

## Schedule 32 – Intellectual Property

(clause 55)

### 1. Definitions

In this Schedule 32 (*Intellectual Property*):

**Background IP** means any and all Material which is or has been developed other than in connection with the SSTOM PPP by OpCo or any OpCo Associate and brought to the SSTOM PPP by OpCo or any OpCo Associate.

**Brand** means all goodwill associated with Sydney Metro – Western Sydney Airport including:

- (a) all registered and unregistered trade marks used for or in relation to Sydney Metro – Western Sydney Airport (other than OpCo Trade Marks);
- (b) all names used for or in relation to Sydney Metro – Western Sydney Airport (other than those names of OpCo Contractors which are used in their business generally including any business name, domain name, social media account name or company name, but which do not include, directly or indirectly, any such names which are created or developed in connection with, Sydney Metro – Western Sydney Airport) including business names, domain names, social media account names and company names; and
- (c) all telephone numbers, mobile apps, email addresses, social media accounts and all other addresses used by the general public in relation to Sydney Metro – Western Sydney Airport to make contact or receive information about Sydney Metro – Western Sydney Airport using any means of communication, including a telecommunication network or internet connection.

**Core IP Providers** means each Siemens Entity and any person nominated by the Principal as a core IP Provider under clause 2.15(f).

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

**Data** means all data and expressions of data contained in, or processed or generated by, Sydney Metro – Western Sydney Airport or produced as a result of OpCo's Activities, including:

- (a) all data and expressions of data contained in all images contained in or processed or generated by Sydney Metro – Western Sydney Airport;
- (b) all data and expressions of data comprising reports generated by Sydney Metro – Western Sydney Airport; and
- (c) all data and expressions of data about or relating to or generated by OpCo or its Associates in connection with Sydney Metro – Western Sydney Airport,

and (for the avoidance of doubt) including all data and expressions of data stored in the Asset Information System, the Service Payment Monitoring System and the Condition Monitoring System.

**Deed of Assurance** means a deed of assurance substantially in the form of Annexure A.

**Developed Intellectual Property** means all Intellectual Property, trade secrets and know-how comprised in any Project Documentation, Software, Firmware, system (whether documented or undocumented), process (whether documented or undocumented), deliverable or other material (in whatever form) developed or created by OpCo or its Associates for the purposes of this deed or the SSTOM PPP, and:

- (a) including all Intellectual Property in any Project Documentation, Software, Firmware, system (whether documented or undocumented), process (whether documented or undocumented), deliverable or other material (in whatever form) developed or created for an Extension Proposal; and

- (b) excluding public art as part of the SSTOM Works and Principal's IP.

**Domain Names** means any domain names or social media accounts used by OpCo or its Associates in relation to Sydney Metro – Western Sydney Airport.

**Equipment** means any hardware, equipment, devices, plant, machinery, fixtures, vehicles and furniture supplied by OpCo or its Associates under this deed forming part of Sydney Metro – Western Sydney Airport.

**Equipment IP** means Intellectual Property, trade secrets and know-how comprised in all and part of:

- (a) the Equipment; and
- (b) computer programs supplied as a component of, embedded in or forming part of the Equipment and without which such tangible items cannot operate, such as Software known as 'device' Software or Firmware,

but excluding any Intellectual Property which is owned by OpCo or its Associates or which is Principal's IP.

**Escrow Agent** means, at any time, the person appointed as escrow agent under an Escrow Deed.

**Escrow Deed** means the deed in the form set out in Annexure C or otherwise agreed between the parties pursuant to which the Escrow Agent agrees to act as an escrow agent and to hold the Escrow Material.

**Escrow Fee** means the fee payable to the Escrow Agent in accordance with the Escrow Deed.

**Escrow Material** means:

- (a) all Source Code in respect of the Signalling Intellectual Property;
- (b) all object code for the Software, design documentation, specifications, drawings and data, in each case for the manufacture of the traction power including any object code for the Software, design documentation, specifications, drawings and data for the application, function or integration of the traction power or any of its components; and
- (c) software tools necessary for the Principal or any Successor OpCo (or any sub-licensee or transferee), or that a person in the Principal's position would otherwise require, to modify, maintain, test, further develop or regenerate the Source Code or of the type referred to in paragraph (a) and paragraph (b), subject to clause 2.4(c)(ii) to exercise its rights under clause 2.4.

**ETS IP** means all Intellectual Property, trade secrets and know-how in any materials or information which are disclosed, made available or otherwise provided by the Principal to OpCo and relate to the ETS (including all materials and information provided to the Principal by the ETS Delivery Partner or an ETS Contractor).

**Firmware** means a set of coded instructions embedded within a device or component of a device that performs functions or provides data to enable the device to operate in a specified manner.

**Indemnified Parties** means:

- (a) the Principal; and
- (b) any third party authorised or licensed by the Principal to exercise rights in any Intellectual Property assigned, granted or licensed to the Principal under this deed, and any of their respective Associates.

**Intellectual Property** includes any and all intellectual and industrial property rights throughout the world, whether subsisting now or in the future, including rights of any kind in:

- (a) inventions, trade secrets, discoveries and novel designs, whether or not registered or registrable as patents, innovation patents or designs, including developments or improvements of equipment, technology, processes, know-how, methods or techniques;
- (b) literary works, dramatic works, musical works, artistic works, cinematograph films, television broadcasts, sound broadcasts, published editions of works and any other

subject matter in which copyright (including future copyright and rights in the nature of or analogous to copyright) may, or may upon creation of the subject matter, subsist anywhere in the world;

- (c) registered and unregistered trade marks and service marks, including goodwill in the business concerned in the relevant goods and/or services;
- (d) trade, business or company names;
- (e) internet domain names or social media accounts; and
- (f) proprietary rights under the *Circuit Layouts Act 1989* (Cth),

whether created or in existence before or after the date of this deed.

**Licensed Intellectual Property** means all Intellectual Property and trade secrets and know-how comprised in or related to:

- (a) the SSTOM Works or the Temporary Works;
- (b) all and any part of Sydney Metro – Western Sydney Airport (including public art as part of the SSTOM Works), excluding the Foundation Infrastructure Works; and
- (c) all and any part of OpCo's Activities including all and any items, Software, Firmware, software tools or materials or documents used by OpCo or its Associates in undertaking OpCo's Activities,

excluding the Developed Intellectual Property, Third Party Software, the Equipment IP, the Signalling Intellectual Property and the Principal's IP.

**List of Intellectual Property** means a list of each item of Intellectual Property used or to be used by OpCo or its Associates in performing its obligations under this deed, which includes, separately identified, the List of Software, and specifies in relation to any Intellectual Property not identified in the List of Software:

- (a) the nature and, if applicable, name of the material in which the Intellectual Property is comprised;
- (b) the owner of the Intellectual Property and, to the extent applicable, the licensor and the licensee of that Intellectual Property;
- (c) the duration of any licence and maintenance agreements; and
- (d) the licence and maintenance fees and similar fees.

**List of Software** means a list of each item of Software used or to be used by OpCo or its Associates in performing OpCo's Activities which specifies in relation to each item of Software:

- (a) name and release version of the Software;
- (b) the owner and distributor of the Software and, if relevant, the licensor and the licensee of that Software;
- (c) whether the Software is Third Party Software;
- (d) the duration of any licence and maintenance agreements; and
- (e) the licence, maintenance and support, subscription and other fees pertaining to that Software,

provided that OpCo or its Associates will not be required to disclose the information specified in paragraph (e) above if such information is subject to any contractual confidentiality obligations imposed on that party as a result of such information comprising confidential information having used reasonable endeavours to seek the right to disclose such information to the Principal from the relevant party on the basis that any such information disclosed will be treated by the Principal as Commercially Sensitive Information.

**Moral Rights** has the meaning given to it in the *Copyright Act 1968* (Cth).

**Moral Rights Consent** means a consent in the form of Annexure B, or a consent forming part of an individual's employment agreement which has substantially the same effect as the consent in the form of Annexure B.

**OpCo Trade Marks** means those trade marks of OpCo Contractors which are used in their business generally and are applied by them to devices or equipment that they supply, but excluding brands which are created or developed (whether directly or indirectly) in connection with Sydney Metro – Western Sydney Airport or any other part of Sydney Metro.

**Principal's IP** means all Intellectual Property and trade secrets and know-how comprised in:

- (a) the Data;
- (b) the Brand;
- (c) the Trade Marks;
- (d) the FIW Design Documentation, the FIW Asset Management Information or the FIW O&M Manual;
- (e) the FIW Works or otherwise related to the FIW Works; and
- (f) any Intellectual Property in any materials that the Principal is expressly required to provide to OpCo in accordance with this deed (if any),

but excludes the ETS IP.

**Siemens Entity** mean each of:

- (a) Siemens Mobility GmbH (Commercial Register B Munich, HRB 237219);
- (b) Siemens Mobility Austria GmbH (Registered in Austria, FN 483145 h); and
- (c) Siemens Mobility Pty Ltd ACN 625 304 556.

**Signalling Intellectual Property** means all Intellectual Property, trade secrets and know-how (whether pre-existing or modified, developed or created by OpCo or its Associates for the purposes of this deed or the SSTOM PPP) comprised in:

- (a) all object code for the Software, design documentation, specifications, drawings and Data, in each case for the manufacture of the Trains including any object code for the Software, design documentation, specifications, drawings and data for the application, function or integration of the Trains or any of its components;
- (b) all object code for the Software, design documentation, specifications, drawings and data, in each case for the manufacture of the CBTC and Central Control System including any object code for the Software, design documentation, specifications, drawings and data for the application, function or integration of the CBTC, Central Control System or any of its components; and
- (c) all object code for the Software, design documentation, specifications, drawings and data in each case for the manufacture of the Special Tools and Equipment required for the Trains CBTC and Central Control System including any object code for the Software, design documentation, specifications, drawings and data for the application, function or integration of the Special Tools and Equipment required for the Trains, CBTC and Central Control System.

**Software** means a set of coded instructions that performs functions or provides working data or parameters to enable a device or system to operate in a specified manner, and be loaded into a system or device dynamically by a user and includes all Source Code, object code, Firmware and operating systems required by a system or subsystem to perform in a specified manner.

**Source Code** for software means a human readable form of that software which may be compiled to produce the object code.

**Third Party Licences** means all licences, maintenance and similar contracts for the Third Party Software.

**Third Party Software** means COTS Software and Firmware owned by any entity other than OpCo or its Associates that is:

- (a) comprised in all or any part of the SSTOM Works, the Temporary Works or Sydney Metro – Western Sydney Airport;
- (b) otherwise used or to be used by, or on behalf of, OpCo or its Associates in performing OpCo's Activities; or
- (c) Software tools necessary for the Principal, or that a person in the Principal's position would otherwise require, to modify, maintain, test, further develop or regenerate the bespoke Software contained in Sydney Metro – Western Sydney Airport or otherwise exercise any rights of ownership given to the Principal under clause 2.10,

including the Software and Firmware identified as such in the List of Software and in any information provided under clause 2.8(b)(iv).

**Trade Marks** means any trade marks owned by the Principal and specified by the Principal to OpCo in writing and any other trade marks created or developed by or on behalf of OpCo for use in relation to Sydney Metro – Western Sydney Airport, excluding OpCo Trade Marks.

