

## Schedule 37 – Extensions

(clause 38.1)

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# 1. Definitions and interpretation

## 1.1 Definitions

In this Schedule 37 (*Extensions*):

**Contestable Components** means the OpCo Extension Components which are not Non-Contestable Components.

**Core UTO Scope** means:

- (a) the core systems required for unattended train operations on the Extension comprising additional trains, associated stabling and facilities, signalling and train control and central control systems and systems integration;
- (b) Line Extension Services;
- (c) Power Supply; and
- (d) operations and maintenance of the Extended SMWSA.

**Core UTO Scope Extension** means an Extension in respect of which:

- (a) Core UTO Scope is delivered by OpCo; and
- (b) some or all other elements of the Extension are procured by the Principal as Principal Procured Components.

**Design Costs** means the reasonable and properly incurred costs payable by the Principal to OpCo, a Core Contractor or a Significant Contractor in consideration for the performance of design and technical advisory services in respect of a proposed Extension as referred to in clause 2.1.

**Extended SMWSA** means the integrated, operational, extended Sydney Metro – Western Sydney Airport created by an Extension.

**Extended SMWSA Payment Mechanism** means the mechanism for calculating the Service Payment in respect of the Extended SMWSA.

**Extension Completion** means the stage at which the Extension is considered fully operational following completion of all relevant requirements, which may include commissioning, testing, trial running and completion of performance tests and will be specified in the Principal Extension Documents.

**Extension Components** means the OpCo Extension Components and the Principal Extension Components.

**Extension Consultation Group** means the group referred to in clause 3.2.

**Extension Interface Contractor** means a contractor other than OpCo engaged by the Principal to deliver any Principal Procured Component of an Extension.

**Extension Process Costs** means, as applicable, RFI Costs, Design Costs, OpCo Extension Proposal Costs, Joint Procurement Costs and any Financial Adviser Fee.

**Extension Proposal** means a proposal prepared by OpCo in response to an Extension Proposal Request.

**Extension Proposal Request** means a request issued by the Principal in accordance with clause 5.

**Financial Adviser Fee** means a financial adviser and sponsor fee approved by the Principal in accordance with clause 2.2(b).

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

**Handover of Operations** means, in the context of an Extension, the transfer and handover of OpCo's obligations to operate and maintain Sydney Metro – Western Sydney Airport (including transfer and handover of all relevant Assets, documents, documentation and data) to the Principal or its nominee other than in respect of the continuing performance by OpCo of Asset Management Activities relating to those Assets and parts of the Licensed Maintenance Area either as:

- (a) nominated by the Principal in a Notice of Proposed Extension or an Extension Proposal Request; or
- (b) otherwise agreed by the parties in the Principal Extension Documents relating to that Extension.

**InfraMaintainer Scope** means the Asset Management Activities for which OpCo will continue to be responsible following implementation of a Handover of Operations.

**Joint Procurement** has the meaning given in clause 11.3(a).

**Joint Procurement Costs** means the costs reasonably and properly incurred by OpCo and any OpCo Contractors in connection with a Joint Procurement.

**LES Extension** means an Extension in respect of which:

- (a) Line Extension Services are provided by OpCo;
- (b) the Extended SMWSA is operated and maintained by OpCo; and
- (c) some or all other elements of the Extension are procured by the Principal as Principal Procured Components,

but does not include a Core UTO Scope Extension.

**Line Extension Services** means the coordination and other services from OpCo required to connect, test and commission an Extension into the existing Sydney Metro – Western Sydney Airport, including:

- (a) providing track possessions;
- (b) providing access to the Stabling and Maintenance Facility, Stations and Power Control System;
- (c) undertaking post-Completion activities, testing and commissioning and trial operations for the Extension.

**Non-Contestable Components** means:

- (a) for a Core UTO Services Extension, those elements, systems and components which are listed in Appendix 4, unless in the Principal's opinion (as notified by the Principal to OpCo in or in connection with a Notice of Proposed Extension or Extension Proposal Request), superior value for money will be achieved by procuring a system or component listed in Appendix 4 on a competitive basis;
- (b) for an LES Extension, each element of the Line Extension Services and the operation and maintenance of the Extended SMWSA;
- (c) for a Handover of Operations, each element of the InfraMaintainer Scope; and
- (d) any other core systems and components of an Extension which, in the Principal's opinion, cannot practicably be supplied or delivered by an alternative supplier or contractor on a value for money basis.

**Notice of Proposed Extension** means a notice issued by the Principal in accordance with clause 4.1(a).

**O&M ESDD** has the meaning given in clause 2.4(a)(ii).



**OpCo Extension Component Cost** means the cost of the OpCo Extension Components as calculated in accordance with this Schedule 37 (*Extensions*).

**OpCo Extension Component Option Prices** means the prices per unit identified in Appendix 4 to this Schedule 37 (*Extensions*).

**OpCo Extension Components** means:

- (a) any elements of an Extension which OpCo will design, construct, supply, finance, install, test, commission or otherwise procure;
- (b) for a Handover of Operations, the InfraMaintainer Scope; and
- (c) any other change to the operations, management, repair, maintenance or other services provided by OpCo in connection with or as the result of an Extension.

**OpCo Extension Proposal Cost** means the costs reasonably and properly incurred by OpCo and any OpCo Contractors in preparing an Extension Proposal and carrying out its obligations under this Schedule 37 (*Extensions*) in respect of a proposed Extension, but excluding any RFI Costs, Design Costs and Financial Adviser Fee.

**Open Book Basis** has the meaning given in the Operative Provisions and additionally includes OpCo working with the Principal and its advisors so that the Principal is provided with all of the information it reasonably requires to assess the relevant Extension Process Costs or pricing under this Schedule 37 (*Extensions*), including separate visibility over both the costs and savings included in the calculation of those Extension Process Costs or pricing.

**Power Supply** means the supply of the Bulk Power Supply and Reticulation Systems and Traction Power Systems as described in Particular Specification 09 – Electrical Systems.

**Pre-Existing Infrastructure** means infrastructure to be incorporated into an Extension, that:

- (a) exists at the time that an Extension Proposal is requested; and
- (b) is not part of Sydney Metro - Western Sydney Airport.

**Pre-Existing Infrastructure (Retained Condition)** means Pre-Existing Infrastructure not included in Pre-Existing Infrastructure Upgrade Scope and which is not otherwise a Principal Procured Component.

**Pre-Existing Infrastructure Condition Assessment** means an assessment of the condition of relevant elements of any Pre-Existing Infrastructure that may be undertaken by an appropriately experienced entity and made available to both OpCo and the Principal.

**Pre-Existing Infrastructure Information** means, in relation to Pre-Existing Infrastructure, any design, construction, maintenance and operations records and plans that can reasonably be obtained by the Principal.

**Pre-Existing Infrastructure Upgrade Scope** means the scope of work and other activities required to be undertaken by OpCo on or in respect of Pre-Existing Infrastructure to enable incorporation of that Pre-Existing Infrastructure into the Extended SMWSA, but excludes any:

- (a) Core UTO Scope;
- (b) Line Extension Services in respect of the existing Sydney Metro – Western Sydney Airport; or
- (c) Principal Procured Component.

**Pre-Priced Extension Component** means an OpCo Extension Component in respect of which, at the time an Extension Proposal Request is issued, the Principal considers the relevant OpCo Extension Component Option Price will remain within its Validity Period at the anticipated time of contractual close for the relevant Extension.

**Principal Extension Component** means any:

- (a) Principal Procured Components; and
- (b) Pre-Existing Infrastructure (Retained Condition).

**Principal Extension Documents** means the agreements between the Principal, OpCo and any relevant Associates of OpCo recording the terms on which OpCo and any relevant Associates of OpCo are to carry out their role in an Extension, including the delivery of OpCo Extension Components.

**Principal Procured Component** means:

- (a) each element of an Extension that the Principal will directly or indirectly procure from a supplier other than OpCo whether in respect of design, construction, supply, installation, testing or commissioning; and
- (b) any additional operations, management, repair, upgrade maintenance or other services to be directly or indirectly procured by the Principal from a supplier other than OpCo in connection with or as the result of the Extension, including in relation to Pre-Existing Infrastructure.

**Relevant Financier** has the meaning given in clause 12.4(a)(ii).

**RFI** means any request or requests for information referred to in clause 3.1.

**RFI Costs** means the costs incurred by OpCo and any OpCo Contractors in respect of the RFI Process calculated in accordance with and subject to clause 9.2.

**RFI Process** means the ongoing request for information process in respect of a proposed Extension described in clause 3.

**Successor Operator** means the Principal or a contractor other than OpCo as notified by the Principal.

**Siemens Mobility** means Siemens Mobility Pty Ltd ACN 625 304 556.

**Siemens Mobility Austria** means Siemens Mobility Austria GmbH (Registered in Austria, FN 483145 h).

**Siemens Mobility GmbH** means Siemens Mobility GmbH (Commercial Register B Munich, HRB 237219).

**Siemens Mobility ESDD** has the meaning given in clause 2.4(a)(i).

**Validity Period** means, in respect of a Non-Contestable Component (or a potential Non-Contestable Component):

- (a) the pricing validity period provided for in the Extension Supply Direct Deed for that Non-Contestable Component; or
- (b) if no such Extension Supply Direct Deed is in place, a reasonable period as determined by the Principal having regard to the Non-Contestable Component and its pricing as set out in Appendix 4.

## 1.2 Interpretation

A reference to reducing, varying or amending a proposed Extension or the scope of a proposed Extension will include (without limitation):

- (a) changing a Core UTO Scope Extension to an LES Extension or implementing a Handover of Operations; or
- (b) changing from an LES Extension to implementation of a Handover of Operations.

## 1.3 Acknowledgements

The parties acknowledge and agree that:

- (a) this Schedule 37 (*Extensions*) provides a process for the planning, consideration and procurement of Extensions to achieve overall operational and customer benefits and value for money to the taxpayers of New South Wales from an Extended SMWSA;

- (b) the best outcomes for both the Principal and OpCo in respect of any Extension will be achieved if the parties engage openly, collaboratively and efficiently in the processes provided by this Schedule 37 (*Extensions*);
- (c) without limitation, the Relationship Principles and all of the provisions of clause 5.1 of the Operative Provisions apply to their interaction and relationship under this Schedule 37 (*Extensions*);
- (d) there are many variables in relation to any Extension and this Schedule 37 (*Extensions*) is intended to provide flexibility to accommodate one or more Extensions of various scope, scale, type and timing; and
- (e) without prejudice to clause 4.2, it will remain open to the parties through the Senior Project Group (or other appropriate forum) to actively consider, in respect of any specific potential Extension, whether there is a bespoke process better suited to expeditiously and effectively assist the parties to transact an alternative value for money approach to the delivery and operation of that Extension.

#### 1.4 Principal Extension Documents

- (a) OpCo's rights and obligations in respect of any Extension and any Extended SMWSA following financial close or contractual close (as applicable) under any Principal Extension Documents will be as set out in those Principal Extension Documents and except as expressly set out in the Principal Extension Documents and subject to clause 59.1 of the Operative Provisions, the terms of this deed will not be amended by financial close or contractual close (as applicable) of the Principal Extension Documents.
- (b) The parties acknowledge that it is their intention that, unless agreed otherwise the Extension will not diminish any of the existing protections available to OpCo under this deed, nor add additional obligations beyond those set out in this deed, in relation to Sydney Metro – Western Sydney Airport.
- (c) The parties acknowledge that it is intended that the Principal Extension Documents will include requirements that OpCo must, and must ensure that the OpCo Contractors:
  - (i) manage and minimise any disruption to OpCo's Activities during the implementation of any Extension by putting into place appropriate arrangements, procedures and protocols with regard to the management, continuity and safe operation of Sydney Metro – Western Sydney Airport;
  - (ii) continue to operate, provide access to, exercise operational control over and maintain Sydney Metro – Western Sydney Airport during the implementation of the Extension (in respect of a Handover of Operations, until such time as operational responsibility is transitioned to a Successor Operator) in a manner which facilitates the completion of the Extension in a safe, timely and cost effective manner;
  - (iii) if any pre-existing policy, practice or procedure applied in the conduct of OpCo's Activities is not fully compatible with the implementation of an Extension, develop a transitional policy, practice or procedure that is fully compatible with the implementation of the Extension; and
  - (iv) mitigate any loss or damage suffered by OpCo and OpCo Contractors as a result of the implementation of the Extension.

## 2. General processes to support progressing an Extension

### 2.1 Design and technical advisory services

- (a) The Principal may, at any time, request that any one or more of OpCo, a Core Contractor and any Significant Contractor provide design and/or technical advisory services in respect of a proposed Extension, which may include the development of technical specifications for tendering of any Extension Components.
- (b) If requested by the Principal in accordance with clause 2.1(a), the parties must use best endeavours to enter into, or procure that the relevant Core Contractor or Significant Contractor enters into, a separate contract with the Principal or OpCo (having regard to the design and technical advisory services required) for performance of design and technical advisory services which must:
  - (i) set out the agreed fees and/or rates for the performance of relevant design and technical advisory services;
  - (ii) where any aspect of the preparation of the relevant design and technical advisory services involves any works, activities, items or personnel that are substantially the same as or similar to any works, activities, items or personnel contained in the Schedule of Rates or the Core Contract or Significant Contract (as applicable), be based on prices, rates or unit costs (as applicable) that are at least as favourable to the Principal as those included in the Schedule of Rates or as favourable to OpCo as those included in the relevant Core Contract or Significant Contract (as applicable); and
  - (iii) not include an amount on account of Margin Elements which exceeds the Margin that may be included in respect of a NFI Event pursuant to (and each as defined in) Schedule 6 (*Net Financial Impact*) of this deed.
- (c) The purpose of any of OpCo and any Core Contractor or Significant Contractor providing design and technical advisory services pursuant to this clause 2.1 is for the Principal to:
  - (i) obtain input into the design and technical requirements for one or more Extension Components and enable these design and technical requirements to be refined by the Principal and the Principal's technical adviser, in consultation with OpCo and its relevant OpCo Contractors, in their capacities as:
    - (A) the existing operator and maintainer of the Sydney Metro – Western Sydney Airport; and
    - (B) parties who may be required to accept risk and responsibility for the performance, operation and/or maintenance of Extension Components;
  - (ii) identify key areas for improvement and efficiency in the design and technical requirements for one or more Extension Components and identify potential areas of difference requiring further development;
  - (iii) where appropriate having regard to the packaging strategy, delivery strategy and risk allocation for the proposed Extension, obtain signoff by OpCo and its relevant OpCo Contractors in relation to key enabling infrastructure to ensure that:
    - (A) it will be fit for the purposes of enabling OpCo and its relevant OpCo Contractors (in their capacities as parties who may be required to accept risk and responsibility for the performance, operation and/or maintenance of Extension Components) to comply with their respective obligations in respect of the Extended SMWSA;
    - (B) it will enable the operational performance requirements for the Extended SMWSA to be met; and

- (C) it will enable the Extended SMWSA to be safely operated in line with the safety management system applicable to the Extended SMWSA; and
  - (iv) obtain such other associated technical advisory input as required by the Principal in respect of a proposed Extension.
- (d) All Intellectual Property comprised in any information or documentation developed or created by OpCo, its Associates or any other entity as part of any design and technical advisory services referred to in this clause 2.1 will be owned by the Principal and, to the extent necessary to give effect to this, OpCo:
  - (i) assigns to the Principal all of its rights, title and interest in such Intellectual Property; and
  - (ii) must procure that each Associate or other entity:
    - (A) assigns such Intellectual Property to OpCo in order for OpCo to assign to the Principal in accordance with clause 2.1(d)(i); or
    - (B) directly assigns such Intellectual Property to the Principal.

## 2.2 Professional Service Providers

- (a) The engagement of any professional service provider by OpCo or its Associates (including without limitation, financial advisers, technical advisers and legal advisers) in connection with a potential Extension must be in accordance with the principles and processes set out in this clause 2.2.
- (b) Without limitation to clause 13.3, prior to engaging any professional service provider in connection with a potential Extension (regardless of whether or not either or both of a Notice of Proposed Extension or an Extension Proposal Request has been issued), OpCo must:
  - (i) provide the Principal with details of:
    - (A) the contract or terms of engagement to be entered into with the professional service provider (including the scope of services to be performed by the professional service provider); and
    - (B) the contract price or agreed fee, which in the case of any proposed engagement of a financial adviser must identify the amount of any base element and performance element proposed to be included in the Financial Adviser Fee and the circumstances in which each element is proposed to be payable; and
  - (ii) in respect of a professional service provider that is not a technical adviser, obtain the Principal's approval in respect of the engagement, including the contract or terms of engagement and the contract price or agreed fee as referred to in clause 2.2(b)(i).
- (c) The Principal may, in its absolute discretion:
  - (i) request further information in respect of the scope of services to be performed by the professional service provider and the contract price or agreed fee to be charged by a professional service provider, in which case OpCo must procure that the relevant professional service provider promptly provides such information to the Principal;
  - (ii) require OpCo to:
    - (A) procure any professional services in respect of the potential Extension on a competitive basis; or
    - (B) provide market rates or benchmarking data to assist the Principal in determining whether the amounts advised in accordance with

clause 2.2(b)(i)(B) represent value for money provided that OpCo will anonymise any sensitive information when bound by commercial in confidence undertakings with its other customers; and

- (iii) without limitation to clause 2.2(c)(ii), require OpCo to demonstrate that the amounts advised in accordance with clause 2.2(b)(i)(B) represent value for money.
- (d) OpCo must keep the Principal fully informed of the progress of engagement of any professional service provider as the Principal may reasonably require.

## 2.3 Access

- (a) OpCo must provide the Principal (and any person authorised by the Principal, including any tenderer or contractor for a Principal Procured Component) with such access to the Construction Site and the Licensed Maintenance Area as may be required by the Principal to enable the Principal and any authorised persons to perform any investigations, surveys or tests, or to undertake other relevant activities, in connection with the proposed Extension, subject to OpCo's reasonable safety and security constraints.
- (b) OpCo acknowledges and agrees that it is not entitled to any payment under this Schedule 37 (*Extensions*) in respect of provision of access referred to in clause 2.3(a).

## 2.4 Extension Supply Direct Deeds

- (a) To support the Principal's objectives of flexibility and certainty in the planning and delivery of Extensions including the processes for direct negotiation and step-in described in clause 8, OpCo must ensure that the following OpCo Contractors enter into the following Extension Supply Direct Deeds with the Principal:
  - (i) Siemens Mobility, Siemens Mobility Austria and Siemens Mobility GmbH– Extension Supply Direct Deed in respect of all Core UTO Scope other than operations and maintenance of the Extended SMWSA (**Siemens Mobility ESDD**); and
  - (ii) the O&M Contractor – Extension Supply Direct Deed in respect of operations and maintenance of the Extended SMWSA (**O&M ESDD**).
- (b) If the Principal notifies a Non-Contestable Component to OpCo in connection with a proposed Extension and that Non-Contestable Component is not the subject of an Extension Supply Direct Deed referred to in clause 2.4(a), OpCo must if required by the Principal ensure that the relevant OpCo Contractor enters into an Extension Supply Direct Deed with the Principal as soon as practicable.

# 3. Early Engagement

## 3.1 Requests for Information

- (a) The parties acknowledge that the Principal may require initial information in relation to the project definition of a proposed Extension before it issues either a Notice of Proposed Extension or an Extension Proposal Request.
- (b) At any time (and without limiting the number of times the Principal may do so) the Principal may issue to OpCo a request for information to assist its consideration of a proposed Extension. The information requested may include:
  - (i) (**Procurement and Delivery**): information in relation to the procurement and delivery aspects of the proposed Extension, including:
    - (A) feedback in relation to the benefits for OpCo and the Principal of the various options for procurement processes, works packaging and project delivery;

- (B) to the extent that elements of the Extension may potentially be procured or provided by OpCo on a non-contestable basis, how value for money for the Principal will be achieved and demonstrated in such procurement or provision;
- (C) feedback in relation to options for management of interfaces and integration between proposed Principal Extension Components and OpCo Extension Components and the matters described in clause 2.1(c)(iii);
- (D) feedback in relation to the testing and commissioning strategy for the Extension (including in respect of any Principal Extension Components);
- (E) in relation to any potential Pre-Existing Infrastructure that may be being considered for inclusion in the Extension, feedback in relation to potential:
  - (I) scope, timing and value that would be derived from any Pre-Existing Infrastructure Condition Assessment;
  - (II) actual or desirable availability of Pre-Existing Infrastructure Information; and
  - (III) Pre-Existing Infrastructure Upgrade Scope and delivery strategy; and
- (F) other aspects relating to project definition;
- (ii) **(Operations and Maintenance)**: information in relation to the operation and maintenance aspects of the Extension, including:
  - (A) quantification of improved value for money in operation and maintenance (such as reduced costs of operation and maintenance per unit or per component) and other synergies;
  - (B) options for the operating and asset management plan for the Extended SMWSA;
  - (C) options in relation to rolling stock to implement the potential operating and asset management plan(s); and
  - (D) an assessment of the impact of the Extension on Sydney Metro – Western Sydney Airport;
- (iii) **(Financing)**: information in relation to the financing of the proposed Extension (where applicable), including an indicative commercial structure for the Extension and how it will interface with the existing commercial structure for Sydney Metro – Western Sydney Airport; and
- (iv) **(Other information)**: any other information considered relevant by the Principal (including any preliminary or indicative pricing for any aspect of the Extension).

