



Sydney Light Rail Project Deed

Transport for NSW

ABN 18 804 239 602

and

ALTRAC Light Rail Partnership

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- D7 Financial Close Protocol
- D8 Form of Bond
- D9 Augmentations
- D10 Insurances
- D11 Financiers Tripartite Deed
- D12 Equity Purchase Deed
- D13 Licence Payment Schedule
- D14 Construction Payment Schedule

Part E – Scope and Performance Requirements

- E1 Scope and Performance Requirements

Part F – Initial Project Plans

- F1 Project Plan Commitments
- F2 Initial Customer Service Plan
- F3 Initial Transition-In Management Plan
- F4 Initial Asset Management Plan
- F5 Initial Safety and Systems Assurance Management
- F6 Initial Workplace Relations Management
- F7 Initial Traffic and Transport Management Plan
- F8 Initial Utility Service Treatment Plan

THIS DEED is made on

17 December 2014

BETWEEN:

- (1) **Transport for NSW** (ABN 18 804 239 602) a New South Wales Government agency constituted by section 3C of the *Transport Administration Act 1988* (NSW) of Level 5, Tower A, Zenith Centre 821 Pacific Highway, Chatswood NSW 2067 (**TfNSW**); and
- (2) **ALTRAC Light Rail Partnership**, a partnership between ALTRAC Light Rail 1 Pty Limited ACN 603 192 203 in its capacity as trustee of ALTRAC Light Rail Trust 1, ALTRAC Light Rail 2 Pty Limited ACN 603 194 476 in its capacity as trustee of ALTRAC Light Rail Trust 2 and ALTRAC Light Rail 3 Pty Limited ACN 603 190 601 in its capacity as trustee of ALTRAC Light Rail Trust 3 (**OpCo**).

RECITALS:

- (A) The Project is to be delivered in the following two packages:
 - (1) the Early Works package, which is being delivered by the Managing Contractor under the Managing Contractor Contract; and
 - (2) the design, construction, testing and commission, operations and maintenance package, otherwise known as the SLR PPP, which is to be delivered under this deed.
- (B) On 23 October 2014, following the completion of a public tender process, TfNSW selected OpCo as the successful proponent for the SLR PPP to:
 - (1) design and construct the SLR Works, in consideration of the Construction Price; and;
 - (2) maintain and provide certain Required Services in connection with the SLR PPP during the Term, and operate and maintain the SLR and the ETS during the Operations Phase in consideration of the Service Payments,

in accordance with the terms and conditions of this deed.
- (C) TfNSW and OpCo now wish to enter into this deed to record the terms on which the SLR PPP will be carried out.
- (D) Finance Co has agreed to securitise the Licence Payments and will do so by entering into the Receivables Purchase Deed with TfNSW and OpCo, and by entry into the Debt Financing Documents with the Debt Financiers.

THE PARTIES AGREE AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

The following definitions apply in this deed.

Acciona means Acciona Infrastructure Australia Pty Ltd ABN 52 140 915 251.

Accreditation means accreditation (including provisional accreditation) under Part 3 of the Rail Safety National Law (or an exemption from same).

Actual Fee Zone Occupation Period means (as appropriate):

- (a) in respect of a Fee Zone other than a Double Occupation Fee Zone, the number of days in the period commencing from the Occupation Commencement Date and ending on the Occupation Cessation Date for that Fee Zone; or
- (b) in respect of a Double Occupation Fee Zone, the number of days commencing from the first Occupation Commencement Date and ending on the first Occupation Cessation Date aggregated with the number of days in the period commencing from the second Occupation Commencement Date and ending on the final Occupation Cessation Date for that Fee Zone,

excluding any period in which OpCo has vacated in accordance with a TfNSW Direction under clause 12.2 (*Vacating a Section*).

Actual Headway has the meaning given in Schedule D1 (*Service Payment Regime*).

Additional Areas means areas and structures which:

- (a) are not within the Permanent Light Rail Corridor;
- (b) are visible from the Permanent Light Rail Corridor; and
- (c) if damaged by Graffiti or Vandalism, may reasonably affect the enjoyment of Customers and the ambience of the SLR.

Additional CSELRV Acceptance Requirements means the requirements referred to in clause 19.4A(b).

Additional Required CSELRVs has the meaning given in clause 19.4A(a)(i).

Adjusted Indexed Availability Fee has the meaning given in Schedule D1 (*Service Payment Regime*).

Adjustment Note has the meaning given in the GST Act.

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

Agent means at any time, the person appointed as agent under the Facility Agreement. At the date of this deed the Agent is Commonwealth Bank of Australia ACN 123 123 124.

Airport Motorway Limited or AML means Airport Motorway Limited ABN 26 057 283 093.

Alison Road Works means the following activities that OpCo must undertake at Alison Road between chainage 40+740 and chainage 41+300 in order to satisfy OpCo's obligations under this deed:

- (a) operational noise attenuation to structures and applied finishes;
- (b) works required to address heritage items;
- (c) modifications of the levee bank to provide stability not addressed by the retaining wall;
- (d) the treatment of Ausgrid assets on Route 02 Ref 2NE 41086;

- (e) the treatment of 600 and 500 CICL water mains at chainage 40 + 900 to chainage 41 + 110;
- (f) the treatment of sewer manholes at chainage 40 + 805 and chainage 40 + 955;
- (g) the treatment of sewer at chainage 41 + 055 to chainage 41 + 640;
- (h) the treatment of stormwater culvert and headwalls at 2NSW 90730;
- (i) Jemena protection works at new stabling access at chainage 40 + 740; and
- (j) AARNET treatment at chainage 40 + 900 to chainage 41 + 130.

Alstom means Alstom Transport Australia Pty Limited ABN 68 165 157 451.

Alstom CSELRV Supply Agreement means the contract titled "Alstom CSELRV Supply Agreement" between TfNSW and Alstom dated on or about the date of this deed substantially in the form set out in Schedule A22 (*Alstom CSELRV Supply Agreement*).

Alstom CSELRV Supply Agreement Guarantee means the parent company guarantee from Alstom Transport S.A. in favour of TfNSW in respect of the Alstom CSELRV Supply Agreement, dated on or about the date of this deed.

Alstom Maintenance Subcontract Side Deed means the contract titled "Maintenance Subcontract Side Deed" between TfNSW, the O&M Contractor and Alstom dated on or about the date of this deed substantially in the form set out in Schedule A21 (*Alstom Maintenance Subcontract Side Deed*).

Alstom Manufacturing Country means any country where Alstom is undertaking manufacturing of material, equipment or parts which will form a material part of the SLR Works or the SLR.

Alstom Relief Event means an event:

- (a) falling within paragraphs (b) to (k) of the definition of Relief Event;
- (b) which affects an Additional Required CSELRV or an Option IA CSELRVs (if Option 1A has been exercised by TfNSW) after it has left the assembly plant; and
- (c) occurring prior to the Independent Certifier certifying that the Additional Required CSELRV or the Option IA CSELRV has passed the CSELRV Completion Tests.

Alternative Journey Time Detection Method means the method set out at Annexure 7 of Scheduled D1 (*Service Payment Regime*).

ALR HoldCo means:

- (a) HoldCo 1;
- (b) HoldCo 2; and
- (c) HoldCo 3.

ALR Partners means:

- (a) ALTRAC Light Rail 1 Pty Limited ACN 603 192 203 in its capacity as trustee of the ALR Trust 1;

- (b) ALTRAC Light Rail 2 Pty Limited ACN 603 194 476 in its capacity as trustee of the ALR Trust 2; and
- (c) ALTRAC Light Rail 3 Pty Limited ACN 603 190 601 in its capacity as trustee of the ALR Trust 3.

ALR Trust means:

- (a) the ALR Trust 1;
- (b) the ALR Trust 2; or
- (c) the ALR Trust 3,

as applicable.

ALR Trust 1 means the "ALTRAC Light Rail Trust 1" established under the trust deed dated 8 December 2014 and executed by the ALR Trustee 1.

ALR Trust 2 means the "ALTRAC Light Rail Trust 2" established under the trust deed dated 8 December 2014 and executed by the ALR Trustee 2.

ALR Trust 3 means the "ALTRAC Light Rail Trust 3" established under the trust deed dated 8 December 2014 and executed by the ALR Trustee 3.

ALR Trustee means:

- (a) the ALR Trustee 1;
- (b) the ALR Trustee 2; or
- (c) the ALR Trustee 3,

as applicable.

ALR Trustee 1 means ALTRAC Light Rail 1 Pty Limited ACN 603 192 203.

ALR Trustee 2 means ALTRAC Light Rail 2 Pty Limited ACN 603 194 476.

ALR Trustee 3 means ALTRAC Light Rail 3 Pty Limited ACN 603 190 601.

Applicable Cure Period has the meaning given in clause 41.3(c)(i) and includes any extension granted under clause 41.3(g).

Appointed Principal Contractor means Acciona or the O&M Contractor, as applicable in accordance with, and during the periods described in, clause 9.2 (*Principal contractor*).

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

- (a) must be obtained or satisfied (as the case may be):
 - (i) to perform OpCo's Activities;
 - (ii) in connection with the SLR Site and Extra Land;
 - (iii) for the use and occupation of:

- (A) the SLR Works; and
- (B) the SLR; or
- (iv) otherwise to comply with law; or
- (b) TfNSW notifies OpCo from time to time is necessary to be held by TfNSW in respect of:
 - (i) TfNSW's ownership of the electrical infrastructure forming part of the SLR; or
 - (ii) TfNSW's provision of electricity in accordance with clause 9.18(a)(ii),

and for the avoidance of doubt includes:

- (c) the Planning Approvals;
- (d) the Roads Act Approval; and
- (e) any Environment Protection Licence which applies to OpCo's Activities,

but does not include:

- (f) any Direction given by TfNSW or TfNSW's Representative pursuant to this deed; or
- (g) the exercise by TfNSW of its rights under this deed.

Approved Cure Plan has the meaning given in clause 41.3(c).

Approved Prevention Plan has the meaning given in clause 41.4(c).

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

Asset means the:

- (a) Corridor Assets;
- (b) Non-Corridor Assets;
- (c) Moveable Assets; and
- (d) Existing Moveable Assets,

other than the Excluded Assets.

Asset Condition Assessment means the assessment of the condition of the Assets described in section 9.9 of the SPR.

Asset Information System means the system for the storage, processing, transmission and management of Asset information as described in SPR Appendix 40 (*Asset Information Management Systems*).

Asset Maintenance Standards means the standards developed by OpCo in accordance with section 9.6 of the SPR.

Asset Management Activities means the activities that OpCo is required to perform in clause 21 (*Asset Management*) and the SPR, including:

- (a) maintaining and repairing the SLR;
- (b) performing renewals; and
- (c) maintaining Spares.

Asset Management Failure has the meaning given in clause 21.8(b)(ii).

Asset Management Plan means the Project Plan of that name as listed in SPR Appendix 43 (*Project Plan Requirements*).

Asset Management System means the Asset management arrangements described in section 9.2 of the SPR.

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

- (a) in the case of OpCo, includes OpCo's Contractors and their respective Associates (but does not include TfNSW or any of its Associates);
- (b) in the case of TfNSW, does not include OpCo or its Associates; and
- (c) in the case of both parties, does not include the Independent Certifier, the Dispute Avoidance Board or the Environmental Representative.

Augmentation means any extension to the SLR from time to time that is not an Expansion Modification or an extension otherwise carried out by a third party, unless TfNSW, in its absolute discretion, determines that an Expansion Modification cannot be dealt with in accordance with the Modification regime in which case such Expansion Modification will be deemed to be an Augmentation.

Ausgrid means the statutory State owned corporation of that name established under the *Energy Services Corporations Act 1995* (NSW).

Ausgrid Connection Points means the permanent points at which the SLR's electrical infrastructure connects to Ausgrid's electricity distribution network. For the avoidance of doubt, it does not include any temporary connection points established between the SLR's electrical infrastructure and Ausgrid's electricity distribution network for the purposes of supplying construction power during the Delivery Phase.

Australian Turf Club means the Australian Turf Club ABN 81 148 157 288.

Authority means:

- (a) any governmental, semi-governmental or local government authority, administrative or judicial body or tribunal, department, commission, public authority, agency, minister, statutory corporation or instrumentality (including TfNSW carrying out any statutory authority or function);
- (b) any other person having a right to impose a requirement, or whose consent is required, under law with respect to:
 - (i) any part of OpCo's Activities; or

- (ii) any exercise by OpCo of OpCo's rights or obligations under this deed; or
- (c) any other person having jurisdiction over, or ownership of, any Utility Service, the Utility Service Works, any Local Areas or the Local Area Works undertaken on or in Local Areas.

Availability Deduction has the meaning given in Schedule D1 (*Service Payment Regime*).

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

Bank Bill Rate means, in respect of a period, the rate, expressed as a yield per cent per annum (rounded up, if necessary, to 4 decimal places) that is quoted as the average bid rate on the Reuters monitor system page "BBSY" (or any page that replaces that page) at about 10.10 am (Sydney time) on the first day of the relevant period for which the rate is sought, for Bank Bills that have a tenor in months which is closest to the period, provided that if there is a manifest error in the calculation of that average bid rate or if no average bid rate is so published for Bank Bills of that tenor by about 10.30 am, then the Bank Bill Rate will be the bid rate specified by the non-defaulting party reasonably, acting in good faith, having regard to the rates otherwise bid for Bank Bills having a tenor as described above at or around that time.

Base Case Equity Return means, at any time, the nominal after tax blended internal rate of return to Equity Investors (which is after tax paid or payable on project cash flows by OpCo, and is before any tax paid or payable by Equity Investors), equal to the percentage set out under "Base Case Equity Return" in the Model Outputs Schedule.

Base Case Financial Model means the financial model and assumptions prepared by or for OpCo and accepted by TfNSW contained in Schedule D3 (*Base Case Financial Model*), as updated in accordance with the Financial Close Protocol and from time to time in accordance with clause 25.2(e), 49.11 (*Adjustments to Base Case Financial Model upon a Refinancing Gain*) or 50.1 (*Updates to Base Case Financial Model*).

Base Fee Zone Credit has the meaning given in clause 12.3(a)(ii).

Base Fee Zone Occupation Period means, in respect of a Fee Zone, the number of days specified as the "Base Fee Zone Occupation Period" for that Fee Zone in Schedule B9 (*Occupation Fee Schedule*) and for the Double Occupation Fee Zones only, shall be the aggregate number of days consisting of the two separate occupation periods, as may be extended in accordance with clause 12.3(i).

Benchmarked Insurance Component means the insurance component of the Service Payment payable in respect of the relevant Benchmarked Insurances, being the amount specified as such in section 1.2 of Annexure 1 of Schedule D1 (*Service Payment Regime*).

Benchmarked Insurances means those insurances set out in clauses 39.2(a) (industrial special risks insurance), 39.2(c) (public and products liability insurance), 39.2(d) (professional indemnity insurance) and 39.2(i) (terrorism insurance).

Bond means:

- (a) the Handback Security Bond; or
- (b) the Extension Security Bond.

Business Day means any day in New South Wales other than a Saturday, Sunday or public holiday or 27, 28, 29, 30 or 31 December.

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

CAF Supply Contract means the Sydney Light Rail Rolling Stock Supply Contract between the Director General of the Department of Transport for and on behalf of Transport for NSW, Pyrmont Light Rail Company Pty Limited and Construcciones y Auxiliars de Ferrocarriles S.A. dated 1 August 2012.

CCTV means closed-circuit television.

CDPD Amount means the lesser of:

- (a) 50% of Project Debt forecast in the Base Case Financial Model to be outstanding at the CDPD Payment Date in the Base Case Financial Model; and
- (b) 50% of Project Debt actually outstanding at the CDPD Payment Date.

CDPD Conditions means the conditions set out in clause 25.2(a).

CDPD Notice Date means the date of the notice issued by OpCo under clause 25.2(c)(ii).

CDPD Payment Date means the last day of the "Interest Period" (as that term is defined in the Facility Agreement) which is at least 15 Business Days after:

- (a) the delivery of the CDPD Satisfaction Notice; or
- (b) such earlier date determined by TfNSW in its absolute discretion.

CDPD Period means the period of time:

- (a) beginning on the 2nd anniversary of the later of the Original Date for Completion and the Date of Completion; and
- (b) ending on the 4th anniversary of the later of the Original Date for Completion and the Date of Completion.

CDPD Receivables has the meaning given in the Receivables Purchase Deed.

CDPD Satisfaction Notice means the notice delivered pursuant to clause 25.2(c)(iv)(A).

Centennial Park and Moore Park Trust or **CPMPT** means the Centennial Park and Moore Park Trust ABN 37 220 827 521.

Certificate of Additional CSELRV Acceptance means a certificate referred to in clause 19.9B(a)(i) substantially in the form of Schedule C21 (*Certificate of Additional CSELRV Acceptance*).

Certificate of Civils and Systems Completion means a certificate referred to in clause 19.16(b)(ii) substantially in the form of Schedule C22 (*Certificate of Civils and Systems Completion*).

Certificate of Completion means a certificate referred to in clause 19.9(a)(i) substantially in the form of Schedule C11 (*Certificate of Completion*).

Certificate of Final Completion means a certificate referred to in clause 19.10(d)(i) substantially in the form of Schedule C12 (*Certification of Final Completion*).

Certificate of Readiness for Revenue Service means a certificate referred to in clause 14.4 (*Certification of Readiness for Revenue Service*) substantially in the form of Schedule C14 (*Certificate of Readiness for Revenue Service*).

Certificate of Readiness for First Passenger Service means a certificate referred to in clause 19.3(a)(i) substantially in the form of Schedule C6 (*Certificate of Readiness for First Passenger Service*).

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

Change in Disability Law means a Change in Law relating specifically to the ability of disabled persons to access and use light rail facilities.

Change in Environmental Law means a Change in Law:

- (a) relating to the storage, handling or transportation of waste, dangerous goods or hazardous substances;
- (b) relating to work health and safety; or
- (c) the purpose of which relates specifically to the protection of the Environment.

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

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

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

- (c) has been published or of which public notice has been given; or
- (d) a party experienced and competent in the delivery of works and/or services similar to the SLR Works, the Temporary Works or the Operations Activities would have reasonably foreseen or anticipated,

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

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

- (a) repeal of or change to a NSW Government Policy; or
- (b) the coming into effect or implementation of a new NSW Government Policy,

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

- (c) has been published or of which public notice has been given; or
- (d) a party experienced and competent in the delivery of works and/or services similar to the SLR Works, the Temporary Works or the Operations Activities would have reasonably foreseen or anticipated,

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

Change in Rail Safety Law means a Change in Law relating specifically to rail safety.

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

Change Savings means, in relation to a Construction Change:

- (a) the amount of the Net Financial Impact if that amount is a negative number in relation to a Construction Change referred to in paragraph (a)(i) of that definition; and
- (b) in relation to any other Construction Change, the amount, if any, as may be agreed between TfNSW and OpCo.

City of Sydney or **CoS** means the Council of the City of Sydney ABN 22 636 550 790, constituted under the *Local Government Act 1993* (NSW) and the *City of Sydney Act 1988* (NSW).

City of Sydney Development Agreement means the agreement entitled "Development Agreement – Sydney Light Rail Project" between TfNSW and the Council of the City of Sydney dated 19 December 2013.

Civils and Systems Completion has the meaning given in clause 19.16(b).

Civils and Systems Works means the physical works, assets, systems and deliverables that OpCo must design, construct, manufacture and install under this deed and comprise:

- (a) the Third Party Works;
- (b) the CSELR Stops;
- (c) the rail systems;
- (d) the trackwork;
- (e) the rail structures;
- (f) the interchange facilities;
- (g) the terminus facilities;
- (h) the Light Rail Maintenance and Stabling Facilities;
- (i) the Alison Road Works;
- (j) the Property Noise Attenuation Works; and
- (k) to the extent relevant to such works, assets, systems and deliverables, any Modifications directed or approved in accordance with clauses 29 (*TfNSW initiated Modifications*),

in accordance with this deed (including the SPR), but excluding the Temporary Works.

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

- (a) under, arising out of, or in any way in connection with, this deed;
- (b) arising out of, or in any way in connection with, any task, fact, matter, thing or relationship connected with OpCo's Activities or either party's conduct prior to the date of this deed; or
- (c) otherwise at law or equity including:
 - (i) under, or for breach of, any statute;
 - (ii) in tort for negligence or otherwise, including negligent misrepresentation; or
 - (iii) for restitution, including restitution based on unjust enrichment.

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

Coal Tar has the same meaning as in the EPA Exemption.

Commercially Sensitive Information means the information identified in or of the type referred to in Schedule A4 (*Commercially Sensitive Information*).

Compensable Change in Law means:

- (a) a Project-Specific Change in Law (other than a Project-Specific Change in Law of the Commonwealth of Australia with respect to Tax);
- (b) a Change in Disability Law;
- (c) a Change in Environmental Law;
- (d) a Change in Rail Safety Law; or
- (e) a General Change in Law (other than with respect to Tax).

Compensable Change in NSW Government Policy means:

- (a) a Project-Specific Change in NSW Government Policy; or
- (b) a General Change in NSW Government Policy.

Compensation Event means each of the following:

- (a) a breach by TfNSW of its obligations under this deed or any other Project Agreement;
- (b) a legal challenge brought about by way of commencement of court proceedings in relation to a Planning Approval except to the extent the legal challenge was due to any event the subject of clause 6.3 (*Modifications to Planning Approvals*);
- (c) a Planning Approval is modified, withdrawn, revoked or replaced except to the extent the modification, withdrawal, revocation or replacement was due to any event the subject of clause 6.3 (*Modifications to Planning Approvals*);
- (d) the SLR Works, the Temporary Works, the SLR Site or the SLR are damaged by an Other Contractor;
- (e) OpCo, or an OpCo Contractor, is required:

- (i) to comply with an Environmental Notice; or
- (ii) by any law, Approval, Environmental Notice or otherwise to dispose of, otherwise deal with or remediate Contamination,

which in each case does not arise out of or in connection with any Contamination for which OpCo is responsible (including asbestos or Coal Tar) under clauses 11.4 (*Contamination*), 11.4A (*Responsibility for asbestos*) or 11.4B (*Responsibility for Coal Tar*);

- (f) notwithstanding clause 12.1(b)(i) and without prejudice to OpCo's obligations under clause 9.24 (*Access by Managing Contractor and Early Works Contractor*), TfNSW:
 - (i) fails to give OpCo access to each part of the Construction Site (including a Section) on the Section Access Date (or such earlier date as may be agreed between the parties) in accordance with clause 12.1 (*Construction Site Licence*); and
 - (ii) in respect of those Sections within which Early Works are performed, gives access and the Early Works Contractor and the Managing Contractor has not vacated the Section following completion of the relevant Early Works;
 - (g) if OpCo is directed, ordered or required to cease to perform OpCo's Activities (or to change the way it does so), or to provide reasonable assistance in connection with dealing with a Native Title Claim, as contemplated by clause 12.8 (*Native Title Claims*);
 - (h) the occurrence of a Compensable Change in Law;
 - (i) the occurrence of a Compensable Change in NSW Government Policy;
 - (j) a Step-in Party exercises all or any of the Step-in Powers in respect of a Step-in Event;
 - (k) if the SLR Works, the Temporary Works, the SLR, the SLR Site or OpCo's Activities are damaged or adversely affected by any Proximate Work Activity;
 - (ka) before the Date of Completion the occurrence of a Utility Works Event;
 - (kb) any Existing Asset Defect occurs and such occurrence has, or is likely to have, a material impact on Required Services;
 - (kc) the discovery of Hazardous Coal Tar pursuant to clause 11.4B(a)(i); and
 - (kd) TfNSW cancels a Connection Shutdown pursuant to clause 21.16(e) and OpCo, using its best endeavours, is not able to reschedule the Connection Shutdown so it is not on the critical path,
- except to the extent the event (or its effects):
- (l) occurs or arises as a direct or indirect result of any act or omission of OpCo or OpCo's Contractors;
 - (m) occurs or arises as a direct or indirect result of a failure by OpCo to comply with its obligations under this deed;

- (n) occurs or arises as a direct or indirect result of any breach of this deed by OpCo; or
- (o) is, or ought reasonably to have been, within the control of OpCo or OpCo's Contractors.

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

Concept Design means the concept design prepared by OpCo and included in the SPR Appendix 45 (*Concept Design*).

Condition Precedent means a condition precedent set out in Schedule A1 (*Conditions Precedent*).

Condition Precedent Deadline Date means, in respect of a Condition Precedent, the date specified next to that Condition Precedent in Schedule A1 (*Conditions Precedent*), or such other date as the parties may agree.

Connection Shutdown means a disruption to the Required Services which:

- (a) is required for OpCo to undertake SLR Works to the extent reasonably required to:
 - (i) connect the IWLR alignment to the CSELR alignment; or
 - (ii) ensure interoperability of the CSELR and IWLR;
- (b) when aggregated with other disruptions falling within paragraph (a) of this definition, is not more than:
 - (i) two seven day, 24 hour per day, shutdowns; and
 - (ii) 30 shutdowns between the hours of 8:00pm and 5:00am; and
- (c) has been notified by OpCo to TfNSW and agreed pursuant to clause 21.16 (*Planned Service Disruption and Connection Shutdown*).

Consent Deeds means:

- (a) the Financier D&C Consent Deed, which means the deed titled "Sydney Light Rail D&C finance side deed" dated on or about the date of Financial Close between OpCo, the D&C Contractor, the Security Trustee and any other party to that deed; and
- (b) the Financier O&M Consent Deed, which means the deed titled "Sydney Light Rail O&M finance side deed" dated on or about the date of Financial Close between OpCo, the O&M Contractor, the Security Trustee and any other party to that deed.

Consequential or Indirect Loss means any loss of income, loss of revenue, loss of profit, loss of financial opportunity, loss of business or loss of business opportunity, loss of contract (other than the loss of this deed), loss of goodwill, loss of use, loss of production or failure to realise anticipated savings (whether the loss is direct or indirect).

Construction Change means a change in the costs in connection with the construction and development of the Project which OpCo will incur as a result of:

- (a) a Modification being:
 - (i) a Modification directed by TfNSW which is a NFI Event;

- (ii) a Modification Approval;
- (b) any Augmentation agreed between TfNSW and OpCo;
- (c) TfNSW directing OpCo to implement any Pre-Agreed Option pursuant to clause 31;
- (d) a NFI Event which is a Compensation Event where:
 - (i) the Net Financial Impact is agreed or determined to apply before the Date of Completion;
 - (ii) TfNSW requests that OpCo (or Finance Co), and OpCo (or Finance Co) agrees to, finance all or part of the relevant Net Financial Impact in accordance with this deed; and
 - (iii) the parties agree that OpCo shall be compensated by way of an adjustment to the Service Payments,

and which results in a Construction Change Payment and a corresponding increase in the Receivables Purchase Payment; or
- (d) in any other case, the agreement between TfNSW and OpCo.

Construction Change Date means, in respect of a Construction Change, the earlier to occur of the date on which:

- (a) TfNSW has issued a Modification Order;
- (b) TfNSW has otherwise directed OpCo to implement a Modification or Pre-Agreed Option; or
- (c) TfNSW and OpCo agree to a Construction Change.

Construction Change Payment means, in respect of a Construction Change, an amount equal to the aggregate increase in the Construction Price:

- (a) determined in accordance with clauses 25A (*Securitised Licence Structure*), 26 (*Compensation Payments*), 29 (*TfNSW Initiated Modifications*), 30 (*OpCo Initiated Modifications*), 31 (*Pre-Agreed Options*) or 33 (*Augmentations*), as applicable, and clause 6.1 of Schedule D4 (*Net Financial Impact*) in respect of that Construction Change; or
- (b) otherwise as agreed between TfNSW and OpCo,

as applicable.

Construction Compliance Unit or **CCU** means the unit established within NSW Industrial Relations to monitor compliance with, and receive alleged breaches of, the NSW Guidelines.

Construction Environmental Management Plan means the Project Plan of that name as listed in SPR Appendix 43 (*Project Plan Requirements*).

Construction Management Plan means the Project Plan of that name as listed in SPR Appendix 43 (*Project Plan Requirements*).