## 2. Intellectual Property

### 2.1 Warranty by OpCo

OpCo represents and warrants that:

- (a) it has all appropriate licences of, or title to, all Intellectual Property that is required by it for the purpose of its obligations under this deed;
- (b) OpCo's Associates have all appropriate licences of, or title to, all Intellectual Property that is required for performing their obligations under the Project Agreements or performing obligations under this deed on behalf of OpCo;
- (c) it does not require any licences of, or title to, any Intellectual Property from the Principal in order to perform its obligations under this deed apart from any licences to Intellectual Property granted under this deed;
- (d) the Developed Intellectual Property, the Licensed Intellectual Property, the Third Party Software, the Equipment IP, the Signalling Intellectual Property, the Principal's IP, the Escrow Materials and the ETS IP are all the Intellectual Property that is required for OpCo to carry out its obligations under this deed;
- (e) it has authority to assign or license (as the case may be) all Intellectual Property granted to the Principal under this deed;
- (f) every item of the Software used or to be used by OpCo and its Associates in Sydney Metro – Western Sydney Airport is contained in the List of Software or will be later identified in accordance with clause 2.8(b)(iv);
- (g) it has the authority to undertake the obligations concerning the Third Party Software contained in clause 2.10 and the Equipment IP contained in clause 2.11;
- (h) no third party rights or interests will affect the enjoyment of the benefit of the licences in clauses 2.4(a) and 2.4(aa) or prevent the exercise of rights under clauses 2.4(b) and 2.5;
- (i) none of:
  - (i) the performance of OpCo's Activities, nor anything arising from the performance of OpCo's Activities;
  - (ii) the SSTOM Works;
  - (iii) the Temporary Works; or
  - (iv) the exercise by the Principal of its rights and obligations under the Principal Project Agreements (other than in respect of the Principal's IP),

infringes or will infringe any Intellectual Property or Moral Rights, of any third party;

- (j) there are no Security Interests, and it will not allow any Security Interests to be created, over its rights to any Intellectual Property that is used by it for the purposes of its obligations under this deed, except for any Permitted Security Interest;
- (k) the use or enjoyment of Sydney Metro – Western Sydney Airport (excluding the Foundation Infrastructure Works) in accordance with or as contemplated by this deed by the Principal or any person authorised by the Principal in accordance with or as contemplated by this deed will not infringe Intellectual Property or Moral Rights, or other equivalent rights of any person, or any law relating to the same, whether in Australia or overseas; and
- (l) it is not aware of any allegations of infringement or notices of misappropriation issued by any person or any Claims that Sydney Metro – Western Sydney Airport or its use or enjoyment in accordance with or as contemplated by this deed infringe or will infringe any Intellectual Property or Moral Rights, or other equivalent rights of any third party.

Each representation and warranty in this clause 2.1 is a continuing representation and warranty and will be repeated on each day while any obligation under this deed remains outstanding, with reference to the facts and circumstances then subsisting.

## 2.2 Indemnity

- (a) Subject to clause 44.2 and clause 44.3 of the Operative Provisions, OpCo indemnifies each Indemnified Party against:
  - (i) all Claims which may be brought or made against an Indemnified Party by any person in respect of:
    - (A) any alleged or actual infringement of Intellectual Property by OpCo or its Associates in the course of, or incidental to, performing any obligations under this deed other than to the extent such Intellectual Property is comprised in the items or materials identified in paragraphs (b) to (f) of the definition of Principal's IP or the definition of ETS IP;
    - (B) the use by an Indemnified Party of any Intellectual Property that is the subject of the warranty in clause 2.1(d), excluding the Intellectual Property comprised in the items or materials identified in paragraphs (b) to (f) of the definition of Principal's IP or the definition of ETS IP; and
    - (C) an infringement of Moral Rights resulting from the use, operation, maintenance or modification of Sydney Metro – Western Sydney Airport (excluding the Foundation Infrastructure Works) or any part of it;
  - (ii) any Loss (including legal fees on an indemnity basis) that may be suffered or incurred by the Indemnified Parties in connection with any Claim referred to in clause 2.2(a)(i) or any Claim arising from a breach of the warranties set out in clause 2.1; and
  - (iii) any Loss that may be suffered or incurred by the Indemnified Parties in connection with the Intellectual Property necessary for the continuation of OpCo's Activities being unavailable as a result of or in connection with OpCo not fulfilling its obligations under clause 2.10 to obtain the licenses referred to in clause 2.10.
- (b) Subject to clause 2.2(c), an Indemnified Party must, as soon as is reasonably practicable after it becomes aware of a claim or Loss referred to in clause 2.2(a):
  - (i) notify OpCo in writing of the alleged infringement;
  - (ii) give OpCo at the time of notification the option to conduct the defence of the claim; and
  - (iii) provide OpCo (at OpCo's expense) with reasonable assistance in conducting the defence of such claim.
- (c) Clauses 44.5 and 44.6 of the Operative Provisions apply to any claim or Loss referred in clause 2.2(a) as if reference in those clauses to:
  - (i) a Third Party Claim was a reference to a claim or Loss under clause 2.2(a); and

- (ii) a State Indemnified Party was a reference to the relevant Indemnified Party.;

## 2.3 Infringements

- (a) If OpCo:
- (i) becomes aware of a Claim by a person that the use of any of the Intellectual Property relating to OpCo's Activities or Sydney Metro – Western Sydney Airport infringes or amounts to a misuse of the Intellectual Property or other rights of a third party; or
  - (ii) believes that the Principal may have a Claim against a person for infringement or misuse of any Intellectual Property in Sydney Metro – Western Sydney Airport,
- it must promptly provide the Principal with written notice of the alleged Claim.
- (b) Notwithstanding clauses 2.1 and 2.2, and without prejudice to any other rights or remedies that the Principal may have against OpCo under this deed or under law, if as a result of any alleged infringement or threatened infringement of Intellectual Property relating to OpCo's Activities, the SSTOM Works or the Temporary Works or the exercise by the Principal of its rights and obligations in accordance with the Principal Project Agreements (other than in respect of the Principal's IP), the Principal, OpCo, or any other entity performing work under this deed is prevented (whether by court order or otherwise) from:
- (i) exercising Intellectual Property it had been exercising or was proposing to exercise to perform OpCo's Activities; or
  - (ii) otherwise exercising Intellectual Property in a manner consistent with the rights granted to the Principal under this deed,
- OpCo must:
- (iii) secure for the Principal the right to continue to exercise such Intellectual Property;
  - (iv) replace such Intellectual Property with equivalent non-infringing Intellectual Property, but without degrading the functionality, performance or security of the affected Intellectual Property; or
  - (v) modify any materials, equipment, Software, devices or processes so that they become non-infringing or remove any materials, equipment, Software, devices or processes that are infringing, but without degrading the functionality, performance or security of the affected Intellectual Property.
- (c) If the amount of time necessary to proceed with one of the options set out in clause 2.3(b) is deemed excessive by the Principal, the Principal (acting reasonably) may direct OpCo to select another option and OpCo must comply with that direction.
- (d) The steps required for OpCo to comply with its obligations under clauses 2.3(b) and 2.3(c) are at OpCo's sole cost and expense unless the alleged infringement or threatened infringement directly arises in respect of the licence granted to OpCo under clause 2.16, in which case the costs are to be borne based upon the extent of responsibility of each party for the alleged infringement or threatened infringement, as reasonably determined by the Principal's Representative.
- (e) If any Claim of alleged infringement or threatened infringement arises due to the Principal, an Indemnified Party or any person authorised by the Principal exercising Intellectual Property in a manner not in accordance with the applicable rights granted to the Principal under this deed, between OpCo and the Principal, all such costs of the Claim will be borne by the Principal to the extent those costs were necessary and a direct result of the alleged infringement or threatened infringement. If OpCo is required to provide any assistance to the Principal or an Indemnified Party arising out of or in any way in connection with such a Claim, the Principal must pay or reimburse OpCo its reasonable costs and expenses incurred in providing such assistance.

## 2.4 Licensed Intellectual Property

- (a) OpCo grants to the Principal and any entity nominated by the Principal a permanent, perpetual, irrevocable, transferable, royalty free, non-exclusive licence to exercise the Licensed Intellectual Property:
  - (i) for the following purposes relating to Sydney Metro – Western Sydney Airport:
    - (A) to carry out the SSTOM PPP or OpCo's Activities, including in exercising the Principal's Step-In Rights in accordance with this deed;
    - (B) to carry out the SSTOM Works or the Temporary Works or to operate, maintain, modify and upgrade Sydney Metro – Western Sydney Airport; and
    - (C) any Extension, for the following purposes:
      - (I) to disclose the Licensed Intellectual Property on a confidential basis to third parties solely for the purposes of a tender for procuring any Extension or integration of Sydney Metro – Western Sydney Airport with any Extension;
      - (II) carrying out, operating or maintaining any Extension; or
      - (III) integrating, and to the extent necessary to interface or connect Sydney Metro – Western Sydney Airport with any Extension; and
  - (ii) not used.
- (aa) OpCo grants to the Principal and any Successor OpCo a permanent, perpetual, an irrevocable, transferable, royalty free, non-exclusive licence to exercise the Signalling Intellectual Property for the following purposes:
  - (i) to refurbish, convert, upgrade and modify the Trains;
  - (ii) subject to clause 2.4(c)(iii)(C), to construct and manufacture the Trains;
  - (iii) to operate and maintain the Trains, the CBTC and the Central Control System;
  - (iv) to disclose the Signalling Intellectual Property on a confidential basis to third parties solely for the purposes of a tender process for the procurement of the integration of the Trains, the CBTC and the Central Control System with any Extension; or
  - (v) to integrate the Trains, the CBTC and the Central Control System with any Extension.
- (b) The licences granted in clause 2.4(a) and clause 2.4(aa):
  - (i) arise in respect of each component of the Licensed Intellectual Property and the Signalling Intellectual Property upon the later of the date of this deed or upon the creation of each component of the Licensed Intellectual Property or the Signalling Intellectual Property (as applicable);
  - (ii) may be sub-licensed (including to third parties who are providing services to the Principal in connection with Sydney Metro – Western Sydney Airport) who are subject to reasonable confidentiality obligations in respect of the use of such Licensed Intellectual Property; and
  - (iii) will survive expiry of this deed or termination of this deed on any basis.
- (c) Notwithstanding any other provision in this deed or any other Project Agreement:
  - (i) after the Term, OpCo and its Associates are not required to provide any software support or maintenance services in relation to any Software licensed or supplied to the Principal in respect of the SSTOM PPP, unless otherwise agreed between the parties under a separate agreement or required under the TLS Deed;
  - (ii) the Principal is not entitled to access the Source Code in any Software forming part of the Background IP or Signalling Intellectual Property, except to the extent



the Principal is entitled to be provided with such Source Code pursuant to clause 2.18; and

- (iii) the licence granted in clause 2.4(aa) does not entitle the Principal or any Successor OpCo (or any sub-licensee or transferee) to undertake or procure the construction or manufacture of:
  - (A) a communication based train control system or trains for any railway other than the SSTOM PPP;
  - (B) spare parts for the Trains; or
  - (C) a communication based train control system, Central Control System or Trains for the SSTOM PPP unless:
    - (I) the Principal is entitled to access the Escrow Material pursuant to clause 2.18; and
    - (II) either:
      - (1) OpCo has not within 10 Business Days of having been provided with a notice by the Principal to do so notified the Principal in writing that it will take over the relevant activities in relation to this deed; or
      - (2) the Principal is not reasonably satisfied that OpCo has the capacity to take over the relevant activities in relation to this deed.
- (d) Any transfer by the Principal of the licence granted in clause 2.4(aa) must be notified to parties to the Escrow Deed within a reasonable period.

## 2.5 Developed Intellectual Property

- (a) All Developed Intellectual Property will be owned by the Principal and to the extent necessary to give effect to this, OpCo irrevocably and unconditionally assigns to the Principal all of its rights, title and interest in the Developed Intellectual Property and acknowledges that all future Intellectual Property (including future copyright) in all Developed Intellectual Property vests in the Principal. This ownership of each component of the Developed Intellectual Property vests in the Principal on the later of:
  - (i) the date of this deed; or
  - (ii) creation of each component of the Developed Intellectual Property.
- (b) To the extent that any Developed Intellectual Property is owned by a party other than OpCo, OpCo must procure that party assigns its rights, title and interest (including all Intellectual Property) in such Developed Intellectual Property to the Principal.
- (c) The Principal grants to OpCo a limited, revocable, non-exclusive, non-transferable, royalty-free licence during the Term to exercise the Intellectual Property referred to in clauses 2.5(a) and 2.5(b) solely for performing its obligations under this deed. This licence may be sublicensed to OpCo's Associates subject to such conditions as the Principal may reasonably impose.