### 3.2 Extension Consultation Group

- (a) The Principal may, at any time, request that OpCo must:
  - (i) establish an Extension Consultation Group in relation to a proposed Extension; or
  - (ii) participate in any consultation group arranged by the Principal or its nominee in relation to a proposed Extension,
 and OpCo must do so promptly after receiving the Principal's request.
- (b) The Extension Consultation Group must consist of:

- (i) the Principal's Representative or such other person nominated by the Principal to be the Principal's representative with respect to the proposed Extension;
  - (ii) the representative appointed by OpCo in accordance with clause 5.3(b), if applicable, or otherwise OpCo's Representative;
  - (iii) 2 persons from each party holding positions more senior than the persons referred to in clauses 3.2(b)(i) and 3.2(b)(ii) (as applicable to the relevant party); and
  - (iv) such other persons as the parties agree on.
- (c) The persons referred to in clause 3.2(b) may appoint delegates to attend Extension Consultation Group meetings in their absence.
- (d) The objectives of the Extension Consultation Group are to:
  - (i) establish and oversee work streams which will consider, develop and report to the Extension Consultation Group in respect of options for (to the extent relevant having regard to the scope of the proposed Extension) the:
    - (A) procurement and delivery of the proposed Extension;
    - (B) the operation arrangements for Sydney Metro – Western Sydney Airport to incorporate the proposed Extension; and
    - (C) financing of the proposed Extension;
  - (ii) if the Principal accepts an Extension Proposal in accordance with clause 7.1(a) and if requested to do so by the Principal:
    - (A) oversee the planning, progress and implementation of the Extension;
    - (B) agree and approve key activities and deliverables in respect of the Extension; and
    - (C) ensure that all stakeholders in the Extension are involved and kept informed as to the planning, progress and status of the Extension;
  - (iii) provide a forum for the discussion of matters relating to the proposed Extension, including the proposed staging of the Extension and how OpCo's role may vary in each stage; and
  - (iv) assist with the resolution of any matters referred to the Extension Consultation Group by a party.
- (e) The Extension Consultation Group will meet at least monthly or as otherwise agreed by the parties.
- (f) The Principal's Representative will convene and chair meetings of the Extension Consultation Group and will take the minutes of all meetings and distribute the minutes to the members of the Extension Consultation Group.
- (g) At the Principal's request, OpCo must procure the attendance of representatives of any one or more of the Core Contractors and/or any one or more of the Significant Contractors at meetings of the Extension Consultation Group as observers. The Principal is also entitled to have representatives of the State or any Authority attend meetings as observers.
- (h) The Principal may have representatives of other contractors that have been proposed to carry out any elements of the Extension attend meetings of the Extension Consultation Group.
- (i) In respect of any consultation group that OpCo is required to participate in under clause 3.2(a)(ii):
  - (i) OpCo's representative must be the person referred to in clause 3.2(b)(ii) and include the persons referred to in clause 3.2(b)(iii) (as applicable to OpCo);



- (ii) the objectives of the consultation group will generally be as described in clause 3.2(d), as relevant to the proposed Extension; and
  - (iii) if requested by the Principal, OpCo must procure the attendance of the representatives referred to in clause 3.2(g).
- (j) Nothing which occurs during a meeting of the Extension Consultation Group or any work stream, or any consultation group that OpCo is required to participate in under clause 3.2(a)(ii), will:
- (i) relieve OpCo from, or alter or affect, OpCo's liabilities or responsibilities whether under this deed or otherwise according to Law;
  - (ii) prejudice the Principal's rights against OpCo whether under this deed or otherwise according to Law; or
  - (iii) be construed as a direction by the Principal to do or not do anything.

## 4. Notice of Proposed Extension

### 4.1 Principal may give notice

- (a) The Principal may, at any time, issue to OpCo a notice titled "Notice of Proposed Extension" setting out details in respect of an Extension it is considering. These details may include:
- (i) the Principal's objectives for the proposed Extension;
  - (ii) the proposed scope and contractual structure for the delivery of the proposed Extension, including:
    - (A) whether the Extension is at that time proposed to be delivered as a Core UTO Scope Extension or an LES Extension or will involve a Handover of Operations, or another approach to the Extension; and
    - (B) the proposed Principal Extension Components;
  - (iii) the Principal's confirmation of the proposed OpCo Extension Components that are to be Non-Contestable Components;
  - (iv) whether any proposed OpCo Extension Components are anticipated to remain Pre-Priced Extension Components;
  - (v) desired timeframes for the delivery of the proposed Extension;
  - (vi) desired funding arrangements for the proposed Extension; and
  - (vii) in relation to any potential Pre-Existing Infrastructure, the proposed:
    - (A) availability of any Pre-Existing Infrastructure Information;
    - (B) scope and timing of any Pre-Existing Infrastructure Condition Assessments; and
    - (C) Pre-Existing Infrastructure Upgrade Scope and delivery strategy; and
  - (viii) any other information considered relevant by the Principal.
- (b) Promptly following receipt of a Notice of Proposed Extension in accordance with clause 4.1(a), OpCo must give written notice to the Principal acknowledging receipt of the Notice of Proposed Extension and confirming that the principles and processes set out in this Schedule 37 (*Extensions*) will apply to the development and consideration of the proposed Extension.

## 4.2 Establishing a process

- (a) Following the issue of a Notice of Proposed Extension under clause 4.1(a), the parties must meet to discuss how the project definition, planning and development of the proposed Extension (to the extent of OpCo's potential involvement in it, as described in the Notice of Proposed Extension) should be carried out in a manner which:
  - (i) supports the achievement of value for money outcomes for the taxpayers of New South Wales (including taking account of the operational benefits that an Extended SMWSA can provide);
  - (ii) ensures transparency of procedures and negotiations between the Principal and OpCo (including with reference to proposals from or agreements with the Significant Contractors, as relevant to the Extension); and
  - (iii) is collaborative, efficient and effective.
- (b) The Principal may, taking account any of the matters discussed in accordance with clause 4.2(a), establish a process to progress the proposed Extension, which may include (to the extent appropriate to the proposed Extension):
  - (i) the parties executing a framework agreement in respect of the proposed Extension that builds upon the terms, principles and processes set out in this Schedule 37 (*Extensions*) for project definition, planning, development and associated matters in respect of the proposed Extension;
  - (ii) the Extension process being undertaken in stages;
  - (iii) OpCo being required to develop and submit an Extension Proposal in stages;
  - (iv) OpCo being required to submit interim deliverables or achieve interim milestones;
  - (v) the scope of, and principles for, an interactive process to be established by the parties in accordance with clause 4.3; and
  - (vi) without limitation to clause 13.3, probity arrangements for the process.

## 4.3 Interactive process

- (a) The Principal may establish, and if it does so then the parties must participate in, a structured interactive process that is designed:
  - (i) to enable the parties, prior to the Principal issuing an Extension Proposal Request under clause 5.1
    - (A) to further develop and define approaches to the delivery of an Extension that the Principal is considering; and
    - (B) to discuss the appropriate requirements for, and time period for preparation and submission of, an Extension Proposal; and
  - (ii) to enable OpCo, following receipt of an Extension Proposal Request, to develop and submit a high quality, innovative, well-considered Extension Proposal that represents value for money for the Principal.
- (b) OpCo acknowledges that any interactive process (to the extent of OpCo's potential involvement in it, as described in the Notice of Proposed Extension) is intended to:
  - (i) test the acceptability or otherwise of OpCo's operational, design, technical, commercial, legal and financial solutions with the Principal, its representatives and advisers; and
  - (ii) seek maximum understanding of the Principal's requirements with regards to the proposed Extension from the Principal, its representatives and advisers.
- (c) Notwithstanding clause 4.3(b) above, OpCo will remain responsible for the development of any Extension Proposal.

- (d) OpCo may visit publicly accessible areas of the proposed sites for the proposed Extension at any time. When visiting these areas, OpCo must show sensitivity towards the local community, particularly in residential areas and community spaces and to customers travelling through any brownfield site.
- (e) OpCo may, subject to the Principal's written approval (not to be unreasonably withheld or delayed and to be considered having regard to the scope and type of the proposed Extension and OpCo's proposed role in it), be permitted to:
  - (i) conduct site inspections, including limited non-intrusive investigations, of restricted sites designated by the Principal to form part of the proposed site for the Extension; and
  - (ii) in relation to any Pre-Existing Infrastructure:
    - (A) conduct site inspections of Pre-Existing Infrastructure in accordance with procedures that apply to obtaining access to the relevant elements of that infrastructure; and
    - (B) witness site inspections and investigations that may be undertaken as part of any Pre-Existing Infrastructure Condition Assessments;
- (f) The Principal will manage all necessary access requirements with key third party stakeholders in relation to site inspections. During the Extension process, OpCo must not contact any key third party stakeholders, including Sydney Trains, TAHE, TfNSW, Australian Rail Track Corporation, councils and utility providers, directly in relation to the Extension without the Principal's prior written consent (not to be unreasonably withheld or delayed).

## 5. Extension Proposal Requests

### 5.1 Issue of Extension Proposal Requests

The Principal may at any time (and without limiting the number of times the Principal may do so) following the processes described in clause 4, issue to OpCo a request titled "Extension Proposal Request" which:

- (a) sets out the details of a proposed Extension or any part or stage thereof;
- (b) sets out the matters listed in Part A1 of Appendix 1 (*Requirements for Extension Proposal*);
- (c) may set out any other matters, including those listed in Part A2 of Appendix 1 (*Requirements for Extension Proposal*);
- (d) may mandate a closing date and time by which OpCo is required to respond with its Extension Proposal pursuant to clause 6 (which must allow OpCo a reasonable period to develop the Extension Proposal); and
- (e) may be issued in parts or stages.

### 5.2 Draft Principal Extension Documents

- (a) The Principal will, with the Extension Proposal Request, provide draft Principal Extension Documents setting out the Principal's proposed risk allocation and commercial terms in respect of the proposed Extension.
- (b) The Principal Extension Documents will:
  - (i) be based on and be substantially consistent with the commercial approach, performance standards and risk allocation for the SSTOM PPP under this deed, except to the extent that an aspect of the type, scope or structure of the proposed Extension necessarily requires otherwise;

- (ii) identify any amendments that the Principal proposes to make to this deed and any other existing Project Agreements;
  - (iii) for a Core UTO Scope Extension and without limitation to clauses 5.2(b)(i) and 5.2(b)(ii), include the Principal's proposed:
    - (A) Extended SMWSA Payment Mechanism, consistent with the principles set out in Appendix 2; and
    - (B) performance criteria (including maximum journey time) to apply to the Extended SMWSA and the configuration of additional trains required to achieve those performance criteria, based on the operational model contained in Particular Specification 15;
  - (iv) for an LES Extension and without limitation to clauses 5.2(b)(i) and 5.2(b)(ii), include the Principal's:
    - (A) proposed Extended SMWSA Payment Mechanism, consistent with the principles set out in Appendix 2 and having regard to OpCo's proposed more limited involvement in delivery of the Extension than would be the case for a Core UTO Scope Extension;
    - (B) explanation of any departures from the principles set out in Appendix 2, and reasons for those departures; and
    - (C) proposed performance criteria as referred to in clause 5.2(b)(iii)(B), subject to any changes required to reflect the scope of that LES Extension;
  - (v) for an Extension which involves Pre-Existing Infrastructure, include the Principal's:
    - (A) proposed Extended SMWSA Payment Mechanism, generally consistent with the principles set out in Appendix 2 and having regard to the inclusion of Pre-Existing Infrastructure in the scope of the Extension;
    - (B) explanation of any departures from the principles set out in Appendix 2, and reasons for those departures; and
  - (vi) include principles and processes for further extensions or other augmentations of the Extended SMWSA which are substantially consistent with this Schedule 37 (*Extensions*), except to the extent that an aspect of the type, scope or structure of the proposed Extension necessarily requires otherwise.
- (c) The Principal:
- (i) may, at any time and from time to time prior to OpCo's submission of its Extension Proposal, amend, clarify or replace the draft Principal Extension Documents by issuing addenda to OpCo; and
  - (ii) will use reasonable endeavours to:
    - (A) explain any amendments or replacements; and
    - (B) to issue addendum in a timely manner, having regard to OpCo's cost efficiency and the timetable for submission of the Extension Proposal as set out in the Extension Proposal request.

### 5.3 OpCo's management and representative

- (a) At the Principal's request, OpCo must establish a senior management capability to progress planning for the Extension and to manage its obligations under this Schedule 37 (*Extensions*) promptly after receiving the Principal's request. Prior to appointing the senior managers to this role, OpCo must advise the Principal of their names and their credentials for the role and allow the Principal sufficient time for it to

make comments to OpCo on their suitability for the role. OpCo must not, without the Principal's consent, appoint to the role persons who are key personnel on Sydney Metro – Western Sydney Airport as specified in Schedule 22 (*Key Personnel*).

- (b) The Principal may request that OpCo appoint a person to be OpCo's representative for the purposes of the proposed Extension. OpCo must as soon as practicable after receipt of the Principal's request:
  - (i) appoint an appropriately qualified person to be OpCo's representative; and
  - (ii) notify the Principal of the name and contact details of the representative.

## 6. Extension Proposals

### 6.1 Requirements for Extension Proposal

- (a) If the Principal issues an Extension Proposal Request pursuant to clause 5.1, OpCo must prepare and submit an Extension Proposal (or the relevant part of the Extension Proposal, as applicable) to the Principal in response as soon as practicable and at the latest by the date and time set out in the Extension Proposal Request.
- (b) Any Extension Proposal submitted by OpCo in accordance with clause 6 must:
  - (i) respond to all matters set out in the relevant Extension Proposal Request;
  - (ii) be prepared in accordance with clause 6.2; and
  - (iii) set out detailed particulars of the matters set out in Part B of Appendix 1 or such other particulars as the Principal may reasonably require.

### 6.2 Manner of preparation of Extension Proposals

Any Extension Proposal submitted by OpCo in accordance with clause 6 must be prepared:

- (a) generally in accordance with the pricing methodology set out in Appendix 3;
- (b) so as to maximise the use of open, transparent and specified tender processes in the delivery of the OpCo Extension Components;
- (c) on the basis that OpCo is a willing, efficient and competent provider of the OpCo Extension Components in an efficient and competitive market;
- (d) so as to assist the Principal to determine whether it is receiving value for money and that any payment to OpCo with respect to any OpCo Extension Components is fair and reasonable and is calculated in a manner that is transparent and avoids any double counting;
- (e) so as to meet the Principal's objectives for the Extension;
- (f) so as to minimise, to the extent possible, the disruption to Sydney Metro – Western Sydney Airport, the Sydney public transport network and their customers arising from the delivery of the OpCo Extension Components;
- (g) so as to minimise, to the extent reasonably achievable on a value-for-money basis, the period between decommissioning of any Pre-Existing Infrastructure and Extension Completion;
- (h) so as to minimise to the extent possible any delay in achieving Completion arising from the delivery of the OpCo Extension Components, to the extent that Completion has not yet been achieved;
- (i) so as to avoid any adverse safety impacts from the implementation of the Extension and the delivery of the OpCo Extension Components; and
- (j) in the form of an offer capable of complete evaluation and acceptance by the Principal.

### 6.3 Tender requirements

- (a) OpCo acknowledges that the integrity of any tender process undertaken as part of an Extension is critical to the Principal.
- (b) OpCo must comply, and must procure that its Associates comply, with all arrangements and restrictions imposed by the Principal to maintain the integrity of any tender process undertaken by the Principal or OpCo in relation to an Extension, including:
  - (i) restrictions imposed by the Principal on dealings between OpCo and tenderers;
  - (ii) restrictions imposed by the Principal on the right of OpCo and its Associates to tender for work;
  - (iii) restrictions imposed by the Principal on the ability of OpCo to use cost and price sensitive information to which OpCo is privy as a result of being a party to this deed; and
  - (iv) that the tender process must comply with the NSW Government Code of Practice for Procurement and the NSW Working with Government Guidelines.
- (c) Without limiting clause 6.3(b), each tender process undertaken as part of an Extension must:
  - (i) without limiting clause 13.3, be carried out so as to ensure the probity and competitiveness of the tender process;
  - (ii) treat all tenderers in a fair and unbiased manner; and
  - (iii) in all respects be conducted professionally and in accordance with good practice and the principles of fairness and justice.

## 7. Response to Extension Proposal

### 7.1 Principal's options

- (a) The Principal's Representative may, by written notice to OpCo:
  - (i) accept an Extension Proposal;
  - (ii) accept one or more parts or components of an Extension Proposal, but only to the extent that:
    - (A) the relevant part or component of the Extension Proposal is a standalone part or component or can, in the view of the Principal, be separately identified; and
    - (B) the relevant Extension Component(s) can be implemented by OpCo without impacting on any other part or component of the proposed Extension;
  - (iii) reject an Extension Proposal (either as a whole or one or more parts or components of the Extension Proposal), setting out the reasons why the Extension Proposal was rejected, and require OpCo to negotiate in good faith with the Principal with a view to reaching agreement on all (or on nominated) aspects of the Extension Proposal;
  - (iv) at any time, notify OpCo that it wishes to amend or re-structure the proposed Extension (which may include reducing, increasing or varying the scope of the Extension), providing full details of the proposed amendments in a revised Extension Proposal Request, and request that OpCo prepare and submit a revised Extension Proposal in accordance with clause 6; or

- (v) at any time, notify OpCo that it withdraws the Extension Proposal Request and wishes to either:
  - (A) not proceed with the proposed Extension; or
  - (B) proceed with the proposed Extension in a different way to that identified in the Extension Proposal Request.
- (b) If the Principal accepts an Extension Proposal (in whole or in part), the parties must work towards financial close or contractual close (as applicable), including by:
  - (i) finalising any outstanding aspects of the draft Principal Extension Documents, as responded to by OpCo in its Extension Proposal; and
  - (ii) otherwise completing those relevant requirements under this Schedule 37 (*Extensions*) that remain to be completed prior to financial close or contractual close (as applicable).
- (c) If the Principal requires OpCo to enter into negotiations in accordance with clause 7.1(a)(iii):
  - (i) OpCo must meet with the Principal at times and provide such further details as required by the Principal to enable the Principal to assess and negotiate the Extension Proposal (including providing appropriately qualified personnel to explain the Extension Proposal);
  - (ii) the Principal may establish, and OpCo must comply with, a negotiation protocol regarding the negotiations which will detail matters such as the manner in which:
    - (A) meetings, negotiations, governance and staff liaison will be managed; and
    - (B) the draft Principal Extension Documents, and OpCo's response to them in its Extension Proposal, will be progressed and finalised with the objective of achieving agreement on all aspects of the Principal Extension Documents and financial close or contractual close (as applicable); and
  - (iii) if the parties reach agreement on all aspects of the Extension Proposal following the negotiations, the Principal may give OpCo written notice accepting the Extension Proposal (as varied by those negotiations) and clause 7.1(b) will apply.
- (d) The Principal:
  - (i) will not be obliged to proceed with any OpCo Extension Components proposed in an Extension Proposal Request; and
  - (ii) without limitation to clause 7.1(a)(iv) or clause 7.1(a)(v), reserves the right at any time to:
    - (A) reduce or vary the scope of the Extension; or
    - (B) have any OpCo Extension Components (or any part of the OpCo Extension Components) the subject of an Extension Proposal Request carried out as Principal Procured Components, Proximate Work Activities or as a Modification.

