation*) Annexure B Part A: KPI Tables KPI No. 3;

(g) if the First Passenger Service on the Sydney Metro City has been provided, have completed the transfer of the Asset Information System database to the Principal or the Principal's nominee such that:

(i) all data has the capability of being processed, evaluated and viewed using standard commercially available systems;

(ii) it remains fully functional and retains interface capabilities;

(iii) all data entry is fully up to date;

(iv) all data archives are included; and

(v) all supporting documentation is included;

(h) deliver to the Principal or the Principal's nominee (or both, if required) all and any documents and information concerning OpCo2's Activities which is required for the efficient transfer of responsibility for their performance, including:

(i) the Project Documentation;

(ii) all Data (as defined in Schedule 34 (*Intellectual Property*));

(iii) any documentation or programs required to be provided under Schedule 34 (*Intellectual Property*); and

(iv) any other documentation specified in the SPR;

(i) transfer all of OpCo2's rights, title and interest (if any) in any Extra Land held by OpCo2 at the end of the Term;

(j) in relation to:

(i) Hired Moveable Assets owned by any Related Body Corporate of OpCo2 or a Core Contractor, procure the novation to the Principal of any lease or hire arrangement relating to any such Hired Moveable Asset nominated by the Principal; and

(ii) any other Hired Moveable Assets, use its best endeavours to procure the novation to the Principal of any lease or hire arrangement relating to any such Hired Moveable Asset nominated by the Principal; and

(k) procure the novation to the Principal or its nominee of, or execute any document required to effect OpCo2 ceasing to be a party to, any Significant Contract, and use its best endeavours to procure the novation to the Principal or its nominee of, or execute any document required to effect OpCo2 ceasing to be a party to, any other Subcontract, in each case relating to OpCo2's Activities which the Principal may nominate (in its absolute discretion), with effect from the end of the Term or such other date as the Principal may agree.

21.13 **Power of attorney**

OpCo2 irrevocably appoints, with effect from the end of the Term, the Principal and such persons as are from time to time nominated by the Principal, jointly and severally, as its attorney with full power and authority to execute any agreement or novation contemplated by clause 21.12 (*Handback obligations*).

21.14 **Final Inspection**

(a) As soon as practicable following the end of the Term, an independent expert (**Final Inspection Auditor**):

(i) appointed by agreement between the parties; or

(ii) failing agreement within 10 Business Days of a request made in writing by the Principal, nominated by the President of Engineers Australia,

will inspect and assess the Sydney Metro and notify the Principal and OpCo2 in writing of the estimated cost (without double counting) of making good or rectifying any failure by OpCo2 to carry out:

(iii) if the Term is not extended in accordance with clause 3.3 (*Term extension*):

(A) the work (if any) required under clause 21.10(c)(ii) and

(B) its obligations under clause 21.12 (*Handback Obligations*); or

(iv) if the Term is extended in accordance with clause 3.3 (*Term extension*), its obligations under clause 21.12(f).

(b) In assessing OpCo2's compliance with clause 21.12(f), the Final Inspection Auditor will have regard to:

(i) the instructions for the use of the relevant assessment scale described in Schedule 2 (*Service Payment calculation*) Annexure B Part A: KPI Tables; and

(ii) the Reference Pictures.

(c) The amount notified by the Final Inspection Auditor under clause 21.14(a) will be a debt due and payable from OpCo2 to the Principal.

(d) The Principal may deduct or set off any amount payable by OpCo2 under clause 21.14(c) against any amount otherwise payable by the Principal to OpCo2, or may take other enforcement action available to it including under:

(i) if the Term is not extended in accordance with clause 3.3 (*Term extension*), the Handback Security Bond or any security provided under clause 22.1(b) or

(ii) if the Term is extended in accordance with clause 3.3 (*Term extension*), the Extension Security Bond.

21.15 **Interim inspection**

(a) Without limiting OpCo2's obligations under clause 21.12 (*Handback obligations*), if the Term is extended in accordance with clause 3.3 (*Term extension*):

(i) at the Original Expiry Date OpCo2 must:

(A) ensure that the Assets are in a state and condition which complies with the requirements of this deed including the Handback Condition;

(B) have completed all works scheduled to be carried out under the current Maintenance Works Program; and

(C) ensure that:

(aa) all Trains meet the "Level 3" requirements on the "Car Exterior Assessment Scale" and the "Car Interior Assessment Scale" as set out in Schedule 2 (*Service Payment calculation*) Annexure B Part A: KPI Tables KPI No. 1;

(bb) all Stations meet the "Level 3" requirements on the "Station Views Assessment Scale" as set out in Schedule 2 (*Service Payment calculation*) Annexure B Part A: KPI Tables KPI No. 2;

(cc) all Station Precincts (excluding the Stations) meet the "Level 3" requirements on the "Station Precincts Assessment Scale" as set out in Schedule 2 (*Service Payment calculation*) Annexure B Part A: KPI Tables KPI No. 3; and

(dd) the rail corridor (excluding the Excluded Presentation Areas) meets the "Level 3" requirements on the "Corridor Assessment Scale" as set out in Schedule 2 (*Service Payment calculation*) Annexure B Part A: KPI Tables KPI No. 3; and

(ii) as soon as practicable following the Original Expiry Date, an independent expert (**Interim Inspection Auditor**):

(A) appointed by agreement between the parties; or

(B) failing agreement within 10 Business Days of a request made in writing by the Principal, nominated by the President of Engineers Australia,

will inspect and assess the Sydney Metro and notify the Principal and OpCo2 in writing of the estimated cost (without double counting) of making good or rectifying any failure by OpCo2 to carry out:

(C) the work (if any) required under clause 21.10(c)(ii); and

(D) its obligations under clause 21.15(a)(i).

(b) In assessing OpCo2's compliance with clause 21.15(a)(i)(C), the Interim Inspection Auditor will have regard to:

(i) the instructions for the use of the relevant assessment scale described in Schedule 2 (*Service Payment calculation*) Annexure B Part A: KPI Tables; and

(ii) the Reference Pictures.

(c) To the extent any failures relating to the amount notified by the Interim Inspection Auditor under clause 21.15(a)(ii) have not been rectified by the date falling 3 months after the date of that notice, the applicable amount will be a debt due and payable from OpCo2 to the Principal.

(d) Subject to clause 22.6(b), the Principal may deduct or set off any amount payable by OpCo2 under clause 21.15(c) against any amount otherwise payable by the Principal to OpCo2, or may take other enforcement action available to it including under the Handback Security Bond or any security provided under clause 22.1(b).

22. SECURITY

22.1 Provision of security

(a) OpCo2 must provide the Principal with:

(i) a bond (**Handback Security Bond**) for $[redacted] at least 18 months prior to the Original Expiry Date; and

(ii) in addition to the Handback Security Bond, if the Term is extended in accordance with clause 3.3 (*Term extension*), a bond (**Extension Security Bond**) for $[redacted] by the later of:

(A) the date falling 2 years prior to the Original Expiry Date; and

(B) the date falling 10 Business Days after:

(aa) the Principal accepting the Extension Proposal under clause 3.3(f)(i); or

(bb) if the Principal rejects the Extension Proposal under clause 3.3(f)(ii), the parties reaching agreement on the terms of the Extension Proposal.

(b) If OpCo2 fails to provide a Handback Security Bond in accordance with clause 22.1(a)(i), then OpCo2 will not be in breach of this deed but the Principal may withhold $[redacted] from each payment of the Service Payment each month for a period of 10 months.

(c) If OpCo2 fails to provide an Extension Security Bond in accordance with clause 22.1(a)(ii), then OpCo2 will not be in breach of this deed and the Term will expire on the Original Expiry Date.

22.1A Reduction of Handback Security Bond

(a) If there is a debt due and owing from OpCo2 to the Principal under clause 21.15(c), then OpCo2 will be entitled to replace the original Handback Security Bond with a bond that:

(i) is for an amount equal to [redacted]% of such debt; and

(ii) satisfies clause 22.3 (*Requirements of Bond*).

(b) If OpCo2 exercises its rights under clause 22.1A(a):

(i) the Principal must surrender the original Handback Security Bond to OpCo2 in exchange for the issue of the replacement Handback Security Bond; and

(ii) the replacement bond will then be deemed to be the Handback Security Bond.

22.2 **Return of security**

Subject to the Principal's right to have recourse to the Bonds, the Principal must release:

(a) the Handback Security Bond or any alternative amount withheld under clause 22.1(b):

(i) if the Term is not extended in accordance with clause 3.3 (*Term extension*), as soon as practicable after the Principal has received the Final Inspection Auditor's notice under clause 21.14(a); or

(ii) if the Term is extended in accordance with clause 3.3 (*Term extension*), as soon as practicable after the Principal has received the Interim Inspection Auditor's notice under clause 21.15(a)(ii); and

(b) the Extension Security Bond as soon as practicable after the Principal has received the Final Inspection Auditor's notice under clause 21.14(a).

22.3 **Requirements of Bond**

Each Bond must be:

(a) in the form of Schedule 23 (*Form of Bond*) or such other form as the Principal may approve;

(b) in favour of the Principal;

(c) provided by a bank or insurance company that at all times maintains the Required Rating and is regulated by the Australian Prudential Regulation Authority; and

(d) payable at an office of the issuer in Sydney (or such other place as the Principal may approve).

22.4 **Issuer ceases to have Required Rating**

(a) If the issuer of any Bond ceases to have the Required Rating and, at that time, another bank or insurance company acceptable to the Principal maintains the Required Rating and is regulated by the Australian Prudential Regulation Authority, then OpCo2 must:

(i) promptly notify the Principal of that circumstance; and

(ii) within 20 Business Days of being requested to do so, procure the issue to the Principal of a replacement bond which must have a face value equal to that of the Bond being replaced and must satisfy the requirements of clause 22.3 (*Requirements of Bond*),

and the Principal must surrender the original Bond to OpCo2 in exchange for the issue of the replacement Bond.

(b) If the issuer of any Bond ceases to have the Required Rating and, at that time, no Major Australian Bank has the Required Rating, then:

(i) if the current issuer of the Bond has a rating of less than the second highest rated Major Australian Bank, OpCo2 must procure the issue to the Principal of a replacement bond from an issuer which has a rating equal to or higher than the second highest rated Major Australian Bank which otherwise satisfies the requirements of clause 22.3 (*Requirements of Bond*);

(ii) OpCo2 must monitor the credit rating of the issuer of the replacement Bond and the credit rating of the Major Australian Banks and procure a replacement Bond from an issuer which has the Required Rating within 15 Business Days after any Major Australian Bank regains a rating equal to or greater than the Required Rating; and

(iii) the Principal must promptly surrender the original Bond to OpCo2 following the issue of the replacement Bond.

22.5 **No injunction**

The Principal may make a demand under any Bond at any time. OpCo2 must not take any steps to injunct or otherwise restrain:

(a) the issuer of a Bond from paying the Principal pursuant to the Bond;

(b) the Principal from making a demand under a Bond or receiving payment under a Bond; or

(c) the Principal from using the proceeds of a Bond in accordance with clause 22.6 (*Proceeds of security*).

22.6 **Proceeds of security**

(a) The Principal may only apply the proceeds of:

(i) the Handback Security Bond or any alternative amount withheld under clause 22.1(b) towards:

(A) if the Term is not extended in accordance with clause 3.3 (*Term extension*), payment of any amount due and payable by OpCo2 to the Principal under clause 21.14(c); or

(B) if the Term is extended in accordance with clause 3.3 (*Term extension*), payment of any amount due and payable by OpCo2 to the Principal under clause 21.15(c); and

(ii) the Extension Security Bond to reimburse it for any Loss for which OpCo2 is liable after the Original Expiry Date, and in payment of any other moneys owing by OpCo2 to the Principal (including moneys owing under any indemnity) after the Original Expiry Date, to the extent such Loss or other moneys owing arise in relation to OpCo2's obligations during the Extension Period.

(b) If:

(i) there is a debt due and owing from OpCo2 to the Principal under clause 21.15(c); and

(ii) the Principal makes a deduction or set off under clause 21.15(d) or makes any claim under the Handback Security Bond in relation to such debt (**Claimed Amount**); and

(iii) before the end of the Term, OpCo2 rectifies all of the relevant failures to which such deduction, set off or claim relates,

then the Principal must pay to OpCo2 an amount equal to the Claimed Amount in accordance with clause 25.4(a)(i)(B).

22.7 No interest

The Principal is not obliged to pay OpCo2 interest on a Bond or the proceeds of a Bond.

22.8 No trust

If the Principal makes a demand under a Bond, it does not hold the proceeds on trust for OpCo2.

23. COMMERCIAL OPPORTUNITIES

(a) OpCo2's entitlement to conduct Commercial Opportunities is in accordance with clause 6 of Schedule 9 (*Easements, Land Arrangements and Retail Licences*).

(b) If OpCo2 wishes to:

(i) undertake a development on the Sydney Metro Site (other than the OTS2 Works or the Temporary Works); or

(ii) derive revenue from activities other than as permitted by clause 52.6 (*Restrictions on Revenue*),

OpCo2 may propose a Modification in accordance with clause 30 (*OpCo2 initiated Modifications*), or otherwise seek the Principal's agreement to do so.

24. NAMING AND BRANDING

24.1 Name

The Sydney Metro will be called the Sydney Metro or such other name as is notified by the Principal to OpCo2.

24.2 Government logo and corporate image

(a) OpCo2 must display the NSW Government Transport, Transport for NSW, and/or NSW NOW logo and corporate image and the name Sydney Metro (or such other name as is notified by the Principal to OpCo2) on the Sydney Metro in the locations and manner designated in SPR Appendix 18 (*Branding, Wayfinding, Signage and Customer Information*).

(b) The Principal may at any time direct OpCo2 to display the NSW Government Transport, Transport for NSW and/or NSW NOW logo and corporate image and the name of the Sydney Metro on the Sydney Metro in areas not designated by the SPR.

(c) The State, the Principal and/or Transport for NSW may change the NSW Government Transport, Transport for NSW and/or NSW NOW name/corporate image and may direct OpCo2 to display the new NSW Government Transport, Transport for NSW and/or NSW NOW logo/corporate image on the Sydney Metro in

those areas designated in the SPR or as directed by the Principal under clause 24.2(b).

(d) The Principal must compensate OpCo2 for all reasonable costs incurred in compliance with clauses 24.2(b) or 24.2(c).

24.3 **OpCo2 name/corporate image**

(a) OpCo2 must display its livery, name/corporate image on the Sydney Metro in the manner designated by SPR Appendix 18 (*Branding, Wayfinding, Signage and Customer Information*).

(b) OpCo2 must not change its livery, name/corporate image without the prior written consent of the Principal.

24.4 **Station names**

(a) The Stations will be named as set out in SPR Appendix 18 (*Branding, Wayfinding, Signage and Customer Information*).

(b) The Principal may at any time direct OpCo2 to carry out a Modification pursuant to clause 29 (*Principal initiated Modifications*) to change any Station name.

(c) The Principal will be entitled to retain all revenue received from any person in connection with any Station name.

(d) OpCo2:

(i) may use the Station names only for activities and purposes directly related to the OTS2 PPP and this deed; and

(ii) may not use for public purposes any name for the Stations other than the Station names described in clauses 24.4(a) and 24.4(b).

24.5 **Wayfinding**

OpCo2 must comply with the requirements of SPR Appendix 18 (*Branding, Wayfinding, Signage and Customer Information*) and all the other requirements of the SPR in respect of wayfinding.

24.6 **Other signage and displays**

Without limiting clauses 24.1 (*Name*) to 24.5 (*Wayfinding*), OpCo2 must display wayfinding, signage and other information, public art and branding at all times during the Term (including on hoardings, OTS2 Works, Trains, Stations and Station Precincts) as required in accordance with the SPR.

25. **PAYMENT PROVISIONS**

25.1 **Principal's payment obligation**

The Principal must pay OpCo2:

(a) each Construction Payment A in accordance with clauses 25.2 (*Construction Payment A*) and 25.2B (*Adjustments to Construction Payment A Schedule*);

(b) the Construction Payment B in accordance with clause 25A (*Securitised Licence Structure*);

(c) the Phase 2 Construction Payments and any Option 1 Trains Payment in accordance with clause 25B (*Phase 2 Construction Payments*);

(d) the Service Payments, the Final Completion Payment, any Pre-Agreed Option Construction Payment, the Monthly Modifications Payment, the Early Site Access Payment and the Early Handover Payment in accordance with clauses 25.4 (*Payment claims for Service Payments and other amounts*), 25.5 (*Payment Schedule*) and 25.6 (*Payment*);

(e) the Collaboration Payments in accordance with clauses 25.4 (*Payment claims for Service Payments and other amounts*), 25.5 (*Payment Schedule*), 25.6 (*Payment*) and 25C (*Collaboration Payments*);

[redacted]

(g) the Milestone Payments in accordance with clauses 19A (*Milestones*), 25.4 (*Payment claims for Service Payments and other amounts*), 25.5 (*Payment Schedule*) and 25.6 (*Payment*);

[redacted]

(i) any other amounts which are payable by the Principal to OpCo2 under this deed subject to this clause 25 (*Payment provisions*).

25.2 **Construction Payment A**

(a) OpCo2 may give the Principal a claim for payment of a Construction Payment A:

(i) no later than 3 Business Days before each drawdown date for that month set out in the Construction Payment A Schedule;

(ii) in the form of a valid Tax Invoice; and

(iii) attaching:

(A) a copy of the Drawdown Notice (as defined in the Facility Agreement) given to the Agent in respect of the corresponding drawdown under the Construction Loan Facility Scheduled for that drawdown date; and

(B) confirmation from the Agent addressed to the Principal that:

(aa) it is not aware of any reason why the corresponding drawdown under the Construction Loan Facility Scheduled for that drawdown date would not be made available; and

(bb) it has received confirmation from OpCo2 that all amounts withdrawn from the Principal Construction Payments Account have been applied towards payments due and payable to the Integrator under the Integrator Deed or transferred to the OTS2 Construction Proceeds Account in order to make a GST payment to the ATO.

(b) Subject to clause 25.2(c) the Principal must, by the later of 3 Business Days after receiving a payment claim under clause 25.2(a) and the relevant drawdown date, pay into the Principal Construction Payments Account the amount claimed.

(c) The Principal will only be obliged to deposit a Construction Payment A into the Principal Construction Payments Account if:

(i) the aggregate drawings under the Construction Loan Facility that have been, and are due to be, deposited into the OTS2 Construction Proceeds Account on the same date are not less than the aggregate drawings of the Construction Loan Facility set out in the Construction Payment A Schedule as at the same date;

(ii) all amounts withdrawn from the Principal Construction Payments Account have been applied towards payments due and payable to the Integrator under the Integrator Deed or transferred to the OTS2 Construction Proceeds Account in order to make a GST payment to the ATO;

(iii) no breach by the Agent, the Security Trustee or OpCo2 of clause 10 (*Construction Payments*) of the Financiers Tripartite Deed is subsisting; and

(iv) the Security Trustee has not applied any Insurance Proceeds to the payment or repayment of the Project Debt.

(d) OpCo2 may only request or make withdrawals from the Principal Construction Payments Account in accordance with clause 10.5 of the Financiers Tripartite Deed.

(e) The Principal must not set off any amount due and payable under a Principal Project Agreement against a Construction Payment A.

25.2A **Licence Payments**

(a) (**Licence Payment**): In consideration of the rights to enter on, occupy and access (as applicable) the Licensed Maintenance Area pursuant to the licence granted under clause 12.3 (*Licence to use Licensed Maintenance Area*), OpCo2 agrees to pay each Licence Payment on its corresponding Licence Payment Date until the last day of the Term without any abatement, deduction or right of set off.

(b) (**Adjustments to Licence Payments**): The parties agree that the Licence Payments will be adjusted to account for:

(i) any adjustment to the corresponding Construction Payment B and Receivables Purchase Payment under clause 25A.1(c) and the Securitisation Agreement; and

(ii) any Securitised NFI Event Payment.

(c) (**Calculation of Adjustments**): Any adjustment to the Licence Payment shall be made in a manner which reflects the principles for calculation of the Licence Payments under the Base Case Financial Model as at Financial Close and, where applicable, in accordance with Schedule 26 (*Amendments to Base Case Financial model on CDPD Payment Date*).

25.2B **Adjustments to Construction Payment A Schedule**

(a) Without prejudice to the Principal's obligations under clause 25.2 (*Construction Payment A*), the Principal may, at any time, by giving no less than 5 days written notice to OpCo2, amend the Construction Payment A Schedule by bringing forward the date for any payment which remains to be made in respect of Construction Payment A as at the date of that notice.

(b) If the Principal gives a notice under paragraph (a) , the Construction Payment A Schedule will be deemed to be amended to accommodate any changes to the dates

for or amounts of payment by the Principal in respect of Construction Payment A which are notified by the Principal under paragraph (a) above.

25.3 **Conditional Debt Pay Down**

(a) (**CDPD Payment**): Subject to this clause 25.3 (*Conditional Debt Pay Down*), the Principal must, in accordance with the Securitisation Agreement and the Payments Direction Deed, pay the CDPD Amount on the CDPD Payment Date to Finance Co to repurchase the CDPD Receivables.

(b) (**CDPD Conditions**): The Principal's obligation to pay the CDPD Amount is subject to the following conditions precedent (**CDPD Conditions**):

(i) the CDPD Period has commenced and not expired;

(ii) there is no subsisting OpCo2 Event of Default or OpCo2 Termination Event;

(iii) no OpCo2 Event of Default (other than an OpCo2 Event of Default occurring under clause 40.1(r)) has occurred in the 6 month period immediately prior to the CDPD Notice Date;

(iv) not more than one OpCo2 Event of Default (other than an OpCo2 Event of Default occurring under clause 40.1(r)) has occurred in the 18 month period immediately prior to the CDPD Notice Date;

(v) no OpCo2 Termination Event has occurred in the 12 month period immediately prior to the CDPD Notice Date;

(vi) the costs of rectification of any single subsisting Defect, other than:

(A) during:

(aa) the Initial Defects Period and the First Operations Period, a Foundation Infrastructure Works Defect; or

(bb) the Second Operations Period, a TSE Defect, a Foundation Infrastructure Works Structural Defect or a PSD/MGF Systemic Defect,

in respect of which the Principal has:

(cc) not provided an undertaking pursuant to clause 14B.2(d)(vi);

(dd) provided an undertaking pursuant to clause 14B.2(d)(vi) and has not rectified; or

(ee) not directed a Modification as referred to in clause 14B.2(d)(vii); or

(B) an OTS Civil Works Defects in respect of which the Principal has not directed a Modification as referred to in clause 14.11(b)(ii)),

will not exceed $[redacted];

(vii) the aggregate cost of rectification of all subsisting Defects, other than:

(A) during:

(aa) the Initial Defects Period and the First Operations Period, a Foundation Infrastructure Works Defect; or

(bb) the Second Operations Period, a TSE Defect, a Foundation Infrastructure Works Structural Defect or a PSD/MGF Systemic Defect,

in respect of which the Principal has:

(cc) not provided an undertaking pursuant to clause 14B.2(d)(vi);

(dd) provided an undertaking pursuant to clause 14B.2(d)(vi) and has not rectified; or

(ee) not directed a Modification as referred to in clause 14B.2(d)(vii); or

(B) an OTS Civil Works Defects in respect of which the Principal has not directed a Modification as referred to in clause 14.11(b)(ii)),

will not exceed $[redacted]; and

(viii) no amounts have been retained from the Service Payment pursuant to clause 21.7(e) and not subsequently released (other than any interest retained under clause 21.7(f)(ii)).

(c) (**Satisfaction of CDPD Conditions**):

(i) OpCo2 must use its best endeavours to procure the satisfaction of the CDPD Conditions prior to expiry of the CDPD Period.

(ii) When OpCo2 considers that a CDPD Condition has been satisfied, OpCo2 must promptly and in any event within 10 Business Days give the Principal's Representative:

(A) a written notice stating that it considers that the CDPD Condition has been satisfied; and

(B) reasonable evidence that the CDPD Condition has been satisfied.

(iii) When OpCo2 considers that all of the CDPD Conditions have been satisfied (or waived by the Principal), OpCo2 must give the Principal's Representative:

(A) a written notice stating that it considers that all of the CDPD Conditions have been satisfied (or waived by the Principal); and

(B) an updated Base Case Financial Model which is adjusted only for inputting, in accordance with Schedule 26 (*Amendments to Base Case Financial Model on CDPD Payment Date*), the timing for payment and amount of the CDPD Amount and any other matters agreed with the Principal.

(iv) Within 10 Business Days after receiving a notice under clause 25.3(c)(iii)(A), the Principal's Representative will give OpCo2:

(A) written notice that the Principal's Representative agrees that all of the CDPD Conditions have been satisfied (or waived by the Principal) (**CDPD Satisfaction Notice**); or

(B) written notice that the Principal's Representative does not agree that all of the CDPD Conditions have been satisfied (or waived by the Principal) and the reasons for the Principal's Representative's determination.

(v) If the Principal's Representative gives a notice under clause 25.3(c)(iv)(B), OpCo2 must continue to use its best endeavours to procure the satisfaction of the outstanding CDPD Conditions and this clause 25.3(c) will re-apply.

(vi) A breach of clause 25.3(c)(i) by OpCo2 will not, of itself, be an OpCo2 Event of Default or an OpCo2 Termination Event.

(d) (**Waiver of CDPD Conditions**):

(i) The Principal may waive one or more of the CDPD Conditions in its absolute discretion by giving written notice to OpCo2.

(ii) Any waiver by the Principal of a CDPD Condition does not constitute a waiver by the Principal of any of its rights, powers or discretions in respect of any subsisting breach of this deed, OpCo2 Event of Default, OpCo2 Termination Event or Defect (as may be relevant).

(iii) The Principal may specify the CDPD Payment Date in the notice under clause 25.3(d)(i).

(e) (**Adjustments to the Base Case Financial Model**): On the CDPD Payment Date, OpCo2 will provide to the Principal an updated Base Case Financial Model which is adjusted only by inputting, in accordance with Schedule 26 (*Amendments to Base Case Financial Model on CDPD Payment Date*), the amount and timing for payment of the CDPD Amount and any other matters agreed with the Principal.

25.4 **Payment claims for Service Payments and other amounts**

(a) OpCo2 must give the Principal's Representative claims for payment of the Final Completion Payment, the Service Payments, any Pre-Agreed Option Construction Payment, the Monthly Modifications Payment, the Collaboration Payments, the [redacted] and entitlements to any [redacted] the Early Site Access Payment, the Early Handover Payment, the Milestone Payments and any other amounts payable by the Principal to OpCo2 (other than the Construction Payments A, the Construction Payment B, the Phase 2 Construction Payments, an Option 1 Trains Payment or the CDPD Amount):

(i) in the case of a claim for payment of:

(A) the Final Completion Payment, on or after the Date of Final Completion of Phase 2;

(B) a Service Payment, within 5 Business Days after the end of each month;

(C) any Pre-Agreed Option Construction Payment, the Monthly Modifications Payment, the Collaboration Payments, any Early Site Access Payment, any Early Handover Payment, the Milestone Payments or any other amounts payable by the Principal, within 5 Business Days after the end of each month; and

[redacted]

(ii) in the case of a claim for a Service Payment, in the format set out in Annexure C of Schedule 2 (*Service Payment calculation*) or such other format as the Principal's Representative reasonably requires;

(iii) which are valid Tax Invoices for any Taxable Supplies to which the payment relates;

(iv) which include:

(A) in the case of a claim for payment of a Service Payment, the Monthly Service Payment Report required under clause 25.13(a)(iv); and

(B) any other evidence of the amounts claimed reasonably required by the Principal's Representative; and

(v) which are based on the Schedule of Rates, to the extent relevant.

(b) OpCo2 cannot include in any payment claim under this clause 25.4 (*Payment Claims for Service Payments and other amounts*), a Claim which is barred by clause 57.5 (*Time bar*).

(c) Despite any other provisions of this deed to the contrary, the amount of any progress claim to which OpCo2 is entitled in relation to the Pre-Agreed Option Construction Payment, the Monthly Modifications Payment, the Milestone Payments, or any other amounts payable by the Principal and the amount to be allowed by the Principal's Representative in any payment schedule issued under clause 25.5 (*Payment*) as the amount payable to OpCo2 arising out of or in any way in connection with a payment claim made under this clause 25.4 (*Payment claims for Service Payments and other amounts*) will not include the following amounts:

(i) any amount which this deed provides cannot be claimed or is not payable because of the failure by OpCo2 to take any action (including to give any notice to the Principal or the Principal's Representative);

(ii) any amount which this deed provides is not payable until certain events have occurred or conditions have been satisfied, to the extent those events have not occurred or those conditions have not been satisfied;

(iii) any amount in respect of which the obligation of the Principal to make payment has been suspended under this deed;

(iv) any amount in respect of which OpCo2 has failed to provide supporting information as required by this clause 25 (*Payment provisions*); or

(v) any amount which has already been paid or which is otherwise not claimed in accordance with this deed.

25.5 **Payment Schedule**

(a) Within 6 Business Days of receiving a payment claim which complies with requirements of clause 25.4 (*Payment Claims for Service Payments and other amounts*), the Principal must issue a payment Schedule which sets out the Principal's determination as to the amount then payable to OpCo2, together with

detailed reasons for any difference in the amount so determined from the amount in OpCo2's payment claim.

(b) If the amount set out in the payment Schedule as then payable to OpCo2 is different to the amount in OpCo2's payment claim, OpCo2 must issue a revised Tax Invoice or Adjustment Note (as the case may be) to reflect the amount in the payment Schedule.

(c) The issue of a payment Schedule by the Principal does not constitute approval of any work or services nor will it be taken as an admission or evidence that the work or services covered by the payment Schedule have been satisfactorily carried out in accordance with this deed.

25.6 **Payment**

(a) Subject to clauses 25.6A (*Equity lock-up*), 25.11 (*Set off*) and 25.12 (*Payment of employees and subcontractors*), the Principal must within 14 Business Days of receiving a payment claim which complies with requirements of clause 25.4 (*Payment Claims for Service Payments and other amounts*), pay OpCo2 the amount as set out as then payable in the payment Schedule, less any amounts disclosed as unpaid under clauses 25.12(a)(i)(A) or 25.12(a)(i)(B).

(b) The Principal is not obliged to pay any amounts disclosed as unpaid under clause 25.12(a)(i)(A) or 25.12(a)(i)(B) until OpCo2 produces evidence that the amounts have been paid to the relevant persons.

25.6A **Equity Escrow Account**

(a) OpCo2 will procure that amounts in respect of the Equity Component relating to the Sydney Metro City of all Service Payments during the Phase 1 Operations Phase are deposited into the Equity Escrow Account in accordance with clause 10.5B(c)(ii) of the Financiers Tripartite Deed.

(b) OpCo2 may only request or withdraw the amounts referred to in clause 25.6A(a) in accordance with clause 10.5B (*Establishment and operation of the Equity Escrow Account*) of the Financiers Tripartite Deed.

25.7 **Net amount due from OpCo2 to the Principal**

Where a payment Schedule states that a net amount is due from OpCo2 to the Principal, OpCo2 must (at the Principal's election):

(a) pay that amount to the Principal within 20 Business Days of being requested by the Principal's Representative to do so; or

(b) otherwise carry forward the amount and set it off against the next payment claim.

25.8 **Payment on account**

Neither the issue of a payment schedule under clause 25.5, nor the making of any payment pursuant to any such payment schedule, will:

(a) constitute the approval of any work or other matter or prejudice any Claim by the Principal or the Principal's Representative;

(b) constitute:

(i) evidence of the value of any work;

(ii) an admission of liability; or

(iii) evidence that the works or services to which the corresponding payment claim made under clause 25.4 (*Payment claims for Service Payments and other amounts*) relates have been executed or completed in accordance with this deed; or

(c) prejudice the right of either party to dispute under clause 56 (*Dispute resolution*) whether any amount certified as payable in a payment schedule is the amount properly due and payable (and on determination, whether under clause 56 (*Dispute resolution*) or as otherwise agreed, of the amount properly due and payable, the Principal or OpCo2, as the case may be, will be liable to pay the difference between the amount of such payment and the amount which is properly due and payable),

and any payments made pursuant to a payment schedule are payments on account only.

25.9 **Correction of payment Schedules**

The Principal's Representative may at any time correct, modify or amend any payment schedule.

25.10 **Interest**

Any late payment of amounts that are properly due and payable by either the Principal or OpCo2 to the other under any Project Agreement (including a previously disputed amount or an amount which is not paid due to the application of set-off by the Principal under clause 25.11(a) where the amount set-off is determined to be incorrect) will incur simple interest at the Default Rate from the day after the date on which the payment was due to (and including) the date of payment.

25.11 **Set off**

(a) Other than amounts referred to in clauses 25.2(e), 25.2A(a), 25.3(a), 25A.1(d) and 25A.2(c) the Principal will be entitled to set-off or deduct from any amount due from the Principal to OpCo2 under a Principal Project Agreement:

(i) any debt or other monies due from OpCo2 to the Principal; and

(ii) any claim to money which the Principal makes in good faith against OpCo2 whether for damages or otherwise and whether or not the amount is disputed,

whether under a Project Agreement or otherwise at law relating to the OTS2 PPP.

(b) OpCo2 must make all payments due to the Principal under the Principal Project Agreements without set-off or counterclaim, and without any deduction to the extent permitted by law.

(c) Nothing in this clause 25.11 (*Set off*) affects the Principal's right to recover from OpCo2 the whole of the debt or any balance that remains owing after any set-off.

25.12 **Payment of employees and subcontractors**

(a) OpCo2 is not entitled to give the Principal a payment claim under clause 25.4 (*Payment claims for Service Payments and other amounts*) or 25B (*Phase 2 Construction Payments and Option 1 Trains Payment*) unless OpCo2 has provided the Principal's Representative with:

(i) a statutory declaration substantially in the form set out in Schedule 40 (*Statutory Declaration*), together with any supporting evidence which may be reasonably required by the Principal's Representative, duly signed by OpCo2's 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 OpCo2 have at the date of the payment claim been paid all moneys due and payable to them; and

(B) all Core Contractors have been paid all moneys due and payable to them in respect of OpCo2's Activities;

(ii) a statutory declaration from each Core Contractor which satisfies the requirements of clause 25.12(a)(i) in relation to the employees of the Core Contractor and subcontractors of the Core Contractor that are Significant Contractors;

(iii) a written statement for the purposes of, and which complies with, section 127 of the *Industrial Relations Act 1996* (NSW), section 175B of the *Workers Compensation Act 1987* (NSW) and Schedule 2 part 5 of the *Pay-Roll Tax Act 2007* (NSW), which is substantially in the form set out in Schedule 41 (*Subcontractor's Statement*), covering the period covered by the relevant payment claim; and

(iv) copies of all relevant certificates of currency in respect of workers compensation insurance which OpCo2 has in place in connection with OpCo2's Activities.

(b) Clauses 25.12(a)(iii) and 25.12(a)(iv) will only apply in respect of those parts of OpCo2's Activities carried out in New South Wales.

(c) If an OpCo2 Contractor has become entitled to suspend work under a Subcontract in accordance with the SOP Act because of a failure by OpCo2 or any OpCo2 Contractor to pay moneys due and payable to that OpCo2 Contractor, the Principal may pay to the OpCo2 Contractor the amount owing to the OpCo2 Contractor in connection with that work, and any amount so paid by the Principal will be a debt due and payable by OpCo2 to the Principal. Where practicable, the Principal will provide prior written notice to OpCo2 prior to paying the relevant OpCo2 Contractor.

(d) If any amount is:

(i) certified as payable; or

(ii) otherwise due and payable (and not disputed amounts),

to an OpCo2 Contractor under a Subcontract, and OpCo2 or the relevant OpCo2 Contractor does not pay such amount to that OpCo2 Contractor in accordance with that Subcontract, then the Principal may pay such amount to that OpCo2 Contractor provided it has given OpCo2 10 Business Days' notice of its intention to do so, and any amount so paid by the Principal to that OpCo2 Contractor will be a debt due and payable by OpCo2 to the Principal.

25.13 **Service Payment Monitoring System**

(a) OpCo2 must:

(i) establish a system for the monitoring of its performance of the Operations Activities which are relevant to the calculation of the Service Payment (**Service Payment Monitoring System**);

(ii) monitor the performance of those Operations Activities in accordance with the Service Payment Monitoring System and the SPR;

(iii) enable the Principal's Representative to monitor and review the Operations Activities including by way of real time and read-only access to OpCo2's Service Payment Monitoring System; and

(iv) with each payment claim under clause 25.4 (*Payment Claims for Service Payments and other amounts*), provide the Monthly Service Payment Report to the Principal's Representative.

(b) OpCo2 warrants that the performance data which results from the Service Payment Monitoring System will, at all times, be accurate, complete and correct.

(c) Each Monthly Service Payment Report provided to the Principal's Representative must:

(i) include sufficient information to enable the Principal's Representative to confirm the calculation of the Service Payment for the preceding month; and

(ii) be accompanied by a statutory declaration from OpCo2's Representative warranting that, to the best of his or her knowledge and belief, the Monthly Service Payment Report is accurate.

25A SECURITISED LICENCE STRUCTURE

25A.1 Construction Payment B

(a) Subject to this clause 25A (*Securitised Licence Structure*), in consideration of the execution of the OTS2 Works and the Temporary Works and the performance of the other Delivery Activities by OpCo2, the Principal agrees to pay to OpCo2 (or as OpCo2 directs) the Construction Payment B in accordance with this clause 25A (*Securitised Licence Structure*) on each Construction Payment B Date.

(b) The Principal has no obligation to pay a Construction Payment B unless the Principal receives the corresponding Receivables Purchase Payment from Finance Co under the Securitisation Agreement and in accordance with the Payment Directions Deed.

(c) The amount of a Construction Payment B and the corresponding Receivables Purchase Payment will be adjusted:

(i) to reflect the Net Financial Impact of an NFI Event, where the Net Financial Impact is agreed or determined to apply before the Date of Completion and the Principal requests that OpCo2 (or Finance Co), and OpCo2 (or Finance Co) agrees to, finance all or part of the relevant Net Financial Impact in accordance with this deed; or

(ii) otherwise by agreement in writing between the parties prior to the Date of Completion,

provided that no adjustment to a Construction Payment B or the corresponding Receivables Purchase Payment will affect the limitation referred to in clause 25A.1(b).

(d) Notwithstanding any other clause of any Project Agreement, the Principal may not set off any amount due and payable by OpCo2 or Finance Co to the Principal under the Project Agreements against any Construction Payment B.

(e) If a Construction Payment B and the corresponding Receivables Purchase Payment are adjusted in accordance with clause 25A.1(c), the Principal and OpCo2 agree that the Licence Payments payable under this deed will also be adjusted in accordance with clause 25.2A(b).

(f) Subject to clause 25A.4 (*GST on Construction Payment B and Securitised NFI Event Payment*), the Principal acknowledges that, if a Receivables Purchase Payment is not received in full or at all (or only part of that Receivables Purchase Payment is received) in each case from Finance Co under the Securitisation Agreement, the Principal's only right or remedy in respect of such non-payment or part payment is the relief from payment of the corresponding whole or part of that Construction Payment B under clause 25A.2(b) until such time as the relevant payment is received in accordance with the Payment Directions Deed.

25A.2 **Securitised NFI Payment**

(a) Subject to clause 25A.2(b), if an NFI Event occurs where the Net Financial Impact is agreed or determined to apply after the Date of Completion and the Principal requests that OpCo2 (or Finance Co), and OpCo2 (or Finance Co) agrees to, finance all or part of the relevant Net Financial Impact in accordance with this deed, the Principal must pay the Securitised NFI Event Payment to OpCo2 (or as OpCo2 directs) on the Additional Purchase Date.

(b) The Principal has no obligation to pay the Securitised NFI Event Payment unless it receives the corresponding payment of the Receivables Purchase Price from Finance Co under the Securitisation Agreement and in accordance with the Payment Directions Deed in relation to that NFI Event.

(c) The Principal may not set off any amount due and payable by OpCo2 or Finance Co to the Principal under the Project Agreements against any Securitised NFI Event Payment.

(d) If a Securitised NFI Event Payment is required to be paid under clause 25A.2(a), the Principal and OpCo2 agree that the Licence Payments payable under this deed will be adjusted in accordance with clause 25.2A(c).

(e) To the extent it has not already passed, all right, title and interest of OpCo2 in the works to which the Securitised NFI Event Payment applies passes to the Principal on payment by the Principal in accordance with clause 25A.2(a).

(f) The Principal acknowledges that, if the Receivables Purchase Price in respect of Additional Receivables is not received in full or at all under the Securitisation Agreement, the Principal's only right or remedy in respect of such non-payment or part payment is the relief from payment of the corresponding whole or part of the Securitised NFI Event Payment under clause 25A.1(b) until such time as the relevant payment is received.

25A.3 **No change in risk allocation**

(a) The parties acknowledge and agree that the Securitised Licence Structure is not intended to result in an Increased Principal Risk Allocation.

(b) OpCo2 undertakes not to make any Claim inconsistent with the acknowledgement in clause 25A.3(a) and must procure that neither Finance Co nor any Related Body Corporate of Finance Co or OpCo2 will make any such Claim.

(c) If the Principal reasonably believes that the Securitised Licence Structure results or is likely to result in an Increased Principal Risk Allocation, then it may give OpCo2 a notice stating that the Securitised Licence Structure is to be modified to the extent reasonably necessary to ensure there is no Increased Principal Risk Allocation.

(d) OpCo2 agrees to do anything reasonably requested by the Principal in a notice given by the Principal under clause 25A.3(c) or otherwise reasonably necessary to modify the Securitised Licence Structure to ensure there is no Increased Principal Risk Allocation.

(e) OpCo2 acknowledges and agrees that:

(i) damages may not be an adequate remedy for the Principal for any failure by OpCo2 to comply with the undertakings in clause 25A.3(a) or 25A.3(b); and

(ii) if there is a breach or purported breach by OpCo2 of its obligations in clause 25A.3(a) or 25A.3(b), the Principal may seek and is entitled to injunctive or declaratory relief.

(f) OpCo2 indemnifies the Principal against:

(i) any Loss incurred by the Principal in connection with any Increased Principal Risk Allocation to the extent that it is not removed or remedied by changes to the Securitised Licence Structure made in accordance with clause 25A.3(d); and

(ii) any Claim brought against the Principal by Finance Co, OpCo2 or any of their respective Related Bodies Corporate which is inconsistent with the acknowledgment in clause 25A.3(a).

25A.4 GST on Construction Payment B and Securitised NFI Event Payment

Notwithstanding any other provision of clause 61.2 (*GST*):

(a) the Principal is not obliged to make a payment to OpCo2 in respect of GST on a Construction Payment B or a Securitised NFI Event Payment until the Principal has received the benefit of an input tax credit for such GST (either by the input tax credit being offset against a GST or other tax liability, credited to the Principal's account (running balance account) or being refunded to the Principal in the relevant period);

(b) the Principal must use reasonable endeavours to ensure it (or the government entity which is treated as making the supplies and acquisitions under the Project Agreements for GST purposes) receives the benefit of the input tax credit from the Australian Taxation Office as quickly as possible, including by reporting the relevant acquisition in the first GST Return in which it can properly be reported, lodging the GST Return in which the acquisition is reported no later than the due date for that GST Return and promptly informing OpCo2 of any delays or other related issues in respect of the input tax credit; and

(c) if at any time this deed is terminated and the Principal has paid a Construction Payment B or a Securitised NFI Event Payment in respect of which it has not paid to OpCo2 an amount in respect of GST on that payment, the Principal is obliged to continue to use reasonable endeavours to obtain the benefit of the input tax credit and to pay to OpCo2 an amount equal to the relevant GST payment when it receives the benefit of an input tax credit in respect of the Construction Payment B or Securitised NFI Event Payment (as relevant).

25B PHASE 2 CONSTRUCTION PAYMENTS AND OPTION 1 TRAINS PAYMENTS

25B.1 Principal payment for Phase 2 Works and Option 1 Trains Payments

(a) Subject to clauses 25.11(a), 25B.2(i), 25B.4 (*Provision of documentation and other requirements*) and 56.17 (*Payments*) and any other right to set-off which the Principal may have, the Principal must pay OpCo2:

(i) the Phase 2 Construction Payments in accordance with the Phase 2 Construction Payment Schedule and this clause 25B (*Phase 2 Construction Payments and Option 1 Trains Payments*) for the progressive completion of the Phase 2 Works; and

(ii) if the Principal has issued a notice pursuant to clause 31(a) directing OpCo2 to implement the Option 1 Trains Option, the Option 1 Trains Payments in accordance with items 9, 10, 11 and 12 of Part A of Schedule 30A (*Pre-Agreed Options - Trains*) and this clause 25B (*Phase 2 Construction Payments and Option 1 Trains Payments*) for the Option 1 Trains.

(b) If the requirements of this clause 25B (*Phase 2 Construction Payments and Option 1 Trains Payments*) are complied with in respect of a payment claim, the Principal must pay the amount of such claim into the Principal Construction Payments (Phase 2) Account.

(c) The Principal will not be required to:

(i) make a Phase 2 Milestone Payment until the Principal's Representative has determined that:

(A) the relevant Phase 2 Milestone to which it relates has been achieved; and

(B) all preceding Phase 2 Milestones (if any) in the relevant section of the Phase 2 Construction Payment Schedule have been achieved;

(ii) pay any Phase 2 Payment Drawdown (CBTC) until the later of:

(A) the date associated with the applicable Phase 2 Payment Drawdown (CBTC) in the Phase 2 Construction Payment Schedule; and

(B) when all Phase 2 Milestones (CBTC) that precede the applicable Phase 2 Payment Drawdown (CBTC) in the Phase 2 Construction Payment Schedule have been achieved;

(iii) pay any Phase 2 Payment Drawdown (Integrator), or any part thereof, until the date associated with the applicable Phase 2 Payment Drawdown (Integrator) in the Phase 2 Construction Payment Schedule; or

(iv) pay any more than [redacted]% of a Phase 2 Payment Drawdown (Integrator) until the later of:

(A) the date associated with the applicable Phase 2 Payment Drawdown (Integrator) in the Phase 2 Construction Payment Schedule; and

(B) when all Phase 2 Milestones (Integrator) that precede the applicable Phase 2 Payment Drawdown (Integrator) in the Phase 2 Construction Payment Schedule have been achieved.