## 2.6 Access to Intellectual Property

Other than Intellectual Property, trade secrets and know-how used in the Escrow Material, if requested by the Principal, OpCo must, at its own cost:

- (a) fully disclose to the Principal all details of the Intellectual Property, trade secrets and know-how used in the SSTOM Works, the Temporary Works in carrying out OpCo's Activities or in the exercise by the Principal of its rights and obligations under the Principal Project Agreements (other than in respect of the Principal's IP); and
- (b) subject to the Principal's obligations in clause 54.2(b) of the Operative Provisions, allow the Principal to discuss such Intellectual Property, trade secrets and know-how with, and obtain information about the Intellectual Property, trade secrets and know-how from,

OpCo or any of its Associates involved in the creation, development or use of the Intellectual Property, trade secrets and know-how,

and in respect of the Licensed Intellectual Property and Third Party Software, in each case:

- (c) to enable the Principal, its Associates and any Successor OpCo to carry out any of the purposes set out in clause 2.4(a); and
- (d) subject to the Principal providing such confidentiality undertakings as OpCo may reasonably require.

## 2.7 Moral Rights

- (a) To the extent permitted by law, OpCo must not, and must take all reasonable steps to ensure that its Associates or any other person do not, sue, enforce any claim, bring any action or exercise any remedy in respect of any breach or alleged breach, infringement or other wrong doing (whether before or after the date of this deed) in respect of any person's Moral Rights in respect of the SSTOM Works, the Temporary Works, OpCo's Activities or the exercise of the Principal's rights and obligations under the Principal Project Agreements (other than in respect of the Principal's IP) by:
  - (i) the Principal;
  - (ii) any third party to whom the Principal sub-licenses or grants any other right to use, possess, vary or amend any Developed Intellectual Property, any Licensed Intellectual Property or Sydney Metro – Western Sydney Airport; or
  - (iii) any third party to whom the Principal assigned any Developed Intellectual Property or any part of the Equipment IP.
- (b) OpCo must:
  - (i) in respect of any person who is or may be an author (for the purposes of the *Copyright Act 1968* (Cth)) of any part of the Developed Intellectual Property, obtain from that person, a duly completed and executed Moral Rights Consent;
  - (ii) use reasonable endeavours to ensure that no person creates any part of the Developed Intellectual Property before that person has duly completed and executed a Moral Rights Consent;
  - (iii) not coerce any person to complete or execute a Moral Rights Consent;
  - (iv) promptly provide that Moral Rights Consent to the Principal; and
  - (v) maintain an up-to-date record of the names and addresses of each person who is an author of any part of the Developed Intellectual Property, and the part of the Developed Intellectual Property of which each such person is an author, and provide a copy of the record to the Principal whenever it is updated.
- (c) Subject to clause 44.2 and clause 44.3 of the Operative Provisions, OpCo indemnifies the Indemnified Parties against all Claims which arise in relation to an infringement of Moral Rights resulting from the use, operation or modification of the SSTOM Works, the Temporary Works or Sydney Metro – Western Sydney Airport.

## 2.8 Physical material

- (a) OpCo must, at its own cost, deliver, from time to time or on request of the Principal during the Term and upon termination or expiry of this deed, such physical media embodying:
  - (i) Developed Intellectual Property;
  - (ii) Licensed Intellectual Property;
  - (iii) Third Party Software and Equipment IP which OpCo or its Associates owns or has appropriate rights to provide; or
  - (iv) Data,

as the Principal reasonably requests to enable it to fully exercise its ownership and rights under this deed, excluding any Escrow Material.

- (b) Without limiting clause 2.8(a):
  - (i) immediately after the date of this deed, OpCo must deliver the List of Software (current as at that date) to the Principal as part of the List of Intellectual Property delivered under clause 2.15(d); and
  - (ii) OpCo must create and deliver to the Principal prior to Completion one copy of the object code of any Software comprised in the items or materials identified in sub-clauses (a) to (c) of the definition of Licensed Intellectual Property;
  - (iii) within 5 Business Days of any change to the Software used in the items or materials identified in sub-clauses (a) to (c) of the definition of Licensed Intellectual Property, OpCo must deliver a copy of it to the Principal;
  - (iv) within 5 Business Days of the use by OpCo of any Software which is not specified on the List of Software, OpCo must:
    - (A) provide the Principal with the following information:
      - (I) name of the Software;
      - (II) owner of the Software; and
      - (III) confirmation that the Software is the subject of the warranty in clause 2.1; and
    - (B) use commercially reasonable endeavours to provide the Principal with a copy of the Software licence, if any.

## 2.9 Copyright and Circuit Layout Act

Notwithstanding any other provision of this deed, this deed does not exclude or limit, or have the effect of excluding or limiting, the operation of subsection 47B(3) or sections 47C, 47D, 47E or 47F of the *Copyright Act 1968* (Cth) or Part II, Division 3 of the *Circuit Layouts Act 1989* (Cth).

## 2.10 Third Party Software

- (a) If required by the Principal, OpCo must:
  - (i) on or after the termination or expiry of this deed, use commercially reasonable endeavours to assign to the Principal OpCo's rights under, or cause a novation to the Principal of OpCo's rights and obligations under, or assist the Principal to obtain direct rights to, Third Party Licences (and must take commercially reasonable steps to ensure that the Third Party Licences make provision for this); and
  - (ii) at the Principal's request during the Term or if the Principal exercises its Step-In Rights under clause 48 of the Operative Provisions, use commercially reasonable endeavours to assist the Principal to obtain direct rights to Third Party Licences.
- (b) In respect of any assignment, novation or any such direct rights obtained under clause 2.10(a):
  - (i) each party will bear its own costs of effecting the assignment or novation or obtaining direct rights, except for any fee charged by a relevant third party (not being OpCo or one of its Associates) which will be paid by the Principal;
  - (ii) the Principal will pay all costs and expenses referable to any period after the date of their assignment;
  - (iii) without derogating from clause 2.1, OpCo must do all acts and things reasonably requested by the Principal to enable the Principal to:
    - (A) obtain copies of, and otherwise be apprised of all the terms of, and communications and information concerning, the Third Party Licences and their performance;
    - (B) exercise and enforce all rights and perform all obligations under the Third Party Licences as if named as OpCo; and

- (C) obtain such assignment, novation or direct rights on the same or substantially similar terms (including the remaining duration of any term) as OpCo has acquired for itself as enables it to fulfil its obligations under this deed; and
- (iv) on and from the date of the assignment or novation of such Third Party Licences, the Principal must:
  - (A) assume all obligations of OpCo under such Third Party Licences; and
  - (B) indemnify OpCo against all claims in respect of such Third Party Licences which arise on or from the date of assignment or novation of such Third Party Licences.

## 2.11 Equipment IP

The parties agree that ownership of the Equipment IP does not vest in the Principal. OpCo must ensure, however, that:

- (a) at the time ownership of tangible items (including computer hardware) forming part of the SSTOM Works, the Temporary Works or Sydney Metro – Western Sydney Airport (including, if necessary, OpCo's confidential information) is transferred to and vests in the Principal pursuant to clause 58 of the Operative Provisions; and
- (b) at all times during any period in which the Principal is exercising its Step-In Rights in accordance with clause 48 of the Operative Provisions,

the Principal has such perpetual, irrevocable, royalty-free, transferable licences of the Equipment IP as will enable the Principal to fully and effectively use and deal with the tangible items as owner of the tangible items, and to permit others to use those tangible items (including computer hardware) under contract with the Principal.

## 2.12 Perfecting licence and ownership

- (a) Without limiting any other provision of this deed, including clause 2.15, OpCo must do all things necessary (including executing documents) to perfect the licences and ownership granted to the Principal in this clause 2 and otherwise to give effect to OpCo's obligations and the Principal's rights under this clause 2.
- (b) If and to the extent that the Principal notifies OpCo that it has failed to perform any act required under clause 2.12(a) and OpCo fails to perform that act within the reasonable period identified in that notice OpCo, with effect from the expiry of the time period identified in that notice irrevocably appoints the Principal, or such other person as the Principal nominates from time to time, as OpCo's attorney to do such acts and things, in OpCo's name, as the Principal reasonably requires in order to exercise the rights under this clause 2.

## 2.13 Ownership of Data

- (a) Notwithstanding any other provision of this deed, OpCo agrees and acknowledges that the Principal owns the Data (including all Intellectual Property in the Data). These ownership rights vest in the Principal upon creation of the Data. To the extent necessary to give effect to this, OpCo irrevocably and unconditionally assigns to the Principal all existing and future rights, title and interest (including all Intellectual Property) in the Data, on its creation.
- (b) To the extent that any Data is owned by a party other than OpCo, OpCo must procure that that party assigns all existing and future rights, title and interest (including all Intellectual Property) in such Data to the Principal.

## 2.14 Patent validity

If any component of any Intellectual Property which is licensed or assigned under this deed expires through the effluxion of time or is or becomes invalid, then, without limiting the Principal's rights in respect of that expiry or invalidity, that component will, to that extent only, be deemed to

be excluded from the Intellectual Property licensed or assigned under this deed and this deed will otherwise continue in full force and effect.

## 2.15 Assurance

- (a) If any circumstances occur whereby the direct or indirect relationship between OpCo and the owner of any Licensed Intellectual Property, or Equipment IP not owned by OpCo concerning the Licensed Intellectual Property or Equipment IP changes or is likely to change, then OpCo must procure that:
  - (i) the owner of the Licensed Intellectual Property or Equipment IP (as applicable) and OpCo must immediately notify the Principal in writing, which notice must describe, with a reasonable level of detail, the nature of those circumstances and their effect or likely effect on the Principal;
  - (ii) notwithstanding those circumstances, the owner of the Licensed Intellectual Property or Equipment IP (as applicable) permits the Principal to continue exercising its rights to the Licensed Intellectual Property or the Intellectual Property in all or any part of Equipment IP (as applicable) as if such circumstances did not occur, or as the case requires, had not occurred; and
  - (iii) the owner of the Licensed Intellectual Property or Equipment IP (as applicable) and OpCo will do all such acts and things as the Principal reasonably requests in order to give effect to this clause 2.15.
- (b) Circumstances referred to in clause 2.15(a) include termination of any licensing arrangement or circumstances involving an inability to pay debts.
- (c) OpCo must ensure that no arrangements with respect to Intellectual Property owned by, or licensed to, a Core IP Provider are entered into in connection with OpCo's Activities without OpCo and the relevant Core IP Provider having delivered to the Principal's Representative a duly executed Deed of Assurance in relation to any Licensed Intellectual Property, Signalling Intellectual Property and/or Equipment IP owned by the Core IP Provider.
- (d) Immediately after the date of this deed, OpCo must deliver the List of Intellectual Property (current at that date) to the Principal.
- (e) Prior to entering into any arrangements with respect to any Intellectual Property which is not specified on the List of Intellectual Property, OpCo must provide the Principal with written notice specifying:
  - (i) the nature of the Intellectual Property;
  - (ii) the owner of the Intellectual Property and, if relevant, the licensor and licensee of the Intellectual Property; and
  - (iii) details of the proposed arrangements to be entered into with respect to the Intellectual Property.
- (f) The Principal may nominate any owner of, or holder of rights in, Intellectual Property identified in the List of Intellectual Property or a notice from OpCo under clause 2.15(e) as a Core IP Provider, in which case clause 2.15(c) will apply.
- (g) OpCo must deliver an updated List of Intellectual Property to the Principal within 20 Business Days of the use of any Intellectual Property not listed on the List of Intellectual Property previously delivered to the Principal.