## 7.2 Open book and audit

- (a) If required by the Principal during any negotiations under this Schedule 37 (*Extensions*), OpCo must:
  - (i) provide any pricing, costing and other information relating to OpCo, or any Core Contractor or Significant Contractor which proposes to deliver any Non-Contestable Components; and

- (ii) use best endeavours to provide any pricing, costing and other information relating to any other OpCo Contractor or any other proposed contractor of OpCo which is proposed to deliver any Non-Contestable Components, on an Open Book Basis.
- (b) If required by the Principal, OpCo must:
  - (i) procure that the Core Contractors or Significant Contractors which propose to deliver Non-Contestable Components provide; and
  - (ii) use best endeavours to procure that any other OpCo Contractor or other proposed contractor of OpCo which is proposed to deliver any Non-Contestable Components provides, the Principal with full access to internal cost estimation, programming, contingency and risk information used by OpCo or any OpCo Contractor for their own purposes in relation to:
    - (iii) the Non-Contestable Component(s), and
    - (iv) OpCo's Activities to the extent relevant to the Non-Contestable Component(s) (to the extent the Principal reasonably considers the information relevant to its assessment of the impacts of the Extension and such information is reasonably available to it).
- (c) OpCo must:
  - (i) procure that each Core Contractor or Significant Contractor which proposes to deliver a Non-Contestable Component allows; and
  - (ii) use best endeavours to procure that any other OpCo Contractor or any other proposed contractor of OpCo allows, the Principal and its nominees to review and undertake audits of all records and information held by OpCo to enable the Principal to verify OpCo's compliance with this Schedule 37 (*Extensions*).

## 8. Direct negotiation, discontinuation and termination

### 8.1 Negotiations with OpCo Contractors

- (a) The Principal may in its discretion and at any time and without limitation to any Extension Supply Direct Deed:
  - (i) negotiate directly with any OpCo Contractor in relation to an Extension (or any part or stage thereof); or
  - (ii) step-in at any time during the tender process to continue and close the tender process and negotiate directly with all relevant tenderer(s) or counterparty(s) to the exclusion of OpCo or that Significant Contractor (as applicable) in order to agree a contract with the Principal or the Principal's nominee for the supply of the relevant works, assets, systems, services or other deliverables required in respect of the Extension by the OpCo Contractor to the Principal or the Principal's nominee.
- (b) OpCo must provide any reasonable assistance required by the Principal in its negotiations with OpCo Contractors.
- (c) If the Principal exercises its step-in rights pursuant to clause 8.1(a)(ii), the works performed by the relevant tenderer(s) or counterparty(s) will become Principal Extension Components.



## 8.2 Right to terminate

- (a) The Principal may terminate this deed pursuant to clause 49.7 of the Operative Provisions if:
  - (i) in the Principal's view, it is unlikely that the parties will be able to reach agreement on any matters that are the subject of this Schedule 37 (*Extensions*); or
  - (ii) in the Principal's absolute discretion, it is necessary to do so in order to achieve the Principal's objectives in respect of an Extension and the Extended SMWSA.
- (b) This clause 8.2 does not in any way limit the Principal's rights under clause 49.5 of the Operative Provisions.

## 8.3 Right to discontinue

Without limitation to clause 7.1(a)(v), the Principal may at its discretion by notice to OpCo at any time discontinue any processes under this Schedule 37 (*Extensions*) or any negotiations with OpCo in relation to an Extension. Without in any way limiting its rights under this clause, the Principal may exercise this right in the event that:

- (a) in the Principal's absolute discretion, it is necessary to do so in order to achieve the Principal's objectives in respect of an Extension and the Extended SMWSA;
- (b) the progress of or outcome of the processes or negotiations with OpCo, or OpCo's overall approach to those processes or negotiations, are, in the view of the Principal, unsatisfactory;
- (c) OpCo fails to achieve Completion by the Date for Completion; or
- (d) OpCo's operation of Sydney Metro – Western Sydney Airport is, in view of the Principal, unsatisfactory.

Any exercise by the Principal of a right under this clause 8.3 does not affect the Principal's rights under clause 8.1.

## 9. Costs

### 9.1 General

Other than as set out in this clause 9, OpCo will be responsible for its own costs and expenses incurred with respect to compliance with its obligations under this Schedule 37 (*Extensions*) and will have no entitlement to make any Claim against the Principal with respect to any such costs.

### 9.2 RFI Costs

- (a) Subject to and in accordance with this clause 9.2, the Principal will reimburse OpCo any RFI Costs on a monthly basis or as otherwise agreed by the parties.
- (b) Following receipt of an RFI, OpCo may notify the Principal that it will incur RFI Costs (except to the extent that those RFI Costs are costs of OpCo that would be incurred in the course of performing the Operations Activities or otherwise in the ordinary course of OpCo's business) in complying with its obligations under clause 3.1 in respect of that RFI.
- (c) If OpCo notifies the Principal in accordance with clause 9.2(b), the Principal may:
  - (i) ask OpCo to provide an estimate of the RFI Costs that OpCo will incur in complying with its obligations under clause 3.1 in respect of any RFI, following which OpCo must, at its cost, promptly provide that estimate calculated in accordance with this clause 9.2 together with supporting documentation; or

- (ii) withdraw the RFI.
- (d) The Principal may, in its absolute discretion:
  - (i) approve or reject any estimate of RFI Costs provided by OpCo; or
  - (ii) request further information in respect of an estimate of RFI Costs, in which case OpCo must procure that the relevant information is provided to the Principal promptly and this clause 9.2(d) will re-apply.
- (e) In respect of any RFI, OpCo must provide to the Principal the information requested as soon as practicable after:
  - (i) receiving the RFI from the Principal; or
  - (ii) if the Principal asks OpCo to provide an estimate of the RFI Costs in respect of the RFI in accordance with clause 9.2(c)(i), the Principal has given its written approval to OpCo under clause 9.2(d)(i) for OpCo to incur RFI Costs in respect of that RFI.
- (f) At the request of either party, OpCo and the Principal will meet to discuss the information provided by OpCo under clause 9.2(e).
- (g) If the Principal has given its written approval to OpCo for OpCo to incur RFI Costs in respect of the preparation of information requested by the Principal under clause 3.1(b), OpCo will, subject to clause 9.2(h), be entitled to those RFI Costs which are reasonably and properly incurred by OpCo in preparing the information requested but capped at the amount of any estimate provided by OpCo under clause 9.2(c)(i) and approved by the Principal under clause 9.2(d)(i) (or such higher amount as the Principal may approve in writing).
- (h) The RFI Costs incurred by OpCo in preparing any information referred to in clause 3.1(b)(i) and clause 3.1(b)(ii) (and any estimate provided by OpCo under clause 9.2(c)) must:
  - (i) where any aspect of the preparation of the response to the RFI involves any works, activities, items or personnel that are substantially the same as or similar to any works, activities, items or personnel contained in the Schedule of Rates or any Significant Contract or Nominated Subcontract (as applicable), be based on prices, rates or unit costs (as applicable) that are at least as favourable to the Principal as those included in the Schedule of Rates or the relevant Significant Contract or Nominated Subcontract (as applicable); and
  - (ii) not include any margin (including any profit or costs for on-site and off-site overheads, administration or corporate expenses).
- (i) In consideration for the Principal agreeing to reimburse OpCo its RFI Costs in accordance with this clause 9.2, OpCo will use its best endeavours to minimise such costs.

### 9.3 Design Costs

The Principal will reimburse OpCo or the relevant Core Contractor or Significant Contractor the Design Costs in accordance with the relevant contract for the performance of design and technical advisory services entered into by the Principal and OpCo or the relevant Significant Contractor pursuant to clause 2.1(b).

### 9.4 OpCo Extension Proposal Costs

- (a) OpCo must, as soon as practicable after receipt of a Notice of Proposed Extension, provide the Principal with its proposed OpCo Extension Proposal Costs for the preparation of an Extension Proposal (assuming for these purposes only that the Principal proceeds to issue an Extension Proposal Request following the Notice of Proposed Extension), other than in respect of any:
  - (i) RFI Costs, which are to be dealt with pursuant to clause 9.2; and

- (ii) Design Costs, which are to be dealt with pursuant to clause 9.3.
- (b) OpCo's proposed OpCo Extension Proposal Costs must:
  - (i) reflect:
    - (A) a sharing of risk between OpCo and the Principal; and
    - (B) any matters set out in the Notice of Proposed Extension or discussed between the parties in accordance with either or both of clauses 4.2 and 4.3;
  - (ii) be an estimate of the actual incremental costs that will be reasonably and properly incurred by OpCo in preparing the Extension Proposal;
  - (iii) include, as relevant to the scope of the proposed Extension, fixed prices or capped prices (as directed by the Principal) for:
    - (A) design and other technical work to prepare the delivery elements of the Extension Proposal;
    - (B) work to prepare the operations and maintenance elements of the Extension Proposal; and
    - (C) work to prepare, as relevant to the scope of the proposed Extension, the financing elements of the Extension Proposal (if any), specifically identifying any assumptions regarding the OpCo Extension Proposal Cost and process for response and development of the Extension Proposal (including with a supporting assumption book explaining in sufficient detail the basis for, and reasonableness of, the prices provided);
  - (iv) where any aspect of the preparation of an Extension Proposal would involve any works, activities, items or personnel that are substantially the same as or similar to any works, activities, items or personnel contained in the Schedule of Rates, any Significant Contract or Nominated Subcontract (as applicable), be based on prices, rates or unit costs (as applicable) that are at least as favourable to the Principal as those included in the Schedule of Rates, or as favourable to OpCo as those included in the relevant Significant Contract or Nominated Subcontract (as applicable);
  - (v) not include an amount on account of margin (including any profit or costs for on-site and off-site overheads, administration or corporate expenses);
  - (vi) separately identify any related entity costs together with supporting documentation demonstrating that those costs are fair and reasonable and reflect commercial arm's length arrangements;
  - (vii) set out a detailed breakdown of the costs and time allowed to prepare the Extension Proposal including:
    - (A) if the Extension Proposal is to be prepared in parts or stages, a breakdown of the costs to be incurred in respect of each part or stage; and
    - (B) a breakdown of the costs of each professional service provider engaged by OpCo in accordance with clause 2.2;
  - (viii) be supported by a detailed project plan and organisation structure indicating the major phases, components, tasks and resource commitment both internal and external to a level of detail sufficient to allow a comprehensive understanding of the formulation of the proposed OpCo Extension Proposal Costs;
  - (ix) include a payment profile for payment by the Principal which reflects a sharing of risk between OpCo and the Principal (for example, payments only being

- required to be made by the Principal if the milestone applicable to that payment has been satisfied); and
- (x) comply with clause 9.5 (to the extent OpCo's proposed OpCo Extension Proposal Costs include any such amounts).
  - (c) To the extent it is able to do so, the Principal will provide OpCo with any further details of the OpCo Extension Components reasonably requested by OpCo to assist in determining the OpCo Extension Proposal Costs.
  - (d) Within 20 Business Days of receipt of OpCo's proposed OpCo Extension Proposal Costs pursuant to clause 9.4(a) (or such longer period as the Principal reasonably requires), the Principal's Representative must advise OpCo whether:
    - (i) the Principal accepts OpCo's proposed OpCo Extension Proposal Costs, in which case OpCo must, if the Principal issues an Extension Proposal Request following the Notice of Proposed Extension, prepare and submit the Extension Proposal in accordance with clause 6; or
    - (ii) the Principal does not accept OpCo's proposed OpCo Extension Proposal Costs, in which case the Principal may:
      - (A) suggest an alternative amount as the OpCo Extension Proposal Costs;
      - (B) propose a different payment profile for payment by the Principal;
      - (C) require OpCo to submit a further proposal (incorporating alterations or refinements to address any feedback from the Principal), in which case this clause 9.4(d) will reapply; or
      - (D) inform OpCo that it does not wish to take further steps in relation to the Notice of Proposed Extension.
  - (e) If the Principal gives OpCo a notice in accordance with clause 9.4(d)(ii)(A) or 9.4(d)(ii)(B), the parties must meet and use their reasonable endeavours to agree the alternative amount as the OpCo Extension Proposal Costs or the payment profile (as applicable).
  - (f) Subject to clause 9.4(g), OpCo will be entitled to reimbursement of the OpCo Extension Proposal Costs incurred by OpCo (with no multiplier) in accordance with the payment profile:
    - (i) but only if:
      - (A) OpCo has submitted an Extension Proposal in response to each Extension Proposal Request issued by the Principal in respect of the proposed Extension;
      - (B) OpCo has complied with the requirements of this Schedule 37 (*Extensions*) in all material respects;
      - (C) the Extension Proposal meets the intent and requirements of the Extension Proposal Request;
      - (D) the Principal is satisfied (acting reasonably) that the costs incurred by OpCo are verifiable and reasonably and properly incurred in accordance with this clause 9.4; and
      - (E) either
        - (I) contractual close and financial close (if applicable) has been achieved; or
        - (II) OpCo has satisfied a milestone for payment proposed under clause 9.4(b)(ix) and approved by the Principal under clause 9.4(d)

- (ii) capped at the amount of any OpCo Extension Proposal Costs proposal approved by the Principal under clause 9.4(d)(i) or agreed by the parties under clause 9.4(e) (or such higher amount as the Principal may, acting reasonably, approve) including in respect of each relevant milestone payment (if any).
- (g) If the Principal varies the scope of a proposed Extension in accordance with this Schedule 37 (*Extensions*):
  - (i) the Principal will also request that OpCo revise its proposed or accepted OpCo Extension Proposal Costs to reflect the varied scope;
  - (ii) OpCo must promptly provide the Principal with its revised proposed OpCo Extension Proposal Costs to apply from the date of the scope of the proposed Extension being varied (whether or not an Extension Proposal has been submitted), which must comply with clause 9.4(b); and
  - (iii) within 10 Business Days of receipt of OpCo's proposed revised OpCo Extension Proposal Costs pursuant to clause 9.4(g)(ii) (or such longer period as the Principal reasonably requires), the Principal's Representative must advise OpCo whether:
    - (A) the Principal accepts OpCo's proposed revised OpCo Extension Proposal Costs, in which case clause 9.4(f) will apply in respect of those revised OpCo Extension Proposal Costs; or
    - (B) the Principal does not accept OpCo's proposed revised OpCo Extension Proposal Costs, in which case the parties must meet and use their reasonable endeavours to agree the alternative amount as the OpCo Extension Proposal Costs and the associated payment profile, and clause 9.4(f) will apply in respect of the agreed revised OpCo Extension Proposal Costs.

## 9.5 Costs of professional service providers

- (a) Without limitation to clause 9.4, the Principal will only be responsible for the costs of a professional service provider engaged by OpCo as an OpCo Extension Proposal Cost if:
  - (i) the contract or terms of engagement, including the contract price or agreed fee, has been approved by the Principal in accordance with clause 2.2(b);
  - (ii) the costs have been reasonably and properly incurred (and in the case of costs of any financial adviser, are incurred against a scope of work agreed by the Principal); and
  - (iii) any increase in the original contract price or agreed fee (as approved by the Principal) has been approved by the Principal in writing.
- (b) In respect of any part of OpCo Extension Proposal Costs which represents the Financial Adviser Fee:
  - (i) determination as to the amount of the performance element payable as part of the Financial Adviser Fee will be at the Principal's absolute discretion; and
  - (ii) any Financial Adviser Fee payable by OpCo to the financial adviser will be paid out of the proceeds of the first drawdown of the financing of the OpCo Extension Components.

## 9.6 Verification of Costs

Without limiting clause 7.2, the Principal may, at any time, request:

- (a) OpCo to provide to the Principal promptly after the Principal's request:
  - (i) documentation reasonably required by the Principal to enable the Principal to:

- (A) assess the OpCo Extension Proposal Costs incurred or committed to be incurred at the date of the Principal's request; or
  - (B) confirm that there is no double counting consistent with clause 9.7; or
- (ii) an estimate of the OpCo Extension Proposal Costs incurred prior to the date of the Principal's request; and
- (b) an audit of OpCo's records on an Open Book Basis to enable the Principal to assess the OpCo Extension Proposal Costs incurred prior to the date of the Principal's request.

## **9.7 No double counting**

OpCo will not be entitled to claim the same element of a cost twice and will not be entitled to claim any cost to the extent the Principal has already made payment to OpCo or any of its Associates under this deed or under a separate arrangement with OpCo or any of its Associates.

## **9.8 No escalation or indexation**

Except as expressly provided in this Schedule 37 (*Extensions*), costs and amounts under this Schedule 37 (*Extensions*) are not subject to any escalation or indexation.

# **10. Principal Procured Components**

## **10.1 Cooperation with Principal's tender process**

- (a) If the Principal engages in a tender process for any Principal Procured Component, OpCo must provide the Principal with any assistance the Principal may reasonably require relating to the development of any tender documentation for the Principal Procured Components.
- (b) If required by the Principal, OpCo must:
  - (i) attend meetings with the Principal or its representatives in relation to preparation of the tender documentation;
  - (ii) attend meetings with tenderers;
  - (iii) assist the Principal in answering questions submitted by tenderers;
  - (iv) assist the Principal in assessing all or any specified part of tenders received;
  - (v) work with the Principal and the tenderers to develop a preliminary site access schedule and other integration elements;
  - (vi) provide any other assistance reasonably requested by the Principal in relation to the preparation for and conduct of the tender process; and
  - (vii) enter into and actively participate in good faith discussions with the Principal and any Extension Interface Contractors regarding alternative project procurement methods, including any alliancing or partnering arrangements.
- (c) OpCo must not (nor permit its Associates to) tender for or carry out any element of the Principal Procured Components (including as a subcontractor), except where:
  - (i) the express written approval of the Principal's Representative is obtained; and
  - (ii) OpCo and its Associates comply with any conditions that may be imposed by the Principal's Representative in respect of their involvement in a tender for, and the carrying out of, the Principal Procured Components.

## 10.2 OpCo interfaces with Principal Extension Components

- (a) To the extent that the Extension will involve OpCo accepting risk and responsibility for the performance, operation and/or maintenance of a Principal Extension Component or other matters referred to in clause 10.2(b)(i) or clause 10.2(b)(ii), the Principal will provide OpCo (and any relevant Significant Contractor) with:
  - (i) in respect of any Principal Procured Component, design review and other associated rights; and
  - (ii) in respect of any Pre-Existing Infrastructure (Retained Condition), condition review rights.
- (b) To the extent required by the Principal, OpCo will:
  - (i) enter into arrangements addressing the interface, integration and coordination of the Principal Extension Components with the OpCo Extension Components, and any activities to be performed by Extension Interface Contractors in delivering such Principal Extension Components, on such terms as reasonably required by the Principal or otherwise developed between the Principal and OpCo;
  - (ii) enter into arrangements addressing the interface, integration and coordination of any Pre-Existing Infrastructure (Retained Condition) with the OpCo Extension Components, on such terms as reasonably required by the Principal or otherwise developed between the Principal and OpCo;
  - (iii) to the extent applicable to the scope of the Extension, work with the Principal, Extension Interface Contractors and any relevant other parties (as nominated by the Principal) to agree the testing and commissioning strategy for the proposed Extension including how any Principal Extension Components will be integrated with each other and/or with Sydney Metro – Western Sydney Airport; and
  - (iv) in respect of a Handover of Operations, work with the Principal and Extension Interface Contractors (if required by the Principal) to agree arrangements in respect of the transition of operational responsibility for the SSTOM Works, other than the InfraMaintainer Scope, from OpCo to a Successor Operator.