Construction Payment means the aggregate payment to be made in accordance with clause 25A.1 (*Construction Price*) by TfNSW to OpCo of an amount equal to the

corresponding aggregate Receivables Purchase Payment payable by Finance Co to TfNSW under the Receivables Purchase Deed, as set out in the Construction Payment Schedule and includes any Construction Change Payment.

Construction Payment Date means, with respect to the Construction Payment, the Date of Completion, also being the date on which the corresponding Receivables Purchase Payment payable by Finance Co to TfNSW is required to be made under the Receivables Purchase Deed.

Construction Payment Schedule means the schedule of Construction Payments as set out in Schedule D14 (*Construction Payment Schedule*).

Construction Price means the price to be paid by TfNSW to OpCo in accordance with clause 25A.1 (*Construction Price*), being the aggregate Construction Payment, which must equal the aggregate Receivables Purchase Price calculated under the Receivables Purchase Deed.

Construction Site means the Project Site and the Temporary Areas.

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

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

- (a) a presence that presents a risk of harm to human health or any other aspect of the Environment; or
- (b) toxic, flammable or otherwise capable of causing harm to humans or damage to the Environment including asbestos, toluene, polychlorine biphenyls, lead based paints, glues, solvents, cleaning agents, paints, water treatment chemicals and stone containing silica.

Contract Service Level Requirements means the requirements set out in section 4 of SPR Appendix 38 (*Minimum Service Requirements*), as amended from time to time in accordance with clause 11 of Schedule D1 (*Service Payment Regime*).

Control means:

- (a) the ability to control, directly or indirectly, the composition of the board of an Entity;
- (b) the ability to exercise, or control the exercise of, the rights to vote in relation to more than 25% of the voting shares, or other form of voting equity, in an Entity;
- (c) the ability to dispose, or exercise control over the disposal of, more than 25% of the shares or other form of equity in an Entity; or
- (d) the capacity to determine the outcome of decisions about the financial and operating policies of an Entity as defined in section 50AA of the Corporations Act.

Conversion Period means the period commencing on the Original Date for Completion and ending on the date which 61 days after the Original Date for Completion.

Core Contract means:

- (a) the D&C Contract; and
- (b) the O&M Contract.

Core Contractor means:

- (a) the D&C Contractor; and
- (b) the O&M Contractor.

Core Contractor Guarantor means:

- (a) the D&C Guarantors; and
- (b) the O&M Guarantors.

Core Contractor Side Deed means:

- (a) the D&C Contract Side Deed; and
- (b) the O&M Contract Side Deed.

Corporate WHS Management System has the meaning given in the NSW Government Work Health and Safety Management Systems and Auditing Guidelines (Edition 5, September 2013).

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

Corridor Assets means those fixed assets described in SPR Appendix 3 (*Assets*) that are located within the Permanent Light Rail Corridor.

Cost Reimbursement Deed Poll means the proposal cost reimbursement deed poll by Transdev, Alstom, Acciona and Capella Capital Pty Ltd (as agent for Capella Capital Partnership ABN 63 127 727 771) in favour of TfNSW dated July 2014.

Counterparty Details means, in respect of each person other than TfNSW who is a party to a TfNSW Project Agreement:

- (a) a certified copy of its constitution (or other constituent documents);
- (b) in the case of a trustee, a certified copy of the trust deed of the trust it enters into the TfNSW Project Agreement as trustee for;
- (c) a certified copy of any powers of attorney under which the person executed each TfNSW Project Agreement to which it is a party;
- (d) other than for the Security Trustee, the Agent or Acciona Infraestructuras S.A., a certified copy of the extract of minutes evidencing the resolutions of its board of directors, authorising the entry into, delivery and observance of obligations under each TfNSW Project Agreement to which it is a party; and
- (e) names and specimen signatures of the authorised officers of OpCo, including OpCo's Representative and any other person authorised to take action or give notices for or on behalf of OpCo under the TfNSW Project Agreements.

CPI means the "Weighted Average of Eight Capital Cities: All Groups Consumer Price Index" as maintained and published quarterly by the Australia Bureau of Statistics (ABS). If the Weighted Average of Eight Capital Cities: All Groups Consumer Price Index ceases

to be published quarterly or its method of calculation substantially alters, then the Weighted Average of Eight Capital Cities: All Groups Consumer Price Index is to be replaced by the nearest equivalent index as selected in good faith by TfNSW's Representative and any necessary consequential amendments are to be made.

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

CPMPT Development Agreement means the agreement entitled "Development Agreement – Sydney Light Rail Project" between TfNSW and Centennial Park and Moore Park Trust dated 7 July 2014.

CSELR means the CBD and south east Light Rail from Circular Quay to Central Station via George Street, and to Randwick and Kingsford via Surry Hills and Moore Park including the SLR Works as constructed, but excluding the ETS.

CSELR Permanent Light Rail Corridor means that part of the Permanent Light Rail Corridor described in clause 12.6 (*CSELR Permanent Light Rail Corridor*).

CSELR Stop means each of the CSELR light rail stops listed in Table 1 in SPR Appendix 38 (*Minimum Service Requirements*).

CSELRV means a coupled light rail vehicle of approximately 66m which OpCo must:

- (a) design, build, supply, operate and maintain for the purpose of conveying Customers under this deed, including as part of Pre-Agreed Option 1A directed or approved in accordance with clause 31 (*Pre-Agreed Options*) and Schedule D5 (*Pre-Agreed Options*); or
- (b) operate and maintain for the purpose of conveying Customers under this deed as a result of a Modification.

CSELRV Completion Tests means:

- (a) the Tests referred to and carried out in accordance with section 4.1 of SPR Appendix 37 (*Rolling Stock*) and the Testing and Commissioning Plan; or
- (b) in the case of the Additional Required CSELRVs and the Option 1A CSELRVs (if Pre-Agreed Option 1A has been exercised), the Tests referred to and carried out in accordance with section 4.2 of SPR Appendix 37 (*Rolling Stock*) and the Testing and Commissioning Plan.

Customer means all users and potential users of:

- (a) the SLR; or
- (b) services associated with the SLR.

Customer Service Officer or **CSO** means individual personnel of OpCo who:

- (a) provide information and assistance to Customers on board the SLR; and
- (b) are appointed as authorised officers for the purposes of the *Passenger Transport Act 1990* (NSW) and *Passenger Transport Regulation 2007* (NSW).

D&C Contract means the contract so titled between OpCo and the D&C Contractor dated on or about the date of this deed.

D&C Contract Side Deed means the contract titled "SLR D&C Contract Side Deed" between TfNSW, OpCo, the D&C Contractor and Acciona Infraestructuras S.A. dated on or about the date of this deed substantially in the form set out in Schedule A12 (*D&C Contract Side Deed*).

D&C Contractor means the unincorporated joint venture comprised of Alstom and Acciona.

D&C Guarantee means each parent company guarantee from a D&C Guarantor in favour of OpCo, dated on or about the date of this deed.

D&C Guarantors means:

- (a) in respect of Acciona, Acciona Infraestructuras S.A.; and
- (b) in respect of Alstom, ALSTOM Transport S.A..

DAB Agreement means the agreement titled "Sydney Light Rail DAB Agreement" dated on or about the date of this deed between TfNSW, OpCo and the members of the Dispute Avoidance Board substantially in the form set out in Schedule A14 (*DAB Agreement*).

Daily Fee means, in respect of a Fee Zone, the fee specified as the "Daily Fee" for that Fee Zone in Schedule B9 (*Occupation Fee Schedule*).

Date for Completion means the Original Date for Completion (as at Financial Close), as extended in accordance with this deed.

Date for Revenue Service means 1 July 2015 or a later date as agreed between the parties in accordance with clause 14.1(a) for Revenue Service on the IWLR.

Date of Completion means the date on which Completion is achieved, being the date stated by the Independent Certifier in the Certificate of Completion.

Date of Final Completion means the date on which Final Completion is achieved, being the date stated by the Independent Certifier in the Certificate of Final Completion.

Date of Revenue Service means the date on which OpCo commences Revenue Service, being the date stated by TfNSW's Representative in the Certificate of Readiness for Revenue Service.

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

DCOM Interface Agreement means the agreement between OpCo, the D&C Contractor and the O&M Contractor titled "DCOM Interface Agreement" dated on or about the date of this deed.

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

Debt Financiers' Security means:

- (a) the Borrower GSA, which means the general security deed dated on or about the date of Financial Close between Finance Co and the Security Trustee;

- (b) the Borrower Holdco GSA, which means the general security deed dated on or about the date of Financial Close between Astra SLR Holdings Pty Limited ACN 603 284 840 and the Security Trustee;
- (c) the OpCo GSA, which means the general security deed dated on or about the date of Financial Close between OpCo and the Security Trustee, amongst others; and
- (d) the ALR Holdco GSA, which means the general security deed dated on or about the date of Financial Close between each ALR HoldCo and the Security Trustee.

Debt Financing Documents means:

- (a) the Facility Agreement;
- (b) the Security Trust Deed;
- (c) the Debt Financiers' Securities;
- (d) the Consent Deeds;
- (e) each ISDA Master Agreement and Schedule dated on or about the date of Financial Close between Finance Co and a Swap Bank (as defined in the Facility Agreement);
- (f) the Financiers Certifier Deed, which means the deed so titled dated on or about the date of Financial Close between the Financiers Certifier (as defined in the Debt Financing Documents), OpCo, the Agent and the Security Trustee;
- (g) any document entered into in relation to any Refinancing in accordance with clause 49 (*Financing and Refinancing*); and
- (h) any other document that the parties agree is a Debt Financing Document for the purposes of this deed.

Deed of Assurance has the meaning given in Schedule A5 (*Intellectual Property*).

Deeds of Disclaimer means the Deeds of Disclaimer:

- (a) signed by Transdev on 10 July 2014; and
- (b) signed by each of Alstom, Acciona and Capella Capital Pty Ltd ABN 63 127 727 771 (as agent for Capella Capital Partnership) on 11 July 2014.

Default Notice has the meaning given in clause 41.2 (*Default Notice*).

Default Rate means, in respect of a period, a rate equivalent to 3% per annum above the Bank Bill Rate for that period.

Defect means:

- (a) any defect, deficiency, fault, error or omission in the Temporary Works, the SLR Works or the SLR; or
- (b) any:
 - (i) cracking, shrinking, movement or subsidence in the Temporary Works, the SLR Works or the SLR; or
 - (ii) other aspect of the Temporary Works, the SLR Works or the SLR,

which is not in accordance with the requirements of this deed.

Defects Correction Period means a period referred to in clauses 19.5(g), 19.6(d) or 19.7(e).

Deferred Equity Commitment Deeds has the meaning given in the Common Terms Deed.

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

- (a) in connection with the design and construction of the SLR Works and the design and construction of the Temporary Works (whether such things are performed, or required to be performed, during the Delivery Phase or the Operations Phase); or
- (b) to exercise its rights or comply with its obligations under this deed during the Delivery Phase,

including the activities described in section 6 of the SPR.

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

Delivery Phase Progress Report means each progress report to be submitted by OpCo under clause 17.7 (*Delivery Phase Progress Reports*).

Delivery Phase Sustainability Plan means the Project Plan of that name as listed in SPR Appendix 43 (*Project Plan Requirements*).

Delivery Program means the program of the Delivery Activities, as updated from time to time in accordance with clause 17.3 (*Delivery Program*). The initial Delivery Program is contained in Schedule A10 (*Initial Delivery Program*).

Design Documentation means all:

- (a) design documentation (including design standards, concrete mix designs, design reports, durability reports, specifications, models, samples, prototypes, calculations, shop drawings, drawings, digital records, business rules, system processes and all other relevant data) in electronic, computer readable and written or physical forms, or stored by any other means, which are prepared for the performance of OpCo's Activities by or on behalf of OpCo or an OpCo Contractor (including the design of the Temporary Works) whether created before or after the date of this deed; and
- (b) computer software (including both source code and object code versions) which is Developed IP.

Design Life means in respect of an Asset that falls within the category referred to in section 5.2 of the SPR, the period specified for that Asset in section 5.2 of the SPR commencing on the Date of Completion and ending on the day after expiry of the period specified for that Asset in section 5.2 of the SPR.

Design Management Plan means the Project Plan of that name as listed in SPR Appendix 43 (*Project Plan Requirements*).

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

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

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

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

Destination Stop has the meaning given in Schedule D1 (*Service Payment Regime*).

Developed IP has the meaning given in Schedule A5 (*Intellectual Property*).

Direction means any decision, demand, determination, direction, instruction, notice, order, rejection or requirement in writing given by a person with the authority to do so.

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

Dispute Avoidance Board or **DAB** means the board constituted under the DAB Agreement.

Distribution means, whether in cash or in kind:

- (a) any distribution by OpCo to its Equity Investors or their Related Bodies Corporate, or controlling entities or any amount available for such distribution, whether by way of distribution or partnership income, return of partnership capital, repayment, loan, contractual arrangement, transfer of assets or rights or otherwise in respect of the partnership capital of OpCo or any subordinated debt;
- (b) the receipt from OpCo by its Equity Investors or their Related Bodies Corporate of any other benefit which is not received in the ordinary course of business or on reasonable commercial terms;
- (c) any payment by OpCo to any Equity Investor or a Related Body Corporate of any Equity Investor which is not received in the ordinary course of business or on reasonable commercial terms; or
- (d) the release of any contingent funding liabilities, the amount of such release being deemed to be a gain for the purpose of any calculation of Refinancing Gain.

Double Occupation Fee Zone means a Fee Area indicated as "double occupancy" in the column entitled "Base Fee Zone Occupation Duration (in calendar days)" in Schedule B9 (*Occupation Fee Schedule*).

Draft Cure Plan has the meaning given in clause 41.3(a)(iv).

Draft Prevention Plan has the meaning given in clause 41.4(a).

Early Works means works which may include the investigation and testing of the SLR Site, relocation, removal, augmentation or upgrade of Utility Services, design and construction of certain Utility Service relocations, bus and pedestrian network alterations, property access works, road works, demolition and excavation works and other works carried out and/or managed by the Managing Contractor under the Managing Contractor Contract.

Early Works Contractor means a contractor engaged by the Managing Contractor under the Managing Contractor Contract to carry out the Early Works.

Early Works Defect means:

- (a) any defect, deficiency, fault, error or omission in the Early Works; or
- (b) any:
 - (i) cracking, shrinkage, movement or subsidence in the Early Works; or
 - (ii) other aspect of the Early Works,

which is not in accordance with the requirements of the Managing Contractor Contract.

Easements means the easements, restrictions on use, covenants, agreements or other similar arrangements together with any leases, sub-leases, licences and rights and privileges for any of the purposes set out at clauses 3.1 or 4 of Schedule B5 (*Easement and Land Arrangements*) to benefit or burden the SLR Site or provided for access to the Non-Corridor Assets and which may be created pursuant to Schedule B5 (*Easement and Land Arrangements*).

Election Date means, in respect of a Pre-Agreed Option, the relevant date specified as the "Election Date" in Schedule D5 (*Pre-Agreed Options*).

Electricity Connection Agreements has the meaning given in clause 9.17(b)(i).

Emergency Modification means any Modification which TfNSW believes, acting reasonably, is required:

- (a) to prevent, mitigate or repair any:
 - (i) threat, or likely threat, to the safety of any Customer or other person;
 - (ii) cause, or likely cause, of any significant damage to the SLR; or
 - (iii) suspension, interruption, or likely suspension or interruption, to the operation of the SLR; or
- (b) to discharge a legislative or public duty.

Emissions and Energy Data means:

- (a) any data, information, records and reports of the type that a registered corporation or any other person may be required by the NGER Legislation to keep or to provide to the Clean Energy Regulator concerning greenhouse gas emissions, energy production or energy consumption;
- (b) any data, information, records and reports of the type that a registered corporation or any other person may be entitled to provide to the Clean Energy Regulator under the NGER Legislation concerning reduction of greenhouse gas emissions, removal of greenhouse gases or offsets of greenhouse gas emissions from any greenhouse gas project; and
- (c) any other data, information, records and reports concerning environmental emissions or energy production, use, consumption or efficiency of the type that any person may be required by any other law to keep or to provide to any Authority.

Encumbrance means a mortgage, charge, pledge, lien, encumbrance, security interest, title retention, preferential right, trust arrangement, contractual right of set-off or any

other security agreement or arrangement in favour of any person and includes any Security Interest.

Energy Adjustment has the meaning given in Schedule D1 (*Service Payment Regime*).

Entity has the meaning in the Corporations Act.

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

- (a) the physical characteristics of those surroundings such as the land, the waters and the atmosphere;
- (b) the biological characteristics of those surroundings such as the animals, plants and other forms of life; and
- (c) the aesthetic characteristics of those surroundings such as their appearance, sounds, smells, tastes and textures.

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

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

Environmental Impact Statement means the document entitled "CBD and South East Light Rail Project Environmental Impact Statement" dated November 2013.

Environmental Management Plans means:

- (a) the Construction Environmental Management Plan;
- (b) the Operations Phase Environmental and Sustainability Plan; and
- (c) the Delivery Phase Sustainability Plan.

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

Environmental Representative or **ER** means Gillian Lehn of Australian Quality Assurance & Superintendence Pty Ltd ABN 40 050 539 010 appointed by TfNSW under a separate contract with APP Corporation Pty Ltd ABN 29 003 764 770 and any person appointed by TfNSW as a replacement from time to time, as notified to OpCo.

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

EPA Exemption means the document issued by the New South Wales Environment Protection Authority entitled 'Protection of the Environment Operations (Waste) Regulation 2005 – General Exemption under Part 6, Clause 51 and 51A: The reclaimed asphalt pavement exemption 2012' which was published in the NSW Government Gazette Number 4, 13 January 2012 at pp 39 - 41.

EPBC Act means the *Environment Protection and Biodiversity Conservation Act 1999* (Cth).

Equity Documents means:

- (a) the Investors Deed;
- (b) the Partnership Deed;
- (c) the Subscription Agreement;
- (d) the Management Services Agreement;
- (e) the constitution or trust deed, as applicable, of each OpCo Group member; and
- (f) any other document that the parties agree is an Equity Document for the purposes of this deed.

Equity Interest means:

- (a) a share or unit or other interest in the nature of equity in any member of OpCo Group; and
- (b) any right or interest (including any interest in the nature of debt) in any member of OpCo Group which is exercisable or convertible into an interest referred to in paragraph (a).

Equity Investor means a person who:

- (a) is defined in the Investors Deed as an Equity Investor from time to time; or
- (b) provides a shareholder loan (or other loan in the nature of equity funding) to or for the benefit of OpCo.

Equity Purchase Deed means the deed dated on or about the date of this deed entered into between TfNSW, Equity Investors, HoldCo 1, HoldCo 2 and HoldCo 3 substantially in the form set out in Schedule D12 (*Equity Purchase Deed*).

Equity Purchase Exercise Notice has the meaning given to that term under the Equity Purchase Deed.

Equity Purchase Option has the meaning given to that term under the Equity Purchase Deed.

Equity Purchase Payment means an amount payable by TfNSW to OpCo under clause 43.15 (*Equity Purchase Option*) and calculated in accordance with Schedule D12 (*Equity Purchase Deed*).

ETS means the electronic ticketing system for the SLR, including the ETS Equipment, software, smartcards and all other aspects of the system, as modified or replaced from time to time, but does not include the LTS.

ETS Contractors means:

- (a) Cubic Transportation Systems (Australia) Pty Limited ABN 82 003 617 561 and any other contractors engaged by TfNSW in relation to the ETS; and
- (b) any subcontractors and suppliers at any level of the entities referred to in paragraph (a).

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

- (a) provided by TfNSW or the ETS Contractor;

- (b) installed on the SLR by TfNSW, the ETS Contractor or OpCo; and
- (c) intended to be used by OpCo, including portable readers, excluding smartcards.

Excluded Assets means the assets referred to as "Excluded Assets" in SPR Appendix 3 (*Assets*).

Executive Negotiator means:

- (a) for TfNSW, TfNSW's nominated Deputy Director General; and
- (b) for OpCo, its chief executive officer, (or his or her delegate, who must not be part of the Senior Project Group).

Existing Asset Defect means:

- (a) any defect, deficiency, fault, error, cracking, shrinkage, Structural Defect, movement or subsidence in any of the Assets indicated by a "Yes" in the column entitled "Existing Asset Defect regime applies" in the table relating to IWLR Assets in section 2.1 of SPR Appendix 3 (*Assets*) whenever occurring or coming into existence but which could not have been discovered or anticipated by a reasonable inspection of those Assets prior to Financial Close; or
- (b) a deficiency in an Asset which existed at Financial Close due solely to a failure of such Asset to comply with the Disability Standards for Accessible Public Transport (Cth) and accompanying guidelines under the *Disability Discrimination Act 2000* (Cth), but which shall not include any IWLR DDA Compliance Works.

Existing Land Arrangements has the meaning given in Schedule B5 (*Easement and Land Arrangements*).

Existing Moveable Assets means the moveable assets, including the IWLRVs and the LTS Equipment, listed in Schedule A6 (*Existing Moveable Assets*).

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

- (a) is a vanilla interest rate swap;
- (b) does not have any element of accretion or indexation of the notional principal;
- (c) has a tenor that is no longer than the tenor of the underlying principal of the Project Debt; and
- (d) has a notional amount that is no more than the underlying principal of the Project Debt.

Expansion Modification means a Modification that:

- (a) extends the SLR by no longer than 20% of its length (such length to include parts of the SLR which are under construction or already contracted to be constructed whether or not construction has commenced); and
- (b) requires OpCo to design, build, operate and maintain the extension contemplated.

Expiry Date means:

- (a) the Original Expiry Date; or
- (b) if TfNSW has exercised its option to extend the Term under clause 3.3 (*Term extension*), the date that falls on the last day of the Extension Period.

Extended Design Life means, in respect of an Asset that falls within a category referred to in section 5.2 of the SPR and is Replaced or Refurbished during the Term, the period commencing on the date that Replacement or Refurbishment has been completed and ending on the day which occurs after expiry of the period specified for the replaced or refurbished Asset in section 5.2 of the SPR.

Extension Order means the order issued by TfNSW under clause 3.3(j)(iii).

Extension Period means the period commencing on the Original Expiry Date and ending on the date specified in any Extension Proposal agreed pursuant to clause 3.3 (*Term extension*).

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

Extension Proposal Request means the request issued by TfNSW to OpCo under clause 3.3(a).

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

Extra Land means the land referred to in clause 12.11(a).

Facility Agreement means the Syndicated Facility Agreement dated on or about the date of Financial Close between OpCo, Finance Co, the Debt Financiers, the Agent and the Security Trustee, amongst others.

Fee Area means the area identified as a "Fee Area" as set out in Schedule B9 (*Occupation Fee Schedule*).

Fee Zone means each of the following:

- (a) Type A Fee Zone; and
- (b) Type B Fee Zone.

Fee Zone Credit means the Base Fee Zone Credit and the OpCo Fee Zone Credit.

Final Completion has the meaning given in clause 19.10(b).

Final Design Documentation means any Design Documentation which:

- (a) OpCo is entitled to use for construction in accordance with clause 13.9(a);
- (b) has been amended by a Modification directed or approved by TfNSW's Representative in accordance with clauses 29 (*TfNSW initiated Modifications*) or 30 (*OpCo initiated Modifications*); or
- (c) has been amended in accordance with clause 20.19 (*Post Final Completion design changes*).

Final Frequent Breaches Notice means a notice issued under clause 41.6(c) which complies with the requirements of clause 41.6(d).

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

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

Final Persistent Breach Notice means a notice issued under clause 41.5(c) which complies with the requirements of clause 41.5(d).

Finance Co means Astra SLR Finance Pty Limited ACN 166 382 403.

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

Financial Close Protocol means the protocol set out in Schedule D7 (*Financial Close Protocol*).

Financial Indebtedness means any indebtedness, present or future, actual or contingent, in respect of moneys borrowed or raised, or any financial accommodation whatsoever, including:

- (a) under the Debt Financing Documents;
- (b) under or in respect of any bill, acceptance, guarantee, discounting arrangement, redeemable share or stock, hedging/swap arrangements, finance or capital lease, hire purchase arrangement, the deferred purchase cost of any asset or service;
- (c) any obligation to deliver goods or provide services paid for in advance by any financier; or
- (d) In respect of any financing transaction.

Financiers Tripartite Deed means the deed so titled dated on or about Financial Close between TfNSW, OpCo, Finance Co, the Security Trustee and the Agent substantially in the form set out in Schedule D11 (*Financiers Tripartite Deed*).

First Energy Benchmark Date means the date which is the first anniversary of the Date of Completion.

First Passenger Service means the first Service with Customers on board the CSELRV.

First Service means the first Service of each day with paying Customers on board.

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

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

Frequent Breach has the meaning given in clause 41.6 (*Frequent Breaches*).

Frequent Breaches Notice means a notice issued under clause 41.6(a) which complies with the requirements of clause 41.6(b).

Full Operations means all activities that OpCo performs, or is required to perform, from the Date of Completion, including as specified in section 8 of the SPR.

Full Operations Phase means the period commencing on the Date of Completion and ending on the last day of the Term.

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

- (a) a Project-Specific Change in Law;
- (b) a Change in Disability Law;
- (c) a Change in Environmental Law; or
- (d) a Change in Rail Safety Law.

General Change in NSW Government Policy means a Change in NSW Government Policy which is not a Project-Specific Change in NSW Government Policy.

General Modification is a Modification that is not:

- (a) an Emergency Modification;
- (b) an O&M Modification;
- (c) an Operations Modification;
- (d) a LRV O&M Modification; or
- (e) an Expansion Modification.

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

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

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

GST Return has the meaning given to that term in the GST Act.

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

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

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

Handback Condition means the required condition of the SLR as at the Expiry Date (or if this deed is terminated early, at the end of the Term), as set out in section 10 of the SPR.

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

Hazardous Coal Tar has the meaning given in clause 11.4B(a)(i).

Health Infrastructure means the NSW Health entity responsible for planning, managing and delivering major capital works projects, administered by the Health Administration Corporation.

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

HoldCo 1 means ALTRAC Holdings 1 Pty Limited ACN 603 167 380.

HoldCo 2 means ALTRAC Holdings 2 Pty Limited ACN 603 192 221.

HoldCo 3 means ALTRAC Holdings 3 Pty Limited ACN 603 185 655 in its personal capacity and its capacity as trustee of the ALTRAC Holdings Trust 3.

Hold Point means a point beyond which a work process must not proceed without the authorisation or release of an authority designated by the Independent Certifier pursuant to clause 5.4(h)(iii).

Human Resources Plan means the Project Plan of that name as listed in SPR Appendix 43 (*Project Plan Requirements*).

IAMA means The Institute of Arbitrators and Mediators, Australia.

Incident means an accident, event or occurrence which:

- (a) results in first aid assistance being provided to any person;
- (b) actually or potentially causes death, serious injury or significant passenger disruption; or
- (c) affects the operation of the Stops or the Light Rail Vehicles on, or operational capacity or efficiency of, the SLR.

Incident Management Plan means the Project Plan of that name as listed in SPR Appendix 43 (*Project Plan Requirements*).

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

Independent Certifier means APP Corporation Pty Ltd ABN 29 003 764 770 or such other person as may be agreed by TfNSW and OpCo.

Independent Certifier Deed means the deed so titled dated on or about the date of this deed between TfNSW, OpCo and the Independent Certifier substantially in the form set out in Schedule A15 (*Independent Certifier Deed*).

Indexed Lifecycle Component has the meaning given in Schedule D1 (*Service Payment Regime*).

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

- (a) referred to in Schedule A11 (*Information Documents*);
- (b) issued or made available by, or on behalf of, TfNSW or the State to OpCo in connection with the Invitation for Expressions of Interest for the SLR PPP issued by TfNSW in October 2013, the RFP, the SLR Works, the IWLR, the SLR or the ETS (including anything issued or made available through TfNSW's website) and which at the time of issue (or being made available) was expressly classified or stated to be an "Information Document";

- (c) issued or made available by, or on behalf of, TfNSW or the State to OpCo in connection with the Invitation for Expressions of Interest for the SLR PPP issued by TfNSW in October 2013, the RFP, the SLR Works, the IWLR, the SLR or the ETS (including anything issued or made available through TfNSW's website), but which did not form part of the Invitation for Expressions of Interest or RFP (as applicable), regardless of whether or not it was expressly classified or stated to be an "Information Document"; or
- (d) referred to, or incorporated by reference, in an Information Document unless such information, data, document or material is otherwise expressly stated to form part of this deed,

whether issued or made available:

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

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

Initial Utility Service Treatment Plan means the initial Project Plan of that name referred to in Schedule F8 (*Initial Utility Service Treatment Plan*).