## 2.16 Principal's IP

- (a) Subject to clause 2.16(d), the Principal grants to OpCo an irrevocable (for the duration of the Term), non-transferable, royalty free, non-exclusive licence during the Term to use the Principal's IP solely for the purposes of carrying out OpCo's Activities, subject to such conditions as the Principal may reasonably impose.
- (b) The licence granted in clause 2.16(a) may be sublicensed (free of charge) by OpCo to its Associates on such conditions as the Principal may reasonably impose.

- (c) Subject to clause 2.16(d):
  - (i) the Principal grants to OpCo an irrevocable (for the duration of the Term), non-transferable, royalty free, non-exclusive sub-licence during the Term to use the ETS IP for the purposes of OpCo carrying out OpCo's Activities in respect of the ETS; and
  - (ii) the sub-licence granted in clause 2.16(c)(i) may be sub-sublicensed (free of charge) by OpCo to its Associates on such conditions as the Principal may reasonably impose.
- (d) OpCo's use of any Principal's IP or ETS IP that is owned by third parties may be the subject of additional terms and conditions (including prohibitions or restrictions on sublicensing), as notified by the Principal to OpCo from time to time.

## 2.17 Trade Marks and Brand

- (a) Notwithstanding any other provision of this deed, OpCo acknowledges and agrees that the Principal owns the legal and beneficial right, title and interest in the Intellectual Property in the Brand and the Trade Marks.
- (b) To the extent that any rights, title or interest in the Intellectual Property in the Brand or Trade Marks vests in OpCo or its Associates, OpCo:
  - (i) assigns, and will ensure that its Associates assign, such rights, title and interest (including future copyright) on its creation to the Principal; and
  - (ii) acknowledges that all future Intellectual Property (including future copyright) in the Brand or Trade Marks vests in the Principal.
- (c) OpCo must do all things necessary (including executing documents) and provide the Principal with all such assistance as is reasonably required by the Principal to register the Trade Marks and the Domain Names in the name of the Principal and to maintain that registration throughout the Term.
- (d) OpCo must ensure that where the Trade Marks appear in any written material (including any electronic material) published by or on behalf of OpCo, unless otherwise authorised by the Principal:
  - (i) the Trade Marks must appear with the ® or the TM symbol (as appropriate); and
  - (ii) the Trade Marks must be accompanied by the following footnote:
 

*The **[insert trade mark]** trade mark is used by OpCo under licence from **[insert the Principal's full name]**.*
- (e) OpCo must not use the Trade Marks in a manner which is prejudicial to the Principal or likely to prejudice the distinctiveness of the Trade Marks or the validity of any registration for the Trade Marks.
- (f) The Principal may from time to time during the Term impose in writing, reasonable requirements regarding the use of the Trade Marks, and OpCo must comply with those requirements.
- (g) OpCo must comply (and ensure that its Associates comply) with any standards, directions and specifications notified in writing by the Principal from time to time during the Term as to the appearance, colour, size and positioning of the Trade Marks and the footnote referred to in clause 2.17(d)(ii).
- (h) OpCo must not at any time during the Term use the Trade Marks in juxtaposition to any other trade mark, embellishment or device without the prior written consent of the Principal.
- (i) OpCo will:
  - (i) if requested by the Principal, take all necessary action and execute and deliver to the Principal all necessary documents and instruments to record OpCo as a registered user of the Trade Marks;

- (ii) if requested by the Principal, submit to the Principal, samples of all materials (including all advertisements, promotions and other marketing material) which incorporate the Trade Marks for the Principal's prior written approval;
  - (iii) except to the extent expressly permitted by this agreement, not use or apply to register the Trade Marks as part of its corporate, business, trading or domain name;
  - (iv) not directly or indirectly contest or oppose or assist any other party to contest or oppose the Principal's ownership of the Trade Marks; and
  - (v) not register or use any trade mark or trade name which is substantially identical or deceptively similar to the Trade Marks.
- (j) Any and all goodwill attaching (now or in the future) to the Trade Marks as a result of use of the Trade Marks by or on behalf of or under licence from the Principal:
- (i) is and shall remain the property of; and
  - (ii) shall enure to,
- the Principal, and OpCo will not obtain any rights in or to the Trade Marks.
- (k) If, during the Term, OpCo becomes aware of any infringement or unauthorised use of, act inconsistent with, challenge to or claim against or in relation to any of the Trade Marks, OpCo must promptly notify the Principal.
- (l) The Principal will have the conduct of all proceedings relating to any infringement or unauthorised use of, act inconsistent with, challenge to or claim against or in relation to any of the Trade Marks and will in its sole discretion decide what action if any to take in respect of that matter. OpCo must, at the Principal's reasonable cost, take any action which the Principal reasonably requests to bring the matter to an end.
- (m) OpCo shall upon termination or expiry of this deed procure that all telephone numbers, mobile apps, email addresses, social media accounts and all other electronic addresses or other contact details which are designated by OpCo for use by the general public to make contact with OpCo in relation to the operation of Sydney Metro – Western Sydney Airport or receive information from OpCo about Sydney Metro – Western Sydney Airport using any form of communication, including via a telecommunication network or internet connection, are irrevocably and unconditionally transferred to the Principal.

## 2.18 Escrow

- (a) At the times nominated in the Escrow Deed, OpCo must deposit or procure the deposit of a copy of the Escrow Material, then existing, in escrow with the Escrow Agent on the terms of the Escrow Deed.
- (b) The Principal will be liable to pay the Escrow Agent all applicable Escrow Fees in accordance with the Escrow Deed.
- (c) The Principal will be entitled, at OpCo's cost, to be provided by the Escrow Agent or the Siemens Entity with the Escrow Material at any time if any of the following events occur:
  - (i) an Insolvency Event occurs in relation to a Siemens Entity;
  - (ii) the Principal exercises any Step-In Rights in accordance with this deed, but only to the extent, and for the period, required for the Principal to reasonably exercise its Step-In Rights and a Siemens Entity's obligations have been suspended for that period as a consequence of the exercise of those Step-In Rights;
  - (iii) on the Expiry Date however, the Principal's right to use such Escrow Material is limited to the purposes described in clause 2.18(c)(iii) only;
  - (iv) this deed is terminated pursuant to clause 49.4 of the Operative Provisions for an OpCo Termination Event for which a Siemens Entity is directly responsible;
  - (v) a Siemens Entity's line of business relating to the relevant Escrow Material is discontinued globally without the relevant line of business being transferred to a third party; or

- (vi) the parties otherwise agree to release the Escrow Material.
- (d) The Principal may (at the Principal's cost), once every 12 months during the Term, have an auditor review, analyse and conduct tests on a confidential basis in relation to the Escrow Material maintained in escrow with the Escrow Agent for the purposes of:
  - (i) verifying that OpCo is complying with clause 2.18(a);
  - (ii) reviewing the quality of the material in escrow to ensure there has been no degradation to that material in escrow; and
  - (iii) providing a report as to the auditor's findings.
- (e) OpCo must, within 30 Business Days of receipt of a written notice from the Principal specifying that an audit pursuant to clause 2.18(d) has determined that OpCo is not complying with clause 2.18(a) or there has been degradation to the material in escrow, remedy such non-compliance or replace such material as the case may be.
- (f) Intellectual Property comprised in any material which the Principal is entitled to be provided with under this clause 2.18 will be deemed to be Licensed Intellectual Property during the period to which the Principal is entitled to be provided with that material.
- (g) OpCo is not required to deposit and maintain in escrow any material that it has already given to the Principal on a permanent basis.

## 2.19 No derogation

Nothing in this Schedule 32 (*Intellectual Property*) derogates from the Principal's rights under Schedule 6A of the *Transport Administration Act 1988* (NSW).

## 2.20 English language

OpCo agrees that all materials, information, documentation, source code comments, and any other document or thing required to be provided under this Schedule 32 (*Intellectual Property*), must be provided in the English language.

## 2.21 Survival

This Schedule 32 (*Intellectual Property*) survives:

- (a) any frustration, suspension, termination or expiry of this deed; or
- (b) the exercise by the Principal of its Step-In Rights under clause 48 of the Operative Provisions.



## Annexure A – Deed of Assurance

THIS DEED is made on

**[insert year]**

## BETWEEN:

**[insert details of the owner of the Licensed Intellectual Property]** ABN **[insert number]** whose registered office is at **[insert address]** (the **Licensed IP Owner**);

**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 (the **Principal**); and

**[insert]** (OpCo).

## RECITALS:

- A The Principal has entered into, or may in future enter into, the SSTOM Project Deed with OpCo (the **SSTOM Project Deed**).
- B Part of OpCo's obligations under the SSTOM Project Deed include the licensing under or pursuant to the SSTOM Project Deed of the Intellectual Property described in Schedule 1 (all and every part of which is referred to as the **Licensed Intellectual Property**) to the Principal and any third party authorised or licensed by the Principal in accordance with the SSTOM Project Deed, with the right to sublicense (the **Project Deed Licence**).
- C The Licensed IP Owner owns/has appropriate rights to **[delete whichever alternative is not appropriate]** all Intellectual Property in the Licensed Intellectual Property, and has authorised OpCo to grant the Project Deed Licence to the Principal and any third party authorised or licensed by the Principal in accordance with the SSTOM Project Deed.
- D By this Deed, the Licensed IP Owner assures the Principal and any entity authorised or licensed by the Principal in accordance with the SSTOM Project Deed that the Principal and any such entity authorised or licensed by the Principal may continue exercising its rights under the Project Deed Licence, notwithstanding any change affecting the Licensed IP Owner's direct or indirect relationship with OpCo.

## THE PARTIES AGREE AS FOLLOWS:

- 1. The Licensed IP Owner warrants that it owns/has appropriate rights to **[delete whichever alternative is not appropriate]** all Intellectual Property in the Licensed Intellectual Property and is entitled to enter into this Deed.
- 2. The Licensed IP Owner warrants that it has authorised OpCo to grant the Project Deed Licence.
- 3. If any circumstances occur whereby the Licensed IP Owner's direct or indirect relationship with OpCo concerning the Licensed Intellectual Property changes, or is likely to change, then:
  - (a) the Licensed IP Owner and OpCo shall immediately notify the Principal in writing, which notice shall describe, with a reasonable level of detail, the nature of those circumstances and their effect or likely effect on the Principal;
  - (b) notwithstanding those circumstances, the Principal and any entity authorised or licensed by the Principal may continue exercising its rights under the Project Deed Licence as if such circumstances do not occur, or as the case requires, had not occurred; and
  - (c) the Licensed IP Owner and OpCo will do all such acts and things as the Principal reasonably requests in order to give effect to this Deed.

Such circumstances include termination of any licensing arrangement or circumstances involving an inability to pay debts.

- 4. The Licensed IP Owner shall ensure that any entity which succeeds to, is assigned or otherwise becomes the owner of, any of the Intellectual Property in respect of the Licensed Intellectual

Property agrees to be bound by the terms of this Deed as if it were named in this Deed as the Licensed IP Owner and the Licensed IP Owner shall notify the Principal and OpCo in writing immediately after any such entity succeeds to, is assigned or otherwise becomes the owner of any of the Intellectual Property in respect of the Licensed Intellectual Property.