## 11. Procurement of OpCo Extension components

### 11.1 Non-Contestable Components

- (a) Subject to clause 11.3, OpCo will lead the procurement of each Non-Contestable Component, with such input and structured involvement from the Principal as the Principal may direct prior to commencement of or at any time during the procurement of the relevant Non-Contestable Component.
- (b) OpCo must seek the Principal's written approval prior to providing the relevant party with a request for proposal (or equivalent), including the initial form of contract, for the relevant Non-Contestable Component.
- (c) Subject to clause 13.3, in procuring a Non-Contestable Component:
  - (i) the Principal and OpCo must work together to agree the scope of works, the technical requirements and package design, and the commercial and financial terms (including a target and pre-tender estimate of the contract price) acceptable to the parties; and
  - (ii) OpCo must:
    - (A) comply with Good Industry Practice;

- (B) comply with the reasonable requirements of the Principal, as advised by the Principal from time to time;
  - (C) liaise, cooperate and provide all reasonable assistance and information as required by the Principal;
  - (D) provide the Principal with reasonable prior notice of, and, if requested by the Principal, allow the Principal to attend and participate in, meetings with the relevant Significant Contractor; and
  - (E) allow the Principal to attend and participate in evaluation meetings.
- (d) During procurement of a Non-Contestable Component, OpCo must:
- (i) enforce its rights in respect of procurement of that Non-Contestable Component (including the pricing of that Non-Contestable Component) under the relevant Extension Supply Direct Deed;
  - (ii) require that procurement of the Non-Contestable Component be on an Open Book Basis in compliance with clause 7.2;
  - (iii) provide such information concerning the Extension (as relevant) as the parties agree to ensure the relevant Significant Contractor is fully informed of the opportunity;
  - (iv) impose a duty of confidentiality on the relevant Significant Contractor;
  - (v) ensure the Principal is able to exercise the step-in right referred to in clause 8.1(a)(ii);
  - (vi) require the relevant Significant Contractor to acknowledge and comply with any subcontracting requirements agreed by the parties; and
  - (vii) seek contractual terms with the relevant Core Contractor or Significant Contractor which:
    - (A) are consistent with the terms (including risk allocation) contained in the draft Principal Extension Documents provided by the Principal in the relevant Extension Proposal Request (as amended or replaced by any addenda pursuant to clause 5.2(b)(v)); and
    - (B) include a step-in right in favour of the Principal (or its nominee) and a side deed in respect of the contract between the relevant Core Contractor and Significant Contractor, the Principal and OpCo and/or the relevant Core Contractor (as applicable).
- (e) As part of the process set out in clause 11.1(d) above, OpCo must procure that the relevant Core Contractor or Significant Contractor provides the parties an offer for the supply of the Non-Contestable Component for the Extension (the **NCC Offer**) which:
- (i) contains details of the contract price, calculated in accordance with this Schedule 37 (*Extensions*) and the relevant Extension Supply Direct Deed;
  - (ii) accepts the terms referred to in paragraph 11.1(d)(vii) above or clearly identifies any departures, including the scope of works, technical requirements and commercial and financial terms together with a clear technical, commercial, financial or legal explanation for the departure;
  - (iii) addresses the financial capacity of the Core Contractor or Significant Contractor;
  - (iv) demonstrates that the Core Contractor or Significant Contractor will be able to satisfy the relevant scope, performance and technical requirements under the contract; and



- (v) acknowledges that the contract involves the sole source and non-competitive tendering of the relevant Non-Contestable Component for the Extension and demonstrates how the offer will provide value for money for the Principal.
- (f) The Principal must, within 20 Business Days of the date on which the NCC Offer was provided to the Principal (or such longer period as the Principal reasonably requires), review the NCC Offer and provide OpCo with a notice:
  - (i) requesting further information in respect of the NCC Offer, including any pricing, costing and other information, in which case OpCo must procure that the relevant Core Contractor or Significant Contractor provides such information;
  - (ii) approving the terms of the NCC Offer, in which case OpCo or the relevant Core Contractor (as applicable) must enter into the contract for the Non-Contestable Component in accordance with clause 11.1(g), provided that the Principal will not approve under this clause any departure to the terms referred to in paragraph 11.1(d)(vii) above, without the agreement of OpCo (acting reasonably); or
  - (iii) providing detailed reasons as to why some or all of the terms of the NCC Offer are unacceptable, including an explanation why the relevant component(s) of the NCC Offer are unacceptable and the parties must proceed in accordance with clause 11.1(h).
- (g) If the Principal approves the NCC Offer in accordance with clause 11.1(f)(ii) initially or subsequently, OpCo or the relevant Core Contractor (as applicable) must enter into the contract for the Non-Contestable Component with the relevant Core Contractor or Significant Contractor on the basis of:
  - (i) the form of contract for the Non-Contestable Component approved by the Principal in writing; and
  - (ii) the contract price approved by the Principal in writing.
- (h) If the Principal rejects the NCC Offer in accordance with clause 11.1(f)(iii), OpCo must negotiate with the relevant Core Contractor or Significant Contractor in respect of those matters which the Principal has identified as being unacceptable in order to procure a revised NCC Offer, in which case the process in clause 11.1(f) is reapplied until the Principal approves the NCC Offer or discontinues the procurement under clause 11.1(i).
- (i) The Principal may, at any time and in its absolute discretion, direct OpCo to discontinue any procurement under this clause 11.1.

## 11.2 Contestable Components

- (a) Subject to clause 11.3, OpCo will lead the procurement of each Contestable Component, with input and structured involvement from the Principal, in accordance with the process set out in this clause 11.2.
- (b) Without limiting OpCo's obligations under clause 7.2, clause 6.3 and this clause 11.2, OpCo must demonstrate to the Principal's Representative's reasonable satisfaction that an auditable and competitive tender process is being or has been carried out in respect of each Contestable Component.
- (c) Unless otherwise agreed with the Principal, when letting any contracts and works packages for any Contestable Components (or packages of Contestable Components), OpCo must:
  - (i) comply with the Principal's requirements as advised by the Principal from time to time;
  - (ii) comply with clause 61 of the Operative Provisions in relation to the contracts and works packages; and

- (iii) allow the Principal to:
  - (A) be present at the opening of any tender documentation;
  - (B) attend meetings with tenderers; and
  - (C) participate in all tender evaluations.
- (d) The Principal will advise OpCo in writing which of the contracts or works packages to be let by or on behalf of OpCo for any Contestable Components (or packages of Contestable Components) will require the Principal's prior approval before being let.
- (e) In respect of the contracts to which clause 11.1(d) applies:
  - (i) before issuing a request for tender, OpCo must provide a list of its preferred tenderers to the Principal's Representative, which:
    - (A) must be experienced and capable contractors for the relevant Contestable Component; and
    - (B) may include the existing OpCo Contractors for the relevant Contestable Component but otherwise must not (without the Principal's consent) include:
      - (1) any Associate of OpCo; or
      - (2) any Related Body Corporate to any other of the service providers asked by OpCo to submit an offer;
  - (ii) the Principal's Representative may review and either approve or reject any or all of the preferred tenderers (acting reasonably);
  - (iii) OpCo must provide the Principal with any request for tender that OpCo proposes to issue to prospective tenderers;
  - (iv) any request for tender issued by OpCo for any Contestable Component (or package of Contestable Components) must:
    - (A) provide such information concerning the Extension, the relevant Contestable Component (or package of Contestable Components) and the project agreements relevant to the Extension as the Principal reasonably requires to ensure the tenderers are fully informed of the opportunity tendered;
    - (B) impose a duty of confidentiality on tenderers;
    - (C) ensure the Principal is able to exercise the step-in right referred to in clause 8.1(a)(ii);
    - (D) require tenders to be conforming and irrevocable for a period of six months (or such other period as required for the Principal and OpCo to reach contractual close on the OpCo Extension Components);
    - (E) require tenderers to acknowledge and comply with any subcontracting requirements set out in this deed; and
    - (F) require tenderers to agree to contractual terms which:
      - (I) are consistent with the commercial terms (including risk allocation) contained in the draft Principal Extension Documents (or equivalent) provided by the Principal in the relevant Extension Proposal Request; and
      - (II) include a step-in right in favour of the Principal (or its nominee) and a side deed in respect of the contract between the relevant Significant Contractor, the Principal and OpCo and/or the relevant Core Contractor (as applicable).

or to clearly identify any departures from the form of the contract, including the scope of works, technical requirements and commercial and financial terms together with a clear technical, commercial, financial or legal explanation for the departure;

- (v) OpCo must procure offers in response to the request for tender by competitive tender from at least three preferred tenderers (unless otherwise agreed by the Principal having regard to the scope and nature of the relevant tender package) who have not been rejected by the Principal's Representative unless there are not three suitably qualified market participants who are willing to submit a tender, in which case to satisfy this requirement OpCo must:
  - (A) procure offers from as many suitably qualified market participants as reasonably possible;
  - (B) provide evidence to the satisfaction of the Principal's Representative (acting reasonably) of the limited market for works of the scope and nature equivalent to the relevant tender package; and
  - (C) co-ordinate and co-operate with the Principal's Representative to overcome and mitigate the impacts arising from the lack of competition for the relevant tender package;
- (vi) each offer obtained under clause 11.1(e)(v) must address the following criteria:
  - (A) details of the contract price, which reflects a competitive pricing of the relevant Contestable Component in the then current market;
  - (B) current capacity and capability of the tenderer to carry out or provide the relevant Contestable Component, including current workload and resources plans, key people, subcontractors and consultants;
  - (C) previous performance by the tenderer of works or activities similar to the relevant Contestable Component;
  - (D) financial capacity of the tenderer; and
  - (E) demonstration that the tenderer will be able to meet the relevant scope, performance and technical requirements;
- (vii) within 20 Business Days (or such other period as is agreed by the Principal's Representative, acting reasonably) after the closing date for each invitation to tender, OpCo must provide the Principal's Representative with a copy of all tender documents received together with a preliminary report regarding those tenders, containing a recommendation as to which tenderer OpCo considers should be selected together with clear reasoning for making that recommendation, including an explanation of why that tender represents best value for money;
- (viii) the Principal's Representative may, within 15 Business Days of receiving the recommendation under clause 11.1(e)(vii), give OpCo written notice of any concerns it has with that recommendation;
- (ix) if the Principal gives notice under clause 11.1(e)(viii), OpCo must not allow a contract in relation to the tender to be let until any concern raised by the Principal has been resolved to the satisfaction of the Principal (acting reasonably);
- (x) if the Principal's Representative approves OpCo's recommendation or its concerns regarding the recommendation have been resolved, OpCo must enter into a contract with the approved tenderer on the basis of:
  - (A) terms that are consistent with the commercial terms (including risk allocation) and with the scope of work and performance and technical requirements contained in the draft Principal Extension Documents (or

- equivalent) provided by the Principal in the relevant Extension Proposal Request; and
- (B) the subcontract price approved in writing by the Principal's Representative; and
- (xi) OpCo must keep the Principal's Representative fully informed of the progress of each tender process and give the Principal's Representative such details of the tender documents and tenders as the Principal's Representative may require.
- (f) The Principal may, at any time and in its absolute discretion, direct OpCo to discontinue any procurement under this clause 11.1.

### 11.3 Joint Procurement

- (a) The Principal may, in its absolute discretion, by written notice to OpCo require that the procurement process for any OpCo Extension Component (regardless of whether it is a Contestable Component or a Non-Contestable Component) pursuant to clause 11.1 or (as applicable) provide a role for the Principal in procurement, whether jointly with OpCo as the leader of the procurement or in some other context as required by the Principal (each a **Joint Procurement**).
- (b) OpCo acknowledges that the objective of a Joint Procurement is to:
  - (i) obtain a "Best for Sydney Metro Project" procurement solution incorporating:
    - (A) best overall value for money on a whole of life basis;
    - (B) compliance with the Principal's objectives for the Extension;
    - (C) compliance with scope and performance requirements and quality in accordance with a high performance customer focused automated metro system;
    - (D) robust design, technical and delivery solutions;
    - (E) reliable and proven systems;
    - (F) program certainty;
    - (G) operational confidence;
    - (H) safety; and
    - (I) market competitiveness and innovation in the bidding process for the works, activities or other things the subject of the Joint Procurement;
  - (ii) promote market confidence and competitive bidding; and
  - (iii) specifically promote confidence in the market that there is a "level playing field" and encourage entities not forming part of the OpCo Group, or parties who are not a major subcontractor to OpCo, to compete for the work.
- (c) The Principal may require that a Joint Procurement is conducted in accordance with such procedures as notified by the Principal to OpCo.
- (d) The Principal may, at any time and in its absolute discretion, discontinue its role in any Joint Procurement.

## 12. Finance

### 12.1 Arranging finance for an OpCo Extension Component

- (a) If the Principal, in its Extension Proposal Request or subsequently, requires OpCo to finance the OpCo Extension Components (or any part of them), OpCo must:

- (i) use all prudent and commercial endeavours to procure finance for the relevant OpCo Extension Components, or part thereof, upon terms which:
  - (A) optimise the levels of debt and equity in order to minimise the average cost of capital for the project, taking into account:
    - (I) the availability of financing in the market at the time;
    - (II) the levels of debt and equity achieved in similar transactions; and
    - (III) the risk allocation that is proposed for the Extension;
  - (B) are the most favourable terms available from existing or potential financiers (provided that, if clause 12.1(c) applies, this clause 12.1(i)(B) does not require OpCo to source equity at a return which is lower than that contemplated under clause 12.1(c)); and
  - (C) are acceptable to the Principal's Representative; and
- (ii) provide the Principal and its nominees with visibility over, and input into, any debt raising and refinancing process and/or equity tender process, including the right to:
  - (A) review, comment and approve all plans, documentation and information relating to any such process (with such review and comment to be undertaken promptly and approval not to be unreasonably delayed or withheld); and
  - (B) attend such meetings with potential Debt Financiers when it is agreed between OpCo and the Principal.
- (b) The Principal reserves the right to finance or arrange finance of the OpCo Extension Components (or any part of them).

## 12.2 Equity for OpCo Extension Components financed by OpCo

The parties acknowledge and agree that if the Principal requires OpCo to finance the OpCo Extension Components (or any part of them) in accordance with clause 12.1(a) then:

- (a) as soon as practicable after receiving an Extension Proposal Request:
  - (i) the Principal and OpCo must work together to agree a strategy for dealing with equity; and
  - (ii) if any of the Equity Investors wish to exit their equity investment in Sydney Metro – Western Sydney Airport, OpCo must submit its proposed exit strategy for those Equity Investors, which:
    - (A) may include a managed sale within the remaining equity group, and if so, must clearly indicate any benefits and financial impact (**Friction Costs**) (if any) to the Principal; and
    - (B) must include the agreed binding equity commitment from the remaining Equity Investors;
- (b) Friction Costs (if any) associated with any proposed exit strategy will:
  - (i) only be payable at the Principal's discretion; and

- (ii) be limited to the difference between:
  - (A) the fixed sale price that the exiting Equity Investor will receive on exiting at financial close or, if financial close does not apply to the Extension, contractual close of the Extension; and
  - (B) the price willing to be paid by the remaining Equity Investors to take up the exiting Equity Investor's equity portion; and
- (c) if the outcome of OpCo's proposed exit strategy for the exiting Equity Investors results in an equity solution that is unsatisfactory to the Principal as a result of:
  - (i) the Friction Costs not being acceptable to the Principal; or
  - (ii) the level of equity held in aggregate by any Equity Investor not being acceptable to the Principal; or
  - (iii) the terms, conditions and/or pricing of changes to equity commitments being unacceptable to the Principal,

(each as determined by the Principal in its absolute discretion), then the Principal may direct OpCo to undertake a competitive market tender or such other process as the Principal agrees in its absolute discretion for exiting the relevant equity.

### 12.3 Right to request Refinancing

- (a) The Principal may:
  - (i) as part of an Extension Proposal Request issued under clause 5; or
  - (ii) by separate notice in writing to OpCo,

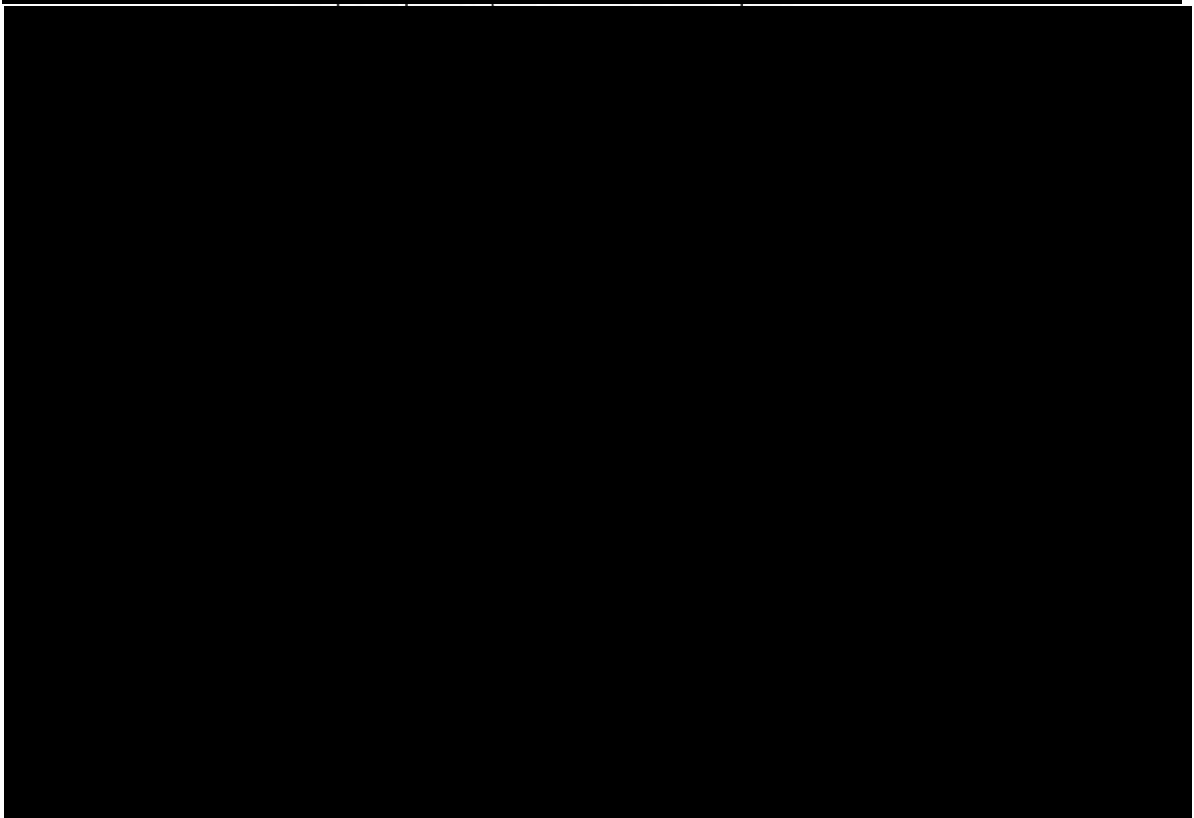
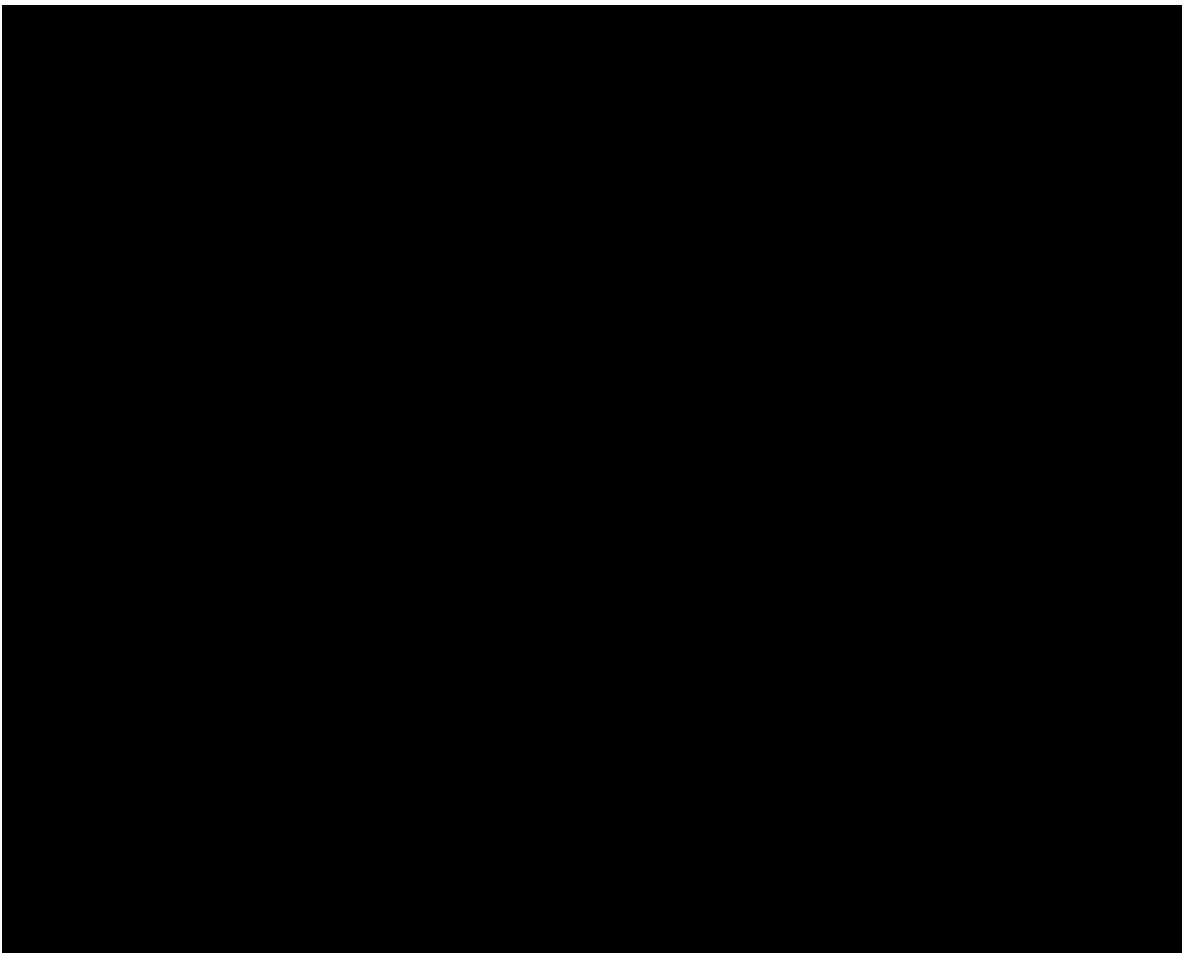
require OpCo to request terms for a potential Refinancing of OpCo's existing Debt Financing Facilities that is:

  - (iii) standalone, though in connection with either a potential Core UTO Scope Extension, an LES Extension or a Handover of Operations, or any specific OpCo Extension Components, that will be financed by the Principal; or
  - (iv) as part of the financing by OpCo of any OpCo Extension Components for a Core UTO Scope Extension,

from potential financiers for that Refinancing (**Refinancing Request Notice**).
- (b) The Principal and OpCo must meet within 20 Business Days of OpCo receiving the relevant Extension Proposal Request or Refinancing Request Notice (as applicable) to discuss the Refinancing Request Notice and the evidence available to both parties about the availability and terms of financing (except to the extent already considered by the parties in the course of the processes described in clause 4).
- (c) The Principal may, in its absolute discretion, withdraw a Refinancing Request Notice at any time after issuing the Refinancing Request Notice by giving notice to OpCo. If a Refinancing Request Notice forms part of an Extension Proposal Request, the withdrawal of the Refinancing Request Notice does not affect the other parts of that Extension Proposal Request.
- (d) Upon the issue of a Refinancing Request Notice, OpCo must:
  - (i) request potential financiers provide terms for a potential Refinancing, including any associated novation of existing interest hedges that are in place, if required (the **Refinancing Request**);
  - (ii) act promptly, diligently and in good faith with respect to the Refinancing Request;
  - (iii) use all reasonable endeavours to obtain the most favourable terms from potential financiers for a potential Refinancing (including any existing Debt

Financiers, in respect of their potential participation in the potential Refinancing and any exit from their participation under the Debt Financing Facilities); and

- (iv) following the receipt of all responses from all potential financiers to which the Refinancing Request was issued, either provide:
  - (A) full details of the proposed Refinancing to the Principal, including a financial model, the basis for the assumptions used in the financial model and evidence that the assumptions represent the most favourable available terms for the potential Refinancing; and
  - (B) initial drafts of any changes to this deed or the Principal Extension Documents required to give effect to the proposed Refinancing.
- (e) Following receipt of the information referred to in clause 12.3(d)(iv), the Principal may, at its absolute discretion:
  - (i) instruct OpCo to implement the proposed Refinancing;
  - (ii) instruct OpCo to discontinue the proposed Refinancing (in which case the Principal will also reimburse OpCo for the reasonable costs, including legal and financial adviser fees, incurred by OpCo in respect of the proposed Refinancing);
  - (iii) instruct OpCo to suspend the proposed Refinancing (in which case the Principal will reimburse OpCo for the reasonable costs, including legal and financial adviser fees, incurred by OpCo in respect of the proposed Refinancing up to the date of the suspension); or
  - (iv) notify OpCo that it wishes to amend the Refinancing Request Notice, providing full details of the proposed amendments, in which case clause 12.3(d) will reapply to the amended Refinancing Request Notice,and OpCo must use all reasonable endeavours to comply with the Principal's instructions.





## 13. General

### 13.1 Intellectual Property

OpCo grants to the Principal and its officers, employees, agents and advisers a permanent, perpetual, irrevocable, transferable, royalty free, non-exclusive licence to exercise, for the purpose of the Extension, all Intellectual Property comprised in or that relates to any information provided to the Principal in response to any request and in any Extension Proposal (whether owned by OpCo or any other person), which is not owned by the Principal in accordance with clause 2.1(d).

### 13.2 No obligation to review

- (a) The Principal does not assume or owe any duty of care to OpCo to review any documents or other material submitted by OpCo or any OpCo Contractor in relation to any proposed Extension for errors, omissions or compliance with this deed.
- (b) No review of, comments upon, or notice in respect of, or any failure to review, comment upon or give any notice in respect of, any documents or other material submitted by OpCo or any OpCo Contractor in relation to any proposed Extension will:
  - (i) relieve OpCo from, or alter or affect, OpCo's liabilities, obligations or responsibilities whether under this deed or otherwise according to Law; or
  - (ii) prejudice or limit the Principal's rights against OpCo whether under this deed or otherwise according to Law.

### 13.3 Probity

The Principal reserves the right to do any or all of the following:

- (a) engage a probity adviser or auditor to observe and review the process under this Schedule 37 (*Extensions*), including any negotiations and/or any tender process under this Schedule 37 (*Extensions*);
- (b) require OpCo to:
  - (i) engage a probity adviser or auditor in respect of relevant aspects of processes under this Schedule 37 (*Extensions*);

- (ii) procure that the probity adviser or auditor provides the Principal and OpCo with reports, updates and other information in respect of the conduct and probity of the relevant processes; and
- (c) require OpCo and any of its Associates (including any Significant Contractor proposed to be involved in discussions or negotiations in relation to, or to be provided with any documents in relation to, a proposed Extension) to enter into a probity and process deed (in the form provided by the Principal) prior to engaging with OpCo or the relevant Associate in relation to the proposed Extension.

#### **13.4 No Claim**

OpCo will not be entitled to make any Claim against the Principal arising out of or in connection with a failure by the Principal to exercise its rights under this Schedule 37 (*Extensions*) or a failure by the parties to reach an agreement.

#### **13.5 Breach by OpCo**

A failure by OpCo and the Principal to agree on any matters on which this Schedule 37 (*Extensions*) expressly requires agreement:

- (a) does not constitute an OpCo Event of Default; and
- (b) will not constitute a breach for the purposes of clauses 47.6 or 47.7 of the Operative Provisions.

## Appendix 1 – Requirements for Extension Proposal

### Part A – Content of Extension Proposal Requests

#### Part A1 – Mandatory matters for inclusion in Extension Proposal Request

##### 1. General

- 1.1 Identification of whether the Extension is a Core UTO Scope Extension, an LES Extension, will involve a Handover of Operations or another approach to the Extension.
- 1.2 Identification of the Contestable and Non-Contestable Components for the Extension (to the extent relevant to the Extension) including, in the case of a Core UTO Services Extension, any systems or components listed in in Appendix 4 that the Principal no longer considers (in accordance with the definition of 'Non-Contestable Component') to be Non-Contestable Components.
- 1.3 Identification of any Pre-Existing Infrastructure and any proposed Pre-Existing -Infrastructure Upgrade Scope.
- 1.4 Identification of the Principal Extension Components for the Extension.
- 1.5 The Principal's requirements for any OpCo Extension Components.
- 1.6 The Principal's requirements for management of integration:
  - (a) between any Principal Extension Components and any OpCo Extension Components for the Extension (further to and consistent with the provisions of clause 10.2); and
  - (b) with other relevant third parties.
- 1.7 The Principal's requirements and timetable for the preparation and submission of an Extension Proposal, taking into account:
  - (a) the size and complexity of the proposed Extension;
  - (b) the information required to be included in the Extension Proposal; and
  - (c) the outcomes of any discussions of the Extension Consultation Group or any interactive workshops held in accordance with clause 4.3.
- 1.8 Identification of the Principal's objectives for the Extension and for OpCo's role in it.

##### 2. Commercial

- 2.1 The Principal's proposed contractual structure for the delivery of the Extension and the OpCo Extension Components (or any options the Principal is considering in relation to such structure).
- 2.2 The Principal's draft commercial terms for the Extension, as described in clause 5.2.

#### Part A2 – Optional matters for inclusion in Extension Proposal Request

##### 3. Procurement and Delivery

- 3.1 The Principal's requirements for OpCo to procure any OpCo Extension Components under an alliance or early contractor involvement contract or another collaborative contracting model.

- 3.2 Details of any Pre-Priced Extension Components for which the Principal does not believe the relevant OpCo Extension Component Option Prices set out in Appendix 4 represent market value.
- 3.3 Identification of any Extension Components that the Principal, at that point in time, intends to be the subject of Joint Procurement.
- 3.4 An indicative delivery program for the proposed Extension, including an indication of anticipated timeframes for delivery of the OpCo Extension Components and any interfaces between any OpCo Extension Components and any parts of the Extension that the Principal proposes to have carried out by Extension Interface Contractors.
- 3.5 The Principal's requirements for the management and provision of design, construction, testing, commissioning, trial operations and completion of the Extension.
- 3.6 The Principal's requirements for the certification of the design, construction, testing, commissioning and completion of the Extension.
- 3.7 The Principal's requirements for any independent certifier to be jointly engaged by the parties (and any other persons nominated by the Principal).
- 3.8 Draft technical specifications relating to the OpCo Extension Components.
- 3.9 The Principal's reference design (to the extent available at the date of the Extension Proposal Request) for the proposed Extension.
- 3.10 Details of the land the Principal proposes to make available to OpCo with respect to the Extension.
- 3.11 Any studies, reports or similar material available to the Principal which the Principal proposes to provide as Information Documents.
- 3.12 The Principal's requirements for any project plans to be prepared by OpCo with respect to the proposed Extension.
- 3.13 The Principal's proposed strategy for obtaining planning approval with respect to the proposed Extension.
- 3.14 The Principal's requirements for OpCo to obtain any:
  - (a) additional Approvals; or
  - (b) amendments, modifications or variations to any Approval or OpCo's Accreditation.
- 3.15 The Principal's requirements for OpCo to manage any communications and community relations issues arising from the proposed Extension.
- 3.16 The Principal's requirements for the management of any tender process to be carried out by OpCo in relation to the proposed Extension.
- 3.17 The Principal's requirements to minimise the impact of the delivery of the proposed Extension on Sydney Metro – Western Sydney Airport and its customers.
- 3.18 In respect of any Pre-Existing Infrastructure, details of:
  - (a) any Pre-Existing Infrastructure Condition Assessments to be undertaken or results of any already undertaken;
  - (b) the Pre-Existing Infrastructure Information to be made available by the Principal; and
  - (c) the Principal's requirements to minimise the period between decommissioning of the Pre-Existing Infrastructure and Extension Completion.
- 3.19 Details of any interface arrangements that the Principal requires OpCo to enter into or comply with in respect of the proposed Extension, including with any Extension Interface Contractors (as referred to in clause 10.2), Authorities, relevant rail operators or other Rail Entities, or other third parties.

- 3.20 Any information the Principal requires from OpCo regarding the OpCo Extension Components or the Extension generally.

#### **4. Operations and Maintenance**

- 4.1 The Principal's requirements (if any) for OpCo to do any of the following:
- (a) maintain rolling stock, other rail systems, station systems and other infrastructure forming part of an Extension;
  - (b) provide services on the Extended SMWSA; or
  - (c) for a Handover of Operations, provide the InfraMaintainer Scope from the time of Extension Completion.
- 4.2 For a Core UTO Scope Extension or an LES Extension, the Principal's expectation of the extent of cost benefits, economies of scale and synergies which will arise from the combined operation and maintenance of Sydney Metro – Western Sydney Airport and the Extension.
- 4.3 Any requirements for updated operational modelling to be undertaken and provided by OpCo in relation to the proposed Extension.
- 4.4 The Principal's requirements for OpCo to update its systems and management plans to reflect the Extension and OpCo's proposed role in it (as per the scope referred to in item 4.1 above).

#### **5. Finance**

- 5.1 The Principal's requirements (if any) for OpCo to finance the OpCo Extension Components or any part of them.
- 5.2 The Principal's requirements (if any) for OpCo to obtain financier approvals or issue a Refinancing Request (as defined in clause 12.3(d)(i) in accordance with clause 12.3 in connection with the Extension.

#### **6. Costs**

- 6.1 Identification of which costs for OpCo Extension Components that the Principal believes can be benchmarked against costs available in the market for similar assets and services.
- 6.2 Details of the Principal's proposed manner of payment of the OpCo Extension Component Cost. This may include payment:
- (a) by a lump sum payment;
  - (b) by a schedule of lump sum milestone payments;
  - (c) by adjustment to the Service Payment; or
  - (d) by a combination of the above.

#### **7. Other commercial issues**

- 7.1 The Principal's requirements with respect to any intellectual property required for the proposed Extension.
- 7.2 The Principal's requirements with respect to any insurances to be taken out (whether through an existing or amended existing OpCo policy, or otherwise) with respect to the proposed Extension.
- 7.3 The Principal's requirements with respect to the principles, pricing and risk allocation for further extension or other augmentation of the Extended SMWSA.
- 7.4 Any other information considered relevant by the Principal.

## Part B – Requirements for Extension Proposal

### 1. Procurement and Delivery

- 1.1 Any changes which OpCo proposes to the Principal's proposed contractual structure for delivering the OpCo Extension Components, together with the reasons for the changes.
- 1.2 OpCo's response to the draft Principal Extension Documents, with a clear technical, commercial, financial or legal explanation for each departure (if any).
- 1.3 Any alternative options proposed by OpCo for delivering the OpCo Extension Components.
- 1.4 To the extent relevant for OpCo's role in the Extension, a delivery program identifying the staging of works and any requirements for possessions of any railways, including:
  - (a) Sydney Metro – Western Sydney Airport; and
  - (b) to the extent relevant, any Pre-Existing Infrastructure.
- 1.5 Any elements of the OpCo Extension Components which OpCo reasonably considers to be Non-Contestable Components:
  - (a) taking into account any opinion expressed by the Principal in the Extension Proposal Request with respect to systems or components listed in Appendix 4 that the Principal no longer considers to be Non-Contestable Components; and
  - (b) provided that OpCo may not identify any systems or components as Non-Contestable Components other than those listed in Appendix 4 as Non-Contestable Components.
- 1.6 OpCo's confirmation that it will deliver the OpCo Extension Components consistently with the specified requirements of the Principal.
- 1.7 OpCo's confirmation that:
  - (a) for a Core UTO Scope Extension, it accepts whole of life operation and maintenance responsibility and risk in respect of the Extended SMWSA (including the Extension); and
  - (b) for an LES Extension, it accepts whole of life operation and maintenance responsibility and risk in respect of the Extended SMWSA (including the Extension) subject only to any departures from this principle specifically identified in OpCo's response to the draft Principal Extension Documents.
- 1.8 Details of how OpCo will manage any interfaces with Extension Interface Contractors and, to the extent relevant for OpCo's role in the Extension, accept the handover of any works carried out by those Extension Interface Contractors and incorporate those works into OpCo's asset management activities and systems.
- 1.9 In respect of any Extension involving Pre-Existing Infrastructure:
  - (a) details of how OpCo will manage any interfaces with Pre-Existing Infrastructure and, to the extent relevant for OpCo's role in the Extension, accept the handover of this infrastructure and incorporate this infrastructure into OpCo's asset management activities and systems; and
  - (b) details of how OpCo will meet the Principal's requirements in relation to minimising the period between decommissioning of any Pre-Existing Infrastructure and Extension Completion.
- 1.10 A testing and commissioning strategy for the proposed Extension, including how any works forming part of the Extension (whether procured by OpCo or by the Principal) will be integrated with Sydney Metro – Western Sydney Airport. In respect of a Handover of Operations, the testing and commissioning strategy for the proposed Extension should be for the period until the Handover of Operations occurs, or as otherwise requested in the Extension Proposal Request.

- 1.11 Details of how the Extension will be affected at each of the Stabling and Maintenance Facility and Operations Control Centre, including how this will be achieved without impacting operations on the Sydney Metro – Western Sydney Airport.
- 1.12 To the extent relevant to the scope of the Extension, details of how the Extension will be affected at St Mary and Aerotropolis, including how this will be achieved without impacting operations on the Sydney Metro – Western Sydney Airport.
- 1.13 Information about any potential latent conditions or issues known to OpCo that could impact the proposed Extension.
- 1.14 Any inspections, investigations or testing of the proposed site that OpCo wishes, or wishes the Principal, to carry out.
- 1.15 If part or all of the Extension is to be carried out during the Delivery Phase, the effect which the proposed Extension will have on the Delivery Program.
- 1.16 If part or all of the OpCo Extension Components are to be carried out during the Operations Phase, and to the extent relevant to OpCo's role in the Extension, a program for the completion, integration and commissioning of any works forming part of the OpCo Extension Components, including integrated testing and trial running on the Extension and the Extended SMWSA.
- 1.17 Drafts of any project plans in respect of either or both of the Extension and the Extended SMWSA (which may include draft updates to Project Plans for Sydney Metro – Western Sydney Airport) as required by the Principal.
- 1.18 Drafts of interface plans and Rail Safety Interface Agreements with Sydney Trains and any other rail operator affected by the Extension.
- 1.19 The effects (if any) which delivery of the proposed Extension until Extension Completion is likely to have on the following for Sydney Metro – Western Sydney Airport:
  - (a) operational performance;
  - (b) customers (including how OpCo intends to manage planned and unplanned disruptions to services and any other adverse impacts to customers and members of the public which may arise from the proposed Extension, to the extent relevant for OpCo's role in the Extension);
  - (c) industrial relations and staff, including staff training;
  - (d) asset management, including maintenance;
  - (e) the workmanship, durability or functional integrity of the SSTOM Works, the Temporary Works or Sydney Metro – Western Sydney Airport;
  - (f) performance of OpCo's Activities in accordance with this deed, subject to any amendments that may be proposed in the draft Principal Extension Documents;
  - (g) OpCo's ability to:
    - (i) satisfy any warranty given by OpCo under this deed (subject to any amendments that may be proposed in the draft Principal Extension Documents); or
    - (ii) perform any of its other obligations under this deed (subject to any amendments that may be proposed in the draft Principal Extension Documents).
- 1.20 Any other information pertaining to procurement and delivery reasonably required by the Principal.

## **2. Operations and Maintenance**

- 2.1 Draft operations and maintenance specifications relating to the OpCo Extension Components.