25B.2 **Payment claims**

(a) OpCo2 must give the Principal's Representative a payment claim, with respect to each Phase 2 Construction Payment and Option 1 Trains Payment and any other amounts payable by the Principal to OpCo2 in relation to the Phase 2 Works or Option 1 Trains:

(i) at the times required by the Phase 2 Construction Payment Schedule or Schedule 30A (*Pre-Agreed Options – Train*) (as applicable) provided that:

(A) in respect of a:

(aa) milestone based payment, OpCo2 has achieved the relevant milestone specified in the Phase 2 Construction Payment Schedule or Schedule 30A (*Pre-Agreed Options – Train*) (as applicable) in respect of that payment;

(bb) Phase 2 Payment Drawdown (CBTC):

(a) the date associated with the applicable Phase 2 Payment Drawdown (CBTC) in the Phase 2 Construction Payment Schedule has occurred; and

(b) OpCo2 has achieved all Phase 2 Milestones (CBTC) that precede the applicable Phase 2 Payment Drawdown (CBTC) in the Phase 2 Construction Payment Schedule;

(cc) Phase 2 Payment Drawdown (Integrator), OpCo2 will not be entitled to claim any more than [redacted]% of a Phase 2 Payment Drawdown (Integrator) until:

(a) the date associated with the applicable Phase 2 Payment Drawdown (Integrator) in the Phase 2 Construction Payment Schedule has occurred; and

(b) OpCo2 has achieved all Phase 2 Milestones (Integrator) that precede the applicable Phase 2 Payment Drawdown (Integrator) in the Phase 2 Construction Payment Schedule; and

(B) may not give a claim for payment under this clause 25B.2(a)(i) more than once in any month;

(ii) on the twenty-third day of each month (or if this day is not a Business Day (SOP), the next Business Day (SOP) after this day); and

(iii) twenty-eight Business Days (SOP) after [redacted]

(aa) In relation to a payment claim received from the Integrator from a Significant Contractor pursuant to clause 25B.2(a) of a Significant Contract, OpCo2 must procure that the Integrator gives a copy of any such payment claim directly to the Principal (on an information basis only) within 1 Business Day (SOP) of receiving that payment claim from the relevant Significant Contractor.

(ab) In relation to any payment claim to be given by OpCo2 to the Principal's Representative pursuant to clause 25B.2(a), OpCo2 must use its best endeavours to give the Principal's Representative such payment claim as early as possible.

(b) For each claim made under clause 25B.2(a), OpCo2 must give the Principal's Representative:

(i) a claim:

(A) in a format required by the Principal's Representative (including electronic format) showing the amount OpCo2 claims; and

(B) which is a valid tax invoice for any taxable supplies to which the payment relates; and

(ii) in the case of the payment claims issued after [redacted] comply with clause 25B.2(k).

(c) The Principal's Representative must, on behalf of the Principal, within 4 Business Days (SOP) of receipt of OpCo2's claim under clause 25B.2(a), issue to OpCo2 and the Principal a payment schedule stating:

(i) the amount (if any) which the Principal's Representative believes to be then payable by the Principal to OpCo2 and which the Principal proposes to pay to OpCo2; or

(ii) the amount which the Principal's Representative believes to be then payable by OpCo2 to the Principal,

including details of the calculation of that amount. In issuing a payment schedule the Principal's Representative:

(iii) may deduct from the amount which would otherwise be payable to OpCo2 any amount which the Principal is entitled to retain, deduct, withhold or set-off under this deed, including any amount which the Principal is entitled to set-off or withhold under this deed, including under clauses 25.11(a), 25B.4 (*Provision of documentation and other requirements*), 25B.5 (*Payment of subcontractors, workers compensation and payroll tax*) and 56.17 (*Payment*); and

(iv) must, if the payment schedule shows an amount less than the amount claimed by OpCo2 in the payment claim, set out in the payment schedule why the amount is less and if the reason for the difference is that the Principal has retained, deducted withheld or set-off payment for any reason, the reason for the retention, deduction, withholding or setting-off of payment.

(d) If OpCo2 does not give the Principal's Representative a payment claim at a time required by clause 25B.2(a), the Principal's Representative may nevertheless (but is not obliged to) issue a payment schedule as if a payment claim was made at the time required.

(e) A payment schedule issued under clause 25B.2(c) or 25B.2(d) will separately identify the sum of the amounts due.

(f) If the amount set out in a payment schedule issued under clause 25B.2(c) is different to the amount in OpCo2's payment claim or if the Principal's Representative issues a payment schedule under clause 25B.2(d), OpCo2 must, within 2 Business Days (SOP) of receiving the payment schedule, issue a revised tax invoice, adjustment note or tax invoice (as the case may be) to the Principal to reflect the amount in the payment schedule.

(g) Within 15 Business Days of the date of OpCo2's payment claim in accordance with clause 25B.2(a) or within 5 Business Days of the issue of a payment schedule in accordance with clause 25B.2(d):

(i) where the payment schedule provides that an amount is payable by the Principal to OpCo2, the Principal must pay OpCo2 the payment due to OpCo2 as certified in the payment schedule; and

(ii) where the payment schedule provides that an amount is payable by OpCo2 to the Principal, OpCo2 must pay the Principal the amount due to the Principal as certified in the payment schedule.

(h) If OpCo2 lodges a payment claim earlier than at the times specified under clause 25B.2(a), the Principal's Representative will not be obliged to issue the payment schedule in respect of that payment claim earlier than it would have been obliged had OpCo2 submitted the payment claim in accordance with this clause 25B (*Phase 2 Construction Payments and Option 1 Trains Payment*).

(i) Despite any other provisions of this deed to the contrary, the amount of any payment claim to which OpCo2 is entitled in relation to the Phase 2 Construction Payment or Option 1 Trains Payment and the amount to be allowed by the Principal's Representative in any payment schedule issued under clause 25B.2(c) as the amount payable to OpCo2 arising out of or in any way in connection with the Phase 2 Works or Option 1 Trains Payment will:

(i) not include the following amounts:

(A) any amount which this clause 25B (*Phase 2 Construction Payments and Option 1 Trains Payment*) provides cannot be claimed or is not payable because of the failure by OpCo2 to take any action (including to give any notice to the Principal or the Principal's Representative);

(B) any amount which represents unliquidated damages claimed against the Principal (whether for breach of contract, in tort or otherwise);

(C) in respect of a Claim for payment for an Option 1 Trains Payment, an amount for a milestone unless OpCo2 has achieved all milestones for those Option 1 Trains set out in Schedule 30A (*Pre-Agreed Options – Train*) that relate to a date before the date which OpCo2 is making a Claim for payment;

(D) in relation to the Phase 2 Works, any:

(aa) Phase 2 Milestone Payment unless OpCo2 has achieved the relevant Phase 2 Milestone to which the payment relates and all preceding milestones (if any) in the relevant section of the Phase 2 Construction Payment Schedule;

(bb) Phase 2 Payment Drawdown (CBTC), unless:

(a) the date associated with the applicable Phase 2 Payment Drawdown (CBTC) in the Phase 2 Construction Payment Schedule has occurred; and

(b) OpCo2 has achieved all Phase 2 Milestones (CBTC) that precede the applicable Phase 2 Payment Drawdown (CBTC) in the Phase 2 Construction Payment Schedule; or

(bb) amount which exceeds [redacted]% a Phase 2 Payment Drawdown (Integrator), unless:

(a) the date associated with the applicable Phase 2 Payment Drawdown (Integrator) in the Phase 2 Construction Payment Schedule has occurred; and

(b) OpCo2 has achieved all Phase 2 Milestones (Integrator) that precede the applicable Phase 2 Payment Drawdown (Integrator) in the Phase 2 Construction Payment Schedule;

(E) in relation to the Phase 2 Works other than the Alstom Phase 2 Works, any amount which this clause 25B (*Phase 2 Construction Payments and Option 1 Trains Payment*) provides is not payable until certain events have occurred or conditions have been satisfied, to the extent those events have not occurred or those conditions have not been satisfied (including any conditions or events identified in the Phase 2 Construction Payment Schedule and those conditions set out in clause 25B.4 (*Provision of documentation and other requirements*);

(F) any amount in respect of which the obligation of the Principal to make payment has been suspended under this deed;

(G) any amount in respect of which OpCo2 has failed to provide supporting information as required by this clause 25B (*Phase 2 Construction Payments and Option 1 Trains Payment*); or

(H) any amount for the Phase 2 Works or an Option 1 Train for which payment has already been paid or which is otherwise not in accordance with this deed;

(ii) deduct the following amounts:

(A) any amounts which have become due from OpCo2 to the Principal under this deed; and

(B) any amounts which the Principal is entitled under this deed to retain, deduct, withhold or set-off against the payment claim, including under clauses 25B.4 (*Provision of documentation and other requirements*), 25B.5 (*Payment of subcontractors, workers compensation and payroll tax*) and 25.11(a);

(iii) in determining amounts to be excluded or deducted under subparagraphs (i) and (ii), have regard to matters or circumstances occurring at any time before the date that the determination is being made; and

(iv) be determined having regard to the Phase 2 Construction Payment or the Option 1 Trains Payment as applicable (with additions or deductions, if any, provided for by this deed).

(j) Failure by the Principal's Representative to set out in a payment schedule an amount which the Principal is entitled to retain, deduct, withhold or set-off from the amount which would otherwise be payable to OpCo2 by the Principal will not prejudice the Principal's right to subsequently exercise its right to retain, deduct, withhold or set-off any amount under this deed.

(k) OpCo2 must include in the payment claim lodged by it after [redacted] all Claims that OpCo2 wishes to make against the Principal in respect of any fact,

matter or thing arising out of, or in any way in connection with, the Phase 2 Works which occurred:

(i) not used; and

(ii) in the case of the payment claim referred to in clause 25B.2(a)(iii), prior to the date of that payment claim.

(l) OpCo2 releases the Principal from any Claim in respect of any fact, matter or thing arising out of, or in any way in connection with, the Phase 2 Works that occurred prior to the date of submission of the relevant payment claim referred to in clause 25B.2(k)(ii), except for any claim which:

(i) has been included in the relevant payment claim which is given to the Principal's Representative within the time required by, and in accordance with, clause 25B.2(a); and

(ii) has not been barred under another provision of this deed.

25B.3 **Effect of payment schedules and payments**

(a) Neither the issue of a payment schedule under clause 25B.2(c), nor the making of any payment pursuant to any such payment schedule, will:

(i) constitute the approval of any work or other matter or prejudice any Claim by the Principal or the Principal's Representative with respect to the Phase 2 Works or the Option 1 Trains;

(ii) constitute evidence of the value of any work or an admission of liability or evidence that the Phase 2 Works or the Option 1 Trains have been executed or completed in accordance with this deed; or

(iii) prejudice the right of either party to dispute under clause 56 (*Dispute resolution*) whether any amount certified as payable in a payment schedule is the amount properly due and payable (and on determination, whether under clause 56 (*Dispute resolution*) or as otherwise agreed, of the amount properly due and payable, the Principal or OpCo2, as the case may be, will be liable to pay the difference between the amount of such payment and the amount which is properly due and payable),

and any payments made pursuant to a payment schedule are payments on account only.

(b) The Principal's Representative may at any time correct, modify or amend any payment schedule.

25B.4 **Provision of documentation and other requirements**

(aa) This clause applies to the Phase 2 Works other than the Alstom Phase 2 Works and the Option 1 Trains Payments.

(a) The value of the construction work carried out by OpCo2, and the amount of the payment to which OpCo2 is entitled, will be no more than [redacted]% of the amount that the Principal's Representative would otherwise have set out in any payment schedule unless and until OpCo2 has:

(i) effected and is maintaining all insurances it is required to effect and maintain under this deed;

(ii) not used;

(iii) where clause 25B.6(q) applies, provided the Principal's Representative with the statement and evidence (if any) required to be provided by OpCo2 pursuant to that clause;

(iv) provided the Principal's Representative with a statutory declaration in the form of Schedule 40 (*Statutory Declaration*) which has been duly executed:

(A) by a representative of OpCo2 who is in a position to know the facts declared; and

(B) on the date the relevant payment claim was issued; and

(v) done everything it is required to do under this deed before being entitled to make a payment claim or receive payment.

(b) The value of the construction work carried out by OpCo2, and the amount of the payment to which OpCo2 is entitled, will be no more than [redacted]% of the amount that the Principal's Representative would otherwise have set out in any payment schedule unless and until OpCo2 has provided updated Delivery Programs each month as required by clause 17.3 (*Delivery Program*) and section 3.18 of the SPR.

25B.5 **Payment of subcontractors, workers compensation and payroll tax**

(a) If a worker or a subcontractor of OpCo2, obtains a court order in respect of the moneys payable to him, her or it in respect of his, her or its employment on, materials supplied for, or work performed with respect to, the Phase 2 Works, and produces to the Principal the court order and a statutory declaration that it remains unpaid, the Principal may (but is not obliged to) pay the amount of the order and costs included in the order to the worker or subcontractor, and the amount paid shall be a debt due from OpCo2 to the Principal.

(b) If the Principal receives notices of:

(i) OpCo2 being placed under administration; or

(ii) the making of a winding up order in respect of OpCo2,

the Principal will not make any payment to a worker or subcontractor without the concurrence of the administrator, provisional liquidator or liquidator, as the case may be.

(ba) If any moneys are shown as unpaid in OpCo2's statutory declaration under clause 25.12 (*Payment of employees and subcontractors*), the Principal may withhold the moneys so shown until OpCo2 provides evidence to the satisfaction of the Principal's Representative that the moneys have been paid to the relevant persons.

(c) Nothing in this clause 25B.5 limits or otherwise affects the Principal's rights under section 175B(7) of the *Workers Compensation Act* 1987 (NSW), section 18(6) of schedule 2 of the *Payroll Tax Act* 2007 (NSW) and section 127(5) of the *Industrial Relations Act* 1996 (NSW).

25B.6 **SOP Act**

(aa) To the extent that this deed is not excluded from the operation of the SOP Act, this clause 25B.6 (*SOP Act*) will apply.

(a) Expressions defined or used in the SOP Act have the same meaning for the purposes of this clause 25B.6 (*SOP Act*) (unless the context otherwise requires).

(b) OpCo2 must ensure that a copy of any written communication it delivers or arranges to deliver to the Principal of whatever nature in relation to the SOP Act, including a payment claim under the SOP Act, is provided to the Principal's Representative at the same time.

(c) In responding to OpCo2 under the SOP Act, the Principal's Representative also acts as the agent of the Principal.

(d) If, within the time allowed by the SOP Act for the service of a payment schedule by the Principal, the Principal fails to:

(i) serve the payment schedule itself; or

(ii) notify OpCo2 that the Principal's Representative does not have authority from the Principal to issue the payment schedule on its behalf,

then a payment schedule issued by the Principal's Representative under clause 25 (*Payment provisions*) and/or clause 25B (*Phase 2 Construction Payments and Option 1 Trains Payment*) which relates to the period relevant to the payment schedule will be taken to be the payment schedule for the purpose of the SOP Act (whether or not it is expressly stated to be a payment schedule).

(e) Without limiting paragraph (c), the Principal authorises the Principal's Representative to issue payment schedules on its behalf (without affecting the Principal's right to issue a payment schedule itself).

(f) For the purposes of clause 25 (*Payment provisions*) and/or clause 25B (*Phase 2 Construction Payments and Option 1 Trains Payment*), the amount of the progress payment to which OpCo2 is entitled under clause 25 (*Payment provisions*) and/or clause 25B (*Phase 2 Construction Payments and Option 1 Trains Payment*) will be the amount certified by the Principal's Representative in a payment schedule under clause 25.5 (*Payment Schedule*) and/or clause 25B.2 (*Payment claims*) respectively, less any amount the Principal may elect to retain, deduct, withhold or set off in accordance with this deed.

(g) OpCo2 agrees that:

(i) the dates prescribed by clauses 25.4(a)(i)(C) and 25B.2(a) as the date on which OpCo2 is entitled to make a payment claim is, for the purposes of the SOP Act (including section 8(1B) of the SOP Act), the date for the serving of a payment claim; and

(ii) a payment claim is not a document notifying an obligation on the Principal to make any payment and the Principal will have no liability to make a payment of any amount in respect of a progress claim unless the amount has been included in a payment schedule issued by the Principal's Representative in accordance with clause 25.5 (*Payment Schedule*), 25B.2(c) or 25B.2(d).

(h) Nothing in clause 25 (*Payment provisions*), clause 25B (*Phase 2 Construction Payments and Option 1 Trains Payment*) or this clause 25B.6 (*SOP Act*) will be construed to:

(i) make any act or omission of the Principal in contravention of the SOP Act (including failure to pay an amount becoming due under the SOP Act), a

breach of this deed (unless the Principal would have been in breach of this deed if the SOP Act had no application); or

(ii) subject to paragraph (i), give to OpCo2 rights under this deed which extend or are in addition to rights given to OpCo2 by the SOP Act in respect of any act or omission of the Principal in contravention of the SOP Act.

(i) If OpCo2 suspends the whole or part of the Phase 2 Works pursuant to the SOP Act, except to the extent (if any) expressly provided under the SOP Act and paragraph (h), the Principal will not be liable for, and OpCo2 is not entitled to Claim any Loss suffered or incurred by OpCo2 as a result of the suspension.

(j) OpCo2 must indemnify and keep indemnified the Principal against all Loss suffered or incurred by the Principal arising out of:

(i) a suspension by a subcontractor of work which forms part of the Phase 2 Works pursuant to the SOP Act; or

(ii) a failure by OpCo2 to comply with its obligations under clause 25B.6(b).

(k) OpCo2 agrees that for the purposes of section 17(3) of the SOP Act:

(i) it has irrevocably chosen the Resolution Institute as the authorised nominating authority to which any adjudication application under the SOP Act in respect of the Phase 2 Works is to be made; and

(ii) OpCo2 must make any adjudication application under the SOP Act to that authorised nominating authority (unless the Principal in its absolute discretion consents to any alternative nominating authority).

(l) When an adjudication occurs under the SOP Act and the Principal has paid an adjudicated amount to OpCo2:

(i) the amount will be taken into account by the Principal's Representative in issuing a payment schedule under clauses 25.5 (*Payment Schedule*) and/or 25B.2(c);

(ii) if it is subsequently determined pursuant to clause 25 (*Payment provisions*) or clause 25B (*Phase 2 Construction Payments and Option 1 Trains Payment*) that OpCo2 was not entitled to payment of some or all of the adjudicated amount that was paid by the Principal (**overpayment**), the overpayment will be a debt due and payable by OpCo2 to the Principal which OpCo2 must pay to the Principal upon demand and in respect of which OpCo2 is not entitled to claim or exercise any set-off, counterclaim, deduction or similar right of defence; and

(iii) if the adjudicator's determination is quashed, overturned or declared to be void, the adjudicated amount then becomes a debt due and payable by OpCo2 to the Principal upon demand and in respect of which OpCo2 is not entitled to claim or exercise any set-off, counterclaim, deduction or similar right of defence.

(m) Without limiting clause 25.11 (*Set off*), the Principal may withhold any amount that is less than or equal to the amount claimed to be owed under a payment withholding request served on the Principal pursuant to Division 2A of the SOP Act.

(n) If the Principal withholds from money otherwise due to OpCo2 any amount that is less than or equal to the amount claimed to be owed under a payment withholding request served on the Principal pursuant to Division 2A of the SOP Act, then:

(i) the Principal may plead and rely upon Division 2A of the SOP Act as a defence to any claim for the money by OpCo2 from the Principal; and

(ii) the period during which the Principal retains money due to OpCo2 pursuant to an obligation under Division 2A of the SOP Act will not be taken into account for the purpose of determining:

(A) any period for which money owed by the Principal to OpCo2 has been unpaid; and

(B) the date by which payment of money owed by the Principal to OpCo2 must be made.

(o) OpCo2 agrees not to commence proceedings to recover any amount withheld by the Principal pursuant to a payment withholding request served on the Principal pursuant to Division 2A of the SOP Act.

(p) Any amount paid by the Principal pursuant to section 26C of the SOP Act will be a debt due from OpCo2 to the Principal.

(q) If the Principal withholds money pursuant to a payment withholding request served on the Principal pursuant to Division 2A of the SOP Act and OpCo2:

(i) pays the amount claimed to be due under the adjudication application to which the payment withholding claim relates; or

(ii) becomes aware that the adjudication application to which the payment withholding claim relates has been withdrawn,

then OpCo2 must so notify the Principal within 5 Business Days (SOP) of the occurrence of the event in clauses 25B.6(q)(i) to (ii) above (as applicable) by providing to the Principal a statement in writing in the form of a statutory declaration together with such other evidence as the Principal may require evidencing that the amount has been paid or the adjudication application has been withdrawn (as the case may be)

25C COLLABORATION PAYMENTS

25C.1 Collaboration Payments

(a) The Principal and OpCo2 acknowledge that the successful and timely completion of the Collaboration Events and the Interface Works are crucial to the success of the Project.

(b) Without prejudice to clauses 9.11 (*Cooperation and coordination with Other Contractors*), 9.12A (*Project Cooperation and Integration Deeds*), 9.12B (*Cooperation and coordination with Foundation Infrastructure Works Contractors*), 9.20C (*Assistance in respect of Over Station Developments*), 12A (*Access and Handover*), 14A.17 (*Claims*) and 14B (*Foundation Infrastructure Works Defects*), OpCo2 must work collaboratively with the relevant Foundation Infrastructure Works Contractors and use its best endeavours to complete each Collaboration Event by the relevant CE Locked Date.

25C.2 Entitlement to Collaboration Payments

(a) OpCo2 will be entitled to a Collaboration Payment in relation to a Collaboration Event if and only if:

(i) OpCo2 and the relevant Foundation Infrastructure Works Contractor(s) have completed their respective obligations in order to achieve the Collaboration Event on or before the relevant CE Locked Date (so if OpCo2 satisfies its obligations on or before the CE Locked Date but the Foundation Infrastructure Works Contractor(s) does not, OpCo2 has no entitlement to the Collaboration Payment); and

(ii) OpCo2 makes a CE Election to accept the Collaboration Payment on or before the CE Election Date by delivering an executed CE Election Notice to the Principal's Representative.

(b) Subject to clause 25C.2(e), the CE Locked Dates will not be adjusted for any reason (including if OpCo2 is delayed in achieving a CE Locked Date by a Relief Event).

(c) The payment by the Principal of any Collaboration Payment will be made in accordance with the procedure set out in clause 25 (*Payment Provisions*).

(d) OpCo2 must pass through the Collaboration Payments to the Integrator and the Specified OpCo2 Contractors in accordance with Part B of Schedule 25 (*Collaboration Payment Schedule*).

(e) If:

(i) a Phase 2 Change Event has occurred; and

(ii) pursuant to clause 29.2(e)(xiv) OpCo2 has provided details in its Modification Impact Proposal that the Phase 2 Change Event has an impact on OpCo2's ability to achieve a Collaboration Event on or before the applicable CE Locked Date,

the Principal may adjust the relevant CE Locked Date.

25C.3 **Election to accept Collaboration Payment**

(a) OpCo2 must make its CE Election under clause 25C.2(a)(ii) in respect of a Collaboration Payment on or before the CE Election Date in respect of that Collaboration Event by delivering its CE Election Notice to the Principal's Representative. Any purported election by OpCo2 after that date will be invalid.

(b) The Principal's Representative must confirm, within 10 Business Days of OpCo making its CE Election under clause 25C.3(a), whether it:

(i) agrees that the obligations referred to in clause 25C.2(a)(i) have been completed by both OpCo2 and the relevant Foundation Infrastructure Works Contractor(s); or

(ii) does not agree that the obligations referred to in clause 25C.2(a)(i) have been completed by both OpCo2 and the relevant Foundation Infrastructure Works Contractor(s), in which case the Principal's Representative will provide its reasons in writing.

(c) Without prejudice to the rights of OpCo2 to refer the matter to the dispute resolution procedure pursuant to clause 56 (*Dispute resolution*), if clause 25C.3(b)(ii) applies, OpCo2 may subsequently make another CE Election in respect of the same Collaboration Event, provided the requirements of clause 25C.2(a)(i) are satisfied and in which case the procedure set out in clause 25C.2 (*Entitlement to Collaboration Payments*) and this clause 25C.3 (*Election to accept Collaboration Payment*) will re-apply.

(d) If OpCo2 does not make the CE Election on or before the CE Election Date, OpCo2 will be deemed to have made an election to not accept the relevant Collaboration Payment.

25C.4 **Impact on Claims**

(a) If OpCo2 makes a CE Election in accordance with clause 25C.3(a) to accept the Collaboration Payment, then from the Release Date:

(i) the Principal and its Associates will have no Liability to OpCo2 or any of its Associates for any Claims arising out of or in connection with the relevant Collaboration Event, including whether the facts and circumstances of the Claim were known or unknown to the Principal, OpCo2 or any of their Associates at the Release Date;

(ii) OpCo2 must not bring or pursue, or procure an Associate or other third party to bring or pursue, a Claim described in clause 25C.4(a)(i) against the Principal or any of its Associates;

(iii) OpCo2 indemnifies the Principal and its Associates against Claims and Liabilities described in clause 25C.4(a)(i) and any breach of clause 25C.4(A)(ii); and

(iv) this deed may be pleaded as a bar to any suit, action or legal proceeding by OpCo2 against the Principal or any of its Associates in respect of any Claim or Liability described in clause 25C.4(a)(i).

(b) If OpCo2 does not make the CE Election to accept the Collaboration Payment, then OpCo2 may pursue any Claims in connection with a Collaboration Event, subject to the terms of this deed and subject to the Principal having a Liability for the Claim pursuant to this deed.

(c) Nothing in this clause impacts the obligation of OpCo2 to make a Claim by the times provided for in this deed, including clause 57 (*Notice of Claims*).

(d) Whether or not the Collaboration Payment is paid, the Principal is not liable for, and OpCo2 will have no Claim in relation to, OpCo2 choosing to take steps to:

(i) accelerate progress of the Delivery Activities;

(ii) compress OpCo2's Activities; or

(iii) overcome or absorb any delay,

in an effort to achieve a CE Locked Date, whether or not:

(iv) OpCo2 achieves the CE Locked Date; or

(v) the delay is caused by a Relief Event.

26. **COMPENSATION EVENTS**

26.1 **Not used**

26.2 **Entitlement to claim compensation**

(a) If a Compensation Event causes OpCo2 to incur Loss, OpCo2 may claim compensation in accordance with this clause 26 (*Compensation Events*).

(b) To the extent that any Claim for compensation under this clause 26 (*Compensation Events*) includes a Claim by OpCo2 for any Loss that it has incurred and which arises out of or in connection with any delay to the Delivery Activities, OpCo2 is only entitled to compensation for such Loss:

(i) if, and only in respect of the period of time for which, it has been granted an extension of time:

(A) to the Date for Completion of Phase 1 pursuant to:

(aa) clause 17.9A(a) due to a Compensation Event; or

(bb) clause 17.11 (*Unilateral extension*);

(B) to the Date for Completion of Phase 2 pursuant to:

(aa) clause 17.10(a) due to a Compensation Event; or

(bb) clause 17.11 (*Unilateral extension*); or

(C) to a Date for Acceptance pursuant to:

(aa) clause 17.9B (*Determination and grant of extension of time – Milestone Completion and Train Option Acceptance Requirements*) due to a Compensation Event; or

(bb) clause 17.11 (*Unilateral extension*); or

(ii) if the Principal has elected to exercise its discretion:

(A) under clause 17.9A(f) not to grant an extension of time to the Date for Completion of Phase 1; or

(B) under clause 17.10(e) not to grant an extension of time to the Date for Completion of Phase 2,

in respect of the period of time for which it would otherwise have been granted an extension of time.

[redacted]

26.3 **Claim for compensation**

Subject to clause 57.5A (*Temporary waiver of notification requirements*), to claim compensation in respect of a Compensation Event, OpCo2 must:

(a) within 40 Business Days after the earlier of when OpCo2 becomes aware, or ought reasonably to have become aware, that the Compensation Event is likely to cause OpCo2 to incur Loss (or if OpCo2 becomes so aware, or ought reasonably to have become so aware, in the period between the date of this deed and Financial Close, within 40 Business Days after Financial Close), give to the Principal's Representative a written notice, expressly stating:

(i) that OpCo2 proposes to make a Claim; and

(ii) the Compensation Event upon which the Claim will be based; and

(b) within 25 Business Days of giving the notice under clause 26.3(a), give the Principal's Representative a written Claim which must include (to the extent practicable):

(i) detailed particulars concerning the Compensation Event upon which the Claim is based;

(ii) details of the obligations which have been affected by the Compensation Event;

(iii) details of any Net Financial Impact of the Compensation Event and how it has been calculated;

(iv) if pursuant to clause 26.2(b) OpCo2 is entitled to include in its claim a delay component, detailed particulars of how the delay for which it has been granted an extension of time, or for which it would have been granted an extension of time but for the Principal electing to exercise its discretion under clause 17.9A(f) or clause 17.10(e), has caused a Net Financial Impact; and

(v) details of the steps which OpCo2 has taken to mitigate the effects of the relevant Compensation Event.

26.4 **Continuing Compensation Events**

If the Compensation Event (or its effects) are continuing, OpCo2 must:

(a) continue to give the information required by clause 26.3(b) every 40 Business Days after the notice under clause 26.3(b) was provided to the Principal's Representative until after the Compensation Event (or its effects) have ceased; and

(b) provide a final written Claim within 25 Business Days after the Compensation Event (or its effects) have ceased.

26.5 **Condition precedent to compensation**

(a) It is a condition precedent to OpCo2's entitlement to compensation that:

(i) a Compensation Event has occurred which has caused OpCo2 to incur a Loss;

(ii) OpCo2 has complied with the requirements of clauses 26.3 (*Claim for compensation*), 26.4 (*Continuing Compensation Events*) and 57.5A(e);

(iii) to the extent that OpCo2 wishes to claim any Loss that it has incurred and which arises out of or in connection with any delay to Completion of Phase 1:

(A) it has been granted an extension of time to the Date for Completion of Phase 1 under clause 17.9A(d);

(B) it has been granted an extension of time to Date for Completion of Phase 1 under clause 17.11 (*Unilateral extension*); or

(C) the Principal has elected to exercise its discretion under clause 17.9A(f) to not grant an extension of time; and

(iv) to the extent that OpCo2 wishes to claim any Loss that it has incurred and which arises out of or in connection with any delay to Completion of Phase 2:

(A) it has been granted an extension of time to the Date for Completion of Phase 2 under clause 17.10(a);

(B) it has been granted an extension of time to Date for Completion of Phase 2 under clause 17.11 (*Unilateral extension*); or

(C) the Principal has elected to exercise its discretion under clause 17.10(e) to not grant an extension of time.

(aa) Notwithstanding clause 17.9A(a), OpCo2's entitlement to compensation for any Loss that it has incurred and which arises out of or in connection with any delay to Completion of Phase 1 will be assessed by reference to the length of the EOT Period granted under clause 17.9A(d) or any unilateral extension to the Date for Completion of Phase 1 notified by the Principal under clause 17.11 (*Unilateral extension*).

(b) If OpCo2 fails to comply with the requirements of clauses 26.3 (*Claim for compensation*) and, if applicable, 26.4 (*Continuing Compensation Events*) within the periods required by those clauses:

(i) the Principal will not be liable (in so far as it is possible to exclude such liability) upon any Claim by OpCo2; and

(ii) OpCo2 will be absolutely barred from making any Claim against the Principal,

arising out of or in connection with the relevant Compensation Event.

26.6 **Compensation for Net Financial Impact**

If the condition precedent in clause 26.5(a) has been satisfied, the Principal must compensate OpCo2 for the Net Financial Impact of the Compensation Event.

26.7 **Calculation and payment of Net Financial Impact**

The Net Financial Impact of a Compensation Event will be calculated and paid in accordance with Schedule 29 (*Net Financial Impact*).

26.8 **Mitigation**

(a) OpCo2 must use all reasonable endeavours to mitigate the effects of any Compensation Event (including by putting in place temporary measures reasonably acceptable to the Principal's Representative).

(b) Without limiting clause 26.8(a), OpCo2 must use all reasonable endeavours to:

(i) avoid or minimise the duration and consequences of any delay caused by a Compensation Event;

(ii) minimise any incremental costs or loss of revenue incurred or suffered as a result of a Compensation Event; and

(iii) maximise any cost savings or additional revenue derived as a result of a Compensation Event.

(c) OpCo2's entitlement to compensation will be reduced to the extent that OpCo2 fails to comply with its obligations under this clause 26.8 (*Mitigation*).

26.9 **Non-compliance**

OpCo2's entitlement to compensation will be reduced to:

(a) exclude any incremental costs or loss of revenue which would not have been incurred or suffered; and

(b) include any cost savings or additional revenue which would have been derived,

had:

(c) OpCo2 complied with its obligations under the Project Agreements; and

(d) OpCo complied with its obligations under the OTS Project Deed prior to the OTS Incorporation Date.

26.10 **OpCo2 conduct**

OpCo2's entitlement to compensation will be reduced to:

(a) exclude any incremental costs or loss of revenue which would not have been incurred or suffered; and

(b) include any cost savings or additional revenue which would have been derived,

to the extent that the Compensation Event occurs or arises as a result of:

(c) any act or omission of OpCo2 or an OpCo2 Contractor; or

(d) any act or omission of OpCo or an OpCo Contractor.

26.11 **Limitation of liability**

(a) Except as provided for in clause 17 (*Time*) and this clause 26 (*Compensation Events*), the Principal will not be liable upon any Claim by OpCo2 arising out of or in connection with a Compensation Event, including in respect of any breach of this deed by the Principal.

(b) The parties agree that OpCo2's entitlements under clause 17 (*Time*) and this clause 26 (*Compensation Events*) are a limitation on the Principal's liability to OpCo2 for any breach of this deed by the Principal and that OpCo2 will not be entitled to make, nor will the Principal be liable upon, any Claim in these circumstances other than in respect of the matters for which the Principal may be liable under clause 17 (*Time*) and this clause 26 (*Compensation Events*).

(c) Nothing in this clause 26.11 (*Limitation of liability*) shall affect or limit OpCo2's rights or entitlements under clause 27 (*Relief Events*) or OpCo2's right to terminate this deed.

27. RELIEF EVENTS

27.1 Time

This clause 27 (*Relief Events*) will not apply to any claim for delay or an extension of time. Any claim for delay or an extension of time will be dealt with in accordance with clause 17 (*Time*).

27.2 Notification

Subject to clause 57.5A (*Temporary waiver of notification requirements*), if a Relief Event occurs, OpCo2 must:

(a) within 20 Business Days after it becomes aware that a Relief Event is likely to affect the ability of OpCo2 to comply with its obligations under this deed (or if OpCo2 becomes so aware in the period between the date of this deed and Financial Close, within 20 Business Days after Financial Close), give to the Principal's Representative a written notice stating that a Relief Event has occurred; and

(b) within 10 Business Days of giving the notice under clause 27.2(a), give the Principal's Representative full particulars of the Relief Event including (to the extent practicable):

(i) details of the obligations which have been affected by the Relief Event;

(ii) details of the steps which OpCo2 has taken to mitigate the effects of the relevant Relief Event; and

(iii) whether OpCo2 considers that the Relief Event may also reasonably be expected to give rise to a Force Majeure Event.

27.3 Continuing Relief Event

If the Relief Event (or its effects) is continuing, OpCo2 must continue to give the information required by clause 27.2(b) every 40 Business Days after the notice under clause 27.2(b) was provided to the Principal's Representative until after the Relief Event (or its effects) have ceased. If a Relief Event (or its effects) continues for such a period or in such a manner that a Force Majeure Event occurs, OpCo2 must, within the earlier of 20 Business Days after the occurrence of the Force Majeure Event or the date of the next notice given by OpCo2 under this clause 27.3 (*Continuing Relief Event*) after the occurrence of the Force Majeure Event, notify the Principal of the occurrence of the Force Majeure Event.

27.4 Condition precedent to relief

(a) It is a condition precedent to OpCo2's entitlement to relief from its obligations under clause 27.5 (*Relief from obligations*) that OpCo2 has complied with the requirements of clauses 27.2 (*Notification*), 27.3 (*Continuing Relief Event*) and 57.5A(e) within the periods required by those clauses.

(b) If OpCo2 fails to comply with the requirements of clauses 27.2 (*Notification*) and 27.3 (*Continuing Relief Event*):

(i) the Principal will not be liable (in so far as it is possible to exclude such liability) upon any Claim by OpCo2; and

(ii) OpCo2 will be absolutely barred from making any Claim under this clause 27 (*Relief Events*) against the Principal,

arising out of or in connection with the relevant Relief Event.

27.5 **Relief from obligations**

(a) If:

(i) a Relief Event (PPP) occurs; and

(ii) the condition precedent in clause 27.4(a) has been satisfied,

OpCo2 will not be in breach of any of its obligations under this deed which are affected by the Relief Event (PPP) (other than payment obligations), but only to the extent and for so long as the Relief Event (PPP) prevents OpCo2 from performing those obligations, provided this clause does not apply to the Phase 2 Works which are dealt with in clause 27.5(b).

(b) If:

(i) a Relief Event (Other) occurs; and

(ii) the condition precedent in clause 27.4(a) has been satisfied,

OpCo2 will not be in breach of any of its obligations under this deed with respect to the Phase 2 Works which are affected by the Relief Event (Other) (other than payment obligations), but only to the extent and for so long as the Relief Event (Other) prevents OpCo2 from performing those obligations.

27.6 **Mitigation**

OpCo2 must use all reasonable endeavours to mitigate the effects of any Relief Event (including by putting in place temporary measures reasonably acceptable to the Principal's Representative).

27.7 **Payment regime not affected**

Nothing in this clause 27 (*Relief Events*) will affect the operation of Schedule 2 (*Service Payment calculation*) and the Service Payment will be calculated as if obligations affected by a Relief Event subsisted during the period in which the Relief Event is subsisting.

28. FORCE MAJEURE

28.1 **Force Majeure Event**

A Force Majeure Event is a Relief Event (other than a Compensation Event) which prevents, or can reasonably be expected to prevent, OpCo2 from complying with a material part of its obligations under this deed for a continuous period exceeding 180 days.

28.2 **Meeting**

As soon as practicable after notice of the occurrence of a Force Majeure Event is given under clauses 27.2 (*Notification*) or 27.3 (*Continuing Relief Event*) the parties must meet and consult with each other in good faith and use all reasonable endeavours to determine whether a Force Majeure Event has occurred.

28.3 **Termination for Force Majeure Event**

(a) Subject to clause 28.3(b), if:

(i) the parties are unable to agree on appropriate measures to mitigate the effects of the Force Majeure Event and facilitate the continued performance of this deed on or before the date falling 20 Business Days after the date of the commencement of the relevant Force Majeure Event (or the date on which the relevant Relief Event became a Force Majeure Event); and

(ii) the Force Majeure Event is continuing or its consequence remain such that the affected party has been or is unable to comply with a material part of its obligations under this deed during that 20 Business Day period,

then, subject to clause 28.4 (*Suspension of OpCo2's right to terminate*):

(iii) in the case of a Force Majeure Event corresponding to the Relief Event (PPP) referred to in paragraph (j) of the definition of Relief Event (PPP) or the Extension Only Relief Event referred to in paragraph (h) of the definition of Extension Only Relief Event, OpCo2 may terminate this deed by giving 20 Business Days' written notice to the Principal; or

(iv) in all other cases, either party may terminate this deed by giving 20 Business Days' written notice to the other party.

(b) OpCo2 may only terminate this deed in accordance with clause 28.3(a):

(i) if OpCo2 is entitled to recover (or would have been entitled to recover if OpCo2 had fully complied with its insurance obligations under this deed and made a proper claim) under the advance consequential loss insurance policy during the Delivery Phase or under the business interruption insurance policy during the Operations Phase, once the maximum indemnity period stated in the relevant insurance policy has been exceeded; or

(ii) if OpCo2 is not entitled to recover under the advance consequential loss insurance policy during the Delivery Phase or under the business interruption insurance policy during the Operations Phase (other than because OpCo2 has not complied with its insurance obligations under this deed or made a proper claim), at the end of the 20 Business Day period referred to in clause 28.3(a).

28.4 Suspension of OpCo2's right to terminate

(a) If OpCo2 gives a termination notice under clause 28.3(a), the Principal may suspend OpCo2's right to terminate by giving a suspension notice within 20 Business Days of receipt of OpCo2's termination notice.

(b) If the Principal gives OpCo2 a suspension notice under clause 28.4(a):

(i) the Principal must:

(A) if the right to terminate is suspended after the Date of Completion of Phase 1, during the period in which OpCo2's right to terminate is suspended; or

(B) if the right to terminate is suspended before the Date of Completion of Phase 1, from the date on which OpCo2 would have achieved First Passenger Service on the Sydney Metro City but for the Force Majeure Event,

pay OpCo2:

(C) the Service Payment which would have been payable if OpCo2's Activities then required to be carried out under this deed were being performed in full (based on:

(aa) the average performance of OpCo2 for the 6 months (or lesser period if the Force Majeure Event occurred less than 6 months after the Date of Completion of Phase 1) immediately prior to the Force Majeure Event first occurring, or

(bb) the forecast performance of OpCo2, if the Force Majeure Event occurred before the Date of Completion of Phase 1),

less the aggregate of (without double counting):

(cc) the costs not incurred by OpCo2 as a result of the non-performance of OpCo2's Activities; and

(dd) the amount of the proceeds OpCo2 receives from any business interruption or advance business interruption insurances; and

(D) if the Force Majeure Event occurred before the Date of Completion of Phase 1, any reasonable costs that are incurred by OpCo2 or OpCo2 Contractors as a result of the need to demobilise, remobilise or maintain the availability of any personnel, equipment or any other thing required to perform the Delivery Activities less the amount of the proceeds OpCo2 receives from any business interruption or advance consequential loss insurances; and

(ii) this deed will not terminate until expiry of written notice (of at least 30 Business Days) from the Principal to OpCo2 that it is ending the suspension of OpCo2's right to terminate, provided that OpCo2's right to terminate may only be suspended for a maximum period of six months, following which OpCo2 may exercise its right to terminate this deed under clause 28.3 (*Termination for Force Majeure Event*) and the Principal may not suspend that right under this clause 28.4 (*Suspension of OpCo2's right to terminate*).

(c) If OpCo2 becomes able to recommence performing the relevant obligations after the Principal gives OpCo2 a suspension notice:

(i) OpCo2 must recommence performance of those obligations; and

(ii) OpCo2's termination notice under clause 28.3(a) will cease to have any effect.

28A MODIFICATIONS

28A.1 Purpose

(a) The parties acknowledge and agree that:

(i) throughout the Term, a number of changes to the requirements of this deed are likely to be required including as a result of a Phase 2 Change Event; and

(ii) the purpose of this clause 28A (*Modifications*) and clauses 29 (*Principal initiated Modifications*), 30 (*OpCo2 initiated Modifications*) and 31 (*Pre-Agreed Options*) is to facilitate and efficiently give effect to such changes.

(b) This clause 28A (*Modifications*) and clauses 29 (*Principal initiated Modifications*), 30 (*OpCo2 initiated Modifications*) and 31 (*Pre-Agreed Options*) seek to achieve the purpose set out in clause 28A.1(a)(ii) by:

(i) incorporating multiple processes for the efficient implementation of change;

(ii) structuring each process to minimise transaction time and cost; and

(iii) allowing sufficient flexibility to ensure that the process adopted for a change is appropriate for the scale, cost and complexity of that change.

(c) Each party must seek to give effect to the purpose stated in clause 28A.1(a)(ii) in complying with its obligations under this clause 28A (*Modifications*) and clauses 29 (*Principal initiated Modifications*), 30 (*OpCo2 initiated Modifications*) and 31 (*Pre-Agreed Options*).

28A.2 **Principal's Modifications Manager**

(a) The Principal has appointed the Principal's Modifications Manager during the Delivery Phase to exercise the powers, duties, discretions and authorities vested in the Principal under this clause 28A (*Modifications*) and clauses 29 (*Principal initiated Modifications*), 30 (*OpCo2 initiated Modifications*) and 31 (*Pre-Agreed Options*), except that only the Principal's Representative is empowered to:

(i) issue a Modification Order under clause 29 (*Principal initiated Modifications*);

(ii) issue a Modification Approval under clause 30 (*OpCo2 initiated Modifications*);

(iii) direct OpCo2 to implement a Pre-Agreed Option under clause 31 (*Pre-Agreed Options*); and

(iv) exercise any other powers, duty, discretion and authority as notified in writing by the Principal to OpCo2 from time to time.

(b) OpCo2 recognises and accepts the Principal's Modifications Manager as lawfully entitled to exercise during the Delivery Phase the Principal's powers, duties, discretions and authorities under this clause 28A (*Modifications*) and clauses 29 (*Principal initiated Modifications*), 30 (*OpCo2 initiated Modifications*) and 31 (*Pre-Agreed Options*), subject to the limitations set out in clause 28A.2(a).

(c) The Principal may at any time by written notice to OpCo2 during the Delivery Phase replace the Principal's Modifications Manager with another person of an equivalent level of seniority, qualifications and experience.

(d) Subject to clause 28A.2(e), a notice given to the Principal's Modifications Manager under this clause 28A (*Modifications*) or clauses 29 (*Principal initiated Modifications*), 30 (*OpCo2 initiated Modifications*) and 31 (*Pre-Agreed Options*) will be deemed to have been given to the Principal.

(e) OpCo2 must during the Delivery Phase issue the following notices to both the Principal's Representative and the Principal's Modifications Manager:

(i) a Modification Impact Proposal under clause 29.2 (*Modification Impact Proposal*);

(ii) a notice under clause 29.3(c)(iv) requesting an increase to the TPPC Cap; and

(iii) a notice under clause 30.1 (*OpCo2 may propose a Modification*) proposing a Modification.

28A.3 **OpCo2's Modifications Personnel**

(a) OpCo2 has appointed OpCo2's Modifications Manager during the Delivery Phase to exercise the powers, duties, discretions and authorities vested in OpCo2 under this clause 28A (*Modifications*) and clauses 29 (*Principal initiated Modifications*), 30 (*OpCo2 initiated Modifications*) and 31 (*Pre-Agreed Options*).

(b) An instruction or direction given to OpCo2's Modifications Manager under this clause 28A (*Modifications*) and clauses 29 (*Principal initiated Modifications*), 30 (*OpCo2 initiated Modifications*) and 31 (*Pre-Agreed Options*) is deemed to be given to OpCo2.

(c) Without limiting clause 28A.4 (*Governance of Modifications*) or 28A.5 (*Modifications Working Group meetings*), OpCo2 must ensure that during the Delivery Phase OpCo2's Modifications Personnel are available for consultation with the Principal's Modifications Manager as the Principal's Modifications Manager reasonably requires.

(d) The Principal may, at any time during the Delivery Phase, give notice to OpCo2 requesting that:

(i) a representative of one or more of:

(A) OpCo2;

(B) the Integrator;

(C) the O&M Contractor;

(D) the Alstom Significant Contractor; and

(E) the Designer,

be engaged (on either full-time or part-time basis) for the management of Modifications on behalf of the relevant OpCo2 Contractor in accordance with clause 28A.3(g); or

(ii) the terms of engagement (either full-time or part-time) of an existing OpCo2's Modifications Personnel be increased or decreased,

together with sufficient reasons and evidence as to why the additional OpCo2's Modifications Personnel is required.