5. The Licensed IP Owner shall at its cost and expense immediately, on demand by the Principal, perform all acts and execute all agreements, assurances and other documents and instruments as the Principal reasonably requests to perfect or give effect to the rights and powers of the Principal created or intended to be created by this Deed.
6. This Deed shall be governed by the laws in force in the State of New South Wales, Australia.
7. The Licensed IP Owner irrevocably submits to and accepts, generally and unconditionally, the non-exclusive jurisdiction of the courts and appellate courts of New South Wales with respect to any legal action or proceedings which may be brought at any time relating in any way to this Deed.
8. The Licensed IP Owner irrevocably waives any objection it may now or in the future have to the venue of any action or proceeding, and any claim it may now or in the future have that any action or proceeding has been brought in any inconvenient forum.
9. The Licensed IP Owner agrees that, subject to any rights of appeal which the Licensed IP Owner may have in New South Wales or to the High Court of Australia, a judgment or order of a New South Wales court in connection with this Deed is conclusive and binding on the Licensed IP Owner and may be enforced against the Licensed IP Owner in the courts of any other jurisdiction.
10. [The Licensed IP Owner irrevocably appoints OpCo as its agent to receive service of process or other documents in any action in connection with this Deed and irrevocably agrees that service on OpCo as agent will be sufficient service on it. ***[This paragraph may be deleted if the Licensed IP Owner has its registered office in Australia. Licensed IP Owner may also replace reference to "OpCo" in this paragraph, with a related body corporate or process agent with a registered office in Australia.]***]
11. Each warranty in this Deed is a continuing warranty for the benefit of the Principal.
12. The Principal may at any time assign, novate, transfer or otherwise deal with all or any part of its rights or obligations under this Deed to any entity to which the Principal assigns, novates, transfers or otherwise deals with its rights or obligations under the SSTOM Project Deed, in accordance with clause 59.3(a) of the SSTOM Project Deed.
13. For the purposes of this Deed 'Intellectual Property' includes any and all intellectual and industrial property rights throughout the world, whether subsisting now or in the future, including rights of any kind in:
  - (a) inventions, discoveries and novel designs, whether or not registered or registrable as patents, innovation patents or designs, including developments or improvements of equipment, technology, processes, methods or techniques;
  - (b) literary works, dramatic works, musical works, artistic works, cinematograph films, television broadcasts, sound broadcasts, published editions of works and any other subject matter in which copyright (including future copyright and rights in the nature of or analogous to copyright) may, or may upon creation of the subject matter, subsist anywhere in the world;
  - (c) registered and unregistered trade marks and service marks, including goodwill in the business concerned in the relevant goods and/or services;
  - (d) trade, business or company names;
  - (e) internet domain names and social media accounts; and
  - (f) proprietary rights under the *Circuit Layouts Act 1989* (Cth),

whether created or in existence before or after the date of this deed.

# Schedule 1

***[Note to Proponent: Prior to execution of this Deed of Assurance by each Core IP Provider, please insert a description of the component of the Licensed Intellectual Property in which the Licensed IP Owner owns the Intellectual Property]***

**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.

**[Insert execution blocks]**

## Annexure B – Moral Rights Consent

THIS DEED POLL is made on

**[insert year]**

**BETWEEN:**

**[insert name of Individual]** ABN **[insert number]** whose registered office is at **[insert address]** (the **Author**); and

**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**).

**RECITALS:**

- E The Principal and **[insert]** (**OpCo**) have entered into a contract entitled SSTOM Project Deed in relation to Sydney Metro – Western Sydney Airport dated **[insert]** to perform, create and deliver certain works (the **Project**).
- F The Author has created or may create material in which copyright subsists for the purposes of the *Copyright Act 1968* (Cth) (as amended), which may be used in connection with, or as part of, the Project (the **Work**).

**THE PARTIES AGREE AS FOLLOWS:**

In relation to the Work, the Author:

1. agrees, to the extent permitted by law, not to sue, enforce any claim, bring any action or exercise any remedy in respect of any breach, alleged breach, infringement or other wrongdoing in relation to the Author's moral rights under the *Copyright Act 1968* (Cth) by:
  - (a) the Principal;
  - (b) OpCo;
  - (c) any third party, to whom OpCo and/or the Principal grants a licence to use the Work (whether express or implied); or
  - (d) any third party to whom OpCo and or the Principal assigns the copyright in such Work, (together defined as OpCo, Principal and Associated Persons);
2. without limiting paragraph 1, consents to, and waives any rights in relation to, any of OpCo, Principal and Associated Persons:
  - (a) failing to acknowledge the Author's authorship of the Work;
  - (b) falsely attributing authorship of the Work; and
  - (c) making any modification, variation or amendment of any nature whatsoever to any of the Work, whether or not:
    - (i) it results in a material distortion of or destruction or mutilation of the Work; and
    - (ii) it is prejudicial to the honour or reputation of the Author; and
3. without limiting paragraphs 1 or 2, consents to, and waives any rights in relation to, any of OpCo, Principal and Associated Persons:
  - (a) using the Work other than in the publication or for the purpose for which it was intended at the time the Work is created;
  - (b) altering the Work by adding to, or removing elements from, the Work, including without limitation editing, altering, modifying or expanding the Work;
  - (c) incorporating the Work into other works of any kind in any medium now known or later invented;

- (d) deriving other works of any kind (including without limitation films, sound recordings and other deliverables in any medium now known or later invented) from the Work;
- (e) using the Work, or any part of the Work or any other work derived from the Work, in conjunction with other material of any kind;
- (f) changing, relocating, demolishing or destroying any building or structure which incorporates, is based on, or is constructed in accordance with, any of the Work; and
- (g) doing any of the acts referred to in paragraphs (b), (c), (d) and (e) in relation to any:
  - (i) adaptation of the Work or any part of such adaptation;
  - (ii) other work derived from or based on the Work or any part of such other work; and
- (h) omitting to attribute the Author's authorship of the Work.

**EXECUTED** as a deed poll.

Each person who executes this document on behalf of a person 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 **[name of individual author]**

\_\_\_\_\_  
Signature

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

\_\_\_\_\_  
Name of witness (print)

## Annexure C – Form of Escrow Deed

THIS DEED is made on

2022

### BETWEEN:

**Siemens Mobility Pty Ltd** ABN 39 625 304 556, **Siemens Mobility GmbH** Commercial registry Munich, HRB 237219 and **Siemens Mobility Austria GmbH** Republic of Austria Business Register No. FN 483145 h (each an **Author**);

**Parklife Metro Pty Ltd** ACN 657 249 682 in its personal capacity and in its capacity as trustee of the Parklife Metro Unit Trust (ABN 50 667 445 077) whose registered office is at Rialto Tower South Level 43, 525 Collins Street, Melbourne VIC 3000 (**OpCo**); and

**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 (**Sydney Metro**).

**Perpetual Limited** ABN 86 000 431 827 of Level 18, Angel Place, 123 Pitt Street, Sydney, NSW 2001 (**Escrow Agent**).

### RECITALS

- A. Under the Project Deed between OpCo and Sydney Metro, OpCo has agreed to develop and deliver the SSTOM Works, including the Trains and CBTC.
- B. OpCo and Sydney Metro have agreed to appoint the Escrow Agent, and the Escrow Agent has agreed, to act as an escrow agent and to hold the Escrow Material on the following terms and conditions.
- C. The Authors are parties to this Deed as an OpCo Contractor that owns or licences a significant portion of the Escrow Material.

### THE PARTIES AGREE

---

#### 1 Agreed Terms and Interpretation

- 1.1 In this Deed the following words have the following meaning:

**Deed** means this Escrow Deed.

**Project Deed** means the agreement "SSTOM Project Deed" between OpCo and Sydney Metro dated on or about the date of this Deed, as amended from time to time in accordance with its terms.

**Disputing Parties** has the meaning given in clause 12.1(a).

**Escrow Fees** means the fees set out in Attachment 1 (Details of Escrow Fees) to this Deed.

**Escrow Materials** means a complete copy of:

- (a) all Source Code in respect of the Signalling Intellectual Property; and
- (b) all object code for the Software, design documentation, specifications, drawings and data, in each case for the manufacture of the traction power including any object code for the



Software, design documentation, specifications, drawings and data for the application, function or integration of the traction power or any of its components;

- (c) software tools necessary for the Principal or any Successor OpCo (or any sub-licensee or transferee), or that any person in the Principal's position would otherwise require, to modify, maintain, test, further develop or regenerate the Source Code referred to in paragraph (a) or paragraph (b) of this definition or of the type referred to in paragraph (a) or paragraph (b) of this definition, to exercise the Principal's rights under clause 2.4 of Schedule 32 of the Project Deed where a Trigger Event occurs; and
- (c) software tools necessary for OpCo (or any sub-licensee or transferee) to exercise OpCo's rights under clause 48 of the D&C Contract where an OpCo Trigger Event occurs.

**Escrow Verification** has the meaning given in clause 7.1.

**OpCo Trigger Event** means:

- (a) an Insolvency Event occurs in relation to any one of the Authors; or
- (b) the D&C Contract is terminated pursuant to clause 49.4 of that Contract for a D&C Contract Termination Event (as that term is defined in the D&C Contract) for which an Author is directly responsible.

**Representatives** has the meaning given in clause 12.2(a).

**Successor OpCo** means any future assignee, novatee or transferee of the Project Deed.

**Trigger Event** means:

- (a) any of the events listed in clause 2.18 of Schedule 32 of the Project Deed; or,
  - (b) if the Project Deed has been terminated pursuant to clause 49.4 of the Operative Provisions for an OpCo Termination Event for which a Siemens Entity is directly responsible; or
  - (c) any of the events listed in clause 2.18(e) (trigger events) of Schedule 5 of the Through Life Support Deed between Siemens Mobility Pty Ltd and the Principal.
- 1.2 All capitalised terms used in this Deed and not otherwise defined have the meaning given to them in the Project Deed.
  - 1.3 Clause 1 (Interpretation) of the Project Deed is incorporated into this Deed, mutatis mutandis.
  - 1.4 Where an obligation is imposed on a party under this Deed, that obligation shall include an obligation to ensure that no act, error or omission on the part of that party's employees, agents or subcontractors or their employees or agents occurs which will prevent the discharge of that party's obligation.
  - 1.5 Where this Deed expresses an obligation as imposed on "the Authors", each Author will be individually responsible for satisfaction of that obligation. Satisfaction of that obligation by any Author will constitute satisfaction of that obligation by all Authors.

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## 2 Duration

Subject to all applicable fees under this Deed being paid by Sydney Metro in accordance with this Deed, this Deed commences on execution and remains in force until the earlier of:

- 2.1 the Escrow Material is released in accordance with this Deed;

- 2.2 the termination or expiry of the Project Deed pursuant to clause 49.5, clause 49.6 or clause 49.8 of the Project Deed and the Authors and the Principal have either:
- (a) agreed that a further replacement escrow deed is not required; or
  - (b) not used; or
- 2.3 this Deed is terminated in accordance with its terms.

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### **3 Appointment of Escrow Agent**

The Escrow Agent is hereby appointed jointly by Sydney Metro, OpCo and the Authors to hold the Escrow Material and, if the conditions for release under clause 8 (Release of the Escrow Material) below are met, to release the Escrow Material in accordance with this Deed.

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### **4 The Author's Obligations**

- 4.1 The Authors shall deliver to, and deposit with, the Escrow Agent one copy of the Escrow Material promptly following the issuance by the Independent Certifier of a certificate in the form of Part Q of Schedule 34 of the Project Deed in respect of the Design Stage 3 Design Documentation or on the earlier termination of the D&C Contract for a D&C Contractor Termination Event (as that term is defined in the D&C Contract).
- 4.2 The Authors must:
- (a) as a condition of Completion;
  - (b) once each Year; and
  - (c) whenever any material modification to the Source Code of the Escrow Material is made under the Project Deed,
- promptly deliver to and deposit with the Escrow Agent whatever additional material is required to make the Escrow Material equivalent to the then current version and configuration of the Source Code, Special Tools and Equipment, manuals, documentation or other material being used in relation to traction power, the Trains, the Central Control System and CBTC. Such additional materials will be deemed to constitute Escrow Material for the purposes of this Deed from the moment they are deposited with the Escrow Agent.
- 4.3 Each Author warrants to Sydney Metro that the Escrow Material is, to the best of its knowledge, free from any disabling code which would prevent the Escrow Material from conforming with the requirements of the Project Deed or which would prevent or impede a thorough and effective verification that the Escrow Material complies with the requirements of the Project Deed.
- 4.4 Each Author warrants that the Escrow Materials which are deposited in Escrow are at all times sufficient to enable Sydney Metro to exercise the licence granted under clause 2.4(aa) of Schedule 32 to the Project Deed regarding Signalling Intellectual Property and to exercise the licence granted under clause 2.4(a) of Schedule 32 to the Project Deed regarding Licensed Intellectual Property relating to traction power.