Inner West Extension Planning Approval 1 means the planning approval for the light rail extension between Wentworth Park and Lilyfield a copy of which appears in Schedule B7 (*Planning Approvals*).

Inner West Extension Planning Approval 2 means the planning approval for the light rail extension between Lilyfield and Dulwich Hill a copy of which appears in Schedule B7 (*Planning Approvals*).

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

- (a) an application is made (other than for a frivolous or vexatious reason) for the winding up or deregistration of a person and, where an application has been made for the dismissal or withdrawal of the application for winding up within 10 Business Days, and the application is not dismissed or withdrawn within 30 Business Days;
- (b) an order is made for the winding up of a person, except for the purpose of a reconstruction, amalgamation, merger or consolidation on terms approved by TfNSW before that order is made where the reconstruction, amalgamation, merger or consolidation is implemented in accordance with the terms of the approval;
- (c) a person passes a resolution for its winding up or deregistration, except for the purpose of a reconstruction, amalgamation, merger or consolidation on terms approved by TfNSW before that resolution is passed where the reconstruction, amalgamation, merger or consolidation is implemented in accordance with the terms of that approval;
- (d) a receiver, receiver and manager, liquidator, provisional liquidator, compulsory manager, trustee for creditors or in bankruptcy or analogous person is appointed to take possession of, or the holder of a Security Interest takes (or appoints an agent

- to take) possession of, any property of a person or otherwise enforces its Security Interest;
- (e) a person or any other person appoints an administrator to the person, or takes any step to do so;
 - (f) a person:
 - (i) suspends payment of its debts (other than as the result of a failure to pay a debt or claim which is the subject of a good faith dispute);
 - (ii) ceases or threatens to cease to carry on all or a material part of its business;
 - (iii) is or states that it is unable to pay its debts; or
 - (iv) is taken to have failed to comply with a statutory demand as a result of the operation of section 459F of the Corporations Act; or
 - (g) a person enters into a readjustment or rescheduling of its indebtedness or makes a general assignment for the benefit of or a composition with its creditors, without the prior consent of TfNSW, except for the purposes of a solvent reconstruction or amalgamation permitted by this deed; or
 - (h) any act is done or event occurs which has an analogous or similar effect to any of the events in paragraphs (a) to (g).

Installation Works has the meaning given in clause 14.5 (*Journey Time Detection Device*).

Insurance Benchmark Date means:

- (a) the Date of Revenue Service and each third, or multiple thereof, anniversary of that date until the Date of Completion;
- (b) the Date of Completion and each third, or multiple thereof, anniversary of that date;
- (c) the date falling three months after the date on which OpCo receives written notification from TfNSW's Representative in accordance with clause 39.4(a) that the insurance limits of indemnity required for the Benchmarked Insurances will be increased; and
- (d) the date falling three months after the date on which OpCo receives written notification from TfNSW's Representative in accordance with clause 39.5 (*Review of Insurance limits and deductibles*) that the minimum sums insured and/or minimum deductibles should be increased or decreased for a Benchmarked Insurance.

Insurance Proceeds has the meaning given in clause 39.14(a).

Insurance Proceeds Account means the account referred to in clause 39.14(b).

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

Intellectual Property has the meaning given in Schedule A5 (*Intellectual Property*).

Interface Management Plan means the Project Plan of that name as listed in SPR Appendix 43 (*Project Plan Requirements*).

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

Investors Deed means the deed so titled dated on or about the date of this deed entered into between Acciona Concesiones S.L. (CIF: B-83397802), FSS Trustee Corporation (ABN 11 118 202 672) in its capacity as trustee of the First State Superannuation Scheme and John Laing Investments (SLR) B.V. (KvK Number 61908126).

IWLR means the inner west Light Rail from Central Station to Dulwich Hill including the IWLRVs, the Existing Moveable Assets and the LTS, but excluding the ETS.

IWLR Contract means each of the following documents:

- (a) the CAF Supply Contract; and
- (b) the Transdev O&M Contract.

IWLR DDA Compliance Works means those works set out in Attachment 6 of SPR Appendix 49 (*Operational Commitments*).

IWLR Operations means all activities that OpCo performs, or is required to perform, on the IWLR in the Operations Phase, including as specified in section 8 of the SPR.

IWLR Operations Phase means the period commencing on the Date of Revenue Service and ending on the Date of Completion.

IWLR Permanent Light Rail Corridor means the land (including subsurface land) and airspace more particularly described as the "IWLR Permanent Light Rail Corridor", in SPR Appendix 6 (*Permanent Light Rail Corridor*).

IWLR Stop means each of the IWLR light rail stops.

IWLRV means:

- (a) an Existing Moveable Asset that is a light rail vehicle; or
- (b) a light rail vehicle which is part of any Modification directed or approved in accordance with clause 29 (*TfNSW initiated Modifications*),

which OpCo must operate and maintain for the purpose of conveying Customers on the IWLR.

Journey Time Detection Device means a radio frequency based system to detect and record the arrival and departure of LRVs at the Central Station Stop and connected in a manner which emulates audio frequency track circuit detection within the SLR network.

Key Time means, as referred to in clause 12.3 (*Occupation of Fee Areas and Fee Zones*), each of the following periods of time:

- (a) 7:00 am to 7:00 pm Sunday to Thursday excluding public holidays; and
- (b) 7:00 am to 11:00 pm Friday, Saturday and public holidays.

KPI means a key performance indicator, as specified in Schedule D1 (*Service Payment Regime*).

Land Arrangements has the meaning given in Schedule B5 (*Easement and Land Arrangements*).

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

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

Last Service means the last Service of each day with paying Customers on board.

Legacy Ticketing System or **LTS** means the magnetic stripe ticket and light rail paper floppy system for the IWLR, including the LTS Equipment and any interim solutions where the system is at end of life (such as changes to, reconfigurations and upgrades to the magnetic stripe ticket and/or light rail paper floppy system), but does not include the ETS.

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

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

Letter of Dispute means a written communication of any Dispute issued by a party under clause 56.3(a).

Licence Payment means each licence payment payable by OpCo to TfNSW under the Operations Phase Licence as set out in the Licence Payment Schedule.

Licence Payment Date means, with respect to a Licence Payment, the date set out in the Licence Payment Schedule in respect of that Licence Payment, being the date on which the Licence Payment is required to be made by OpCo.

Licence Payment Schedule means the schedule of Licence Payments as set out in Schedule D13 (*Licence Payment Schedule*).

Licensed Disposal Site means a waste disposal facility licensed to accept the material which is being delivered there by OpCo pursuant to clauses 11.4A (*Responsibility for asbestos*) and 11.4B (*Responsibility for Coal Tar*).

Licensed Intellectual Property has the meaning given in Schedule A5 (*Intellectual Property*).

Light Rail means any light rail system within the meaning set out in section 104N of the Transport Administration Act.

Light Rail Maintenance and Stabling Facilities means the Randwick Light Rail Facility and the Rozelle Light Rail Facility.

Light Rail Vehicle or LRV means:

- (a) an IWLRV;
- (b) a CSELRV; and
- (c) any other light rail vehicle operating on the SLR.

Local Areas means all public spaces, parks, pedestrian ways, pedal cycle paths, local roads, state highways, regional roads and main roads, including their associated road reserves, which:

- (a) are adjacent to;
- (b) connect to;
- (c) intersect;
- (d) cross; or
- (e) are in any way affected by,

the SLR Works or Temporary Works, including those sections of public spaces, parks, pedestrian ways, pedal cycle paths, local roads, state highways, regional roads and main roads, including any associated road reserves, that are made redundant or become service roads as part of the road network.

Local Area Works means the modification, reinstatement and improvement of Local Areas which OpCo must design and construct and hand over to TfNSW or the relevant Authority in accordance with this deed (and including, to the extent relevant to such works, Modifications directed or approved in accordance with this deed).

Longstop Date means the date that falls 2 years after the Date for Completion as extended in accordance with this deed.

Loss means:

- (a) any cost, expense, loss, damage, liability or other amount; and
- (b) without being limited by paragraph (a) and only to the extent not prohibited by law, any fine or penalty,

whether direct, indirect, consequential, present, future, fixed, unascertained, actual or contingent and, for the avoidance of doubt, includes Consequential or Indirect Loss.

LPI means the "Labour Price Index: Total Hourly Rates of Pay Excluding Bonuses" (No. 6345) as maintained and published quarterly by the Australian Bureau of Statistics. If the Labour Price Index: Total Hourly Rates of Pay Excluding Bonuses ceases to be published quarterly or its method of calculation substantially alters, then the Labour Price Index: Total Hourly Rates of Pay Excluding Bonuses is to be replaced by the nearest equivalent index as selected in good faith by TfNSW's Representative and any necessary consequential amendments are to be made.

LPI Indexed means, with respect to an amount, the amount must be adjusted in accordance with the indexation process detailed in clause 1.11 (*LPI Indexed*).

LRV O&M Modification means a Modification that requires OpCo to operate and maintain additional light rail vehicles for the SLR purchased by TfNSW from a third party.

LTS Equipment means all physical equipment forming part of the LTS including the ticketing assets, hardware, software, computer network and data.

LTS End Date means 31 December 2015 or a later date agreed between the parties.

Maintenance Works Program means the works program required under the Asset Management Plan defining the Asset Management Activities required in the following 2 years.

Major Australian Bank means Australia and New Zealand Banking Group Limited, Westpac Banking Corporation, National Australia Bank Limited and Commonwealth Bank of Australia.

Management Services Agreement means the agreement so titled dated on or about the date of this deed entered into between OpCo, Finance Co and Capella Management Services Pty Ltd (ACN 127 727 842).

Managing Contractor means the entity engaged by TfNSW under the Managing Contractor Contract.

Managing Contractor Collateral Warranty means the document executed by the Managing Contractor, the form of which is set out in Schedule B8 (*Managing Contractor Collateral Warranty*).

Managing Contractor Contract means the contract entered into between TfNSW and the Managing Contractor for the provision of Early Works.

Material Adverse Planning Effect means:

- (a) a delay arising from requirements and conditions of the Planning Modification; or
- (b) a material adverse effect arising from requirements and conditions of the Planning Modification on:
 - (i) the ability of OpCo to comply with its obligations under this deed; or
 - (ii) TfNSW's rights under any TfNSW Project Agreement; or
 - (iii) the Project as contemplated by this deed assuming no Planning Modification was required.

Materials means any equipment, plant, materials, fixtures, fittings, furniture, machinery, goods, parts, components and other items incorporated or to be incorporated into the SLR Works.

Maximum Headway has the meaning given in Schedule D1 (*Service Payment Regime*).

Maximum Journey Time has the meaning given in Schedule D1 (*Service Payment Regime*).

Minimum Operating Standards has the meaning given in SPR Appendix 1 (*Definitions and Acronyms*).

Minor Defect means a Defect:

- (a) which:
 - (i) does not:
 - (A) prevent the SLR from being fit for its intended purpose;
 - (B) prevent the achievement of the system performance requirements specified in the SPR;
 - (C) prevent access to the Stops; or
 - (D) in TfNSW's reasonable opinion, affect the public image of the SLR; or
 - (ii) the Independent Certifier determines that OpCo has reasonable grounds for not promptly rectifying; or
- (b) which the parties agree is a Minor Defect.

Minor Works means works or services required to be performed on the SLR by TfNSW or its contractors (including Other Contractors) that:

- (a) are of a value less than \$50,000;
- (b) do not affect the safe operation of the SLR;
- (c) do not increase the likelihood of OpCo incurring an Availability Deduction; and
- (d) do not interfere materially with OpCo's Activities or materially increase OpCo's maintenance costs.

Missed Platform has the meaning given in Schedule D1 (*Service Payment Regime*).

Missed Service has the meaning given in Schedule D1 (*Service Payment Regime*).

Model Outputs Schedule means the schedule produced in accordance with the Financial Close Protocol and initialled for identification by TfNSW, the Security Trustee and OpCo, a pro forma of which appears as Schedule 1 to the Financial Close Protocol, as updated from time to time pursuant to clause 50.1(b)(iv).

Modification means any change to the requirements of this deed for:

- (a) the SLR Works;
- (b) the Temporary Works;
- (c) the SLR;
- (d) the CSELRVs; or
- (e) OpCo's Activities (or the sequencing or timing of them),

including any addition, extension, reduction, increase, decrease or omission to or from them and includes:

- (f) an Emergency Modification;

- (g) a General Modification;
- (h) an O&M Modification;
- (i) an Operations Modification;
- (j) an Expansion Modification; and
- (k) a LRV O&M Modification.

Modification Approval means a notice titled "Modification Approval" issued by TfNSW under clause 30 (*OpCo initiated Modifications*).

Modification Impact Proposal means a proposal issued by OpCo under clause 29.3(b) or as amended in accordance with clause 29.5(c).

Modification Request means a notice titled "Modification Request" issued by TfNSW under clause 29.1 (*Modification Request*).

Modification Order means a notice titled "Modification Order" issued by TfNSW under clause 29 (*TfNSW initiated Modifications*) for a Modification that is not an Emergency Modification.

Monthly Operations Performance Report means the monthly report prepared in accordance with, and containing the information required by, SPR Appendix 10 (*Reporting Requirements*).

Monthly Service Payment Report means the monthly report prepared in accordance with, and containing the information required by, SPR Appendix 10 (*Reporting Requirements*) and submitted in accordance with clause 25.12 (*Service Payment Monitoring System*).

Monthly Zone Fee means, in respect of a Fee Zone, the total amount of Daily Fees incurred over a calendar month.

Monthly Zone Fees Payment Amount means the sum of Monthly Zone Fees for a calendar month for all Fee Zones.

Moral Rights Consent has the meaning given in Schedule A5 (*Intellectual Property*).

Moveable Assets means:

- (a) the CSELRVs;
- (b) the Spares;
- (c) the Special Tools and Equipment;
- (d) the Non-Revenue Vehicles; and
- (e) all other chattels:
 - (i) forming part of the SLR Works; or
 - (ii) used by OpCo or OpCo's Contractors for the purpose of carrying out OpCo's Activities.

Native Title Claim means any claim or application for a determination of native title under the *Native Title Act 1993* (Cth) or any similar law.

Net Financial Impact means the net financial impact of a NFI Event calculated in accordance with Schedule D4 (*Net Financial Impact*).

Network Charges means all charges payable to Ausgrid:

- (a) under the Electricity Connection Agreements; or
- (b) by the electricity retailer from which TfNSW purchases electricity for the SLR, and which are passed through to TfNSW by that electricity retailer in respect of that electricity,

but does not include any charges relating to augmentation or connection to facilitate the Ausgrid Connection Point being constructed or commissioned.

NFI Event has the meaning given in Schedule D4 (*Net Financial Impact*).

NGER Legislation means the *National Greenhouse and Energy Reporting Act 2007* (Cth) and the regulations and any other legislative instruments under that Act.

Non-Corridor Assets means those fixed assets described in SPR Appendix 3 (*Assets*) that are not located within the Permanent Light Rail Corridor.

Non-Revenue Vehicle means any powered or non-powered vehicle (other than a LRV) that can be moved on the rail of the SLR and used by OpCo or OpCo's Contractors for the primary purpose of, and which are necessary for the carrying out of, OpCo's Activities.

Non-Reviewable Temporary Works means Temporary Works that:

- (a) do not have an impact upon the amenity of any members of the public; and
- (b) do not involve any potential risk to the health or safety of members of the public or property.

NSW Code means the NSW Government's Code of Practice for Procurement (January 2005), or any substitute for, or update to, such code as contemplated in the NSW Guidelines.

NSW Government Policy means any policy or guideline of the NSW Government, as published from time to time.

NSW Guidelines means the NSW Government's Implementation Guidelines to the New South Wales Code of Practice for Procurement: Building and Construction (7 June 2013).

NSWTI means the centralised New South Wales Transport Information service that communicates and receives data and information in relation to public transport services through the 131500 transport infoline (or any replacement service that serves a similar function).

O&M Contract means the contract so titled between OpCo and the O&M Contractor dated on or about the date of this deed.

O&M Contract Side Deed means the contract titled "SLR O&M Contract Side Deed" between TfNSW, OpCo, the O&M Contractor and the O&M Guarantor dated on or about

the date of this deed substantially in the form set out in Schedule A13 (*O&M Contract Side Deed*).

O&M Contractor means Transdev.

O&M Contractor Deed of Charge means the deed of charge dated on or about the date of this deed between TfNSW as chargee and the O&M Contractor as chargor substantially in the form set out in Schedule A23 (*O&M Contractor Deed of Charge*).

O&M Guarantee means the parent company guarantee from the O&M Guarantor in favour of OpCo, dated on or about the date of this deed.

O&M Guarantor means Transdev Australasia.

O&M Modification means a Modification that requires OpCo to operate and maintain any extension to the SLR designed and constructed by TfNSW, its Associates or Other Contractors.

Occupation Cessation Date means each of the following:

- (a) Occupation Cessation Date – Type A; and
- (b) Occupation Cessation Date – Type B.

Occupation Cessation Date - Type A means, subject to clause 12.3(c)(i), the date on which Occupation Cessation – Type A has been achieved. If Occupation Cessation – Type A occurs at any time on a non-Business Day or before 5.00am on a Business Day, the Occupation Cessation – Type A is taken to have occurred on the preceding Business Day.

Occupation Cessation Date - Type B means, subject to clause 12.3(c)(ii), the date on which Occupation Cessation – Type B has been achieved. If Occupation Cessation – Type B occurs at any time on a non-Business Day or before 5.00am on a Business Day, the Occupation Cessation – Type B is taken to have occurred on the preceding Business Day.

Occupation Cessation – Type A means, in respect of a Type A Fee Zone, the following have been achieved:

- (a) the Independent Certifier has issued a certificate in the form of Schedule C9 (*Certificate of Local Area Works Completion*) in relation to the Local Area Works in that Type A Fee Zone; or
- (b) OpCo demonstrates to the satisfaction of the Independent Certifier that that Type A Fee Zone is:
 - (i) capable of being returned to the public for its intended use in its entirety; or
 - (ii) being substantially returned so that it is open for the safe and continuous use by the public for its intended purpose subject only to specific sub-areas that are clearly and safely delineated and protected without material restriction of that public use.

Occupation Cessation – Type B means, in respect of a Type B Fee Zone, the following have been achieved:

- (a) OpCo demonstrates to the satisfaction of the Independent Certifier that at least 50% of the area of that Type B Fee Zone is open for safe and unrestricted public access during Key Times; and

- (b) OpCo provides a warranty to the Independent Certifier and TfNSW that during Key Times safe and unrestricted public access will be maintained to over 50% of that Type B Fee Zone while OpCo completes the remaining SLR Works.

Occupation Commencement Date means, in respect of a Fee Zone:

- (a) the date of the first day on which OpCo requires traffic to be diverted from traffic lanes located in a Fee Zone for a continuous period greater than 56 hours;
- (b) if the traffic arrangements of another Fee Zone requires traffic to be diverted from traffic lanes located in a Fee Zone for a continuous period greater than 56 hours, the date on which OpCo commences Delivery Activities in the Fee Zone, other than a Permitted Activity; or
- (c) if there are no traffic lanes in a Fee Zone the date on which OpCo commences Delivery Activities in a Fee Zone.

ONRSR means the Office of the National Rail Safety Regulator constituted under the Rail Safety National Law.

OpCo Contractor means a contractor and sub-contractors of any tier (including all suppliers, tradespersons and consultants) of OpCo involved in performing OpCo's Activities. The Independent Certifier is not an OpCo Contractor.

OpCo ETS Works has the meaning given in Schedule B1 (*Electronic Ticketing System and Interface*).

OpCo Event of Default means any event specified in clause 41.1 (*OpCo Events of Default*).

OpCo Fee Zone Credit has the meaning given in clause 12.3(a)(iii).

OpCo Group means OpCo and any Related Body Corporate identified as a member in Schedule A7 (*OpCo Group Structure*), and any Related Body Corporate which becomes a member of the OpCo Group pursuant to a consent given in accordance with clause 53.2 (*Change of ownership of OpCo Group Member*).

OpCo Submission has the meaning given to it in clause 4.7 (*TfNSW's rights do not affect risk allocation*).

OpCo Termination Event means any event specified in clause 43.1 (*OpCo Termination Events*).

OpCo's Activities means all things or tasks which OpCo is, or may be, required to do to comply with its obligations under this deed, whether or not the performance of such things or tasks is subcontracted by OpCo to another person, including the Delivery Activities and the Operations Activities.

OpCo's Emissions and Energy Data means any Emissions and Energy Data relating to any aspect of OpCo's Activities, or the activities of OpCo's Contractors in connection with OpCo's Activities, including any such Emissions and Energy Data that:

- (a) OpCo is or may be required at any time to keep or to provide to TfNSW or to any Authority (or both) pursuant to an obligation under this deed;
- (b) OpCo or any entity which is a "controlling corporation" (within the meaning of the NGER Legislation) of OpCo is or may be required at any time to keep or to provide

to TfNSW or to any Authority (or both) pursuant to an obligation at law (including an obligation under the NGER Legislation); or

- (c) OpCo or any entity which is a "controlling corporation" (within the meaning of the NGER Legislation) of OpCo is or may be entitled at any time to provide to the Clean Energy Regulator under NGER Legislation concerning any greenhouse gas project.

OpCo's Privacy Plan means the plan of that name to be prepared by OpCo in accordance with clause 46.10(e).

OpCo's Representative means Malcolm Macintyre or any other person from time to time appointed by OpCo to replace that person in accordance with clause 9.16 (*Personnel*).

Open Book Basis means the provision of any pricing, costing and other information (including in respect of productivity) required to enable an assessment of actual costs and profit margins, including a breakdown of all relevant preliminaries, insurances, labour, equipment, materials, subcontract costs, indexation adjustments for inflation, currency components, margins and, to the extent relevant, discount rates used to calculate present values, all in a clear and transparent manner.

Operating Year means a calendar year commencing on 1 July which falls (as a whole or in part) within the Operations Phase, except that:

- (a) the first Operating Year will commence on the Date of Revenue Service and will end on 30 June following the Date of Revenue Service; and
- (b) the last Operating Year will end on the last day of the Term.

Operational Financial Model means the updated Base Case Financial Model provided to TfNSW from time to time in accordance with clause 50.2(a)(i).

Operations Activities means all activities that OpCo performs, or is required to perform:

- (a) in connection with the operation or asset management of the SLR or the ETS including:
- (i) IWLR Operations during the IWLR Operations Phase; and
- (ii) Full Operations during the Full Operations Phase; or
- (b) to exercise its rights or comply with its obligations under this deed during the Operations Phase, including the activities described in section 8 of the SPR.

Operations Activities Review has the meaning given in clause 20.3(a).

Operations and Maintenance Manuals means the manuals of that name, as updated from time to time in accordance with SPR Appendix 41 (*Manuals*).

Operations Control Centre means the centralised command and control facility for SLR operations.

Operations Management Plan means the Project Plan of that name as listed in SPR Appendix 43 (*Project Plan Requirements*).

Operations Modification means a Modification that requires OpCo to operate over, but not maintain, any extension to the SLR designed, constructed and maintained by TfNSW, its Associates or Other Contractors.

Operations Phase means the period commencing on the Date of Revenue Service and ending on the last day of the Term.

Operations Phase Environmental and Sustainability Plan means the Project Plan of that name as listed in SPR Appendix 43 (*Project Plan Requirements*).

Operations Phase Licence means the licences granted by TfNSW to OpCo in accordance with clause 12.4 (*Licence*) in connection with the Operations Activities.

Operative Provisions means the operative provisions of this deed, being clauses 1 (*Definitions and interpretation*) to 62 (*General*) and excluding all schedules and appendices.

Option 1A CSELRVs means the 2 CSELRVs which OpCo is required to provide to TfNSW following the exercise of Pre-Agreed Option 1A.

Origin Stop has the meaning given in Schedule D1 (*Service Payment Regime*).

Original Date for Completion means 16 March 2019.

Original Expiry Date means the 15th anniversary of the Original Date for Completion.

Other Contractors means any contractor, consultant, tradesperson, supplier or other person engaged or authorised by TfNSW to do work on or about the SLR Site but excluding OpCo, OpCo's Contractors, the Managing Contractor, the Early Works Contractors and the ETS Contractor.

Other Contractors' Activities means any activities undertaken by an Other Contractor which interface with or affect, are affected by, OpCo's Activities, the Temporary Works, the SLR Works or the SLR, including any Proximate Work Activities, Minor Works undertaken by an Other Contractor and extensions to the SLR.

PAFA Act means the *Public Authorities (Financial Arrangements) Act 1987 (NSW)*.

PAFA Act Deed Poll of Guarantee means the guarantee made on or prior to the date of Financial Close pursuant to section 22B of the PAFA Act in respect of TfNSW's obligations under the TfNSW Project Agreements substantially in the form set out in Schedule A16 (*PAFA Act Deed Poll of Guarantee*).

Partnership means the ALTRAC Light Rail Partnership established by the ALR Partners under the Partnership Deed.

Partnership Deed means the Partnership Deed between the ALR Partners dated on or about the date of this deed which establishes the Partnership.

Payment Directions Deed means the document so entitled dated on or about Financial Close between TfNSW, OpCo, Finance Co and the Agent.

Partnership Deed means the deed so titled dated on or about the date of this deed entered into between the ALR Partners.

Payment Directions Deed means the deed so titled dated on or about the date of this deed entered into between TfNSW, OpCo, the Agent and Finance Co.

PDCS means TfNSW's web based TeamBinder project data and collaboration system, or such other electronic project data and collaboration system to be used as notified by TfNSW's Representative under clause 58(b).

Permanent Light Rail Corridor means:

- (a) the CSELR Permanent Light Rail Corridor; and
- (b) the IWLR Permanent Light Rail Corridor.

Permitted Activity means, in respect of a Fee Zone, an activity that TfNSW has approved (which approval will not be unreasonably withheld) and:

- (a) can be undertaken within a delineated temporary work site;
- (b) within 24 hours of direction by, and at no cost to TfNSW, can be ceased, the temporary work site removed and the site made safe for public access;
- (c) does not involve overnight storage of materials or the parking of vehicles within the Fee Zone;
- (d) does not occupy more than 200m² of the Fee Zone;
- (e) is of a duration of 14 days or less; and
- (f) is the only activity undertaken by OpCo in that Fee Zone in each 30 day period following the date of the first day on which traffic is diverted from traffic lanes located in a Fee Zone for a continuous period greater than 56 hours.

Permitted Change in Control means a Change in Control described in Part B of Schedule A8 (*Permitted Changes in Ownership and Control*).

Permitted Change in Ownership means a Change of Ownership described in Schedule A8 (*Permitted Changes in Ownership and Control*).

Persistent Breach has the meaning given in clause 41.5(a).

Persistent Breach Notice means a notice issued under clause 41.5(a) which complies with the requirements of clause 41.5(b).

Personal Information means:

- (a) while the PPIPA is in force, that term as defined in the PPIPA; and
- (b) if the PPIPA is repealed, that term as defined in any Commonwealth or New South Wales Legislation that replaces the PPIPA in whole or in part.

Planned Service Disruption means a disruption to the Required Services:

- (a) which:
 - (i) is contained within the Asset Management Plan and is required for the purposes of maintenance of the SLR; or
 - (ii) is required by an Authority to access the Permanent Light Rail Corridor;
- (b) which when aggregated with other disruptions falling within paragraph (a) of this definition, is not more than the following hours per annum:
 - (i) 300 hours in years 2030 and 2031;
 - (ii) 80 hours in each year during the IWLR Operations Phase; and

- (iii) 180 hours in any other year during the Term,
pro-rated for any year in the relevant period which is not a complete year;
- (c) which does not occur between the hours of 5am to 9pm Monday to Friday; and
- (d) which has been notified by OpCo to TfNSW and agreed pursuant to clause 21.16 (*Planned Service Disruption*).