(e) OpCo2 may, at any time during the Delivery Phase, give notice to the Principal requesting that an additional OpCo2's Modifications Personnel be engaged (on either full-time or part-time basis) in accordance with clause 28A.3(g), together with sufficient reasons and evidence as to why the additional OpCo2's Modifications Personnel is required.

(f) The Modifications Working Group must:

(i) discuss a request given by the Principal under clause 28A.3(d) or by OpCo2 under clause 28A.3(e) at the next Modifications Working Group meeting; and

(ii) use their reasonable endeavours to agree whether OpCo2 is required to engage the additional OpCo2's Modifications Personnel or increase or

decrease the terms of engagement of an existing OpCo2's Modifications Personnel, and if so, the timing for engagement of, or change to the terms of engagement of, that OpCo2's Modifications Personnel and the terms on which that OpCo2's Modifications Personnel is to be engaged.

(g) OpCo2 must procure that an appropriately qualified, experienced and capable representative of OpCo2 or the relevant OpCo2 Contractor (as applicable) is employed within the timeframe agreed by the parties under clause 28A.3(f) to manage all activities in relation to Modifications on behalf of the relevant OpCo2 Contractor. The Monthly Modifications Payment will be adjusted accordingly from the date for engagement of the relevant OpCo2's Modifications Personnel, as agreed by the Modifications Working Group in accordance with clause 28A.3(f)(ii).

(h) If the Principal considers that any of OpCo2's Modifications Personnel are no longer required, the Principal may give notice to OpCo2 to that effect, and OpCo2 must ensure that the employment of that person is ceased from the date specified in the notice, being not less than three months from the date of the notice.

28A.4 **Governance of Modifications**

(a) The parties must ensure that their respective members of the Modifications Working Group:

(i) attend the Modifications Working Group meetings;

(ii) co-operate and collaborate to ensure that, to the extent possible, each party has early notification of the prospect of a Modification, including the scope and priority of upcoming Modifications;

(iii) are responsible for ensuring all time periods and obligations under this clause 28A (*Modifications*) and clauses 29 (*Principal initiated Modifications*), 30 (*OpCo2 initiated Modifications*) and 31 (*Pre-Agreed Options*) are met; and

(iv) are provided with sufficient support to meet all time periods and obligations under this clause 28A (*Modifications*) and clauses 29 (*Principal initiated Modifications*), 30 (*OpCo2 initiated Modifications*) and 31 (*Pre-Agreed Options*).

(b) OpCo2 must ensure that during the Delivery Phase OpCo2's Modifications Manager and the Integrator's Modifications Manager are co-located within the same building with the Principal's Modifications Manager. If any additional OpCo2's Modifications Personnel are engaged in accordance with clause 28A.3(g), the parties must agree, acting reasonably and taking into account the relevant circumstances, the extent to which that person is required to be co-located within the same building with the Principal's Modifications Manager.

(c) The Principal may involve OpCo2 (and where applicable, OpCo2 Contractors) early in the specification of a Modification to ensure that the developed specifications reflect the inputs from OpCo2 (and where applicable, OpCo2 Contractors).

(d) OpCo2 must prepare and continually update a running schedule of all Modifications that have been proposed or implemented.

(e) The running schedule must be in a form approved by the Principal and, at a minimum, contain the following details in respect of each Modification:

(i) a unique code, number or identifier (which must not be changed or removed, regardless of whether a proposed Modification has been rejected or otherwise);

(ii) a description of the Modification;

(iii) the status of the Modification;

(iv) the reason for proposing the implementation of the Modification; and

(v) the amount payable (if any) in respect of the Modification.

(f) OpCo2 must make available to the Principal, on request:

(i) the running schedule prepared in accordance with this clause 28A.4 (*Governance of Modifications*); and

(ii) any records relating to any Modification that has been proposed or implemented.

28A.5 **Modifications Working Group meetings**

(a) (**Establishment**): Within four months of the date of Financial Close, the parties must establish the Modifications Working Group for the duration of the Delivery Phase.

(b) (**Purpose**): The purpose of the Modifications Working Group is to provide a forum during the Delivery Phase to discuss:

(i) the status of all outstanding Modifications, including:

(A) any notices submitted by either party that are required to be discussed at the relevant meeting;

(B) any matters in relation to an outstanding Modification that are not agreed; and

(C) the status of any notice or proposal that a party is preparing, in order to ensure that all time periods are met;

(ii) the progression of all agreed Modifications;

(iii) any Modification that either party is planning to propose, including any Modification relating to a Phase 2 Change Event, and:

(A) where applicable, the content of any notice that the relevant party intends to issue; and

(B) in respect of a proposed Modification that the Principal is considering:

(aa) which of the items set out in clause 29.1(a) the Modification Impact Request is likely to include (if any);

(bb) the Third Party Preparation Costs that OpCo2 is likely to incur in preparing a Modification Impact Proposal, taking into account the size and complexity of the proposed Modification, including whether the proposed Modification is a Minor Modification, and the information required to be included in the Modification Impact Proposal; and

(cc) any extension to the 15 Business Day period in clause 29.2(a) for OpCo2 to respond to the Modification Impact Request, taking into account the size and complexity of the proposed Modification and the information required to be included in the Modification Impact Proposal; and

(C) the appropriate TPPC Cap to reflect the likely Third Party Preparation Costs referred to in paragraph (bb); and

(iv) any other issues arising out of, or in connection with, any Modification or proposed Modification.

(c) (**Frequency of meetings**): For so long as any OpCo2's Modifications Personnel continue to be engaged in accordance with clause 28A.3 (*OpCo2's Modifications Personnel*), the Modifications Working Group must meet weekly, unless the parties otherwise agree.

(d) (**Administration**): OpCo2's Modifications Manager must convene and chair each Modifications Working Group meeting, unless the parties otherwise agree.

(e) (**Agenda**): OpCo2's Modifications Manager must prepare and issue an agenda for each meeting to each member of the Modifications Working Group and any other person as required by the Principal's Modifications Manager. The agenda must:

(i) have been prepared in consultation with the Principal's Modifications Manager; and

(ii) be provided no less than 48 hours prior to each meeting.

(f) (**Delegates**): Each member of the Modifications Working Group may appoint a delegate (of an equivalent level of seniority or experience) to attend Modifications Working Group meetings in their absence.

(g) (**Principal may require certain representatives to attend**): At the Principal's request, OpCo2 must procure the attendance of one or more representatives of OpCo2 or any OpCo2 Contractor that the Principal considers appropriate given the nature of any proposed Modification to be discussed at the relevant meeting. The Principal is also entitled to have representatives of the State or any Authority attend meetings.

(h) (**OpCo2 may bring certain representatives**): OpCo2 may have one or more representatives of OpCo2 or any OpCo2 Contractor attend a meeting that OpCo2 considers appropriate given the nature of any proposed Modification to be discussed at the relevant meeting.

(i) (**Consultation in good faith**): Each member of the Modifications Working Group must consult in good faith and, where applicable, use their reasonable endeavours to agree on a mutually acceptable resolution to any matters which are not agreed under this clause 28A (*Modifications*) or clauses 29 (*Principal initiated Modifications*), 30 (*OpCo2 initiated Modifications*) and 31 (*Pre-Agreed Options*).

28A.6 **Open Book**

All documentation and information provided by OpCo2 under this clause 28A (*Modifications*) and clauses 29 (*Principal initiated Modifications*), 30 (*OpCo2 initiated Modifications*) and 31 (*Pre-Agreed Options*) (including any documentation or information prepared by an OpCo2 Contractor) must be provided on an Open Book Basis.

28A.7 **Independent Assessor**

(a) (**Independent Assessor Deed**): At the Principal's discretion, an Independent Assessor may be engaged on the terms of the Independent Assessor Deed.

(b) (**Role**): The Independent Assessor's role is to, amongst other things:

(i) where required by the Principal:

(A) make independent assessments of the matters set out in this clause 28A (*Modifications*) and clauses 29 (*Principal initiated Modifications*), 30 (*OpCo2 initiated Modifications*) and 31 (*Pre-Agreed Options*); and

(B) develop a high level reference price for implementation of a Modification (**Reference Price**); and

(ii) participate in joint briefings in accordance with clause 28A.7(e).

(c) (**OpCo2 may request assessment**): OpCo2 may request that the Principal require the Independent Assessor to carry out an independent assessment in accordance with clause 28A.7(b)(i)(A).

(d) (**Independent**): The Independent Assessor is obliged to act independently of the Principal and OpCo2.

(e) (**Joint briefing**): Where the Principal requires the Independent Assessor to provide an independent assessment in accordance with clause 28A.7(b)(i)(A), the parties must agree a mutual time to jointly brief the Independent Assessor in relation to the matters the subject of the independent assessment as soon as practicable thereafter.

(f) (**Provision of information**): The Principal and OpCo2 must provide the Independent Assessor with all information and documents in relation to the relevant proposed Modification and allow the Independent Assessor:

(i) to attend meetings; and

(ii) access to all premises,

as may be necessary or reasonably required by the Independent Assessor to allow the Independent Assessor to perform its obligations under the Independent Assessor Deed.

(g) (**Copy all information to other party**): All notices and documents provided by a party to the Independent Assessor must be copied to the other party. If a party is required to provide a notice or document to the Independent Assessor within a specified time period, that notice or document must be provided to the other party within the same time period.

(h) (**Conduct does not affect obligations**): Without limiting clause 28A.7(i), an act or omission (including negligence) of the Independent Assessor will not:

(i) relieve a party from, or alter or affect, a party's liabilities, obligations or responsibilities to the other party whether under this deed or otherwise according to law; or

(ii) prejudice or limit a party's rights against the other party whether under this deed or otherwise according to law.

(i) (**Not approval or evidence**):

(i) An assessment by the Independent Assessor will not:

(A) constitute an approval by the Principal of any notice or proposal given by OpCo2 under this clause 28A (*Modifications*) or clauses 29 (*Principal initiated Modifications*), 30 (*OpCo2 initiated Modifications*) and 31 (*Pre-Agreed Options*);

(B) be taken as an admission or evidence that any matters assessed by the Independent Assessor comply with this deed; or

(C) prejudice any rights or powers of the Principal or OpCo2 under this deed or otherwise according to law.

(ii) No act or omission of the Independent Assessor, including any assessment by the Independent Assessor will:

(A) be deemed to be an act or omission by the Principal or OpCo2 (including a breach of contract) under or in connection with the Principal Project Agreements; or

(B) entitle OpCo2 to make any Claim against the Principal.

(j) (**Independent Assessor's costs**): The Principal will be responsible for the costs incurred by the Independent Assessor.

(k) (**Independent Assessor's assessment**): The Principal may, in its absolute discretion, provide OpCo2 with any independent assessment prepared by the Independent Assessor in accordance with clause 28A.7(b)(i).

28A.8 **Consultation with Foundation Infrastructure Works Contractors**

(a) Without limiting clauses 14A.3 (*Principal initiated Foundation Infrastructure Works Change*) and 14A.4 (*OpCo2 initiated Foundation Infrastructure Works Change*), if OpCo2 becomes aware that a Modification will, or is likely to, impact on any Foundation Infrastructure Works or necessitate a Foundation Infrastructure Works Change, and in any case prior to:

(i) submitting a Modification Impact Proposal in accordance with clause 29.2 (*Modification Impact Proposal*);

(ii) proposing a Modification in accordance with clause 30.1 (*OpCo2 may propose a Modification*);

(iii) submitting a notice in accordance with clause 14A.3(b) in response to a Principal initiated Foundation Infrastructure Works Change; or

(iv) submitting a notice in accordance with clause 14A.4(a) requesting the Principal to procure a Foundation Infrastructure Works Change,

OpCo2 must, in accordance with each relevant Project Cooperation and Integration Deed:

(v) notify the relevant Foundation Infrastructure Works Contractor of the proposed Modification; and

(vi) work closely and iteratively with the relevant Foundation Infrastructure Works Contractor in good faith regarding:

(A) the scope and design of the proposed Modification (and, where applicable, the corresponding Foundation Infrastructure Works Change) in order to remove or reduce the impact that the proposed Modification will or may have on the relevant Foundation Infrastructure Works; and

(B) the cost of implementing the proposed Modification and any corresponding Foundation Infrastructure Works Change.

(b) If a Modification Impact Proposal submitted by OpCo2 in accordance with clause 29.2 (*Modification Impact Proposal*) states that OpCo2 considers a Foundation Infrastructure Works Change will, or is likely to, be required to enable the proposed Modification to be implemented or as a consequence of the proposed Modification, the Principal's Representative must, following further development of the scope and design of the Foundation Infrastructure Works Change(s) with the relevant Foundation Infrastructure Works Contractor(s), issue to OpCo2 a written notice in accordance with clause 14A.3 (*Principal initiated Foundation Infrastructure Works Change*) regarding any required Foundation Infrastructure Works Changes.

(c) If OpCo2 considers that a Foundation Infrastructure Works Change will, or is likely to, be required as a result of or in connection with a Modification proposed by OpCo2 under clause 30 (*OpCo2 initiated Modifications*), then OpCo2 must give the Principal a written notice requesting the Principal to procure any required Foundation Infrastructure Works Change in accordance with clause 14A.4 (*OpCo2 initiated Foundation Infrastructure Works Change*) at the same time as giving notice under clause 30.1 (*OpCo2 may propose a Modification*) or as soon as practicable thereafter.

28A.9 **Project Documentation**

OpCo2 must, on completion of a Modification, update the as-built drawings and the operating and maintenance manuals (as necessary) to reflect the Modification.

28A.10 **Templates**

Section 5 of Schedule 24 (*Modifications*) contains templates which the parties must use to document Modifications.

28A.11 **Monthly Modifications Payment**

(a) After the end of each month, OpCo2 must give the Principal's Representative claims for payment of the Monthly Modifications Payment (if any) in respect of the previous month in accordance with clause 25.4 (*Payment claims for Service Payments and other amounts*).

(b) The Principal will pay OpCo2 the Monthly Modifications Payment (if any) each month in accordance with clause 25 (*Payment Provisions*).

28A.12 **Modifications KPIs**

(a) OpCo2 must monitor and report on performance against all Modification KPIs in accordance with section 2 of Schedule 24 (*Modifications*).

(b) The Modification Performance Deduction for the relevant Month will be calculated in accordance with section 2 of Schedule 24 (*Modifications*).

(c) Subject to clause 28A.12(d), the Principal will be entitled to set-off or deduct the Modification Performance Deduction from the Monthly Modifications Payment due the following Month.

(d) The Modification Performance Deduction applicable to any Month will not exceed the Modifications Personnel Fee payable by the Principal in respect of that Month (if any).

(e) The Modifications KPIs may be amended from time to time by agreement of the parties (including to reflect any reduction in the number of OpCo2's Modifications Personnel, where appropriate).

28A.13 **Modifications review**

(a) Three months prior to each Modifications Review Date, the Principal and OpCo2 must meet to review the Modifications regime (**Modifications Review**).

(b) Factors that may be addressed in a Modifications Review include:

(i) review of the number of OpCo2 Modifications Personnel;

(ii) review of the Modifications KPIs;

(iii) measures to improve the Modifications process; and

(iv) any other factors that the Principal or OpCo2 consider relevant.

(c) Following a Modifications Review:

(i) the Principal or OpCo2 may give notice in accordance with clause 28A.3 (*OpCo2's Modifications Personnel*) requesting an increase or decrease in the number of OpCo2's Modifications Personnel and/or a change to the terms of engagement of any OpCo2's Modifications Personnel, with any such changes to take effect on the Modifications Review Date (unless otherwise agreed by the parties); and

(ii) where the parties agree to amend the Modifications KPIs, the Modification KPIs will be amended from the Modifications Review Date.

29. PRINCIPAL INITIATED MODIFICATIONS

29.1 Modification Impact Request

(a) The Principal:

(i) may at any time issue to OpCo2 a notice setting out the details of a proposed Modification which the Principal is considering; and

(ii) must upon the occurrence of a Phase 2 Change Event, issue to OpCo2 a notice setting out the details of a proposed Modification with respect to the Phase 2 Change Event,

(**Modification Impact Request**).

(aa) Having regard to discussions of the Modifications Working Group, a Modification Impact Request may include any or all of the following:

(i) the basis (or bases) on which the Principal requires OpCo2 to prepare a Modification Cost Proposal, which may include:

(A) a single lump sum payment, or a series of lump sum payments;

(B) milestone payments;

(C) separate pricing for separate parts or components of the proposed Modification;

(D) a target cost basis;

(E) a managing contractor basis; and/or

(F) any other means which the Principal considers appropriate in the circumstances;

(ii) whether the Principal requires OpCo2 to conduct a tender process under clause 29.4 (*Tender for works*) for all or part of the works which would be required to effect the Modification and, if OpCo2 is required to submit a Modification Impact Proposal prior to completion of that tender process, whether an estimate of the cost of the Tendered Works should be included in the Modification Cost Proposal submitted as part of the Modification Impact Proposal;

(iii) whether the Principal considers the Modification to be a Minor Modification;

(iv) where the proposed Modification relates to an addition or increase to the requirements of this deed for the OTS2 Works, the Temporary Works, the Sydney Metro or OpCo2's Activities:

(A) any particular timing requirements for the implementation of the required works or services;

(B) details of the Principal's budgetary constraints and affordability thresholds;

(C) a Reference Price developed by the Independent Assessor in accordance with clause 28A.7 (*Independent Assessor*) (if any); and

(D) whether the Principal requires OpCo2 to raise additional finance to fund the proposed Modification;

(v) the TPPC Cap applicable to the preparation of the Modification Impact Proposal, taking into account:

(A) the size and complexity of the proposed Modification and the information required to be included in the Modification Impact Proposal;

(B) whether the Principal considers the Modification to be a Minor Modification and if so, the TPPC Cap in paragraph (a) of that definition will apply; and

(C) any discussions of the Modifications Working Group in accordance with clause 28A.5(b)(iii)(B)(bb) regarding the Third Party Preparation Costs likely to be incurred and the appropriate TPPC Cap;

(vi) any reporting format, breakdown of quotations or additional information that the Principal reasonably requires OpCo2 to include in the Modification Impact Proposal;

(vii) if the Modification Impact Request is with respect to a Phase 2 Change Event, the Principal's assessment of the changes, if any, to the Southwest Baseline Scope and/or the Site Access Schedule;

(viii) pursuant to [redacted] if the Modification Impact Request is with respect to the Phase 2 Change Event contemplated in paragraph (d) of the definition of Phase 2 Change Event, the Principal's proposed solution to overcome the [redacted] identified in the Certificate of compliance with [redacted] not meeting the [redacted] and

(ix) any other matters or information that the Principal reasonably requires OpCo2 to consider when preparing its Modification Impact Proposal.

(b) At the same time as, or at any time after, issuing a Modification Impact Request, the Principal may, in its absolute discretion, require the Independent Assessor to provide an independent assessment of any or all of the following:

(i) the cost of implementing the proposed Modification, to be developed on the basis (or bases) requested by the Principal in the Modification Impact Request, and calculated in accordance with Schedule 29 (*Net Financial Impact*);

(ii) if the Modification is proposed to be carried out during the Delivery Phase, the effect the proposed Modification will have on the Delivery Program (including any extension of time required to the Date for Completion of Phase 1, the Date for Completion of Phase 2, a Milestone Date for Completion or a Date for Acceptance, as applicable);

(iii) if the Modification is proposed to be carried out during the Operations Phase, the time required for OpCo2 to implement the proposed Modification;

(iv) the effects (if any) which the proposed Modification will have on OpCo2's performance against any performance indicator or requirement which could result in a Service Payment Deduction; and

(v) the value for money for the Principal arising from the proposed Modification.

(c) Without limiting clause 29.1(a), the Principal may at any time issue to OpCo2 a notice requiring that a two-stage process be adopted for the development, consideration and approval of a Modification which the Principal is considering, which may include:

(i) Stage 1, during which the parties will explore the feasibility of the proposed Modification and the Principal will decide whether or not it wishes to proceed to Stage 2; and

(ii) Stage 2, during which OpCo2 will be required to prepare a fully developed and fully costed proposal for implementation of the proposed Modification.

(d) If the Principal gives a notice under clause 29.1(c), the Modifications Working Group must, at the next Modifications Working Group meeting (or as many additional meetings as agreed by the parties), use their reasonable endeavours to agree on the required content and timing for the submission to be made by OpCo2 at each stage and the protocols for consideration and approval of the proposed Modification at each stage.

(e) If the Modifications Working Group agrees on the requirements and protocols for the development, consideration and approval of the proposed Modification in accordance with clause 29.1(d), each party must comply with the agreed requirements and protocols.

(f) Subject to clause 29.14A (*Principal's right to withdraw or not proceed with Modification for Phase 2 Change Event*), the Principal:

(i) will not be obliged to proceed with any Modification proposed in a Modification Impact Request; and

(ii) may withdraw a Modification Impact Request at any time prior to the issue of a Modification Order by giving notice to OpCo2, and thereafter, in its absolute discretion, either:

(A) procure the implementation of the activities the subject of the proposed Modification as Proximate Work Activity in accordance with clause 34 (*Proximate Work Activities*); or

(B) not proceed with the activities the subject of the proposed Modification.

29.2 **Modification Impact Proposal**

(a) As soon as practicable, and in any event within 15 Business Days (or such longer period as set out in the Modification Impact Request, agreed by the Principal through the Modifications Working Group or agreed by the Principal in accordance with clause 29.2(c)), after receipt of a Modification Impact Request, OpCo2 must provide the Principal with a proposal in accordance with this clause 29.2 (*Modification Impact Proposal*) (**Modification Impact Proposal**).

(b) Within 5 Business Days of receiving a Modification Impact Request, OpCo2 may notify the Principal if it considers more than 15 Business Days is required to prepare and submit a Modification Impact Proposal, and proposing what it considers represents a reasonable time period for the preparation and submission of a Modification Impact Proposal, taking into account:

(i) the size and complexity of the proposed Modification;

(ii) the information required to be included in the Modification Impact Proposal;

(iii) whether OpCo2 is required to conduct a tender process in accordance with clause 29.4 (*Tender for works*);

(iv) whether OpCo2 is required to consult with Significant Contractors and/or designers;

(v) whether OpCo2 is required to consult with any Foundation Infrastructure Works Contractors in accordance with clause 28A.8 (*Consultation with Foundation Infrastructure Works Contractors*); and

(vi) if the Modification Impact Request is with respect to a Phase 2 Change Event and contains the Principal's assessment of the changes to the Southwest Baseline Scope, whether the process set out in clause 14A.2B (*Southwest Baseline Scope*) is required to be implemented in order to determine the scope of the relevant Southwest Baseline Scope Change.

(c) If OpCo2 gives the Principal notice in accordance with clause 29.2(b), the Principal must consider the request in good faith and within 5 Business Days give notice to OpCo2 confirming a reasonable period for submission of the Modification Impact Proposal. If the time period differs from that proposed by OpCo2 in accordance with clause 29.2(b), the Principal's notice must set out the reasons why the Principal does not consider that OpCo2's proposal constitutes a reasonable time period for the preparation and submission of a Modification Impact Proposal.

(d) Notwithstanding that OpCo2 may have issued a notice under clause 29.2(b) and the Principal may be considering that notice in accordance with clause 29.2(c):

(i) OpCo2 must continue preparing a Modification Impact Proposal on the basis that it will be required to submit the Modification Impact Proposal within 15 Business Days of receiving the Modification Impact Request; and

(ii) subject to the Principal agreeing to a longer period in accordance with clause 29.2(c), OpCo2 must provide the Principal with a Modification Impact Proposal within 15 Business Days of receiving the Modification Impact Request.

(e) Subject to clause 29.2(ea), the Modification Impact Proposal must set out detailed particulars of:

(i) OpCo2's cost proposal for the proposed Modification, which:

(A) must be developed on the basis (or bases) requested by the Principal in the Modification Impact Request;

(B) must be calculated in accordance with Schedule 29 (*Net Financial Impact*);

(C) may include any Third Party Preparation Costs incurred by OpCo2 in preparing the Modification Impact Proposal, capped at the TPPC Cap and subject to OpCo2 providing evidence of the amounts claimed on an Open Book Basis; and

(D) if OpCo2, a Core Contractor or a Specified OpCo2 Contractor intends to engage, or expand the scope of the existing engagement of, one or more Professional Service Providers in order to implement the proposed Modification, must include OpCo2's estimate of the Professional Service Provider Costs likely to be incurred by each Professional Service Provider in respect of the scope of services or incremental increase in the scope of works or services (as applicable) to be carried out by that Professional Service Provider as a direct result of the Modification, which must be calculated in accordance with Schedule 29 (*Net Financial Impact*),

(**Modification Cost Proposal**);

(ii) where the Modification Impact Request includes a Reference Price, an explanation of any difference between the Modification Cost Proposal and the Reference Price;

(iii) where relevant, OpCo2's proposed schedule of payments for the Modification (**Modification Payment Schedule**) including, where the Modification Cost Proposal has been prepared on the basis of milestone payments, an objective milestone or other means of providing evidence confirming that the part of the Modification corresponding to each occasion when payment is due under the Modification Payment Schedule has been duly carried out;

(iv) the basis (if any) on which OpCo2 is able to fund the proposed Modification and the difference to the Modification Cost Proposal if OpCo2, rather than the Principal, funds the Modification;

[redacted]

[redacted]

[redacted]

(vi) if the Modification is proposed to be carried out during the Operations Phase, the time within which the proposed Modification will be implemented;

(vii) any Approvals required to implement the proposed Modification, and the effect of the proposed Modification on any existing Approvals;

(viii) the effects which the proposed Modification will have on:

(A) OpCo2's ability to satisfy its obligations under this deed (including any warranties given by OpCo2 under this deed); and

(B) OpCo2's performance against any performance indicator or requirement which could result in a Service Payment Deduction;

(ix) any relief which is required from OpCo2's obligations under this deed to ensure that it is left in a no better and no worse position than it would be in if the Modification were not implemented;

(x) OpCo2's view on the effect (if any) which the proposed Modification will, or is likely to, have on the Foundation Infrastructure Works, including whether

OpCo2 considers that a Foundation Infrastructure Works Change will, or is likely to, be required to enable the proposed Modification to be implemented or as a consequence of the proposed Modification and if so, any change that could be made to the proposed Modification (including any change to the timing of the proposed Modification or to the manner in which the Modification is proposed to be implemented) to reduce or avoid the impact of the proposed Modification on the relevant Foundation Infrastructure Works;

(xi) OpCo2's view on the effect (if any) which the proposed Modification will, or is likely to, have on the OTS2 PPP and a description of how OpCo2 proposes to manage those effects;

(xii) where requested by the Principal in the Modification Impact Request, an outline of the proposed design solution for the Modification, including an appropriate risk analysis and appraisal and, to the extent relevant, the impact on whole-of-life costs;

(xiii) where requested by the Principal in the Modification Impact Request, the proposed method of implementation and the proposed method of certification of any design, construction or operational aspects of the works or services required to implement the proposed Modification (but only to the extent that these will be different to those specified in this deed);

(xiv) where the proposed Modification relates to a Phase 2 Change Event, the effect which the proposed Modification will have on OpCo2's ability to achieve a Collaboration Event on or before the applicable CE Locked Date (including OpCo2's views on any adjustment required to the CE Locked Date);

(xv) where the proposed Modification includes a proposed change to the Southwest Baseline Scope, OpCo2's confirmation pursuant to clause 14A.2B(b); and

(xvi) any other information requested by the Principal in the Modification Impact Request.

(ea) Where the proposed Modification is the result of:

(i) a Phase 2 Change Event (other than the events referred to in paragraphs (a)(ii), (d) or (e) of the definition of Phase 2 Change Event), the Modification Impact Proposal and the detailed particulars required to be set out in clause 29.2(e) must be limited only to the effects arising as a result of a change, if any, to the Southwest Baseline Scope or the Site Access Schedule;

(ii) the Phase 2 Change Event referred to in paragraph (e) of the definition of Phase 2 Change Event, the parties agree that:

(A) at the date of this deed, OpCo2 has made no allowance for the costs of operating and maintaining the PSD/MGF Systems on the Sydney Metro Southwest; and

(B) OpCo2's sole entitlement under this deed with respect to the Phase 2 Change Event referred to in paragraph (e) of the definition of Phase 2 Change Event is a determination of the Base O&M Costs (as that term is defined in Schedule 29 (*Net Financial Impact*)) for operating and maintaining the PSD/MGF Systems on the Sydney Metro Southwest and the Modification Impact Proposal and the detailed particulars required to be set out in clause 29.2(e) must only address that issue;

(iii) the Phase 2 Change Event referred to in paragraph (g) of the definition of Phase 2 Change Event, the parties agree that:

(A) OpCo2's entitlement in respect of the Phase 2 Change Event will be limited to:

(aa) the difference between the Delivery Activities:

(a) required to be provided by OpCo2 on the Sydney Metro Southwest in respect of the interface between the PSD/MGF Systems and the OTS2 Works (including in relation to the applicable process for obtaining Accreditation) in order to enable OpCo2 or one or more of its Core Contractors to obtain Accreditation to operate the Sydney Metro Southwest consistent with the SPR for the purposes of achieving Completion of Phase 2 under clause 19.4 (*Requirements for Completion*) prior to the occurrence of the Phase 2 Change Event referred to in paragraph (g) of the definition of Phase 2 Change Event; and

(b) required to be provided by OpCo2 on the Sydney Metro Southwest in respect of the interface between the PSD/MGF Systems and the OTS2 Works (including in relation to the applicable process for obtaining Accreditation) in order to enable OpCo2 or one or more of its Core Contractors to obtain Accreditation to operate the Sydney Metro Southwest consistent with the SPR for the purposes of achieving Completion of Phase 2 under clause 19.4 (*Requirements for Completion*) following the occurrence of the Phase 2 Change Event referred to in paragraph (g) of the definition of Phase 2 Change Event; and

(bb) the difference between:

(a) the Operations Activities required to be performed with respect to the PSD/MGF Systems on the Sydney Metro Southwest in order to enable OpCo2 or one or more of its Core Contractors to maintain Accreditation to operate the Sydney Metro Southwest; and

(b) those Operations Activities required to be performed with respect to the PSD/MGF Systems contemplated and priced by OpCo2 pursuant to clause 29.2(ea)(ii) prior to the occurrence of the Phase 2 Change Event (and having regard to any adjustment to the Base O&M Costs (as that term is defined in Schedule 29 (*Net Financial Impact*)) as a result of the Phase 2 Change Event referred to in paragraph (e) of the definition of Phase 2 Change Event); and

(B) OpCo2 will be entitled to an extension to the Date for Completion of Phase 2, a Milestone Date for Completion or a Date for Acceptance (as applicable) and the Modification Impact Proposal and the detailed particulars required to be set out in clause 29.2(e) may include a claim for an extension of time on this basis. The parties agree however that the Principal may, in its absolute discretion, when

granting any extension of time in respect of this Phase 2 Change Event reduce the extension that would otherwise have been granted by the Remaining Adjustment Period (which is for the benefit of the Principal); or

[redacted]

[redacted]

(f) Without limiting clause 29.2(e)(v), where the proposed Modification is the result of a Phase 2 Change Event, OpCo2 must provide the Principal with an updated Delivery Program on an Open Book Basis.

(g) Where a Modification requires OpCo2 to operate and maintain the cooling system at Barangaroo as part of the Operations Activities pursuant to section 2.4 of Schedule 3A (*Barangaroo Interface*), the Modification Impact Proposal and the detailed particulars required to be set out in clause 29.2(e) must be prepared having regard to the principles, reference design and reference pricing set out in section 2 (*Barangaroo Station Cooling Principles*) of Schedule 3A (*Barangaroo Interface*).

(h) Without limiting clause 29.11 (*Instruction to proceed*), if OpCo2 fails to provide a Modification Impact Proposal in accordance with the time period specified in clause 29.2(a), the Principal's Representative may issue a Modification Order in accordance with clause 29.11 (*Instruction to proceed*) instructing OpCo2 to implement the proposed Modification.

29.3 **Cost of preparing Modification Impact Proposal**

(a) OpCo2 must use reasonable endeavours to minimise the Third Party Preparation Costs incurred by OpCo2 in the preparation of a Modification Impact Proposal.

(aa) The parties agree that in relation to a Modification (other than any Modification in connection with a Phase 2 Change Event) which is implemented prior to the Date of Completion of Phase 2 and which does not result in an increase to the scope of the Operations Activities, the amount of Third Party Preparation Costs incurred by O&M Contractor which are recoverable by OpCo2 will be a fixed amount of $[redacted]

(b) If:

(i) OpCo2 prepares and submits a Modification Impact Proposal in accordance with clause 29.2 (*Modification Impact Proposal*); and

(ii) the Principal:

(A) does not issue a Modification Order in respect of the proposed Modification following submission of a Modification Impact Proposal by OpCo2; or

(B) withdraws the Modification Impact Request in accordance with clause 29.1(f)(ii) prior to expiry of the relevant time period for submission of a Modification Impact Proposal,

then the Principal must reimburse the reasonable Third Party Preparation Costs incurred by OpCo2 in:

(iii) preparing the Modification Impact Proposal, including any costs under clause 29.1(c)(i); and

(iv) performing its obligations under clauses 29.4 (*Tender for works*), 29.5(a)(ii) or 29.6 (*Principal rejects Modification Impact Proposal*),

capped at the TPPC Cap set out in the relevant Modification Impact Request, or such higher amount approved by the Principal in accordance with clause 29.3(d)(i) or agreed by the parties in accordance with clause 29.3(f), and subject to OpCo2 providing evidence of the amounts claimed on Open Book Basis.

(c) If, following receipt of a Modification Impact Request, OpCo2:

(i) does not agree with the Principal's TPPC Cap; or

(ii) considers that there has been a material change in the scope of work required to prepare and submit a Modification Impact Proposal such that the Third Party Preparation Costs that it is likely to incur in preparing the Modification Impact Proposal will exceed the TPPC Cap set out in the Modification Impact Request,

OpCo2 may provide the Principal with a notice:

(iii) setting out OpCo2's revised estimate of the Third Party Preparation Costs that it is likely to incur (including evidence of how that estimate was developed on an Open Book Basis); and

(iv) requesting an increase to the TPPC Cap to reflect that estimate.

(d) Within 5 Business Days of receiving a notice from OpCo2 under clause 29.3(c)(iv), the Principal must consider OpCo2's requested increase to the TPPC Cap in good faith and notify OpCo2 that the Principal either:

(i) approves OpCo2's estimate of Third Party Preparation Costs (in which case the TPPC Cap will be amended accordingly); or

(ii) considers that OpCo2's estimate does not represent a reasonable estimate of Third Party Preparation Costs.

(e) The Principal may, at any time and in its absolute discretion, require the Independent Assessor to provide an independent assessment of what constitutes a reasonable estimate of Third Party Preparation Costs in the circumstances.

(f) If the Principal gives a notice under clause 29.3(d)(ii):

(i) the Modifications Working Group must, at the next Modifications Working Group meeting:

(A) discuss OpCo2's estimate of Third Party Preparation Costs; and

(B) use their reasonable endeavours to agree on a mutually acceptable estimate of Third Party Preparation Costs, taking into account any

assessment of Third Party Preparation Costs prepared by the Independent Assessor; and

(ii) if the parties agree on a mutually acceptable estimate of Third Party Preparation Costs, that agreed estimate will be the TPPC Cap.

(g) OpCo2's only entitlement to be reimbursed for costs incurred in:

(i) preparing a Modification Impact Proposal; and

(ii) performing its obligations under clauses 29.4 (*Tender for works*), 29.5(a)(ii) or 29.6 (*Principal rejects Modification Impact Proposal*),

is as set out in this clause 29.3 (*Cost of preparing Modification Impact Proposal*) and Schedule 29 (*Net Financial Impact*).

29.4 **Tender for works**

(a) Subject to clause 29.4(aa), the Principal may, in a Modification Impact Request or otherwise, require OpCo2 to carry out a tender process for all or part of the works which would be required to effect a Modification.

(aa) The parties acknowledge and agree that:

(i) this clause 29.4 (*Tender for works*) does not apply in respect of the Phase 2 Installation Works and any Modification Impact Request issued by the Principal in respect of the Phase 2 Installation Works; and

(ii) clause 13B (*Phase 2 Installation Works*) will apply in relation to the tender process for the Phase 2 Installation Works.

(b) If OpCo2 is required to carry out a tender process in accordance with clause 29.4(a), OpCo2 must:

(i) carry out the tender process promptly and in accordance with this clause 29.4 (*Tender for works*) and the Principal's reasonable requirements; and

(ii) permit the Principal to review all materials that are submitted in the tender process and provide any other information that the Principal reasonably requires.

(c) Subject to clause 29.4(d), within 10 Business Days of completion of the tender process (or such longer period as is agreed by the Principal (acting reasonably)), OpCo2 must:

(i) if OpCo2 has not yet submitted a Modification Impact Proposal, submit a Modification Impact Proposal in accordance with clause 29.2 (*Modification Impact Proposal*); and

(ii) if OpCo2 has submitted a Modification Impact Proposal before the completion of the tender process (including OpCo2's estimated cost of the Tendered Works), submit an appropriately amended Modification Impact Proposal,

having regard to the outcome of the tender process (including the tendered price).

(d) If, following completion of the tender process, the Principal is not reasonably satisfied:

(i) that the subcontractor that OpCo2 intends to select is the best choice having regard to:

(A) the price quoted for the Tendered Works in the prevailing market conditions;

(B) the experience and capability of that subcontractor in the context of the Tendered Works; and

(C) the ability of the subcontractor to carry out the work in respect of the Tendered Works in the manner required by this deed; or

(ii) that the tender process has been conducted in accordance with best procurement practice,

the Principal may, within 20 Business Days after receiving a Modification Impact Proposal or an amended Modification Impact Proposal in accordance with clause 29.4(c) (or such longer period as the Principal reasonably requires and notifies to OpCo2, having regard to the size and complexity of the Tendered Works):

(iii) direct OpCo2 not to accept any tender;

(iv) otherwise instruct OpCo2 not to proceed with the Tendered Works;

(v) proceed to implement the Tendered Works itself, through subcontractors selected by it; or

(vi) instruct OpCo2 to proceed with the Tendered Works, but on another basis.

(e) If the Principal gives OpCo2 an instruction or direction in accordance with clause 29.4(d):

(i) the Modifications Working Group must discuss the Principal's instruction or direction, and the consequences of such instruction or direction, at the next Modifications Working Group meeting; and

(ii) where appropriate, OpCo2 must submit an appropriately amended Modification Impact Proposal having regard to the Principal's instruction or direction as soon as practicable, and in any event within 15 Business Days (or such longer period as is agreed by the Principal acting reasonably), after receiving the Principal's instruction or direction.

29.5 **Election by the Principal**

[redacted]

[redacted]

(b) Within 20 Business Days (or such longer period as agreed between the parties, having regard to the size and complexity of the proposed Modification) after receiving a Modification Impact Proposal, the Principal must do one of the following:

(i) accept the Modification Impact Proposal by issuing a Modification Order directing OpCo2 to implement the Modification in accordance with clause 29.12 (*OpCo2 to implement Modification*);

(ii) notify OpCo2 that it accepts one or more parts or components of the Modification Impact Proposal and either:

(A) where that part or component of the Modification Impact Proposal:

(aa) is a standalone part or component or can be separately identified; and

(bb) can be implemented by OpCo2 without impacting on another part or component of the proposed Modification,

issue a Modification Order directing OpCo2 to implement that part or component of the Modification in accordance with clause 29.12 (*OpCo2 to implement Modification*); or

(B) where that part or component of the Modification Impact Proposal:

(aa) is not a standalone part or component or cannot be separately identified; or

(bb) cannot be implemented by OpCo2 without impacting on another part or component of the proposed Modification,

request OpCo2 to provide, within 10 Business Days of receiving the notice (or such longer period as the Principal may agree), an updated Modification Impact Proposal in accordance with 29.2(a) in relation to that part or component of the Modification only (and the updated Modification Impact Proposal must include a detailed explanation regarding any adjustment to the time or cost required to carry out that part or component of the Modification as compared to that set out in the original Modification Impact Proposal);

(iii) if the Principal has not already done so, issue a Modification Order directing OpCo2 to implement a change referred to in paragraph (f) of the definition of Modification in respect of the proposed Modification;

(iv) issue a notice to OpCo2 in accordance with clause 29.6 (*Principal rejects Modification Impact Proposal*) rejecting the Modification Impact Proposal; or

(v) notify OpCo2 that it does not wish to proceed with the proposed Modification; or

(vi) notify OpCo2 that it wishes to amend the proposed Modification, providing full details of the proposed amendments, and request that OpCo2 provide, within 15 Business Days (or such longer period as is agreed by the parties (acting reasonably)), a revised Modification Impact Proposal in accordance with clause 29.2(a) that reflects the amendments to the proposed Modification,

and if the Principal does not provide a response within 20 Business Days (or such longer period as agreed between the parties), the Principal will be deemed to have given a notice under clause 29.5(b)(v).

(c) If clause 29.5(b)(ii) applies and the Principal accepts one or more components of a Modification Impact Proposal in response to a Modification Impact Request issued by the Principal pursuant to clause 29.1(a)(ii), the Principal must issue to OpCo2 a Modification Impact Request for that part or component of the Modification that is not accepted by the Principal and clause 29.2 (*Modification Impact Proposal*) will apply.

29.6 **Principal rejects Modification Impact Proposal**

(a) If the Principal issues a notice rejecting the Modification Impact Proposal in accordance with clause 29.5(b)(iv), the Principal:

(i) must set out the reasons why the Modification Impact Proposal was rejected; and

(ii) may, in its absolute discretion, require any of the following:

(A) that OpCo2 revise the Modification Impact Proposal to address the reasons identified in the notice and, within 15 Business Days (or such longer period as is agreed by the Principal (acting reasonably)), provide the Principal with the revised Modification Impact Proposal;

(B) that the parties consult in accordance with clause 29.6(b) regarding the issues raised in the notice; and/or

(C) that OpCo2 conduct a tender process (to the extent it has not already done so) under clause 29.4 (*Tender for works*).

(b) If required by the Principal in a notice given pursuant to clause 29.6(a)(ii)(B), the Modifications Working Group must, at the next Modifications Working Group meetings (or as many additional meetings as agreed by the parties):

(i) discuss the Modification Impact Proposal and the reasons why it was rejected by the Principal (as set out in the Principal's notice); and

(ii) use their reasonable endeavours to agree on a mutually acceptable resolution to the matters set out in the Modification Impact Proposal which are in dispute.

29.7 **Parties reach agreement**

If the parties reach agreement under clause 29.6(b) on the disputed matters in the Modification Impact Proposal, the Principal may either:

(a) issue a Modification Order directing OpCo2 to implement the Modification on the basis of the Modification Impact Proposal, as varied by the agreement of the parties, in accordance with clause 29.12 (*OpCo2 to implement Modification*); or

(b) require that OpCo2 revise the Modification Impact Proposal to reflect the agreement of the parties and, within 15 Business Days (or such longer period as is agreed by the Principal (acting reasonably)), resubmit the revised Modification Impact Proposal and clause 29.2 (*Modification Impact Proposal*) will re-apply.

29.8 **If parties fail to reach agreement**

If the parties are unable to reach agreement under clause 29.6(b):

(a) the Principal; or

(b) where the proposed Modification is the result of a Phase 2 Change Event, OpCo2,

may refer the matter for dispute resolution in accordance with clause 56 (*Dispute resolution*).

29.9 **Principal may direct that Modification proceed**

(a) If the matter is referred for dispute resolution under clause 29.8 (*If parties fail to reach agreement*), the Principal's Representative may also direct OpCo2 to implement the Modification by issuing a Modification Order whether or not any matters in dispute have been agreed in accordance with clause 56 (*Dispute resolution*).

(b) If the Principal's Representative issues such a Modification Order:

(i) any disputed matters will, until the Principal and OpCo2 otherwise agree or a determination is made in accordance with clause 56 (*Dispute resolution*), be reasonably determined by the Principal's Representative. In making his or her determination, the Principal's Representative will:

(A) assume that funding for the Modification will be provided by the Principal, unless the parties otherwise agree; and

(B) determine all matters required to enable the Modification to be implemented;

(ii) OpCo2 must proceed to implement the Modification:

(A) on the basis determined by the Principal's Representative (notwithstanding that any matters in dispute have not been agreed or determined in accordance with clause 56 (*Dispute resolution*)); and

(B) in accordance with clause 29.12 (*OpCo2 to implement Modification*); and

(iii) any necessary adjustments will be made following the determination of a dispute under clause 56 (*Dispute resolution*) (where applicable).

29.10 **Principal options following determination**

Following determination of the disputed matters referred to in clause 29.8 (*If parties fail to reach agreement*), the Principal may, only if it has not already exercised its right under clause 29.9 (*Principal may direct that Modification proceed*), either:

(a) issue a Modification Order directing OpCo2 to implement the Modification in accordance with the Modification Impact Proposal as varied by the determination; or

(b) withdraw the proposed Modification by written notice to OpCo2.

29.11 **Instruction to proceed**

(a) Whether or not:

(i) the Principal has issued a Modification Impact Request under clause 29.1(a); or

(ii) OpCo2 has submitted a Modification Impact Proposal under 29.2(a) in response to a Modification Impact Request,

the Principal's Representative may at any time instruct OpCo2 to implement a Modification by issuing a Modification Order. In these circumstances and other than where [redacted] applies, the Principal's Representative will determine (acting reasonably):

(iii) OpCo2's entitlement to payment for implementation of the Modification;

(iv) if the Modification is proposed to be carried out during the Delivery Phase, the effect which the proposed Modification will have on the Delivery Program (including any extension of time required to the Date for Completion of Phase 1, the Date for Completion of Phase 2, a Milestone Date for Completion or a Date for Acceptance, as applicable); and

(v) any relief which is required from OpCo2's obligations under this deed to ensure that it is left in a no better and no worse position than it would be in if the Modification were not implemented,

until the Principal and OpCo2 agree otherwise or a determination is made in accordance with clause 56 (*Dispute resolution*).

(b) In making his or her determination, the Principal's Representative will:

(i) assume that funding for the Modification will be provided by the Principal, unless the parties otherwise agree; and

(ii) determine all matters required to enable the Modification to be implemented.

(c) If OpCo2 disagrees with a matter determined by the Principal's Representative:

(i) OpCo2 may refer the matter for dispute resolution in accordance with clause 56 (*Dispute resolution*);

(ii) OpCo2 must proceed to implement the Modification:

(A) in accordance with clause 29.12 (*OpCo2 to implement Modification*); and

(B) on the basis determined by the Principal's Representative notwithstanding that the matters in dispute have not been agreed or determined in accordance with clause 56 (*Dispute resolution*); and

(iii) any necessary adjustments will be made following any agreement or determination under clause 56 (*Dispute resolution*).