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### **5 Escrow Agent's Obligations**

- 5.1 The Escrow Agent shall accept custody of the Escrow Material on the date of delivery in accordance with clause 4.1 above and, subject to the terms and conditions of this Deed, shall hold the Escrow Material on behalf of Sydney Metro, OpCo and the Authors.
- 5.2 The Escrow Agent shall take all reasonably necessary steps to ensure the preservation, care, maintenance, safe custody and security of the Escrow Material while it is in the possession,

custody or control of the Escrow Agent, including storage in a secure receptacle and in an atmosphere which does not harm the Escrow Material or in a secure electronic environment.

- 5.3 Other than where the independent assessor has been transferred the Escrow Material in accordance with clause 7.3, the Escrow Agent shall bear all risks of loss, theft, destruction of or damage to the Escrow Material while it is in the Escrow Agent's possession, custody or control (including whilst any transfer of Escrow Material to the independent assessor is underway).
- 5.4 If the Escrow Material is lost, stolen, destroyed or damaged while it is in the possession, custody or control of the Escrow Agent, the Escrow Agent shall immediately notify Sydney Metro, OpCo and the Authors.
- 5.5 Unless this Deed is terminated in accordance with clause 9.2(b), the Authors must, upon receipt of notice from the Escrow Agent under clause 5.4 above, promptly deposit a replacement copy of the Escrow Material with the Escrow Agent.
- 5.6 Without limiting any other rights the Authors, OpCo and Sydney Metro may have under this Deed or at law, where the loss, damage or destruction of the Escrow Material is caused by the negligent, malicious, reckless or unlawful act or omission of the Escrow Agent, the Escrow Agent must reimburse the Authors for the reasonable cost of depositing a replacement copy of the Escrow Material.
- 5.7 The Escrow Agent is not obliged to determine the nature, completeness or accuracy of the Escrow Material lodged with it.
- 5.8 Subject to clause 5.9, to the extent permitted by law, the Escrow Agent's aggregate liability, to Sydney Metro, OpCo and the Authors collectively, in contract (including under an indemnity), tort (including negligence), breach of statutory duty or otherwise in respect of any loss, damage or expense arising out, of or in connection with, this Deed shall not exceed in aggregate for all claims that arise out, of or in connection with, this Deed the greater of:
  - (a) [REDACTED]
  - (b) [REDACTED]
- 5.9 Nothing in this Deed shall exclude or limit the Escrow Agent's liability for:
  - (a) personal injury (including sickness or death) caused by any act or omission of the Escrow Agent or its employees or agents; or
  - (b) any act of fraud, gross negligence or gross misconduct by the Escrow Agent or its employees or agents.
- 5.10 On and from the date of receipt of the Escrow Material in accordance with clause 4.1, the Escrow Agent shall hold and maintain appropriate insurance covering theft and unauthorised access. Upon request of any of the Authors, OpCo or Sydney Metro, the Escrow Agent will provide a copy of the insurance policy to the Author, OpCo and/or Sydney Metro as requested.
- 5.11 The Escrow Agent shall keep complete written records of the activities undertaken and materials prepared pursuant to this Deed. Upon reasonable notice to the Escrow Agent during the term of this Deed, each of the Authors, OpCo and Sydney Metro shall each be entitled to inspect the records of the Escrow Agent with respect to this Deed at reasonable times during normal business hours at the Escrow Agent's facilities and to inspect the data medium with the Escrow Materials required to be held by the Escrow Agent.

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## 6 Escrow Fee and Expenses

- 6.1 Subject to clause 6.2, Sydney Metro shall pay all applicable Escrow Fees plus any applicable GST to the Escrow Agent.

- 6.2 Where the testing required to be completed in accordance with clauses 7.1 and 7.2 of this Deed demonstrates that the Escrow Material is not sufficient to enable Sydney Metro to use, operate and maintain the Escrow Material, the Trains, the Central Control System and the CBTC, the Authors shall pay the costs of any rectification required, including additional testing or additional deposits of the Escrow Material that may be required.
- 6.3 All expenses and disbursements incurred by the Escrow Agent in connection with this Deed shall be borne wholly and completely by the Escrow Agent.
- 6.4 All expenses and disbursements incurred by OpCo or an Author in connection with this Deed shall be borne wholly and completely by OpCo and the Author, respectively.

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## 7 Testing and Verification

- 7.1 At any time throughout the term of this Deed, Sydney Metro may engage an independent assessor to conduct such tests as may be necessary to demonstrate that the Escrow Material is sufficient to enable Sydney Metro to use, configure, modify, operate, support and maintain the Trains, the traction control, the Central Control System and the CBTC or may require the Authors to perform such tests (**Escrow Verification**), provided that where Sydney Metro requires the Authors to perform such tests the Authors will be able to recover from Sydney Metro its reasonable and demonstrable costs incurred in connection with doing so. Sydney Metro may witness any Escrow Verification.
- 7.2 In addition to Sydney Metro's right to conduct or require testing under clause 7.1, each time a deposit of Escrow Materials is undertaken by OpCo or the Authors, either OpCo or the Authors must provide reasonable evidence to Sydney Metro that it has conducted verification or quality assurance checks to ensure that the warranty in clause 4.4 of this Deed is true and correct at the time of deposit.
- 7.3 Escrow Verification may be repeated if the Escrow Verification establishes that the Escrow Material is not sufficient to enable Sydney Metro to use, configure, modify, operate, support and maintain the Escrow Material and the Trains, traction power, Central Control System and CBTC.
- 7.4 The Escrow Agent shall release the Escrow Material to the independent assessor upon presentation of a release form signed by Sydney Metro specifying:
- (a) that it wishes Escrow Material to be released for purposes of Escrow Verification;
  - (b) the material to be released; and
  - (c) the person to whom that material may be released.
- 7.5 The Escrow Material released pursuant to clause 7.4 above must be returned to the Escrow Agent or its employees or agents at the conclusion of the Escrow Verification.
- 7.6 All costs that Escrow Agent incurs in assisting the assessment shall be borne by Sydney Metro, and must be paid within 14 Business Days of receipt of an invoice from the Escrow Agent.
- 7.7 The costs of any independent assessor must be borne by Sydney Metro, unless the Escrow Verification demonstrates that the Escrow Material does not comply in a material respect with this Deed or the Project Deed, in which case the costs of any remediation and any repeated Escrow Verification required by Sydney Metro must be borne by the Authors.
- 7.8 For the avoidance of doubt, the rights to audit and test the Escrow Materials in this clause 7 are in addition to rights of the Principal in clause 2.18 of Schedule 32.

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## 8 Release of the Escrow Material

- 8.1 The Escrow Agent shall not release, or allow access to, the Escrow Material except in accordance with the provisions of this Deed.

- 8.2 If a Trigger Event occurs, and Sydney Metro wishes the Escrow Agent to release the Escrow Material to it, Sydney Metro must provide notice in the form of a statutory declaration to both the Escrow Agent, each Author and OpCo stating that a Trigger Event has occurred and requiring the Escrow Agent to immediately release the Escrow Material to Sydney Metro.
- 8.2A If an OpCo Trigger Event occurs, and OpCo wishes the Escrow Agent to release the Escrow Material to it, OpCo must provide notice in the form of a statutory declaration to the Escrow Agent, each Author and Sydney Metro stating that an OpCo Trigger Event has occurred and requiring the Escrow Agent to immediately release the Escrow Material to OpCo.
- 8.3 The Escrow Agent shall release the Escrow Material to Sydney Metro or OpCo promptly after receiving a notice under clauses 8.2 or 8.2A (respectively).
- 8.4 Where:
- (a) the Project Deed has expired or has been lawfully terminated by Sydney Metro or OpCo;
  - (b) Sydney Metro has agreed to the release;
  - (c) this Deed is terminated in accordance with clause 9 (Termination) below and neither OpCo nor the Authors are obligated under the Project Deed or other instrument to execute a substantially similar Deed to replace this Deed; or
  - (d) the D&C Contract has been lawfully terminated by the D&C Contractor,
- the Escrow Agent shall, upon written request from an Author, release the Escrow Material to the Authors.
- 8.5 If the Escrow Material is released to Sydney Metro under this Deed, Sydney Metro:
- (a) is granted a licence to the Escrow Material in accordance with the Project Deed; and
  - (b) without limiting paragraph (a), must use the Escrow Material subject to all the other terms of the Project Deed, including Schedule 32 to the Project Deed, as if the Escrow Material is included in the definition of Licensed Intellectual Property.
- 8.6 If the Escrow Material is released to OpCo under this Deed, OpCo:
- (a) is granted a licence to the Escrow Materials in accordance with the D&C Contract, to the extent required to enable OpCo to achieve Completion: and
  - (b) without limiting paragraph (a), must use the Escrow Materials subject to all the other terms of the D&C Contract, including Schedule 32 of that contract, as if the Escrow Material is included in the definition of Licensed Intellectual Property in that contract.

Clauses 8.5 and 8.6 survives expiry or termination of this Deed.

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## **9 Termination**

- 9.1 The Escrow Agent may, by giving three (3) months' prior notice to Sydney Metro, the Author and OpCo, terminate this Deed subject to the pro-rata refund of any advance payment of the Escrow Fee.
- 9.2 Sydney Metro, an Author or OpCo may terminate this Deed immediately if the Escrow Agent:
- (a) has become subject to any form of insolvency administration; or
  - (b) is in breach of any obligation under this Deed so that there is a substantial failure by the Escrow Agent to perform or observe this Deed.

9.3 Sydney Metro, OpCo and any Author may, upon giving thirty (30) days prior notice to the Escrow Agent, jointly terminate this Deed, however in this case, no refund of advance payment of the Escrow Fee will be payable by the Escrow Agent.

9.4 In the event:

- (a) the Escrow Agent terminates this Deed under clause 9.1; or
- (b) Sydney Metro, an Author, or OpCo terminates this Deed under clause 9.2; or
- (c) Sydney Metro, an Author or OpCo terminate this Deed under clause 9.3; or

then the Escrow Agent shall as soon as practicable but no later than within 1 Business Day release the Escrow Material to a new interim escrow agent who is in the business of providing escrow services nominated by notice in writing by the Principal to the Escrow Agent and the Authors. The Principal must procure that the interim escrow agent ensures the preservation, care, maintenance, safe custody and security of the Escrow Material while it is in its possession, custody or control of, including storage in a secure receptacle and in an atmosphere which does not harm the Escrow Material or in a secure electronic environment. Where this occurs, the Principal, OpCo and the Authors shall use reasonable endeavours to agree upon a permanent new escrow agent and new escrow agreement as soon as practicable.

9.5 If a new interim escrow agent has not been appointed, the Escrow Agent will release the Escrow Material to a third party as agreed by Authors and the Principal and notified to the Escrow Agent in writing. If the Principal and Authors are unable to agree on a third party within 2 Business Days of any communication between the parties relating to this clause, the Escrow Agent will release the Escrow Material to an independent third party nominated by the Principal immediately upon written notice from the Principal. The Principal must procure that the independent third party ensures the preservation, care, maintenance, safe custody and security of the Escrow Material while it is in its possession, custody or control, including storage in a secure receptacle and in an atmosphere which does not harm the Escrow Material or in a secure electronic environment.