Planning Approvals means:

- (a) the Project Planning Approval;
- (b) the Inner West Extension Planning Approval 1;
- (c) the Inner West Extension Planning Approval 2; and
- (d) any other consent, concurrence or approval, or determination of satisfaction with any matter, which is made, given or issued under the Planning Approvals from time to time and all conditions to any of them, and includes all documents incorporated by reference, as that consent, concurrence, approval or determination may be modified from time to time.

Planning Modification means the modification to the Project Planning Approval under section 115ZI of the EP&A Act dealing with, amongst other things:

- (a) the Grosvenor Street Stop arrangement;
- (b) the removal of the World Square Stop;
- (c) the Moore Park Stop arrangement;
- (d) the increase in the size of CSELRVs of approximately 66 metres in length (coupled) and increase in the size of Stop platforms;
- (e) the realignment of the light rail alignment along Alison Road, including the relocation of the Royal Randwick Stop and the height increase to the Centennial Park levee;
- (f) the realignment of the light rail track at the Anzac Parade and Alison Road intersection;
- (g) the wire-free infrastructure within the CBD;
- (h) the revised construction methodology for the tunnel under Anzac Parade;
- (i) the location of the Surry Hills substation to underground; and
- (j) the height increase to the Randwick Light Rail Facility.

Planning Modification Application means the application for the Planning Modification submitted by TfNSW to the Minister for Planning and placed on public exhibition in December 2014.

Planning Modification Documents has the meaning given to that term in clause 6A.1(a)(ii).

PPIPA means the *Privacy and Personal Information Protection Act 1998 (NSW)*.

PPSA means the *Personal Property Securities Act 2009* (Cth).

PPSA Security Interest has the meaning given to the term "security interest" in the PPSA.

Pre-Agreed Option means Pre-Agreed Option 1A and any of the Anzac Parade Options (as defined) in Part D of Schedule D5 (Pre-Agreed Options).

Pre-Agreed Option 1A means the pre-agreed option identified as Option 1A in Schedule D5 (Pre-Agreed Options).

Pre-Refinancing Equity Return means OpCo's after tax internal rate of return to Equity Investors over the Term, taking into account the Distributions to date and forecast Distributions over the remainder of the Term in each case as set out in the then current Base Case Financial Model prior to the proposed Refinancing.

Project means the Sydney Light Rail project which will be delivered through the SLR PPP and the Early Works and any preceding, subsequent or consequent works.

Project Aboriginal Participation Plan means that plan that satisfies the requirements of the NSW Government Aboriginal Participation in Construction Guidelines for an "Aboriginal Participation Plan" and required under clause 9.23 (*Aboriginal participation in construction*).

Project Agreements means:

- (a) this deed;
- (b) the Independent Certifier Deed;
- (c) the D&C Contract;
- (d) the D&C Contract Side Deed;
- (e) each D&C Guarantee;
- (f) the DCOM Interface Agreement;
- (g) the O&M Contract;
- (h) the O&M Contract Side Deed;
- (i) the Alstom Maintenance Subcontract Side Deed;
- (j) the O&M Guarantee;
- (k) the Debt Financing Documents;
- (l) the Equity Documents;
- (m) the Equity Purchase Deed;
- (n) the Financiers Tripartite Deed;
- (o) each TfNSW Deed of Charge;
- (p) the PAFA Act Deed Poll of Guarantee;

- (q) the relevant Source Code Escrow Agreement;
- (r) any Deeds of Assurance;
- (s) any Moral Rights Consents;
- (t) the Alstom CSELRV Supply Agreement;
- (u) the Alstom CSELRV Supply Agreement Guarantee;
- (v) the O&M Contractor Deed of Charge;
- (w) the Receivables Purchase Deed;
- (x) the Payment Directions Deed; and
- (y) the DAB Agreement,

provided that the Alstom CSELRV Supply Agreement Guarantee shall only be treated as a Project Agreement under this deed from the date it is entered into.

Project Debt means the Financial Indebtedness of OpCo and Finance Co under the Debt Financing Documents.

Project Planning Approval:

- (a) means the approval granted by the Minister for Planning under section 115ZB of the EP&A Act dated 4 June 2014, a copy of which (as at the date of this deed) appears in Schedule B7 (*Planning Approvals*); and
- (b) includes all:
 - (i) conditions to such approval; and
 - (ii) documents incorporated by reference,

as modified from time to time, including pursuant to the Planning Modification.

Project Plans means the plans listed in SPR Appendix 43 (*Project Plan Requirements*), including all subsidiary plans and supporting documents and information.

Project Site means the land (including subsurface land) and airspace more particularly described as the "Project Site" in SPR Appendix 2 (*Construction Site*).

Project-Specific Change in Law means a Change in Law, the terms of which apply to:

- (a) the SLR, and not to other railways or other modes of transport in Australia;
- (b) OpCo, and not to other persons;
- (c) the SLR Site, and not to any other:
 - (i) similarly situated land or facilities; or
 - (ii) land or facilities where similar activities to OpCo's Activities are undertaken;
or

- (d) projects procured or established under the NSW PPP Guidelines or other policies of the State in respect of public private partnerships and not to other projects.

Project-Specific Change in NSW Government Policy means a Change in NSW Government Policy, the terms of which apply to:

- (a) the SLR, and not to other railways in Australia;
- (b) OpCo, and not to other persons;
- (c) the SLR Site, and not to any other:
 - (i) similarly situated land or facilities; or
 - (ii) land or facilities where similar activities to OpCo's Activities are undertaken; or
- (d) projects procured or established under the NSW PPP Guidelines or other policies of the State in respect of public private partnerships and not to other projects.

Property Works means all works required to existing buildings and infrastructure or to and within properties arising out of OpCo's Activities as described or specified in the SPR (and including, to the extent relevant to such works, any Modification directed or approved in accordance with this deed).

Proposal means the proposal provided by OpCo in response to the RFP.

Proposed Early Completion Date means the date (if any) nominated and updated (where applicable) by OpCo in its Delivery Phase Progress Report, by which OpCo proposes to achieve Completion, being a date that is prior to the Date for Completion.

Proposed Early Completion Notice means a notice provided by OpCo to TfNSW in accordance with clause 19.12(b)(ii).

Proximate Work Activity means any activities that TfNSW wishes to carry out (or have carried out by an Other Contractor) within, adjacent to, over or under the SLR Site, including the activities listed in clause 34.1 (*Right to carry out Proximate Work Activities*) and the Installation Works pursuant to clause 14.5 (*Journey Time Detection Device*), but excluding:

- (a) the TfNSW ETS Activities;
- (b) the Early Works; and
- (c) the rectification of an Early Works Defect by the Managing Contractor or an Early Works Contractor.

Public Disclosure Obligations has the meaning given in clause 47.3(a).

Qualifying Nominee means the State or an "authority" (as defined in the PAFA Act).

Quality Management Plan means the Project Plan of that name as listed in SPR Appendix 43 (*Project Plan Requirements*).

Quarter End means the last day of each 3 month period ending 31 March, 30 June, 30 September or 31 December.

Rail Safety Interface Agreement means an interface agreement as defined in section 4 of the Rail Safety National Law, for the purposes of Part 3 Division 6, Subdivision 2 of the Rail Safety National Law, to which OpCo is a party.

Rail Safety National Law means the *Rail Safety National Law (NSW) No 82a*.

Rail Safety Regulations means the regulations made under the Rail Safety National Law or the *Rail Safety (Adoption of National Law) Act 2012* (NSW).

Randwick City Council or **RCC** means the Randwick City Council ABN 77 362 844 121, constituted under the *Local Government Act 1993* (NSW).

Randwick Light Rail Facility means the facility at Randwick to be designed, constructed, operated and maintained by OpCo under this deed (including SPR Appendix 19 (*Light Rail Maintenance and Stabling Facilities*)).

Rates means all rates, taxes or charges or other amounts which any Authority levies by reference to the SLR or the SLR Site, but excluding head works costs or other contributions levied by reference to the SLR Works or the Operations Activities and excluding any Land Tax.

RCC Development Agreement means the Development Agreement Sydney Light Rail Project between TfNSW and the Randwick City Council dated 29 September 2014.

Receivables has the meaning given to that term in the Receivables Purchase Deed.

Receivables Purchase Deed means the document so entitled between TfNSW, OpCo and Finance Co dated on or about the date of this deed under which TfNSW agrees amongst other things, to assign to Finance Co each Licence Payment payable under the Operations Phase Licence.

Receivables Purchase Payment has the meaning given to that term in the Receivables Purchase Deed and being an amount equal to the corresponding aggregate Construction Payment payable by TfNSW to OpCo under this deed.

Receivables Purchase Price means the amount payable by Finance Co to TfNSW under the Receivables Purchase Deed, being the aggregate Receivables Purchase Payment, which must equal the aggregate Construction Price calculated under clause 25A.1 (*Construction Price*).

Reference Pictures has the meaning given in Schedule D1 (*Service Payment Regime*).

Refinancing means any of the following:

- (a) any amendment to, or restatement or replacement of, any Debt Financing Document;
- (b) the exercise of any right (including the giving of a waiver or consent) under any Debt Financing Document or any Equity Document; or
- (c) any other step or arrangement or new contractual or financing arrangement that has a substantially similar effect to that described in paragraph (a) or (b),

that is likely to change the type, amount, pricing, tenor, terms for payment or repayment or hedging of the financial accommodation in connection with the SLR PPP, but does not include:

- (d) the syndication or subscription of any debt under the Debt Financing Documents that is contemplated at the date of Financial Close or, following a Refinancing, that is contemplated at the date of that Refinancing;
- (e) the change in control or sell down of any bonds in an arm's length transaction at market value;
- (f) disposals of investments or commitments of debt or equity in an arm's length transaction at market value;
- (g) any amendment to, or restatement or replacement of, or waiver or consent under, any Debt Financing Document which is a direct result of an amendment, restatement, replacement, waiver or consent to cure any actual or potential event of default or review event under any Debt Financing Document; or
- (h) the entry into of derivative transactions contemplated to be entered into on or before Financial Close by the Debt Financing Documents or, following a Refinancing, contemplated to be entered into in connection with that Refinancing.

Refinancing Gain has the meaning given in clause 49.8 (*Calculation of Refinancing Gain or Refinancing Loss*).

Refinancing Loss has the meaning given in clause 49.8 (*Calculation of Refinancing Gain or Refinancing Loss*).

Regular Service means the Services forming part of the Contract Service Level Requirements, as defined in section 4.1 of SPR Appendix 38 (*Minimum Service Requirements*).

Related Body Corporate:

- (a) in relation to TfNSW, means any entity controlled by the Secretary of Transport; and
- (b) in relation to any other person, has the same meaning as in the Corporations Act.

Relief Event means each of the following:

- (a) a Compensation Event;
- (b) fire, explosion, flood, storm, lightning, hurricane, mudslide, landslide, earthquake and drought where such event of drought is declared as a state of emergency by any person having the requisite authority to do so and in each case occurring within Australia or an Alstom Manufacturing Country;
- (c) a Terrorist Act within Australia;
- (d) war, armed conflict, riot, civil commotion occurring within Australia;
- (e) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel in each case occurring within Australia;
- (f) failure by any Authority, or a provider of gas, water, sewerage, electricity or telecommunications utilities within Australia, to carry out works or provide services to the SLR Site which it is obliged by law (including by contract) to carry out or provide, or any interruption permitted by law (including by contract) to the

carrying out or provision of those works or services within Australia, except where the failure is a breach of a Third Party Agreement or a Utility Provider Agreement;

- (g) any event which causes loss or damage to the SLR;
- (h) any blockade or embargo in each case occurring within Australia or an Alstom Manufacturing Country, other than a blockade or embargo which only affects OpCo and/or one or more OpCo Contractors;
- (i) any industrial action within Australia, other than industrial action which only affects OpCo and/or one or more OpCo Contractors;
- (j) any event or occurrence which deprives OpCo of any access to the SLR Site that it is entitled to under this deed;
- (k) an act or omission by TfNSW not being an act or omission:
 - (i) expressly permitted or allowed by the Project Agreements;
 - (ii) which is within a timeframe expressly permitted or allowed by the Project Agreements; or
 - (iii) being the exercise by TfNSW of any of its statutory functions or powers;
- (ka) an event for which OpCo has been relieved pursuant to clause 18 of Schedule D1 (*Service Payment Regime*);
- (kb) in respect of the Operations Activities during the IWLR Operations Phase and during the Full Operations Phase, OpCo, acting reasonably and in a manner that would be expected of an experienced, efficient and competent operator, suspends or cancels a Service to avoid or protect against a real or apparent public danger caused by an Incident; and
- (kc) an Alstom Relief Event,

except to the extent the event (or its effects):

 - (l) occurs or arises as a direct or indirect result of any act or omission of OpCo or OpCo's Contractors;
 - (m) occurs or arises as a direct or indirect result of a failure by OpCo to comply with its obligations under this deed;
 - (n) occurs or arises as a direct or indirect result of any breach of this deed by OpCo; or
 - (o) is, or ought reasonably to have been, within the control of OpCo or OpCo's Contractors.

Remediation Period has the meaning given in clause 21.8(d).

Remedy means, in respect of an OpCo Event of Default, to remedy or cure the OpCo Event of Default or otherwise overcome the consequences of the OpCo Event of Default.

Replaced or Refurbished or Replacement and Refurbishment has the meaning given in SPR Appendix 1 (*Definitions and Acronyms*).

Reputable Insurer means an insurance company having the Required Rating.

Required IWLR Works means the works set out in Schedule A19 (*Required IWLR Works*).

Required Rating means a credit rating (or in the case of an insurer, a financial security rating) of at least A- by Standard and Poor's (Australia) Pty Limited or A3 by Moody's Investors Service, Inc (or such other credit rating as TfNSW may approve in writing from time to time) or, if no rating is provided by Standard and Poor's (Australia) Pty Limited or by Moody's Investors Service, Inc, an equivalent rating with another reputable rating agency.

Required Services means, at any time, the passenger services which OpCo is required to provide to meet the Contract Service Level Requirements at that time.

Required SLR Employee means all:

- (a) OpCo's employees; and
- (b) O&M Contractor employees,

to the extent that they are engaged in connection with the carrying out of the Operations Activities.

Revenue Service means passenger services with paying Customers on board a Light Rail Vehicle.

RFP means the document titled "Sydney Light Rail Public Private Partnership Request for Proposal" dated 7 March 2014.

Risk Management Plan means the Project Plan of that name as listed in SPR Appendix 43 (*Project Plan Requirements*).

RMS means Roads and Maritime Services, a NSW Government agency constituted by section 46 of the *Transport Administration Act 1988* (NSW).

Roads Act Approval means the consents and approvals granted by RMS under the *Roads Act 1993* (NSW), a copy of which (as at the date of this deed) appears in Schedule B11 (*Roads Act Approval*).

Rozelle Light Rail Facility means the facility at Rozelle to be designed, constructed, operated and maintained by OpCo under this deed (including SPR Appendix 19 (*Light Rail Maintenance and Stabling Facilities*)).

Safety Management Plan means the Project Plan of that name as listed in SPR Appendix 43 (*Project Plan Requirements*).

Safety Management System means a safety management system as required by section 99 of the Rail Safety National Law.

Section means that section of the Construction Site specified as a "Section" as set out in Schedule B6 (*Section Access Schedule*).

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

Section Access Schedule means Schedule B6 (*Section Access Schedule*).

Securitisation Refund Payment has the meaning given in the Receivables Purchase Deed.

Securitized Licence Structure means the securitisation structure in effect under clause 25A (*Securitized Licence Structure*), the Licence Payment Schedule, the Receivables Purchase Deed, the Payment Directions Deed and the Operations Phase Licence.

Security Interest means any mortgage, charge, pledge, lien, encumbrance, assignment, hypothecation, security interest, title retention, preferential right, trust arrangement, contractual right of set-off or any other security agreement or arrangement in favour of any person or any interest in relation to personal property provided for by a transaction that in substance secures payment or performance of an obligation or otherwise would be considered to be a "security interest" under the PPSA (except in clause 59 (*PPSA*), where **Security Interest** has the meaning given in that clause).

Security Management Plan means the Project Plan of that name as listed in SPR Appendix 43 (*Project Plan Requirements*).

Security Trust Deed means the deed so titled dated on or about the date of Financial Close between OpCo, Finance Co, the Agent and the Security Trustee, amongst others.

Security Trustee means, at any time, the person appointed as security trustee under the Security Trust Deed. At the date of this deed the Security Trustee is CBA Corporate Services (NSW) Pty Limited ACN 072 765 434.

Seller has the meaning given in the Equity Purchase Deed.

Senior Project Group means the group established under clause 5.5 (*Senior Project Group*).

Service Change means an amendment to the Contract Service Level Requirements referred to in clause 11 of Schedule D1 (*Service Payment Regime*).

Service Failure Points has the meaning given in Schedule D1 (*Service Payment Regime*).

Service Payment has the meaning given in Schedule D1 (*Service Payment Regime*).

Service Payment Deduction means:

- (a) an Availability Deduction;
- (b) a Timeliness Deduction;
- (c) a Service Quality Deduction;
- (d) a Revenue Management Deduction; or
- (e) a negative Asset Management Adjustment,

all as defined in Schedule D1 (*Service Payment Regime*).

Service Payment Monitoring System means the system referred to in clause 25.12 (*Service Payment Monitoring System*).

Service Quality Deduction has the meaning given in Schedule D1 (*Service Payment Regime*).

Service Quality KPI has the meaning given in Schedule D1 (*Service Payment Regime*).

Services means the light rail services which OpCo actually provides (as distinct from the Required Services).

SHFA Development Agreement means the Development Agreement Sydney Light Rail Project to be entered into between TfNSW and the Sydney Harbour Foreshore Authority substantially in the form of the document with the reference number 232566494_1 uploaded to the Sydney Light Rail Data Room on 3 December 2014.

Shutdown Period means the period between the Last Service and the First Service.

Significant Contractor means a party (other than OpCo) to a Significant Contract.

Significant Contracts means:

- (a) the Core Contracts;
- (b) the contracts listed in Schedule A9 (*Significant Contracts*); and
- (c) each contract entered into by OpCo or a Core Contractor under which OpCo or the Core Contractor transfers to the subcontractor some or all of the risk of Service Payment Deductions.

Site Conditions are any physical conditions and characteristics of, upon, above, below or over the surface, or in the vicinity of, the SLR Site and any Extra Land or their surroundings including:

- (a) Artefacts and any other natural and artificial conditions;
- (b) physical and structural conditions, including old footings, underground structures, buildings, improvements, partially completed structures and in-ground works;
- (c) all improvements, including any artificial things, foundations, retaining walls and other structures installed by or on behalf of TfNSW or others;
- (d) surface water, ground water, ground water hydrology and the effects of any dewatering;
- (e) any Contamination, hazardous substance or other spoil or waste;
- (f) topography of the SLR Site and any Extra Land, ground surface conditions and geology, including rock and sub-surface conditions or other materials encountered at the SLR Site or Extra Land;
- (g) geological, geotechnical and subsurface conditions or characteristics;
- (h) any underground strata;
- (i) all Utility Services, systems and facilities, above or below ground level and all facilities with which such Utility Services and systems are connected to, form part of, or installed in; and
- (j) the Environment, water, weather or climatic conditions, or the effects of the Environment, water, weather or climatic conditions, including rain, surface water runoff and drainage, water seepage, wind-blown dust and sand, seasons and physical conditions that are a consequence of weather or climatic conditions.

SLR means the Sydney Light Rail and includes:

- (a) from the Date of Revenue Service, the IWLR;
- (b) from the Date of Completion, the CSELR; and
- (c) any Modification or Augmentation.

SLR Documentation means all drawings, plans, manuals, software designs, reports, computer records, specifications, calculations and any other documents (whether in hard copy or electronic form) prepared or required to be prepared by or on behalf of OpCo in performing OpCo's Activities, including the Design Documentation and the Project Plans.

SLR PPP means:

- (a) the financing, design and construction of the SLR Works and the Temporary Works and the performance of the other Delivery Activities;
- (b) the operation and maintenance of the SLR and the ETS Equipment and the performance of the other Operations Activities; and
- (c) the handback to TfNSW of the SLR and the ETS Equipment,

in accordance with this deed.

SLR Site means:

- (a) the Construction Site during the Delivery Phase; and
- (b) the Permanent Light Rail Corridor during the Operations Phase.

SLR Site Interface Work has the meaning given in clause 9.2(a)(ii).

SLR Works means the physical works, assets, systems and deliverables that OpCo must design, construct, manufacture, install, test and commission under this deed including:

- (a) the OpCo ETS Works;
- (b) the Third Party Works;
- (c) the CSELRVs;
- (d) the CSELR Stops;
- (e) the rail systems;
- (f) the trackwork;
- (g) the rail structures;
- (h) the interchange facilities;
- (i) the terminus facilities;
- (j) the Light Rail Maintenance and Stabling Facilities;
- (k) the Alison Road Works;

- (l) the Property Noise Attenuation Works; and
- (m) to the extent relevant to such works, assets, systems and deliverables, any Modifications directed or approved in accordance with clauses 29 (*TfNSW initiated Modifications*) or 30 (*OpCo initiated Modifications*) or any Pre-Agreed Options exercised by TfNSW,

in accordance with this deed (including the SPR), but excluding the Temporary Works.

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

Special Event means:

- (a) an organised event that requires Special Event Services to be provided in accordance with section 4.2 of SPR Appendix 38 (*Minimum Service Requirements*); or
- (b) a special event in respect of which TfNSW directs a Service Change under clause 20.3 (*Operations Activities Review*).

Special Event Service means the Services forming part of the Contract Service Level Requirements, as defined in section 4.2 of SPR Appendix 38 (*Minimum Service Requirements*).

Special Tools and Equipment means the special tools and equipment listed in the Operations and Maintenance Manuals.

Specified Planned Service Disruption means a Planned Service Disruption that is primarily required for the following maintenance activities:

- (a) rail grinding for the IWLR;
- (b) track tamping for the IWLR;
- (c) ultrasonic testing and measurement for the IWLR;
- (d) track renewal activities (for example curve renewal, ballast replacement, and sleeper replacement) for the SLR;
- (e) turnout renewals for IWLR; or
- (f) turnout grinding for IWLR.

SPR means the Scope and Performance Requirements contained in Schedule E1 (*Scope and Performance Requirements*).

SPR Appendix mean an appendix of the SPR.

Staff means all persons, whether officers, employees, agents or contractors of OpCo or OpCo's Contractors, engaged in or in connection with the performance of OpCo's Activities.

Stakeholder and Community Engagement Plan means the Project Plan of that name as listed in SPR Appendix 43 (*Project Plan Requirements*).

Standstill Period means the period commencing on the date of the notice under either clause 2.4(d) or clause 6A.7(a)(iv) and ending 60 days later (unless otherwise agreed by the parties) provided that there may only be one such period under this deed.

State means the Crown in right of the State of New South Wales.

Step-in Event has the meaning given in clause 42.1 (*Step-in Events*).

Step-in Party means an agent, attorney or nominee of TfNSW, and may be more than one person appointed to act jointly.

Step-in Powers has the meaning given in clause 42.3 (*Step-in Powers*).

Step-in Rights has the meaning given in clause 42.2(a).

Stop means:

- (a) the IWLR Stops; and
- (b) the CSELR Stops.

Strategic Business Plan means the Project Plan of that name as listed in SPR Appendix 43 (*Project Plan Requirements*).

Structural Defect means any Defect in any internal or external load bearing component of an IWLR Asset that is essential to the structural integrity or stability of such asset that:

- (a) results in the IWLR Asset or any part of it being required by or under any law to be closed or prohibited from being used;
- (b) in the written opinion of an independent structural engineer (appointed jointly by TfNSW and OpCo with the costs shared on an equal basis) (a **Structural Engineer**) is likely to result in the IWLR Asset or any part of it being required by or under any law to be closed or prohibited from being used if not rectified expeditiously;
- (c) results in the destruction or failure (in part or in full of such IWLR Asset) so as to require replacement of the IWLR Asset (or any part of it);
- (d) in the written opinion of a Structural Engineer is likely to result in the destruction or failure (in part or in full of such IWLR Asset) so as to require replacement of the IWLR Asset (or any part of it) if not rectified expeditiously;
- (e) results in material physical damage to the IWLR Asset or any part of it such that it no longer meets the required level of performance or service and/or requires repairs under the SPR to maintain the functional performance of the IWLR;
- (f) in the written opinion of an appropriately qualified independent expert (appointed jointly by TfNSW and OpCo with the costs shared on an equal basis) is likely to result in material physical damage to the IWLR Asset or any part of it such that it no longer meets the required level of performance or service and/or requires repairs under the SPR to maintain the functional performance of the IWLR if not rectified expeditiously; or
- (g) in the written opinion of a Structural Engineer results in a threat of imminent collapse that may reasonably be considered to cause destruction of, or physical damage to, the IWLR Asset (or any part of it) or require the immediate or foreseeable closure of the IWLR Asset or any dependent or adjacent property which is supported by or dependent upon the IWLR Asset,

but excluding any Defect to the extent caused, exacerbated or contributed to, including by way of any breach of its obligations, by OpCo or its Associates (for the avoidance of doubt, excluding the unavoidable impact on the IWLR Asset arising out of the use of the IWLR Assets as contemplated under this deed).

Subcontract means a contract with an OpCo Contractor relating to OpCo's Activities, including a Core Contract and any other Significant Contract.

Subscription Agreement means the agreement so titled dated on or about Financial Close entered into between, amongst others, Acciona Concesiones S.L. (CIF: B-83397802), FSS Trustee Corporation (ABN 11 118 202 672) in its capacity as trustee of the First State Superannuation Scheme, John Laing Investments (SLR) B.V. OpCo and the Security Trustee.

Successor OpCo means the entity that will perform all or any part of OpCo's Activities after the expiry or termination of the Term and includes its proposed subcontractors.

Sydney Harbour Foreshore Authority or SHFA means the Sydney Harbour Foreshore Authority ABN 51 437 725 177.

Sydney Trains means the body corporate constituted by Part 2A of the *Transport Administration (General) Regulation 2005* (NSW).

Sydney Water Corporation or **SWC** means Sydney Water Corporation ABN 49 776 225 038.

Tax means any present or future tax, levy, impost, duty, deduction, fee, charge, compulsory loan or withholding plus any interest, penalty, charge, fees or other amounts payable in respect thereof.

Tax Invoice has the meaning given in the GST Act.

Taxable Supply has the meaning given in the GST Act.

Temporary Areas means the land more particularly described as the "Temporary Areas" in SPR Appendix 2 (*Construction Site*).

Temporary Works means any temporary physical works required for the purpose of performing the Delivery Activities, but which do not form part of the SLR Works.

Term means the period:

- (a) commencing on the date of this deed; and
- (b) ending on the earlier of:
 - (i) the Expiry Date; and
 - (ii) the date on which this deed is terminated.

Termination Payment means an amount payable by TfNSW to OpCo under clause 43.12 (*Termination Payments*), in each case calculated in accordance with Schedule D6 (*Termination Payments*) and clause 43.14 (*Option to assume Project Debt*) (if applicable).

Terrorist Act has the meaning given in section 5 of the *Terrorism Insurance Act 2003* (Cth) as at the date of this deed.

Test means:

- (a) a test required by SPR Appendix 33 (*Testing and Commissioning*) or the Testing and Commissioning Plan; and
- (b) any additional test carried out under clause 18.8(a).

Test Procedure means a detailed procedure for the conduct of a Test.

Test Program has the meaning given in clause 18.3(b)(i).

Test Report means a report on the conduct of a Test, including supporting documentation.

Testing means the carrying out of the Tests.

Testing and Commissioning Plan means the Project Plan of that name as listed in SPR Appendix 43 (*Project Plan Requirements*).

TfNSW Data has the meaning given in Schedule A5 (*Intellectual Property*).