- 2.2 Details of any impacts on the Stabling and Maintenance Facility, including any additional stabling roads and any new/altered specialist equipment.
- 2.3 Operating and maintenance requirements for any new stabling facility to be operated and / or maintained by OpCo for the Extension.
- 2.4 Details of changes to Operations Control Centre operations, including layout and procedural changes.
- 2.5 Details of impacts to the Asset Information System, Condition Monitoring System and Service Payment Monitoring System.
- 2.6 Draft train fleet plan, including:
  - (a) fleet numbers and configuration;
  - (b) plan for delivery of the train fleet for the Extension to the stabling and maintenance facility/s, including:
    - (i) timeframes for delivery;
    - (ii) specific requirements for delivery; and
    - (iii) strategies to avoid or minimise the impacts of delivery of the train fleet on Sydney Metro – Western Sydney Airport, including performance of the Operations Activities;
  - (c) specific requirements for commissioning, testing and trial running of the Extension (identified separately to fleet requirements for operations on Sydney Metro – Western Sydney Airport); and
  - (d) strategies to avoid or minimise operational impacts on Sydney Metro – Western Sydney Airport.
- 2.7 Station management requirements.
- 2.8 In respect of Sydney Metro – Western Sydney Airport after Extension Completion:
  - (a) details of any impacts on operational performance;
  - (b) details of any impact on industrial relations and staff, including staff training;
  - (c) details of any impacts to asset maintenance, including any change to existing asset management (including maintenance) plans;
  - (d) details of any impacts on the workmanship, durability or functional integrity of Sydney Metro – Western Sydney Airport;
  - (e) details of the effects (if any) on performance of OpCo's Activities in accordance with this deed, including OpCo's handover of Sydney Metro – Western Sydney Airport to the Principal and subject to any amendments that may be proposed in the draft Principal Extension Documents; and
  - (f) details of any impacts on OpCo's ability to:
    - (i) satisfy any warranty given by OpCo under this deed (subject to any amendments that may be proposed in the draft Principal Extension Documents); or
    - (ii) perform any of its other obligations under this deed (subject to any amendments that may be proposed in the draft Principal Extension Documents).
- 2.9 Any other information pertaining to operations and maintenance reasonably required by the Principal.
- 3. Safety**
- 3.1 Identification of safety risks and how they will be managed, in respect of:



- (a) the OpCo Extension Components during their delivery by OpCo (including all steps to be undertaken by OpCo prior to Extension Completion); and
  - (b) the Extension following Extension Completion, to the extent of OpCo's role in respect of it.
- 3.2 The effect of the Extension on Accreditation of OpCo and OpCo's Core Contractors, and how OpCo will ensure that it (or a Core Contractor) continues to have all Accreditation necessary to carry out its obligations under this deed in respect of the Sydney Metro – Western Sydney Airport during delivery of the Extension until Extension Completion.
- 3.3 OpCo's proposal to ensure that it (or a Core Contractor) has the necessary Accreditation required to comply with OpCo's obligations regarding the Extension, during each of:
  - (a) delivery of the Extension; and
  - (b) the operations phase for the Extension from Extension Completion.
- 3.4 How OpCo will ensure at all times during the planning, development and implementation of an Extension the safety of rail operations carried out by it, including how it will ensure that it and the OpCo Contractors:
  - (a) comply with all applicable Laws and the conditions of its Accreditation;
  - (b) comply with the applicable RSNL Safety Management System;
  - (c) identify and implement any changes to the applicable RSNL Safety Management System required as a result of the implementation of the Extension;
  - (d) apply for any variations to its Accreditation required as a result of the implementation of the Extension in accordance with a clear Accreditation strategy and pathway;
  - (e) engage with ONRSR in relation to that Accreditation pathway; and
  - (f) coordinate efficiently and effectively with the Principal and any other relevant person (including any Extension Interface Contractor or Other Contractor) in relation to the safety of rail operations, any changes to the applicable RSNL Safety Management System and / or any variation to Accreditation.
- 3.5 The effect of the Extension on OpCo's safety obligations under this deed.
- 3.6 To the extent not addressed by the previous items, OpCo's proposal to ensure that it is able to comply with its safety obligations (at law and as proposed in the Principal Extension Documents) with respect to the delivery, integration and operation & maintenance of the Extension.

#### 4. **Financing**

- 4.1 Subject to clause 12 and to the extent requested in the Principal's Extension Proposal Request, the basis on which OpCo would be prepared to finance the OpCo Extension Components (or any part of them), if required to do so, including:
  - (a) the proposed financing plan;
  - (b) the levels of debt and equity proposed;
  - (c) committed term sheets for debt (approved by the credit committees of the proposed financiers) and equity (approved by the boards of the equity investors);

and the process(es) which OpCo will implement to ensure that the sourcing of debt and equity (and the pricing of them) is transparent.
- 4.2 A protocol for amending the Financial Model to incorporate the impact of the OpCo Extension Component Cost.

- 4.3 A proposed revised version of the Financial Model prepared in accordance with this deed to incorporate the impact of the OpCo Extension Component Cost.

**5. Costs**

- 5.1 The OpCo Extension Component Cost calculated in accordance with Appendix 3 and Appendix 4.
- 5.2 How the Extension Proposal demonstrates value for money for the Principal in delivering the OpCo Extension Components, including how OpCo has:
- (a) obtained competitive prices for any Contestable Components;
  - (b) ensured that the Principal receives value for money with respect to any Non-Contestable Components (including with regard to prevailing market rates); and
  - (c) in the case of a Core UTO Scope Extension or an LES Extension, captured for the benefit of the Principal the cost savings, economies of scale and synergies arising from the combined operations and maintenance of Sydney Metro – Western Sydney Airport and the Extension.
- 5.3 OpCo's response to the Principal's proposed manner of payment of OpCo Extension Component Cost.

## Appendix 2 – Development of Extended SMWSA Payment Mechanism

### 1. Interpretation

- (a) Capitalised terms not otherwise defined in the Operative Provisions of this deed or this Schedule 37 (*Extensions*) have the meaning given to them in Schedule 2 (*Service Payment calculation*).
- (b) In addition, in this Appendix 2:
  - (i) **Abatable CDM** has the meaning given in clause 4.4(a);
  - (ii) **Abatable Train Service** has the meaning given in clause 3.4(a);
  - (iii) **Extension Demand Forecast** has the meaning given in clause 2.3(d); and
  - (iv) **Proxy Extended SMWSA Base Availability Fee** means the amount derived in accordance with clause 2.4(b).

### 2. Key principles

#### 2.1 Application

- (a) This Appendix 2 will be used to recalibrate and revise the payment mechanism and performance regime contained in Schedule 2 (*Service Payment calculation*) to produce the Extended SMWSA Payment Mechanism for the Extended SMWSA following a Core UTO Scope Extension. Except as otherwise provided in this Appendix 2, the parties do not intend to alter the payment mechanism and performance regime contained in Schedule 2 (*Service Payment calculation*) for a Core UTO Scope Extension.
- (b) This Appendix 2 will be used as the basis for the draft Extended SMWSA Payment Mechanism for the Extended SMWSA following an LES Extension. The parties acknowledge that the Extended SMWSA Payment Mechanism following an LES Extension may also need to include changes additional to those contemplated in this Appendix 2 to appropriately reflect the structure of and OpCo's role in the LES Extension.
- (c) The Extended SMWSA Payment Mechanism included in the final Principal Extension Documents executed between the parties will:
  - (i) be in the form of Schedule 2 (*Service Payment calculation*), with the changes provided for in this Appendix 2;
  - (ii) replace the Schedule 2 (*Service Payment calculation*) payment mechanism and performance regime in respect of the Sydney Metro – Western Sydney Airport; and
  - (iii) apply to the Extended SMWSA,
 each in accordance with the final Principal Extension Documents.
- (d) References in this Appendix 2 to specific clauses of the Extended SMWSA Payment Mechanism are references to the equivalent clauses in Schedule 2 (*Service Payment calculation*) as recalibrated and revised in accordance with this Appendix 2.
- (e) This Appendix 2 will also be used to recalibrate and revise the Schedule 2 (*Service Payment calculation*) payment mechanism and performance regime in connection with a Modification that amends the Contract Service Level Requirements beyond the Service Change Limitations, as provided for in clause 33.15(d)(ii) of the Operative Provisions. In that event, references in this Appendix 2 to:

- (i) the Extension will be read as references to that Modification; and
- (ii) the Extended SMWSA will be read as references to Sydney Metro – Western Sydney Airport including that Modification.

## 2.2 Components of Extended SMWSA Payment Mechanism

- (a) The Extended SMWSA Payment Mechanism will provide for an adjusted Service Payment which has the following components (consistent with the components of the Service Payment under Schedule 2 (*Service Payment calculation*)):
  - (i) Base Availability Fee, consisting of:
    - (A) Indexing Component 1 and Indexing Component 2, reflecting costs of operation and maintenance of the Extended SMWSA (other than periodic capital refurbishment costs);
    - (B) a Non-Indexing Component reflecting payments to debt and equity financiers of the Extended SMWSA (or of the Sydney Metro – Western Sydney Airport if none of the OpCo Extension Components are privately financed); and
    - (C) a Benchmarked Insurance Component, reflecting costs of any insurances to be maintained by OpCo during the operations phase for the Extended SMWSA which are subject to a price benchmarking regime;
  - (ii) Base Lifecycle Component, reflecting costs of periodic capital replacement and refurbishment costs in respect of the Extended SMWSA;
  - (iii) Service Level Adjustment Amount, based on marginal prices to be used to reflect the increased or decreased costs of providing services on the Extended SMWSA in the event of a Long Term Service Change or Short Term Service Change after Extension Completion (and for the avoidance of doubt, not in respect of changes to service levels resulting from the Extension itself);
  - (iv) adjustments in respect of the elements of the performance regime referred to in clause 2.3(a); and
  - (v) a Floating Rate Adjustment to reflect differences between the actual floating interest rate and the interest rate assumed in the Financial Model:
    - (A) at financial close, if financial close is applicable, in respect of the Extended SMWSA; or
    - (B) otherwise, at financial close in respect of Sydney Metro – Western Sydney Airport.
- (b) In the Extended SMWSA Payment Mechanism:
  - (i) the Base Availability Fee (other than the Non-Indexing Component) and Base Lifecycle Component for the Extended SMWSA will be indexed by CPI or WPI quarterly, consistent with indexation under clause 15 of Schedule 2 (*Service Payment calculation*); and
  - (ii) the marginal prices referred to in clause 2.2(a)(iii) will be indexed by CPI, consistent with indexation under clause 15 of Schedule 2 (*Service Payment calculation*) for marginal prices.

## 2.3 Performance regime for Extended SMWSA Payment Mechanism

- (a) The elements of the performance regime for the Extended SMWSA Payment Mechanism will be consistent with those elements of the performance regime under Schedule 2 (*Service Payment calculation*), being elements in respect of Availability, Timeliness, Service Quality, Asset Functionality, Reporting, Asset Management, Customer Satisfaction and Electricity Compliance.

- (b) The Extended SMWSA Payment Mechanism will retain the 'no service, no fee' principle, as further described in clause 2.4.
- (c) The Extended SMWSA Payment Mechanism will retain the [REDACTED] Timeliness / [REDACTED] Availability ratios of deduction in the event of no service.
- (d) The approach under Schedule 2 (*Service Payment calculation*) of deriving weightings based on the forecast distribution of demand across the Extended SMWSA (in accordance with the Principal's forecast at the time of the Extension Proposal Request being issued in accordance with this Schedule 37 (*Extensions*) (**Extension Demand Forecast**) will be maintained and apply under the Extended SMWSA Payment Mechanism.

## 2.4 Calibration

- (a) The Extended SMWSA Payment Mechanism will be calibrated:
  - (i) on the basis that [REDACTED] of the Base Availability Fee for a month can be eroded by combined unindexed Availability Deductions and Timeliness Deductions if no services are run for 30 days of that month;
  - (ii) such that [REDACTED] of the Base Availability Fee for the Extended SMWSA for a month would be eroded by unindexed Timeliness Deductions if no services are run for 30 days of that month (utilising the Proxy Extended SMWSA Base Availability Fee for purpose of this calibration);
  - (iii) such that [REDACTED] of the Base Availability Fee for the Extended SMWSA for a month would be eroded by Availability Deductions for Missed Train Services if no services are run for 30 days of that month (utilising the Proxy Extended SMWSA Base Availability Fee for purpose of this calibration);
  - (iv) by reference to a Proxy Extended SMWSA Base Availability Fee derived in accordance with clause 2.4(b);
  - (v) assuming that each month has an average balance between different days of the week, but ignoring public holidays; and
  - (vi) assuming the following Bedding In Factor:
    - (A) [REDACTED] until the end of the [REDACTED] after the date of Extension Completion;
    - (B) [REDACTED] for each of the [REDACTED] after the date of Extension Completion;
    - (C) thereafter, [REDACTED], unless:
      - (I) the OpCo Extension Components are privately financed;
      - (II) the equivalent of a CDPD Amount is payable by the Principal in respect of that financing; and
      - (III) the preconditions to payment by the Principal of that CDPD Amount have not been met,
 in which case, a higher percentage will apply, comparable to the approach for such a scenario in Schedule 2 (*Service Payment calculation*),
 provided that if Extension Completion occurs less than [REDACTED] after the Date of Completion of Sydney Metro – Western Sydney Airport, the Principal may adjust the Bedding In Factor to appropriately reflect bedding in for both the Extended SMWSA and Sydney Metro – Western Sydney Airport.
- (b) The Proxy Extended SMWSA Base Availability Fee will be determined as follows:

Step One: Sum the Indexing Component 1, Indexing Component 2, Non-Indexing Component and Benchmarked Insurance Component (each as described in clause 2.2(a) above) for the first year after Extension Completion or, if the Principal has requested OpCo to finance OpCo Extension Components and the equivalent of a CDPD Amount is payable by the Principal in respect of that financing during the corresponding equivalent of the CDPD Period, the first [REDACTED] of that period, as assumed in the Base Case Financial Model for the Extended SMWSA and disregarding any indexation that would apply in accordance with the Extended SMWSA Payment Mechanism.

Step Two: Divide the result of Step Two by 12.

## 2.5 Timing

- (a) The Extended SMWSA Payment Mechanism will apply from Extension Completion.
- (b) If Extension Completion does not occur on the first day of an Operating Month then the Indexing Component 1, Indexing Component 2, Benchmarked Insurance Component and Non-Indexing Component applicable for the Operating Month in which Extension Completion occurs will be the average of the component values determined pursuant to Schedule 2 (*Service Payment calculation*) and the component values determined in accordance with the Extended SMWSA Payment Mechanism, weighted by the number of days in that month that each of Schedule 2 (*Service Payment calculation*) and the Extended SMWSA Payment Mechanism are applicable.
- (c) In the first Operating Quarter of the Extended SMWSA following Extension Completion, the application of any quarterly components of the Extended SMWSA Payment Mechanism will be adjusted proportionately to reflect the number of days from the date of Extension Completion until the end of that Operating Quarter.

## 3. Availability Deduction

### 3.1 Platform Closure Weighting

- (a) Subject to clause 3.1(b), the Principal will determine the Platform Closure Weighting for each Platform on the Extended SMWSA in accordance with the following steps:
  - Step One: Divide [REDACTED] by the total number of Platforms on the Extended SMWSA. This will give the Platform Closure Weighting for each Platform other than as described in Step Two or Three below.
  - Step Two: For Airport Terminal, produce the Platform Closure Weighting by multiplying Step One by [REDACTED].
  - Step Three: For St Marys, produce the Platform Closure Weighting by multiplying Step One by [REDACTED].
- (b) The Principal may determine if:
  - (i) any additional multipliers should be applied for Platform Closure Weightings at any or all other Platforms; and
  - (ii) any change to the multipliers for Airport Terminal and St Marys is required, based on the Extension Demand Forecast and the strategic importance of each Station, as determined by the Principal.
- (c) The definition of Platform Closure Weighting in clause 1 of Schedule 2 (*Service Payment calculation*) will be updated to refer to the percentages derived under clause 3.1(a) for each relevant Station on the Extended SMWSA, amended as determined by the Principal (if at all) under clause 3.1(b).

### 3.2 Day Weightings

The Day Weightings for the Extended SMWSA will be set in accordance with the formula in clause 4.4(b) of Schedule 2 (*Service Payment calculation*).

### 3.3 Tolerances

- (a) Subject to clauses 3.3(b) and 3.3(c), the Daily Missed Train Tolerance and Monthly Missed Train Tolerance will be set at the thresholds provided for in clause 4.2 of Schedule 2 (*Service Payment calculation*), being:
  - (i) Daily Missed Train Tolerance = [REDACTED] of the number of Required Train Services for the relevant day rounded down to the nearest whole number; and
  - (ii) Monthly Missed Train Tolerance = [REDACTED] of the number of Required Train Services in that month, rounded down to the nearest whole number.
- (b) The Principal may increase the thresholds for the Daily Missed Train Tolerance and Monthly Missed Train Tolerances if the Principal determines it appropriate to so in light of:
  - (i) the relative operational complexity of the Extended SMWSA compared to the Sydney Metro – Western Sydney Airport; and
  - (ii) consequently, OpCo's ability to provide Delivered Train Services so that Missed Train Services do not exceed these tolerances.
- (c) For the avoidance of doubt, the thresholds for the Daily Missed Train Tolerance and Monthly Missed Train Tolerances will not be made more onerous than those referred to in clause 3.3(a).

### 3.4 Calculating the Deduction per Missed Train Service

- (a) The Principal will determine the number of Train Services which can be the subject of the Availability Deduction in a month (each an **Abatable Train Service**) for the Extended SMWSA in accordance with the following steps:
 

Step One: Determine the total number of Required Train Services, [REDACTED], in a 30 day period (assuming an average breakdown between days of the week).

Step Two: Subtract from Step One the number of Missed Train Services in the 30 day period that would be within the Monthly Missed Train Tolerance (determined in accordance with clause 3.3).
- (b) The Principal will calibrate the Train Service Deduction by dividing [REDACTED] of the Proxy Extended SMWSA Service Payment by the number of Abatable Train Services (determined in accordance with clause 3.4(a)) and rounding to the closest [REDACTED]
- (c) The Principal will review and may alter the application of these principles to ensure they provide appropriate incentives in relation to response to Incidents.

## 4. Timeliness Deduction

### 4.1 Frequency Customer Delay Measure

- (a) The Principal will determine which Platforms at Stations on the Extended SMWSA will be Headway Monitored Platforms, provided that these will not include Platforms at a Station at the end of the Extended SMWSA, and the following provisions of Schedule 2 (*Service Payment calculation*) will be updated accordingly:
  - (i) the definition of Headway Monitored Platform will include the additional Platforms at the new Stations; and
  - (ii) clause 2.1(a) of Annexure A to add the new Headway Monitored Platforms.

- (b) The Principal will determine the Platform Groups for the new Headway Monitored Platforms, maintaining a ratio of approximately three Platforms per Platform Group, and clause 2.1(a) of Annexure A of Schedule 2 (*Service Payment calculation*) will be amended to add the new Platform Groups.
- (c) The Principal will determine the Platform Weightings for the Platforms on the Extended SMWSA in accordance with the Extension Demand Forecast, and the following provisions of Schedule 2 (*Service Payment calculation*) will be updated accordingly:
  - (i) clause 2.1(a) of Annexure A will be amended to add these Platform Weightings;
  - (ii) clause 2.1(b) of Annexure A will be amended to add the corresponding Aggregated Platform Weightings across all Platforms, Service Period Duration and Total Platform Weightings (calculated in accordance with the methodology for calculating 'Total Platform Weighting' in clause 2.1(b) of Annexure A); and
  - (iii) clause 2.1(b) of Annexure A will be amended to include a revised amount for the Total Weekly Platform Weighting that is reflective of the Extended SMWSA and is to be calculated in accordance with clause 5.7(b) of Schedule 2 (*Service Payment calculation*).
- (d) The tables in clause 2.1 of Annexure A of Schedule 2 (*Service Payment calculation*) will be amended to add the Stations for the Extension.

#### 4.2 Journey Time Customer Delay Measure

- (a) The Principal will determine the Train Weightings for the Extended SMWSA in accordance with the Extension Demand Forecast, and the following provisions of Schedule 2 (*Service Payment calculation*) will be updated accordingly:
  - (i) clause 2.2 of Annexure A will be amended to add these Train Weightings;
  - (ii) clause 2.2 of Annexure A will be amended to add the applicable Total Number of Train Services for the Extended SMWSA and the corresponding in Total Train Weighting (calculated in accordance with the methodology for calculating 'Total Train Weighting' in clause 2.2 of Annexure A); and
  - (iii) clause 2.2 of Annexure A will be amended to include a revised amount for the Total Weekly Train Weighting that is reflective of the Extended SMWSA and is to be calculated in accordance with clause 5.7(c) of Schedule 2 (*Service Payment calculation*).
- (b) The table in clause 2.2 of Annexure A of Schedule 2 (*Service Payment calculation*) will be amended to add the Stations for the Extension.

#### 4.3 Tolerances

- (a) The Daily CDM Tolerance and the Monthly CDM Tolerance for the Extended SMWSA will be set in accordance with the following steps, subject to clauses 4.3(c) and 4.3(d):
 

Step One: For each day of a week (being Monday to Sunday), calculate the total CDM that would be accrued by OpCo on each day, based on the statistical distribution described in clause 10.