9.6 The Escrow Agent shall immediately release the Escrow Material to a new escrow agent identified in a notice in writing signed by all of the Authors and OpCo.

9.7 The Principal must procure that any new interim escrow agent nominated pursuant to clause 9.4 or independent third party nominated pursuant to clause 9.5 is not a Competitor.

9.8 For the purposes of this clause 9, "Competitor" means any of:

- (a) Alstom S.A.;
- (b) Hitachi Rail Limited;
- (c) Hyundai Rotem Stock Company;
- (d) Construcciones y Auxiliar de Ferrocarriles, S.A.;
- (e) CRRC Corporation Limited;
- (f) Thales S.A.; or
- (g) a related body corporate of an entity listed in paragraphs (a) to (f) (inclusive) above.

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## 10 Confidentiality

10.1 The Escrow Agent shall not, except as permitted by this Deed, make public or disclose to any person any information about this Deed or the Escrow Material.

- 10.2 The Escrow Agent shall not reproduce, or cause to have reproduced, a copy of the Escrow Material or any part thereof, except as may be necessary to electronically store (and maintain a backup) of the Escrow Material.
- 10.3 The obligations under this clause 10 (Confidentiality) shall survive the termination of this Deed.

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## 11 Compliance with Laws

The Escrow Agent shall, in carrying out this Deed, comply with the provisions of any relevant statutes, regulations, by-laws and the requirements of any Commonwealth, State or local authority.

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## 12 Dispute resolution

### 12.1 Procedure for resolving disputes

- (a) **(Disputes to be resolved):** Any dispute arising under this Deed must be resolved by the parties to that dispute (**Disputing Parties**) in accordance with this clause 12.
- (b) **(Procedure):** The procedure that is to be followed to resolve a dispute is as follows:
  - (1) firstly, the dispute must be the subject of negotiation as required by clause 12.2;
  - (2) secondly, if the dispute remains unresolved (in whole or in part) after the expiration of the period for negotiation referred to in clause 12.2(c)(1) the Disputing Parties may agree that the dispute will be referred to an expert for determination in accordance with clauses 12.4 to 12.9 (inclusive) or to arbitration under clause 12A; and
  - (3) thirdly, if:
    - (A) the dispute remains unresolved (in whole or in part) and has not been referred to expert determination after the expiration of the period for negotiation referred to in clause 12.2(c)(1) and irrespective of whether the Disputing Parties failed to meet as required by that clause or whether having so met the parties fail to agree whether the Dispute should be referred to an expert or to arbitration within 20 Business Days after the expiration of the period for negotiation referred to in clause 12.2(c)(1);
    - (B) the dispute has been referred to expert determination and a determination is not made by the expert within 30 days after the expert's acceptance of appointment; or
    - (C) the dispute is referred to expert determination and a notice of dissatisfaction is given in accordance with clause 12.6(a),

then the dispute must be referred to arbitration in accordance with clause 12A.

### 12.2 Negotiation

- (a) **(Notification):** If a dispute arises then a party may give notice to each other party requesting that the dispute be referred for resolution by negotiation between the Chief Executive Officers (or equivalent) of the Disputing Parties (**Representatives**).
- (b) **(Contents of notice):** A notice under clause 12.2(a) must:
  - (1) state that it is a notice under this clause 12; and
  - (2) include or be accompanied by particulars of the matters which are the subject of the dispute.

- (c) **(Attempt to resolve dispute):** If a dispute is referred for resolution by negotiation under clause 12.2(a), then:
- (1) the Representatives must meet and attempt in good faith to resolve the dispute (in whole or in part) within 10 Business Days of the date on which the notice under clause 12.2(a) is received (or such later date as the Disputing Parties may agree); and
  - (2) any agreement reached between the Representatives will be reduced to writing, signed by or on behalf of each Disputing Party and will be contractually binding on the Disputing Parties.

### 12.3 Expert determination

If:

- (a) **(Dispute unresolved by Representatives):** a dispute which has been referred to the Representatives for negotiation in accordance with clause 12.2(a) remains unresolved (in whole or in part) after the expiration of the period for negotiation referred to in clause 12.2(c)(1); and
- (b) **(Referral to expert):** the Disputing Parties agree within 20 Business Days after the expiration of the period for negotiation referred to in clause 12.2(c)(1), that the dispute be referred to an expert for determination,

then those parts of the dispute which remain unresolved will be referred to an expert for determination under clauses 12.4 to 12.9. For the avoidance of doubt, a dispute may only be referred to an expert for determination by agreement of the Disputing Parties.

### 12.4 Selection of expert

- (a) **(Exchange of lists of 3 preferred experts):** Within 7 Business Days after the date on which the Disputing Parties agree to refer a dispute to an expert for determination under clause 12.3, the Disputing Parties must exchange lists of 3 persons (in order of preference) who, if appointed, would satisfy the requirements of clause 12.4(d), from whom the expert is to be chosen.
- (b) **(Appointment of person who appears on both lists):** Any person who appears on the list of all of the Disputing Parties exchanged under clause 12.4(a) will be appointed as the expert to determine a dispute and if more than one person appears on the list of all of the Disputing Parties, the person given the highest order of priority by the party who gave the notice under clause 12.2(a) will be appointed.
- (c) **(Appointment if no person appears on both lists):** If no person appears on the list of all of the Disputing Parties and the Disputing Parties cannot otherwise agree an expert, the party which gave the notice under clause 12.2(a) must procure:
  - (1) the president (or the senior non-executive officer, howsoever described) of the institute or governing body for the technical or professional discipline the subject of the relevant dispute to nominate the expert, having regard to, but not being bound by, those persons proposed by the Disputing Parties under clause 12.4(a); or
  - (2) if there is no governing body for the technical or professional discipline the subject of the relevant dispute or such governing body advises that it will not nominate an expert, the President of the Australian Centre for International Commercial Arbitration to nominate a person to act as the expert, having regard to, but not being bound by, those persons proposed by the Disputing Parties under clause 12.4(a),

within 7 Business Days of exchange of notices under clause 12.4(a).



- (d) **(Appropriate skills):** It is the intention of the parties that the expert appointed to determine a dispute will be an independent person with appropriate skills having regard to the nature of the matters in dispute.
- (e) **(No entitlement to challenge appointment):** No Disputing Party will be entitled to challenge the appointment of an expert under this clause 12.4 on the basis that the expert does not satisfy the requirements of clause 12.4(d).
- (f) **(Not an arbitration agreement):** Any agreement for expert determination under this Deed will not constitute an arbitration agreement for the purposes of the *Commercial Arbitration Act 2010* (NSW).
- (g) **(Agreement):** Once an expert is appointed, the Disputing Parties must enter into an agreement with the expert on the terms of the Expert Determination Agreement or such other reasonable terms as the expert may require.

## 12.5 Rules of expert determination

The expert determination process will be administered, and the expert will be required to act, under the terms of the Expert Determination Agreement.

## 12.6 Expert finding

- (a) **(Notification):** The determination of the expert must be in writing and will be final and binding on the Disputing Parties unless, within 10 Business Days of receipt of the determination, a Disputing Party gives notice to each other Disputing Party of its dissatisfaction and intention to refer the matter to arbitration in accordance with clause 12A.
- (b) **(Amendment to determination):** Upon submission by any Disputing Party, the expert may amend the determination to correct:
  - (1) a clerical mistake;
  - (2) an error from an accidental slip or omission;
  - (3) a material miscalculation of figures or a material mistake in the description of any person, thing or matter; or
  - (4) a defect in form.

## 12.7 Liability of expert

- (a) **(Liability of expert):** The Disputing Parties agree:
  - (1) that the expert will not be liable in connection with the expert determination, except in the case of fraud on the part of the expert; and
  - (2) to indemnify the expert against any Claim or Liability in connection with the expert determination, except in the case of fraud on the part of the expert, in which case a Claim may be made against him or her by any person who is party to the dispute.
- (b) **(Engagement):** The Disputing Parties will jointly engage the expert services in connection with the expert determination proceedings and each Disputing Party will seek a separate Tax Invoice equal to its share of the costs of the expert.

## 12.8 Costs

The Disputing Parties must:

- (a) bear their own costs in connection with the expert determination proceedings; and
- (b) pay an equal portion of the costs of the expert.

## 12.9 Proportionate liability

To the extent permitted by Law, the expert will have no power to apply or to have regard to the provisions of any proportionate liability legislation which might, in the absence of this clause 12.9, have applied to any dispute referred to the expert in accordance with this clause 12.

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## 12A Arbitration

### 12A.1 Reference to Arbitration

- (a) **(Dispute):** If:

- (1) a dispute:

- (A) which has been referred to the parties' Representatives for negotiation in accordance with clause 12.2(a) remains unresolved (in whole or in part) after the expiration of the period for negotiation referred to in clause 12.2(c)(1); and
- (B) the Disputing Parties do not agree to refer the dispute to an expert for determination; or

- (2) in the case of a dispute which the Disputing Parties agree to refer to expert determination under clause 12.3:

- (A) a determination is not made within 30 days of the expert's acceptance of the appointment; or
- (B) a notice of dissatisfaction is given in accordance with clause 12.6,

then any Disputing Party may notify the other Disputing Parties that it requires the dispute to be referred to arbitration.

- (b) **(Referral):** Upon receipt by a Disputing Party of a notice under clause 12A.1(a), the dispute will be referred to arbitration.

### 12A.2 Arbitration

- (a) **(ACICA Rules):** Arbitration in accordance with this clause 12A will be conducted in accordance with the arbitration rules of the Australian Centre for International Commercial Arbitration (known as the **ACICA Rules**) and as otherwise set out in this clause 12A.
- (b) **(Seat):** The seat of the arbitration will be Sydney, New South Wales.
- (c) **(Language):** The language of the arbitration will be English.

### 12A.3 Appointment of arbitrator

The Disputing Parties will endeavour to agree on the arbitrator or arbitrators (if the Disputing Parties agree to appoint three arbitrators), but if no such agreement is reached within 14 Business Days of the dispute being referred to arbitration in accordance with clause 12A.1(b), the arbitrator or arbitrators will be appointed by the Australian Centre for International Commercial Arbitration.

### 12A.4 General Principles for conduct of arbitration

- (a) **(Conduct of arbitration):** The Disputing Parties agree that:

- (1) they have chosen arbitration for the purposes of achieving a just, quick and cost-effective resolution of any dispute;
  - (2) any arbitration conducted in accordance with this clause 12A will not necessarily mimic court proceedings of the seat of the arbitration or the place where hearings take place (if different), and the practices of those courts will not regulate the conduct of the proceedings before the arbitrator; and
  - (3) in conducting the arbitration, the arbitrator must take into account the matters set out in clauses 12A.4(a)(1) to 12A.4(a)(2).
- (b) **(Evidence in writing):** All evidence in chief must be in writing unless otherwise ordered by the arbitrator.
- (c) **(Evidence and discovery):** The rules for evidence and discovery will be the IBA Rules on the Taking of Evidence in International Arbitration current at the date of arbitration.
- (d) **(Oral hearing):** The oral hearing must be conducted as follows:
- (1) any oral hearing must take place in Sydney, New South Wales and all outstanding issues must be addressed at the oral hearing;
  - (2) the date and duration of the oral hearing must be fixed by the arbitrator at the first preliminary conference. The arbitrator must have regard to the principles set out in clause 12A.4(a) when determining the duration of the oral hearing;
  - (3) oral evidence in chief at the hearing will be permitted only with the permission of the arbitrator for good cause;
  - (4) the oral hearing must be conducted on a stop clock basis with the effect that the time available to the parties must be split equally between the parties so that each party has the same time to conduct its case unless, in the opinion of the arbitrator, such a split would breach the rules of natural justice or is otherwise unfair to one of the parties;
  - (5) not less than 28 days prior to the date fixed for oral hearing each of the Disputing Parties must give notice of those witnesses (both factual and expert) of each other Disputing Party that it wishes to attend the hearing for cross examination;
  - (6) in exceptional circumstances the arbitrator may amend the date of hearing and extend the time for the oral hearing set in accordance with clause 12A.4(d)(2);
  - (7) a Disputing Party will not be bound to accept the written evidence of a witness submitted on behalf of the opposing party which is not challenged in cross examination; and
  - (8) each Disputing Party is expected to put its case on significant issues in cross examination of a relevant witness called by the other Disputing Party or, where it seeks to challenge the evidence of a witness not called for cross-examination by reference to other evidence, to identify that evidence in its written opening submissions so that the other Disputing Party may know the nature of and basis for the challenge to the witness' written evidence.
- (e) **(Experts):** Unless otherwise ordered each Disputing Party may only rely upon one expert witness in connection with any recognised area of specialisation.