TfNSW Deed of Charge means:

- (a) the deed of charge dated on or about the date of this deed between TfNSW as chargee and OpCo as chargor; and
- (b) the deed of charge dated on or about the date of this deed between TfNSW as chargee and Finance Co as chargor to secure the performance of Finance Co's obligations under the Receivables Purchase Deed,

each substantially in the form set out in Schedule A17 (*TfNSW Deed of Charge*).

TfNSW ETS Activities has the meaning given in Schedule B1 (*Electronic Ticketing System and Interface*).

TfNSW Project Agreements means those Project Agreements to which TfNSW is a party.

TfNSW Refinancing Share has the meaning given in clause 49.9(a).

TfNSW Termination Event means any event specified in clause 43.5 (*TfNSW Termination Events*).

TfNSW's Project Director means the person from time to time appointed by TfNSW to lead the Project.

TfNSW's Representative means TfNSW's Project Director or any other person from time to time appointed by TfNSW to replace that person in accordance with clause 5.1(b).

Third Party means:

- (a) City of Sydney;
- (b) Randwick City Council;
- (c) Centennial Park and Moore Park Trust;
- (d) University of New South Wales;

- (e) Australian Turf Club;
- (f) Airport Motorway Limited and Airport Motorway Custodians Pty Limited as trustee of the Airport Motorway Trust;
- (g) Sydney Harbour Foreshore Authority;
- (h) Sydney Trains; or
- (i) Health Infrastructure.

Third Party Agreements means each of the following documents:

- (a) the City of Sydney Development Agreement;
- (b) the CPMPT Development Agreement;
- (c) the RCC Development Agreement;
- (d) the SHFA Development Agreement; and
- (e) the Sydney Light Rail - Eastern Distributor Master Interface and Access Deed between TfNSW, Airport Motorway Limited and Airport Motorway Custodians Pty Limited as trustee of the Airport Motorway Trust, RMS and the Minister for Roads and Freight for and on behalf of the State of New South Wales substantially in the form of the document with the reference number 231899059.02 uploaded to the Sydney Light Rail Data Room on 29 October 2014,

referred to in Schedule B3 (*Requirements of Third Parties*).

Third Party Works means those works performed by OpCo and which OpCo must hand over to TfNSW or others when complete and which comprise:

- (a) Local Area Works;
- (b) Property Works; and
- (c) Utility Service Works.

Timeliness Deduction has the meaning given in Schedule D1 (*Service Payment Regime*).

Traffic and Transport Management Plan means the Project Plan of that name as listed in SPR Appendix 43 (*Project Plan Requirements*).

Traffic Signal Aggregate Delay has the meaning given in section 2 of Attachment 2 of SPR Appendix 16 (*Road Works*).

Training Management Guidelines means the document titled "Training Management Guidelines" prepared by the New South Wales Government Department of Premier and Cabinet and dated February 2009, as updated from time to time.

Training Management and Competency Plan means the Project Plan of that name as listed in SPR Appendix 43 (*Project Plan Requirements*).

Transdev means Transdev Sydney Pty Ltd ABN 34 096 046 052.

Transdev Australasia means Transdev Australasia Pty Ltd ABN 40 079 303 816.

Transdev Permanent Employee means a permanent employee of Transdev as at the date of this deed and as set out in Schedule A3 (*Transdev Permanent Employees*).

Transdev O&M Contract means the Sydney Light Rail Operation and Maintenance Contract between Transport for NSW, Veolia Transport Sydney Pty Ltd and MTS Holding Company Pty Ltd dated 28 June 2013.

Transition In Management Plan means the Project Plan of that name as listed in SPR Appendix 43 (*Project Plan Requirements*).

Transition Out Management Plan means the Project Plan of that name as listed in SPR Appendix 43 (*Project Plan Requirements*).

Transport Administration Act means the *Transport Administration Act 1988* (NSW).

Transport Integration Plan means the Project Plan of that name as listed in SPR Appendix 43 (*Project Plan Requirements*).

Transport Management Centre or **TMC** means the NSW Transport Management Centre responsible for monitoring and managing the New South Wales road network.

Transport Officer means a member of TfNSW staff appointed as an authorised officer for the purposes of the *Passenger Transport Act 1990* (NSW) and *Passenger Transport Regulation 2007* (NSW).

Type A Fee Zone means, in respect of a Fee Area, the area identified with the letter "A" after the Fee Area number as shown in the drawings included in Part A of Schedule B9 (*Occupation Fee Schedule*).

Type B Fee Zone means, in respect of a Fee Area, the area identified with the letter "B" after the Fee Area number as shown in the drawings included in Part A of Schedule B9 (*Occupation Fee Schedule*).

Unforeseeable Modification Requirement means a requirement or condition of the Planning Modification of a type described in clause 6A.3.

Uninsurable Material Risk has the meaning given in clause 40.3 (*If no agreement*).

Uninsurable Risk means a risk in respect of which:

- (a) insurance is not available in the international insurance market with any Reputable Insurer at the time that insurance ought to be obtained and coverage is not available under the *Terrorism Insurance Act 2003* (Cth) or a similar legislative scheme; or
- (b) the insurance premium payable for insuring that risk is at such a level, or the terms and conditions are such, that the risk is not generally being insured against in the international insurance market with Reputable Insurers by prudent, competent and experienced providers in Australia of services similar to OpCo's Activities, at the time that the insurance is sought to be obtained.

University of New South Wales means the University of New South Wales ABN 57 195 873 179, a body corporate established pursuant to the *University of New South Wales Act 1989* (NSW).

Urban Design Reference Group means the architectural and urban design reference group established as an advisory body to TfNSW in relation to the SLR.

Utilities Information means the information in relation to Utilities Services:

- (a) contained in Schedule A20 (*Utilities Services Asset Identification Information*);
- (b) available from the 'Dial Before You Dig' Service; or
- (c) otherwise publicly available.

Utility Provider Agreements means each of the following documents:

- (a) the Sydney Light Rail Project SWC Interface Agreement to be entered into between TfNSW and Sydney Water Corporation substantially in the form of the document with the reference number 227326191.27 uploaded to the Sydney Light Rail Data Room on 29 October 2014; and
- (b) the Agreement for Adjustment Works to Network Assets to be entered into between TfNSW and Ausgrid substantially in the form of the document with the reference number ME_117018097_2 uploaded to the Sydney Light Rail Data Room on 31 October 2014,

referred to in Schedule B4 (*Requirements of Utility Provider Agreements*).

Utility Service means any service and includes any utility, facility or item of infrastructure for the provision of water, electricity, gas, ethane, fuel, telephone, drainage (including piped, open or subsoil drains), sewerage, industrial waste disposal, lighting, CCTV and electronic communications service.

Utility Service Works means the construction, modification, removal, protection or relocation of Utility Services all of which are to be coordinated, designed and/or constructed by OpCo and handed over to TfNSW, an Authority or any other person in accordance with this deed including any such works specified in the SPR (and including, to the extent relevant to such works, Modifications directed or approved in accordance with this deed).

Utility Works Event means:

- (a) in any part of Fee Areas 1 to 31 (including intervening intersections between these Fee Areas to the boundary of the Project Site) it is necessary for OpCo to protect, modify replace, relocate or otherwise deal with a Utility Service that is not identified in the Utilities Information (save where such Utility Service has been included in the Initial Utility Service Treatment Plan);
- (b) other than in respect of Utility Services referred to in paragraph (c) below, in any part of Fee Areas 1 to 31 (including intervening intersections between these Fee Areas to the boundary of the Project Site) there is a material change in the physical characteristics or location of a Utility Service from the physical characteristics or location identified in the Utilities Information for that Utility Service and such change necessitates a treatment method for that Utility Service which is materially different from that shown in the Initial Utility Service Treatment Plan;
- (c) in respect of the specific treatment methods for the specific Utility Services referred to in the Initial Utility Service Treatment Plan, Ausgrid requires a treatment method which is materially different to that set out in the Initial Utility Service Treatment Plan provided that prior to accepting an alternative treatment from Ausgrid, OpCo has consulted with TfNSW in good faith in order to discuss the alternatives available; or

- (d) in any part of Fee Areas 1 to 31 (including intervening intersections between these Fee Areas to the boundary of the Project Site), a provider of gas, sewage, electricity or telecommunications in Australia fails to carry out works or provide services which it is obliged by law (including in contract) or has agreed (evidenced in writing) with OpCo or the D&C Contractor to provide, for a period exceeding 15 Business Days after the date upon which the provider was obliged or had agreed (evidenced in writing) to carry out the works or service or a provider of gas, sewage, electricity or telecommunications in Australia prevents, by the exercise of its rights at law, the performance by OpCo or its Associates of Utility Service Works identified in the Initial Utility Service Treatment Plan, provided that this paragraph (d) shall not apply:
- (i) to any contestable works;
 - (ii) to the extent the Utility Provider has not been provided with prescribed notices within any required notice periods required by contract or law; or
 - (iii) to the extent OpCo has not completed all the preceding works and activities required to enable the Utility Provider to undertake the work.

Vandalism means any malicious, reckless or deliberate damage excluding Graffiti.

WHS Legislation means:

- (a) the *Work Health and Safety Act 2011* (NSW) and the *Work Health and Safety Regulation 2011* (NSW); and
- (b) any legislation in other States and Territories of Australia addressing work health and safety which applies to the SLR Works.

Witness Point means a point in a work process for which OpCo must give prior notice to TfNSW's Representative to allow TfNSW's Representative or the Independent Certifier to attend and witness the work should it choose to do so.

Working Group means each working group established pursuant to clause 5.5(i).

Workplace Relations Management Plan means the Project Plan of that name as listed in SPR Appendix 43 (*Project Plan Requirements*).

1.2 **SPR definitions**

The definitions and abbreviations in SPR Appendix 1 (*Definitions and Acronyms*) apply in this deed unless the relevant term is defined differently in the Operative Provisions.

1.3 **Schedule definitions**

- (a) Subject to clause 1.3(b), the definitions in the Schedules apply in this deed unless the relevant term is defined differently in the Operative Provisions.
- (b) The definitions in the Third Party Agreements only apply in respect of clause 9.21 (*Third Party requirements*) and the Third Party Agreements.

1.4 **Interpretation**

In this deed:

- (a) headings and subheadings are for convenience only and do not affect interpretation;

and the following rules apply in interpreting this deed unless the context makes it clear that a rule is not intended to apply:

- (b) person includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (c) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation;
- (d) a reference to a document (including this deed) is to that document as varied, novated, supplemented, assigned, ratified or replaced from time to time;
- (e) a reference to any Authority, institute, association or body is:
 - (i) if that Authority, institute, association or body is reconstituted, renamed or replaced or if the powers or functions of that Authority, institute, association or body are transferred to another organisation, deemed to refer to the reconstituted, renamed or replaced organisation or the organisation to which the powers or functions are transferred, as the case may be; and
 - (ii) if that Authority, institute, association or body ceases to exist, deemed to refer to the organisation which serves substantially the same purposes or object as that Authority, institute, association or body;
- (f) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or any section or provision of either of these includes:
 - (i) all ordinances, by-laws, regulations of and other statutory instruments (however described) issued under the statute or delegated legislation; and
 - (ii) any consolidations, amendments, re-enactments and replacements;
- (g) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (h) a reference to:
 - (i) a party, schedule, appendix, attachment or annexure is a reference to a party, schedule, appendix, attachment or annexure to or of this deed;
 - (ii) this deed includes all schedules, appendices, attachments and annexures to it, including the SPR; and
 - (iii) the SPR includes all SPR Appendices;
- (i) a reference:
 - (i) in the Operative Provisions to a clause is a reference to a clause of the Operative Provisions; and

(ii) in a schedule, attachment, annexure or appendix to a clause, paragraph or annexure, is a reference to a clause, paragraph or annexure of that schedule, attachment, annexure or appendix;

(j) any reference to:

- (i) the SLR Works or the Temporary Works;
- (ii) the Operations Activities;
- (iii) the Project Plans;
- (iv) the SPR;
- (v) the Design Documentation and the SLR Documentation; or
- (vi) any other document or thing,

or any part of any of them:

- (vii) being or remaining fit for its purpose or for its intended purpose; or
- (viii) as having an intended use,

(or any similar reference) will be read as referring to the purpose, intended purpose or intended use (in respect of any warranty given at the Date of Completion, by reference to the purpose, intended purpose or intended use as at the Date of Completion) having regard to:

(ix) TfNSW's intention is that the SLR Works will be used as an integral part of an operating Light Rail intended to provide light rail services between:

- (A) Dulwich Hill and Central Station;
- (B) Central Station to Circular Quay via George Street; and
- (C) Central Station and Randwick and Kingsford, via Surry Hills and Moore Park,

and which may:

- (aa) be required to accommodate and utilise various rolling stock, Light Rail track, Light Rail systems and related equipment;
 - (bb) be subject to continuous operation;
 - (cc) be operated by either the State of New South Wales or by private operator(s) on its behalf;
 - (dd) be upgraded, augmented, extended and expanded to the extent referred to in this deed; and
 - (ee) be connected to and/or integrated with other transport infrastructure to the extent referred to in this deed;
- (x) any purpose, intended purpose or intended use stated in, contemplated by or reasonably ascertainable from:

- (A) this deed, including:
 - (aa) the principles and drivers referred to in sections 1.2 and 1.3 of the SPR; and
 - (bb) the requirement that the SLR Works, when completed, will be designed and constructed in compliance with all health and safety requirements of the WHS Legislation; or
- (B) (to the extent relevant for determining the purpose, intended purpose or intended use in connection with a Modification) any document provided by TfNSW to OpCo specifically in connection with the Modification (excluding any Information Documents);
- (k) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (l) includes in any form is not a word of limitation;
- (m) a reference to \$ or dollar is to Australian currency;
- (n) a reference to construction includes development, manufacture, supply, installation, integration, testing and commissioning;
- (o) any reference to information will be read as including information, representations, statements, data, samples, bore logs, calculations, assumptions, deductions, determinations, drawings, design, specifications, models, plans and other documents in all forms including the electronic form in which it was generated; and
- (p) any obligation of OpCo under this deed with respect to a Project Plan, will be read as an obligation with respect to the version of the relevant Project Plan last submitted by OpCo to TfNSW's Representative under clause 8 (*Project Plans*) in respect of which:
 - (i) during the Delivery Phase and in relation to the Traffic and Transport Management Plan and Testing and Commissioning Plan, the Independent Certifier has certified under clause 8.5(b)(ii)(B); or
 - (ii) for all other Project Plans, TfNSW's Representative has not given a notice under clause 8.5(a),
 (as applicable).

1.5 Resolution of ambiguities

- (a) The following order of precedence applies in the event of any ambiguity, discrepancy or inconsistency in, or between, the documents comprising this deed:
 - (i) if the ambiguity, discrepancy or inconsistency is in or between the documents comprising this deed, the documents will be given precedence in accordance with the following:
 - (A) this deed (excluding the SPR); and
 - (B) the SPR;

- (ii) to the extent clause 1.5(a)(i) does not apply to or resolve the ambiguity, discrepancy or inconsistency and the ambiguity, discrepancy or inconsistency is between different codes, standards, specifications or guidelines with which OpCo must comply, the order of precedence set out in section 1.1(f) of SPR Appendix 34 (*Standards and Guidelines*) will apply;
 - (iii) to the extent clauses 1.5(a)(i) and 1.5(a)(ii) do not apply to or resolve the ambiguity, discrepancy or inconsistency and the ambiguity, discrepancy or inconsistency is between different requirements of the SPR, the order of precedence set out in section 1.2(c) of the SPR will apply;
 - (iv) to the extent clauses 1.5(a)(i) to 1.5(a)(iii) do not apply to or resolve the ambiguity, discrepancy or inconsistency and the ambiguity, discrepancy or inconsistency is between the SPR and the Planning Approvals, the document which prescribes or requires the highest standard of compliance consistent with complying with all Approvals will take precedence (unless TfNSW's Representative directs otherwise);
 - (v) to the extent clauses 1.5(a)(i) to 1.5(a)(iv) do not apply or resolve the ambiguity, discrepancy or inconsistency and the ambiguity, discrepancy or inconsistency relates to the required quality or standard of the SLR Works, the Temporary Works or OpCo's Activities, OpCo must comply with the highest quality or standard specified, perform the more onerous obligation or comply with the requirement that delivers the greater level of service; and
 - (vi) to the extent clauses 1.5(a)(i) to 1.5(a)(v) do not apply or resolve the ambiguity, discrepancy or inconsistency and the ambiguity, discrepancy, or inconsistency is between figured and scaled dimensions, figured will prevail over the scaled dimensions.
- (b) The documents comprising this deed (including the SPR and the Planning Approval) are to be regarded as mutually explanatory and anything contained in one but not the others will be equally binding as if contained in all of them.
 - (c) If an ambiguity, discrepancy or inconsistency is discovered by OpCo, OpCo must notify TfNSW within 5 Business Days of such discovery.
 - (d) TfNSW's Representative must, within 10 Business Days of receipt of a notice under clause 1.5(c), instruct OpCo as to the interpretation to be followed so as to resolve the ambiguity, discrepancy or inconsistency in accordance with the rules set out in this clause 1.5 (*Resolution of ambiguities*).
 - (e) Any Direction given by TfNSW's Representative in accordance with clause 1.5(d) will not:
 - (i) entitle OpCo to make any Claim arising out of or in connection with the Direction;
 - (ii) relieve OpCo from or alter its liabilities or obligations whether under this deed or otherwise according to law; or
 - (iii) prejudice or limit TfNSW's rights against OpCo whether under this deed or otherwise according to law.

1.6 National Public Private Partnership Policy and Guidelines

In respect of the principles and other guidance materials published from time to time by the Australian government under its National Public Private Partnership Policy and Guidelines or the State under its NSW Public Private Partnerships Guidelines (2012), or any related policies, however named, which deal with public private partnerships and arrangements for the provision of infrastructure and services (collectively the **Principles**):

- (a) the Project Agreements do not purport to, and do not incorporate, the Principles;
- (b) to the extent any particular Principles are expressly incorporated into the provisions of the Project Agreements, they may not be, and are not required to be, incorporated in identical terms to the Principles as published by the Australian government or the State; and
- (c) except to the extent expressly incorporated in the Project Agreements, the Principles will not be implied into the terms of the Project Agreements.

1.7 No bias against drafter

No provision of this deed is to be interpreted to the disadvantage of a party because that party (or its representative) drafted that provision.

1.8 Business Day

If the day on or by which anything is to be done under this deed is not a Business Day, that thing must be done no later than the next Business Day.

1.9 Excluding liability

Any provision of this deed which seeks to limit or exclude a liability of a party is to be construed as doing so only to the extent permitted by law.

1.10 CPI Indexed

Unless otherwise expressly provided, a reference to "CPI Indexed" after a monetary amount in a TfNSW Project Agreement means that the amount will be indexed for movements in the CPI in accordance with the following formula:

$$A \text{ (CPI Indexed)} = A \times \frac{\text{CPI}_{Q-1}}{\text{CPI}_{\text{Base}}}$$

Where:

A is the monetary amount originally specified;

CPI_{Q-1} is the CPI for the Quarter End following the date that occurs 6 months before the relevant calculation date; and

CPI_{Base} is the CPI for the Quarter End ending September 2014, being the Quarter End following the date that occurs 6 months before the date of Financial Close.

1.11 LPI Indexed

Unless otherwise expressly provided, a reference to "LPI Indexed" after a monetary amount in a TfNSW Project Agreement means that the amount will be indexed for movements in the LPI in accordance with the following formula:

$$A \text{ (LPI Indexed)} = A \times \frac{LPI_{Q-1}}{LPI_{Base}}$$

Where:

A is the monetary amount originally specified;

LPI_{Q-1} is the LPI for the Quarter End following the date that occurs 6 months before the relevant calculation date; and

LPI_{Base} is the LPI for the Quarter End ending September 2014, being the Quarter End following the date that occurs 6 months before the date of Financial Close.

1.12 Authorities

- (a) The TfNSW Project Agreements will not in any way unlawfully restrict or otherwise unlawfully affect the unfettered discretion of TfNSW to exercise any of its statutory functions or powers pursuant to any law.
- (b) OpCo acknowledges that, without limiting clause 1.12(a), anything TfNSW does, fails to do, or purports to do, pursuant to its functions and powers under any law will be deemed not to be an act or omission by TfNSW (including a breach of contract) under or in connection with the TfNSW Project Agreements and will not entitle OpCo to make any Claim against TfNSW.
- (c) Clauses 1.12(a) and 1.12(b) do not limit any liability which TfNSW would have had to OpCo under any TfNSW Project Agreement as a result of a breach by TfNSW of a term of any TfNSW Project Agreement but for clauses 1.12(a) and 1.12(b).
- (d) OpCo acknowledges that:
 - (i) there are many Authorities (other than TfNSW) with jurisdiction over aspects of OpCo's Activities, parts of the SLR Site and other areas affected by OpCo's Activities (including the Extra Land);
 - (ii) such Authorities may from time to time exercise their statutory functions and powers in such a way as to disrupt, interfere with or otherwise affect OpCo's Activities; and
 - (iii) except to the extent expressly stated otherwise in this deed, OpCo bears the risk of all occurrences of the kind referred to in clause 1.12(d)(ii) and will not be entitled to make, and TfNSW will not be liable upon, any Claim arising out of or in any way in connection with such occurrences.

1.13 Reasonable endeavours

If TfNSW is required under the terms of this deed to exercise best or reasonable endeavours, OpCo acknowledges that:

- (a) TfNSW will only be obliged to bring about the relevant outcome to the extent that it is reasonably able to do so, having regard to its resources and other responsibilities;
- (b) TfNSW cannot guarantee the relevant outcome; and
- (c) TfNSW, by undertaking to exercise reasonable endeavours, does not agree to:
 - (i) interfere with or influence the exercise by any person of a statutory power or discretion;
 - (ii) exercise a power or discretion or otherwise act in a manner that promotes the objectives and expected outcomes of the Project Agreements if TfNSW regards that exercise as not in the public interest;
 - (iii) develop policy or legislate by reference only or predominantly to the interests of the Project Agreements;
 - (iv) procure legislation in the future in a manner that is only consistent with the objectives and expected outcomes of the Project Agreements; or
 - (v) act in any other way that TfNSW regards as not in the public interest.

1.14 **Standards**

Except as expressly stated otherwise, a reference to any standard, code, guideline or specification is a reference to the version stated in this deed or, if no version is stated, the version of that standard, code, guideline or specification as at the date of this deed.

1.15 **Binding OpCo**

The parties acknowledge and agree that the other parties are entitled to treat any discharge, receipt, waiver, consent, communication, agreement, act or other thing given or effected by the OpCo's Representative or any ALR Partner in connection with any Project Agreement as having been given or effected for or on behalf of, and with the authority and consent of, OpCo.

1.16 **OpCo**

The obligations, undertakings, representations, warranties, indemnities and liabilities of OpCo under this deed and the other TfNSW Project Agreements bind all ALR Partners jointly and severally as partners.

2. **CONDITIONS PRECEDENT**

2.1 **Conditions Precedent**

This deed will not commence unless and until each of the Conditions Precedent have been satisfied (or waived under clause 2.3 (*Waiver of Conditions Precedent*)), except for the provisions contained in:

- (a) clause 1 (*Definitions and interpretation*);
- (b) clause 2 (*Conditions Precedent*);
- (c) clause 6A (*Planning Modification*);
- (d) clause 8.2 (*Initial Project Plans*);

- (e) clause 11.1 (*Physical conditions*);
- (f) clause 11.2 (*Information Documents*);
- (g) clause 11.3 (*Condition of the SLR Site and structures*);
- (h) clause 47 (*Disclosure, confidentiality and publicity*);
- (i) clause 49 (*Financing and Refinancing*);
- (j) clause 52 (*Restrictions*);
- (k) clause 53 (*Change of Ownership / Control*);
- (l) clause 54 (*Subcontracting*);
- (m) clause 55 (*Representations and warranties*);
- (n) clause 56 (*Dispute resolution*);
- (o) clause 57 (*Notice of Claims*);
- (p) clause 58 (*Notices*);
- (q) clause 59 (*PPSA*);
- (r) clause 60 (*Proportionate liability*);
- (s) clause 61 (*Taxes*); and
- (t) clause 62 (*General*),

(each of which is a **Day 1 Clause**) which will commence on the date of this deed.

2.2 **Satisfaction of Conditions Precedent**

- (a) TfNSW must:
 - (i) apply for the consents and approvals under section 20 of the PAFA Act;
 - (ii) procure an executed deed of assignment substantially in the form set out at Schedule C18 (*Form of Deed of Assignment*); and
 - (iii) otherwise use all reasonable endeavours to satisfy each Condition Precedent which is expressed to be included for the benefit of OpCo (or OpCo and TfNSW),

by the relevant Condition Precedent Deadline Date.
- (b) OpCo must use all reasonable endeavours to satisfy each Condition Precedent which is expressed to be for the benefit of TfNSW (or TfNSW and OpCo) by the relevant Condition Precedent Deadline Date.
- (c) When a party is of the opinion that a Condition Precedent has been satisfied it must give the other party notice of its opinion.

- (d) The party receiving a notice given under clause 2.2(c) will notify the other party whether or not it agrees that the Condition Precedent has been satisfied, such agreement not to be unreasonably withheld.
- (e) If the party receiving a notice given under clause 2.2(c) fails to give the other party a notice under clause 2.2(d) within 5 Business Days, the Condition Precedent will be deemed to have been satisfied.
- (f) Upon the satisfaction (or waiver under clause 2.3 (*Waiver of Conditions Precedent*)) of all Conditions Precedent, the parties must promptly acknowledge in writing the fact that Financial Close has occurred.

2.3 Waiver of Conditions Precedent

- (a) Subject to clause 2.3(b), a Condition Precedent is waived if, and only if:
 - (i) where the Condition Precedent is included for the benefit of a particular party, that party gives notice of the waiver of the Condition Precedent to the other party; and
 - (ii) where the Condition Precedent is included for the benefit of both parties, both parties agree in writing to waive the Condition Precedent.
- (b) TfNSW must not waive the Condition Precedent in paragraph 8 of Schedule A1 (*Conditions Precedent*) except with OpCo's prior written consent.

2.4 Condition Precedent Deadline Dates

- (a) The provisions of this clause 2.4 (*Condition Precedent Deadline Dates*) shall not apply to a failure to satisfy the Condition Precedent referred to at item 8 of the Schedule A1 (*Conditions Precedent*) which shall be dealt with in accordance with clause 6A.7 (*Termination in relation to the Planning Modification*).
- (b) If a Condition Precedent has not been satisfied (or waived under clause 2.3 (*Waiver of Conditions Precedent*)) by 11.59 pm on the relevant Condition Precedent Deadline Date, then the party listed as the "Benefiting Party" in Schedule A1 (*Conditions Precedent*) in respect of that Condition Precedent (or, if both parties are the "Benefiting Party" in respect of that Condition Precedent, either party) may give notice in writing to the other party that it is terminating this deed if the Condition Precedent in question is not satisfied (or waived under clause 2.3 (*Waiver of Conditions Precedent*)) within the period specified in its notice (which must not be less than 5 Business Days).
- (c) If a party gives notice under clause 2.4(a) and the Condition Precedent in question is not satisfied (or waived under clause 2.3 (*Waiver of Conditions Precedent*)) within the period specified in that notice (or such longer period as the parties may agree) then this deed will terminate upon the expiry of that period.
- (d) If either party gives a notice terminating this deed in accordance with clause 2.4(b) then prior to the expiry of the period specified in the notice TfNSW may give OpCo a notice suspending the termination and notifying OpCo that the Standstill Period will commence.
- (e) If the Standstill Period has commenced under this clause 2.4 (*Condition Precedent Deadline Dates*) then the parties will during the Standstill Period discuss in good faith how and on what terms the Project can continue and reach Financial Close. If the parties fail to reach agreement during the Standstill Period this deed will

terminate with immediate effect at the end of the Standstill Period (or as otherwise agreed).