29.12 **OpCo2 to implement Modification**

If the Principal's Representative gives a Modification Order pursuant to clause 29.5(b)(i), 29.5(b)(ii)(A), 29.7(a), 29.10(a) or 29.11(a):

(a) OpCo2 must:

(i) implement the Modification in accordance with the Modification Order and the requirements of this deed; and

(ii) notify the Principal when it believes that the Modification has been completed;

(b) OpCo2 will be relieved of its obligations under this deed to the extent specified in the Modification Order;

(c) the Date for Completion of Phase 1, the Date for Completion of Phase 2, a Milestone Date for Completion or a Date for Acceptance, as applicable, will be extended as specified in the Modification Order; and

(d) OpCo2 will be entitled to payment of:

(i) the Agreed Modification Cost in accordance with the agreed Modification Payment Schedule; or

(ii) the Net Financial Impact calculated and paid in accordance with Schedule 29 (*Net Financial Impact*),

each as adjusted in accordance with clause 29.9(b)(iii) or 29.11(c)(iii) (where applicable).

29.13 **Omissions**

(a) If a Modification omits any part of the OTS2 Works or OpCo2's Activities, the Principal may carry out those omitted OTS2 Works or OpCo2's Activities itself or by engaging an Other Contractor, the ETS Contractor or a Foundation Infrastructure Works Contractor, provided that the Principal may not propose a Modification that:

(i) omits all, or substantially all, of the OTS2 Works or OpCo2's Activities; or

(ii) omits OTS2 Works or OpCo2's Activities, where such omission would or may:

(A) put OpCo2 (or any Core Contractor) in breach of its obligations as a Rail Infrastructure Manager or Rolling Stock Operator under the Rail Safety National Law and Rail Safety Regulations; or

(B) jeopardise the Accreditation of OpCo2 (or any Core Contractor), or an application for Accreditation by OpCo2 (or any Core Contractor), including anything that may be grounds for the ONRSR to refuse an application for Accreditation by OpCo2 (or any Core Contractor), or to suspend or revoke (in whole or in part) or impose or vary conditions or restrictions on the Accreditation of OpCo2 (or any Core Contractor).

(b) The Principal must ensure that it and any Other Contractor, ETS Contractor or Foundation Infrastructure Works Contractor it engages to carry out those omitted OTS2 Works or OpCo2's Activities:

(i) cooperates with OpCo2 and the Core Contractors in relation to OpCo2's (or any Core Contractor's) compliance with its Accreditation obligations under the Rail Safety National Law and Rail Safety Regulations;

(ii) does not put OpCo2 (or any Core Contractor) in breach of its obligations as a Rail Infrastructure Manager or Rolling Stock Operator under the Rail Safety National Law and Rail Safety Regulations;

(iii) complies with all reasonable requirements of OpCo2 (or any Core Contractor) in relation to compliance with the Accreditation of OpCo2 (or any Core Contractor); and

(iv) does not do anything (or fail to do anything) which jeopardises the Accreditation of OpCo2 (or any Core Contractor) or an application for Accreditation by OpCo2 (or any Core Contractor), including anything that may be grounds for the ONRSR to refuse an application for Accreditation by OpCo2 (or any Core Contractor), or to suspend or revoke (in whole or in part) or impose or vary conditions or restrictions on the Accreditation of OpCo2 (or any Core Contractor).

29.14 **No liability unless Modification Order**

OpCo2 will not be entitled to make any Claim against the Principal arising out of, or in any way in connection with, any Modification, except where OpCo2 is directed to implement a Modification pursuant to a Modification Order issued by the Principal under this clause 29 (*Principal initiated Modifications*) or where clauses 29.3 (*Cost of preparing Modification Impact Proposal*) or 57.1 (*Notice of Modification*) apply.

29.14A **Principal's right to withdraw or not proceed with Modification for Phase 2 Change Event**

Subject to clause 29.16 (*Reduction, decrease, omission of OpCo2's Activities with respect to Phase 2*) and without prejudice to the Principal's right to issue a Modification to reduce, decrease or omit all or any part of OpCo2's Activities with respect to Phase 2 as contemplated in that clause, the Principal's right to withdraw a Modification Impact Request in accordance with clause 29.1(f)(ii), withdraw a proposed Modification in accordance with clause 29.10(b) or not proceed with a proposed Modification in accordance with clause 29.5(b)(v) will not apply where the Modification Impact Request is issued pursuant to clause 29.1(a)(ii) or clause 29.5(c).

29.15 **Contract Service Level Requirements**

(a) The parties acknowledge that the Principal is considering the implementation of a Modification to amend the Contract Service Level Requirements outside the Service Change Limitations in accordance with the parameters set out in Schedule 44 (*Line capacity, Headway and Fleet size Modification*).

(b) The Principal may at any time initiate discussions with OpCo2, or issue a Modification Impact Request, in respect of a proposal of this nature.

29.16 **Reduction, decrease or omission of OpCo2's Activities with respect to Sydney Metro Southwest**

(a) The Principal and OpCo2 acknowledge and agree that:

(i) they are both parties contracting at arms' length, have equal bargaining power, possess extensive commercial experience and expertise and are being advised by their own legal, accounting, technical, financial, economic and other commercial professionals in relation to their rights and obligations pursuant to this deed; and

(ii) it is in the contemplation of both parties that the Principal may, for any reason, issue a Modification to reduce, decrease or omit all or any part of OpCo2's Activities with respect to the Sydney Metro Southwest.

(b) OpCo2 agrees that if the Principal issues any Modification contemplated under clause 29.16(a)(ii), OpCo2 or any of its Associates will not have any Claim against the Principal arising out of or in connection with the Principal's right to issue the Modification contemplated under clause 29.16(a)(i) and this deed may be pleaded as a bar to any suit, action or legal proceeding by OpCo2 or any of its Associates against the Principal or any of its Associates in respect of any Claim or Liability described in this clause 29.16(b).

30. OPCO2 INITIATED MODIFICATIONS

30.1 OpCo2 may propose a Modification

Subject to OpCo2 complying with clause 28A.8 (*Consultation with Foundation Infrastructure Works Contractors*), OpCo2 may propose a Modification by giving a written notice with details of:

(a) the proposed Modification;

(b) the reason for the proposed Modification, including whether the proposed Modification is required to ensure that the OTS2 Works, Temporary Works or the Sydney Metro comply with a Change in Law or a Change in NSW Government Policy;

(c) the time within, and the manner in which, OpCo2 proposes to implement the proposed Modification;

(d) the effect the proposed Modification will have on the Delivery Program (including any extension of time required to the Date for Completion of Phase 1, the Date for Completion of Phase 2, a Milestone Date for Completion or a Date for Acceptance, as applicable);

(e) any Approvals required to implement the proposed Modification, and the effect of the proposed Modification on any existing Approvals;

(f) the effects which the proposed Modification will have on OpCo2's ability to satisfy its obligations under this deed (including any warranties given by OpCo2 under this deed);

(g) the effect (if any) which the proposed Modification will have on the Foundation Infrastructure Works, including;

(i) whether OpCo2 will, or is likely to, request the Principal to procure a Foundation Infrastructure Works Change in accordance with clause 14A.4 (*OpCo2 initiated Foundation Infrastructure Works Change*) as a result of or in connection with the proposed Modification, and if so, a description of the required Foundation Infrastructure Works Change(s);

(ii) the additional costs (if any) that each Foundation Infrastructure Works Contractor will, or is likely to, incur as a result of the proposed Modification;

(iii) the effect (if any) that the proposed Modification will, or is likely to, have on each Foundation Infrastructure Works Contractor's delivery program (including any extension of time required to a date for completion under the relevant Foundation Infrastructure Works Contract); and

(iv) the effect (if any) that the proposed Modification will, or is likely to, have on each Foundation Infrastructure Works Contractor's ability to satisfy their respective obligations under the relevant Foundation Infrastructure Works Contract;

(h) the effect (if any) which the proposed Modification will, or is likely to, have on the OTS2 PPP and a description of how OpCo2 proposes to manage those effects; and

(i) the value for money for the Principal arising from the Modification, including the proposed cost savings to be paid to the Principal.

30.2 **Principal may approve or reject**

(a) If OpCo2 gives a notice under clause 30.1 (*OpCo2 may propose a Modification*), the Principal:

(i) must consider OpCo2's proposed Modification in good faith; and

(ii) subject to clause 30.3 (*Modification required as a result of a Change in Law or Change in NSW Government Policy*), must, within 20 Business Days of receiving the notice (or such longer period as the Principal reasonably requires and notifies to OpCo2, having regard to the size and complexity of the proposed Modification) and in its absolute discretion, either:

(A) approve (with or without conditions) the proposed Modification in its absolute discretion by issuing a Modification Approval to OpCo2;

(B) notify OpCo2 that the proposed Modification is not approved, in which case the notice:

(aa) must set out the reasons why the proposed Modification is not approved; and

(bb) may request that OpCo2 revise the proposed Modification to address the reasons identified in the notice and resubmit the proposed Modification in accordance with clause 30.1 (*OpCo2 may propose a Modification*); or

(C) reject the proposed Modification in its absolute discretion.

(b) The Principal will be under no obligation to approve the proposed Modification in accordance with clause 30.2(a)(ii)(A) for the convenience of or to assist OpCo2.

(c) If the Principal gives OpCo2 a notice in accordance with clause 30.2(a)(ii)(B), the Modifications Working Group must, at the next Modifications Working Group meeting (or as many additional meeting as agreed by the parties):

(i) discuss the proposed Modification and the reasons why the proposed Modification was not approved (as set out in the Principal's notice); and

(ii) use their reasonable endeavours to agree on a mutually acceptable resolution to the matters set out in the Principal's notice.

(d) If the Modifications Working Group agree in accordance with clause 30.2(b) on a mutually acceptable resolution to the matters set out in the Principal's notice, then the Principal may either:

(i) approve (with or without conditions) the proposed Modification, as varied by the agreement of the parties, by issuing a Modification Approval to OpCo2; or

(ii) request OpCo2 to revise the proposed Modification to reflect the agreement of the parties and resubmit the proposed Modification in accordance with clause 30.1 (*OpCo2 may propose a Modification*).

(e) If the Modifications Working Group are unable to reach agreement in accordance with clause 30.2(c), the proposed Modification will be deemed to have been rejected by the Principal (unless otherwise agreed by the parties).

(f) At any time after the Principal receives a notice from OpCo2 under clause 30.1 (*OpCo2 may propose a Modification*), the Principal may, in its absolute discretion, require the Independent Assessor to provide an independent assessment of:

(i) a reasonable time period for implementation of the proposed Modification;

(ii) if the Modification is proposed to be carried out during the Delivery Phase, the effect the proposed Modification will have on the Delivery Program (including whether any extension of time would be required to the Date for Completion of Phase 1, the Date for Completion of Phase 2, a Milestone Date for Completion or a Date for Acceptance, as applicable);

(iii) the effects (if any) which the proposed Modification will have on OpCo2's ability to satisfy its obligations under this deed (including any warranties given by OpCo2 under this deed); and

(iv) the value for money for the Principal arising from the proposed Modification, including the proposed cost savings (if any) to be paid to the Principal.

(g) If the Principal issues a Modification Approval under clause 30.2(a)(ii)(A) or 30.2(d)(i) without conditions:

(i) OpCo2 must proceed to implement the Modification on the basis set out in the Modification Approval; and

(ii) OpCo2 will be relieved of its obligations under this deed to the extent specified in the Modification Approval.

(h) If the Principal issues a Modification Approval under clause 30.2(a)(ii)(A) or 30.2(d)(i) with conditions, OpCo may either:

(i) give notice to the Principal accepting the conditions attached to the Modification Approval and proceed to implement the Modification on the basis set out in the Modification Approval, in which case OpCo2 will be relieved of its obligations under this deed to the extent specified in the Modification Approval; or

(ii) withdraw the proposed Modification if OpCo2, acting reasonably, does not accept any of the conditions attached to the Modification Approval.

30.3 **Modification required as a result of a Change in Law or Change in NSW Government Policy**

(a) To the extent that any Modification requested by OpCo2 is required to ensure that the OTS2 Works, Temporary Works or the Sydney Metro comply with a Change in Law or a Change in NSW Government Policy, the Principal must, in its discretion, either:

(i) approve the Modification proposed by OpCo2 by issuing a Modification Approval;

(ii) direct OpCo2 to carry out a Modification in accordance with clause 29 (*Principal initiated Modifications*) to ensure that the OTS2 Works, the Temporary Works or the Sydney Metro comply with the Change in Law or Change in NSW Government Policy; or

(iii) take such other action as the Principal considers necessary to ensure the OTS2 Works, the Temporary Works or the Sydney Metro comply with the Change in Law or Change in NSW Government Policy.

(b) If the Principal approves or directs a Modification in accordance with clause 30.3(a)(i) or clause 30.3(a)(ii):

(i) OpCo2 must proceed to implement the Modification on the basis of OpCo2's notice under clause 30.1 (*OpCo2 may propose a Modification*) or in accordance with clause 29 (*Principal initiated Modifications*); and

(ii) if the Modification is required to ensure that the OTS2 Works, the Temporary Works or the Sydney Metro comply with a Compensable Change in Law or a Compensable Change in NSW Government Policy, clause 17.9A (*Determination and grant of extension of time – Completion of Phase 1*) or 17.10 (*Determination and grant of extension of time –Completion of Phase 2*) and clause 26 (*Compensation Events*) will apply.

30.4 **OpCo2 to bear risks and costs**

Unless otherwise agreed in writing by the Principal and subject to clause 30.3(b)(ii), OpCo2 will:

(a) bear all risks and costs associated with a Modification proposed by OpCo2;

(b) be responsible for managing the proposed Modification, including with the relevant Foundation Infrastructure Works Contractor where a Modification proposed by OpCo2 impacts the Foundation Infrastructure Works; and

(c) not be entitled to make any Claim against the Principal arising out of, or in any way in connection with, a Modification proposed by OpCo2,

including where the Principal issues a Modification Approval in relation to such Modification.

31. **PRE-AGREED OPTIONS**

(a) The Principal may at any time prior to the relevant Election Date, in its absolute discretion and without being under any obligation to do so, direct any Pre-Agreed Option by giving notice to OpCo2.

(b) If a notice is given pursuant to clause 31(a) in respect of a Pre-Agreed Option by the relevant Election Date:

(i) OpCo2 must implement the Pre-Agreed Option with effect from the relevant Effective Date;

(ii) in respect of a Pre-Agreed Option other than an Option 1 Trains Option, this deed will be deemed to be amended in accordance with the relevant amendments set out in Schedule 30 (*Pre-Agreed Options*) with effect from the relevant Effective Date; and

(iii) in respect of the Option 1 Trains Option, this deed will be deemed to be amended in accordance with the relevant amendments set out in Part A of Schedule 30A (*Pre-Agreed Options - Trains*) and the parties agree to comply with the terms of Part A of Schedule 30A (*Pre-Agreed Options - Trains*)with effect from the relevant Effective Date.

(c) The Principal will not:

(i) issue a Modification Impact Request or direct a Modification under clause 29 (*Principal initiated Modifications*); or

(ii) issue a Notice of Augmentation Objectives under clause 33 (*Augmentations*),

that involves the same change to the Delivery Activities, OTS2 Works, the Sydney Metro or the Operations Activities as a Pre-Agreed Option, before the Election Date for the relevant Pre-Agreed Option.

(d) Subject to clause 31(c), nothing in this clause 31 (*Pre-Agreed Options*) prevents the Principal from:

(i) issuing a Modification Impact Request or directing a Modification under clause 29 (*Principal initiated Modifications*);

(ii) issuing a Notice of Augmentation Objectives under clause 33 (*Augmentations*);

(iii) carrying out Proximate Work Activities under clause 34 (*Proximate Work Activities*); or

(iv) engaging an Other Contractor or the ETS Contractor to carry out any works,

that involves the same (or similar) changes to the Delivery Activities, OTS2 Works, the Sydney Metro or the Operations Activities as a Pre-Agreed Option, whether before or after the relevant Election Date.

[redacted]

32. TRANSPORT PLANNING

(a) OpCo2 acknowledges that the State or any Authority may make policy decisions in relation to the development and implementation of transport planning in New South Wales as it sees fit. Nothing in the Project Agreements restricts this.

(b) OpCo2 must participate as reasonably required by the Principal in the development and implementation of transport planning. This participation may involve:

(i) attending meetings, consultation forums and other similar events;

(ii) reviewing and contributing to the development of proposals and strategies put forward by the State or other transport operators and stakeholders;

(iii) providing comments on the impact of proposals and strategies on the Sydney Metro; and

(iv) cooperating in good faith in the implementation of the Principal's and Transport for NSW's public transport policy objectives, as notified to OpCo2.

(c) OpCo2 will have no entitlement to make any Claim against the Principal or the State with respect to any consequence of the State, the Principal or any Authority exercising, or not exercising, any right or power in relation to the development and implementation of transport planning in New South Wales, except as expressly provided in this deed.

33. AUGMENTATIONS

33.1 Flexible process

Schedule 46 (*Augmentation*) sets out a process by which Augmentations can be discussed and, potentially, agreed. The parties may agree alternative arrangements for discussing and reaching agreement upon a proposed Augmentation.

33.2 Not used

33.3 Not used

33.4 Not used

33.5 Not used

33.6 Not used

33.7 Not used

33.8 Not used

33.9 Termination in connection with an Augmentation

The Principal may terminate this deed pursuant to clause 42.7 (*Voluntary termination by the Principal*) if the parties are unable to reach agreement on any matters that are the subject of Schedule 46 (*Augmentation*). This clause does not in any way limit the Principal's right to terminate this deed at any time pursuant to clause 42.7 (*Voluntary termination by the Principal*).

33.10 **No limitation**

This clause 33 (*Augmentations*) and Schedule 46 (*Augmentation*) does not limit any of the Principal's other rights under this deed.

33.11 **Not used**

34. **PROXIMATE WORK ACTIVITIES**

34.1 **Right to carry out Proximate Work Activities**

Subject to this clause 34 (*Proximate Work Activities*), the Principal (or its nominees) may carry out Proximate Work Activities, including to:

(a) build and connect an Augmentation;

(b) fit out or alter any Station;

(c) build an additional connection between the Sydney Metro and its local environment, including by developing an additional exit and entrance to a Station;

(d) build, operate and maintain a retail, commercial or residential development and associated infrastructure above, below or adjacent to the Sydney Metro;

(e) close off areas, including to prevent public access;

(f) open up any areas that are closed off;

(g) install, operate and maintain equipment;

(h) install Utility Services and connect to existing Utility Services (including those under the control of OpCo2);

(i) build, connect, operate and maintain any other infrastructure or improvement above, below or adjacent to the Sydney Metro; and

(j) carry out any associated work.

34.2 **Proposed Proximate Work Activity**

If the Principal (or its nominees) proposes to undertake a Proximate Work Activity:

(a) the Principal must give OpCo2 reasonable written notice of its intention to do so; and

(b) OpCo2 must co-operate with the Principal (and its nominees) to enable the Principal to plan the undertaking of the Proximate Work Activity.

34.3 **Carrying out Proximate Work Activities**

If the Principal (or its nominees) carries out any Proximate Work Activity:

(a) OpCo2 must:

(i) comply with its obligations under clause 9.11 (*Cooperation and coordination with Other Contractors*);

(ii) assist the Principal in ensuring that any works constructed as part of the Proximate Work Activity are compatible with the Sydney Metro and the ETS;

(iii) subject to and in accordance with clause 29 (*Principal initiated Modifications*), allow the Principal to adjust the OTS2 Works, the Temporary Works or the Sydney Metro to interface with any works constructed as part of the Proximate Work Activity;

(iv) co-operate with the Principal and its nominees to facilitate the undertaking of the Proximate Work Activity, including permitting reasonable temporary closure of parts of the Sydney Metro Site, managing passengers and others in areas affected by the Proximate Work Activity and rescheduling or otherwise adjusting OpCo2's Activities; and

(v) do anything which the Principal reasonably requires in order to give full effect to this clause 34.3(a) (including executing any document or entering into an agreement with a third party on terms which the Principal's Representative considers to be commercially reasonable);

(b) the Principal must, and must procure that its nominees:

(i) cooperate with OpCo2 to facilitate the carrying out of OpCo2's Activities;

(ii) liaise with OpCo2 and use reasonable efforts to schedule the Proximate Work Activities at a time and in a way that minimises the impact on OpCo2's Activities; and

(iii) observe all reasonable safety and security constraints notified by OpCo2; and

(c) the Principal must ensure that the Principal and its nominees:

(i) cooperate with OpCo2 and the Core Contractors in relation to OpCo2's (or any Core Contractor's) compliance with its Accreditation obligations under the Rail Safety National Law and Rail Safety Regulations;

(ii) do not put OpCo2 (or any Core Contractor) in breach of its obligations as a Rail Infrastructure Manager or Rolling Stock Operator under the Rail Safety National Law and Rail Safety Regulations;

(iii) comply with all reasonable requirements of OpCo2 (or any Core Contractor) in relation to compliance with the Accreditation of OpCo2 (or any Core Contractor); and

(iv) do not do anything (or fail to do anything) which jeopardises the Accreditation of OpCo2 (or any Core Contractor) or an application for Accreditation by OpCo2 (or any Core Contractor), including anything that may be grounds for the ONRSR to refuse an application for Accreditation by OpCo2 (or any Core Contractor), or to suspend or revoke (in whole or in part) or impose or vary conditions or restrictions on the Accreditation of OpCo2 (or any Core Contractor).

34.3A **No claim**

Subject to paragraph (o) of the definition of Compensation Event, the Principal will not be liable upon any Claim by OpCo2 arising out of or in any way in connection with any Proximate Work Activities.

34.4 **Not used**

34.5 **No limitation**

This clause 34 (*Proximate Work Activities*) does not limit the Principal's other rights under this deed.

35. **CHANGE IN LAW**

35.1 **Non-compensable changes in law**

Subject to clause 35.2 (*Compensable Change in Law*), OpCo2 will be liable for the consequences of, and will have no Claim against the Principal arising out of or in any way in connection with, a change in law.

35.2 **Compensable Change in Law**

Subject to clauses 17 (*Time*) and 26 (*Compensation Events*) and Schedule 29 (*Net Financial Impact*), OpCo2 will be entitled to compensation for a Compensable Change in Law.

35.3 **Beneficial Change in Law**

Where there is a Change in Law which results in a positive Net Financial Impact, OpCo2 must pay [redacted]% of the amount of the Net Financial Impact to the Principal.

35.4 **Not used**

35.5 **Implementation of Change in Law**

To the extent it is able to do so, on reasonable request, the Principal must use reasonable endeavours (without having to incur additional cost) to avail OpCo2 of any relief, implementation arrangements or programs which are extended to the Principal in respect of compliance with any Change in Law other than a Compensable Change in Law.

35A **NSW GOVERNMENT POLICY**

35A.1 **OpCo2 to comply with NSW Government Policy**

Subject to clauses 35A.2 (*OpCo2 to notify*) and 35A.3 (*Principal's Direction*), OpCo2 must comply with all NSW Government Policies, as published from time to time, which apply to OpCo2's Activities (unless the Principal directs otherwise).

35A.2 **OpCo2 to notify**

OpCo2 must promptly notify the Principal of any Change in NSW Government Policy which applies to OpCo2's Activities.

35A.3 **Principal's Direction**

(a) Upon receipt of any notification from OpCo2 under clause 35A.2 (*OpCo2 to notify*), the Principal may in its absolute discretion direct OpCo2 to:

(i) implement the changes required for OpCo2 to comply with its obligation under clause 35A.1 (*OpCo2 to comply with NSW Government Policy*); or

(ii) not implement any changes, notwithstanding the Change in NSW Government Policy,

provided that if OpCo2 is required by law to comply with a Change in NSW Government Policy as a result of the Change in NSW Government Policy not because of a Change in Law, then the Principal must issue a direction under paragraph (a)(i).

(b) Notwithstanding any other provisions within this deed, OpCo2 must not, and is not required to, implement any changes as a result of a Change in NSW Government Policy unless a Direction has been issued by the Principal under clause 35A.3(a)(i).

35A.4 **Compensation for Compensable Change in NSW Government Policy**

Subject to clauses 17 (*Time*) and 26 (*Compensation Events*) and Schedule 29 (*Net Financial Impact*), where the Principal has issued a Direction under clause 35A.3(a)(i), OpCo2 will be entitled to compensation for a Compensable Change in NSW Government Policy.

35A.5 **Beneficial Change in NSW Government Policy**

Where there is a Compensable Change in NSW Government Policy which results in a positive Net Financial Impact and the Principal has issued a Direction under clause 35A.3(a)(i), OpCo2 must pay [redacted]% of the amount of the Net Financial Impact to the Principal.

36. **REINSTATEMENT OF LOSS OR DAMAGE**

36.1 **Reinstatement**

(a) If any part of:

(i) the OTS2 Works, the Temporary Works and the Construction Site;

(ii) a portion of the Foundation Infrastructure Works for which OpCo2 is responsible in accordance with clause 14A.11 (*Care and maintenance of the Foundation Infrastructure Works*);

(iii) the Sydney Metro Northwest, after the OTS Incorporation Date;

(iv) the Sydney Metro City, after the Date of Completion of Phase 1;

(v) the Sydney Metro Southwest, after the Date of Completion of Phase 2;

(vi) the Licensed Maintenance Area after the relevant Date of Completion; or

(vii) unfixed goods and materials (whether on or off the Sydney Metro Site), including anything brought on to the Sydney Metro Site by an OpCo2 Contractor, used or to be used in carrying out OpCo2's Activities,

is lost, damaged or destroyed (other than as a result of Graffiti or Vandalism), OpCo2 must:

(viii) promptly provide the Principal's Representative with written notice of any such loss, damage or destruction and any required reinstatement or repair (if such loss, damage or destruction is material);

(ix) if paragraph (viii) applies, consult with the Principal's Representative as to the programming of the works needed to effect the relevant reinstatement or repair;

(x) promptly reinstate or otherwise make good the loss, or repair the damage, so that OpCo2 continues to comply with its obligations under the Project Agreements to the greatest extent possible, provided that where clause 39.3(b) applies, OpCo2 will be obliged to reinstate or otherwise make good the loss, or repair the damage only if the Principal elects to pay OpCo2 under clause 39.3(b)(i); and

(xi) if paragraph (viii) applies, keep the Principal's Representative fully informed of the progress of the reinstatement and repair activities.

(b) To the extent that the loss, damage or destruction arises from any of the following events:

(i) war (declared or undeclared), armed conflict, riot, civil commotion;

(ii) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel not caused by OpCo2 or its Associates;

(iii) a breach of any Principal Project Agreement by the Principal;

(iv) any fraudulent, negligent or other wrongful act or omission or Wilful Misconduct of the State or the Principal or their Associates;

(v) during:

(A) the Initial Defects Period and the First Operations Period, a Foundation Infrastructure Works Defect; or

(B) the Second Operations Period, a TSE Defect, a Foundation Infrastructure Works Structural Defect or a PSD/MGF Systemic Defect,

in respect of which the Principal has:

(C) not provided an undertaking pursuant to clause 14B.2(d)(vi);

(D) provided an undertaking pursuant to clause 14B.2(d)(vi) and has not rectified; or

(E) not directed a Modification as referred to in clause 14B.2(d)(vii);

(vi) an OTS Civil Works Defects in respect of which the Principal has not directed a Modification as referred to in clause 14.11(b)(ii);

(vii) an ECRL Latent Condition;

(viii) an Existing Asset Defect; or

(ix) the occurrence of an event described in clause 16.1(d) of Schedule 2 (*Service Payment calculation*),

then the Principal must pay OpCo2 the reasonable cost of carrying out the reinstatement or repair work (to the extent the Insurance Proceeds, if any, are insufficient).

36.2 **Not used**

36.3 **Direction by the Principal to reinstate to different specifications**

The Principal may require OpCo2 to reinstate or repair the OTS2 Works or the Sydney Metro on the basis of different specifications or standards by directing a Modification pursuant to clause 29 (*Principal initiated Modifications*). The reinstatement or repair work will only constitute a Modification to the extent that it differs from what would have otherwise been required under this deed. The available Insurance Proceeds will be taken into account in calculating the Net Financial Impact of the Modification.

36.4 **Damage to third party property**

(a) Without limiting clause 37 (*Indemnity and liability exclusions*), but subject to clause 38.13(a), where any damage to or loss or destruction of real or personal property of a third party occurs which arises out of a breach by OpCo2 of this deed or a wrongful act or omission of OpCo2, OpCo2 must do one of the following (at the option of the relevant third party):

(i) promptly repair, replace or reinstate the damage, loss or destruction; or

(ii) reasonably compensate the third party.

(b) If OpCo2 fails to carry out the repair, replacement or reinstatement work or pay reasonable compensation within a reasonable time, the Principal may carry out the repair, replacement or reinstatement work or pay reasonable compensation and any Loss incurred by the Principal will be a debt due and payable from OpCo2 to the Principal.

37. **INDEMNITY AND LIABILITY EXCLUSIONS**

37.1 **Indemnity from OpCo2**

OpCo2 must indemnify the Principal, the State and each Rail Entity (each a **State Indemnified Party**) from and against:

(a) any Loss incurred by a State Indemnified Party in respect of:

(i) damage to, loss or destruction of, or loss of use of (whether total or partial), any real or personal property belonging to a State Indemnified Party; or

(ii) any claim against a State Indemnified Party (including by another State Indemnified Party) in respect of:

(A) any illness, personal injury to, or death of, any person; or

(B) damage to, loss or destruction of, or loss of use of or access to (whether total or partial), any real or personal property,

caused by, arising out of, or in any way in connection with OpCo2's Activities; or

(b) any Loss incurred by a State Indemnified Party arising out of or in any way in connection with:

(i) any breach or failure to comply with the terms of any Project Agreement by OpCo2; or

(ii) any fraudulent, negligent or other wrongful act or omission by OpCo2.

37.2 **Exclusions from indemnity**

OpCo2's liability under clause 37.1 (*Indemnity from OpCo2*) or under any other indemnity given by OpCo2 to or for the benefit of any person (**Indemnified Party**) under any Project Agreement will be reduced to the extent that the Loss arises from:

(a) any act or omission of any Indemnified Party or its Associates;

(b) a third party claim for pure economic loss arising solely as a result of:

(i) the decision by the State, Transport for NSW or the Principal to proceed with the Sydney Metro; or

(ii) the existence or location of the Sydney Metro;

(c) OpCo2 complying with express directions of the Principal or the Principal's Representative other than those given in accordance with clause 5.1(c); or

(d) loss of use of or access to (whether total or partial), any real or personal property, to the extent OpCo2 has not received the proceeds of Insurance (provided OpCo2 has complied with its insurance obligations under this deed and has diligently pursued all insurance claims under the Insurances available to it).

37.3 **Exclusion of Consequential or Indirect Loss**

(a) Consequential or Indirect Loss means any loss of income, loss of revenue, loss of profit, loss of financial opportunity, loss of business or loss of business opportunity, loss of contract, loss of goodwill, loss of use, loss of production or failure to realise anticipated savings (whether the loss is direct or indirect).

(b) Subject to clause 37.3(d), but otherwise despite any other provision of this deed, OpCo2 has no liability to any Indemnified Party (whether in contract, tort or otherwise, including under clause 37.1 (*Indemnity from OpCo2*) or under any other indemnity given by OpCo2 under any Project Agreement), nor will any Indemnified Party be entitled to make any Claim against OpCo2, in respect of Consequential or Indirect Loss incurred or sustained by the Indemnified Party as a result of any act or omission of OpCo2 (whether negligent or otherwise).

(c) Subject to clause 37.3(e), but otherwise despite any other provision of this deed, the Principal has no liability to OpCo2 (whether in contract, tort or otherwise), nor will OpCo2 be entitled to make any Claim against the Principal, in respect of Consequential or Indirect Loss incurred or sustained by OpCo2 as a result of any act or omission of the Principal (whether negligent or otherwise).

(d) Clause 37.3(b) does not operate to limit or restrict OpCo2's liability to an Indemnified Party in respect of Consequential or Indirect Loss:

(i) for any liquidated damages or amounts payable under clause 17.10A (*Liquidated damages and indemnity for delay*);

(ii) to the extent that OpCo2 has:

(A) recovered from a third party (including any subcontractor and whether by way of indemnity or otherwise); or

(B) would have recovered from a third party, had it diligently pursued a claim against the third party,

an amount in respect of that liability; and

(iii) to the extent that OpCo2:

(A) is indemnified in respect of that liability by a policy of insurance required under this deed; or

(B) would have been indemnified in respect of that liability by a policy of insurance required under this deed if OpCo2 had:

(aa) diligently pursued a claim under that policy of insurance;

(bb) complied with the terms and conditions of that policy of insurance; or

(cc) complied with its insurance obligations under this deed;

(iv) for Loss in respect of any liability of an Indemnified Party to a third party (including to another Indemnified Party), except to the extent that such liability arises in contract;

(v) for Loss arising from any criminal acts or fraud on the part of OpCo2 or an Associate of OpCo2;

(vi) for Loss arising from Wilful Misconduct on the part of OpCo2 or an Associate of OpCo2; or

(vii) to the extent to which, by law, the parties cannot limit or contract out of.

(e) Clause 37.3(c) does not operate to limit or restrict the Principal's liability to OpCo2 in respect of Consequential or Indirect Loss:

(i) in respect of a Compensation Event;

(ii) for the Construction Payment A, the Final Completion Payment, the CDPD Amount or the Service Payments payable under clause 25 (*Payment provisions*);

(iii) for the Phase 2 Construction Payments payable under clause 25B (*Phase 2 Construction Payments and Option 1 Trains Payment*);

(iv) for any interest payable under clause 25.10 (*Interest*);

(v) for any amount payable under clause 39.3(b)(i) if an Uninsurable Material Risk materialises;

(vi) for any amount payable under clause 28.4 (*Suspension of OpCo2's right to terminate*) or clause 42.6(g) if the Principal suspends OpCo2's right to terminate;

(vii) for any Termination Payment payable under clause 42.12 (*Termination Payments*);

(viii) to the extent that the Principal has:

(A) recovered from a third party (including any subcontractor and whether by way of indemnity or otherwise); or

(B) would have recovered from a third party, had it diligently pursued a claim against the third party,

an amount in respect of that liability;

(ix) to the extent that the Principal:

(A) is indemnified in respect of that liability by a policy of insurance required under this deed; or

(B) would have been indemnified in respect of that liability by a policy of insurance required under this deed if the Principal had:

(aa) diligently pursued a claim under that policy of insurance;

(bb) complied with the terms and conditions of that policy of insurance; or

(cc) complied with its insurance obligations under this deed;

(x) for Loss in respect of any liability of OpCo2 to a third party;

(xi) for Loss arising from any criminal acts or fraud on the part of the Principal or an Associate of the Principal;

(xii) for Loss arising from Wilful Misconduct on the part of the Principal or an Associate of the Principal; or

(xiii) to the extent to which, by law, the parties cannot limit or contract out of.

37.4 **Liability for events triggering Service Payment Deductions**

(a) Subject to clauses 37.4(b) and 37.4(c), OpCo2 will not be liable for any Loss incurred by the Principal as a result of any breach by OpCo2 of:

(i) its obligations under clause 20.2 (*Required Train Services*); or

(ii) any other obligation the breach of which results in a Service Payment Deduction.

(b) Clause 37.4(a) does not affect:

(i) the application of any Service Payment Deduction; or

(ii) OpCo2's liability under clause 37.1(a).

(c) If a Service Payment Deduction is held to be legally unenforceable, OpCo2 will be liable for any Loss incurred by the Principal as a result of any event which would have triggered that Service Payment Deduction up to the amount of the Service Payment Deduction which would have applied if it were enforceable.

37.4A **Liability for events triggering interference payments**

(a) Subject to clause 37.4A(b), OpCo2 will not be liable for any Loss incurred by the Principal as a result of any breach by OpCo2 of:

(i) clause 3.2 (*Non-interference with Sydney Trains*) of Schedule 3 (*Sydney Trains interface*); or

(ii) any other obligation the breach of which results in a liability under clause 6 (*Interference Payments*) of Schedule 3 (*Sydney Trains interface*).

(b) Clause 37.4A(a) does not affect OpCo2's liability under clause 6 (*Interference Payments*) of Schedule 3 (*Sydney Trains interface*) or clause 37.1(a).

(c) If a liability under clause 6 (*Interference Payments*) of Schedule 3 (*Sydney Trains interface*) is held to be legally unenforceable, OpCo2 will be liable for any Loss incurred by the Principal as a result of any act or omission of OpCo2 which would have triggered that payment, up to $[redacted] (CPI Indexed) per incident.

(d) OpCo2's maximum aggregate liability to the Principal under 6 (*Interference Payments*) of Schedule 3 (*Sydney Trains interface*) and clause 37.4A(c):

(i) in connection with:

(A) the Delivery Activities; or

(B) the rectification of Defects by OpCo2 before the date falling 12 months after the Date of Completion of Phase 2,

is limited to $[redacted] (CPI Indexed); and

(ii) in connection with the Operations Activities, is unlimited.

37.5 **Procedure for Third Party Claims**

(a) If a State Indemnified Party wishes to claim indemnity under clause 37.1 (*Indemnity from OpCo2*) in respect of a claim against the State Indemnified Party by a third party (**Third Party Claim**), the State Indemnified Party must give notice of the Third Party Claim to OpCo2 as soon as reasonably practicable.

(b) If OpCo2 gives written notice to the State Indemnified Party confirming that the State Indemnified Party is indemnified under clause 37.1 (*Indemnity from OpCo2*) in respect of the Third Party Claim, the State Indemnified Party must:

(i) subject to clause 37.5(c), take such actions as OpCo2 may reasonably direct in defending or mitigating the Third Party Claim;

(ii) subject to clause 37.5(f), not settle or compromise the Third Party Claim without OpCo2's consent (not to be unreasonably withheld or delayed). OpCo2 will be deemed to be acting reasonably if OpCo2 refuses to provide its consent as a result of restrictions or obligations under any insurance policy to which such Third Party Claim may be subject; and

(iii) periodically inform OpCo2 of the status of the Third Party Claim and the actions taken to defend or mitigate it.

(c) If OpCo2 wishes to direct a State Indemnified Party to take actions in defending or mitigating the Third Party Claim, OpCo2 must first give reasonable security to the State Indemnified Party for any cost or liability arising out of such direction.

(d) OpCo2's liability under clause 37.1 (*Indemnity from OpCo2*) will be reduced to the extent that a failure by a State Indemnified Party to comply with clause 37.5(a) prejudices OpCo2, but not otherwise.

(e) If OpCo2 unreasonably withholds or delays its consent to a request under clause 37.5(b)(ii), the State Indemnified Party may instruct a Queen's Counsel or Senior Counsel in accordance with clause 37.6 (*Counsel's opinion*) to provide a legal opinion on whether a proposed settlement or compromise of the Third Party Claim is reasonable.

(f) The State Indemnified Party may settle or compromise the Third Party Claim without OpCo2's consent if, following the procedure outlined in clause 37.5(e), the Queen's Counsel or Senior Counsel opines that the proposed settlement or compromise of the Third Party Claim is reasonable.

37.6 **Counsel's opinion**

(a) If a State Indemnified Party wishes to instruct a Queen's Counsel or Senior Counsel pursuant to clause 37.5(e) to provide an opinion (**Opinion**), then the State Indemnified Party must appoint a Queen's Counsel or Senior Counsel agreed by the State Indemnified Party and OpCo2 in writing (**Counsel**) to provide the Opinion in accordance with clause 37.6(b). If the State Indemnified Party and OpCo2 do not agree within 10 Business Days on the Counsel to be appointed, the State Indemnified Party may ask the President of the New South Wales Bar Association to select a barrister who:

(i) is a Queen's Counsel or Senior Counsel;

(ii) practises at the New South Wales Bar; and

(iii) has appropriate and relevant expertise,

and the State Indemnified Party must appoint the Counsel selected by the President of the New South Wales Bar Association or his or her nominee.

(b) The State Indemnified Party must procure that Counsel provides the Opinion in accordance with the following provisions:

(i) the State Indemnified Party must instruct Counsel to provide a copy of Counsel's written Opinion to the State Indemnified Party and OpCo2 within the shortest possible time but, in any event, within 20 Business Days after the date on which Counsel is instructed to provide the Opinion;

(ii) the State Indemnified Party and OpCo2 must, each at their own cost, provide Counsel with any information and assistance reasonably required by Counsel to enable Counsel to provide the Opinion;

(iii) Counsel must take into account the economics of defending the Third Party Claim, the damages and costs which are likely to be recovered by the third party, the likely costs of defence, the prospects of defending successfully the Third Party Claim and whether the proposed settlement or compromise of the Third Party Claim is likely to prejudice any relevant Insurance that may respond to that Third Party Claim;

(iv) Counsel must take into account any concerns relating to the reputation of the State Indemnified Party communicated to Counsel by the State Indemnified Party;

(v) Counsel will act as an independent expert and not as an arbitrator and the Opinion of Counsel will be final and binding on the State Indemnified Party and OpCo2;

(vi) the Opinion will be for the benefit of the State Indemnified Party and OpCo2 jointly; and

(vii) the costs of Counsel in connection with the Opinion are payable as determined by the Counsel.

(c) OpCo2 must do all things necessary, and execute all documents, authorities and directions as are required by the State Indemnified Party to give effect to Counsel's advice as set out in the Opinion.

37.7 **Obligations not affected**

(a) Clause 37.1 (*Indemnity from OpCo2*) does not limit or otherwise affect OpCo2's other obligations under this deed or otherwise according to law.

(b) OpCo2 is not relieved of any obligation to indemnify a State Indemnified Party under clause 37.1 (*Indemnity from OpCo2*) by reason of effecting insurance or being an insured party under an insurance policy effected by the Principal.

37.8 **Indemnified Parties**

(a) To the extent that the indemnity in clause 37.1 (*Indemnity from OpCo2*) is of State Indemnified Parties other than the Principal, the Principal has sought and obtained that indemnity as agent on behalf of each State Indemnified Party. The Principal may also enforce that indemnity as agent on behalf of each State Indemnified Party.

(b) If the Principal does not have authority to act as agent on behalf of a State Indemnified Party other than the Principal, then the Principal will be deemed to have sought and obtained that indemnity as trustee for that State Indemnified Party and holds the benefit of that indemnity as trustee. the Principal may also enforce that indemnity as trustee for the benefit that State Indemnified Party.

(c) If the indemnity in clause 37.1 (*Indemnity from OpCo2*) is unenforceable to the extent that it is expressed to be given in favour of a State Indemnified Party other than the Principal, all references in this clause 37 (*Indemnity and liability exclusions*) to "the State Indemnified Party" or "a State Indemnified Party" will be read as a reference to "the Principal" only.

37.9 **Release**

OpCo2 releases (to the full extent permitted by law) the Indemnified Parties from all Claims which arise from the provision of the Train Services or the carrying out of other OpCo2's Activities, except to the extent that the Claim arises from the negligence or other wrongful act or omission of an Indemnified Party or a breach by the Principal of its obligations under a Principal Project Agreement or as otherwise provided for under a Principal Project Agreement.

37.10 **Liability with respect to third parties**

OpCo2 agrees that none of the Indemnified Parties will be responsible for the actions of OpCo2 or its Associates and that OpCo2 will provide the Train Services and carry out the other OpCo2's Activities at its own cost and risk without recourse to the Principal, Transport for NSW or the State, other than as provided for under a Principal Project Agreement.

38. **INSURANCE**

38.1 **Principal's Insurances**

(a) The Principal must effect and maintain at all relevant times the insurance policies set out in Exhibit 7 (*Principal's Insurances*).

(b) OpCo2 acknowledges that the Principal's Insurances:

(i) are subject to the limits, exclusions, conditions, deductibles and excesses noted on the policies set out in Exhibit 7 (*Principal's Insurances*); and

(ii) do not cover every risk to which OpCo2 might be exposed.

(c) OpCo2:

(i) must satisfy itself of the nature and extent of the cover provided by the Principal's Insurances; and

(ii) may, if it wishes to do so and at its own cost, effect appropriate insurance for any risk or liability which is not covered by the Principal's Insurances.

(d) Where OpCo2:

(i) must, under clause 36.1 (*Reinstatement*), reinstate or repair at its cost any loss, destruction or damage, or is required to indemnify the Principal or another Indemnified Party under clause 37.1 (*Indemnity from OpCo2*), and makes a claim under any of the Principal's Insurances in respect of the destruction or damage or the event giving rise to the indemnity; or

(ii) otherwise makes a claim under or in respect of any of the Principal's Insurances,

OpCo2 must bear the cost of any excesses or deductibles in the Principal's Insurances or in any insurance effected by OpCo2 under this clause 38.1 (*Principal's Insurances*), that may apply in those circumstances, without prejudice to any right OpCo2 may have under clause 26 (*Compensation Events*) to seek reimbursement of such cost.

(e) OpCo2 must:

(i) comply with the terms and conditions of the Principal's Insurances; and

(ii) ensure that OpCo2 Contractors comply with the terms of the Principal's Insurances.

(f) The Principal must give OpCo2:

(i) notice of any claim the Principal makes on the Principal's Insurances;

(ii) notice of any fact or circumstance which may prejudice the Principal's Insurances;

(iii) certified copies of all:

(A) policies (including policy Schedules, wordings and endorsements);

(B) renewal certificates; and

(C) slips and cover notes,

for the Principal's Insurances, within 10 Business Days after the Principal receives them from the insurer or broker; and

(iv) a certificate of currency satisfactory to OpCo2's Representative (acting reasonably) to confirm that the Principal's Insurances have been effected and maintained in accordance with the requirements of this clause 38.1 (*Principal's Insurances*), whenever requested by OpCo2's Representative.

(g) The Principal must:

(i) ensure that the Principal's Insurances are taken out with Reputable Insurers;

(ii) not knowingly do or permit, or omit to do, anything which prejudices the Principal's Insurances;

(iii) rectify anything which might prejudice the Principal's Insurances;

(iv) not cancel the Principal's Insurances, or vary the Principal's Insurances in a manner detrimental to OpCo2's interests, without the prior written consent of OpCo2 (which must not be unreasonably withheld);

(v) give full and true particular information to the insurer of all matters and things the non-disclosure of which might in any way prejudice or affect the Principal's Insurances or the payment of all or any benefits under the Principal's Insurances; and

(vi) comply at all times with the terms and conditions of the Principal's Insurances.