Step Two: For each day of a week, multiply the relevant result from Step One by [REDACTED] (and round [REDACTED]) to give the Daily CDM Tolerance.

Step Three: Determine the Monthly CDM Tolerance by summing the results of Step One and dividing by [REDACTED] (and rounding [REDACTED]).
- (b) Subject to clauses 4.3(c) and 4.3(d), in Schedule 2 (*Service Payment calculation*):
  - (i) the table in clause 4 of Annexure A will be amended to include the Daily CDM Tolerance for each day of the week, as per Step Two in clause 4.3(a); and



- (ii) the definition of 'Monthly CDM Tolerance' in clause 5.1 will be amended by replacing the number [REDACTED] with the number resulting from Step Three in clause 4.3(a).
- (c) The Principal may increase the Daily CDM Tolerance and the Monthly CDM Tolerance if the Principal determines it appropriate to do so in light of:
  - (i) the relative operational complexity of the Extended SMWSA compared to the Sydney Metro – Western Sydney Airport; and
  - (ii) consequently, OpCo's ability to perform services so that Frequency Customer Delay Measure and Journey Time Customer Delay Measure do not exceed these tolerances.
- (d) For the avoidance of doubt, the Daily CDM Tolerance and the Monthly CDM Tolerance will not be smaller than the results of the calculation set out in clause 4.3(a).

#### 4.4 Calculating the value of Timeliness Deductions

- (a) The Principal will determine the CDM which can be the subject of the Timeliness Deduction in a month (each an **Abatable CDM**) for the Extended SMWSA in accordance with the following steps:
 

Step One: Determine the value that represents the total CDM that would be accrued if there was no service in a 30 day period (assuming an average breakdown between days of the week), on the basis outlined in clause 5.5(d) in Schedule 2 (*Service Payment calculation*).

Step Two: Subtract from Step One the total CDM that are within the Monthly CDM Tolerance (as determined under clause 4.3).
- (b) The Principal will calibrate the Timeliness Deduction per Abatable CDM (determined in accordance with clause 4.4(a)) in accordance with the following principles:
  - (i) the Extended SMWSA Payment Mechanism will use a two-banded approach as contained in clause 5.1 of Schedule 2 (*Service Payment calculation*);
  - (ii) the dollar value per CDM in each band will be set such that:
    - (A) the dollar value per CDM is approximately five times higher in the higher band than the lower band; and
    - (B) consistently with clause 2.3(c) and 2.4, [REDACTED] of the Base Availability Fee under the Extended SMWSA Payment Mechanism would be eroded by unindexed Timeliness Deductions by day 30 of a month if no services are run in that month; and
  - (iii) the Principal will review and may alter the application of these principles to ensure they provide appropriate incentives to maximise customer outcomes (which may include implementing a three-band approach if appropriate).

## 5. Service Quality, Asset Functionality and Reporting Deductions

### 5.1 Base Maximum Deduction

- (a) Subject to clause 5.1(b), the Service Quality KPI, Service Quality KPI Weightings, Asset Functionality KPI, Asset Functionality KPI Weightings, Reporting KPI and Reporting KPI Weightings set out in Schedule 2 (*Service Payment calculation*) will be maintained under the Extended SMWSA Payment Mechanism.
- (b) The Base Maximum Deduction for Service Quality, Asset Functionality and Reporting will be increased proportionately with the increase to the sum of Indexing Component 1 and Indexing Component 2 for the Extended SMWSA for the year referred to in

clause 2.4(b) when compared to the sum of these values for the Sydney Metro – Western Sydney Airport immediately prior to Extension Completion.

## 5.2 Structure of KPIs

- (a) Subject to clause 5.2(b), the structure of the KPIs and all individual KPI weightings set out in Annexure B of Schedule 2 (*Service Payment calculation*) will be maintained for the Extended SMWSA Payment Mechanism, including the content of the Annexure B KPI Tables relating to:
  - (i) the measurement methodology, including what and how to measure; and
  - (ii) the calculation of the KPI scores and KPI deduction percentages.
- (b) The Principal may determine that the minimum number of sample amounts for the KPI n 1, n 2, n 3, n 6 and n 9 assessments as set out in Annexure B of Schedule 2 (*Service Payment calculation*) will be adjusted to reflect the scope of operations and maintenance of the Extended SMWSA, including additional Stations and number of Trains, in which case the KPI tables in Annexure B of Schedule 2 (*Service Payment calculation*) will be updated with those respective minimum sample figures as follows:
  - (i) sample figures in KPI tables and scoresheets for KPI n 1, n 2 and n 3 will be updated; and
  - (ii) sample figures in KPI tables for KPI n 6 and n 9 will be updated.

## 6. Asset Management Adjustment

The Asset Management Adjustment for the Extended SMWSA will reflect clause 9 of Schedule 2 (*Service Payment calculation*).

## 7. Electricity Compliance Incentive Payment

The Base Electricity Compliance Incentive Payment for the Extended SMWSA Payment Mechanism will be increased proportionately with the increase to the sum of Indexing Component 1 and Indexing Component 2 for the Extended SMWSA for the year referred to in clause 2.4(b) when compared to the sum of these values for the Sydney Metro – Western Sydney Airport immediately prior to Extension Completion.

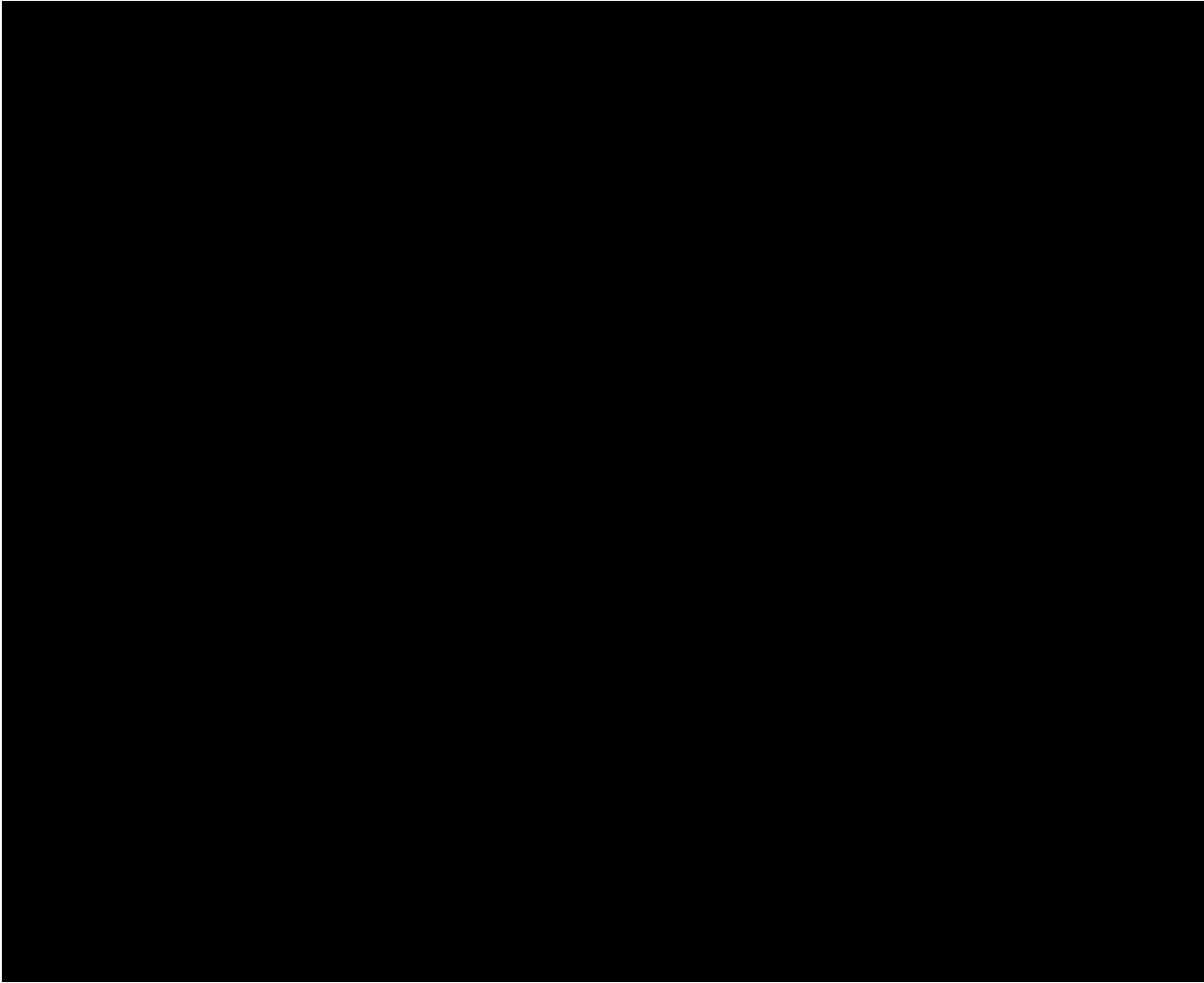
## 8. Customer Satisfaction Payment

The Base Maximum Customer Satisfaction Payment for the Extended SMWSA Payment Mechanism will be increased proportionately with the increase to the sum of Indexing Component 1 and Indexing Component 2 for the Extended SMWSA for the year referred to in clause 2.4(b) when compared to the sum of these values for the Sydney Metro – Western Sydney Airport immediately prior to Extension Completion.

## 9. Other amendments to reflect the scope of the Extended SMWSA

The Extended SMWSA Payment Mechanism will be updated to reflect the physical scope of the Extended SMWSA, including the following:

- (a) the definition of Maximum Train Journey Time will be updated to reflect the new Origin Stations and Destination Stations and maximum required journey time between the two Stations;
- (b) clause 3 of Annexure A of Schedule 2 (*Service Payment calculation*) will be amended to include the updated Matrix of Origin Destination Pairs; and

- (c) clauses 5.1 to 5.6 of Annexure A of Schedule 2 (*Service Payment calculation*) will be amended to include the updated:
- (i) Stations;
  - (ii) departure and arrival times at the relevant Stations;
  - (iii) Maximum Headways;
  - (iv) number of Required Train Services; and
  - (v) total number of Required Train Services.
- 

## Appendix 3 – Extension Pricing Framework

### 1. Determination of OpCo Extension Component Cost

#### 1.1 OpCo Extension Component Cost

The OpCo Extension Component Cost will be the sum of the amounts referred to in paragraphs 2.3, 2.4, 3.1, 3.2, 4.1 and 4.3, minus the sum of the amounts referred to in paragraph 4.2, provided that there shall be no double counting.

#### 1.2 Assistance in determining

If OpCo and the Principal are unable to agree on any part of the calculation of the OpCo Extension Component Cost (other than any calculation under paragraph 4.3(a) or 4.3(b)) the parties may appoint a third party facilitator to assist them in their discussions (and unless otherwise agreed, the costs of such facilitator will be shared equally between the parties).

#### 1.3 Acknowledgement as to intellectual property

OpCo agrees that the OpCo Extension Component Cost will include the cost of intellectual property rights for the use of those components on the Extended SMWSA at least to the same extent as is provided to the Principal under Schedule 32 (*Intellectual Property*) of this deed in relation to Sydney Metro – Western Sydney Airport.

#### 1.4 Interpretation

Unless stated otherwise, a reference in this Appendix to:

- (a) a clause is a reference to a clause in this Schedule 37 (*Extensions*);
- (b) a paragraph is a reference to a paragraph in this Appendix; and
- (c) this Appendix is a reference to this Appendix 3 (*Extension Pricing Framework*) to Schedule 37 (*Extensions*).

### 2. Non-Contestable Components

#### 2.1 Benchmarking prior to determining Non-Contestable Components

At any time prior to the issue of a Notice of Extension Proposal Request:

- (a) the Principal may initiate a benchmarking process to determine if one or more OpCo Extension Component Option Prices referred to in paragraph 2.3(a)(i) are value for money, which considers the relevant OpCo Extension Component Option Prices relative to the supply prices of these Non-Contestable Components to other customers by the relevant Significant Contractor, and the supply by other suppliers of similar products generally in the international market; and
- (b) OpCo will assist the Principal with that process.

#### 2.2 Pricing of Non-Contestable Components

Elements of OpCo Extension Components which have been identified as Non-Contestable Components in accordance with this Schedule 37 (*Extensions*) must be priced by OpCo in accordance with this paragraph 2.

#### 2.3

2.4

### 3. Contestable Components

#### 3.1 Pricing of Contestable Components

The amount included in the OpCo Extension Component Cost for a Contestable Component (or a package of Contestable Components) will be the competitive market price:

- (a) obtained in accordance with the process provided for under clause 11.2 and (to the extent of a contract to which clause 11.2(d) applies), approved by the Principal's Representative in accordance with clause 11.2(e)(x); and
- (b) for a Joint Procurement, approved for purposes of entry by OpCo into the contract for the Contestable Component (or a package of Contestable Components) in accordance with the Joint Procurement procedures referred to in clause 11.3(c),

(Contestable Component Price).

#### 3.2 Margin

The parties agree that:

- (a) the Contestable Component Price will be:
  - (i) inclusive of Contestable Component supplier margin
  - (ii) exclusive of margin for OpCo itself;

## 4.1

[illegible]

#### 4.2 OpCo to calculate deductions

OpCo must calculate the sum of the following items which arise or will arise as a direct result of the occurrence of the relevant:

- (a) any cost avoided (including tax, financing and/or other benefits associated with deferred expenditure) made by or accruing to OpCo as a result of the Extension;
- (b) any other amounts received or receivable by OpCo pursuant to or in accordance with the terms of this deed as a result of the Extension; and
- (c) any additional revenue associated with commercial opportunities which may be earned as a result of the Extension beyond those which are included in the Financial Model.

#### 4.3 OpCo to calculate incremental costs of finance and tax

OpCo must calculate (in accordance with paragraph 5.2) the sum of the following items that arise or will arise as a direct result of the occurrence of the relevant Extension:

- (a) any incremental debt or equity financing costs required to carry out OpCo Extension Components, whether in connection with the existing financial accommodation or any new financial accommodation, in accordance with clause 12 of Schedule 37 (*Extensions*);
- (b) an amount equal to any Tax payable by it as a result of the OpCo Extension Component Cost (net of any deductions) less any amounts which would not have been payable had it used all reasonable endeavours to minimise any Tax payable; and
- (c) to the extent (and only to the extent) provided for in the draft Principal Extension Documents, any compensation in respect of Service Payments foregone for Sydney Metro – Western Sydney Airport due to the delivery of an Extension, updated (as appropriate) to reflect current indexation and interest rate assumptions where these risks are assumed by the Principal.

### 5. Payment

#### 5.1 Payment of OpCo Extension Component Cost

OpCo will be entitled to be compensated for the OpCo Extension Component Cost in accordance with the final Principal Extension Documents, which may provide for (without limitation):

- (a) payment of all or some of the OpCo Extension Component Cost by way of Service Payments under the Extended SMWSA Payment Mechanism, in accordance with paragraph 5.2; and/or
- (b) payment of all or some of the OpCo Extension Component Cost by way of lump sum payments, in accordance with paragraph 5.3.

## 5.2 Payment through Extended SMWSA Payment Mechanism

- (a) To the extent that the OpCo Extension Component Cost is to be compensated via an amended Service Payment for the Extended SMWSA:
- (i) the Extended SMWSA Payment Mechanism will be developed in accordance with Appendix 2 to this Schedule 37 (*Extensions*); and
  - (ii) without limitation to Appendix 2 to this Schedule 37 (*Extensions*), the amended Service Payment will be calculated such that:

(A)

[REDACTED]

- (B) where debt finance is obtained, the increase to the relevant portion(s) of the Service Payment that relates to debt is calculated such that it is the minimum amount required to amortise the increased or new loan facility and interest;

(C)

[REDACTED] and

(D)

[REDACTED]

## 5.3 Lump sum payments

To the extent that any part of the OpCo Extension Component Cost is to be compensated via lump sum milestone payments, then OpCo must calculate the lump sum milestone payments payable by the Principal. The lump sum milestone payable shall be determined with reference to the Financial Model such that:

- (a) the Financial Model is updated for any tax effects resulting from agreed changes to costs and revenues and the lump sum payment itself;
- (b) the Service Payment is not changed; and
- (c) the Base Case Equity Return is not changed.