- (f) If this deed is terminated pursuant to this clause 2.4 (*Condition Precedent Deadline Dates*) including at the end of the Standstill Period then no party will have any Claim against any other party under or in respect of the TfNSW Project Agreements or in respect of any Loss suffered or incurred in connection with the SLR PPP, except for:
- (i) any Claim arising from or in relation to a breach of any Day 1 Clause; and
 - (ii) in the case of termination as a direct result of a failure to satisfy the Condition Precedent referred to at item 1 (which is the fault of TfNSW and which was not in turn caused or contributed to by OpCo or an OpCo Contractor), or items 2 or 10 of Schedule A1 (*Conditions Precedent*) then TfNSW shall pay to OpCo any demonstrable, properly incurred and reasonable costs which OpCo has incurred between [REDACTED] and the date of termination and certified as such by the Independent Certifier, provided that TfNSW's maximum aggregate liability under this clause 2.4(f) and clause 6A.7(c)(iii) shall not exceed [REDACTED].

3. TERM

3.1 Commencement date

Except for the Day 1 Clauses which commence on the date of this deed, this deed commences on the date of Financial Close.

3.2 End of Term

Unless terminated early, the Term will end on the Expiry Date.

3.3 Term extension

- (a) TfNSW's Representative may, at any time prior to the date that is 12 months before the Original Expiry Date, issue to OpCo an Extension Proposal Request seeking to extend the Term for a period of up to 24 months.
- (b) Within 40 Business Days after receipt of the Extension Proposal Request, OpCo must provide TfNSW with a proposal to extend the Term for the period specified in the Extension Proposal Request (**Extension Proposal**).
- (c) The Extension Proposal must set out detailed particulars of:
 - (i) the program of Asset Management Activities, including Replacements and Refurbishments, to be undertaken in the Extension Period;
 - (ii) the direct costs incurred by OpCo in carrying out OpCo's Activities in the current Operating Year to date;
 - (iii) the projected direct costs that OpCo reasonably expects to incur in carrying out OpCo's Activities during the period specified in the Extension Proposal Request;
 - (iv) the:
 - (A) Adjusted Indexed Availability Fee; and

- (B) the Indexed Lifecycle Component,

for each month during the Extension Period and the basis on which they have been calculated; and
- (v) any other reasonable additional direct costs that OpCo expects to incur prior to the Original Expiry Date if the Extension Proposal is implemented.
- (d) The Adjusted Indexed Availability Fee and Indexed Lifecycle Component proposed by OpCo in the Extension Proposal must:
 - (i) be calculated on the basis of the projected direct costs that OpCo reasonably expects to incur in carrying out OpCo's Activities in the Extension Period; and
 - (ii) not include a margin (on account of risk, profit or contribution to overheads) greater than [REDACTED] on those costs.
- (e) OpCo must allow TfNSW to review and audit OpCo's records on an Open Book Basis to verify the information contained in the Extension Proposal.
- (f) Within 30 Business Days after receiving the Extension Proposal, TfNSW's Representative may:
 - (i) accept the Extension Proposal;
 - (ii) reject the Extension Proposal; or
 - (iii) inform OpCo that it does not wish to proceed with the Term extension, by written notice to OpCo.
- (g) If TfNSW accepts the Extension Proposal in accordance with clause 3.3(f)(i):
 - (i) TfNSW will issue the Extension Notice setting out the Extension Period;
 - (ii) subject to the balance of this clause 3.3(g), the terms of this deed will continue to apply until the expiry of the Extension Period;
 - (iii) the:
 - (A) Adjusted Indexed Availability Fee; and
 - (B) the Indexed Lifecycle Component,

will be amended as set out in the Extension Proposal for the Extension Period;
 - (iv) the reference to "Expiry Date" in the definition of "Handback Condition" will be replaced by "Original Expiry Date and the Expiry Date";
 - (v) clauses 43.12(a) and 43.12(b) will be deleted;
 - (vi) if this deed is terminated during the Extension Period, TfNSW must pay OpCo the Termination Payment determined in accordance with Schedule D6 (*Termination Payments*); and

- (vii) TfNSW will pay OpCo the reasonable additional costs identified in the Extension Proposal under clause 3.3(c)(v) at the time proposed in the Extension Proposal.
- (h) If TfNSW rejects the Extension Proposal in accordance with clause 3.3(f)(ii), TfNSW may require that OpCo consult in good faith and use its reasonable endeavours to reach agreement with TfNSW on a mutually acceptable resolution to the matters set out in the Extension Proposal which are not agreed.
- (i) If the parties reach agreement on the terms of the Extension Proposal by the date that is 6 months before the Original Expiry Date, clause 3.3(g) will apply as if TfNSW had accepted the Extension Proposal as varied by the agreement of the parties.
- (j) If:
 - (i) the parties are unable to reach agreement by the date that is 6 months before the Original Expiry Date; or
 - (ii) OpCo fails to provide the Extension Security Bond in accordance with clause 22.1(a)(ii),
 TfNSW may elect:
 - (iii) to direct OpCo to implement the Extension Proposal by issuing an Extension Order; or
 - (iv) that the Term will expire on the Original Expiry Date.
 - (v) If TfNSW elects to direct OpCo to implement the Extension Proposal under clause 3.3(j)(iii) and the parties are still unable to reach agreement, either party may refer the matter to dispute resolution in accordance with clause 56 (*Dispute resolution*).
- (k) If TfNSW issues an Extension Order:
 - (i) any disputed matters will, until TfNSW and OpCo otherwise agree or a determination is made in accordance with clause 56 (*Dispute resolution*), be reasonably determined by TfNSW's Representative. In making his or her determination, TfNSW's Representative will determine all matters required to be implemented to enable the Term to be extended by the Extension Period;
 - (ii) OpCo must proceed with the Term extension on the basis determined by TfNSW's Representative (notwithstanding that any matters in dispute have not been agreed or determined in accordance with clause 56 (*Dispute resolution*));
 - (iii) clause 3.3(g) will apply as if TfNSW had accepted the Extension Proposal in accordance with clause 3.3(f)(i); and
 - (iv) any necessary adjustments will be made following the determination of a dispute (where applicable).

- (l) If:
 - (i) OpCo prepares an Extension Proposal in accordance with this clause 3.3 (*Term extension*); and
 - (ii) TfNSW issues an Extension Order,
 then TfNSW will reimburse the reasonable third party costs incurred by OpCo in:
 - (iii) preparing the Extension Proposal; and
 - (iv) performing its obligations under clause 3.3(h).
- (m) Nothing in this clause 3.3 (*Term extension*) will be construed as affording OpCo a right or expectation of extension of this deed.
- (n) OpCo will have no Claim, and no Claim by OpCo will be justiciable, in connection with a failure by TfNSW to extend the Term, or any loss arising in connection with any potential Extension Period.

4. **OBJECTIVES, PRIMARY OBLIGATIONS AND RISK ALLOCATION**

4.1 **Objectives for the Project**

TfNSW's strategic objectives for the Project are to:

- (a) ensure Customer needs are met through provision of a safe, high quality, integrated and affordable transport service;
- (b) deliver a transport service that has been informed by engagement with communities and stakeholders and demonstrates evidence-based decision-making;
- (c) increase the use of sustainable transport modes in the CBD, inner west Sydney and south east Sydney;
- (d) improve reliability and efficiency of travel to, from and within the CBD, inner west Sydney and south east Sydney;
- (e) satisfy long term travel demand between the CBD and suburbs in Inner west Sydney and south east Sydney;
- (f) improve access to major destinations in south east Sydney, including Moore Park, University of NSW, Royal Randwick Racecourse and Randwick health precinct;
- (g) facilitate the continued, orderly and efficient growth of urban development and economic activity with the CBD and suburbs in inner west Sydney and south east Sydney; and
- (h) contribute to environmental, social and economic sustainability by improving liveability, minimising impact on the environment and the community, and delivering value for money.

OpCo will perform OpCo's Activities in a manner which promotes the achievement of these objectives.

4.2 **Objectives for the SLR PPP**

TfNSW's objectives for the SLR PPP are:

- (a) to deliver world class Light Rail services which will provide Customers with a safe, high quality, reliable, efficient and affordable public transport solution and meet the specified performance requirements on a whole of life basis;
- (b) to provide a Customer experience with:
 - (i) a frequent, convenient and reliable public transport service that consistently provides efficient travel time along its route;
 - (ii) a fully-integrated transport solution with convenient connections between transport modes;
 - (iii) high quality Stops and Light Rail Vehicles which are safe, easy to use, and highly accessible; and
 - (iv) high quality and reliable information, and intuitive and clear wayfinding and signage consistent with the TfNSW brand;
- (c) to develop a long term, collaborative working relationship between TfNSW and OpCo and OpCo's Contractors;
- (d) to design, deliver, test, commission, operate and maintain a safe Light Rail system, including the development of an effective safety culture;
- (e) to set new benchmarks for the future development and operation of Sydney's transport network;
- (f) to provide a whole of life approach to design, construction, operations and asset management;
- (g) that OpCo will engage with the community and implement proactive stakeholder and community liaison strategies to minimise disruption and develop community "ownership" of the SLR;
- (h) that OpCo will deliver sustainable social and environmental outcomes by minimising energy use, minimising impacts on the environment and promoting workforce development; and
- (i) that OpCo will deliver a sound financing strategy for the SLR PPP which provides value for money to the State and a robust and financially sustainable business for the operation of the SLR.

OpCo will perform OpCo's Activities in a manner which promotes the achievement of these objectives.

4.3 **Customer is at the centre**

- (a) OpCo acknowledges TfNSW's vision statement, namely that "The Customer is at the centre of everything we do in transport".
- (b) OpCo will perform OpCo's Activities in a manner consistent with this vision statement.

4.4 **OpCo's primary obligations**

Without limiting OpCo's obligations under this deed, OpCo must:

- (a) finance or arrange for the financing of the SLR PPP;

- (b) design and construct the SLR Works;
 - (c) operate and maintain the SLR and ETS during the Operations Phase, in order to provide a safe, secure, continuous, reliable, effective and efficient Light Rail service that from a Customer perspective, integrates with the rest of Sydney's public transport system;
 - (d) hand the LTS Equipment back to TfNSW on the LTS End Date; and
 - (e) hand the SLR and the ETS Equipment back to TfNSW at the end of the Term,
- subject to, and in accordance with, this deed.

4.5 **TfNSW's primary obligations**

Without limiting TfNSW's obligations under this deed, TfNSW must:

- (a) grant OpCo the licences under clauses 12.1 (*Construction Site Licence*) and 12.4 (*Licence*); and
- (b) pay OpCo in accordance with clause 25 (*Payment provisions*),

subject to, and in accordance with, this deed.

4.6 **Project risks**

Except as expressly stated in this deed, OpCo accepts all risks associated with the SLR PPP and will not be entitled to make any Claim against TfNSW arising out of or in connection with such risks.

4.7 **TfNSW's rights do not affect risk allocation**

- (a) TfNSW has various rights under this deed which are designed to give TfNSW the ability to monitor the performance of OpCo's obligations. Such rights include:
 - (i) the right to review Project Plans, Design Documentation, Delivery Programs, Delivery Phase Progress Reports, Monthly Operations Performance Reports, Test Procedures, Test Reports, Base Case Financial Models, Operational Financial Models and other documents which OpCo must submit to TfNSW (**OpCo Submissions**);
 - (ii) rights to inspect, monitor or audit OpCo's Activities; and
 - (iii) rights to attend Tests.
- (b) Neither the exercise of, nor the failure to exercise, such rights will:
 - (i) relieve OpCo from, or alter or affect, OpCo's liabilities, obligations or responsibilities whether under this deed or otherwise according to law;
 - (ii) prejudice or limit TfNSW's rights against OpCo whether under this deed or otherwise according to law; or
 - (iii) without limiting clause 4.7(b)(ii), preclude TfNSW from subsequently asserting that OpCo has not fulfilled its obligations whether under this deed or otherwise according to law.

- (c) Without limiting clause 4.7(b):
- (i) neither TfNSW nor TfNSW's Representative assumes or owes any duty of care to OpCo:
 - (A) to review any OpCo Submission for errors, omissions or compliance with this deed; or
 - (B) if TfNSW does review any OpCo Submission, for identifying errors, omissions or non-compliance with this deed;
 - (ii) no review of, comments upon, or notice in respect of, or any failure to review, comment upon or give any notice in respect of, any OpCo Submission or any other direction, act or omission of TfNSW or TfNSW's Representative will:
 - (A) relieve OpCo from, or alter or affect, OpCo's liabilities, obligations or responsibilities whether under this deed or otherwise according to law;
 - (B) prejudice or limit TfNSW's rights against OpCo whether under this deed or otherwise according to law;
 - (C) constitute an instruction to accelerate, disrupt, prolong or vary any of OpCo's Activities; or
 - (D) affect the time for the performance of TfNSW's obligations;
 - (iii) OpCo will not be relieved from compliance with any of its obligations under this deed or from any of its liabilities whether under this deed or otherwise according to law as a result of:
 - (A) compliance with any Project Plan;
 - (B) any audits or other monitoring by TfNSW of OpCo's compliance with any Project Plan; or
 - (C) any failure by TfNSW, or anyone acting on behalf of TfNSW, to detect any non-compliance including where any failure arises from any negligence on the part of TfNSW or such other person;
 - (iv) neither TfNSW nor TfNSW's Representative assumes or owes any duty of care to OpCo:
 - (A) to inspect OpCo's Activities, the SLR Works or the SLR for errors, omissions or compliance with the requirements of this deed; or
 - (B) if TfNSW does inspect OpCo's Activities, the SLR Works or the SLR, for identifying errors, omissions or non-compliance with the requirements of this deed; and
 - (v) any inspection of OpCo's Activities (or lack of inspection) by or on behalf of TfNSW will not in any way:
 - (A) relieve OpCo from, or alter or affect, OpCo's liabilities, obligations or responsibilities whether under this deed or otherwise according to law; or

- (B) prejudice or limit TfNSW's rights against OpCo whether under this deed or otherwise according to law.

5. GOVERNANCE

5.1 TfNSW's Representative

- (a) TfNSW's Representative will carry out all of its functions under this deed as the agent of TfNSW (and not as an independent certifier, assessor or valuer).
- (b) TfNSW may at any time by written notice to OpCo replace TfNSW's Representative with another person.
- (c) OpCo must comply with all Directions given by TfNSW's Representative under this deed.

5.2 Appointees of TfNSW's Representatives

TfNSW's Representative may:

- (a) by written notice to OpCo appoint persons to exercise any of the functions of TfNSW's Representative under this deed;
- (b) not appoint more than one person to exercise a specific function at any one time;
- (c) revoke any appointment under clause 5.2(a) by written notice to OpCo; and
- (d) continue to exercise a function under this deed despite appointing another person to exercise the function under clause 5.2(a) (provided that any Directions of TfNSW's Representative take precedence over those of any other representative to the extent of any inconsistency).

All references in this deed to TfNSW's Representative include a reference to an appointee under this clause 5.2 (*Appointees of TfNSW's Representatives*).

5.3 OpCo's Representative

- (a) OpCo's representative for the purposes of this deed is OpCo's Representative.
- (b) OpCo must:
 - (i) ensure that OpCo's Representative is available at all reasonable times for communications with TfNSW's Representative; and
 - (ii) ensure that OpCo's Representative is, at all times an employee of OpCo.

5.4 Independent Certifier

- (a) **(Independent Certifier Deed):** The Independent Certifier will be engaged on the terms of the Independent Certifier Deed.
- (b) **(Role):** Subject to clause 5.4(c), the Independent Certifier's role is to, amongst other things:
 - (i) independently certify in accordance with the Independent Certifier Deed:
 - (A) that the Traffic and Transport Management Plan and the Testing and Commissioning Plan comply with the requirements of this deed;

- (B) that the Design Documentation complies with the requirements of this deed;
 - (C) that the SLR Works have been completed, tested and commissioned in accordance with this deed;
 - (D) that the Tests and Approvals required by the Testing and Commissioning Plan will, if satisfied, allow it to certify Completion of the SLR Works;
 - (E) that the OpCo ETS Works have been completed, tested and commissioned in accordance with the SPR;
 - (F) that the requirements for First Passenger Service have been satisfied;
 - (G) the achievement of Completion;
 - (H) the achievement of the Additional CSELRV Acceptance Requirements;
 - (I) the achievement of Final Completion;
 - (J) the achievement of Civils and Systems Completion (if applicable);
 - (K) readiness for First Passenger Service;
 - (L) completion of each discrete part of the Local Area Works;
 - (M) the Occupation Commencement Date for each Fee Zone; and
 - (N) the Occupation Cessation Date and the Actual Fee Zone Occupation Period for each Fee Zone;
- (ii) independently audit in accordance with the Independent Certifier Deed:
- (A) that the Project Plans comply with the requirements of this deed;
 - (B) OpCo's compliance with Third Party Agreements and the Third Party requirements specified in Schedule B3 (*Requirements of Third Parties*);
 - (C) the effects of OpCo's Activities, as described in section 4.3 of the SPR;
 - (D) that OpCo's Activities and Temporary Works comply with the traffic and transport management and the road, footpath and shared path requirements in the deed; and
 - (E) OpCo's compliance with the Planning Approval;
- (iii) participate in meetings as specified in the Design Management Plan;
- (iv) attend Tests, Hold Points and Witness Points;
- (v) undertake the role of the Environmental Representative, including those obligations in the Planning Approval;
- (vi) make determinations on matters that this deed (including the SPR) expressly requires be determined by the Independent Certifier;

- (vii) issue certificates as contemplated by this deed;
 - (viii) undertake surveillance of OpCo's Activities;
 - (ix) provide written confirmation of completion of discrete parts of Utility Services Works and Property Works; and
 - (x) notify that the Installation Works are complete and the Journey Time Detection Device is fit for its intended purpose to enable OpCo to comply with its obligations under Schedule D1 (*Service Payment Regime*).
- (c) **(ASA and AEO)**: In certifying Design Documentation, the Independent Certifier is not required to act as an AEO.
- (d) **(Independent)**: The Independent Certifier is obliged to act independently of TfNSW, OpCo and OpCo's Contractors.
- (e) **(Not approval or evidence)**: Subject to clause 19.11(a), a certification or other determination of the Independent Certifier will not:
- (i) constitute an approval by TfNSW of OpCo's performance of its obligations under this deed; or
 - (ii) be taken as an admission or evidence that the matters certified or determined by the Independent Certifier comply with this deed.
- (f) **(Conduct does not affect obligations)**: Without limiting clause 5.4(e), an act or omission (including negligence) of the Independent Certifier will not:
- (i) relieve a party from, or alter or affect, a party's liabilities, obligations or responsibilities to the other party whether under this deed or otherwise according to law; or
 - (ii) prejudice or limit a party's rights against the other party whether under this deed or otherwise according to law.
- (g) **(Determinations final and binding)**: Determinations of the Independent Certifier will be immediately binding on the parties. If a party, acting reasonably, believes a manifest error has occurred in relation to a determination of the Independent Certifier, that party may (other than for a determination that is final and binding on the parties in accordance with clauses 19.11(a), 19.11(b), 19.11(c)) dispute the determination of the Independent Certifier and must do so in accordance with clause 56 (*Dispute resolution*). Parties must give effect to determinations by the Independent Certifier unless and until they are revised pursuant to the dispute resolution process in clause 56 (*Dispute resolution*). Nothing in this clause 5.4(g) will limit OpCo's ability to dispute (in accordance with clause 56 (*Dispute resolution*)) any determination or certification of the Independent Certifier under clauses 12.2(c), 13.7(b), 18.2(c) or 18.5(c).
- (h) **(Provision of information)**: TfNSW and OpCo must provide the Independent Certifier with all information and documents and allow the Independent Certifier:
- (i) to attend meetings;
 - (ii) access to all premises; and

- (iii) to insert Hold Points or Witness Points in the Project Plans and designate the authority to release the Hold Points,

all as may be necessary or reasonably required by the Independent Certifier to allow the Independent Certifier to perform its obligations under the Independent Certifier Deed.

- (i) **(Copy all information to other party):** All notices and documents provided by a party to the Independent Certifier must be copied to the other party. If a party is required to provide a notice or document to the Independent Certifier within a specified time period, that notice or document must be provided to the other party within the same time period.
- (j) **(TfNSW may provide comments):** TfNSW's Representative may provide comments to the Independent Certifier in respect of OpCo's Activities.
- (k) **(Hold/Witness Points):** OpCo must comply with the Hold Point and Witness Point procedures required by this deed, including as set out in the SPR or inserted in the Project Plans by the Independent Certifier pursuant to clause 5.4(h)(iii).

5.5 Senior Project Group

- (a) **(Composition – Delivery Phase):** A Senior Project Group must be established consisting of:
 - (i) from TfNSW:
 - (A) TfNSW's Deputy Director General (Transport Projects) (Chairperson);
 - (B) TfNSW's Project Director; and
 - (C) TfNSW's Deputy Director General (Transport Services); and
 - (ii) from OpCo:
 - (A) OpCo's Representative;
 - (B) 2 other people not holding a position more senior than the person referred to in clause 5.5(a)(ii)(A), with at least 1 person from OpCo whose primary role and expertise is in respect of the Delivery Activities; and
 - (C) at least 1 person from OpCo whose primary role and expertise is in respect of Operations Activities.
- (b) **(Composition – Operations Phase):** A Senior Project Group must be established consisting of:
 - (i) from TfNSW:
 - (A) TfNSW's Deputy Director General (Transport Services) (Chairperson); and
 - (B) TfNSW's Deputy Director General (Customer Experience); and
 - (ii) from OpCo:
 - (A) OpCo's Representative;

- (B) 1 person holding a position more senior than the person referred to in clause 5.5(b)(ii)(A),
- with at least 1 person from OpCo whose primary role and expertise is in respect of the Operations Activities.
- (c) **(Objectives):** The objectives of the Senior Project Group are to:
- (i) monitor the overall progress of the SLR PPP;
 - (ii) review each Delivery Phase Progress Report provided by OpCo during the Delivery Phase;
 - (iii) review each Monthly Operations Performance Report provided by OpCo during the Operations Phase;
 - (iv) facilitate the development of a long term, collaborative working relationship between the parties;
 - (v) assist with the resolution of any matters referred to the Senior Project Group by a party, including issues arising out of the subject of the Third Party Agreements or any Third Party requirement specified in Schedule B3 (*Requirements of Third Parties*); and
 - (vi) review and consider such other matters relating to the SLR PPP as are agreed between the parties from time to time.
- (d) **(Frequency of meetings):** The Senior Project Group will meet monthly during the Delivery Phase and quarterly thereafter, unless the parties agree otherwise.
- (e) **(Administration):** TfNSW's Representative will convene the meetings of the Senior Project Group. The meetings will be chaired by the most senior TfNSW attendee. TfNSW will provide the secretariat.
- (f) **(TfNSW may require certain representatives to attend):** At TfNSW's request, OpCo must procure the attendance of representatives of any Significant Contractor (which will include, where the Significant Contractor is not a Core Contractor, the Core Contractor of whom such Significant Contractor is a subcontractor (of any level)) and/or the Agent at meetings of the Senior Project Group. TfNSW is also entitled to invite representatives of the State or any Authority attend meetings.
- (g) **(OpCo may bring certain representatives):** OpCo may, with TfNSW's consent, have a representative of each Core Contractor attend any meeting of the Senior Project Group.
- (h) **(Observers attending Senior Project Group meetings):** All persons invited or directed to attend meetings as provided by clauses 5.5(f) and 5.5(g) will do so as observers who:
- (i) are not members of the Senior Project Group;
 - (ii) have no voting rights at meetings; and
 - (iii) may only present such information and participate in the meeting discussions to the extent invited by the meeting chairperson.

- (i) **(Working Groups):** The Senior Project Group may establish Working Groups as required in relation to particular aspects of OpCo's Activities, including to prepare for operational readiness or provide a non-binding forum for OpCo to present its proposed solutions and for the parties to discuss the solutions.

5.6 **No legal effect**

Without limiting clause 57.1 (*Notice of Modification*), the Senior Project Group and each Working Group are consultative and advisory only and nothing which occurs during a meeting of any such group will:

- (a) affect the rights or obligations of either party under the Project Agreements;
- (b) entitle a party to make any Claim against the other;
- (c) relieve a party from, or alter or affect, a party's liabilities or responsibilities whether under this deed or otherwise according to law; or
- (d) prejudice a party's rights against the other whether under this deed or otherwise according to law.

5.7 **Annual relationship review**

- (a) As soon as practicable after the end of each calendar year, TfNSW and OpCo must conduct an annual relationship review.
- (b) The annual relationship review will:
 - (i) review the health and quality of the working relationship between the parties during the previous year; and
 - (ii) identify opportunities to improve the working relationship between the parties during the forthcoming year.

5.8 **Call-in**

- (a) If, during the Operations Phase:
 - (i) TfNSW is dissatisfied with OpCo's performance of the Operations Activities;
 - (ii) OpCo is in breach of an obligation under this deed or, in TfNSW's reasonable view, OpCo will be in breach of an obligation if its current performance continues unchanged; and
 - (iii) in TfNSW's reasonable view, its concerns are not being addressed in the various governance mechanisms referred to in this clause 5 (*Governance*),
 TfNSW may issue a notice to OpCo outlining the nature of TfNSW's dissatisfaction.
- (b) If required by TfNSW in the notice under clause 5.8(a), OpCo must:
 - (i) provide information;
 - (ii) attend meetings with TfNSW; and
 - (iii) prepare and implement remedial plans to improve performance in the areas identified by TfNSW.

6. LAW AND APPROVALS

6.1 Compliance with laws

OpCo must:

- (a) in performing OpCo's Activities, comply with all applicable laws;
- (b) ensure that OpCo's Contractors, in performing OpCo's Activities, comply with all applicable laws;
- (c) ensure that the SLR Works, Temporary Works and the SLR comply with all applicable laws;
- (d) give TfNSW's Representative copies of:
 - (i) all material documents given by OpCo or OpCo's Contractors to an Authority at the time that those documents are given to the Authority; and
 - (ii) details of any other material communications between OpCo or OpCo's Contractors and an Authority,
 in connection with OpCo's Activities;
- (e) in relation to any document required to be prepared pursuant to a Planning Approval, which is also required to be submitted to an Authority:
 - (i) provide TfNSW's Representative with copies of any such documents;
 - (ii) provide TfNSW with an opportunity to comment on any such documents;
 - (iii) consider any comments made by TfNSW in relation to any such documents; and
 - (iv) deliver a final version of any such documents in order to enable TfNSW to submit the relevant document to any Authority; and
- (f) provide TfNSW with such assistance as may be reasonably required by TfNSW to enable TfNSW to comply with all applicable laws.

6.2 Approvals

- (a) TfNSW has obtained, or will obtain:
 - (i) the Planning Approvals, other than the Planning Modification which the parties acknowledge has been prepared and submitted as at the date of this deed as described in clause 6A (*Planning Modification*); and
 - (ii) the Roads Act Approval.
- (b) OpCo must:
 - (i) obtain and maintain, and ensure that OpCo's Contractors obtain and maintain, all Approvals required to perform OpCo's Activities (other than those Approvals which this deed expressly states that TfNSW has or will obtain or TfNSW agrees in its absolute discretion to obtain or maintain);

- (ii) except to the extent otherwise expressly specified in the Planning Approval conditions set out in Schedule B2 (*Action in complying with Planning Approvals*) or the Roads Act Approval conditions set out in Schedule B10 (*Roads Act Approval Conditions*):
 - (A) comply with, carry out and fulfil, and ensure that OpCo's Contractors comply with, carry out and fulfil; and
 - (B) ensure that the SLR Works, the Temporary Works, the IWLR and, after the Date of Completion, the CSELR, comply with,

the conditions and requirements of all Approvals (including those which TfNSW is expressly or impliedly under the terms of the Approval required to comply with, carry out or fulfil);
- (iii) except to the extent prohibited by law, indemnify TfNSW against any Loss suffered by TfNSW arising out of or in any way in connection with a failure by OpCo to comply with its obligations under clauses 6.2(b)(i) or 6.2(b)(ii);
- (iv) except to the extent otherwise expressly specified in:
 - (A) the Planning Approval conditions set out in Schedule B2 (*Action in complying with Planning Approvals*); or
 - (B) the Roads Act Approval conditions set out in Schedule B10 (*Roads Act Approval Conditions*),

pay all fees, effect all insurances, provide any bonds and execute any undertakings or agreements or any other document required by any relevant Authority in respect of any Approval which OpCo must obtain or comply with (and ensure that OpCo's Contractors do likewise in relation to any Approvals which they must maintain or comply with in connection with OpCo's Activities); and
- (v) without limiting clause 6.2(b)(ii), provide TfNSW with such assistance as reasonably may be required by TfNSW to enable it to obtain or satisfy or fulfil the conditions and requirements in respect of any:
 - (A) Approvals which are obtained by TfNSW after the date of this deed;
 - (B) conditions and requirements of Approvals which are required to be satisfied or fulfilled by TfNSW pursuant to the Planning Approval conditions set out in Schedule B2 (*Action in complying with Planning Approvals*); or
 - (C) conditions and requirements which are required to be satisfied or fulfilled by TfNSW pursuant to the Roads Act Approval conditions set out in Schedule B10 (*Roads Act Approval Conditions*).