[redacted]

38.2 **OpCo2's Delivery Phase insurance obligations**

OpCo2 must effect and maintain (or cause to be effected and maintained) the following insurances for amounts not less than, and with deductibles not more than, those specified in Schedule 32 (*Insurances*):

(a) (**plant and equipment insurance**): a plant and equipment insurance policy which covers physical loss or damage to any plant or equipment (whether owned, hired or leased by OpCo2 or OpCo2 Contractors) which is used in connection with the carrying out of OpCo2's Activities and not otherwise covered by the Principal

Insurances or any Insurances effected by OpCo2 in compliance with this clause 38.2 (*OpCo2's Delivery Phase insurance obligations*);

(b) (**marine cargo and marine advance consequential loss**): a marine cargo and marine advance consequential loss insurance policy covering the Trains and other components of the OTS2 Works that will be procured outside of Australia against physical damage, loss or destruction, and loss of Service Payment as a consequence of such damage and such other insurable risks as are reasonably required by the Principal;

(c) (**professional indemnity insurance**): a professional indemnity insurance policy covering the liability of OpCo2 in respect of any breach of a duty owed in a professional capacity by OpCo2, OpCo2 Contractors and anyone engaged by OpCo2 or any OpCo2 Contractor;

(d) (**employers' liability and workers' compensation insurance**): workers' compensation insurance as required by law (and on the basis that, where permitted under the relevant statutory workers compensation or accident compensation scheme, the insurance shall extend to cover the vicarious liability of the Principal for the acts or omissions of OpCo2) and, where common law claims can be brought outside of the relevant statutory workers compensation or accident compensation scheme, employer's liability insurance covering any injury, damage, expense, loss or liability suffered or incurred by any persons employed by OpCo2 or engaged in performing OpCo2's Activities or their dependants (and on the basis that such insurance shall extend to cover the vicarious liability of the Principal for the acts or omissions of OpCo2);

(e) (**own damage motor vehicle insurance**): a motor vehicle insurance policy which covers all physical loss or damage to motor vehicles (whether owned, hired or leased by OpCo2 or an OpCo2 Contractor) which are used in connection with OpCo2's Activities;

(f) (**third party property damage motor vehicle insurance**): a motor vehicle insurance policy which covers third party property damage related to any motor vehicles which are used in connection with OpCo2's Activities;

(g) (**compulsory third party motor vehicle insurance**): compulsory third party motor vehicle insurance, in respect of all registrable motor vehicles which are used in connection with OpCo2's Activities; and

(h) (**terrorism insurance for Trains and Trains manufacturing facility**) a stand-alone project specific insurance policy covering:

(i) the Trains and components of the Trains (including Trains and components of the Trains that will be procured outside of Australia) against physical damage, loss or destruction, and loss of Service Payment as a consequence of such damage (including while outside of Australia); and

(ii) loss of Service Payment as a consequence of physical damage, loss or destruction of the overseas manufacturing facility of the Trains,

caused by or arising from terrorism.

38.3 OpCo2's Operations Phase insurance obligations

OpCo2 must effect and maintain (or cause to be effected and maintained) the following insurances for amounts not less than, and with deductibles not more than, those specified in Schedule 32 (*Insurances*):

(a) (**industrial special risks insurance**): an industrial special risks insurance policy:

(i) covering the Sydney Metro;

(ii) against destruction, loss or damage and other insurable risks as are reasonably required by the Principal; and

(iii) including cover for business interruption arising from such destruction, loss or damage;

(aa) (**industrial special risks insurance**): an industrial special risks insurance policy covering the Trains operating on Sydney Metro Northwest prior to the Date of Completion of Phase 1 against destruction, loss or damage and other insurable risks as are reasonably required by the Principal;

(b) (**plant and equipment insurance**): a plant and equipment insurance policy which covers physical loss or damage to any plant or equipment (whether owned, hired or leased by OpCo2 or an OpCo2 Contractor) which is used in connection with the carrying out of OpCo2's Activities and not otherwise covered by any Insurances effected by OpCo2 in compliance with this clause 38.3 (*OpCo2's Operations Phase insurance obligations*);

(c) (**public and products liability insurance**): a public and products liability insurance policy, written on an occurrence basis, which covers the liability of OpCo2 and OpCo2 Contractors (including to the Principal) in respect of:

(i) damage to, loss or destruction of, or loss of use of, real or personal property;

(ii) injury to, or death or disease of, any persons (other than employees); and

(iii) advertising injury or advertising liability risks (including: libel, slander or defamation; infringement of copyright or of title or slogan; piracy or unfair competition or idea misappropriation under an implied contract; and invasion of privacy) committed or alleged to have been committed in any advertisement, publicity article, broadcast or telecast,

arising out of, or in connection with, OpCo2's Activities;

(ca) (**public and products liability**): a public and products liability insurance policy, written on an occurrence basis, which covers the liability of OpCo2 and OpCo2 Contractors (including to the Principal) in respect of the Trains operating on Sydney Metro Northwest prior to the Date of Completion of Phase 1;

(d) (**professional indemnity insurance**): a project specific professional indemnity insurance policy covering the liability of OpCo2 and OpCo2 Contractors in respect of any breach of a duty owed in a professional capacity by OpCo2, OpCo2 Contractors and anyone engaged by them in a professional capacity;

(e) (**employers' liability and workers' compensation insurance**): workers' compensation insurance as required by law (and on the basis that, where permitted under the relevant statutory workers compensation or accident compensation scheme, the insurance shall extend to cover the vicarious liability of the Principal for the acts or omissions of OpCo2) and, where common law claims can be brought outside of the relevant statutory workers compensation or accident compensation scheme, employer's liability insurance covering any injury, damage, expense, loss or liability suffered or incurred by any persons employed by OpCo2 or engaged in performing OpCo2's Activities or their dependants (and on the basis

that such insurance shall extend to cover the vicarious liability of the Principal for the acts or omissions of OpCo2);

(f) (**own damage motor vehicle insurance**): a motor vehicle insurance policy which covers all physical loss or damage to motor vehicles (whether owned, hired or leased by OpCo2 or an OpCo2 Contractor) which are used in connection with OpCo2's Activities;

(g) (**third party property damage motor vehicle insurance**): a motor vehicle insurance policy which covers third party property damage related to any motor vehicles which are used in connection with OpCo2's Activities;

(h) (**compulsory third party motor vehicle insurance**): compulsory third party motor vehicle insurance, in respect of all registrable motor vehicles which are used in connection with OpCo2's Activities; and

(i) (**terrorism insurance for Trains**): terrorism insurance which covers physical loss or damage to Trains caused by a terrorist act and including cover for business interruption arising from such loss or damage.

38.4 **Periods of OpCo2's insurance**

(a) OpCo2 must maintain:

(i) the insurances referred to in clause 38.2 (*OpCo2's Delivery Phase insurance obligations*) (other than the professional indemnity insurance policy referred to in clause 38.2(c)) from the date of Financial Close until the Date of Completion of Phase 2 including any associated defects liability period (as applicable);

(ii) the professional indemnity insurance policy referred to in clause 38.2(c) from the date of Financial Close for a period of 10 years and, prior to or following expiration of such policy, OpCo2 will use best endeavours to obtain the professional indemnity insurance policy referred to in clause 38.2(c) for a further period to the 7th anniversary of the Date of Completion of Phase 2 (the period from the expiration of the initial 10 years to the 7th anniversary of the Date of Completion of Phase 2, being the **PI Extended Period**);

(iii) the insurances referred to in clause 38.3 (*OpCo2's Operations Phase insurance obligations*) (other than the professional indemnity insurance policy referred to in clause 38.3(d), the industrial special risks policy referred to in clause 38.3(aa) and the public and products liability referred to in clause 38.3(ca)) from the Date of Completion of Phase 1 until the end of the Term;

(iv) the professional indemnity insurance policy referred to in clause 38.3(d) from the Date of Completion of Phase 1 until the date which is 7 years after the end of the Term; and

(v) the insurances referred to in clauses 38.3(aa) and 38.3(ca) from the date the Trains are made available by OpCo2 (or an OpCo2 Contractor) to OpCo (or an OpCo Core Contractor) to operate and maintain for the purpose of conveying Customers (as that term is defined under the OTS Project Deed) under the OTS Project Deed until the Date of Completion of Phase 1.

(b) OpCo2 must promptly inform the Principal of the amount of any additional premium payable in giving effect to a requirement of the Principal under clause 38.4(a)(ii) to obtain the professional indemnity insurance policy referred to in clause 38.2(c) for the PI Extended Period before it implements the requirement (using reasonable

endeavours to minimise any increase in or maximise any reduction in the cost of any additional, increased or varied Insurances), and the Principal will advise OpCo2 in writing whether it still requires OpCo2 to give effect to that requirement.

(c) Any premiums paid on the professional indemnity insurance policy in respect of the PI Extended Period as well as any brokerage and Taxes payable in respect of those premiums, will be reimbursed by the Principal to OpCo2 within 20 Business Days after OpCo2 provides evidence satisfactory to the Principal (acting reasonably) that the insurance cover has been so effected and the premium paid.

38.5 **Additional, increased or varied Insurances**

(a) If the Principal at any time reasonably requires OpCo2 to:

(i) insure against a risk not specifically provided for or contemplated under clauses 38.2 (*OpCo2's Delivery Phase insurance obligations*) or 38.3 (*OpCo2's Operations Phase insurance obligations*); or

(ii) increase the extent of, or change the terms of, an existing Insurance from that set out in clauses 38.2 (*OpCo2's Delivery Phase insurance obligations*) or 38.3 (*OpCo2's Operations Phase insurance obligations*),

it may notify OpCo2 in writing and request that OpCo2 give effect to the Principal's requirements.

(b) OpCo2 must promptly inform the Principal of the amount of any additional premium payable in giving effect to a requirement of the Principal under clause 38.5(a) before it implements the requirement (using reasonable endeavours to minimise any increase in or maximise any reduction in the cost of any additional, increased or varied Insurances), and the Principal will advise OpCo2 in writing whether it still requires OpCo2 to give effect to that requirement.

(c) Any additional premiums paid on any additional, increased or varied Insurances required by the Principal under clause 38.5(b), as well as any brokerage and Taxes payable in respect of those premiums, will be reimbursed by the Principal to OpCo2 within 20 Business Days after OpCo2 provides evidence satisfactory to the Principal (acting reasonably) that the insurance cover has been so effected and the premium paid.

(d) The parties agree that 3 months prior to the estimated date from which a Train is made available by OpCo2 (or an OpCo2 Contractor) to OpCo (or an OpCo Core Contractor) to operate and maintain for the purpose of conveying Customers (as that term is defined under the OTS Project Deed) under the OTS Project Deed, the Principal is deemed to have issued a notice to OpCo under the OTS Project Deed pursuant to clause 38.5(a) of the OTS Project Deed to increase the extent of, or change the terms of, the existing insurances under clauses 38.3(a) and 38.3(c) of the OTS Project Deed to effect the insurances referred to in clauses 38.3(aa) and 38.3(ca).

38.6 **Review of Insurance limits and deductibles**

(a) The minimum sums insured and maximum deductibles for the insurances referred to in clause 38.3 (*OpCo2's Operations Phase insurance obligations*) (other than the insurances referred to in clauses 38.3(e) and 38.3(h)) will be reviewed by the Principal's Representative on each anniversary of the Date of Completion to determine whether and by how much the minimum sums insured and maximum deductibles should be increased or decreased, having regard to the opinion of a reputable insurance broker as to prudent insurance practice at the time.

(b) Clause 38.5 (*Additional, increased or varied Insurances*) will not apply to any increase or decrease in the minimum sums insured or maximum deductibles pursuant to this clause 38.6 (*Review of Insurance limits and deductibles*). Rather, any change in insurance costs due to an increase or decrease in the minimum sums insured or maximum deductibles pursuant to this clause 38.6 (*Review of Insurance limits and deductibles*) will be subject to the benchmarking regime in clause 38.16 (*Benchmarking of Insurances*).

38.7 **Joint names**

OpCo2 must ensure that:

(a) all Insurances effected by OpCo2 in compliance with this clause 38 (*Insurance*) other than the Insurances referred to in clauses 38.2(a), 38.2(b) (to the extent it relates to marine advanced consequential loss), 38.2(c), 38.2(d), 38.2(e), 38.2(f), 38.2(g), 38.3(b), 38.3(d), 38.3(e), 38.3(f), 38.3(g) and 38.3(h):

(i) are in the joint names of OpCo2, the Principal and the Security Trustee; and

(ii) extend cover to OpCo2 Contractors and others described in the relevant policy, by specifying them within the definition of "Insured", for their respective rights and interests; and

(b) the Insurance required by clause 38.2(c) extends cover to the Principal as principal for liability which the Principal incurs as a result of a claim made against the Principal by any person or entity (other than an insured under the policy) which results from liability of OpCo2 in respect of any breach of a duty owed in a professional capacity by OpCo2, OpCo2 Contractors and anyone engaged by OpCo2 or any OpCo2 Contractor in a professional capacity or liability incurred by any insured under the policy in the performance of professional services.

38.8 **Insurance requirements generally**

All Insurances effected by OpCo2 in compliance with this clause 38 (*Insurance*) must be taken out with Reputable Insurers or with insurers approved by the Principal's Representative (such approval not to be unreasonably withheld) and, other than the Insurances referred to in clauses 38.2(d), 38.2(e), 38.2(f), 38.2(g), 38.3(e), 38.3(f), 38.3(g) and 38.3(h):

(a) (**terms**): must be on the terms required by this clause 38 (*Insurance*) or otherwise as approved by the Principal's Representative (such approval not to be unreasonably withheld);

(b) (**exclusions**): must not contain any exclusion, endorsement or alteration unless it is first approved in writing by the Principal's Representative (such approval not to be unreasonably withheld);

(c) (**contractually assumed liability**): in the case of the Insurances specified in clause 38.3(c), will not expressly exclude liability arising under clause 37.1 (*Indemnity from OpCo2*) solely on the basis that it is a contractually assumed liability;

(d) (**proportionate liability**): in the case of the Insurances specified in clauses 38.2(c) and 38.3(d), must:

(i) cover any legal liability contractually assumed to the extent that OpCo2, the Principal and any other insureds under those Insurances have contracted out of the operation of Part 4 of the *Civil Liability Act 2002* (NSW) or assumed liability for others under this deed;

(ii) without limiting clause 38.8(d)(i), cover OpCo2 for potential liability to the Principal assumed by reason of the exclusion of Part 4 the *Civil Liability Act 2002* (NSW); and

(iii) not exclude any potential liability OpCo2 may have to the Principal under or by reason of this deed;

(e) (**waiver, non-imputation and cross liability clause**): which name more than one insured must include a waiver and cross liability clause in which the insurer agrees:

(i) to waive all rights of subrogation or action that it may have or acquire against all or any of the persons comprising the insured;

(ii) other than the Insurance referred to in clause 38.2(c), that the term "insured" applies to each of the persons comprising the insured as if a separate policy of insurance had been issued to each of them (subject always to the overall sum insured not being increased as a result);

(iii) in relation to the Insurance referred to in clause 38.2(c), that the conduct of one insured shall not be imputed to any other insured; and

(iv) other than with respect to a breach of survey/shipping warranty for the Insurance referred to in clause 38.2(b) (*marine cargo and marine advance consequential loss*), that any non-disclosure, breach of any duty or act or omission by one insured does not prejudice the right of any other insured to claim under any Insurance;

(f) (**notice**): must contain a term which requires the lead insurer to give:

(i) the Principal 30 Business Days' notice prior to the lead insurer cancelling the policy on the request of OpCo2; and

(ii) OpCo2 and the Principal 30 Business Days' notice of:

(A) giving a notice of cancellation;

(B) expiration of the policy; or

(C) any other notice in respect of the policy;

(g) (**loss payee**): in the case of the Insurances specified in clause 38.3(a) (other than in respect of the business interruption cover referred to in clause 38.3(a)(iii)), must specify the Principal, OpCo2 and the Security Trustee as joint loss payees;

(h) (**reinstatement**): in the case of the Insurances specified in clauses 38.2(a), 38.2(b), 38.3(a) and 38.3(b) must be endorsed to note and allow OpCo2's obligations under clause 36.1 (*Reinstatement*), to the effect that compliance with the provisions of those clauses will not prejudice OpCo2's or any other insured's rights to indemnity under the Insurances; and

(i) (**notice of a claim**): other than the Insurance referred to in clause 38.2(c), notice of a claim by any insured will be accepted by the insurer as notice by all insureds.

The parties acknowledge and agree that the Core Contractors may, to the extent permitted by law, self-insure in relation to the Insurances specified in clauses 38.2(d), 38.2(e), 38.3(e) and 38.3(f).

38.9 **Premiums**

OpCo2 must punctually pay all premiums and other amounts payable in respect of the Insurances effected by it, and give the Principal evidence of payments for premiums if and when requested by the Principal.

38.10 **Evidence of insurance**

In respect of the Insurances required to be effected and maintained by OpCo2 under this clause 38 (*Insurance*) (other than clauses 38.2(g) and 38.3(h) or where a Core Contractor self-insures in accordance with clause 38.8 (*Insurance requirements generally*)), OpCo2 must give the Principal's Representative:

(a) certified copies of all:

(i) policies (including policy Schedules, wordings and endorsements);

(ii) renewal certificates; and

(iii) slips and cover notes,

within 10 Business Days after it receives them from the insurer or broker; and

(b) a certificate of currency satisfactory to the Principal's Representative (acting reasonably) to confirm that the Insurances which OpCo2 must effect and maintain pursuant to this clause 38 (*Insurance*) have been effected and maintained in accordance with the requirements of this clause 38 (*Insurance*), whenever requested by the Principal's Representative.

38.11 **Failure to produce proof of insurance**

If OpCo2 fails to provide evidence satisfactory to the Principal's Representative in accordance with clause 38.10(a) or within 10 Business Days of a request under clause 38.10(b), the Principal may effect and maintain the relevant Insurances and pay the premium. The costs incurred by the Principal in connection with taking such action will be recoverable from OpCo2 as a debt due and payable from OpCo2 to the Principal.

38.12 **OpCo2's obligations not limited**

The effecting of Insurances does not limit the liabilities or obligations of OpCo2 under this deed. OpCo2 bears the risk of the Insurances being inadequate to enable OpCo2 to fulfil its obligations under this deed.

38.13 **General insurance obligations**

OpCo2 must:

(a) not knowingly do or permit, or omit to do, anything which prejudices any Insurance;

(b) rectify anything which might prejudice any Insurance;

(c) reinstate an Insurance required to be maintained under clauses 38.2 (*OpCo2's Delivery Phase insurance obligations*) or 38.3 (*OpCo2's Operations Phase insurance obligations*) if it lapses;

(d) not cancel, vary or allow any Insurance required to be maintained under clauses 38.2 (*OpCo2's Delivery Phase insurance obligations*) or 38.3 (*OpCo2's Operations*

Phase insurance obligations) to lapse without the prior written consent of the Principal's Representative;

(e) immediately notify the Principal of any fact or circumstance or change in circumstances which may prejudice an Insurance;

(f) without limiting clause 38.14(a), immediately notify the Principal's Representative if it receives any claim or notice in connection with an Insurance;

(g) give full and true particular information to the insurer of all matters and things the non-disclosure of which might in any way prejudice or affect any such policy or the payment of all or any benefits under the Insurance; and

(h) comply at all times with the terms of each Insurance.

38.14 **Claims under Insurances**

In addition to the obligations to notify the insurer under any Insurance, OpCo2 must:

(a) notify the Principal's Representative of any occurrence of which it is aware that may give rise to a claim (other than a claim by the Principal or its Associates) under any Insurance other than statutory insurance;

(b) keep the Principal's Representative informed of subsequent developments of which it is aware concerning the claim;

(c) do everything reasonably required by the Principal (or any other person in whose name the relevant policy is effected) to enable the Principal or such other person to claim, collect or recover money due under an Insurance;

(d) subject to clause 38.14(e), diligently pursue any material claim which it has under any Insurance in relation to that occurrence; and

(e) to the extent the Principal is an insured party under an Insurance, not compromise, settle, prosecute or enforce a claim under that Insurance without the prior written consent of the Principal's Representative (which must not be unreasonably withheld or delayed).

38.15 **Insurance Proceeds Account**

(a) (**Insurance Proceeds**): This clause 38.15 (*Insurance Proceeds Account*) applies to the following insurance proceeds:

(i) all amounts received under the Insurances referred to in clauses 38.1 (*Principal's Insurances*), 38.2(b), 38.2(h) and 38.3(a); and

(ii) any amounts paid by the Principal pursuant to clause 39.3(b)(i) (Uninsurable Risks) representing the insurance proceeds that would have been payable under the Insurances referred to in paragraph (a), had such insurance remained available,

but excluding:

(iii) any amounts received under the construction liability insurance policy referred to in clause 38.1(a); and

(iv) any proceeds of delay in start up, marine advance consequential loss or business interruption insurance.

(b) (**Establish account**): OpCo2 must:

(i) establish an account to be known as the Insurance Proceeds Account;

(ii) maintain that account in the name of OpCo2 and the Security Trustee with a financial institution nominated by OpCo2 and approved by the Principal (each approval not to be unreasonably withheld) or with the Account Bank which is a party to the Financiers Tripartite Deed;

(iii) give details of that account to the Principal;

(iv) notify the financial institution referred to in clause 38.15(b)(ii) of the charge over the Insurance Proceeds Account in accordance with the Principal Deed of Charge and procure, and provide the Principal with a copy of, acknowledgment of that notice from the financial institution; and

(v) procure the agreement of the financial institution referred to in clause 38.15(b)(ii):

(A) that, other than any Security Interest contained in the Debt Financing Documents, the financial institution 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;

(B) not to assert, claim or exercise:

(aa) any Security Interest, right of set off, combination of accounts or counterclaim in relation to the Insurance Proceeds Account;

(bb) 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 Financiers Tripartite Deed which may diminish, impair or terminate the Insurance Proceeds Account; or

(cc) 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.

(c) (**Deposit Insurance Proceeds**): All Insurance Proceeds must be deposited into the Insurance Proceeds Account.

(d) (**Application of moneys**): Subject to clause 38.15(f), moneys in the Insurance Proceeds Account may only be applied towards the cost of repair or reinstatement.

(e) (**Records**): OpCo2 must give the Principal records of expenditure from the Insurance Proceeds Account within 30 Business Days of such expenditure.

(f) (**Early termination**): If this deed is terminated under clauses 42 (*Termination*), 28 (*Force Majeure*), 36 (*Reinstatement of loss or damage*) or 39 (*Uninsurable Risks*), the Principal will be entitled to any moneys remaining in the Insurance Proceeds Account on the date of termination.

38.16 **Benchmarking of Insurances**

(a) Three months prior to each Insurance Benchmark Date, OpCo2 must, where possible, obtain separate quotations from three Reputable Insurers in the

commercial insurance market at that time, for annual premium costs of obtaining the Benchmarked Insurances.

(b) The Principal's Representative will select one quotation for each Benchmarked Insurance which will form the basis of the benchmarking of the Benchmarked Insurance Component.

(c) On each Insurance Benchmark Date, if the annual insurance premiums for the Benchmarked Insurances (as specified in the quotations selected by the Principal's Representative) are greater or less than the insurance premiums for the Benchmarked Insurances at the commencement of the Operations Phase or the last Insurance Benchmark Date on which an adjustment to the Benchmarked Insurance Component occurred under this clause 38.16 (*Benchmarking of Insurances*) (as applicable), the Benchmarked Insurance Component will be adjusted by the amount by which the insurance premium for the Benchmarked Insurance:

(i) exceeds the Benchmarked Insurance Component; or

(ii) is less than the Benchmarked Insurance Component,

provided that:

(iii) any increase or decrease in the cost of obtaining the Benchmarked Insurance which is attributable to:

(A) the insurance history of OpCo2 or an OpCo2 Contractor;

(B) a change in the sum insured or deductible, unless such change is approved by the Principal's Representative (such approval not to be unreasonably withheld); or

(C) any other relevant act or omission of OpCo2 or an OpCo2 Contractor,

will be disregarded; and

(iv) the increase or decrease in the cost of obtaining the Benchmarked Insurances is due to circumstances generally prevailing in the Australian and overseas insurance market for the relevant class of insurance.

39. UNINSURABLE RISKS

39.1 Notice and meeting

If either party considers that a risk that:

(a) this deed requires to be insured; and

(b) was insurable at the date of this deed,

has become an Uninsurable Risk:

(c) the party must immediately notify the other party in writing, giving particulars; and

(d) the parties will meet and discuss the means by which the risk should be managed.

39.2 Relief from obligation to insure

If:

(a) a risk that:

(i) this deed requires to be insured; and

(ii) was insurable at the date of this deed,

has become an Uninsurable Risk; and

(b) the risk did not become an Uninsurable Risk as a result of an act or omission of the party who is required to effect the relevant insurance or its Associates,

then, for so long as the risk is and remains an Uninsurable Risk, the relevant party is not required to effect and maintain insurance against that risk.

39.3 **If no agreement**

If the risk that has become an Uninsurable Risk is a risk which, at the date of this deed, is usually covered by the contract works and public and products liability insurance policies contained in Exhibit 7 (*Principal's Insurances*) or by the insurance specified in clauses 38.3(a) or 38.3(c) (an **Uninsurable Material Risk**) and the parties cannot reach agreement on how the risk should be managed, then:

(a) this deed will continue but Annexure A of Schedule 2 (*Service Payment calculation*) will be amended to reduce the Benchmarked Insurance Component by an amount equal to the premium that was last paid for insuring the Uninsurable Material Risk (indexed in accordance with clause 14 of Schedule 2 (*Service Payment calculation*)); and

(b) if the Uninsurable Material Risk materialises, the Principal must (at the Principal's option) do one of the following within a reasonable period of the relevant event occurring:

(i) pay to OpCo2 an amount equal to the insurance proceeds that would have been payable had the relevant insurance continued to be available (after deducting any deductibles that would have been deducted); or

(ii) where the Uninsurable Material Risk causes material damage, loss or destruction to a substantial portion of the Sydney Metro or the OTS2 Works, terminate this deed.

39.4 **Obligation to monitor and reinsure**

(a) Whilst ever a risk that:

(i) this deed requires to be insured; and

(ii) was insurable at the date of this deed,

is an Uninsurable Risk, the party who is required to effect the relevant insurance must approach the insurance market on a regular basis (but no more than once every 12 months) to establish whether that risk remains uninsurable and advise the other party accordingly.

(b) Upon the insurance becoming available for the Uninsurable Risk referred to in clause 39.4(a):

(i) the party who is required to effect the relevant insurance must immediately notify the other party; and

(ii) if the insurance is to be effected by OpCo2, OpCo2 must:

(A) obtain separate quotations to cover the risk in accordance with the requirements set out in clause 38 (*Insurance*) from three Reputable Insurers and provide these quotations to the Principal within 10 Business Days of submission to the Principal of the notice described in clause 39.4(b)(i) together with such other documentation or information as the Principal reasonably requires in connection with those quotations;

(B) within 5 Business Days of receipt of confirmation from the Principal that one of the quotations provided under clause 39.4(b)(ii) is acceptable, effect insurance with the provider of the quotation to cover the risk in accordance with the requirements set out in clause 38 (*Insurance*); and

(C) update Annexure A of Schedule 2 (*Service Payment calculation*) to increase the Benchmarked Insurance Component by an amount equal to the price of the quotation that is accepted by the Principal.

40. DEFAULT

40.1 OpCo2 Events of Default

Each of the following events is an OpCo2 Event of Default:

(a) (**failure to progress**): OpCo2 fails to diligently progress the Delivery Activities as required under clause 17.2(a)(iv);

(b) (**funding cancelled**): the obligation of a Debt Financier or an Equity Investor to provide funding under the Debt Financing Documents or the Equity Documents, respectively, is cancelled due to an event of default under a Debt Financing Document or an Equity Document (as applicable), or a Debt Financier or Equity Investor fails (in whole or in part) to provide funding under the Debt Financing Documents or the Equity Documents as contemplated by the Base Case Financial Model when required to do so;

(c) (**unacceptable availability**): after the Date of Completion of Phase 1:

(i) the number of Missed Train Services in a month exceeds [redacted]% of the total number of Required Train Services for that month for any [redacted] out of [redacted] consecutive months;

(ii) the number of Missed Train Services in any rolling [redacted] month period exceeds [redacted]% of the total number of Required Train Services for that period;

(iii) the total number of hours of Platform Closure:

(A) for any Platform in a month exceeds [redacted]; or

(B) across all Platforms in a month exceeds [redacted];

(iv) the first Train Service of the day in either direction is not delivered within [redacted] minutes of the Scheduled time for the first Required Train Service on more than [redacted] occasions in a rolling [redacted] month period; or

(v) the last Train Service of the day in either direction is not delivered within [redacted] minutes of the Scheduled time for the last Required Train Service on more than [redacted] occasions in a rolling [redacted] month period,

in each case, disregarding any such unacceptable availability which is:

(vi) directly caused by a Relief Event during a period when OpCo2's non-financial obligations are suspended under clause 27.5 (*Relief from obligations*); or

(vii) excluded from the calculations of Availability Deductions in accordance with clause 16 of Schedule 2 (*Service Payment calculation*);

(d) (**unacceptable timeliness**): after the Date of Completion of Phase 1:

(i) more than [redacted]% of Train Services in a month exceed the Maximum Train Journey Time by [redacted] minutes for each of [redacted] consecutive months or any [redacted] out of [redacted] consecutive months; or

(ii) more than [redacted]% of Actual Headways in a month exceed the relevant Maximum Headway by more than [redacted] minutes for each of [redacted] consecutive months or any [redacted] out of [redacted] consecutive months,

in each case, disregarding any such unacceptable timeliness which is:

(iii) directly caused by a Relief Event during a period when OpCo2's non-financial obligations are suspended under clause 27.5 (*Relief from obligations*); or

(iv) excluded from the calculations of Timeliness Deductions in accordance with clause 16 of Schedule 2 (*Service Payment calculation*);

(e) (**unacceptable quality**): after the Date of Completion of Phase 1, OpCo2 accrues:

(i) [redacted] or more Service Failure Points over a rolling period of [redacted] consecutive quarters; or

(ii) a Service Failure Point for the same Service Quality KPI or Asset Functionality KPI in any [redacted] quarters in a rolling [redacted] month period,

in each case, disregarding any such unacceptable quality which is directly caused by a Relief Event during a period when OpCo2's non-financial obligations are suspended under clause 27.5 (*Relief from obligations*);

(f) (**failure to pay**): OpCo2 fails to pay an amount that is due under any Principal Project Agreement when it is due and the failure is not remedied within 20 Business Days of a written demand from the Principal;

(g) (**failure to remedy an Asset Management Failure**): OpCo2 fails to remedy an Asset Management Failure within 6 months of the expiry of the Remediation Period;

(h) (**failure to report**): OpCo2 fails to comply with its reporting obligations under this deed or a report from OpCo2 contains an inaccuracy which in either case has a material impact on the Principal or Rail Entity or Customers;

(i) (**refinancing**): OpCo2 breaches its obligations under clause 49.1 (*Debt Financing Documents*);

(j) (**subcontracting**): OpCo2 breaches its obligations under clauses 54.3(a), 54.3(b), 54.3(e) or 54.3(f);

(k) (**lack of or breach of Accreditation**): OpCo2 or an OpCo2 Contractor:

(i) undertakes any of OpCo2's Activities which require Accreditation without being Accredited to do so or without doing so for or on behalf of a person who holds the required Accreditation; or

(ii) breaches the terms of its Accreditation in a material respect in performing OpCo2's Activities;

(l) (**threatened suspension or revocation of Accreditation**): the ONRSR notifies OpCo2 or a Core Contractor that:

(i) it proposes to suspend or revoke OpCo2's Accreditation or a Core Contractor's Accreditation with respect to OpCo2's Activities; or

(ii) a failure to take action specified by the ONRSR within a time period specified by the ONRSR may result in the ONRSR suspending or revoking OpCo2's Accreditation or a Core Contractor's Accreditation with respect to OpCo2's Activities;

(m) (**fraud**): the Principal is the victim of any fraud or dishonest conduct by OpCo2 or a Core Contractor in connection with the OTS2 PPP, or the Independent Commission Against Corruption or similar public body determines that OpCo2 (or a Core Contractor, in performing OpCo2's Activities) has engaged in corrupt conduct, collusive pricing or other similar activity;

(n) (**incorrect representation or warranty**): a representation or warranty made or given by OpCo2 in this deed or any other Principal Project Agreement proves to be untrue which has a material adverse effect on OpCo2's ability to comply with its obligations under the Project Agreements;

(o) (**delay**): OpCo2 has not achieved:

(i) Completion of Phase 1 by the Date for Completion of Phase 1; or

(ii) Completion of Phase 2 by the Date for Completion of Phase 2;

(p) (**Milestone delay**): OpCo2 has not achieved Milestone Completion of a Milestone by the relevant Milestone Date for Completion;

(q) (**Train Option Acceptance Requirements delay**): OpCo2 has not achieved the Train Option Acceptance Requirements for a batch of Option 1 Trains by the relevant Date for Acceptance of those Option 1 Trains; and

(r) (**other breach**): any other material breach by OpCo2 of an obligation under this deed (other than a breach which results in a Service Payment Deduction) or any other Principal Project Agreement.

40.2 **Default Notice**

If an OpCo2 Event of Default occurs, the Principal may give OpCo2 a notice (the **Default Notice**):

(a) stating that it is a notice under this clause 40.2 (*Default Notice*); and

(b) specifying the nature of OpCo2 Event of Default.

40.3 **Cure Plan**

(a) If:

(i) a Default Notice is given; and

(ii) the OpCo2 Event of Default is capable of being Remedied,

OpCo2 must, within 10 Business Days (or such longer period as the Principal may agree) after receipt of the Default Notice:

(iii) Remedy the OpCo2 Event of Default; or

(iv) prepare and submit to the Principal a draft plan describing the actions and measures which OpCo2 will diligently pursue to Remedy the OpCo2 Event of Default (including the proposed cure period) (**Draft Cure Plan**).

(aa) The parties agree that for the purpose of this clause 40.3 (*Cure Plan*), an OpCo2 Event of Default under clause 40.1(o), clause 40.1(p) or clause 40.1(q) will be treated as capable of being Remedied.

(ab) The parties acknowledge that:

(i) where the Draft Cure Plan involves the replacement of a Core Contractor that holds Accreditation in respect of OpCo2's Activities, the cure period will need to take into account a reasonable period of time for a replacement contractor to obtain the required Accreditation to undertake OpCo2's Activities;

(ii) where the Draft Cure Plan relates to an OpCo2 Event of Default under clause 40.1(o)(i) or clause 40.1(p), the cure period may extend to the date that is the Longstop Date (Phase 1) and without limiting:

(A) OpCo2's obligations under clause 40.3(c)(ii); or

(B) the Principal's rights under clause 40.3(e),

the Principal may not reject the Draft Cure Plan in accordance with clause 40.3(b)(ii) on the basis of the proposed cure period if the cure period expires on or before the date that is the Longstop Date (Phase 1); and

(iii) where the Draft Cure Plan relates to an OpCo2 Event of Default under clause 40.1(o)(ii) or clause 40.1(q), the cure period may extend to the date that is the Longstop Date (Phase 2) and without limiting:

(A) OpCo2's obligations under clause 40.3(c)(ii); or

(B) the Principal's rights under clause 40.3(e),

the Principal may not reject the Draft Cure Plan in accordance with clause 40.3(b)(ii) on the basis that the cure period expires on the date that is the Longstop Date (Phase 2).

(b) Within 10 Business Days after receipt of the Draft Cure Plan, the Principal must either:

(i) approve the Draft Cure Plan by notifying OpCo2; or

(ii) reject the Draft Cure Plan by notifying OpCo2 and providing reasons to OpCo2 for its rejection.

(c) If the Principal approves a Draft Cure Plan pursuant to clause 40.3(b)(i) (the **Approved Cure Plan**):

(i) the period of time in the Approved Cure Plan to Remedy the OpCo2 Event of Default is the cure period (the **Applicable Cure Period**); and

(ii) OpCo2 must comply with and implement the Approved Cure Plan (or otherwise diligently pursue the Remediation of the OpCo2 Event of Default) and Remedy the OpCo2 Event of Default within the Applicable Cure Period.

(d) If the Principal rejects a Draft Cure Plan pursuant to clause 40.3(b)(ii), OpCo2, in consultation in good faith with the Principal, must amend the Draft Cure Plan to meet the Principal's reasonable requirements and submit the amended Draft Cure Plan to the Principal for its approval, in which case this clause 40.3 (*Cure Plan*) will apply to the amended Draft Cure Plan as if it were originally submitted under clause 40.3(a).

(da) The parties acknowledge and agree that an Applicable Cure Period will not take into account any period of time during which the performance of the relevant obligations by OpCo2 is suspended by operation of clause 27.5 (*Relief from obligations*).

(e) If:

(i) a Default Notice is given;

(ii) the OpCo2 Event of Default is capable of being Remedied; and

(iii) OpCo2 fails to:

(A) Remedy the OpCo2 Event of Default, or submit a Draft Cure Plan, in accordance with clause 40.3(a);

(B) if the Principal rejects a Draft Cure Plan pursuant to clause 40.3(b)(ii), amend the Draft Cure Plan to meet the Principal's reasonable requirements and submit the amended Draft Cure Plan in accordance with clause 40.3(d); or

(C) comply with and implement the Approved Cure Plan (or otherwise diligently pursue the Remediation of the OpCo2 Event of Default), except in a minor respect,

and such failure is not remedied by OpCo2 within 5 Business Days of notice from the Principal regarding that failure, an OpCo2 Termination Event will occur.

(f) If at any time prior to the expiry of an Applicable Cure Period OpCo2 reasonably considers that it requires an extension to the Applicable Cure Period it may request an extension to the Applicable Cure Period by notifying the Principal in writing setting out the reasons for that belief and the reasonable period of time proposed by OpCo2 for the extension of the Applicable Cure Period.

(g) If:

(i) OpCo2 gives the Principal a notice under clause 40.3(f); and

(ii) the Principal is reasonably satisfied that OpCo2 has diligently pursued and is continuing to diligently pursue a Remedy (other than in a minor respect) of the applicable OpCo2 Event of Default but that the OpCo2 Event of Default cannot, despite such diligence, be Remedied within the Applicable Cure Period,

the Principal must grant an extension of the Applicable Cure Period for such period as the Principal considers is reasonably required to Remedy the OpCo2 Event of Default, provided that the Principal is not required to grant more than one extension to an Applicable Cure Period.

40.4 **Prevention Plan**

(a) If:

(i) a Default Notice is given; and

(ii) the OpCo2 Event of Default is not capable of being Remedied,

OpCo2 must, within 10 Business Days after receipt of the Default Notice prepare and submit to the Principal a draft plan describing the actions and measures which OpCo2 will diligently pursue to prevent the OpCo2 Event of Default from recurring (**Draft Prevention Plan**).

(aa) The parties agree that for the purpose of this clause 40.4 (*Prevention Plan*), an OpCo2 Event of Default under clause 40.1(o), clause 40.1(p) or clause 40.1(q) will be treated as capable of being Remedied.

(b) Within 10 Business Days after receipt of the Draft Prevention Plan, the Principal must either:

(i) approve the Draft Prevention Plan by notifying OpCo2; or

(ii) reject the Draft Prevention Plan by notifying OpCo2 and providing reasons to OpCo2 for its rejection.

(c) If the Principal approves a Draft Prevention Plan pursuant to clause 40.4(b)(i) (the **Approved Prevention Plan**), OpCo2 must comply with and implement the Approved Prevention Plan.

(d) If the Principal rejects a Draft Prevention Plan pursuant to clause 40.4(b)(ii), OpCo2, in consultation in good faith with the Principal, must amend the Draft Prevention Plan to meet the Principal's reasonable requirements and submit the amended Draft Prevention Plan to the Principal for its approval, in which case this clause 40.4 (*Prevention Plan*) will apply to the amended Draft Prevention Plan as if it were originally submitted under clause 40.4(a).

(e) If:

(i) a Default Notice is given;

(ii) the OpCo2 Event of Default is not capable of being Remedied; and

(iii) OpCo2 fails to:

(A) submit a Draft Prevention Plan in accordance with clause 40.4(a);

(B) if the Principal rejects a Draft Prevention Plan pursuant to clause 40.4(b)(ii), amend the Draft Prevention Plan to meet the Principal's reasonable requirements and submit the amended Draft Prevention Plan in accordance with clause 40.4(d); or

(C) comply with and implement, except in a minor respect, the Approved Prevention Plan,

and such failure is not remedied by OpCo2 within 5 Business Days of notice from the Principal regarding that failure, an OpCo2 Termination Event will occur.

40.5 **Persistent Breach**

(a) The Principal may issue a notice to OpCo2 (**Persistent Breach Notice**) if a breach of the same OpCo2 obligation under this deed or any other Principal Project Agreement occurs more than once in any 12 month period (**Persistent Breach**).

(b) A Persistent Breach Notice must:

(i) state that it is a Persistent Breach Notice;

(ii) identify the breach;

(iii) not relate to:

(A) an OpCo2 Event of Default which is the subject of a current Approved Cure Plan or Approved Prevention Plan which OpCo2 is diligently implementing;

(B) a breach which results in a Service Payment Deduction; or

(C) a breach in relation to which the Principal has issued a Frequent Breaches Notice under clause 40.6(a) and which OpCo2 is diligently remedying; and

(iv) state that, if the breach continues beyond 30 Business Days or recurs within the 12 month period commencing 30 Business Days after the date of service of the Persistent Breach Notice, it may result in the Principal becoming entitled to terminate this deed.

(c) If, following the issue of a Persistent Breach Notice, the breach specified in the Persistent Breach Notice has continued beyond 30 Business Days or recurred within the 12 month period commencing 30 Business Days after the date of service of the Persistent Breach Notice, then the Principal may issue a notice to OpCo2 (**Final Persistent Breach Notice**).

(d) A Final Persistent Breach Notice must:

(i) state that it is a Final Persistent Breach Notice;

(ii) identify the breach;

(iii) state that the breach has been the subject of a Persistent Breach Notice served within the period of 12 months and 30 Business Days prior to the date of the service of the Final Persistent Breach Notice; and

(iv) state that if the breach continues beyond 30 Business Days or recurs 3 or more times within the 6 month period after the date of service of the Final Persistent Breach Notice, the Principal will become entitled to terminate this deed.

40.6 **Frequent Breaches**

(a) The Principal may issue a Frequent Breaches Notice to OpCo2 if OpCo2 commits frequent breaches of this deed which, in aggregate:

(i) substantially frustrate the objects of this deed;

(ii) significantly impair the Principal's ability to fulfil any of its objectives under the Transport Administration Act;

(iii) have a material adverse effect on the Sydney Metro, the ETS or Customers; or

(iv) in the Principal's reasonable opinion indicate that OpCo2 does not intend to be or does not regard itself as being bound by this deed,

whether or not such breaches are of the same type or class (**Frequent Breaches**).

(b) A Frequent Breaches Notice must:

(i) state that it is a Frequent Breaches Notice;

(ii) identify the Frequent Breaches; and

(iii) not relate to:

(A) an OpCo2 Event of Default which is the subject of a current Approved Cure Plan or Approved Prevention Plan which OpCo2 is diligently implementing;

(B) a breach which results in a Service Payment Deduction; or

(C) a breach in relation to which the Principal has issued a Persistent Breach Notice under clause 40.5(a) and which OpCo2 is diligently remedying; and

(iv) state that, if Frequent Breaches continue to occur during the 12 month period commencing 30 Business Days after the date of service of a Frequent Breaches Notice, they may result in the Principal becoming entitled to terminate this deed.

(c) If Frequent Breaches continue to occur during the 12 month period commencing 30 Business Days after the date of service of a Frequent Breaches Notice, the Principal may issue a Final Frequent Breaches Notice to OpCo2.

(d) A Final Frequent Breaches Notices must:

(i) state that it is a Final Frequent Breaches Notice;

(ii) identify the Frequent Breaches;

(iii) state that the Frequent Breaches have been the subject of a Frequent Breaches Notice served within the period of 12 months and 30 Business Days prior to the date of service of the Final Frequent Breaches Notice; and

(iv) state that if Frequent Breaches continue to occur at any time in the 6 month period commencing 30 Business Days after the date of service of the Final Frequent Breaches Notice, the Principal will become entitled to terminate this deed.

41. STEP-IN

41.1 Step-In Events

Each of the following is a Step-In Event:

(a) an OpCo2 Termination Event; and

(b) an event or circumstance which arises out of or in connection with OpCo2's Activities or the OTS2 PPP that poses a serious threat to, or causes or will cause material damage or material disruption to:

(i) the health or safety of persons;

(ii) the Environment;

(iii) any property; or

(iv) the safe and secure performance of OpCo2's Activities.

41.2 **Step-in Rights**

(a) If:

(i) a Step-In Event occurs; and

(ii) the Principal has given notice to OpCo2 in accordance with clause 41.2(b),

then a Step-in Party may exercise all or any of the Step-in Powers set out in clause 41.3 (*Step-in Powers*) in an endeavour to remedy the Step-in Event or overcome the risk or mitigate any consequences resulting from the Step-in Event (**Step-in Right**).

(b) The notice referred to in clause 41.2(a)(ii):

(i) must be in writing and must specify:

(A) the Step-in Event which has triggered the Step-in Right;

(B) the OpCo2's Activities which the Step-in Party proposes to perform;

(C) the date on which the relevant Step-in Party proposes to commence performing the relevant OpCo2's Activities; and

(D) the date on which the relevant Step-in Party proposes to cease exercising the relevant OpCo2's Activities; or

(ii) may be given orally if the Principal's Representative considers that the Step-in Event requires urgent remedy or action and there is insufficient time to issue a written notice under clause 41.2(b)(i), but if given orally must be followed within 24 hours by a written notice under clause 41.2(b)(i).

(c) The Step-in Right is without prejudice to the Principal's other rights in respect of a Step-in Event, including its rights under clause 42 (*Termination*).

41.3 **Step-in Powers**

A Step-in Party may, in performing OpCo2's Activities referred to in the notice under clause 41.2(b), do anything in respect of those activities that OpCo2 could do including:

(a) enter into and remain in possession of all or any of the Assets;

(b) operate and manage all or any of the Assets;

(c) exercise all or any of OpCo2's rights, and perform all or any of OpCo2's obligations:

(i) in connection with the performance of OpCo2's Activities;

(ii) under or in relation to a Project Agreement or any other document to which OpCo2 is a party; and

(iii) under or in relation to any Accreditation or other Approval held by OpCo2,

as if it were OpCo2, to the exclusion of OpCo2;

(d) do anything the Step-in Party considers necessary or desirable to remedy the Step-in Event or overcome the risk or mitigate any consequences resulting from the Step-in Event; and

(e) do anything incidental to the matters listed in paragraphs (a) to (d),

(**Step-in Powers**).

41.4 **OpCo2's obligations**

(a) OpCo2 must:

(i) cooperate with the Step-in Party in the exercise of the Step-in Powers; and

(ii) take any step which the Step-in Party considers necessary or desirable to remedy the Step-in Event or overcome the risk or mitigate any consequences resulting from the Step-in Event; and

(iii) ensure that its Significant Contractors, and use its best endeavours to ensure all other OpCo2 Contractors, do likewise.