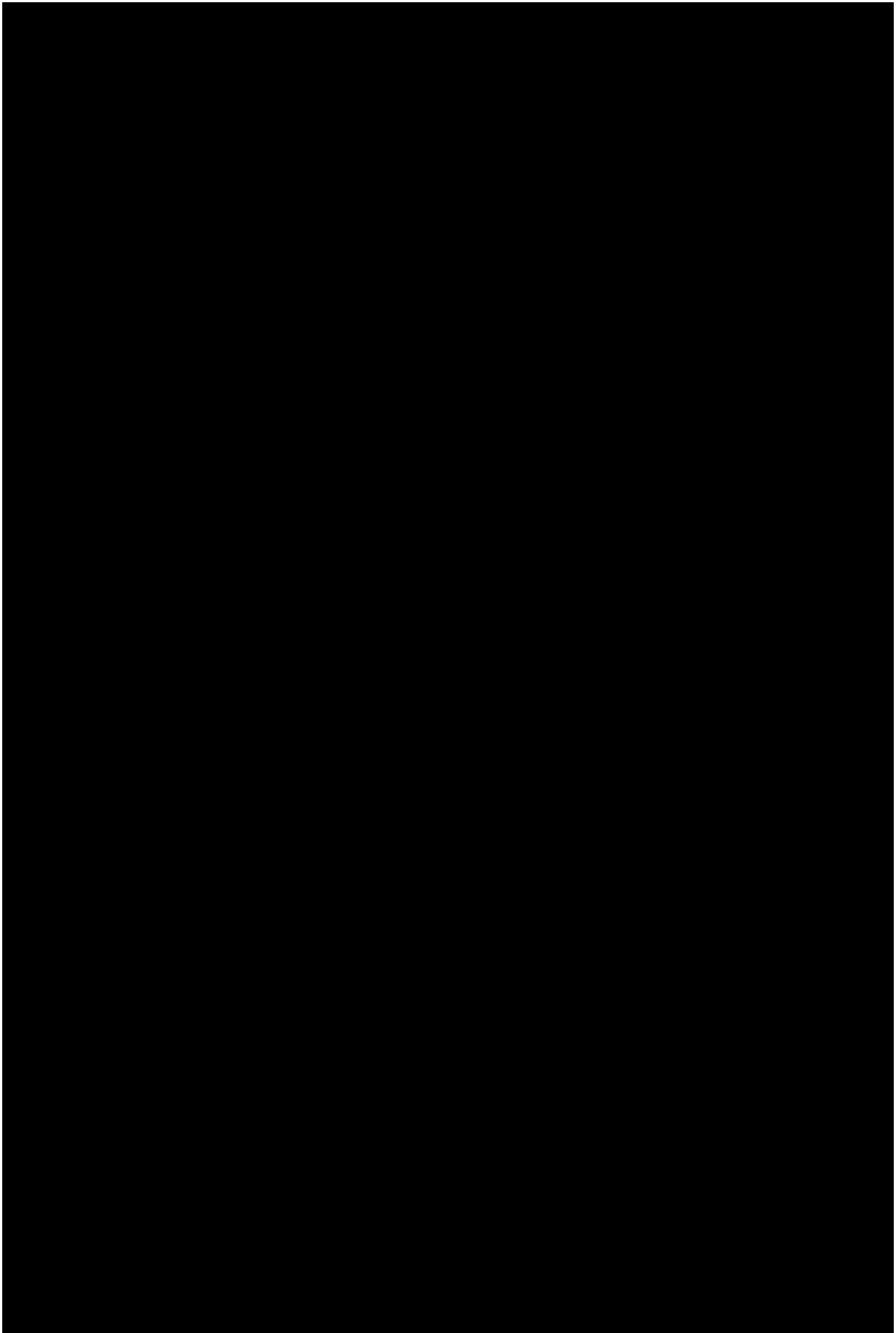


## Appendix 4 – OpCo Extension Component Option Prices

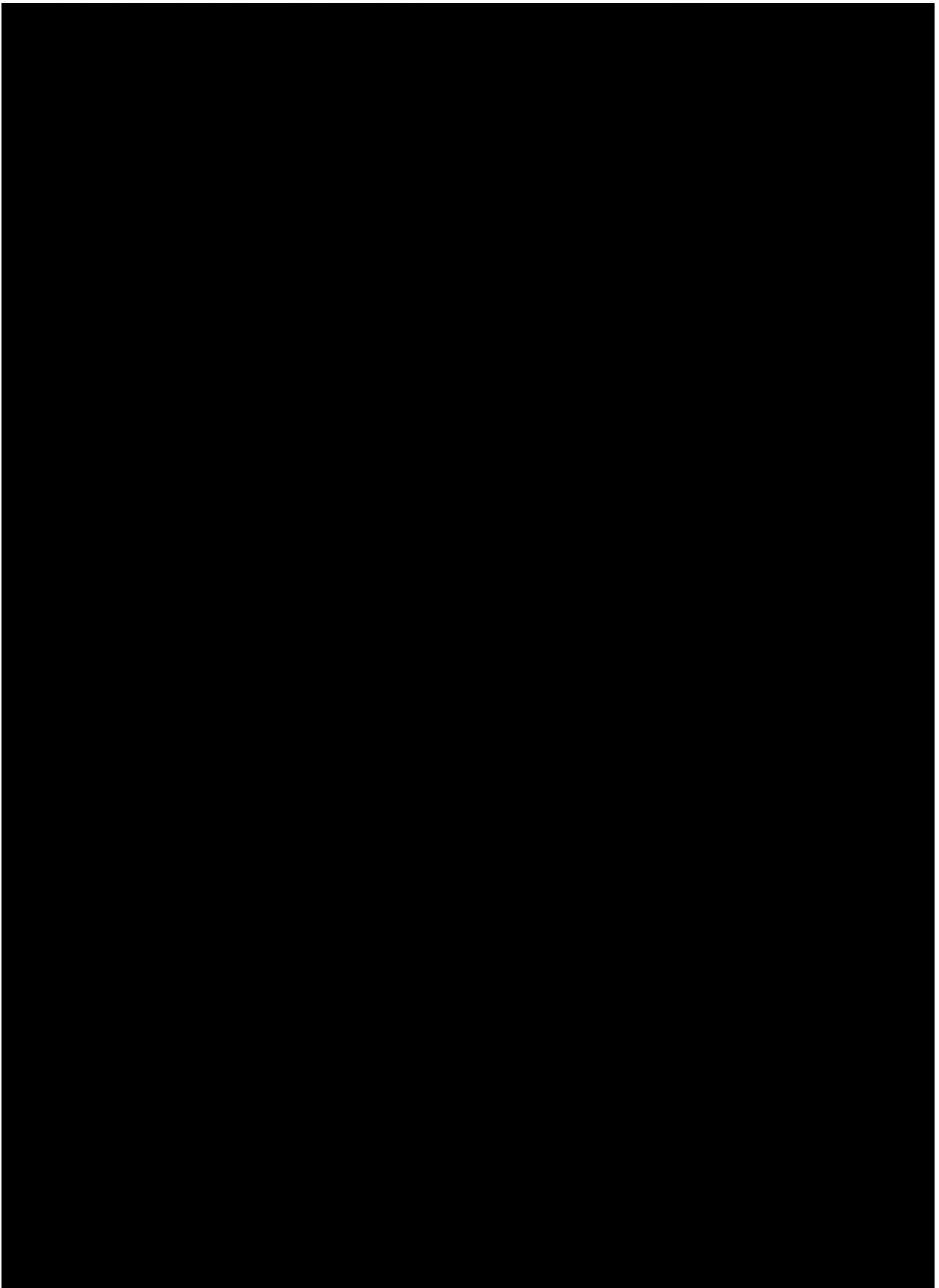
### 1. Non-Contestable Components

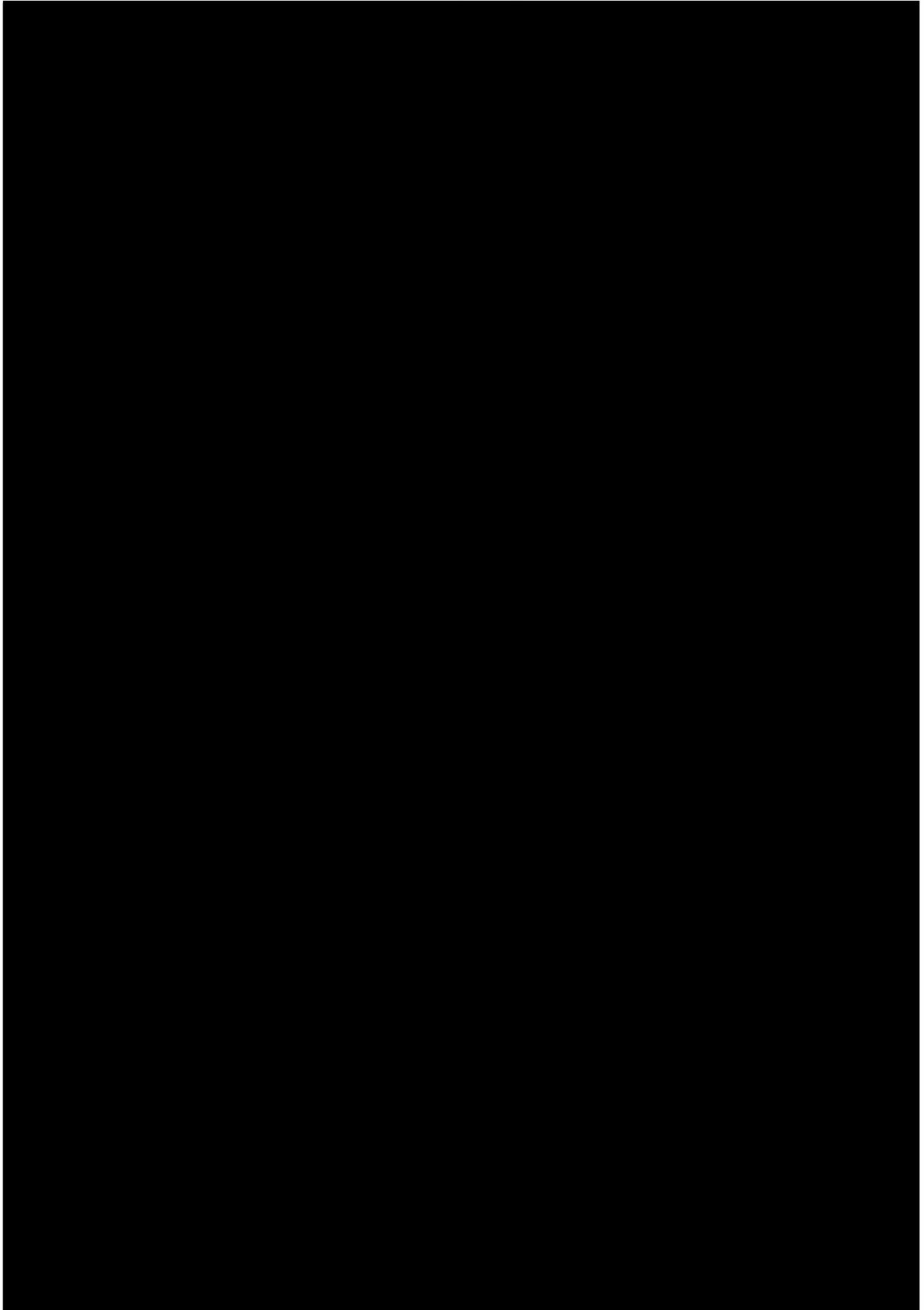
The Non-Contestable Components will be priced as set out in this Appendix 4.

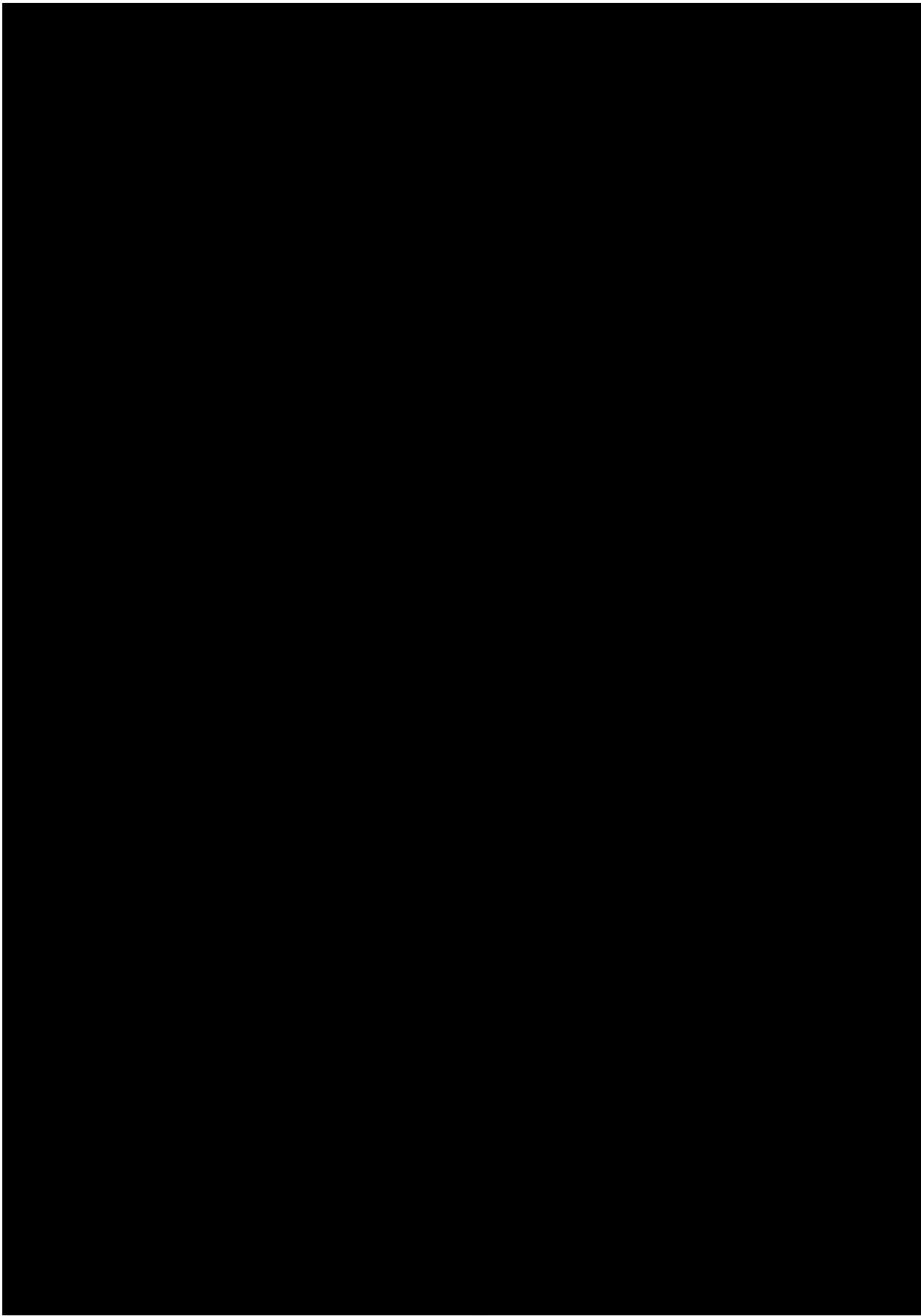
Non-Contestable Component	OpCo Extension Component Option Price
Supply of New Trains	In accordance with Annexure A to this Appendix 4 (Non-Contestable Components) to Schedule 37 ( <i>Extensions</i> ).
Supply of Signalling and Train Control Systems (STCS)	In accordance with Annexure B to this Appendix 4 (Non-Contestable Components) to Schedule 37 ( <i>Extensions</i> ).
O&M Services (inclusive of Extended Operations Activities and Extended Operator Readiness and Mobilisation Activities)	Extension O&M Price (for Extended Operations Activities): In accordance with Annexure C to this Appendix 4 (Non-Contestable Components) to Schedule 37 ( <i>Extensions</i> ). Extended Operator Readiness and Mobilisation Price (for Extended Operator Readiness and Mobilisation Activities): In accordance with Annexure C to this Appendix 4 (Non-Contestable Components) to Schedule 37 ( <i>Extensions</i> ).
Supply of CCS	In accordance with Annexure D to this Appendix 4 (Non-Contestable Components) to Schedule 37 ( <i>Extensions</i> )
Supply of Communications systems	In accordance with Annexure E to this Appendix 4 (Non-Contestable Components) to Schedule 37 ( <i>Extensions</i> )
Supply of Radio	In accordance with Annexure F to this Appendix 4 (Non-Contestable Components) to Schedule 37 ( <i>Extensions</i> )

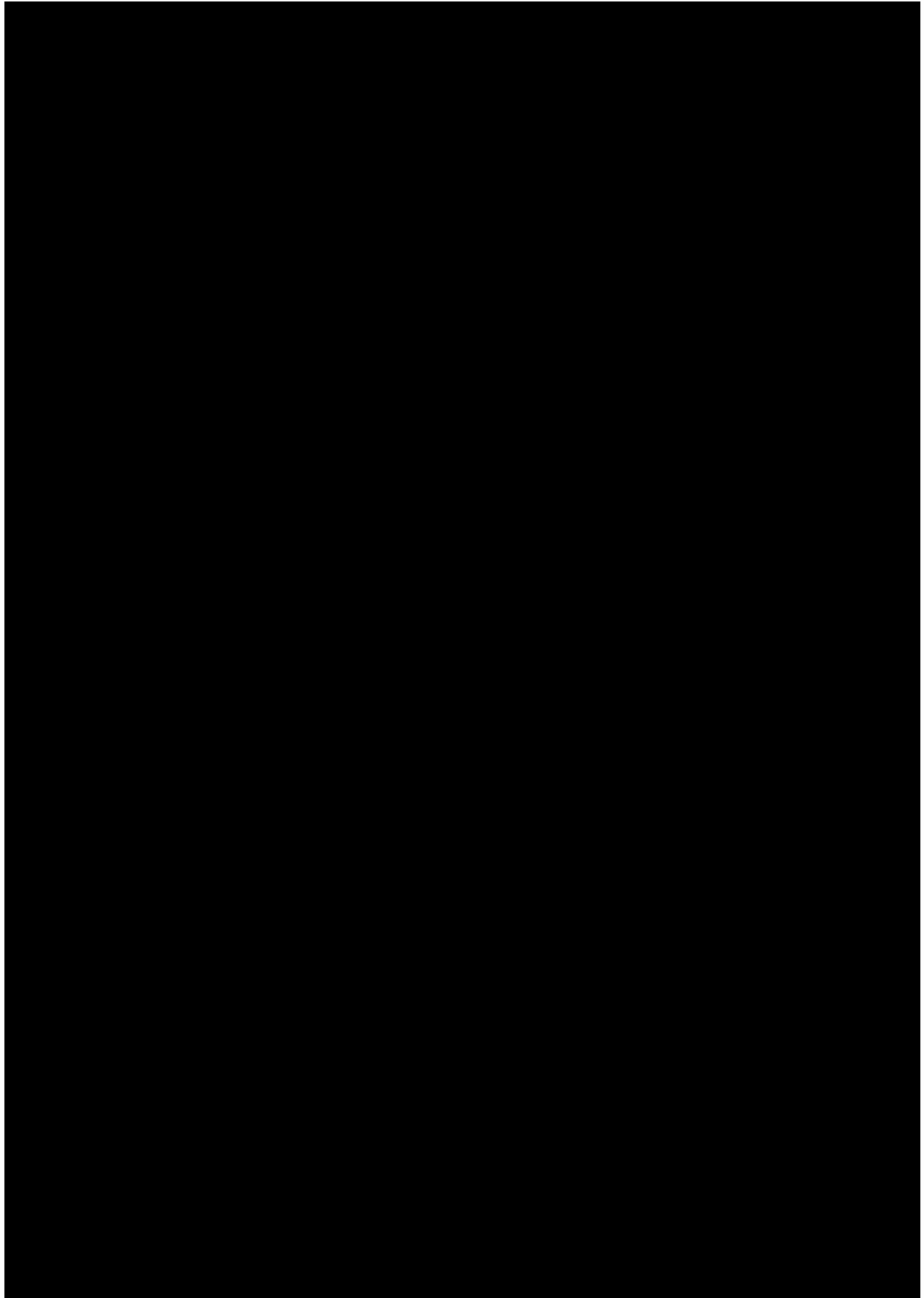


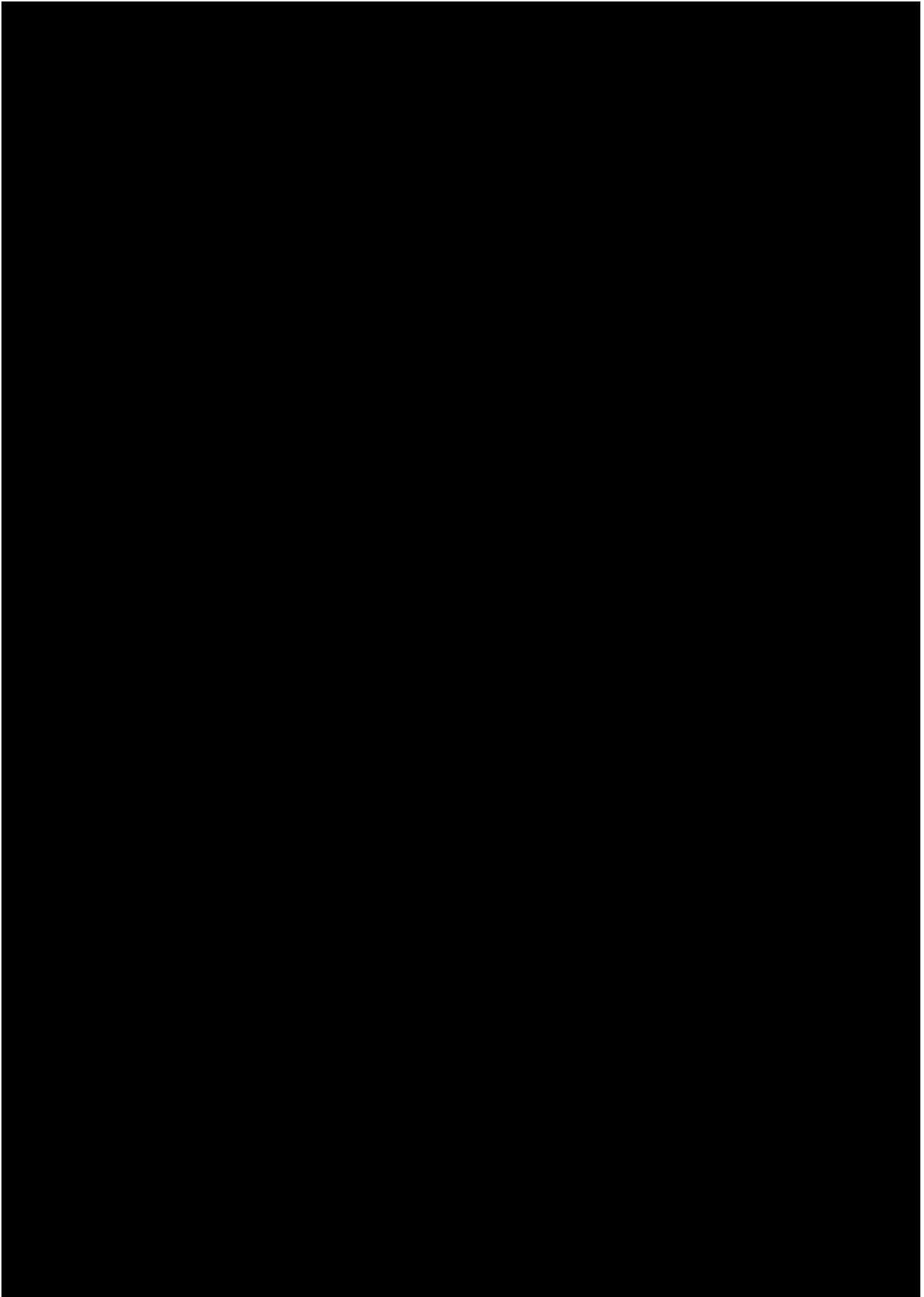












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