6.3 Modifications to Planning Approvals

Notwithstanding clause 35 (*Change in Law*) but without limiting clause 6A (*Planning Modification*), if, arising out of or in connection with a Modification requested by OpCo or any failure by OpCo to comply with its obligations under this deed or any other Project Agreement:

- (a) any further environmental impact assessment is required under Part 4 or Part 5.1 of the EP&A Act (or their equivalents) in connection with the SLR PPP;
- (b) TfNSW determines that it is necessary to carry out any further environmental impact assessment under Part 5 of the EP&A Act (or its equivalent) in connection with the SLR PPP;
- (c) a Planning Approval is modified and/or amended under the EP&A Act or the EPBC Act;
- (d) a new Approval is issued under the EP&A Act in respect of the SLR Works or the SLR, either in substitution for or replacement of a Planning Approval or otherwise; or
- (e) any such new Approval is modified under the EP&A Act,

then any such events and any actions or additional work arising out of or in connection with any such events will be at OpCo's cost and risk, irrespective of who is required to, or does, carry out any such assessment.

6.4 **Legal challenge to Planning Approvals**

If there is a legal challenge brought about by way of commencement of court proceedings in relation to the grant of, or compliance with, the Planning Approvals, OpCo must continue to perform OpCo's Activities unless, as a result of that legal challenge, it is otherwise ordered by a court or directed by TfNSW.

6.5 **Crown Building Work**

- (a) OpCo must, in relation to any part of the SLR Works or Temporary Works that is Crown Building Work (as defined in section 109R of the EP&A Act), certify or procure that an OpCo Associate certifies the Crown Building Work (on behalf of TfNSW) as required by section 109R of the EP&A Act.
- (b) Any certification under clause 6.5(a) will not lessen or otherwise affect:
 - (i) OpCo's other liabilities or responsibilities under this deed or otherwise according to law; or
 - (ii) TfNSW's rights against OpCo, whether under this deed or otherwise according to law.

6.6 **Long service leave levy**

Before commencing construction of the SLR Works or the Temporary Works, OpCo must:

- (a) pay (or procure payment) to the Building and Construction Industry Long Service Payments Corporation, or its agent, the amount of the long service levy payable in respect of the building and/or construction work under the *Building and Construction Industry Long Service Payments Act 1986* (NSW); and
- (b) produce to TfNSW's Representative the document evidencing payment of the levy.

6A **PLANNING MODIFICATION**

6A.1 **Planning Modification Application**

- (a) The parties acknowledge and agree that:

- (i) TfNSW is the proponent under the EP&A Act in respect of the Planning Modification;
 - (ii) as at the date of this deed, TfNSW has prepared and submitted, in conjunction with OpCo and its Associates, the Planning Modification Application including all associated plans, specifications and environmental impact statement updates (the **Planning Modification Documents**); and
 - (iii) prior to its submission OpCo approved the form of the Planning Modification Application, including the Planning Modification Documents.
- (b) From the date of this deed OpCo must, at OpCo's cost:
- (i) following request by TfNSW, prepare any further documents, plans or reports required to be prepared in respect of the Planning Modification Application process;
 - (ii) provide assistance to TfNSW and its Associates in relation to the Planning Modification Application, including by attending any relevant meeting as required by TfNSW and providing any information available to OpCo or its Associates;
 - (iii) co-operate with TfNSW and its Associates in relation to the Planning Modification Application; and
 - (iv) assist TfNSW in managing the process for obtaining the Planning Modification, including:
 - (A) any consultation with the community and stakeholders required by the Planning Modification Application process; and
 - (B) the public exhibition of the Planning Modification Application,
 each in accordance with Good Industry Practice.
- (c) OpCo warrants that it will:
- (i) prepare each further document, plan, report or information required pursuant to clause 6A.1(b)(i) above in accordance with Good Industry Practice; and
 - (ii) ensure that any such document, plan or report will comply with the EP&A Act, the EPBC Act and any other applicable legislation.
- (d) Except to the extent expressly stated otherwise in this clause 6A (*Planning Modification*), OpCo will not be entitled to make and TfNSW will not be liable for any Claim, including for a Compensation Event, arising out of or in any way in connection with the process set out in this clause 6A (*Planning Modification*). This clause 6A.1(d) does not limit OpCo's right to make a Claim under paragraphs (b) and (c) of the definition of Compensation Event in respect of events occurring both after the Planning Modification has been determined by the Minister for Planning and Financial Close has been achieved.
- (e) The parties acknowledge and agree that the terms of any Planning Modification which the Minister for Planning may issue arise from the exercise of a statutory discretion in accordance with the terms of the EP&A Act.

- (f) The parties will use their best endeavours to ensure that any conditions of the Planning Modification are, in substance, as close as possible to the requirement for the Project as set out in this deed, having regard to the degree of control the parties have over this outcome.

6A.2 Issue of the Planning Modification

TfNSW will give notice to OpCo, within 2 Business Days of the Planning Modification being determined by the Minister for Planning, together with a copy of the notice of determination of the Planning Modification.

6A.3 Unforeseeable Modification Requirements

For the purposes of this deed, an Unforeseeable Modification Requirement of the Planning Modification is a requirement or condition of the Planning Modification which is not a requirement or condition included in the Project Planning Approval prior to the Planning Modification and which:

- (a) requires the incurring of incremental expenditure during the Delivery Phase and/or incremental operation and maintenance expenditure during the Operations Phase;
- (b) restricts the use of the SLR for the purpose detailed in the Project Planning Approval, where that restriction has a Material Adverse Planning Effect;
- (c) is inconsistent with any of the obligations contemplated in this deed and that requirement has a Material Adverse Planning Effect; or
- (d) has the effect of refusing one or more of the modifications referred to in paragraphs (a) to (j) of the definition of Planning Modification.

6A.4 Contesting the Planning Approval

- (a) OpCo acknowledges that where the Minister for Planning:
 - (i) determines to refuse part or all of the Planning Modification; or
 - (ii) grants, or indicates that it will grant, the Planning Modification subject to conditions or requirements which:
 - (A) are Unforeseeable Modification Requirements; or
 - (B) TfNSW wishes to challenge,

TfNSW must, within 20 Business Days after TfNSW becomes aware of the determination of the Planning Modification, notify OpCo whether TfNSW intends to contest the determination or imposition of that condition or requirement.

- (b) If TfNSW notifies OpCo that it intends to contest the refusal to grant part or all of the Planning Modification or imposition of a condition or requirement, OpCo must at its cost:
 - (i) provide assistance to TfNSW in managing the process for contesting the determination or imposition of the relevant condition or requirement in accordance with Good Industry Practice;

- (ii) prepare any documents and submissions that are reasonably required by TfNSW to be prepared for contesting the determination or imposition of the relevant condition or requirement;
- (iii) provide assistance to TfNSW in connection with the contesting of the determination or relevant condition or requirement, including by attending any relevant meeting as required by TfNSW and providing any information available to OpCo or its Associates; and
- (iv) co-operate with TfNSW in relation to the contesting of the determination or the relevant condition or requirement.

6A.5 Not used

6A.6 Direction to Proceed

- (a) Without limiting clauses 6A.4(a) or 6A.7 (*Termination in relation to the Planning Modification*), if:
 - (i) the Minister for Planning grants, or indicates that it will grant, the Planning Modification subject to an Unforeseeable Modification Requirement; or
 - (ii) TfNSW, after having consulted with OpCo, considers that a Modification is required to ensure that:
 - (A) the Planning Modification is granted; or
 - (B) the Planning Modification is granted without being subject to an Unforeseeable Modification Requirement,

TfNSW may issue a Modification Request to OpCo in accordance with clause 29 (*TfNSW Initiated Modifications*) setting out the details of a proposed Modification to enable OpCo to comply with the Unforeseeable Modification Requirement. If TfNSW issues a Modification Request to OpCo under this clause 6A.6(a), clause 29 (*TfNSW Initiated Modifications*) will apply.

- (b) Without limiting clause 6A.4(a), if the Minister for Planning grants the Planning Modification which is not subject to an Unforeseeable Modification Requirement but is inconsistent with any of the obligations contemplated in this deed then TfNSW will issue a Modification Request to OpCo in accordance with clause 29 (*TfNSW Initiated Modifications*) setting out the details of a proposed Modification to enable OpCo to comply with the Planning Modification as granted. If TfNSW issues a Modification Request to OpCo under this clause 6A.6(b), clause 29 (*TfNSW Initiated Modifications*) will apply.
- (c) Notwithstanding any other provision of this clause 6A (*Planning Modification*) or clause 29 (*TfNSW Initiated Modifications*) but subject to clause 6B (*Additional noise levels*), the parties will bear the Net Financial Impact arising from all Modifications proposed pursuant to clause 6A.6(a) and clause 6A.6(b) in accordance with clause 2(e) of Schedule D4 (*Net Financial Impact*).
- (d) If TfNSW issues a Modification Request under clauses 6A.6(a) or 6A.6(b), TfNSW's right to withdraw the Modification Request, elect not to proceed with the proposed Modification or reject the Modification Impact Proposal in accordance with clauses 29.1(b), 29.6(b), 29.6(c) and 29.12(b) (as applicable) will not apply. If TfNSW does not agree on any aspect of the Modification Impact Proposal submitted by OpCo, the parties will consult in good faith and use reasonable endeavours to agree

on an acceptable resolution to the matters set out in the Modification Impact Proposal and clauses 29.9 (*Parties reach agreement*) and 29.10 (*If parties fail to reach agreement*) will apply.

6A.7 Termination in relation to the Planning Modification

- (a) Notwithstanding any other provision of this clause 6A (*Planning Modification*), if:
- (i) the Minister for Planning determines to refuse the Planning Modification;
 - (ii) the Planning Modification is not granted prior to 31 March 2015; or
 - (iii) the Minister for Planning grants the Planning Modification subject to an Unforeseeable Modification Requirement,
- then TfNSW shall by no later than 31 March 2015:
- (iv) give written notice to OpCo terminating this deed with immediate effect, provided that TfNSW may only exercise this right if the Unforeseeable Modification Requirement is, in TfNSW's reasonable opinion, material to TfNSW having regard to the cost of such Unforeseeable Modification Requirement taking in account the sharing of any Net Financial Impact in Schedule D4 (*Net Financial Impact*);
 - (v) issue a Modification Request in accordance with clause 6A.6(a); or
 - (vi) give written notice to OpCo that the Standstill Period will commence.
- (b) If the Standstill Period under this clause 6A.7 (*Termination in relation to the Planning Modification*) has commenced, the parties will during the Standstill Period discuss in good faith how and on what terms the Project can continue and achieve Financial Close. If the parties fail to reach agreement during the Standstill Period, this deed will terminate with immediate effect at the end of the Standstill Period (or as otherwise agreed).
- (c) If this deed is terminated pursuant to this clause 6A.7 (*Termination in relation to the Planning Modification*) then no party will have any Claim against the other party under or in respect of the Project Agreements or in respect of any Loss suffered or incurred in connection with the SLR PPP, except:
- (i) for any Claim arising from or in relation to breach of any Day 1 Clause;
 - (ii) TfNSW shall pay to OpCo the Contribution as if OpCo were an Unsuccessful Proponent provided that the requirements of clauses 2(c) and 2(e) of the Cost Reimbursement Deed Poll shall apply; and
 - (iii) other than in circumstances where the termination has arisen from any default of OpCo or an OpCo Contractor, TfNSW shall pay to OpCo any demonstrable, properly incurred and reasonable costs which OpCo has incurred between [REDACTED] and the date of termination and certified as such by the Independent Certifier, provided that TfNSW's maximum aggregate liability under this clause 6A.7(c)(iii) and 2.4(f) shall not exceed [REDACTED].
- (d) For the purposes of clause 6A.7(b)(ii), **Contribution** and **Unsuccessful Proponent** have the meaning given to them in the Cost Reimbursement Deed Poll.

6B PROPERTY NOISE ATTENUATION WORKS

The parties acknowledge and agree that the parties shall share the Net Financial Impact in respect of noise attenuation measures carried out by OpCo to third party properties located alongside the SLR Site which are required to comply with the terms of this deed (**Property Noise Attenuation Works**) in accordance with paragraph (g) of Schedule D4 (*Net Financial Impact*).

7. RAIL SAFETY

7.1 OpCo's rail safety obligations

- (a) (**OpCo to hold Accreditation**): Without limiting clause 6.2 (*Approvals*), OpCo must ensure that OpCo or the Core Contractors, in carrying out OpCo's Activities:
 - (i) hold the necessary Accreditation to carry out any railway operations (as defined in the Rail Safety National Law) that form part of the Project; and
 - (ii) comply with all conditions of such Accreditation and all obligations of accredited persons under the Rail Safety National Law and Rail Safety Regulations.
- (b) (**Rail transport operator**): OpCo must ensure that OpCo or the Core Contractors, in carrying out OpCo's Activities, act as and comply with any obligations of a rail transport operator they have under the Rail Safety National Law and Rail Safety Regulations.
- (c) (**OpCo's Contractors**): OpCo must ensure that OpCo's Contractors engaged in, or in connection with, OpCo's Activities comply with any obligations they have under the Rail Safety National Law.
- (d) (**Utilising OpCo's Accreditation**): OpCo must ensure that it is able to comply at all times with clause 7.1(a) if an OpCo Contractor is engaged in or in connection with OpCo's Activities in circumstances where subsection 62(1)(b) of the Rail Safety National Law applies.
- (e) (**Safety Management System**): OpCo must:
 - (i) ensure that its or the Core Contractor's Safety Management System contemplates and provides for the continuation of OpCo's Activities following the occurrence of a Step-in Event; and
 - (ii) provide TfNSW with:
 - (A) the then current version of its or the Core Contractor's Safety Management System for OpCo's Activities promptly upon request by TfNSW; and
 - (B) an updated version of such Safety Management System within 5 Business Days of any update.
- (f) (**Notices**): OpCo must provide TfNSW with a copy of any notice, report and other correspondence given to or received by OpCo or its Associates under or in connection with:
 - (i) the Rail Safety National Law;

- (ii) the Rail Safety Regulations; or
- (iii) any Accreditation held by OpCo or its Associates,

in connection with OpCo's Activities or which may adversely affect the ability of OpCo or its Associates to perform OpCo's Activities, promptly after it is given or received. The notice, report or other correspondence must be provided, as soon as possible, but in any event no later than 5 Business Days after it is given or received by OpCo or its Associates.

7.2 Staff

Without limiting clauses 6.1 (*Compliance with laws*) and 6.2 (*Approvals*), OpCo must ensure that all Staff:

- (a) are competent to carry out the work for which they are engaged for the purposes of section 117 of the Rail Safety National Law; and
- (b) comply with their obligations under the Rail Safety National Law.

7.3 TfNSW to provide information

If requested by OpCo to do so, TfNSW must provide OpCo with any information then held by TfNSW that:

- (a) OpCo or a Core Contractor reasonably requires to obtain any Accreditation, or a variation to its Accreditation, or to fulfil its obligations under the Rail Safety National Law, in connection with OpCo's Activities; and
- (b) OpCo or the relevant Core Contractor cannot obtain from another source.

8. PROJECT PLANS

8.1 Purpose

The intended purposes of the Project Plans are:

- (a) to demonstrate to TfNSW that OpCo has the understanding, capacity and capability at all times to perform OpCo's Activities safely and in accordance with the requirements of this deed;
- (b) to ensure that the SLR and the ETS Equipment (to the extent applicable) comply with the requirements of this deed;
- (c) to define responsibilities, resources and processes for planning, performing and verifying that OpCo's Activities satisfy the requirements of this deed; and
- (d) to allow TfNSW to understand how OpCo will achieve the performance outcomes specified in this deed, the objectives set out in clauses 4.1 (*Objectives for the Project*) and 4.2 (*Objectives for the SLR PPP*) and otherwise fulfil its obligations under this deed.

8.2 Initial Project Plans

- (a) Initial versions of certain Project Plans are included in the Part F Schedules (*Initial Project Plans*).
- (b) Without limiting clause 8.3 (*Updated Project Plans*), OpCo must:

- (i) in relation to Project Plans for which an initial version is included in the Part F Schedules (*Initial Project Plans*), submit an updated version at the times required by SPR Appendix 43 (*Project Plan Requirements*); and
- (ii) for all remaining Project Plans, submit initial versions at the times required by SPR Appendix 43 (*Project Plan Requirements*).

8.3 Updated Project Plans

OpCo may update its Project Plans. OpCo must:

- (a) review and, if necessary, update each Project Plan to take account of events or circumstances which will, or may, affect OpCo's Activities relevant to the Project Plan, including:
 - (i) Modifications;
 - (ii) Service Changes;
 - (iii) changes in law;
 - (iv) the commencement of new phases or stages of design, construction, testing, commissioning, operations or maintenance; and
 - (v) any breach or potential breach of the warranty in clause 8.4 (*Fitness for purpose*);
- (b) without limiting clause 8.3(a), update each Project Plan at the times required by SPR Appendix 43 (*Project Plan Requirements*);
- (c) promptly submit:
 - (i) during the Delivery Phase, each updated Traffic and Transport Management Plan and Testing and Commissioning Plan to the Independent Certifier (with a copy to TfNSW's Representative); and
 - (ii) for all other Project Plans, each updated Project Plan to TfNSW's Representative;
- (d) not update any Project Plan in a manner which makes TfNSW's obligations under the TfNSW Project Agreements more onerous or increases any liability or potential liability of TfNSW or its Associates in connection with the SLR Works, the SLR or the ETS; and
- (e) ensure that any updated Project Plans:
 - (i) impose standards, levels of service, scope and requirements that are equal to, greater than or higher than those imposed by; and
 - (ii) provide an equal or greater level of detail than,

the initial versions of the Project Plans contained in the SPR (where applicable) and any version of the Project Plan which has been either:

 - (iii) certified by the Independent Certifier under clause 8.5(b)(ii)(B); or

- (iv) submitted to TfNSW's Representative and the time specified in clause 8.5(a) has expired without TfNSW's Representative having issued a notice under that clause during that time,

(as applicable).

8.4 **Fitness for purpose**

OpCo warrants that each Project Plan will at all times be fit for the purposes set out in clause 8.1 (*Purpose*).

8.5 **Review of Project Plans**

- (a) Subject to clause 8.5(b), TfNSW's Representative may (but is not obliged to):

- (i) review any Project Plan submitted under this clause 8 (*Project Plans*); and
- (ii) notify OpCo if, in the opinion of TfNSW's Representative, the Project Plan does not comply with the requirements of this deed (with detailed reasons),

within 20 Business Days following submission of the Project Plan to TfNSW's Representative.

- (b) During the Delivery Phase, in relation to the Traffic and Transport Management Plan and Testing and Commissioning Plan:

- (i) TfNSW's Representative may (but is not obliged to):

- (A) review these Project Plans submitted under this clause 8 (*Project Plans*); and
- (B) notify the Independent Certifier in writing (with a copy to OpCo) of any comments which TfNSW has in respect of these Project Plans,

within 15 Business Days following submission of the Project Plan to the Independent Certifier; and

- (ii) the Independent Certifier must review the Traffic and Transport Management Plan and Testing and Commissioning Plan submitted under this clause 8 (*Project Plans*) (taking into account any comments received from TfNSW under clause 8.5(b)(i)) and:

- (A) if the Independent Certifier considers that the Project Plan does not comply with the requirements of this deed, notify OpCo of the non-compliances (with detailed reasons); or
- (B) certify the Project Plan by providing to OpCo and TfNSW's Representative a certificate in the form of Schedule C13 (*Independent Certifier Project Plan Certificate*),

within 20 Business Days following submission of the Project Plan to the Independent Certifier.

- (c) If OpCo receives a notice in accordance with clause 8.5(a)(ii) or 8.5(b)(ii)(A), OpCo must, within 20 Business Days, submit a revised Project Plan to TfNSW's Representative (and, during the Delivery Phase also to the Independent Certifier)

whereupon the provisions of this clause 8.5 (*Review of Project Plans*) will reapply to the revised Project Plan.

8.6 **TfNSW may request updates**

If, at any time during the Term:

- (a) any Project Plan does not comply with the requirements of this deed; or
- (b) OpCo has not updated any Project Plan in accordance with the requirements of clause 8.3(a),

TfNSW's Representative may by written notice request that OpCo amend or update the Project Plan specifying:

- (c) the reasons why such updating is required (or why the Project Plan does not comply with this deed); and
- (d) the time within which such updating must occur (which must be reasonable, having regard to the amount of work required),

and OpCo must:

- (e) amend or update the Project Plan as requested by TfNSW to comply with the requirements of this deed; and
- (f) submit the amended or updated Project Plan to TfNSW within the time specified under clause 8.6(d).

8.7 **Permitted use, implementation and compliance**

OpCo:

- (a) is only permitted to use; and
- (b) must implement and comply with,

each Project Plan which has been:

- (c) in relation to the Delivery Activities:
 - (i) certified or deemed to have been certified by the Independent Certifier under clause 8.5(b)(ii)(B); or
 - (ii) submitted to TfNSW's Representative and TfNSW's Representative has not issued a notice under clause 8.5(a) within 20 Business Days following submission of the Project Plan; or
- (d) in relation to the Operations Activities, submitted to TfNSW's Representative and TfNSW's Representative has not issued a notice under clause 8.5(a) within 20 Business Days following submission of the Project Plan,

(as applicable).

8.8 **Strategic Business Plan**

- (a) OpCo must prepare and update the Strategic Business Plan in accordance with this clause 8 (*Project Plans*).

- (b) The Strategic Business Plan must:
 - (i) describe OpCo's overall vision and management approach;
 - (ii) explain how OpCo's Activities will promote the achievement of the objectives referred to in clauses 4.1 (*Objectives for the Project*) and 4.2 (*Objectives for the SLR PPP*); and
 - (iii) otherwise comply with the requirements of the SPR.

9. OPCO'S GENERAL OBLIGATIONS

9.1 All work included

Except as stated in this deed, OpCo has allowed for the provision of all work and materials necessary for OpCo's Activities, whether or not expressly mentioned in this deed. All such work and materials:

- (a) must be undertaken and provided by OpCo at its own cost;
- (b) form part of OpCo's Activities and will not constitute a Modification; and
- (c) will not entitle OpCo to make a Claim except as expressly provided for in this deed.

9.2 Principal contractor

- (a) (**Definitions**): In this clause 9.2 (*Principal contractor*) and in clause 9.4 (*Work health and safety*) the terms "principal contractor", "workplace" and "construction work" have the same meanings assigned to those terms in the WHS Legislation. For the purposes of the WHS Legislation and this deed:

- (i) OpCo's Activities; and
- (ii) any construction work carried out on the SLR Site by TfNSW, the Managing Contractor, an Early Works Contractor, the ETS Contractor or an Other Contractor:
 - (A) during any period in which the Appointed Principal Contractor has been engaged as principal contractor in respect of the Construction Site, Permanent Light Rail Corridor or Non-Corridor Assets; and
 - (B) which interfaces with OpCo's Activities (**SLR Site Interface Work**),
 is taken to be part of the same "construction project".

- (b) (**Engagement as principal contractor**): Without limiting OpCo's obligations under any other provision of this deed, the parties acknowledge and agree that under the Core Contract Side Deeds and from the date on which OpCo is given access to a part of the Construction Site, the Permanent Light Rail Corridor or the Non-Corridor Assets in accordance with this deed, except where the Section Access Schedule provides that OpCo will not have control of that part of the Construction Site:
 - (i) to the extent that OpCo's Activities or any SLR Site Interface Work includes construction work, TfNSW:
 - (A) engages the Appointed Principal Contractor as the principal contractor in respect of OpCo's Activities and the SLR Site Interface Work;

- (B) authorises the Appointed Principal Contractor to have management and control of each workplace at which OpCo's Activities and the SLR Site Interface Work is to be carried out and to discharge the duties of a principal contractor under the WHS Legislation;
 - (C) must give the Appointed Principal Contractor prior notice of any Other Contractor undertaking SLR Site Interface Work before such SLR Site Interface Work commences; and
 - (D) must provide OpCo and the Appointed Principal Contractor with an executed deed poll in favour of OpCo and the Appointed Principal Contractor:
 - (aa) in the form set out in Schedule C15 (*Form of Deed Poll for Other Contractor*) from each Other Contractor; and
 - (bb) in the form set out in Schedule C19 (*Form of Deed Poll for Managing Contractor*) from the Managing Contractor,
 - undertaking SLR Site Interface Work;
 - (ii) Acciona accepts the engagement as principal contractor and agrees to discharge the duties imposed on a principal contractor by the WHS Legislation; and
 - (iii) the O&M Contractor accepts the engagement as principal contractor and agrees to discharge the duties imposed on a principal contractor by the WHS Legislation.
- (c) **(Period of engagement - Acciona):** The parties acknowledge and agree that under the D&C Contract Side Deed, Acciona's engagement and authorisation as a principal contractor will continue until:
- (i) in respect of each discrete part of the Third Party Works, the point in time when the relevant discrete part of the Third Party Works has been completed in accordance with clauses 19.5 (*Local Area Works*), 19.6 (*Utility Service Works*) or 19.7 (*Property Works*) (as applicable);
 - (ii) in respect of the balance of the SLR Works (other than SLR Works being performed on any Extra Land or Temporary Areas), the earlier of:
 - (A) the termination of this deed; and
 - (B) the Date of Completion; and
 - (iii) in respect of any SLR Works being performed by the D&C Contractor on any Extra Land or Temporary Areas after the Date of Completion, the earlier of:
 - (A) the termination of this deed; and
 - (B) the Date of Final Completion.
- (d) **(Period of engagement - O&M Contractor):** The parties acknowledge and agree that under the O&M Contract Side Deed, the O&M Contractor's engagement and authorisation as principal contractor in respect of any construction work carried out within the Permanent Light Rail Corridor or in respect of the Non-

Corridor Assets, will continue until the point in time when the relevant construction work is completed.

- (e) **(Authorisations and licences):** OpCo must:
- (i) ensure that if any law, including in the State or Territory in which the SLR Works are situated or OpCo's Activities are carried out (as the case may be) requires that:
 - (A) a person:
 - (aa) be authorised or licensed (in accordance with the WHS Legislation) to carry out any work at that workplace, that person is so authorised or licensed and complies with any conditions of such authorisation or licence; and/or
 - (bb) has prescribed qualifications or experience or, if not, is to be supervised by a person who has prescribed qualifications or experience (as defined in the WHS Legislation), that person has the required qualifications or experience or is so supervised; or
 - (B) a workplace, plant or substance (or design) or work (or class of work) be authorised or licensed, that workplace, plant or substance, or work is so authorised or licensed;
 - (ii) not direct or allow a person to carry out work or use plant or substance at a workplace unless the requirements of clause 9.2(e)(i) are met (including any requirement to be authorised, licensed, qualified or supervised); and
 - (iii) if requested by TfNSW or required by the WHS Legislation, produce evidence of any approvals, certificates, authorisations, licences, prescribed qualifications or experience or any other information relevant to work health and safety (as the case may be) to the reasonable satisfaction of TfNSW before OpCo or an OpCo's Contractor (as the case may be) commences such work.
- (f) **(If engagement not effective):** If the engagement of an Appointed Principal Contractor as principal contractor under this clause 9.2 (*Principal contractor*) or the relevant Core Contractor Side Deed is not effective for any reason, OpCo agrees that it will ensure that the Appointed Principal Contractor exercises and fulfils the functions and obligations of the principal contractor under the WHS Legislation as if the Appointed Principal Contractor had been validly engaged and authorised as principal contractor under clause 9.2(b) and the relevant Core Contractor Side Deed.
- (g) **(Other Principal Contractors):** At any time when the Section Access Schedule provides that OpCo will not have control of a part of the Construction Site, OpCo:
- (i) acknowledges that the Other Contractor who is specified in the Section Access Schedule as being in control of the part of the Construction Site (**Other Principal Contractor**) is the principal contractor in respect of all construction work carried out by or on behalf of TfNSW on the part of the Construction Site during the period in which that Other Principal Contractor is in control of the part of the Construction Site; and

- (ii) must comply with any exercise by the Other Principal Contractor referred to in clause 9.2(g)(i) of such authority as is necessary to enable that Other Principal Contractor to discharge the responsibilities imposed on a principal contractor by the WHS Legislation.