(b) Without limiting clause 41.4(a), OpCo2 must:

(i) allow the Step-in Party to access and use:

(A) all or any of the land and assets used in the performance of OpCo2's Activities;

(B) its Staff; and

(C) any information the Step-in Party reasonably requires;

(ii) to the extent necessary, use reasonable endeavours to procure any consents to disclose Personal Information to the Step-in Party;

(iii) assist the Step-in Party in dealing with the ONRSR in relation to any Accreditation issues;

(iv) comply with all reasonable directions given by the Step-in Party; and

(v) ensure that its Significant Contractors, and use its best endeavours to ensure all other OpCo2 Contractors do likewise,

to enable the Step-in Party to exercise its Step-in Powers.

(c) OpCo2 irrevocably appoints the Principal as its attorney with full power to exercise the Step-in Powers (or to delegate the exercise of the Step-in Powers to another Step-in Party).

(d) OpCo2's obligations under this deed will be suspended to the extent and for such period as is necessary to permit the Principal to exercise its Step-in Rights.

41.5 **Principal's obligations**

(a) The Principal must ensure that each Step-in Party, in exercising the Step-in Powers, uses its reasonable endeavours to perform OpCo2's Activities in accordance with the requirements of this deed.

(b) OpCo2 acknowledges that a Step-in Party is not under any obligation to remedy the Step-in Event nor to overcome the risk or mitigate any consequences resulting from the Step-in Event.

(c) The Principal must ensure that each Step-in Party:

(i) cooperates with OpCo2 and the Core Contractors in relation to OpCo2's (or any Core Contractor's) compliance with its Accreditation obligations under the Rail Safety National Law and Rail Safety Regulations;

(ii) does not put OpCo2 (or any Core Contractor) in breach of its obligations as a Rail Infrastructure Manager or Rolling Stock Operator under the Rail Safety National Law and Rail Safety Regulations;

(iii) complies with all reasonable requirements of OpCo2 (or any Core Contractor) in relation to compliance with the Accreditation of OpCo2 (or any Core Contractor); and

(iv) does not do anything (or fail to do anything) which jeopardises the Accreditation of OpCo2 (or any Core Contractor) or an application for Accreditation by OpCo2 (or any Core Contractor), including anything that may be grounds for the ONRSR to refuse an application for Accreditation by OpCo2 (or any Core Contractor), or to suspend or revoke (in whole or in part) or impose or vary conditions or restrictions on the Accreditation of OpCo2 (or any Core Contractor).

41.6 **Payments during step-in**

(a) If, during a period when the Principal is exercising its Step-in Rights, OpCo2 continues to perform obligations under this deed which affect the calculation of the Service Payment, the parts of the Service Payment affected by the performance of those obligations will continue to be calculated in accordance with Schedule 2 (*Service Payment calculation*) based on the actual performance of those obligations during the period when the Principal is exercising its Step-in Rights.

(b) If, during a period when the Principal is exercising its Step-in Rights, OpCo2's performance of an obligation which affects the calculation of the Service Payment is suspended, the parts of the Service Payment which are affected by the Step-in Party's performance of those obligations will continue to be calculated in accordance with Schedule 2 (*Service Payment calculation*), but based on the average performance of the relevant obligation by OpCo2 for the 6 months immediately prior to the Principal exercising the Step-in Right). In other words, each Service Payment Deduction referable to an obligation which is being performed by the Step-in Party will be calculated based on the average level of that Service Payment Deduction for the 6 months immediately prior to the Principal exercising the Step-in Right.

(c) The Principal will be entitled to deduct the following amounts, without double counting, from any Service Payment payable in respect of a period when the Principal is exercising its Step-in Rights:

(i) where the Step-in Event was an OpCo2 Termination Event:

(A) the costs avoided by OpCo2 as a result of the exercise of the Step-in Right; and

(B) the reasonable costs incurred by the Principal in exercising the Step-in Right, including all reasonable costs incurred by a Step-in Party in performing OpCo2's Activities; or

(ii) where the Step-in Event was not an OpCo2 Termination Event, the costs avoided by OpCo2 as a result of the exercise of the Step-in Right.

(d) If the aggregate amount to be deducted under clauses 41.6(c)(i) or 41.6(c)(ii) is greater than the Service Payment payable in respect of the relevant period, the difference will be a debt due and payable from OpCo2 to the Principal.

41.7 **No liability**

OpCo2 acknowledges that the Principal will have no liability to OpCo2, and OpCo2 will not be entitled to make any Claim against the Principal, arising out of or in connection with:

(a) any conduct, delay, negligence or breach of duty in the exercise or non-exercise of a Step-in Power; nor

(b) for any Loss which results,

except where it arises from:

(c) fraud, Wilful Misconduct or gross negligence on the part of the Step-in Party or its Associates; or

(d) a Compensation Event or a Relief Event.

41.8 **Step-out**

(a) A Step-in Party must cease to exercise the Step-in Powers as soon as reasonably practicable and, in any event, upon the earlier of:

(i) the relevant Step-in Event being remedied (or the risk or consequences resulting from the Step-in Event being overcome) to the satisfaction of the Principal; and

(ii) the Principal's Representative notifying OpCo2 in writing that the Step-in Party will no longer exercise the Step-in Powers.

(b) The Principal must give written notice to OpCo2 of the date on which the Step-in Party will cease to exercise the Step-in Powers (which notice must be given by the Principal to OpCo2 a reasonable time prior to the date the Step-in Party proposes to cease to exercise the Step-in Powers).

(c) The Principal and OpCo2 must consult with each other with the intention of ensuring that the transition from the Step-in Party ceasing to exercise the Step-in Powers to OpCo2 resuming the performance of the relevant OpCo2's Activities is effected without interruption to OpCo2's Activities.

(d) Upon the Step-in Party ceasing to exercise the Step-in Powers, OpCo2 must resume the performance of the relevant OpCo2's Activities in accordance with this deed (unless this deed has been terminated).

42. TERMINATION

42.1 OpCo2 Termination Events

Each of the following events is an OpCo2 Termination Event:

(a) (**unacceptable availability**): after the Date of Completion of Phase 1:

(i) the number of Missed Train Services in a month exceeds [redacted]% of the total number of Required Train Services for that month for each of any [redacted] out of [redacted] consecutive months; or

(ii) the number of Missed Train Services in any rolling [redacted] month period exceeds [redacted]% of the total number of Required Train Services for that period,

in each case, disregarding any such unacceptable availability which is:

(iii) directly caused by a Relief Event during a period when OpCo2's non-financial obligations are suspended under clause 27.5 (*Relief from obligations*); or

(iv) excluded from the calculations of Availability Deductions in accordance with clause 16 of Schedule 2 (*Service Payment calculation*);

(b) (**unacceptable timeliness**): after the Date of Completion of Phase 1, more than [redacted]% of Train Services in a month exceed the Maximum Train Journey Time by [redacted] minutes for any [redacted] out of [redacted] consecutive months, disregarding any such unacceptable timeliness which is:

(i) directly caused by a Relief Event during a period when OpCo2's non-financial obligations are suspended under clause 27.5 (*Relief from obligations*); or

(ii) excluded from the calculations of Timeliness Deductions in accordance with clause 16 of Schedule 2 (*Service Payment calculation*);

(c) (**unacceptable quality**): after the Date of Completion of Phase 1, OpCo2 accrues [redacted] or more Service Failure Points over a rolling period of [redacted] consecutive quarters, disregarding any such unacceptable quality directly caused by a Relief Event during a period when OpCo2's non-financial obligations are suspended under clause 27.5 (*Relief from obligations*);

(d) (**Persistent Breach**): subject to clause 42.1A (*Termination for failure to achieve Completion of Phase 1 or Milestone Completion*), the Principal has issued a Final Persistent Breach Notice and the relevant breach has continued beyond 30 Business Days or recurred 3 or more times within the 6 month period after the date of service of the Final Persistent Breach Notice;

(e) (**Frequent Breaches**): subject to clause 42.1A (*Termination for failure to achieve Completion of Phase 1 or Milestone Completion*), the Principal has issued a Final Frequent Breaches Notices and Frequent Breaches continue to occur at any time in the 6 month period commencing 30 Business Days after the date of service of the Final Frequent Breaches Notice;

(f) (**failure to Remedy**): a failure by OpCo2 to Remedy an OpCo2 Event of Default which is capable of being Remedied within the Applicable Cure Period;

(g) (**failure to prevent**): a failure by OpCo2 to prevent the recurrence of a OpCo2 Event of Default which is the subject of an Approved Prevention Plan;

(h) (**failure to submit, amend or implement cure/prevention plan**): an event described in clauses 40.3(e) or 40.4(e);

(i) (**failure to achieve Completion by Longstop Date**): a failure by OpCo2 to:

(i) achieve Completion of Phase 1 or the OTS Incorporation Date by the Longstop Date (Phase 1); or

(ii) achieve Completion of Phase 2 by the Longstop Date (Phase 2);

(j) (**abandonment**): OpCo2 abandons the OTS2 PPP;

(k) (**insolvency of OpCo2**): an Insolvency Event occurs in relation to an OpCo2 Entity, whether or not OpCo2 has been in breach of this deed;

(l) (**suspension or revocation of Accreditation**): the ONRSR suspends (other than a suspension not exceeding 6 weeks under section 74 of the Rail Safety National Law) or revokes any Accreditation required by OpCo2 or a Core Contractor to perform OpCo2's Activities;

(m) (**insolvency of contractor or guarantor**): an Insolvency Event occurs in relation to a Core Contractor or a Core Contractor Guarantor (and which, in relation to the Integrator or the Integrator Guarantor, only occurs prior to the Date of Final Completion of Phase 2) whether or not OpCo2 is then in breach of this deed, and:

(i) that Core Contractor or Core Contractor Guarantor is not replaced within 120 Business Days; or

(ii) at any time during that period, OpCo2 is not diligently pursuing the replacement of that Core Contractor or Core Contractor Guarantor (as applicable),

by a person that:

(iii) satisfies the requirements of clause 54.3(b); or

(iv) is otherwise acceptable to the Principal (acting reasonably);

(ma) (**termination of OTS Project Deed for default**): prior to the OTS Incorporation Date the OTS Project Deed is terminated in accordance with clause 42.4 (*Termination for OpCo Termination Event*) of the OTS Project Deed;

(n) (**failure to insure**): OpCo2 does not effect and maintain (or cause to be effected and maintained) an insurance as required by this deed, and fails to do so within 10 Business Days after receipt of a notice from the Principal directing it to do so;

(o) (**assignment etc**): OpCo2 breaches its obligations under clause 52.2(b);

(p) (**restriction on Change of Ownership of OpCo2**): OpCo2 breaches its obligations under clause 53.2 (*Change of Ownership of OpCo2 Group Member*);

(q) (**restriction on Change in Control of Integrator**): a Change in Control of the Integrator occurs without the Principal's approval under clause 53.3(a) and OpCo2 fails to comply with the requirements of clause 53.3(e);

(r) (**restriction on Change in Control of O&M Contractor**): OpCo2 breaches its obligation under clause 53.4(a);

(s) (**restrictions on replacement of a Core Contractor or Alstom Significant Contractor**): a Core Contractor or the Alstom Significant Contractor is replaced by OpCo2 or a Core Contractor without the Principal's approval under clause 54.3(a) and OpCo2 fails to:

(i) terminate any Significant Contract with the replacement Core Contractor or Alstom Significant Contractor and retender the works or services within 90 days after receipt of a notice from the Principal directing it to do so; or

(ii) ensure the Core Contractor terminates any Significant Contract with the replacement Alstom Significant Contractor and retenders the works or services within 90 days after receipt of a notice from the Principal directing it to do so;

(t) (**Illegality Event**): the occurrence of any of the following events:

(i) OpCo2 or a Core Contractor ceases to hold an Approval or breaches a law, and such failure or breach is, in the reasonable opinion of the Principal, material to the performance of OpCo2's obligations under this deed and is not remedied within 30 days of the earlier of:

(A) the date on which the Principal notifies OpCo2 of the failure or breach; or

(B) the date on which OpCo2 becomes aware of the failure or breach;

(ii) any Project Agreement:

(A) being revoked, repudiated or terminated or ceasing to be legal, valid and binding and enforceable against OpCo2 or any other party to a Project Agreement (other than the Principal, Transport for NSW, the State, Sydney Trains or a Foundation Infrastructure Works Contractor), other than as contemplated by the Project Agreements; or

(B) becoming invalid, void or voidable in any material respect other than where the Principal, Transport for NSW, the State, Sydney Trains or a Foundation Infrastructure Works Contractor has caused it to be invalid, void or voidable,

and, where the event is capable of being remedied, the event is not Remedied within 30 days of OpCo2 becoming aware of the relevant event occurring; or

(iii) it is or becomes unlawful for OpCo2 or a Core Contractor to perform any of its obligations under the Project Agreements, and such event is not remedied within 30 days of OpCo2 becoming aware of the relevant event occurring; and

(u) (**Train Option Acceptance Requirements delay**): OpCo2 has not achieved the Train Option Acceptance Requirements for each batch of Option 1 Trains by the Longstop Date (Phase 2).

42.1A Termination for failure to achieve Completion of a Phase or Milestone Completion

Without limiting the Principal's other rights or OpCo2's other obligations under this deed, where an OpCo2 Event of Default occurs as a result of:

(a) an OpCo2 Event of Default under clause 40.1(o)(i) or 40.1(p), then any consequential OpCo2 Termination Event referred to in clauses 42.1(d) and 42.1(e)

that may otherwise arise will be deemed to not arise until the Longstop Date (Phase 1); and

(b) an OpCo2 Event of Default under clause 40.1(o)(ii) or 40.1(q), then any consequential OpCo2 Termination Event referred to in clauses 42.1(d) and 42.1(e) that may otherwise arise will be deemed to not arise until the Longstop Date (Phase 2).

42.2 **Notice of OpCo2 Termination Event**

Without limiting the Principal's other rights or OpCo2's other obligations under this deed, OpCo2 must notify the Principal's Representative immediately upon becoming aware of an OpCo2 Termination Event or an event or occurrence that, with the giving of notice, or lapse of time, would or is likely to become an OpCo2 Termination Event.

42.3 **Not used**

42.4 **Termination for OpCo2 Termination Event**

(a) Subject to clause 42.4(b), if an OpCo2 Termination Event occurs and is subsisting, the Principal may give a written notice to OpCo2 immediately terminating this deed. The notice must set out details of the OpCo2 Termination Event for which the Principal is giving the notice.

(b) If the OpCo2 Termination Event in clause 42.1(ma) occurs, the Principal will terminate this deed by written notice to OpCo2 with effect from the date stated in the notice (which shall be the same date as the date of termination of the OTS Project Deed).

42.5 **Principal Termination Events**

Each of following events is a Principal Termination Event:

(a) (**Failure to pay**): the Principal fails to comply with its payment obligations under clause 25 (*Payment provisions*) and the failure is not remedied within 20 Business Days of a written demand from OpCo2 (provided that an amount disputed under clause 25.9 (*Correction of payment Schedules*) is not to be taken into account for the purposes of this clause 42.5(a));

(b) (**Expropriation**): the State expropriates, sequesters or requisitions a material part of the Sydney Metro or any Equity Interest; or

(c) (**Frustration**): a breach by the Principal of this deed which substantially frustrates or renders it impossible for OpCo2 to:

(i) achieve Completion of the OTS2 Works; or

(ii) comply with a material part of its obligations with respect to the Operations Activities under this deed for a continuous period of 2 months.

42.6 **Termination for Principal Termination Event**

(a) If a Principal Termination Event occurs, OpCo2 may give the Principal 30 Business Days' notice of its intention to terminate this deed.

(b) If OpCo2 gives a notice under clause 42.6(a), the Principal may suspend OpCo2's right to terminate by giving a suspension notice within 30 Business Days of receipt of OpCo2's notice.

(c) The Principal's suspension of OpCo2's right to terminate expires on the earliest of:

(i) the Principal notifying OpCo2 that it is ending the suspension period;

(ii) in the case of the Principal Termination Event referred to in clause 42.5(a), 30 Business Days after the date of OpCo2's notice under clause 42.6(a);

(iii) in the case of any other Principal Termination Event, 24 months after the date of OpCo2's notice under clause 42.6(a); and

(iv) when the relevant Principal Termination Event has been remedied (or its effects overcome).

(d) If the Principal's suspension of OpCo2's right to terminate expires:

(i) under clauses 42.6(c)(i), 42.6(c)(ii) or 42.6(c)(iii) and the Principal Termination Event has not been Remedied, OpCo2 may immediately terminate this deed by notice to the Principal; and

(ii) under clause 42.6(c)(iv), this deed will continue in force.

(e) OpCo2 must continue to perform its obligations under this deed while its right to terminate is suspended, to the extent that it is lawful and practicable to do so.

(f) If the Principal does not give a suspension notice under clause 42.6(b) and the relevant Principal Termination Event has not been remedied (or its effects overcome) within 30 Business Days of receipt of OpCo2's notice under clause 42.6(a), OpCo2 may, if the Principal Termination Event is still subsisting, immediately terminate this deed by notice to the Principal.

(g) If the Principal issues a notice to OpCo2 under clause 42.6(b) the Principal must pay OpCo2 monthly an amount sufficient to place OpCo2 in the net after tax position it would have been in had the relevant Principal Termination Event not occurred, from the date the Principal issues a notice under clause 42.6(b) until the end of the period of suspension.

(h) The Principal will not be entitled to give any notice under clauses 40.2 (*Default Notice*) or 42.4 (*Termination for OpCo2 Termination Event*) to the extent the occurrence or circumstance which would otherwise entitle the Principal to give such a notice results from the relevant Principal Termination Event.

42.7 Voluntary termination by the Principal

(a) The Principal:

(i) may, at any time for its sole convenience and without giving reasons, terminate this deed by written notice to OpCo2 with effect from the date stated in the notice (which date must not precede the date the notice is received by OpCo2); and

(ii) will terminate this deed by written notice to OpCo2 if prior to the OTS Incorporation Date the Principal has terminated the OTS Project Deed in accordance with the clause 42.7 (*Voluntary Termination by the Principal*) of the OTS Project Deed with effect from the date stated in the notice (which date shall be the same date as that included in the notice pursuant to clause 42.7 (*Voluntary Termination by the Principal*) of the OTS Project Deed).

(b) If this deed is terminated in accordance with clause 42.7(a), the Principal may thereafter either itself or by third parties carry out some or all of OpCo2's Activities (if the Principal elects to do so).

42.8 **Termination for Force Majeure Event**

(a) Either party may terminate this deed pursuant to clause 28.3 (*Termination for Force Majeure Event*).

(b) If prior to the OTS Incorporation Date the OTS Project Deed has been terminated in accordance with clause 28.3 (*Termination for Force Majeure Event*) of the OTS Project Deed, then the Principal will terminate this deed by written notice to OpCo2 with effect from the date stated in the notice (which shall be the same date as the date of termination of the OTS Project Deed).

42.9 **Termination in connection with Augmentations**

The Principal may terminate this deed pursuant to clause 33.9 (*Termination in connection with an Augmentation*) or to clause 20 of Schedule 46 (*Augmentation*).

42.10 **Termination for Uninsurable Risk**

The Principal:

(a) may terminate this deed pursuant to clause 39 (*Uninsurable Risks*); and

(b) will terminate this deed by written notice to OpCo2 if prior to the OTS Incorporation Date the Principal has terminated the OTS Project Deed in accordance with clause 42.10 (*Termination for Uninsurable Risk*) of the OTS Project Deed with effect from the date stated in the notice (which date shall be the same date as that included in the notice pursuant to clause 42.10 (*Termination for Uninsurable Risk*) of the OTS Project Deed).

42.11 **Consequences of termination**

Upon expiry or termination of this deed, the rights and obligations of the parties under this deed will cease except for:

(a) any accrued rights and obligations under this deed, including those arising out of the termination of this deed; and

(b) any rights and obligations which expressly or impliedly continue after termination of this deed, including those referred to in clause 62.6 (*Survival of certain provisions; no merger*).

42.12 **Termination Payments**

(a) Subject to clause 42.12(b), if this deed is terminated under this clause 42 (*Termination*) or clauses 28.3 (*Termination for Force Majeure Event*), 33.9 (*Termination in connection with an Augmentation*) or 39 (*Uninsurable Risks*), the Principal must pay to OpCo2:

(i) if this deed is terminated under clause 42.4 (*Termination for OpCo2 Termination Event*) (other than as the result of an OpCo2 Termination Event referred to in clause 42.1(j)), the Termination Payment determined in accordance with clause 3 of Schedule 31 (*Termination Payments*);

(ii) if this deed is terminated under clauses 42.6 (*Termination for Principal Termination Event*), 42.7 (*Voluntary termination by the Principal*) or 33.9

(*Termination in connection with an Augmentation*), the Termination Payment calculated in accordance with clause 4 of Schedule 31 (*Termination Payments*); or

(iii) if this deed is terminated under clauses 28.3 (*Termination for Force Majeure Event*), 39 (*Uninsurable Risks*) or 42.8(b), the Termination Payment calculated in accordance with clause 5 of Schedule 31 (*Termination Payments*).

(b) If this deed is terminated as the result of an OpCo2 Termination Event referred to in clause 42.1(j), OpCo2 will receive no compensation.

(c) In the calculation of Termination Payments under Schedule 31 (*Termination Payments*), there will not be any double counting of any amounts, whether such amounts are referred to in Schedule 31 (*Termination Payments*) or elsewhere in this deed.

(d) If this deed is terminated as a result of a Principal Termination Event or a breach by the Principal:

(i) payment of the relevant Termination Payment will be full and final settlement of any Claim which OpCo2 has against the Principal arising out of that breach and/or the termination of this deed; and

(ii) OpCo2 will not be entitled to pursue a claim of restitution of any kind, including a claim of unjust enrichment or quantum meruit.

42.13 **No other termination rights**

Despite any rule of law or equity to the contrary, this deed may not be terminated other than as provided for in this deed.

42.14 **Option to assume Project Debt**

(a) If:

(i) this deed is terminated, other than as a result of a Principal Termination Event arising under clause 42.5(a); and

(ii) as at the date of termination, an OpCo2 Entity has any outstanding Financial Indebtedness,

the Principal may, subject to complying with law, elect to assume all of that OpCo2 Entity's rights and liabilities under the Debt Financing Documents.

(b) If the Principal elects to assume all of an OpCo2 Entity's rights and liabilities under clause 42.14(a):

(i) OpCo2 must ensure that such rights and liabilities are novated to the Principal on the date of termination of this deed (but subject to clause 42.14(b)(v));

(ii) the Principal agrees to meet all further obligations to the Debt Financiers on the same terms and conditions as contained in the Debt Financing Documents;

(iii) the Principal's assumption of the OpCo2 Entity's rights and liabilities must be supported by a guarantee from the State on terms no less favourable than

those contained in the GSF Act Guarantee, together with any necessary approvals that may be required for such guarantee;

(iv) the Termination Payment which the Principal would otherwise be obliged to pay to OpCo2 will be reduced by:

(A) the principal payable directly to the Debt Financiers by the Principal following any novation of the Debt Financing Documents to the Principal under this clause 42.14 (*Option to assume Project Debt*); and

(B) the amount of any costs of terminating the Debt Financing Documents which would otherwise have been taken into account in determining the Termination Payment, but which are not incurred by reason of the novation; and

(v) subject to clauses 42.14(b)(iv), the Principal must pay the Termination Payment to OpCo2 prior to the novation becoming effective.

(c) OpCo2 must ensure that both OpCo2 and Finance Co are permitted, under the terms of all of the Debt Financing Documents, to procure the novation of their respective rights and obligations under those Debt Financing Documents pursuant to this clause 42.14 (*Option to assume Project Debt*).

43. TRANSITION OUT PROVISIONS

43.1 Right to appoint Successor OpCo2

(a) OpCo2 acknowledges that the Principal may, on or before the expiry or termination of the Term, invite any person (including OpCo2) to perform all or any part of OpCo2's Activities for the period commencing after expiry or termination of the Term.

(b) The following clauses will not apply if OpCo2 is the Successor OpCo2:

(i) clause 43.6 (*Assistance in securing continuity*); and

(ii) clause 43.7 (*Access*).

43.2 Transition Out Plan

(a) OpCo2 must prepare, update and submit the Transition Out Plan in accordance with clause 8 (*Project Plans*).

(b) OpCo2 must ensure that a Step-In Party, prospective Successor OpCo2, Successor OpCo2 or nominee of the Principal has, to the extent permitted by law, immediate access to the information required to be included in the Transition Out Plan on reasonable notice from the Principal and in any case on the dates OpCo2 is required to submit the Transition Out Plan to the Principal in accordance with clause 8 (*Project Plans*).

43.3 Preparation for contracting at end of Term

(a) OpCo2 must, to the extent permitted by law, provide the Principal with reasonable access to the Staff and the information, books and records, kept by or on behalf of OpCo2 in connection with the OTS2 PPP, for the purpose of the Principal preparing reports and documents in connection with any invitation to a person for the performance of all or part of OpCo2's Activities.

(b) OpCo2 must use reasonable endeavours to assist the Principal in the preparation for, and the conduct of, a fair and competitive expression of interest or tendering process.

(c) Without limiting clause 43.3(b), OpCo2 must, to the extent permitted by law, make available to the Principal any information, and assist in the verification of any information (including the provision of answers to verification questions), as they reasonably require in connection with the contracting of OpCo2's Activities.

(d) OpCo2 warrants to the Principal that to the best of its belief all information provided under clauses 43.2 (*Transition out Plan*) and 43.3 (*Preparation for contracting at end of Term*) will be, at the time it is provided, true and correct in all material respects and will not be misleading, by omission or otherwise.

43.4 **Continuity of OpCo2's Activities**

OpCo2 must manage, perform and maintain OpCo2's Activities in a way that an appropriately qualified and resourced Step-In Party or Successor OpCo2 (or nominee of the Principal) is able at any time to immediately take over the performance of OpCo2's Activities without interruption.

43.5 **Non frustration of transfer**

OpCo2 must not do anything that directly or indirectly avoids or materially prejudices or frustrates the transfer of the performance of OpCo2's Activities at termination or expiry of the Term to a Successor OpCo2 (or nominee of the Principal).

43.6 **Assistance in securing continuity**

OpCo2 must do everything, both before and after the expiry or termination of the Term, as the Principal may reasonably require to assist and advise any Step-In Party, prospective Successor OpCo2, Successor OpCo2 or nominee of the Principal in performing OpCo2's Activities, including the provision of:

(a) information and records related to the performance of OpCo2's Activities (excluding Commercially Sensitive Information); and

(b) training sessions to any person nominated by the Principal in relation to the performance of OpCo2's Activities.

43.7 **Access**

OpCo2 must ensure that a prospective Successor OpCo2, Successor OpCo2 or nominee of the Principal has access to the Assets, systems, Sydney Metro Trains Facility (North), Sydney Metro Trains Facility (South) and the Required Employees for the purpose of:

(a) the prospective Successor OpCo2, Successor OpCo2 or nominee of the Principal receiving information in respect of OpCo2's Activities; and

(b) preparations by the prospective Successor OpCo2, Successor OpCo2 or nominee of the Principal to take over the performance of OpCo2's Activities following expiry or termination of the Term,

but only to the extent that any of the above does not unduly interfere with the performance of OpCo2's Activities.

43.8 **Required Employee details**

(a) No later than 30 Business Days prior to the Expiry Date, or, in the event that this deed is terminated, within 7 Business Days of any notice of termination, OpCo2 must:

(i) provide to each Required Employee a statement setting out that Required Employee's:

(A) grade/classification;

(B) rate of pay;

(C) date of commencement of employment; and

(D) estimated accrued entitlements (including annual leave, long-service leave, sick pay and rostered days off) as at the Expiry Date or termination of this deed; and

(ii) provide to the Principal information on the Required Employees, including:

(A) the statement provided to each Required Employee pursuant to clause 43.8(a)(i);

(B) a list of the names of the Required Employees;

(C) each Required Employee's terms and conditions of employment; and

(D) each Required Employee's roster.

(b) In the event that a Required Employee notifies OpCo2 that he or she disputes any of the information contained in the statement provided to that Required Employee pursuant to clause 43.8(a)(i), OpCo2 must notify the Principal of such dispute and the Principal shall refer the disputed issue to an actuary.

43.9 **Variation of terms and conditions of employment**

OpCo2 must not, without the prior written consent of the Principal (which must not be unreasonably withheld), vary, or purport or promise to vary, the terms or conditions of employment (including superannuation entitlements) of any Required Employee where:

(a) the variation takes effect in the 12 months prior to the Expiry Date unless:

(i) it is in the ordinary course of business and, when aggregated with any other variation which takes effect during that period, represents a percentage increase in the remuneration of the Required Employee of no more than the percentage increase in the index referred to in clause 14.2(b) of Schedule 2 (*Service Payment calculation*) over the twelve month period ending on the month for which that index was last published; or

(ii) is a variation imposed by a determination of the Fair Work Commission or the New South Wales Industrial Relations Commission;

(b) all or part of the variation first takes effect after the end of the Term;

(c) the variation relates to the provision of a financial or non-financial benefit (but excluding base salary and the Required Employee's legal entitlements) which the Required Employee will or may have a contractual right to receive after the expiry or termination of the Term; or

(d) the variation prevents, restricts or hinders the Required Employee from working for a Successor OpCo2 in any capacity whether as an employee, independent contractor or otherwise, or from performing any duties which are the same as or similar to the duties the Required Employee performed in the course of his or her employment with OpCo2.

43.10 Transfer of employees to Successor OpCo2

(a) At the end of the Term the Principal may, and at the Expiry Date the Principal must, procure that Successor OpCo2 (or a contractor of Successor OpCo2) makes offers of employment to the Required Employees on terms which are similar to and are, on an overall basis, no less favourable than their terms of employment with OpCo2 (or the relevant O&M Contractor).

(b) Notwithstanding clause 43.10(a), OpCo2 will (or will ensure that the relevant OpCo2 Contractor will) pay to any employee who becomes entitled to any redundancy payment upon the cessation of their employment with OpCo2 (or the relevant O&M Contractor), an amount which:

(i) complies with the terms of any relevant employment agreement and applicable laws; and

(ii) is consistent with general standards applicable at that time.

(c) For the purposes of this clause 43.10 (*Transfer of employees to Successor OpCo2*), any offer of employment by Successor OpCo2 (or a contractor of Successor OpCo2) must:

(i) recognise continuity of service for all service related entitlements;

(ii) expressly waive any qualifying period which would otherwise preclude an employee's access to Commonwealth unfair dismissal laws in place from time to time; and

(iii) meet any criteria as to 'acceptable alternative employment' for the purposes of any exemption from the liability of OpCo2 (or the O&M Contractor) to make redundancy payments set under any applicable contract, policy or enterprise agreement which applies to the employee as at the end of the Term.

(d) This clause 43.10 (*Transfer of employees to Successor OpCo2*) does not apply if this deed is terminated under clauses 28.3 (*Termination for Force Majeure Event*) or 39 (*Uninsurable Risks*).

43.11 Asset Information System

OpCo2 must commence the transfer of the Asset Information System database to the Principal, as required by clause 21.12(g), at least 12 months prior to the Expiry Date.

44. ACCESS, INSPECTIONS AND AUDITS

44.1 Principal's right of entry

(a) The Principal (and any person authorised by the Principal) may, at any time, enter the Sydney Metro Site and any other premises where OpCo2's Activities are being carried out for the purpose of:

(i) observing or inspecting OpCo2's Activities;

(ii) monitoring compliance by OpCo2 with its obligations under any Principal Project Agreement; or

(iii) exercising any right or performing any obligation which the Principal has under any Principal Project Agreement.

(b) When exercising this right, the Principal must do so (and must ensure any person authorised by the Principal does so) in a manner that:

(i) does not unreasonably interfere with OpCo2's Activities; and

(ii) complies with OpCo2's reasonable site access and work health and safety procedures.

(c) OpCo2 must use reasonable endeavours to:

(i) coordinate OpCo2's Activities so they do not interfere with the exercise by the Principal of its right of entry; and

(ii) provide the Principal with every reasonable facility and other assistance necessary for any inspection by the Principal, including providing access to any relevant systems, registers, manuals, records (including financial records), plans and programs.

(d) If an inspection shows that OpCo2 has not complied or is not complying with its obligations under this deed, the Principal's Representative:

(i) may notify OpCo2 of the details of the non-compliance;

(ii) may specify a reasonable period within which OpCo2 must carry out appropriate rectification and/or remedy activities; and

(iii) will be entitled to be reimbursed by OpCo2 for the reasonable costs of the inspection including any reasonable administrative costs incurred by the Principal in relation to the inspection.

(e) When exercising this right in clause 44.1(a), the Principal must ensure that the Principal and its nominees:

(i) cooperate with OpCo2 and the Core Contractors in relation to OpCo2's (or any Core Contractor's) compliance with its Accreditation obligations under the Rail Safety National Law and Rail Safety Regulations;

(ii) do not put OpCo2 (or any Core Contractor) in breach of its obligations as a Rail Infrastructure Manager or Rolling Stock Operator under the Rail Safety National Law and Rail Safety Regulations;

(iii) comply with all reasonable requirements of OpCo2 (or any Core Contractor) in relation to compliance with the Accreditation of OpCo2 (or any Core Contractor); and

(iv) do not do anything (or fail to do anything) which jeopardises the Accreditation of OpCo2 (or any Core Contractor) or an application for Accreditation by OpCo2 (or any Core Contractor), including anything that may be grounds for the ONRSR to refuse an application for Accreditation by OpCo2 (or any Core Contractor), or to suspend or revoke (in whole or in part) or impose or vary conditions or restrictions on the Accreditation of OpCo2 (or any Core Contractor).

44.2 **Access to information**

Without limiting any other provision of this deed:

(a) the Principal may at any time notify OpCo2 that it requires access to any information held by OpCo2 or a Significant Contractor which relates to OpCo2's Activities;

(b) upon receipt of a notice under clause 44.2(a), OpCo2 must immediately provide the Principal (and any person authorised by the Principal) with access to, or a copy of, the required information, except to the extent that the information is subject to legal professional privilege; and

(c) the Principal (and any person authorised by the Principal) may review, copy, retain or otherwise deal with such information,

provided that where such information relates to the Net Financial Impact of an NFI Event, the Principal's right to request and OpCo2's obligation to provide such information will be limited to the extent set out in clause 3.10 of Schedule 29 (*Net Financial Impact*).

44.3 **Access to third parties' information**

OpCo2 must:

(a) ensure that the Principal (and any person authorised by the Principal) has direct access to any information, documents or material that:

(i) is maintained by a third party (including OpCo2's Associates); and

(ii) the Principal is entitled to have access to, or have copies of, from OpCo2 under this deed;

(b) ensure that any contractual arrangements between OpCo2 or OpCo2 Contractors and any third parties acknowledge the Principal's right of access under clause 44.3(a); and

(c) provide to the Principal on demand written evidence (including copies of any contractual arrangements referred to in clause 44.3(b)) showing compliance by OpCo2 with its obligations under clause 44.3(b).

44.4 **OpCo2 to cooperate**

OpCo2 must cooperate, and must ensure that OpCo2 Contractors cooperate, with the Principal and any persons authorised by the Principal in the exercise of the Principal's rights under this clause 44 (*Access, inspections and audits*).

45. **RECORDS, REPORTING OBLIGATIONS AND PRIVACY**

45.1 **Records**

(a) OpCo2 must keep appropriate books of account, records, documentation and systems which evidence its performance of OpCo2's Activities and its compliance with the Project Agreements.

(b) OpCo2 must ensure its books of account, records, documentation and systems are available to the Principal in accordance with clause 44.2 (*Access to information*).

45.2 **Financial reporting**

(a) Not later than 4 months after the end of each financial year, OpCo2 must give the Principal:

(i) unconsolidated audited financial statements for the previous financial year for each OpCo2 Entity;

(ii) the audited financial statements for the previous financial year of any consolidated entity of which OpCo2 forms part; and

(iii) the audited financial statements for the previous financial year of the Core Contractors, provided that OpCo2 will not be required to give the Principal the audited financial statements of the Integrator in respect of any period after the date of Final Completion of Phase 2.

(b) Each of the documents to be provided to the Principal in accordance with this clause 45.2 (*Financial reporting*) must be accompanied by a certificate signed by two authorised officers of the relevant entity certifying that the information provided is accurate, complete and correct in all respects.

(c) OpCo2 must prepare (or procure the preparation of) the accounts and financial statements required under this clause 45.2 (*Financial reporting*) in compliance with law and, without limitation, in accordance with the accounting principles generally accepted in Australia and consistently applied.

45.3 **Project reporting and Risk Register**

Without limiting OpCo2's other reporting obligations under this deed, OpCo2 must:

(a) provide the following reports during the Delivery Phase:

(i) the Delivery Phase Progress Report;

(ii) Test Reports in accordance with clause 18.5 (*Test Reports*);

(iii) an Intellectual Property report under clause 19.12 (*Final Completion*);

(iv) a report on the effects of OpCo2's Activities under section 3.5 of the SPR;

(v) site investigation reports under section 3.15 of the SPR;

(vi) survey reports under section 3.17 of the SPR;

(vii) Quality Plan audit reports under section 5.5.6 of the SPR;

(viii) as constructed documentation and construction completion report under section 5.12 of the SPR; and

(ix) design reports under section 6.4.3 of the SPR;

(x) durability assessment reports under section 6.4.6 of the SPR;

(xi) the reports required under section 6.4.7 of the SPR; and

(xii) accident and Incident reports under section 6.5.25 of the SPR; and

(b) provide the following reports during the Operations Phase:

(i) reports on the Asset Management Activities in accordance with clause 21.9 (*Reporting*);

(ii) the Monthly Operations Performance Report;

(iii) the Monthly Service Payment Report;

(iv) Asset Condition Assessment reports under section 8.10 of the SPR; and

(v) the configuration management reports, quarterly performance reports, annual performance reports and Special Event reports required by SPR Appendix 53b (*Operations Phase Reporting Requirements*);

(c) during the Term, provide written reports of all work health, safety and rehabilitation matters under clause 9.4(f) and any other reports required by OpCo2 under this deed and the SPR;

(d) without limiting the foregoing paragraphs of this clause 45.3 (*Project reporting and Risk Register*), as part of each Delivery Phase Progress Report and each Monthly Operations Performance Report (as applicable), report on a without prejudice basis on any fact, matter or thing which may give rise to a risk of:

(i) a delay in achieving Completion of Phase 1 or Completion of Phase 2;

(ii) a delay in providing the First Passenger Service on the Sydney Metro City;

(iii) [redacted]

(iv) a delay in achieving Milestone Completion of a Milestone;

(v) a delay in completing a Collaboration Event by the relevant CE Locked Date;

(vi) an adverse effect on the performance of OpCo2's Activities or the OTS2 Works;

(vii) OpCo2 being in breach of any term of this deed; or

(viii) a Claim,

(an **Early Warning Notification**) in a separate section to the relevant report entitled Early Warning Notification, provided where in the course of a month there is a particularly material issue arising which may have any of the effects in (i) to (v) above then OpCo2 shall give a notice of such a risk prior to the delivery of the relevant report;

(e) upon receipt of an Early Warning Notification under clause 45.3(d), enter the risk the subject of the Early Warning Notification on the Risk Register (which must include a description of the risk and the actions which are to be taken to avoid or mitigate the risk, including any cost-effective solution to overcome (either in whole or in part) the risk from a whole of life costs point of view); and

(f) provide the Principal with access to the Risk Register or as otherwise directed by the Principal's Representative.

An Early Warning Notification provided by OpCo2 under clause 45.3(d) will not relieve OpCo2 from or alter its liabilities or obligations under this deed, including any and all other notification obligations under this deed.

45.4 **Notices under Project Agreements**

OpCo2 must give the Principal as soon as practicable certified copies of all notices of default, breach or dispute given or received by it under the Project Agreements from any of its co-contracting parties.

45.5 **Advice on rights of third parties under Project Agreements**

OpCo2 undertakes to advise the Principal as soon as practicable after an event has occurred which, to OpCo2's actual knowledge, could in any way materially prejudice the Principal's rights under the Project Agreements by reason of the exercise of rights available to third parties arising from the Project Agreements.

45.6 **Information provided to Debt Financiers**

OpCo2 must promptly provide to the Principal copies of all documents, financial models, reports, notices and other information which an OpCo2 Entity provides to any Debt Financier under the Debt Financing Documents.

45.7 **ASIC and ASX notices**

OpCo2 must give the Principal, as soon as practicable, copies of all notices and other documents given or received by a member of the OpCo2 Group to or from the Australian Securities and Investments Commission or the ASX Limited.

45.8 **Other information**

OpCo2 must promptly give the Principal such other information relating to the OTS2 PPP or OpCo2's Activities as the Principal may reasonably require from time to time.

45.9 **Retention of records**

OpCo2 must retain all records in relation to the OTS2 PPP:

(a) until they are delivered to the Principal pursuant to clause 21.12(h); or

(b) if not so delivered to the Principal, for at least 7 years after the end of the Term.

45.10 **Privacy**

(a) (**Definitions**): In this clause **Privacy Obligations** means:

(i) while the PPIP Act is in force, obligations imposed on public sector agencies under the PPIP Act; and

(ii) if the PPIP Act is repealed, obligations imposed on Authorities and private sector organisations by any Commonwealth or New South Wales legislation that replaces the PPIP Act in whole or in part.

(b) (**PPIP Act**): OpCo2 acknowledges that:

(i) under this deed it is providing "data services" as that term is defined in the PPIP Act; and

(ii) it is a "public sector agency" as that term is defined in the PPIP Act.

(c) (**Compliance with Privacy Obligations and privacy plans**): OpCo2 must:

(i) comply with the Privacy Obligations and OpCo2's Privacy Plan; and

(ii) provide all reasonable assistance to enable the Principal to comply with the Privacy Obligations.

(d) (**Personal Information**): Without limiting clause 45.10(c), OpCo2 must ensure that Personal Information is collected, used, disclosed and handled by it in accordance with OpCo2's Privacy Plan and this deed.

(e) (**OpCo2's Privacy Plan**): At least 20 Business Days prior to the first occasion on which OpCo2 will handle any Personal Information in undertaking OpCo2's Activities, OpCo2 must submit to the Principal's Representative an OpCo2's Privacy Plan which sets out OpCo2's procedures in relation to privacy protection and includes, as a minimum, procedures which:

(i) ensure that OpCo2 will comply with the Privacy Obligations;

(ii) are consistent with the Privacy Obligations as they apply to the Principal; and

(iii) are consistent with Good Industry Practice.

(f) (**Principal's review**): The Principal's Representative will have the right to comment on OpCo2's Privacy Plan and OpCo2 must amend OpCo2's Privacy Plan to address any comments by the Principal's Representative.

(g) (**Updating of OpCo2's Privacy Plan**): Throughout the Term, OpCo2 must review and, if necessary, update OpCo2's Privacy Plan:

(i) to take account of:

(A) events or circumstances which will, or may, affect the manner in which OpCo2 carries out OpCo2's Activities; and

(B) any evolution in technology and in security threats; and

(ii) upon written request by the Principal's Representative.

(h) (**Submission of updated plan**): OpCo2 must submit any plan updated in accordance with clause 45.10(g) to the Principal's Representative, in which case clause 45.10(f) will reapply.

(i) (**Subcontracts**): OpCo2 must ensure that all Subcontracts with any Significant Contractor who collects, uses, stores, disposes or discloses Personal Information contains provisions to the same or similar effect as clause 45.9 (*Retention of records*).

(j) (**Audit**): The Principal may require OpCo2 and Significant Contractors to have their privacy procedures audited by a qualified nationally recognised firm provided that the Principal is not entitled to require such an audit more frequently than annually. OpCo2 and Significant Contractors must take such action as is reasonable to comply with any exceptions or discrepancies discovered by any such audit.

46. STRATEGIC BUSINESS PLAN

(a) OpCo2 must prepare and update the Strategic Business Plan in accordance with clause 8 (*Project Plans*).

(b) The Strategic Business Plan must:

(i) describe OpCo2's overall vision and management approach;

(ii) explain how OpCo2's Activities will promote the achievement of the objectives referred to in clauses 4.1 (*Objectives for the Sydney Metro*) and 4.2 (*Objectives for the OTS2 PPP*); and

(iii) otherwise comply with the requirements of SPR Appendix 54 (*Project Plan Requirements*).

47. DISCLOSURE, CONFIDENTIALITY AND PUBLICITY

47.1 Disclosure by the Principal

The Principal may publish or disclose (on the internet or otherwise):

(a) the terms and conditions of this deed or any other Principal Project Agreement; and

(b) any document or information arising under, out of or in connection with this deed or any other Project Agreement or relating to the performance of this deed or any other Project Agreement,

provided the Principal redacts any Commercially Sensitive Information.

47.2 Confidentiality

(a) Subject to clause 47.2(c), OpCo2 must:

(i) keep confidential the Project Agreements and information relating to the OTS2 PPP, OpCo2's Activities and any discussions concerning the Project Agreements (including the materials and information referred to in the definition of ETS IP); and

(ii) ensure that each of its Associates comply with the terms of clause 47.2(a)(i).

(b) The Principal must keep confidential the Commercially Sensitive Information.

(c) Neither party is obliged to keep confidential any information:

(i) which is in the public domain through no fault of the disclosing party; or

(ii) the disclosure of which is:

(A) required by law;

(B) required by any recognised stock exchange or a New South Wales or Commonwealth regulator;

(C) given with the written consent of the Principal;

(D) to professional advisers who are under a duty of confidentiality;

(E) given to a court in the course of proceedings to which the disclosing party is a party; or

(F) in the case of the Principal, required by a House of Parliament, a Committee of a House of Parliament or for any legitimate government purpose.

(d) If the Principal requires OpCo2 to provide a confidentiality deed in favour of a third party in respect of any of that third party's confidential information that is provided to OpCo2, then OpCo2 must execute such a confidentiality deed in the form reasonably specified by the Principal.

47.3 **Public Disclosure Obligations**

(a) OpCo2 acknowledges and agrees that disclosures regarding the OTS2 PPP by the Principal, Transport for NSW, the State or any Authority may be required:

(i) under law, including the *Government Information (Public Access) Act 2009* (NSW) or any similar or replacement legislation; or

(ii) to satisfy the disclosure requirements of the Auditor General and to satisfy the requirements of Parliamentary accountability,

(**Public Disclosure Obligations**).

(b) OpCo2 must use all reasonable endeavours to assist the Principal, Transport for NSW, the State or an Authority in meeting their Public Disclosure Obligations in connection with the OTS2 PPP.

47.4 **Publicity**

Except for notices which OpCo2 is required to disclose to any recognised stock exchange, OpCo2 must:

(a) not make any public announcements or statements in relation to the OTS2 PPP (including by posting any information relating to the OTS2 PPP on any website) without the Principal's prior consent;

(b) use reasonable endeavours to agree with the Principal the wording and timing of all public announcements and statements by it or its Associates relating to the OTS2 PPP before the relevant announcement or statement is made;

(c) give the Principal a draft of any proposed media release relating to the OTS2 PPP and obtain the Principal's approval of the media release before distributing it;

(d) give the Principal a copy of any announcement or media release as soon as practicable after it is made or distributed; and

(e) ensure that its Associates comply with the requirements referred to in this clause 47.4 (*Publicity*).