#### 12A.5 Proportional liability

To the extent permitted by Law, the arbitrator will have no power to apply or to have regard to the provisions of any proportional liability legislation which might, in the absence of this clause 12A.5, have applied to any dispute referred to arbitration in accordance with this clause 12A.

#### 12A.6 Extension of ambit of arbitration proceedings

(a) **(Extending disputes):** Where:

- (1) a dispute between the Disputing Parties to this Deed is referred to arbitration in accordance with this clause 12A; and
- (2) there is some other dispute also between the Disputing Parties to and in accordance with this Deed (whenever occurring),

the arbitrator may, upon application being made to the arbitrator by one or more of the Disputing Parties at any time before a final award is made in relation to the first-mentioned dispute, make an order directing that the arbitration be extended so as to include the other dispute.

(b) **(Arbitrator's order):** An arbitrator may make an order in accordance with clause 12A.6(a) on such terms and conditions (if any) as the arbitrator thinks fit.

#### 12A.7 Award final and binding

- (a) **(Final and binding):** Subject to clause 12A.7(b), any award will be final and binding on the Disputing Parties.
- (b) **(Appeal):** Each Disputing Party consents to any appeal to a court where that appeal is made under the *Commercial Arbitration Act 2010* (NSW) on a question of law arising in connection with an arbitral award made in accordance with this clause 12A.

#### 12A.8 Continue to perform

Notwithstanding the existence of a dispute:

- (a) each Disputing Party must continue to carry out its obligations in accordance with this Deed; and
- (b) not used.

#### 12A.9 Governing law of arbitration agreement

The Law governing this arbitration agreement is the law of New South Wales, Australia.

#### 12A.10 Interlocutory relief

This clause 12A does not prevent a Disputing Party from seeking urgent interlocutory relief from a court of competent jurisdiction where, in that Disputing Party's reasonable opinion, that action is necessary to protect that Disputing Party's rights.

#### 12A.11 Consolidation

The parties agree that section 27C of the *Commercial Arbitration Act 2010* (NSW) will apply.

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### 13 Governing Law

This Deed shall be governed by and construed in accordance with the laws from time to time in force in New South Wales. The parties shall submit to the exclusive jurisdiction of the courts of New South Wales.

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**14 Variation and Waiver**

- 14.1 This Deed shall not be varied either in law or in equity except by a deed duly executed by each of the parties.
- 14.2 A waiver by one party of a breach of a provision of this Deed by another party shall not constitute a waiver in respect of any other breach or of any subsequent breach of this Deed. The failure of a party to enforce a provision of this Deed shall not be interpreted to mean that party no longer regards that provision as binding.

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**15 Assignment**

No party may assign, in whole or in part, its benefits under this Deed without the written consent of the other parties, which shall not be unreasonably withheld.

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**16 Severability**

Each provision of this Deed, and each part of it shall, unless the context otherwise necessarily requires it, be read and construed as a separate and severable part, so that if any provision, or part of a provision is void or otherwise unenforceable for any reason, then that provision, or part shall be severed and the remainder shall be read and construed as if the severable part had never existed.

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**17 Notices****17.1 Notice Requirements**

- (a) A notice, consent or other communication under this Deed is only effective if it is:
- (i) in writing and in legible English, signed by or on behalf of the party giving it;
  - (ii) addressed to the party to whom it is to be given; and
  - (iii) subject to paragraph (c), sent through Sydney Metro's chosen collaboration and document management tool, as notified to the Contractor from time to time, unless that is not technically possible or the parties agree otherwise, in which case:
    - (A) sent by pre-paid mail (by airmail, if the addressee is overseas) or delivered to that party's address; or
    - (B) sent by email to that party's email address.
- (b) Where a party notifies the other party of an updated address or email address, the other party must use those updated contact details for the purpose of giving notices under this Deed.
- (c) A notice terminating this Deed must be given by pre-paid mail (by airmail, if the addressee is overseas) or delivered to the relevant party's address (although a copy of that notice must also be sent through Sydney Metro's chosen collaboration and document management tool or by email, as applicable).
- (d) For the purposes of this clause 17 (Notices), the relevant address and email address of each party is, in the case of the:

**Escrow Agent**

Physical address: **[insert]**

Postal address: **[insert]**

Email address: [insert]

## Authors

### Siemens Mobility Pty Ltd

Physical address: Siemens Mobility Pty Ltd  
Level 6, 380 Docklands Drive  
Docklands  
Melbourne Victoria 3008

Postal address: Attention Siemens Mobility Legal and Contracts  
Siemens Mobility Pty Ltd  
Level 6, 380 Docklands Drive  
Docklands  
Melbourne Victoria 3008

Email address: [REDACTED]

### Siemens Mobility GmbH

Physical address: Siemens Mobility GmbH  
Nonnendammallee 101  
13629 Berlin  
Germany

Postal address: Attention Siemens Mobility Legal and Contracts  
Siemens Mobility GmbH  
Nonnendammallee 101  
13629 Berlin  
Germany

Email address: [REDACTED]

### Siemens Mobility Austria GmbH

Physical address: Siemens Mobility Austria GmbH  
Siemensstrasse 90  
1210 Vienna  
Austria

Postal address: Attention Siemens Mobility Legal and Contracts  
Siemens Mobility Austria GmbH  
Siemensstrasse 90  
1210 Vienna  
Austria

Email address: [REDACTED]

### OpCo

Physical address: Level 23, 126 Phillip Street, Sydney NSW Australia 2000

Postal address: Level 23, 126 Phillip Street, Sydney NSW Australia 2000

Email address: [REDACTED]

and

[REDACTED]

**Sydney Metro**

Physical address: Level 43, 680 George Street, Sydney NSW Australia 2000

Postal address: Level 43, 680 George Street, Sydney NSW Australia 2000

Email address: [REDACTED]

or such other address as a party may notify to the other party in writing from time to time.

- 17.2 Subject to clause 17.3, a notice, consent or other communication under this Deed is, in the absence of earlier receipt, regarded as given, provided, served, issued and received if:
- (a) it is sent through Sydney Metro's chosen collaboration and document management tool, when it becomes visible to all other participants to that tool;
  - (b) it is delivered, on delivery at the address of the relevant party;
  - (c) sent by email, at the time it was transmitted by the sender provided that if the sender receives a message indicating that it has not been successfully transmitted provided that where an "out of office" reply, delivery error or similar response is returned in response to that email the email will not be taken to be received and the sender will use the alternative methods of sending the notice in accordance with this clause; or
  - (d) it is sent by mail, on the third Business Day after the day of posting, or if to or from a place outside Australia, on the fifth Business Day after the day of posting.
- 17.3 If a notice, consent or other communication under this Deed is given and received on a day that is not a Business Day or after 5.00pm (local time in the place of receipt) on a Business Day, it is regarded as being given and received at 9.00am on the next Business Day.

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**18 Counterparts**

This Deed may be executed in any number of counterparts, each of which:

- (a) may be executed electronically or in handwriting; and
- (b) will be deemed an original whether kept in electronic or paper form, and all of which taken together will constitute one and the same document.

Without limiting the foregoing, if the signatures on behalf of one party are on more than one copy of this Deed, this shall be taken to be the same as, and have the same effect as, if all of those signatures were on the same counterpart of this Deed.

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**19. Escrow Agent Limitation of Liability**
**19.1 Excluding Liability**

Any provision of this agreement 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.

**19.2 Liability of the Escrow Agent**

- (a) The Escrow Agent shall not be liable to anyone in respect of the performance of its duties and obligations hereunder unless such liability arises as a result of a breach by the Escrow Agent of the terms of this agreement or of fraud, negligence or wilful default on the part of the Escrow Agent (or the Escrow Agent's agents or employees).
- (b) Each of the parties expressly waives all rights which it may have or acquire against the Escrow Agent, its officers, employees, agents and representatives in connection with the performance of this agreement and undertakes to indemnify and hold the Escrow Agent harmless from and against all actions, proceedings, claims, demands, losses, damages,

liabilities, costs, charges, taxes, duties, legal fees and expenses (**Loss**) which may arise as a result of its actions under this agreement, including in connection with any liability arising from a breach of any applicable law by the Escrow Agent, unless such Loss arises as a result of:

- (i) a breach by the Escrow Agent of the terms of this agreement;
  - (ii) fraud, negligence or wilful default on the part of the Escrow Agent (or the Escrow Agent's agent or employees); or
  - (iii) a claim by a party, in which case, to the extent (i) or (ii) does not apply, the party making the claim must indemnify and hold the Escrow Agent harmless from and against all such Loss.
- (c) The Escrow Agent shall be entitled to rely on, and shall be protected in acting upon, and shall be entitled to treat as genuine and as the document it purports to be, any letter, paper or other document furnished to it by any of the parties, and believed by the Escrow Agent, acting reasonably, to be genuine and to have been signed and presented by the proper party or parties
- (d) The Escrow Agent will not be obliged to enquire into or be liable to any person whatsoever for the accuracy, description or relevance of the terms, conditions or contents of this agreement or of the accuracy of any direction that it receives from a party.
- (e) Without limiting clause 19.2(a), the Escrow Agent:
- (i) may rely upon advice given to it by senior counsel jointly appointed by the parties on the question of whether a Trigger Event or OpCo Trigger Event (as applicable) has occurred; and
  - (ii) provided that the Escrow Agent complies with the legal advice provided in accordance with clause 19.2(e)(i), the Escrow Agent will not bear any liability in relying on such advice when releasing the Escrow Material to a party.

**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.

**[Execution blocks to be confirmed]**

**EXECUTED** by **SIEMENS MOBILITY PTY LTD (ABN 39 625 304 556)** by its attorney under power of attorney dated **[insert]**:

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

**EXECUTED** by **SIEMENS MOBILITY AUSTRIA GMBH** (Republic of Austria Business Register No. FN 483145 h) by its attorney under power of attorney dated **[insert]**

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

\_\_\_\_\_  
Signature of Attorney



\_\_\_\_\_  
Name

**EXECUTED by SIEMENS MOBILITY GMBH** (Commercial registry Munich, HRB 237219) by its attorney under power of attorney dated **[insert]**

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

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature of Attorney

\_\_\_\_\_  
Name

**EXECUTED BY PARKLIFE METRO PTY LTD** (ACN 657 444 141) in its personal capacity and in its capacity as trustee of the Parklife Metro Unit Trust, under power of attorney dated **[insert]**

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

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature of Attorney

\_\_\_\_\_  
Name

**EXECUTED BY SYDNEY METRO** (ABN 12 354 063 515) by its duly authorised delegate, in the presence of:

\_\_\_\_\_  
Name

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

\_\_\_\_\_  
Signature of authorised delegate

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

\_\_\_\_\_  
Name of authorised delegate

**[insert execution block for Escrow Agent]**

**Attachment 1 (Details of Escrow Fees)**