48. **INTELLECTUAL PROPERTY**

(a) The parties rights and obligations in relation to Intellectual Property are set out in Schedule 34 (*Intellectual Property*).

(b) In the event that any Escrow Material is released to the Principal pursuant to clause 2.20(b) of Part A of Schedule 34 (*Intellectual Property*) or clause 2.20(b) of Part B of Schedule 34 (*Intellectual Property*), as applicable, the Principal will from time to time make available to OpCo2 (or its Core Contractors) such part of the Escrow Material as may be necessary to enable OpCo2 to continue to comply with its obligations under this deed provided that OpCo2's use of that Escrow Material is limited to the purposes set out in clause 2.4(b) of Part A of Schedule 34 (*Intellectual Property*) or clause 2.4(b) of Part B of Schedule 34 (*Intellectual Property*), as applicable. OpCo2 acknowledges that its indemnities in clause 2.2 of Part A of Schedule 34 (*Intellectual Property*) or clause 2.2 of Part B of Schedule 34

(*Intellectual Property*), as applicable, apply to any Claims which may be brought or made against the Principal by any person in respect of the Principal making Escrow Material so available to OpCo2 and subsequent use of the Escrow Material by OpCo2 or any person by or on behalf of OpCo2.

(c) OpCo2 must within 5 Business Days of receipt of a request from the Principal, provide to the Principal a copy of the Escrow Deed (Alstom) and Escrow Deed (CCS and COM) duly executed by OpCo2 in the number of counterparts required by the Principal.

49. FINANCING AND REFINANCING

49.1 Debt Financing Documents

OpCo2 must not, and must ensure that Finance Co does not, without the prior written consent of the Principal's Representative:

(a) 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 business) other than the Debt Financing Documents or any intercompany financing agreements between OpCo2 Entities; or

(b) make any material amendment to, or waive, vary or change any material provision of, the Debt Financing Documents,

other than in respect of a Refinancing implemented in accordance with this clause 49 (*Financing and Refinancing*) or an event or circumstance described in paragraphs (d) to (h) of the definition of "Refinancing".

49.2 Copies of Debt Financing Documents

OpCo2 must deliver to the Principal's Representative a certified complete copy of each financing agreement entered into by an OpCo2 Entity and each amendment to, or waiver, variation or change of any provision of, the Debt Financing Documents, in each case within 5 Business Days after its execution.

49.3 General

(a) The Financial Indebtedness assumed by an OpCo2 Entity under any Refinancing must be used:

(i) solely for the OTS2 PPP; or

(ii) for refinancing Financial Indebtedness used solely for the OTS2 PPP and for paying legal, swap break and other costs reasonably and properly incurred in connection with the Refinancing including those costs paid to the Principal in accordance with clause 49.10 (*Costs relating to a Refinancing*).

(b) OpCo2 must:

(i) promptly and efficiently procure any Refinancing required to ensure that it complies with its obligations under the Debt Financing Documents; and

(ii) in undertaking any Refinancing, act reasonably as any reasonable borrower would in the circumstances and given the market conditions at that time.

49.4 **OpCo2 to provide details of Refinancing**

(a) OpCo2 must promptly provide the Principal with full details of any proposed Refinancing, including:

(i) a copy of the then current Base Case Financial Model as adjusted for the proposed Refinancing, showing all of the material changes to OpCo2's obligations to the Debt Financiers in a format that allows the calculation of the anticipated Refinancing Gain or Refinancing Loss in accordance with clause 49.8 (*Calculation of Refinancing Gain or Refinancing Loss*);

(ii) the basis for assumptions used in the financial model referred to in clause 49.4(a)(i);

(iii) a certificate on terms and in a form acceptable to the Principal from the auditors of the financial model referred to in clause 49.4(a)(i), as to its operation and effect;

(iv) all information, including terms and conditions, provided by an OpCo2 Entity to its existing and prospective financiers, or by an OpCo2 Entity's existing and prospective financiers to that OpCo2 Entity, in relation to the proposed Refinancing; and

(v) whether OpCo2 considers that the consent of the Principal under clause 49.5 (*Principal consent to Refinancing*) is required for the proposed Refinancing.

(b) The Principal may, within 10 Business Days after receiving details of the proposed Refinancing referred to in clause 49.4(a) (or any revised proposed Refinancing submitted under clause 49.6(c)), request any further information which the Principal reasonably requires from OpCo2 regarding the proposed Refinancing. If such further information is available to an OpCo2 Entity, OpCo2 must (to the extent that further information is available to an OpCo2 Entity) provide it to the Principal as soon as reasonably practicable but no later than 5 Business Days after the Principal's request.

49.5 **Principal consent to Refinancing**

(a) OpCo2 must not, and must ensure that Finance Co does not, enter into any Refinancing which gives rise to:

(i) a Refinancing Gain;

(ii) an increase in the amount of outstanding Project Debt at or beyond the Refinancing date above that forecast in the Base Case Financial Model;

(iii) an increase in the amount of outstanding Project Debt beyond that forecast for any future period in the Base Case Financial Model; or

(iv) a reduction in the tenor of greater than 18 months from that forecast in the Base Case Financial Model at Financial Close for the relevant Refinancing tranche,

without the prior written consent of the Principal, which must be provided in accordance with this clause 49.5 (*Principal consent to Refinancing*).

(aa) Prior to the Date for Completion of Phase 2, OpCo2 must not, and must ensure that Finance Co does not, enter into any Refinancing which:

(i) gives the Debt Financiers the right to demand repayment of the Project Debt as a result of the Principal exercising its rights under the Equity Purchase Deed;

(ii) prohibits, or imposes additional non-market standard fees or costs on Finance Co in connection with, an early repayment of the Project Debt; or

(iii) involves a bond issue,

without the prior written consent of the Principal (which may be given or withheld in its absolute discretion).

(b) The Principal may only withhold its consent to a Refinancing under clause 49.5(a) if the Principal's Representative reasonably believes that:

(i) the Refinancing will bring about an increase or adverse change in the liabilities or the profile of the risks or liabilities of the Principal under any Project Agreement (other than as consented to by the Principal and reflected in the Base Case Financial Model) without adequate compensation to the Principal; or

(ii) other than as reflected in the Base Case Financial Model, the Refinancing, taken as a whole, is materially more onerous or disadvantageous to the relevant OpCo2 Entity than the terms and conditions under the existing Debt Financing Documents and the Principal reasonably considers that the relevant OpCo2 Entity will be unable to adequately service and repay the Financial Indebtedness assumed under the Refinancing, or that as a result of such Financial Indebtedness it is reasonably likely that the relevant OpCo2 Entity will be unable to perform its obligations under the Project Agreements.

(c) The Principal must not withhold its consent to a Refinancing under clause 49.5(a) if:

(i) the sole purpose of the Refinancing is to prevent a maturity date under the Debt Financing Documents being reached;

(ii) the circumstances in clause 49.5(b)(i) have not or will not arise; and

(iii) OpCo2 has:

(A) complied with its obligations under clause 49.4 (*OpCo2 to provide details of Refinancing*);

(B) delivered to the Principal the information required under clause 49.4(b) no less than 2 months but no more than 9 months before the relevant maturity date under the Debt Financing Documents; and

(C) used its best endeavours to ensure that the circumstances referred to in clause 49.5(b)(ii) do not arise in connection with the proposed Refinancing.

(d) The granting of consent under clause 49.5(a) by the Principal shall be without prejudice to the Principal's rights under this deed, including its right to any Principal Refinancing Share.

49.6 **Review Process**

(a) If under clause 49.5(a) the Principal is required to provide its consent to a Refinancing, the Principal must provide or withhold its consent within the period commencing on the date OpCo2 provides all of the details of the proposed Refinancing referred to in clause 49.4(a) and ending 20 Business Days after that date (**Review Period**).

(b) During the Review Period, prior to providing or withholding consent, the Principal may provide comments (and sufficient detail to substantiate those comments) to OpCo2 in respect of the proposed Refinancing if the Principal has reasonably formed the view that either or both of the events in clauses 49.5(b)(i) or 49.5(b)(ii) will occur as a result of the proposed Refinancing.

(c) Following receipt of comments from the Principal under clause 49.6(b), OpCo2 may vary the proposed Refinancing in order to ensure that neither of the events in clauses 49.5(b)(i) or 49.5(b)(ii) will occur as a result of the proposed Refinancing and resubmit the revised proposed Refinancing to the Principal for review during the Review Period.

(d) Upon receipt of the revised proposed Refinancing the Principal may request further information from OpCo2 regarding the revised proposed Refinancing in accordance with clause 49.4(b).

(e) If OpCo2 resubmits the proposed Refinancing to the Principal in accordance with clause 49.6(c), the Review Period will be extended for a further period of 20 Business Days (or such shorter period as requested by OpCo2 and agreed to by the Principal) from the date of such resubmission.

(f) If the Principal does not notify OpCo2 of its consent or refusal to consent to the Refinancing within the Review Period, the Principal will be deemed to have consented to the proposed Refinancing.

(g) Any dispute as to whether the Principal's consent is required for a proposed Refinancing or the Principal is entitled to withhold its consent to a proposed Refinancing may be referred by either party for resolution in accordance with clause 56 (*Dispute resolution*).

49.7 **Refinancing documents**

(a) OpCo2 must deliver a certified true copy of each amended and amending Debt Financing Documents to the Principal within 5 Business Days after execution.

(b) OpCo2 must not, and must ensure that Finance Co does not, execute any Refinancing until:

(i) any new Debt Financiers have executed a deed with the Principal substantially in the form of the Financiers Tripartite Deed or become bound by the Financiers Tripartite Deed; and

(ii) any retiring Debt Financiers have executed any documents reasonably requested by the Principal to terminate their rights under the Financiers Tripartite Deed.

49.8 **Calculation of Refinancing Gain or Refinancing Loss**

(a) For each proposed Refinancing, the impact of the proposed Refinancing on Distributions to Equity Investors in the then current Base Case Financial Model must be calculated in order to establish the extent to which gains may arise that

may need to be shared with the Principal in accordance with clause 49.9 (*Sharing Refinancing Gains*).

(b) 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 49.9 (*Sharing Refinancing Gains*) 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 49.9 (*Sharing Refinancing Gains*) will not apply.

Formula = A - B

where:

A = the net present value of Distributions projected over the remaining period of the Term if the proposed Refinancing is executed, using the Base Case Equity Return and the then current Base Case Financial Model as adjusted to reflect the proposed Refinancing, in a manner consistent with clause 49.11 (*Adjustments to Base Case Financial Model upon a Refinancing Gain*) but without taking into account any adjustment for any sharing with the Principal of any Refinancing Gain arising from the proposed Refinancing; and

B = the net present value of the Distributions projected over the remaining period of the Term immediately prior to the proposed Refinancing using the Base Case Equity Return and the then current Base Case Financial Model prior to any adjustments to reflect the proposed Refinancing.

49.9 **Sharing Refinancing Gains**

(a) The Principal will be entitled to [redacted]% of the benefit of any Refinancing Gain that arises from a Refinancing (**Principal Refinancing Share**).

(b) The Principal may, taking into account the nature and timing of the Refinancing Gain, elect to receive the Principal Refinancing Share as:

(i) a direct payment (to the extent OpCo2 receives an amount referable to the Refinancing Gain as a direct payment);

(ii) a reduction in the Service Payments for the period of the Refinancing; or

(iii) a combination of the above.

(c) The Principal and OpCo2 must act reasonably to agree the manner and timing of payments of the Principal Refinancing Share.

49.10 **Costs relating to a Refinancing**

OpCo2 must pay to the Principal its reasonable costs incurred in relation to considering a proposed Refinancing or consenting to a Refinancing.

49.11 **Adjustments to Base Case Financial Model upon a Refinancing Gain**

On execution of a Refinancing that results in a Refinancing Gain, the Base Case Financial Model will be adjusted in accordance with clause 50.1 (*Updates to Base Case Financial Model*) as follows:

(a) Project Debt, fees and margins for the period of the Refinancing will be updated to reflect the amended or amending Debt Financing Documents;

(b) the actual Project Debt balance after the Refinancing and the forecast amortisation profile of Project Debt balances for the remainder of the Term will be updated to reflect the amended or amending Debt Financing Documents;

(c) the impact of financial covenants which result in the forced retention of cash amounts within OpCo2 will be updated to reflect the amended or amending Debt Financing Documents;

(d) 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 the Principal in accordance with clause 49.10 (*Costs relating to a Refinancing*);

(e) the Service Payments for the period of the Refinancing will be adjusted and direct payments to the Principal will be recorded to reflect the Principal Refinancing Share in accordance with clause 49.9 (*Sharing Refinancing Gains*) 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 required adjustments as otherwise agreed between the Principal and OpCo2.

50. FINANCIAL MODELS

50.1 Updates to Base Case Financial Model

(a) (**When BCFM must be updated**): The Base Case Financial Model must be updated:

(i) as required by clause 25.3 (*Conditional Debt Pay Down*);

(ii) as required by clause 49.11 (*Adjustments to Base Case Financial Model upon a Refinancing Gain*);

(iii) if the Indexed Availability Fee (as defined in Schedule 2 (*Service Payment calculation*)) or the Indexed Lifecycle Component (as defined in Schedule 2 (*Service Payment calculation*)) is adjusted in accordance with clause 6.1(a)(i) of Schedule 29 (*Net Financial Impact*) as a result of a Compensation Event, a Modification directed by the Principal under clause 29 (*Principal initiated Modifications*) or Proximate Work Activities;

(iv) if the Construction Payment A, Construction Payment B, Base Availability Fee (as defined in Schedule 2 (*Service Payment calculation*)), Base Lifecycle Component (as defined in Schedule 2 (*Service Payment calculation*)) or Floating Rate Amount (as defined in Schedule 2 (*Service Payment calculation*)) is adjusted under a Pre-Agreed Option; and

(v) if the Construction Payment A Schedule is amended under clause 25.2B(a).

(b) (**Information to be submitted**): When an update of the Base Case Financial Model is required under clause 50.1(a), OpCo2 must submit to the Principal's Representative:

(i) a proposed revised Base Case Financial Model (**Proposed Base Case Financial Model**) (incorporating all adjustments to the Service Payment made in accordance with this deed) and all supporting formulae and data;

(ii) an instruction manual outlining how to use the Proposed Base Case Financial Model, which is acceptable to the Principal's Representative, acting reasonably;

(iii) a financial close protocol (if applicable) outlining the interest rate and/or foreign exchange setting procedures and model solving procedures for adjusting the Proposed Base Case Financial Model to incorporate updated interest rates and/or foreign exchange rates;

(iv) a revised Model Outputs Schedule; and

(v) a certificate from an auditor acceptable to the Principal's Representative confirming that an independent audit of the Proposed Base Case Financial Model has been completed and that:

(A) calculations in the Proposed Base Case Financial Model have been checked and are in all material respects internally consistent and mathematically correct;

(B) the Proposed Base Case Financial Model allows changes in assumptions to correctly flow through to the results;

(C) any macros in the Proposed Base Case Financial Model that govern the calculation of the Proposed Base Case Financial Model are correct;

(D) the input data used in the Proposed Base Case Financial Model is consistent with all relevant supporting project documentation, formulae or constants;

(E) the calculations of any relevant ratios and financial covenants in the Proposed Base Case Financial Model have been checked and that the Proposed Base Case Financial Model correctly reflects the definitions contained in the Debt Financing Documents;

(F) the Proposed Base Case Financial Model correctly incorporates the relevant structural features in the Debt Financiers' term sheets such as reserve accounts, lock up provisions, default provisions and amortisation;

(G) the accounting assumptions and outputs from the Proposed Base Case Financial Model are in accordance with the generally accepted accounting principles in Australia; and

(H) the income taxation assumptions and outputs from the Proposed Base Case Financial Model are in accordance with the relevant income tax legislation.

(c) (**Principal's review**): OpCo2 must:

(i) allow the Principal's Representative 15 Business Days to either approve or submit proposed amendments to the Proposed Base Case Financial Model and the financial close protocol (if applicable); and

(ii) if required by the Principal's Representative:

(A) make available, at the cost and expense of OpCo2, the appropriate personnel to explain; or

(B) provide information, in such form as the Principal's Representative reasonably requests, in relation to,

the Proposed Base Case Financial Model and the financial close protocol (if applicable).

(d) (**Approval**): The Principal's Representative must, within 15 Business Days of receipt of the Proposed Base Case Financial Model and the financial close protocol (if applicable), either approve or submit proposed amendments to the Proposed Base Case Financial Model and the financial close protocol (if applicable).

(e) (**Consultation in good faith**): If the Principal's Representative submits amendments to the Proposed Base Case Financial Model or the financial close protocol then OpCo2 and the Principal's Representative must consult in good faith with respect to, and use their reasonable endeavours to agree on, the amendments required to the Proposed Base Case Financial Model and the financial close protocol (if applicable).

(f) (**Dispute resolution**): If the Principal's Representative and OpCo2 do not agree on the amendments required to be made to the Proposed Base Case Financial Model or the financial close protocol (if applicable) within 10 Business Days after the commencement of the consultation pursuant to clause 50.1(e) or if no consultation has been held within 12 Business Days after the date when the Principal's Representative submitted the amendments, then the Principal's Representative and OpCo2 must refer the dispute for resolution in accordance with clause 56 (*Dispute resolution*).

(g) (**Adjustment of Base Case Financial Model**): Once the Proposed Base Case Financial Model and the financial close protocol (if applicable) has been approved by the Principal's Representative, agreed between the parties or determined under clause 56 (*Dispute resolution*), the Proposed Base Case Financial Model (as adjusted in accordance with the financial close protocol, if applicable) will be the Base Case Financial Model for the purposes of this deed.

(h) (**Further audit**): If the Proposed Base Case Financial Model is adjusted under clause 50.1(g) in accordance with the financial close protocol, OpCo2 must submit to the Principal's Representative a certificate from an auditor acceptable to the Principal's Representative confirming that an independent audit of the Base Case Financial Model has been completed in accordance with the requirements of clause 50.1(b)(v).

(i) (**Model Outputs Schedule**): Whenever the Base Case Financial Model is updated, the Model Outputs Schedule must be updated to reflect the updated Base Case Financial Model.

50.2 **Operational Financial Model**

(a) Not later than 4 months after the end of each financial year, OpCo2 must give the Principal certified copies of:

(i) an electronic copy of the Base Case Financial Model updated in accordance with this clause 50.2 (*Operational Financial Model*) (the **Operational Financial Model**) showing the actual performance of OpCo2 in the previous financial year and cumulatively since the date of Financial Close and the then current performance projections for the remaining years of the Term (assuming no, or no further, extension);

(ii) a statement in such detail as the Principal may reasonably require reconciling the information in the electronic copy of the Operational Financial

Model provided under clause 50.2(a)(i) with the audited financial statements of OpCo2 for the same period and the Base Case Financial Model; and

(iii) a statement in such detail as the Principal may reasonably require reconciling the information in the electronic copy of the Operational Financial Model provided under clause 50.2(a)(i) with any financial information or financial model provided for or utilised for the purposes of the Debt Financing Documents.

(b) OpCo2 must ensure that the assumptions book for the Operational Financial Model (and consequently the Operational Financial Model itself) incorporates relevant and accurate data (including actual data when available).

(c) the Principal will not be bound by any forecasts or other data contained in the Operational Financial Model.

51. OWNERSHIP OF ASSETS AND LICENCES TO USE

51.1 Fixtures

All fixtures affixed to the:

(a) Sydney Metro Northwest as at the OTS Incorporation Date will be owned by the owner of the relevant part of the Licensed Maintenance Area (Northwest); and

(b) Sydney Metro Site will be owned by the owner of the relevant part of the Project Site from the time they are affixed.

51.2 Moveable Assets

(a) OpCo2 must acquire title to all Moveable Assets:

(i) in the case of chattels forming part of the Sydney Metro Northwest, by no later than the OTS Incorporation Date;

(ii) in the case of chattels forming part of the OTS2 Works for Phase 1 (excluding any Option 1 Trains), by no later than the Date of Completion of Phase 1;

(iii) in the case of chattels forming part of the OTS2 Works for Phase 2 (excluding any Option 1 Trains), by no later than the Date of Completion of Phase 2;

(iv) in the case of an Option 1 Train, by no later than the Date of Acceptance of the relevant Option 1 Train; and

(v) in all other cases (excluding the Hired Moveable Assets), by no later than the Original Expiry Date.

(b) Ownership of the Moveable Assets (excluding the Hired Moveable Assets) transfers to the Principal (free from any Security Interests, other than Permitted Security Interests) in each case by no later than:

(i) the date on which OpCo2 acquires title to the relevant Moveable Asset;

(ii) in the case of chattels forming part of the Sydney Metro Northwest, the OTS Incorporation Date;

(iii) in the case of chattels forming part of the OTS2 Works for Phase 1 (excluding any Option 1 Trains) and without limiting clause 51.2(b)(i), the Date of Completion of Phase 1;

(iv) in the case of chattels forming part of the OTS2 Works for Phase 2 (excluding any Option 1 Trains) and without limiting clause 51.2(b)(i), the Date of Completion of Phase 2;

(v) in the case of an Option 1 Train and without limiting clause 51.2(b)(i), the Date of Acceptance of the relevant Option 1 Train; and

(vi) in the case of any other Moveable Asset (excluding Hired Moveable Assets) and without limiting clause 51.2(b)(i), the Original Expiry Date.

(c) The Principal grants OpCo2 an exclusive licence to use and to permit OpCo2 Contractors, OpCo and OpCo Contractors to use all Moveable Assets then owned by the Principal for the purpose of fulfilling OpCo2's obligations under this deed and, in the case of the OTS2 Trains, for the purpose of fulfilling OpCo's obligations under the OTS Project Deed until the Date of Completion of Phase 1. This licence commences in respect of each such Moveable Asset on the date on which ownership of the Moveable Asset transfers to the Principal and terminates at the end of the Term.

(d) OpCo2 must not enter into any lease or hire arrangement in respect of a Hired Moveable Asset unless the terms of that lease or hire arrangement:

(i) where the Hired Moveable Assets are owned by any Related Body Corporate of OpCo2 or a Core Contractor, permit OpCo2 to novate its rights and obligations under the lease or hire arrangement to the Principal (or its nominee) the end of the Term; and

(ii) are approved by the Principal (such approval not to be unreasonably withheld), where the Hired Moveable Asset is a Special Tool or Equipment.

51.3 **Existing ECRL Moveable Assets**

(a) The Principal grants OpCo2 an exclusive licence to use and to permit OpCo2 Contractors to use the Existing ECRL Moveable Assets for the purpose of fulfilling OpCo2's obligations under this deed.

(b) This licence commences on the OTS Incorporation Date and terminates at the end of the Term.

(c) The Principal makes no representations and gives no warranty to OpCo2 in respect of the condition, location, adequacy or suitability of the Existing ECRL Moveable Assets.

(d) OpCo2 accepts the Existing ECRL Moveable Assets in their present condition subject to all defects and agrees that it is responsible for, and assumes the risk of:

(i) all Loss, delay or disruption it suffers or incurs; and

(ii) any adverse effect on the OTS2 Works, the Temporary Works or the Sydney Metro,

arising out of, or in any way in connection with the Existing ECRL Moveable Assets.

51.4 **Moveable Asset register**

OpCo2 must maintain a register of all Moveable Assets and Existing ECRL Moveable Assets, and provide it to the Principal upon request.

52. **RESTRICTIONS**

52.1 **Restrictions on amendment to Project Agreements**

OpCo2 must not:

(a) where it may impact the rights or increase the liabilities or obligations of the Principal, make or permit any amendment to, replacement of or waiver of a provision of or any supplement or agreement collateral to;

(b) terminate, surrender, rescind or accept the repudiation of;

(c) permit the novation, assignment or substitution of any counterparty's right, obligation or interest in; or

(d) where it may impact the rights or increase the liabilities or obligations of the Principal, enter into any agreement or arrangement which affects the operation or interpretation of,

any Project Agreement (other than a Debt Financing Document) to which the Principal is not a party without the Principal's written consent (which consent will not be unreasonably withheld or delayed).

52.1A **Restriction on amendment of Shareholders Agreement**

Notwithstanding clause 52.1 (*Restrictions on amendment to Project Agreements*), OpCo2 must not without the Principal's written consent:

(a) make or permit any amendment to, replacement of, or waiver of a provision of, or any supplement or agreement collateral to; or

(b) enter into any agreement or arrangement which affects the operation or interpretation of,

the Shareholders Agreement such that a vote, resolution, consent or approval by more than [redacted]% of the OpCo2 Equity Interest is required to proceed with, or participate in, an Augmentation in accordance with Schedule 46 (*Augmentation*).

52.2 **Restrictions on assignment**

(a) (**Principal**): The Principal may assign, novate, transfer or otherwise deal with its rights or obligations under any Project Agreement without OpCo2's prior approval, provided the assignee, novatee or transferee (as applicable) is an authority of the State, a Minister or a government entity (including a State owned corporation or any entity that is wholly owned or controlled by the State) supported by a guarantee from the State on terms no less favourable than those contained in the GSF Act Guarantee.

(b) (**OpCo2**): Except as expressly permitted by this deed, the Financiers Tripartite Deed or the Principal Deed of Charge, OpCo2 must not assign, novate, transfer, mortgage, charge or otherwise deal with its rights or obligations under any Project Agreement, without the Principal's prior approval.

52.3 **Financier's Securities**

OpCo2 may, after execution of the Financiers Tripartite Deed, mortgage or charge its interest under the Project Agreements to secure obligations to any Debt Financier (or trustee or agent for any Debt Financier) under the Debt Financing Documents, if, and for so long only as, the Debt Financier (or the trustee or agent for the Debt Financier) is a party to the Financiers Tripartite Deed.

52.4 **Restrictions on dealings with Sydney Metro**

OpCo2 must not:

(a) create, permit or suffer any Security Interest over;

(b) lease, licence, transfer, sell, part with possession of, or otherwise deal with; or

(c) operate or use, or permit any other person to operate or use,

the Sydney Metro, the ETS or any part of the Sydney Metro Site, except a Permitted Security Interest or as otherwise approved by the Principal.

52.5 **Restrictions on business**

OpCo2 must not conduct any business other than the OTS2 PPP and the performance of its obligations and the exercise of its rights under the Project Agreements without the Principal's prior consent.

52.6 **Restrictions on revenue**

(a) (**OpCo2**): OpCo2 may only derive revenue or other returns from:

(i) payments received from the Principal under the Principal Project Agreements;

(ii) interest or other returns on monies held by or on behalf of OpCo2;

(iii) surplus funds in the Insurance Proceeds Account after application in accordance with clause 38.15(d);

(iv) Commercial Opportunities;

(v) other activities contemplated by this deed or any other Project Agreement; and

(vi) activities approved by the Principal.

(b) (**Significant Contractors**): OpCo2 must ensure that, after the date of this deed, none of its Significant Contractors derive revenue or other returns from the OTS2 PPP other than revenue or returns derived:

(i) directly or indirectly from payments made by OpCo2 or otherwise contemplated by a Project Agreement; or

(ii) under an arrangement approved by the Principal (such approval not to be unreasonably withheld if the arrangement is on arm's length commercial terms).

52.7 **Restrictions on acquisition of property and liabilities being incurred**

OpCo2 must not acquire or hold any property, or incur any liability, other than for purposes of the Project without the Principal's prior consent.

52.8 **Restrictions on related party contracts**

OpCo2 must not (and must ensure that OpCo2 Contractors do not) enter into any contract relating to OpCo2's Activities with a Related Body Corporate (other than on arm's length commercial terms) without the Principal's prior consent.

52.9 **Restriction on tax consolidation**

OpCo2 must not become a member of a consolidated group for the purposes of the *Income Tax Assessment Act 1997* (Cth) without the Principal's prior consent.

53. **CHANGE OF OWNERSHIP / CONTROL**

53.1 **Initial status of ownership**

OpCo2 represents and warrants that, at Financial Close, the legal and beneficial ownership of each member of:

(a) OpCo2 Group;

(b) Finance Co Group; and

(c) Issuer Co Group,

will be as set out in Schedule 36 (*OpCo2 group structure*).

53.2 **Change of Ownership of OpCo2 Group Member**

(a) (**No change without consent**): Subject to clause 53.2(b), OpCo2 must not permit any direct or indirect change to the legal or beneficial ownership of any OpCo2 Equity Interest (**Change of Ownership**) without the Principal's prior written consent (which must not be unreasonably withheld).

(b) (**Exceptions**): The Principal's consent is not required for a Change of Ownership resulting from:

(i) a transfer of any share or unit or other interest in the nature of equity which is listed on a recognised stock exchange;

(ii) any transfer of a share or unit or other interest in the nature of equity by a person to a Related Body Corporate of that person, provided OpCo2 gives the Principal prior written notice of the transfer; or

(iii) a Permitted Change of Ownership, provided OpCo2 gives the Principal prior written notice.

(c) (**When consent may be withheld**): The Principal will be deemed to be acting reasonably if it withholds its consent to a proposed Change of Ownership where the Principal is of the reasonable opinion that:

(i) OpCo2 has not provided it with full details of the proposed Change of Ownership and any further information requested by the Principal;

(ii) the Change of Ownership is to take effect prior to the date which is 2 years after the Date of Completion of Phase 2;

(iii) the new OpCo2 Equity Investor or OpCo2 Equity Investors (or any direct or indirect holding company of the new OpCo2 Equity Investor or OpCo2 Equity Investors):

(A) is or are not solvent and reputable; or

(B) has or have an interest or duty which conflicts in a material way with the interests of the OTS2 PPP and is or are involved in a business or activity which is incompatible, or inappropriate, in relation to the OTS2 PPP; or

(iv) the proposed Change of Ownership:

(A) is against the public interest;

(B) would adversely affect the ability or capability of OpCo2 to perform its obligations under any Project Agreement; or

(C) would increase the liability of, or risks accepted by, the Principal under the Project Agreements.

(d) (**No relief**): The Principal's consent to a Change of Ownership will not relieve OpCo2 of any of its obligations under this deed.

53.3 **Change in Control of the Integrator**

(a) (**Principal to approve**): If a Change in Control of the Integrator has occurred prior to the Date of Final Completion of Phase 2, OpCo2 must promptly notify the Principal's Representative and obtain the Principal's approval (which must not be unreasonably withheld).

(b) (**Details to be provided**): OpCo2 must provide to the Principal's Representative in its notification under this clause 53.3 (*Change in Control of the Integrator*):

(i) full details of the Change in Control, including the acquisition of voting power, the change in equity interests or any other event which has caused or constituted the Change in Control; and

(ii) all other information necessary for the Principal to determine whether to exercise its rights under clause 53.3(d), in relation to the Change in Control.

(c) (**Exceptions**): The Principal's approval is not required for a Change in Control arising from:

(i) a transfer of any share or unit or other interest in the nature of equity which is listed on a recognised stock exchange;

(ii) any transfer of a share or unit or other interest in the nature of equity by a person to a Related Body Corporate of that person, provided OpCo2 gives the Principal prior written notice of the transfer; or

(iii) a Permitted Change in Control, provided OpCo2 gives the Principal written notice of the Permitted Change in Control.

(d) (**When approval must be given**): The Principal must give its approval to a Change in Control of the Integrator if:

(i) the person which now exercises Control of the Integrator:

(A) is solvent and reputable; or

(B) does not have any interest or duty which conflicts in a material way with the interests of the OTS2 PPP and is not involved in a business or activity which is incompatible, or inappropriate, in relation to the OTS2 PPP; and

(ii) the Integrator continues to:

(A) have sufficient expertise and ability; and

(B) be of sufficiently high financial and commercial standing,

to properly carry out the obligations of the Integrator under the relevant Project Agreements.

(e) (**If approval is withheld**): If the Principal notifies OpCo2 that the Principal does not approve the Change in Control of the Integrator, OpCo2 must, within 90 days of receiving such notice, do one of the following:

(i) terminate the Integrator Deed and re-tender those works or services; or

(ii) take such other action as the Principal may agree.

(f) (**No relief**): The Principal's approval of a Change in Control of the Integrator will not relieve OpCo2 of any of its obligations under this deed.

53.4 **Change in Control of O&M Contractor**

(a) (**No change without consent**): Subject to clause 53.4(b), OpCo2 must not permit a Change in Control of the O&M Contractor without the Principal's prior written consent (which must not be unreasonably withheld).

(b) (**Exceptions**): The Principal's consent is not required for a Change of Control of the O&M Contractor resulting from:

(i) a transfer of any share or unit or other interest in the nature of equity which is listed on a recognised stock exchange;

(ii) any transfer of a share or unit or other interest in the nature of equity by a person to a Related Body Corporate of that person, provided OpCo2 gives the Principal prior written notice of the transfer; or

(iii) a Permitted Change in Control, provided OpCo2 gives the Principal written notice of the Permitted Change in Control.

(c) (**When approval may be withheld**): The Principal will be deemed to be acting reasonably if it withholds its approval to a proposed Change in Control of the O&M Contractor where the Principal is of the reasonable opinion that:

(i) OpCo2 has not provided it with full details of the proposed Change of Control and any further information requested by the Principal;

(ii) the person or entity proposed to exercise Control of the O&M Contractor:

(A) is not solvent and reputable; or

(B) has an interest or duty which conflicts in a material way with the interests of the OTS2 PPP and is or are involved in a business or activity which is incompatible, or inappropriate, in relation to the OTS2 PPP; or

(iii) as a result of the proposed Change in Control, the O&M Contractor will no longer:

(A) have sufficient expertise and ability; or

(B) be of sufficiently high financial and commercial standing,

to properly carry out its obligations under the relevant Project Agreements.

(d) (**No relief**): The Principal's approval of a Change in Control of the O&M Contractor (or an entity comprising the O&M Contractor) will not relieve OpCo2 of any of its obligations under this deed.

54. SUBCONTRACTING

54.1 Subcontracting

(a) OpCo2 must not subcontract the performance of OpCo2's Activities or any part of them except in accordance with this clause 54 (*Subcontracting*).

(b) OpCo2 will be liable to the Principal for the acts and omissions of OpCo2 Contractors in connection with OpCo2's Activities as if such acts or omissions were acts or omissions of OpCo2. Subcontracting by OpCo2 of any obligation under the Principal Project Agreements will not relieve OpCo2 of, or otherwise affect, any obligation or liability it has to the Principal under the Principal Project Agreements.

54.2 Core Contracts

Subject to clause 54.3 (*Significant Contracts*), OpCo2 may subcontract the performance of its obligations:

(a) in relation to the design and construction of the OTS2 Works, to the Integrator who will then in relation to the design and construction of the OpCo2 Systems Works, subcontract those works to the OpCo2 Systems Contractors; and

(b) in relation to the operation and maintenance of the Sydney Metro and the ETS Equipment, to the O&M Contractor.

54.3 Significant Contracts

(a) (**Principal consent required**): OpCo2 must not, and must ensure that the Core Contractors do not:

(i) enter into;

(ii) where it may impact the rights or increase the liabilities or obligations of the Principal, make or permit any amendment to, or replacement of or waiver of a provision of;

(iii) terminate, surrender, rescind or accept repudiation of (or give the relevant Significant Contractor an entitlement to terminate, surrender, rescind or accept repudiation of);

(iv) permit the novation, assignment or substitution of any counterparty's right, obligation or interest in; or

(v) where it may impact the rights or increase the liabilities or obligations of the Principal, enter into any agreement or arrangement which affects the operation or interpretation of,

a Significant Contract without obtaining the Principal's prior consent (which consent must not be unreasonably withheld or delayed).

(b) (**Qualifications**): OpCo2 must:

(i) use its best endeavours to ensure that each Significant Contractor:

(A) is solvent and reputable;

(B) does not have any interest or duty which conflicts in a material way with the interests of the OTS2 PPP and is not involved in any business or activity which is incompatible, or inappropriate, in relation to the OTS2 PPP; and

(C) has sufficient expertise and ability, and is of sufficiently high financial and commercial standing, to properly carry out the obligations of OpCo2 which are being subcontracted to it; and

(ii) immediately upon becoming aware that a Significant Contractor does not satisfy the requirements of clause 54.3(b)(i), use its best endeavours to cause:

(A) the Significant Contractor to do whatever is necessary to promptly satisfy the requirements of clause 54.3(b)(i); or

(B) subject to clause 54.3(a), the relevant Significant Contract to be terminated.

(c) (**Provisions to be included in Significant Contracts**): OpCo2 must ensure that each Significant Contract contains provisions which:

(i) satisfy the requirements of clauses 9.4(j), 45.10(i) and 60.3 (*Subcontracts*);

(ii) recognise the Principal's rights under clauses 41 (*Step-in*), 42.14(c) and 44 (*Access, inspections and audits*);

(iii) enable OpCo2 to comply with its novation obligations under clause 21.12(k); and

(iv) are consistent with the Principal's rights under Schedule 34 (*Intellectual Property*).

(d) (**Monitoring of Significant Contracts**): OpCo2 must:

(i) use its best endeavours to ensure that each Significant Contractor complies with the terms of its Significant Contract; and

(ii) notify the Principal of:

(A) any material breach of a Significant Contract; or

(B) any dispute which is notified as such under a Significant Contract,

immediately upon becoming aware of such breach or dispute; and

(iii) keep the Principal informed of the status of any such breach or dispute.

(e) (**Side Deed**): OpCo2 must, if requested by the Principal, ensure that each Significant Contractor (other than the Alstom Significant Contractor) enters into a side deed with the Principal containing terms equivalent to those in the Integrator Deed Side Deed and the O&M Contract Side Deed or such other terms as the Principal may reasonably require.

(f) (**Copy**): OpCo2 must provide the Principal with a copy of each Significant Contract (subject to removal, exclusion or redaction of any "commercial-in-confidence provision" as that term is defined in the *Government Information (Public Access) Act 2009* (NSW)).

55. REPRESENTATIONS, WARRANTIES AND UNDERTAKINGS

55.1 Principal representations and warranties

The Principal represents and warrants for the benefit of OpCo2 that:

(a) it is a NSW Government agency validly constituted and existing under the Transport Administration Act;

(b) it has or will have in full force and effect all authorisations necessary under its constituent legislation to enter into and perform its obligations under each Principal Project Agreement (or will have them in full force and effect at the time the obligation is to be performed);

(c) each Principal Project Agreement constitutes a valid and legally binding obligation of it in accordance with its terms; and

(d) the execution, delivery and performance of each Principal Project Agreement does not violate any law, or any document or agreement to which it is a party or which is binding on it or its assets.

55.2 OpCo2 representations and warranties

OpCo2 represents and warrants for the benefit of the Principal that:

(a) it is duly registered and remains in existence;

(b) the execution, delivery and performance of each Project Agreement to which it is a party does not violate any law, or any document or agreement to which it is a party or which is binding on it or any of its assets;

(c) it has taken all corporate and other action required to enter into any Project Agreement to which it is a party and to authorise the execution and delivery of that Project Agreement and the satisfaction of its obligations under it;

(d) each Project Agreement to which it is a party constitutes a valid and legally binding obligation of it in accordance with its terms;

(e) it subsists and is properly constituted;

(f) except in its capacity as trustee of the Trust, it is not the trustee or responsible entity of any trust, nor does it hold any property subject to or impressed by any trust;

(g) OpCo2 has no subsidiaries;

(h) except as disclosed in writing to the Principal prior to the date of this deed, it is not a member of any consolidated group for the purposes of the *Income Tax Assessment Act 1997* (Cth);

(i) no OpCo2 Event of Default or OpCo2 Termination Event has occurred or is subsisting;

(j) it is not in default of its material obligations under any Principal Project Agreement;

(k) it has not traded since its incorporation other than for the purposes of entering into the Project Agreements to which it is a party and has no liabilities other than those that have arisen in connection with entering into those Project Agreements;

(l) except as contemplated by the Financiers Tripartite Deed, subject to laws from time to time, its obligations under the Principal Deed of Charge will rank ahead of, and its obligations under each Principal Project Agreement (other than the Principal Deed of Charge) will rank at least equally with, all its present and future unsecured obligations;

(m) it does not 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) there has been no material change in the financial condition of OpCo2 (since its incorporation) or the OpCo2 Equity Investors or Core Contractors (since the date of their last audited accounts) which would prejudice the ability of OpCo2 to perform its obligations under the Project Agreements;

(o) the most recently published financial statements of the OpCo2 Equity Investors and Core Contractors have been prepared on a basis consistently applied and using accounting principles which are generally accepted and give a true and fair view of the financial condition of the OpCo2 Equity Investors and Core Contractors and are unqualified for the period in question;

(p) OpCo2 is not aware of any material facts or circumstances that have not been disclosed to the Principal and which might, if disclosed, materially adversely affect the decision of a prudent person considering whether or not to enter into this deed with OpCo2;

(q) it has provided to the Principal all material documents relating to the financing of the OTS2 PPP; and

(r) no litigation, arbitration, mediation, conciliation, criminal or administrative procedures are current, pending or to its knowledge, threatened, which, if adversely determined, would or could have a material adverse effect upon it or its ability to perform its financial or other obligations under any Project Agreement to which it is expressed to be a party.

55.3 Trust representations

OpCo2 represents and warrants for the benefit of the Principal, in its personal capacity and in its capacity as trustee of the Trust, that:

(a) it is empowered by the Trust Deed:

(i) to enter into and perform the Project Agreements to which it is expressed to be a party and to carry on the transactions contemplated by those documents; and

(ii) to carry on the business of the Trust as now conducted or contemplated and to own the assets of the Trust (including any asset purported to be charged or mortgaged by it),

and there are no restrictions on or conditions of its doing so;

(b) all necessary resolutions have been duly passed and all consents, approvals and other procedural matters have been obtained or attended to as required by the Trust Deed for it to enter into and perform its obligations under the Project Agreements to which it is expressed to be a party and any other instrument required under any such Project Agreement;

(c) the Trust has been validly created and is in existence at the date of this deed;

(d) it has been validly appointed as trustee of the Trust;

(e) it is the sole trustee of the Trust;

(f) it has not given notice of its intention to retire as trustee of the Trust;

(g) no action has been taken or threatened to remove it as trustee of the Trust or appoint an additional trustee of the Trust;

(h) to the best of its knowledge and belief following due enquiry, no proceedings of any description have been or are likely to be commenced or threatened which could have a material adverse effect on the assets or financial position of the Trust or on its trusteeship of the Trust;

(i) no property of the Trust has been re-settled or set aside or transferred to any other trust;

(j) it is required or authorised under the terms of the Trust Deed to:

(i) enter into the Project Agreements to which is it expressed to be a party in its capacity as trustee of the Trust; and

(ii) charge the property of the Trust as provided in those Project Agreements;

(k) the Trust is duly constituted in accordance with the Trust Deed and all applicable laws, has not been terminated, nor has any event for the vesting of the assets of the Trust occurred;

(l) it has the right to be fully indemnified out of the assets of the Trust for the satisfaction of all liabilities and other obligations it incurs under the Project Agreements and:

(i) that right of indemnity out of, and its lien over, the assets of the Trust have not been limited or released in any way and the assets of the Trust are sufficient to satisfy that right in full as and when it falls due; and

(ii) OpCo2 as trustee has no material liability which may be set off against this right of indemnity;

(m) it has complied with its obligations and duties under the Trust Deed and at law in all material respects;

(n) the Trust is solely constituted by the Trust Deed, the copy of which provided to the Principal prior to the date of this deed is a true and complete copy of the original and which has been neither amended nor superseded;

(o) the rights of any beneficiaries relating to, and their interests in, the property of the Trust are subject to the prior rights and interests of:

(i) the Principal under the Principal Deed of Charge; and

(ii) OpCo2 in the property of the Trust pursuant to its Trustee's Indemnity.

55.4 **Repetition of representation and warranties**

The representations and warranties contained in clauses 55.2(h), 55.2(i), 55.2(j), 55.2(k), 55.2(n), 55.2(o), 55.2(p) and 55.2(r) are made on the date of this deed. Each other representation and warranty contained in this clause 55 (*Representation, warranties and undertakings*):

(a) is made on the date of this deed; and

(b) will be deemed to be repeated at Financial Close and on each anniversary of the date of this deed,

with reference to the facts and circumstances then subsisting.

55.5 **Trust undertakings**

OpCo2 must:

(a) comply fully with all of its obligations as trustee of the Trust, whether imposed under the Trust Deed or, in all material aspects, at law;

(b) ensure that no waiver or revocation of the Trust Deed is made, whether formally or by conduct;

(c) not amend, or agree to amend, or permit or allow to be amended, its Trust Deed in any way (other than changes of a minor or technical nature or to correct a manifest error);

(d) ensure that no other person is appointed trustee of the Trust without the prior written consent of the Principal;

(e) not do anything which would cause or enable its removal, nor retire, as trustee of the Trust except in favour of a new trustee approved by the Principal;

(f) ensure that the vesting date is not determined, and will not otherwise alter, shorten or fix the vesting date under the Trust Deed or allow the early determination of the Trust;

(g) not exercise in its own favour its Trustee's Indemnity under the Trust against any beneficiary of the 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 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 Trust or the termination, rescission or revocation of the Trust Deed;

(ii) the resettlement of any Trust Property; or

(iii) the resignation, retirement, removal or replacement of it as trustee of the 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 Agreements and the Debt Financing 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 its Trust Deed);

(ii) the rights of any beneficiaries relating to, and their interests in, the property of the Trust are subject to the prior rights and interests of:

(A) the Principal under the Principal Deed of Charge; and

(B) OpCo2 in the property of the 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 Agreement;

(l) unless otherwise permitted under the Project Agreements, not permit any of the beneficiaries of the 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 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 Trust;

(o) not allow any redemption, cancellation or repurchase of any units in the Trust other than as permitted by the Project Agreements;

(p) not take any step to release a unit holder of the 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 the Project Agreement; and

(r) not do anything (or permit anything to be done) which:

(i) results or may result in registration of the 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 Principal's rights of subrogation to the Trustee's Indemnity.

56. DISPUTE RESOLUTION

56.1 Disputes generally

Subject to clause 56.20 (*Dispute under related contracts*), any dispute, difference or controversy directly or indirectly based upon, arising out of, relating to or in connection with the OTS2 PPP, the OTS2 Works, the Temporary Works, OpCo2's Activities, the Sydney Metro, the ETS, this deed (including any questions relating to the existence, validity or termination of this deed) or either party's conduct before the date of this deed, but excluding a failure by a party to comply with a final and binding decision the Expert (**Dispute**) must be resolved in accordance with this clause 56 (*Dispute resolution*).

56.2 Independent Dispute Avoidance and Resolution Panel

(a) The IDAR Panel has been constituted under the IDAR Panel Agreement.

(b) Where an appointed member of the IDAR Panel is unable to act as a result of death, disability, resignation or termination of appointment and the Principal is seeking to replace the relevant member, the Principal will notify OpCo2 of the proposed replacement member (**Proposed Member**).

(c) Within 5 Business Days of receiving the notice contemplated under clause 56.2(b), OpCo2 may notify the Principal of any circumstance that might reasonably be considered to affect the Proposed Member's capacity to act independently, impartially and without bias.

(d) If OpCo2 is able to demonstrate that a circumstance exists that might reasonably be considered to affect the Proposed Member's capacity to act independently, impartially and without bias, the Principal will propose an alternative member to be appointed to the IDAR Panel and clause 56.2(b) and clause 56.2(c) will reapply.

(e) Each party must:

(i) following execution of the IDAR Panel Agreement Accession Deed Poll (if applicable), at all times comply with the terms of the IDAR Panel Agreement;

(ii) attend meetings with the IDAR Panel as required pursuant to the IDAR Panel Agreement or this deed; and

(iii) provide all reasonable assistance to the IDAR Panel in fulfilling its function(s) in respect of OpCo2's Activities including providing all information it reasonably requests.

(f) If OpCo2 and the IDAR Panel are unable to agree a schedule of meetings and site visits as contemplated in clause 2.1 of Schedule 2 to the IDAR Panel Agreement, the Principal will:

(i) consult with OpCo2 in relation to convenient times for meetings and site visits; and

(ii) take into account OpCo2's reasonable requests,

when scheduling meetings and site visits.

(g) The Principal may, having regard to the proposed agenda for a Project Briefing and in its absolute discretion, invite OpCo2, the Integrator and/or the O&M Contractor to attend a Project Briefing.

(h) If requested by the Principal pursuant to clause 56.2(g), OpCo2 must, or must procure that the Integrator and/or the O&M Contractor (as applicable), attend the relevant Project Briefing.

56.3 **Notice of Issue**

Where a Dispute arises, the Dispute must be notified to the IDAR Panel by written notice of the issues in Dispute (**Notice of Issue**) from the dissatisfied party (**Party A**) to the IDAR Panel and the other party (**Party B**). The Notice of Issue must:

(a) provide brief particulars of the issues in Dispute; and

(b) be issued within 10 Business Days after Party A first became aware of the fact, matter or thing on which the Dispute is based.

56.4 **Executive Negotiation**

(a) Where:

(i) a matter is referred to the Executive Negotiators pursuant to [redacted] or

(ii) a Notice of Issue is given under clause 56.3 (*Notice of Issue*),

the Dispute must be referred to the Executive Negotiators and the Executive Negotiators must, within 5 Business Days after the date on which the Notice of Issue was given under clause 56.3 (*Notice of Issue*), meet and negotiate with a view to resolving the Dispute.

(b) Subject to clause 56.4(c), if the Executive Negotiators have not resolved the Dispute within 20 Business Days after:

(i) a matter is referred to the Executive Negotiators pursuant to [redacted] or

(ii) the date on which the Notice of Issue was given under clause 56.3 (*Notice of Issue*),

(or such longer period of time as the Executive Negotiators or the parties may have agreed in writing) then, whether or not the Executive Negotiators have met and undertaken negotiations with a view to resolving the Dispute, those parts of the Dispute that remain unresolved must, unless otherwise agreed by the Executive Negotiators, be referred to the IDAR Panel for Consultation in accordance with clause 56.5 (*Consultation*).

(c) Where a Notice of Issue is given under clause 56.3 (*Notice of Issue*) after 31 December 2026, this clause 56.4 (*Executive Negotiation*) will still apply, but if the Dispute is not resolved within 20 Business Days after the date on which the Notice of Issue was given under clause 56.3 (*Notice of Issue*):

(i) the Dispute will not be referred to expert determination;

(ii) clauses 56.7 (*Expert determination*) to 56.9 (*Final and binding decision*) will not apply; and

(iii) whether or not the Executive Negotiators have met and undertaken negotiations with a view to resolving the dispute, the Dispute will be determined in accordance with clause 56.10 (*Litigation or arbitration*).

56.5 **Consultation**

(a) Within 2 Business Days of the date which is 20 Business Days after the date on which the Notice of Issue was given under clause 56.3 (*Notice of Issue*), the parties must agree upon a member of the IDAR Panel (**Nominated Member**) to review the Dispute. If:

(i) the parties fail to reach such agreement within 2 Business Days; or

(ii) the Nominated Member declines to act or is unable to act as a result of death, disability, resignation or termination of appointment,

the Chair must nominate a replacement Nominated Member within a further 2 Business Days.

(b) If a replacement Nominated Member declines to act or is unable to act as a result of death, disability, resignation or termination of appointment, the Chair must nominate a further replacement Nominated Member within a further 2 Business Days. The Chair cannot nominate itself as the Nominated Member.

(c) If a further replacement Nominated Member declines to act or is unable to act as a result of death, disability, resignation or termination of appointment, the process in clause 56.5(b) will be reapplied until there are no IDAR Panel members to accept the appointment, in which case the Chair must request the Resolution Institute to appoint an appropriately qualified replacement member. This appointment will be final and conclusive.

(d) Within 3 Business Days of the appointment of the Nominated Member, the Nominated Member must convene at least one meeting (**Consultation**) to facilitate genuine and good faith negotiations with a view to:

(i) resolving the Dispute; and

(ii) clarifying and narrowing the issues in Dispute, in the event that the Dispute is not resolved.

(e) Each Consultation will be attended by:

(i) the Nominated Member;

(ii) the Principal's Representative;

(iii) OpCo2's Representative; and

(iv) other persons as agreed between the Principal's Representative and OpCo2's Representative.

(f) The Consultation process must conclude within 15 Business Days of the first Consultation, or such other period as the parties may agree in writing.

56.6 **Recommendation**

(a) Within 5 Business Days of the conclusion of the Consultation, the Nominated Member must notify the parties in writing of its non-binding recommendation as to:

(i) the formulation of the issues in Dispute;

(ii) the most appropriate Expert(s) to be appointed to determine the Dispute pursuant to clause 56.7 (*Expert determination*); and

(iii) whether the Dispute is not suitable for expert determination and should be determined in accordance with clause 56.10 (*Litigation or arbitration*),

(**Recommendation**).

(b) Subject to clause 56.6(d), if the Dispute is not resolved within the later of:

(i) 5 Business Days of the Recommendation; and

(ii) 15 Business Days of the Notice of Issue,

Party A must refer those parts of the Dispute that remain unresolved to expert determination by notice to Party B (with a copy to the IDAR Panel) (**Notice of Dispute**) within 20 Business Days after the later of (i) and (ii) above or such other period of time as agreed between the parties in writing.

(c) The Notice of Dispute must:

(i) state that it is a Notice of Dispute under clause 56.6(b); and

(ii) include or be accompanied by reasonable particulars of those parts of the Dispute including:

(A) references to any:

(aa) provisions of this deed; and

(bb) acts or omissions of any person,

relevant to the Dispute;

(B) the relief sought and the basis for claiming the relief sought; and

(C) copies of, or relevant extracts from, any documents in support of the claim.

(d) If the Nominated Member makes a Recommendation:

(i) under clause 56.6(a)(ii), the parties may accept the recommendation or clause 56.7(a) will apply; or

(ii) under clause 56.6(a)(iii) that the Dispute is not suitable for expert determination, the parties may agree to have the Dispute determined in accordance with clause 56.10 (*Litigation or arbitration*), however if the parties have not so agreed within 5 Business Days of the Recommendation, clause 56.7 (*Expert determination*) will apply.

56.7 Expert determination

(a) Any Dispute which is referred to expert determination by a Notice of Dispute will be conducted in accordance with the Resolution Institute's Expert Determination Rules, as modified by Schedule 42 (*Modification to the Resolution Institute Expert Determination Rules*) to this deed.

(b) Both parties must promptly make available to the Expert all such additional information, access to the Sydney Metro Site and appropriate facilities as the Expert may require for the purposes of making a determination on the Dispute.

(c) At the Principal's request, OpCo2 must procure the attendance of representatives of any Core Contractor, Significant Contractor and/or the Debt Financiers at any expert determination proceedings under this clause 56.7 (*Expert determination*) as observers.

(d) OpCo2 may, with the Principal's consent, have a representative of any Core Contractor attend any expert determination proceedings under this clause 56.7 (*Expert determination*) as an observer.

(e) The parties agree that, to the extent permitted by law:

(i) the powers conferred and restrictions imposed on a court by Part 4 of the *Civil Liability Act 2002* (NSW) are not conferred on the Expert; and

(ii) the Expert has no power to make a binding or non-binding determination or any award in respect of a Dispute by applying or considering the provisions of Part 4 of the *Civil Liability Act 2002* (NSW) (and any equivalent statutory provisions in any other state or territory) which might, in the absence of this provision, have applied to any Dispute referred to expert determination.

(f) Within 50 Business Days after the Expert has been appointed, or within such other period as may be proposed by the Expert and approved by both parties, the Expert must give its determination in writing, which must be reasoned and must state that it is given under this clause 56.7 (*Expert determination*). The determination will be immediately binding on both parties, who must give effect to it unless and until it is revised, overturned or otherwise changed by written agreement between the parties or a court judgment or an arbitral award made in court proceedings or an arbitration pursuant to this clause 56 (*Dispute resolution*).

(g) The parties acknowledge and agree that those persons listed in Schedule 3 of the IDAR Panel Agreement have been appointed by the Principal to a panel of subject-matter experts. Prior to adding persons to, or replacing a person listed in, Schedule 3, the Principal will notify OpCo2 of the proposed subject-matter expert (**Proposed Subject-Matter Expert**).

(h) Within 5 Business Days of receiving the notice contemplated under clause 56.7(g), OpCo2 may notify the Principal of any circumstance that might reasonably be considered to affect the Proposed Subject-Matter Expert's capacity to act independently, impartially and without bias.

(i) If OpCo2 is able to demonstrate that a circumstance exists that might reasonably be considered to affect the Proposed Subject-Matter Expert's capacity to act independently, impartially and without bias, the Principal must not appoint the Proposed Subject-Matter Expert to the panel of subject-matter expert in Schedule 3 and may propose an alternative subject-matter expert in which case clause 56.7(g) and clause 56.7(h) will reapply.

56.8 **Notice of dissatisfaction**

(a) If:

(i) either party is dissatisfied with a determination made by an Expert under clause 56.7 (*Expert determination*) then either party may, within 10 Business Days after receiving the determination, give notice to the other party of its dissatisfaction; or

(ii) an Expert fails to give its determination within a period of 30 Business Days after the Expert has been appointed by the parties (or within such other period as may be proposed by the Expert and approved by both parties),

then either party may, within 10 Business Days after this period has expired, give a notice of dissatisfaction to the other party,

(**Notice of Dissatisfaction**).

(b) A Notice of Dissatisfaction issued under this clause 56.8 (*Notice of dissatisfaction*) must:

(i) state that it is given under this clause 56.8 (*Notice of dissatisfaction*); and

(ii) set out the matter in Dispute and the reason(s) for dissatisfaction.

(c) Except as stated in clause 56.10 (*Litigation or arbitration*), neither party will be entitled to commence court proceedings or arbitration in respect of the Dispute unless a Notice of Dissatisfaction has been given in accordance with this clause 56.8 (*Notice of dissatisfaction*).

56.9 **Final and binding decision**

(a) If an Expert has made a determination as to a Dispute, and no Notice of Dissatisfaction has been given by either party under clause 56.8 (*Notice of dissatisfaction*) within 10 Business Days after it received the Expert's determination, then the determination will become final and binding upon both parties.

(b) Once a determination of an Expert has become final and binding under clause 56.9(a), neither party will be entitled to challenge the determination on any basis.

56.10 **Litigation or arbitration**

Where this clause applies the Principal, in its absolute discretion, may within 5 Business Days:

(a) after issuing or receiving a Notice of Dissatisfaction; or

(b) if clause 56.4(c) applies,

(as applicable) issue a notice to OpCo2 stating that the Dispute is to be determined by litigation pursuant to court proceedings. If the Principal does not issue such a notice within the 5 Business Day period, the Dispute will be referred to arbitration.

56.11 **Arbitration rules**

(a) Any arbitration conducted in relation to a Dispute will be conducted in accordance with the arbitration rules of the Australian Centre for International Commercial Arbitration known as the ACICA Arbitration Rules.

(b) The seat of the arbitration will be Sydney, Australia.

(c) The language of the arbitration will be English.

(d) The parties agree:

(i) that they have chosen arbitration for the purposes of achieving a just, quick and cost-effective resolution of any Dispute;

(ii) that any arbitration conducted pursuant to this clause 56.11 (*Arbitration rules*) shall not necessarily mimic court proceedings and the practices of

those courts will not regulate the conduct of the proceedings before the arbitral tribunal; and

(iii) that in conducting the arbitration, the arbitral tribunal must take into account the matters set out above, particularly in deciding issues such as:

(A) the number of written submissions that will be permitted;

(B) where appropriate, the length of written submissions;

(C) the extent of document discovery permitted, if any;

(D) the consolidation of proceedings, when requested;

(E) the joinder of parties, when requested;

(F) the length of any hearing, if any; and

(G) the number of experts, if any, each party is permitted to appoint.

(e) The parties agree that:

(i) subject to clause 56.12 (*Exclusion from determination or award*), the arbitral tribunal will have the power to grant all legal, equitable and statutory remedies, except punitive damages; and

(ii) section 24 of the *International Arbitration Act 1974* (Cth) will apply in an international arbitration context.

(f) The arbitral tribunal has the power, on the application of any party to this arbitration agreement, to allow a third party who the arbitral tribunal considers has a sufficient interest in the outcome of the arbitration to be joined in the arbitration as a party. Each party hereby consents to such joinder. In the event of such joinder of parties in the arbitration, the arbitral tribunal has the power to make a single final award, or separate awards, in respect of all parties so joined in the arbitration.

(g) Any award of the arbitral tribunal will be final and binding upon the parties.

(h) This arbitration agreement will be governed by and must be construed according to the laws applying in New South Wales.

56.12 **Exclusion from determination or award**

(a) The powers conferred and restrictions imposed on a court by Part 4 of the *Civil Liability Act 2002* (NSW) are not conferred on an arbitral tribunal appointed in accordance with this clause 56 (*Dispute resolution*).

(b) The arbitral tribunal 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) (and any equivalent statutory provisions in any other state or territory) which might, in the absence of this provision, have applied to any Dispute referred to the arbitral tribunal.

56.13 **Not used**

56.14 **Not used**

56.15 **Not used**

56.16 **Not used**

56.17 **Payments**

The Principal may withhold payment of that part of any amount which is the subject of a Dispute.

56.18 **Parties to continue performing obligations**

Subject to clause 56.17 (*Payments*), despite the existence of any Dispute, the Principal and OpCo2 must continue to perform their obligations under this deed.

56.19 **Urgent relief**

Nothing in this clause 56 (*Dispute resolution*) will prejudice the right of a party to seek urgent injunctive or declaratory relief from a court.

56.20 **Dispute under related contracts**

The parties acknowledge and agree that:

(a) the provisions of this clause 56 (*Dispute resolution*) will not apply to any dispute, difference, controversy or claim between one or both of the parties and the Greenfield Independent Certifier which is to be resolved under the OTS2 Independent Certifier Deed;

(b) the parties shall be bound by the outcome of any dispute, difference, controversy or claim between the parties which is resolved pursuant to the Greenfield Independent Certifier Deed;

(c) the provisions of this clause 56 (*Dispute resolution*) will not apply to any dispute, difference, controversy or claim between the parties which is to be resolved under a Project Cooperation and Integration Deed or OTS Cooperation and Integration Deed;

(d) the parties shall be bound by the outcome of any dispute, difference, controversy or claim between the parties which is resolved pursuant to a Project Cooperation and Integration Deed or OTS Cooperation and Integration Deed; and

(e) where the Dispute is a Common Dispute, as that term is defined in clause 16 of Schedule 8 (*Requirements of Third Party Agreements*), then this clause 56 (*Dispute resolution*) will apply subject to the provisions of clause 1 (*Common Disputes*) of Part C of Schedule 8 (*Requirements of Third Party Agreements*).

56.21 **Core Contract disputes**

(a) The parties acknowledge and agree that a dispute or difference arising under a Core Contract may concern the respective rights and obligations of the Principal and OpCo2 under this deed.

(b) Without limiting clauses 45.4(*Notice under Project Agreements*) or 45.5 (*Advice on rights of third parties under Project Agreements*), OpCo2 must inform the Principal's Representative immediately of any formal disputes and differences under any Core Contracts and the consequences (if any) on the operation of this deed.

56.22 **Survive termination**

This clause 56 (*Dispute resolution*) will survive termination of this deed.

57. NOTICE OF CLAIMS

57.1 Notice of Modification

(a) Subject to clause 57.5A (*Temporary waiver of notification requirements*), if a Direction of the Principal, other than a Modification Order, constitutes or involves a Modification, OpCo2 must, if it wishes to make a Claim against the Principal arising out of or, or in any way in connection with, the Direction:

(i) within 20 Business Days of receiving the Direction and before commencing work on the subject matter of the Direction or otherwise complying with the Direction, give notice to the Principal's Representative that sets out:

(A) that it considers the Direction constitutes or involves a Modification;

(B) details of the relevant Direction; and

(C) details of why it considers the Direction constitutes or involves a Modification; and

(ii) within 10 Business Days of giving the notice under clause 57.1(a)(i), submit a written claim to the Principal's Representative which includes the details required by clause 57.3(b); and

(iii) continue to carry out OpCo2's Activities in accordance with this deed including any Direction in respect of which notice has been given under this clause 57.1 (*Notice of Modification*).

(b) If OpCo2 issues a notice under clause 57.1(a)(i), the Principal may:

(i) confirm that the Direction constitutes or involves a Modification, or entitles OpCo2 to make a Claim, by the giving of a notice under this clause 57.1(b)(i), in which case OpCo2 must comply with the Direction;

(ii) deny that the Direction constitutes or involves a Modification, or entitles OpCo2 to make a Claim, by the giving of a notice under this clause 57.1(b)(ii), in which case OpCo2:

(A) may within 10 Business Days of the receipt of the notice issue a notice of issue under clause 56.3 (*Notice of Issue*); and

(B) unless otherwise directed by the Principal's Representative, must comply with the Direction irrespective of any Claim or Dispute in relation to the Direction or any part of it; or

(iii) withdraw the Direction by giving a notice under this clause 57.1(b)(iii) provided that the Principal must compensate OpCo2 for its reasonable costs incurred in compliance with such withdrawn Direction pursuant to clause 57.1(a)(iii).

(c) If within 20 Business Days after first receipt of the notice under clause 57.1(a)(i), the Principal's Representative has not taken any action under clause 57.1(b), the Principal's Representative will be deemed to have given a notice under clause 57.1(b)(ii).

57.2 Notices of other Claims

(a) Subject to clause 57.5A (*Temporary waiver of notification requirements*) and clause 57.2(b), OpCo2 must give the Principal the notices required by clause 57.3

(*Prescribed notices*) if it wishes to make a Claim against the Principal in respect of any Direction or any other fact, matter or thing (including a breach of this deed by the Principal) under, arising out of, or in connection with OpCo2's Activities or this deed, including anything in respect of which it is given an express entitlement under this deed.

(b) Clause 57.2(a) does not apply to the following claims:

(i) a Claim for an extension of time to the Date for Completion of Phase 1, the Date for Completion of Phase 2, a Milestone Date for Completion or a Date for Acceptance under clause 17.8 (*Claim for extension of time*);

(ii) a Claim in respect of a Compensation Event under clause 26.3 (*Claim for compensation*);

(iii) a Claim in respect of a Relief Event under clause 27 (*Relief Events*);

(iv) a Claim in respect of:

(A) a Modification directed or approved by the Principal in accordance with clause 29 (*Principal initiated Modifications*) or clause 30 (*OpCo2 initiated Modifications*) or to which clause 57.1 (*Notice of Modification*) applies;

(B) a Pre-Agreed Option directed by the Principal under clause 31 (*Pre-Agreed Options*); or

(C) a Phase 2 Change Event;

(v) a Claim for payment under clause 25 (*Payment provisions*) of:

(A) a Construction Payment A;

(B) the CDPD Amount;

(C) a Service Payment;

(D) the Final Completion Payment;

(E) an amount payable in connection with an extension in accordance with clause 3.3 (*Term extension*);

(F) an amount payable in connection with an Augmentation in accordance with Schedule 46 (*Augmentation*);

(G) a Termination Payment in accordance with clause 42.12(a);

(H) a Collaboration Payment; or

(I) a Milestone Payment;

(vi) a Claim for payment under clause 25A of the Construction Payment B; or

(vii) a Claim for payment under clause 25 (*Payment provisions*) and clause 25B (*Phase 2 Construction Payments and Option 1 Trains Payment*) of the Phase 2 Construction Payment or an Option 1 Trains Payment.

57.3 **Prescribed notices**

The notices referred to in clause 57.2 (*Notices of other Claims*) are:

(a) a written notice within 20 Business Days after the earlier of when OpCo2 first became aware of, or ought reasonably to have become aware of, the Direction or any other fact, matter or thing on which the Claim is based, expressly specifying:

(i) that OpCo2 intends to submit a Claim; and

(ii) the Direction or any other fact, matter or thing upon which the Claim will be based; and

(b) a written Claim within 10 Business Days of giving notice under clause 57.3(a), which must include:

(i) detailed particulars concerning the Direction or any other fact, matter or thing on which the Claim is based;

(ii) the legal basis for the Claim, whether based on a term of this deed or otherwise, and if based on a term of this deed, clearly identifying the specific term;

(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.

57.4 **Continuing events**

If the Direction or any other fact, matter or thing upon which the Claim under clause 57.3(b) is based or the consequences of the events are continuing, OpCo2 must continue to give information required by clause 57.3(b) within 14 Business Days after the end of each calendar month after the written claim under clauses 57.1(a)(ii) or 57.3(b) (as the case may be) was submitted, until after the Direction or fact, matter or thing upon which the Claim is based has, or the consequences thereof have, ceased.

57.5 **Time bar**

If OpCo2 fails to comply with clauses 57.1 (*Notice of Modification*), 57.2 (*Notices of other Claims*), 57.3 (*Prescribed notices*), 57.4 (*Continuing events*) or 57.5A(e):

(a) the Principal will not be liable (insofar as it is possible to exclude such liability) upon any Claim by OpCo2; and

(b) OpCo2 will be absolutely barred from making any Claim against the Principal,

arising out of, or in any way in connection with, the relevant Direction or fact, matter or thing (as the case may be) to which clauses 57.1 (*Notice of Modification*) or 57.3 (*Prescribed notices*) applies.

57.5A **Temporary waiver of notification requirements**

(a) Within 5 Business Days after receipt of a written notice referred to in clause 17.8(a)(i), 26.3(a), 27.2(a), 57.1(a)(i) or 57.3(a) (as applicable), the Principal's Representative may notify OpCo2 in writing that the Principal wishes to temporarily waive the requirements of clause 17.8(a)(ii), 26.3(b), 27.2(b), 57.1(a)(ii) or 57.3(b) (as applicable) (**Claims Clause**) in relation to the proposed Claim that is the subject of OpCo2's notice.

(b) If the Principal's Representative issues a notice under clause 57.5A(a), the parties must within 2 Business Days (or such longer period agreed between the parties) meet to discuss the proposed Claim and seek to agree:

(i) the period for which the requirements of the relevant Claims Clause will not apply in relation to the proposed Claim; and

(ii) the next steps (if any) that the parties wish to take in relation to the proposed Claim.

(c) If, at a meeting under clause 57.5A(b), the parties agree a period for which the requirements of the relevant Claims Clause will not apply, the Principal's Representative will promptly confirm such period by notice in writing to OpCo2.

(d) A meeting under clause 57.5A(b) may be held in person, by phone, by video conference or by any other means of instantaneous communication agreed between the parties.

(e) Where the Principal's Representative has given a written notice under clause 57.5A(a) and with respect to the requirements of the relevant Claims Clause, if the parties:

(i) agree a period for which the requirements of the relevant Claims Clause will not apply, OpCo2 must provide a written Claim including the details required by the Claims Clause no later than 20 Business Days after the expiry of that period as stated in a notice issued by the Principal's Representative under clause 57.5A(a) (or such longer period as the parties may subsequently agree in writing); or

(ii) fail to agree a period for which the requirements of the relevant Claims Clause will not apply, OpCo2 must provide a written Claim including the details required by the relevant Claims Clause no later than 20 Business Days after the date of the meeting held under clause 57.5A(b).

(f) OpCo2 must maintain and keep an updated register of potential Claims that have been the subject of a notice issued by the Principal's Representative under clause 57.5A(a) and provide a copy of this register to the Principal's Representative at least 3 Business Days in advance of each meeting of the Senior Project Group.

(g) The register of potential claims under clause 57.5A(f) must include:

(i) Claim number;

(ii) Claim description;

(iii) the date the initial notice of Claim was received;

(iv) the clause(s) under which the notice was given;

(v) the date of the notice issued by the Principal's Representative under clause 57.5A(a);

(vi) the date of the meeting under clause 57.5A(b);

(vii) the date on which the Claim is required (as agreed or as per clause 57.5A(e)(ii));

(viii) any next steps agreed at the meeting under clause 57.5A(b); and

(ix) the status of those next steps.

(h) Nothing done by the Principal or the Principal's Representative under this clause 57.5A (*Temporary waiver of notification requirements*):

(i) constitutes acceptance by the Principal that the relevant notice under clause 26.3 (*Claim for compensation*), 27.2 (*Notification*), 57.1 (*Notice of Modification*) or 57.2 (*Notice of other Claims*) (as the case may be) is valid; or

(ii) prejudices in any way the Principal's right to later assert a time bar in respect of such notice provided that for the purposes of any such subsequent assertion, the calculation of the time bar must not include any time period the subject of a waiver granted under this clause 57.5A (*Temporary waiver of notification requirements*).

57.6 **Other provisions unaffected**

Nothing in clauses 57.1 (*Notice of Modification*) to 57.5 (*Time bar*) will limit the operation or effect of any other provision of this deed which requires OpCo2 to give notice to the Principal or the Principal's Representative in order to preserve an entitlement to make a Claim against the Principal.

58. **NOTICES**

(a) Wherever referred to in this clause, **Notice** means each communication (including each notice, consent, approval, request and demand) under or in connection with this deed.

(b) At any time and from time to time the Principal's Representative may notify OpCo2 that a PDCS will be used for giving Notices under or in connection with this deed. the Principal's Representative's notice will set out:

(i) the name of the relevant PDCS;

(ii) the commencement date for use of the PDCS;

(iii) any password, login details or similar information required for OpCo2 to use the PDCS;

(iv) any requirements for specific notices (eg notices of Claims);

(v) the name and contact details of any additional person which the Principal's Representative nominates for receipt of Notices under this deed; and

(vi) any other information reasonably necessary for the use and service of Notices via the PDCS.

(ba) At any time and from time to time the Principal's Representative may notify OpCo2 that a PDCS will not be used for giving certain Notices under or in connection with this deed. The Principal's Representative's notice will state that such Notices will be given in accordance with clause 58(c)(i).

(c) Each Notice must:

(i) before the date referred to in clause 58(b)(ii) or where clause 58(ba) applies:

(A) be in writing;

(B) be addressed:

(aa) in the case of a Notice from OpCo2, be addressed to the Principal's Representative and any additional person notified by the Principal in writing; or

(bb) in the case of a Notice from the Principal, be addressed to OpCo2's Representative; or

(C) comply with any requirements for specific notices (eg notices of Claims) specified by the Principal in writing;

(D) be signed by the party making it or (on that party's behalf) by the solicitor for, or any attorney, director, secretary or authorised agent of, that party; and

(E) be delivered or posted to the relevant address or sent to the email address shown below (or to any new address or email address notified by the intended recipient):

Principal

Name:	Sydney Metro, a New South Wales Government agency
Address:	Level 43, 680 George Street Sydney NSW 2000
Email:	[redacted]
For the attention of:	The Principal's Representative and any additional person notified by the Principal in writing Any Notice in relation to a Claim or a Dispute must also be addressed to the General Counsel – Sydney Metro and sent to [redacted]

OpCo2

Name:	NRT CSW Pty Ltd
Address:	Level 43, Rialto South Tower, 525 Collins Street, Melbourne VIC, 3000
Email:	[redacted]
For the attention of:	[redacted] OpCo2's Representative

(ii) from the commencement date for use of the PDCS referred to in clause 58(b)(ii) and other than where clause 58(ba) applies:

(A) be sent through the PDCS in accordance with the requirements set out in clause 58(e) and:

(aa) in the case of a Notice from OpCo2, be addressed to the Principal's Representative and any additional person notified

in accordance with clause 58(b)(v) and comply with any requirements notified in accordance with clause 58(b)(vi); or

(bb) in the case of a Notice from the Principal, be addressed to OpCo2's Representative; or

(B) in circumstances where the PDCS is temporarily disabled or not operating, be issued in accordance with clause 58(c)(i).

(d) A communication is taken to be received by the addressee:

(i) (in the case of a Notice sent through the PDCS) at the time recorded on the PDCS as being the time at which the Notice was sent;

(ii) (in the case of prepaid post sent to an address in the same country) 2 Business Days after the date of posting;

(iii) (in the case of international post) 7 Business Days after the date of posting; and

(iv) (in the case of delivery by hand) on delivery, provided that if the communication is received on a day which is not a Business Day or after 5.00pm on a Business Day, it is deemed to be received at 9.00am on the next Business Day; and

(v) (in the case of email):

(A) if it is transmitted by 5:00pm (Sydney time) on a Business day – on that Business Day; or

(B) if it is transmitted after 5:00pm (Sydney time) on a Business Day, or on a day that is not a Business Day – on the next Business Day.

(e) With respect to Notices sent through the PDCS:

(i) all Notices must be submitted by the party making it or (on that party's behalf) by the solicitor for, or any attorney, director, secretary or authorised agent of, that party;

(ii) only the text in any Notice, or subject to paragraph 58(e)(iii), any attachments to such Notice which are referred to in the Notice, will form part of the Notice. Any text in the subject line will not form part of the Notice; and

(iii) an attachment to a Notice will only form part of a Notice if it is uploaded to the PDCS in:

(A) .pdf format;

(B) a format compatible with Microsoft Office; or

(C) such other format as may be agreed between the parties in writing from time to time.

(f) OpCo2 must:

(i) ensure that it has internet access which is sufficient to facilitate use of the full functionality of the PDCS;

(ii) ensure that relevant personnel log on and use the PDCS and check whether Notices have been received on each Business Day;

(iii) comply with any user guide and protocol with respect to the PDCS and check whether Notices have been received on each Business Day;

(iv) ensure all relevant personnel attend all necessary training required by the Principal's Representative;

(v) advise the Principal's Representatives of which personnel require access to the PDCS;

(vi) at all times, ensure that it has access to personnel trained in the use of the PDCS so as to be able to view, receive and submit communications (including Notices) using the PDCS; and

(vii) as soon as practicable, at the first available opportunity following any period of time during which the PDCS is temporarily disabled or not operating, send all communications which have been issued pursuant to clause 58(c)(ii)(B) to the Principal's Representative through the PDCS.

(g) The Principal has no liability for any losses OpCo2 may suffer or incur arising out of or in connection with its access to or use of the PDCS or any failure of the PDCS, and OpCo2 will not be entitled to make, and the Principal will not be liable upon, any Claim against the Principal arising out of or in connection with OpCo2's access to or use of the PDCS or any failure of the PDCS.

59. TRANSFER OF FUNCTIONS

59.1 Transfer of Functions or NSW Public Transport Assets

(a) The parties acknowledge that:

(i) a Public Transport Agency may be reconstituted, renamed, dissolved, replaced or restructured and that some or all of the powers, functions, assets, rights, liabilities or responsibilities of a Public Transport Agency may be transferred to or vested in Another Entity;

(ii) if a Public Transport Agency is reconstituted, renamed, dissolved, replaced or restructured and/or some or all of that Public Transport Agency's powers, functions, rights or responsibilities are transferred to or vested in Another Entity, then unless otherwise notified by the Public Transport Agency, references in this deed to that Public Transport Agency must, subject to any facilitative legislation, be deemed to refer, as applicable, to the reconstituted, renamed, restructured or new entity or entity replacing that Public Transport Agency to the extent that such entity has assumed or has had transferred to it or vested in it those powers, functions, rights or responsibilities; and

(iii) a Public Transport Agency may be required to or may, at its absolute discretion, elect to (including as a result of changes to New South Wales Government policy or directions) acquire, or dispose of, any property or assets.

(b) OpCo2 acknowledges and agrees that it must, to the extent required by a Public Transport Agency and without limiting any facilitative legislation, negotiate in good faith any variations required to this deed, or any replacement agreement or agreements for this deed to give effect to a Public Transport Agency being reconstituted, renamed, dissolved, replaced or restructured.

(c) OpCo2 will be taken for all purposes to have consented to, and will not have, and no Public Transport Agency will be liable for, any Claim as a result of any action, matter or circumstance referred to in, or contemplated by this clause 59 (*Transfer of functions*).

60. PROPORTIONATE LIABILITY

60.1 Exclusion of proportionate liability scheme

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

(b) Without limiting the above, the rights, obligations and liabilities of the Principal and OpCo2 under this deed with respect to proportionate liability are as specified in this deed and not otherwise, whether these rights, obligations or liabilities are sought to be enforced by a claim in contract, in tort or otherwise.

60.2 Contractor not to apply proportionate liability scheme

To the extent permitted by law:

(a) OpCo2 must not seek to apply the provisions of Part 4 of the *Civil Liability Act 2002* (NSW) in relation to any claim by the Principal against OpCo2 (whether in contract, tort or otherwise); and

(b) if any of the provisions of Part 4 of the *Civil Liability Act 2002* (NSW) are applied to any claim by the Principal against OpCo2 (whether in contract, tort or otherwise), OpCo2 will indemnify the Principal against any loss, damage, cost or expense that forms part of a claim by the Principal against OpCo2 which the Principal cannot recover from OpCo2 because of the operation of Part 4 of the *Civil Liability Act 2002* (NSW).

60.3 Subcontracts

OpCo2 must:

(a) in each Subcontract into which it enters for the performance of OpCo2's Activities, include a term that (to the extent permitted by law) excludes the application of Part 4 of the *Civil Liability Act 2002* (NSW) in relation to all and any rights, obligations or liabilities of either party under each Subcontract whether these rights, obligations or liabilities are sought to be enforced by a claim in contract, tort or otherwise; and

(b) require each OpCo2 Contractor to include, in any further contract that it enters into with a third party for the performance of OpCo2's Activities, a term that (to the extent permitted by law) excludes the application of Part 4 of the *Civil Liability Act 2002* (NSW) in relation to all and any rights, obligations or liabilities of either party under each further agreement whether such rights, obligations or liabilities are sought to be enforced by a claim in contract, tort or otherwise.

61. TAXES

61.1 Liability for Taxes

(a) Subject to clause 61.2 (*GST*), OpCo2 must indemnify the Principal against, and must pay the Principal on demand the amount of, all Taxes (excluding Rates, Land

Tax and stamp duty, and any penalty, fine, charge or interest in respect of any Rates, Land Tax or stamp duty) incurred in connection with:

(i) the negotiation, preparation, execution, stamping and registration of this deed or any Project Agreement;

(ii) the transactions that this deed or any Project Agreement contemplates; and

(iii) any amendment to, or any consent, approval, waiver, release or discharge of or under, this deed or any Project Agreement.

(b) OpCo2 must:

(i) attend to the timely lodgement for stamping of the Principal Project Agreements and the Debt Financing Documents within the period for lodgement prescribed by law;

(ii) give the Principal reasonable opportunity to review and comment on all submissions, correspondence and other materials before they are provided to the NSW Office of State Revenue and give due consideration to such comments; and

(iii) give the Principal a copy of each assessment issued by the NSW Office of State Revenue as to the amount of stamp duty payable in respect of the Principal Project Agreements, the Debt Financing Documents or any transaction contemplated by any of them, within 2 Business Days after OpCo2 receives the assessment.

(c) The Principal must pay the amount of stamp duty assessed by the Office of State Revenue as payable in respect of the Principal Project Agreements, the Debt Financing Documents or any transaction contemplated by any of them, by the later of:

(i) date on which the assessment is due for payment; and

(ii) 3 Business Days after the Principal receives the NSW Office of State Revenue's assessment.

(d) The Principal is not required to pay any penalty, fine, charge or interest payable in respect of any stamp duty which results from any failure by OpCo2 to comply with its obligation under clause 61.1(b)(i). OpCo2 must pay all such amounts. The Principal must, however, pay any interest payable to the NSW Office of State Revenue to the extent such interest is payable as a result of a breach by the Principal of its obligation under clause 61.1(c).

(e) The Principal must indemnify OpCo2 and each other Transaction Party for any liability incurred by that Transaction Party as a result of a breach by the Principal of its obligations under clause 61.1(c) and clause 61.1(d).

(f) The Principal must pay OpCo2 and each other Transaction Party, and indemnify OpCo2 and each other Transaction Party against, all Rates and Land Tax, if any, in respect of the Sydney Metro Site until the end of the Term.

(g) To the extent that the indemnity in clause 61.1(e) and clause 61.1(f) is in favour of Transaction Parties other than OpCo2, OpCo2 has sought and obtained that indemnity as agent on behalf of each Transaction Party. OpCo2 may also enforce that indemnity as agent on behalf of each Transaction Party. If OpCo2 does not have authority to act as agent on behalf of a Transaction Party other than OpCo2, then OpCo2 will be deemed to have sought and obtained that indemnity as trustee

for that Transaction Party and holds the benefit of that indemnity as trustee. OpCo2 may also enforce that indemnity as trustee for the benefit that Transaction Party.

61.2 **GST**

(a) (**Interpretation**):

(i) Except where the context suggests otherwise, terms used in this clause 61.2 (*GST*) 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 61.2 (*GST*).

(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 61.2 (*GST*).

(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 61.2(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 61.2 (*GST*)), 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 61.2(c)(ii).

(d) (**Variation of GST**):

(i) If the GST Amount properly payable in relation to a supply (as determined in accordance with clause 61.2(c) and clause 61.2(e)), varies from the additional amount paid by the Recipient under clause 61.2(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 61.2(d) is deemed to be a payment, credit or refund of the GST Amount payable under clause 61.2(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 61.2(c) applies is a Taxable Supply made by the Recipient (the **Recipient Supply**), the GST Amount that would be otherwise be payable by the Recipient to the Supplier in accordance with clause 61.2(c) shall 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 61.2(c) (or the time at which such GST Amount would have been payable in accordance with clause 61.2(c) but for the operation of clause 61.2(e)).

(f) (**No merger**): This clause will not merge on completion or termination of this deed.

62. GENERAL

62.1 Certification

For the purposes of this deed, a copy of a document will be regarded as duly certified by OpCo2 if it is certified as a true copy by a director, secretary or general manager of OpCo2.

62.2 Cost of performing obligations

Each party must perform its obligations under this deed at its own cost, unless expressly provided otherwise.

62.3 Governing law and jurisdiction

(a) This deed is governed by and must be construed according to the law applying in New South Wales.

(b) Subject to clause 56 (*Dispute resolution*), 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 courts, with respect to any proceedings that may be brought at any time relating to this deed.

62.4 Amendments

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

62.5 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 another breach of that term or of a breach of any other term of this deed.

62.6 **Survival of certain provisions; no merger**

(a) Without limiting clause 62.13(a):

(i) clauses 1 (*Interpretation*), 5.1 (*Principal's Representative*), 11.2 (*Information Documents*), 13.12(b) (*Design Life warranty*), 13.12(g) (*Design Life Claims*), 21.14 (*Final inspection*), 22 (*Security*), 25.10 (*Interest*), 25.11 (*Set off*), 37 (*Indemnity and liability exclusions*), 42.11 (*Consequences of Termination*), 42.12 (*Termination Payments*), 42.14 (*Option to assume Project Debt*), 43 (*Transition out provisions*), 45.1 (*Records*), 47 (*Disclosure, confidentiality and publicity*), 48 (*Intellectual Property*), 52 (*Restrictions*), 56 (*Dispute resolution*), 57 (*Notice of Claims*), 58 (*Notices*), 60 (*Proportionate liability*), 61 (*Taxes*), 62 (*General*), the representations, warranties and indemnities given by OpCo2 under this deed and any other provisions which are expressed to survive termination (together, the **Surviving Clauses**) will survive rescission, termination or expiration of this deed; and

(ii) if this deed is rescinded or terminated, no party will be liable to any other party except:

(A) under the Surviving Clauses; or

(B) in respect of any breach of this deed occurring before such rescission or termination.

(b) 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.

62.7 **Further acts and documents**

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

62.8 **Consents**

A consent required under this deed from a party may be given or withheld, or may be given subject to any conditions, as that party (in its absolute discretion) thinks fit, unless this deed expressly provides otherwise.

62.9 **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.

62.10 **Severance**

If at any time any provision of this deed is or becomes illegal, invalid or unenforceable in any respect under applicable law, that provision is to be severed to the extent necessary to make this deed enforceable, and it will not affect or impair the legality, validity or enforceability of any other provision of this deed.

62.11 **Exercise of remedies**

(a) If OpCo2 breaches any of its obligations under this deed or any other Project Agreement, the Principal may exercise any or all of the rights and powers and pursue any or all of the remedies available to the Principal under the Project Agreements and/or enforce any other legal or equitable remedy available under applicable law.

(b) Each and every right, power and remedy of the Principal shall be cumulative and in addition to any other right, power and remedy, whether under a Project Agreement or applicable law, which may be exercised by the Principal and the exercise of a right, power or remedy shall not be construed to be a waiver of the right to exercise any other right, power or remedy.

(c) No delay or omission by the Principal in the exercise of any right, power or remedy shall impair such right, power or remedy or constitute a waiver of the relevant breach.

62.12 **Entire agreement**

To the extent permitted by law, in relation to its subject matter, this deed:

(a) embodies the entire understanding of the parties, and constitutes the entire terms agreed by the parties; and

(b) supersedes any prior written or other agreement of the parties.

62.13 **Indemnities**

(a) Each indemnity in this deed is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiration of this deed.

(b) It is not necessary for a party to incur expense or to make any payment before enforcing a right of indemnity conferred by this deed.

(c) A party must pay on demand any amount it must pay under an indemnity in this deed.

(d) Where OpCo2 gives any indemnity or release under any of the Project Agreements, it gives an equivalent indemnity and release to the State. The Principal holds for itself and on trust for the State the benefit of each such indemnity and release in this deed.

(e) Despite any other provision of this deed, to the extent that the Principal is liable to OpCo2 for any Claim arising under this deed, the Principal will not be entitled to avoid or reduce its liability to OpCo2 on the basis that OpCo2 has not suffered all or part of the relevant loss or damage (**Related Loss**) solely because the Related Loss is incurred by a subcontractor of OpCo2 or because the subcontractor's right to recover the Related Loss from OpCo2 or any other subcontractor is deferred, suspended or dependent upon recovery or entitlement from the Principal, OpCo2 or other subcontractor or is dependent upon determination of that entitlement.

62.14 **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.

62.15 **Attorneys**

Each person who executes this deed on behalf of a party under a power of attorney declares that he or she is not aware of any fact or circumstance that might affect his or her authority to do so under that power of attorney.

62.16 **Relationship between the Principal and OpCo2**

Nothing in, or contemplated by, this deed or any other Principal Project Agreement will be construed or interpreted as:

(a) constituting a relationship between the Principal and OpCo2, or any other person, of partners, joint venturers, fiduciaries, employer and employee or principal and agent; or

(b) imposing any general duty of good faith on the Principal to OpCo2 or its Associates in relation to or arising out of this deed, other than to comply with the obligations (if any) expressly stated to be assumed by the Principal under this deed or any other Principal Project Agreement on a good faith basis.

62.17 **Contract documents to be in English**

All documentation in computer readable or other written forms brought (whether before or after the date of this deed) or required to be brought into existence as part of, or for the purpose of, performing OpCo2's Activities, and which must be provided to the Principal, must be written in the English language.

62.18 **Vienna convention**

The UN Convention on Contracts for the International Sale of Goods (1980) does not apply to this Contract.

62.19 **Performance Standards and civil penalty provisions**

(a) OpCo2 acknowledges that it is required by this deed to observe performance standards (**Performance Standards**), including:

(i) compliance with the Demand Usage Strategy during a Forecast Period;

(ii) compliance with the Maintenance Works Program;

(iii) acceptable:

(A) availability and timeliness of Train Services;

(B) quality of Customer service;

(C) cleanliness of Trains, Stations and public areas;

(D) temperature and lighting on Trains and Stations, lift and escalator access; and

(E) availability of CCTV, PIDs, Announcement Units, Induction Loops, as defined in Schedule 2 (*Service Payment calculation*), and Help Points;

(iv) timely handback of track the subject of a Track Possession; and

(v) minimal disruption, interference or adverse impact on Sydney Trains and Sydney Trains' Facilities.

(b) OpCo2 acknowledges that:

(i) the Performance Standards are intended to promote the achievement of the objectives referred to in clauses 4.1 (*Objectives for the Sydney Metro*) and 4.2 (*Objectives for the OTS2 PPP*);

(ii) a failure by OpCo2 to achieve the Performance Standards may result in a failure by the Principal to achieve the objectives referred to in clauses 4.1 (*Objectives for the Sydney Metro*) and 4.2 (*Objectives for the OTS2 PPP*) to the detriment of the Principal and those on whose behalf the objectives are pursued;

(iii) the loss arising from the failure of the Principal to achieve the objectives referred to in clauses 4.1 (*Objectives for the Sydney Metro*) and 4.2 (*Objectives for the OTS2 PPP*) is not capable of easy or precise calculation; and

(iv) in accordance with section 38 of the *Passenger Transport Bill 2014* (NSW), Performance Standards may be enforced by civil penalty provisions.

(c) Clauses 9.17(b)(v) and 21.7 (*Asset Management Failures*), Schedule 2 (*Service Payment calculation*) and clause 6 (*Interference payments*) of Schedule 3 (*Sydney Trains interface*) are civil penalty provisions for the purposes of section 38 of the *Passenger Transport Bill 2014* (NSW).

62.20 **Assumptions**

Except as stated in this deed, OpCo2 bears the risk that any assumptions contained in the Project Agreements, the Delivery Program, the Stage 1 Design or any Project Plans are incorrect and will not be entitled to make any Claim against the Principal arising out of or in connection with such assumptions.

EXECUTED as a deed.

Each person who executes this document on behalf of a party under a power of attorney declares that he or she is not aware of any fact or circumstance that might affect his or her authority to do so under that power of attorney.

EXECUTED by **SYDNEY METRO** (ABN 12 354 063 515) by its authorised delegate, in the presence of:

[redacted]

SIGNED, SEALED and **DELIVERED** for and on behalf of **NRT CSW Pty Ltd** (ACN 635 509 036) in its personal capacity and as trustee of the NRT CSW Unit Trust) under power of attorney in the presence of:

[redacted]

[redacted]