9.3 Protection of persons and property

OpCo must carry out OpCo's Activities:

- (a) safely and in a manner that, insofar as is reasonably practicable, does not put the health and safety of persons at risk; and
- (b) in a manner that protects property.

9.4 Work health and safety

OpCo must:

- (a) **(WHS Legislation)**: ensure that in carrying out OpCo's Activities under this deed:
 - (i) it complies with all laws and other requirements of this deed for work health, safety and rehabilitation management including the WHS Legislation;
 - (ii) all OpCo's Contractors comply with their respective obligations under the WHS Legislation; and
 - (iii) it complies with its obligation under the WHS Legislation to consult, cooperate and coordinate activities with all other persons who have a work health and safety duty in relation to the same matter;
- (b) **(Corporate WHS Management System)**: have a Corporate WHS Management System which complies with the law and is otherwise in accordance with the NSW Government Work Health and Safety Management Systems and Auditing Guidelines (Edition 5, September 2013);
- (c) **(Notify)**: notify TfNSW's Representative as soon as possible after (and in any event, within 4 hours of) becoming aware of a 'notifiable incident' (as defined in the WHS Legislation) arising out of, or in any way in connection with, OpCo's Activities;
- (d) **(Assurances from OpCo's Contractors)**: institute systems to obtain regular written assurances from all OpCo's Contractors about their ongoing compliance with WHS Legislation including the due diligence obligations contained therein;
- (e) **(Assurances to TfNSW)**: provide TfNSW's Representative with the written assurances referred to in clause 9.4(d), together with written assurances from OpCo about OpCo's ongoing compliance with the WHS Legislation;
- (f) **(Report)**: provide TfNSW's Representative with a written report of all work health, safety and rehabilitation matters as TfNSW's Representative may require from time to time and no less than monthly;
- (g) **(Cooperate)**: cooperate with TfNSW to ensure that both parties are able to comply with their respective obligations under the WHS Legislation;

- (h) **(Ensure TfNSW does not breach WHS Legislation)**: ensure that it does not do anything or fail to do anything that would cause TfNSW to be in breach of the WHS Legislation; and
- (i) **(Subcontractors)**: ensure that each Subcontract includes provisions equivalent to clauses 9.2(e), 9.3 (*Protection of persons and property*) and this clause 9.4 (*Work health and safety*).

To the extent not prohibited by law, OpCo must indemnify TfNSW from and against any claims against TfNSW, or Loss suffered or incurred by TfNSW, arising out of or in any way in connection with the failure of OpCo to exercise or fulfil the functions and responsibilities of the principal contractor under the WHS Legislation or if OpCo otherwise fails to comply with clauses 9.2 (*Principal contractor*), 9.3 (*Protection of persons and property*) and this clause 9.4 (*Work health and safety*).

9.5 **Safety Management Plan**

- (a) OpCo acknowledges that preparation of the Safety Management Plan in accordance with clause 8 (*Project Plans*) is a condition precedent to TfNSW's obligations under clause 12.1 (*Construction Site Licence*).
- (b) Without limiting any requirement of the WHS Legislation or this deed, the Safety Management Plan must:
 - (i) set out in adequate detail the procedures OpCo will implement to manage OpCo's Activities from a work health and safety perspective;
 - (ii) describe how OpCo proposes to ensure that OpCo's Activities are performed consistently with the WHS Legislation and any other law;
 - (iii) address the matters specified in the WHS Legislation;
 - (iv) comply with the requirements applicable to a "Project OHS Management Plan" set out in the NSW Government Work Health and Safety Management Systems and Auditing Guidelines (Edition 5, September 2013); and
 - (v) comply with the requirements applicable to a "Work Health Safety Management Plan" or "Site Specific Safety Management Plan" set out in section 9 of the NSW Guidelines.
- (c) Without limiting clause 8 (*Project Plans*), OpCo must:
 - (i) continue to correct any defects in or omissions from the Safety Management Plan (whether identified by TfNSW's Representative or OpCo); and
 - (ii) regularly and at least no less than annually, review and, as necessary, revise the Safety Management Plan in accordance with the WHS Legislation, and submit an amended draft of its Safety Management Plan to TfNSW's Representative, after which clauses 8.3 (*Updated Project Plans*) and 8.5 (*Review of Project Plans*) will reapply (to the extent applicable).
- (d) OpCo must document and maintain detailed records of inspections or audits undertaken as part of the Safety Management Plan.
- (e) OpCo must carry out OpCo's Activities in accordance with, and otherwise implement, the latest Safety Management Plan.

9.6 Prevention of nuisance and interference

- (a) In performing OpCo's Activities, OpCo must:
- (i) prevent nuisance and unreasonable noise, dust, vibration and disturbances; and
 - (ii) not interfere with the passage of people and vehicles, access to any premises, car parks, roads or pedestrian ways or the operations or activities carried out on or adjacent to the SLR Site, except to the extent and for such period that such interference:
 - (A) is required for unforeseeable reasons of public health or safety, in which case OpCo must restore the access as soon as possible; or
 - (B) has been agreed between residents or businesses adjacent to the SLR Site and TfNSW.
- (b) Provided that OpCo is complying with:
- (i) its other relevant obligations under this deed;
 - (ii) the relevant Project Plans (including construction methodology); and
 - (iii) Good Industry Practice,

any breach by OpCo of clause 9.6(a) will not of itself constitute a breach by OpCo for the purposes of clause 41 (*Default*) or clause 43 (*Termination*) only.

9.7 Control of traffic

OpCo, in complying with its obligations under this deed, must comply with:

- (a) the Traffic and Transport Management Plan; and
- (b) the directions of RMS, TMC and TfNSW's Representative with respect to such management.

9.8 Industrial relations

OpCo must, in performing OpCo's Activities:

- (a) assume sole responsibility for and manage all aspects of industrial relations;
- (b) implement an industrial relations agreement for the Operations Phase in line with the contemporary Australian industrial relations legislation;
- (c) comply with its Human Resources Plan;
- (d) comply with its Workplace Relations Management Plan;
- (e) comply with the NSW Code and NSW Guidelines in respect of industrial relations;
- (f) keep TfNSW fully and promptly informed of all industrial relations problems or issues which materially affect or are likely to materially affect the carrying out of OpCo's Activities; and

- (g) use its best endeavours to minimise potential redundancy and termination costs (including for Transdev Permanent Employees) by, without limitation, formulating and administering terms and conditions of employment which minimise potential termination and redundancy costs.

9.9 **Training Management Guidelines**

OpCo must satisfy its obligations as a contractor under the Training Management Guidelines, including by:

- (a) ensuring that it has an Enterprise Training Management Plan (as referred to in the Training Management Guidelines) that complies with the requirements of the Training Management Guidelines;
- (b) preparing a Training Management Plan in accordance with the Training Management Guidelines and submitting the Training Management Plan to TfNSW;
- (c) complying with the Training Management Plan;
- (d) co-operating with and assisting TfNSW with any reviews undertaken by TfNSW of OpCo's compliance with the Training Management Guidelines;
- (e) maintaining records evidencing OpCo's compliance with the Training Management Guidelines; and
- (f) making all records available to TfNSW.

9.10 **Community relations**

OpCo:

- (a) acknowledges that the areas where OpCo's Activities are being carried out are of great importance to many people, including local residents and businesses; and
- (b) must manage and participate in all community relations and engagement programs and activities as:
 - (i) required by the SPR;
 - (ii) required by any Approvals;
 - (iii) required by any Third Party Agreement or any Third Party requirement specified in Schedule B3 (*Requirements of Third Parties*);
 - (iv) contained in the Stakeholder and Community Engagement Plan; and
 - (v) reasonably required by TfNSW from time to time.

9.11 **Stakeholder activities**

OpCo:

- (a) acknowledges that stakeholders, including local residents and businesses adjacent to, or within the vicinity of, the SLR may carry out activities adjacent to, or within the vicinity of, the SLR Site at the same time as OpCo;
- (b) must take all necessary precautions to ensure that the SLR Works, including the Temporary Works, do not unduly interfere with stakeholders' activities;

- (c) must promptly advise TfNSW's Representative of any OpCo Activities that may have an adverse effect upon any stakeholder activities or the safety of stakeholders or any other persons;
- (d) must promptly take all reasonable action to mitigate any adverse effect upon any stakeholder activities or the safety of stakeholders or any other persons;
- (e) must take all necessary precautions to ensure that the SLR Works, the Temporary Works, the SLR Site or the SLR is protected from accidental damage by stakeholders; and
- (f) must promptly advise TfNSW's Representative if OpCo becomes aware of any matter arising out of the stakeholders' activities that may have an adverse effect upon OpCo's Activities or the safety of Customers or any other persons.

9.12 Cooperation and coordination with Other Contractors

OpCo:

- (a) acknowledges that:
 - (i) TfNSW may engage Other Contractors to carry out Other Contractors' Activities upon or in the vicinity of the SLR Site at the same time as OpCo;
 - (ii) OpCo's Activities may interface with the Other Contractors' Activities;
 - (iii) Other Contractors may be executing work on parts of the SLR Site, or adjacent to the SLR Site, at the same time as OpCo is performing OpCo's Activities; and
 - (iv) Other Contractors may require OpCo to provide information to them to coordinate the Other Contractors' Activities with OpCo's Activities, and this must be provided in a timely manner by OpCo;
- (b) must at all times:
 - (i) permit Other Contractors to carry out the Other Contractors' Activities on the applicable parts of the SLR Site or any adjacent property to the SLR Site;
 - (A) at the same time as OpCo is performing OpCo's Activities; and
 - (B) at the times agreed with the Other Contractor, or failing agreement at times determined by TfNSW's Representative having regard to the impact of the Other Contractors' Activities on the Delivery Program,

and for this purpose ensure they have safe, clean and clear access to those parts of the SLR Site, or property adjacent to the SLR Site (to the extent that OpCo has access to that property and for the period of such access), required by them for the purpose of carrying out their work subject to:

 - (C) the Other Contractor complying with OpCo's reasonable site access and work health and safety procedures; and
 - (D) where the relevant Other Contractor is carrying out SLR Site Interface Work, the Other Contractor executing a deed poll in favour

of OpCo and the Appointed Principal Contractor in the form set out in Schedule C15 (*Form of Deed Poll*);

- (ii) take all necessary precautions to ensure that the SLR Works, the Temporary Works, the SLR Site or the SLR is protected from accidental damage by the Other Contractor;
 - (iii) not damage the work performed by the Other Contractor or its plant and equipment;
 - (iv) fully co-operate with Other Contractors, and do everything reasonably necessary to:
 - (A) facilitate the Other Contractors' Activities, including providing Other Contractors with such assistance as may be directed by TfNSW's Representative; and
 - (B) ensure the effective coordination of OpCo's Activities with the Other Contractors' Activities;
 - (v) carefully coordinate and interface OpCo's Activities with the Other Contractors' Activities;
 - (vi) perform OpCo's Activities so as to minimise any interference with or disruption or delay to the Other Contractors' Activities;
 - (vii) be responsible for coordinating OpCo's Activities, including work sequencing, construction methods, safety and industrial relations matters with those affecting, and influenced by, Other Contractor's personnel and work; and
 - (viii) attend coordination meetings chaired by TfNSW's Representative with Other Contractors and others at such times as may be reasonably required by TfNSW's Representative, to review current and future issues; and
- (c) must promptly advise TfNSW's Representative if OpCo becomes aware of any matter arising out of the Other Contractors' Activities that may have an adverse effect upon OpCo's Activities or the safety of Customers or any other persons.

9.13 **Entitlement to compensation**

Subject to clauses 26 (*Compensation Events*) and 27 (*Relief Events*), TfNSW will not be liable for any Claim by OpCo arising out of or in any way in connection with any Other Contractors' Activities.

9.14 **ETS**

- (a) OpCo and TfNSW acknowledge and agree that:
 - (i) TfNSW will be responsible for providing the ETS for the SLR;
 - (ii) from the LTS End Date, the ETS will be the only ticketing or fare system for the SLR; and
 - (iii) TfNSW will be responsible for setting fares and establishing fare policies.

- (b) OpCo must:
- (i) carry out all tasks and activities required to facilitate the provision of the ETS by TfNSW;
 - (ii) provide resources and attend meetings as required for the purposes of the delivery, operation, maintenance and replacement of the ETS in relation to the SLR;
 - (iii) integrate the ETS with the SLR and the Operations Activities in accordance with the SPR;
 - (iv) provide TfNSW with any information TfNSW may require in relation to the SLR for the purposes of the delivery, operation, maintenance and replacement of the ETS;
 - (v) not damage the ETS Equipment, the work performed by the ETS Contractor or the ETS Contractor's plant and equipment;
 - (vi) comply with its obligations in Schedule B1 (*Electronic Ticketing System and Interface*); and
 - (vii) comply with its obligations under the SPR regarding the ETS.

9.15 **Transdev Permanent Employees**

- (a) From the Date of Revenue Service, OpCo or the O&M Contractor will employ or maintain the employment of each Transdev Permanent Employee on terms and conditions that, when considered on an overall basis are substantially similar and no less favourable than the terms of the Transdev Permanent Employee's employment prior to the Date of Revenue Service.
- (b) OpCo must, prior to the Date of Revenue Service, update the list of Transdev Permanent Employees set out in Schedule A3 (*Transdev Permanent Employees*) to reflect any changes which have occurred since the date of this deed.

9.16 **Personnel**

- (a) OpCo must provide experienced and skilled personnel to perform its obligations under this deed.
- (b) OpCo must:
 - (i) employ personnel in the positions and with the skills and experience specified in Part A and Part B of Schedule A2 (*Key roles and personnel*), including OpCo's Representative;
 - (ii) ensure that the Core Contractors employ personnel in the positions and with the skills and experience specified in Part A and Part B of Schedule A2 (*Key roles and personnel*); and
 - (iii) if any of the personnel referred to in clause 9.16(b)(i) or 9.16(b)(ii):
 - (A) die;
 - (B) become seriously ill;

- (C) resign from the employment of OpCo or a Core Contractor (as applicable); or
 - (D) become the subject of a Direction under clause 9.16(e),
replace them with personnel of at least equivalent experience, ability and expertise as specified in Part A and Part B of Schedule A2 (*Key roles and personnel*).
- (c) OpCo must notify TfNSW's Representative within a reasonable time of OpCo becoming aware of the occurrence of any event under clauses 9.16(b)(iii)(A), 9.16(b)(iii)(B) or 9.16(b)(iii)(C).
 - (d) The personnel referred to in clause 9.16(b) must:
 - (i) carry out the functions and be given the authorities and responsibilities specified for them in this deed; and
 - (ii) otherwise be available for consultation with TfNSW's Representative when TfNSW's Representative reasonably requires.
 - (e) TfNSW's Representative may, acting reasonably, direct OpCo to remove any person from the performance of OpCo's Activities.
 - (f) OpCo must ensure that any person the subject of a Direction under clause 9.16(e) is not again involved in the performance of OpCo's Activities.

9.17 **Utility Services**

- (a) OpCo:
 - (i) must, other than as set out in clause 9.18 (*Electricity*), obtain, pay for, contract for the provision of, acquire or otherwise procure or provide any Utility Services and all connections for all Utility Services (including, subject to clause 9.17(b), electricity) it requires to perform OpCo's Activities;
 - (ii) must, in accordance with Schedule B4 (*Requirements of Utility Provider Agreements*), investigate, protect, relocate, modify and provide for all Utility Services necessary for it to comply with its obligations under the Project Agreements;
 - (iii) must not, without TfNSW's Representative's prior written consent, obtain any Utility Services or connect any Utility Services to the SLR Works, the SLR or the ETS Equipment that are not necessary to allow OpCo to carry out OpCo's Activities;
 - (iv) must obtain TfNSW's Representative's prior written consent (such consent not to be unreasonably withheld or delayed) in respect of any new connections for Utility Services or changes or modifications to existing connections for Utility Services;
 - (v) must consult with and keep TfNSW fully informed as to OpCo's dealings with the Authorities providing Utility Services;
 - (vi) must ensure there are no unplanned disruptions to the Utility Services in carrying out OpCo's Activities and that planned disruptions to the Utility Services are minimised and that otherwise no Utility Services are damaged,

destroyed, disconnected, disrupted, interfered with or interrupted by reason of the performance of OpCo's Activities;

- (vii) must ensure that maintenance points for Utility Services are located within the Project Site and only with the prior written consent of TfNSW's Representative (such consent not to be unreasonably withheld or delayed);
 - (viii) other than as set out in clauses 26.1 (*Entitlement of claim compensation*) and 27 (*Relief Events*), assumes the risk of the existence, location, condition and availability of Utility Services (in so far as they affect OpCo's Activities); and
 - (ix) must, to the extent not prohibited by law, indemnify TfNSW from and against any claims against TfNSW, or Loss suffered by TfNSW arising out of or in connection with:
 - (A) any damage to, disconnection or destruction of, disruption to or interference with or interruption to, any Utility Service arising out of or in connection with:
 - (aa) a failure by OpCo to comply with any obligations under this deed; or
 - (bb) any act or omission of OpCo or its Associates; or
 - (B) a failure by OpCo to comply with any obligations under this deed with respect to the Utility Services or the Utility Service Works.
- (b) OpCo:
- (i) acknowledges that both TfNSW and OpCo will be counterparties to the electricity connection agreements with Ausgrid pursuant to which the SLR is connected to the Ausgrid Connection Points (including any connection and augmentation works required for this purpose) (**Electricity Connection Agreements**);
 - (ii) must negotiate all aspects of the Electricity Connection Agreements with Ausgrid, other than any ongoing Network Charges or liability provisions which might affect TfNSW;
 - (iii) must not enter into the Electricity Connection Agreements unless and until TfNSW has advised in writing that it is comfortable with the content of these agreements (such advice not to be unreasonably withheld or delayed); and
 - (iv) is responsible for paying charges relating to augmentation of Ausgrid's network and any other connection costs to facilitate the Ausgrid Connection Points being constructed or commissioned as provided for in the Electricity Connection Agreements, and all other payments under those agreements other than as set out in clause 9.18 (*Electricity*).
- (c) Subject to Schedule D1 (*Service Payment Regime*) and clauses 9.18 (*Electricity*) and 26 (*Compensation Events*), TfNSW will not be liable under this deed or otherwise in relation to any Utility Services required or used for the SLR PPP.
- (d) Subject to clause 26.1 (*Entitlement to claim compensation*) and clause 27 (*Relief Events*), OpCo is responsible for, and assumes the risk of, all additional work, increased costs and any other Loss, delay or disruption (including any delay in

achieving Completion) it suffers or incurs arising out of or in any way in connection with the existence, location, condition and availability of all Utility Services required for the execution of OpCo's Activities.

- (e) OpCo must obtain the prior consent of TfNSW (such consent not to be unreasonably withheld or delayed) in relation to:
 - (i) any proposal to construct any infrastructure in connection with the Utility Services outside the Project Site; and
 - (ii) the exact location of any infrastructure in connection with the Utility Services within or outside of the Project Site.

9.18 Electricity

- (a) **(Purchase of electricity):**
 - (i) OpCo must purchase all electricity required to perform its obligations under this deed (including for testing and commissioning):
 - (A) in relation to the IWLR, prior to commencement of the IWLR Operations Phase;
 - (B) in relation to the CSELR, prior to commencement of the Full Operations Phase; and
 - (C) in relation to all Delivery Activities.
 - (ii) Subject to clauses 9.18(c), 9.18(d), 9.18(e) and 9.18(g), TfNSW must purchase, and make available to OpCo at the Ausgrid Connection Points at no charge, all electricity required to be consumed by OpCo through the Ausgrid Connection Points to operate and maintain:
 - (A) the IWLR and the ETS Equipment during the IWLR Operations Phase; and
 - (B) the SLR and the ETS Equipment immediately after the Date of Completion until the end of the Operations Phase.
- (b) **(Data and audits):** OpCo must promptly provide to TfNSW such electricity demand and consumption data as is requested by TfNSW from time to time, and must participate at no cost in any audit undertaken by or on behalf of TfNSW of OpCo's electricity consumption. TfNSW may make available to the public the results of any such audit.
- (c) **(No customer connection services):** TfNSW does not, and OpCo acknowledges that TfNSW does not, provide any customer connection services in respect of the SLR or the ETS Equipment. TfNSW is not, and OpCo acknowledges that TfNSW is not, responsible for:
 - (i) the connection of the SLR to the electricity supply network during the Operations Phase;
 - (ii) the maintenance of the connections under clause 9.18(c)(i);
 - (iii) the supply of electricity from the electricity supply network to the IWLR, SLR or the ETS Equipment; and

- (iv) the quality and other characteristics of electricity supplied.
- (d) **(OpCo's customer connection contracts)**: OpCo acknowledges that in respect of the SLR, OpCo has a separate customer connection contract with Ausgrid for the provision of customer connection services to the SLR under which Ausgrid is responsible for:
- (i) the connection of the SLR to the electricity supply network during the Operations Phase;
 - (ii) the maintenance of the connections under clause 9.18(d)(i);
 - (iii) the supply of electricity from the electricity supply network to the SLR; and
 - (iv) the quality and other characteristics of electricity supplied.
- (e) **(TfNSW not liable)**: As TfNSW is not responsible for the connection or supply of electricity to the SLR:
- (i) TfNSW does not undertake to provide or maintain any particular quality, voltage, frequency, waveform or system of supply;
 - (ii) all warranties, terms and conditions (implied by statute or otherwise) in relation to the supply of electricity are, to the extent permitted by law, excluded;
 - (iii) TfNSW is not liable for any loss suffered by OpCo as a consequence of any supply or lack of supply of electricity to the SLR;
 - (iv) TfNSW is not liable for any damage to OpCo's equipment, or any loss suffered by OpCo as a result of the equipment being unsuitable for connection to the supply network;
 - (v) TfNSW is not responsible for any act, omission or default of Ausgrid or any other person (including a generation entity or a transmission entity) in relation to the connection and supply of electricity to the SLR;
 - (vi) OpCo must satisfy itself that the electrical capacity of the connection for the SLR is adequate for OpCo's purposes, with TfNSW having no responsibility or liability in this respect; and
 - (vii) OpCo must ensure that the electrical capacity of the connection for the ETS Equipment is adequate to enable operation of the ETS Equipment in the manner contemplated by this deed.
- (f) **(No implied warranties)**: To the extent that a warranty, term or condition is implied by the *Competition and Consumer Act 2010* (Cth) or any other statute the exclusion of which would contravene any such statute or cause any part of clause 9.18(e) to be void, TfNSW's liability for breach of such warranty, term or condition is limited, at TfNSW's option, to refunding the price of the goods or services in respect of which the breach occurred or to providing, replacing or repairing those goods or providing those services again (except for goods or services of a kind ordinarily acquired for personal, domestic or household use or consumption, in respect of which TfNSW's liability is not limited under this deed).
- (g) **(Interruption to customer connection services)**: OpCo acknowledges that the provision of customer connection services to the SLR and the ETS Equipment may

be interrupted or limited in certain circumstances in accordance with laws or in accordance with the conditions of any applicable network tariff and that, in circumstances set out in the customer connection contract, Ausgrid may disconnect the SLR (or parts thereof) and the ETS Equipment.

(h) **(Approvals and obligations under law):**

- (i) Without limiting clause 6.1 (*Compliance with laws*), if TfNSW, as owner of the SLR and the ETS Equipment, has obligations under any law relating to electricity, OpCo will perform all obligations and carry out all tasks and activities required for TfNSW to comply with the relevant law.
- (ii) Without limiting OpCo's obligations under clause 9.18(h)(i) and clause 6.2 (*Approvals*), OpCo must:
 - (A) if a network management plan is required by the Director General of the NSW Department of Industry and Investment, develop, implement, maintain and submit to TfNSW and, subject to clause 9.18(h)(v), the Director General of the NSW Department of Industry and Investment, a network management plan;
 - (B) perform any obligations imposed on TfNSW or OpCo in connection with the electrical infrastructure of the SLR if either or both entities is characterised as a "distribution network service provider" for the purposes of the *Electricity Supply Act 1995* (NSW) (including if the Act is amended to specifically identify TfNSW or the owner and/or operator of TfNSW's rail network electricity system as a "distribution network service provider" for the purposes of the Act);
 - (C) prior to carrying out Testing, prepare an application for, and obtain, an exemption from the requirement to register as a distribution network service provider under the National Electricity Law (which forms a Schedule to the *National Electricity (South Australia) Act 1996* (SA) and which applies in the state of New South Wales under the *National Electricity (New South Wales) Act 1997* (NSW)) for the benefit of both TfNSW and OpCo; and
 - (D) assist TfNSW to prepare an application for, and obtain (if needed), an exemption from the requirement to hold a retailer authorisation under the National Energy Retail Law (which forms a Schedule to the *National Energy Retail Law (South Australia) Act 2011* (SA) and which applies in the state of New South Wales under the *National Energy Retail Law (Adoption) Act 2012* (NSW) for the benefit of TfNSW).
- (iii) OpCo must provide TfNSW with:
 - (A) any documents (including any applications for Approvals or changes to Approvals) prepared for the purpose of satisfying OpCo's obligations under clause 9.18(h)(ii), including the then current version of the network management plan or exemption application (as the case may be) promptly upon request by TfNSW; and
 - (B) an updated version of the network management plan or exemption application within 5 Business Days of any update.
- (iv) In relation to electricity, OpCo must:

- (A) liaise and cooperate with TfNSW and any relevant Authority;
 - (B) provide any reasonable assistance and information required by TfNSW or any relevant Authority within any reasonable timeframe required by TfNSW; and
 - (C) if required by TfNSW or any relevant Authority, attend meetings in relation to electricity matters.
- (v) TfNSW may, but is not obliged to, comment on any documents submitted by OpCo to TfNSW under this clause 9.18 (*Electricity*). OpCo:
- (A) must allow TfNSW a period of 20 Business Days after the date of submission of documents to TfNSW to review and comment on drafts of the documents;
 - (B) if TfNSW makes any comments on the drafts of the documents within this 20 Business Day period, must address TfNSW's comments on the documents and promptly resubmit the relevant draft documents to TfNSW, whereupon the provisions of this clause 9.18(h)(v) will reapply to such resubmitted documents; and
 - (C) must not submit the relevant documents to any Authority unless a period of 20 Business Days after the date of submission of those drafts of documents to TfNSW has expired without TfNSW:
 - (aa) making any comments on the documents or, if TfNSW does provide comments, after OpCo has complied with clause 9.18(h)(v)(B); and
 - (bb) advising that TfNSW (rather than OpCo) will submit the relevant documents to the relevant Authority.
- (vi) TfNSW appoints OpCo to act as TfNSW's agent to the extent:
- (A) necessary for OpCo to comply with its obligations under this clause 9.18 (*Electricity*); and
 - (B) that OpCo is not entitled by law to comply with such obligations in its own capacity (including in its capacity as a contractor to TfNSW).

9.19 **SLR Documentation**

OpCo warrants that the SLR Documentation:

- (a) will sufficiently, adequately and accurately document the SLR, the operation of the SLR and any interfaces with the SLR;
- (b) will be sufficient, adequate and accurate so as to enable TfNSW or a third party to operate and maintain the SLR and otherwise carry out OpCo's Activities; and
- (c) will be fit for the purposes set out in clauses 9.19(a) and 9.19(b).

For the purposes of this clause 9.19 (*SLR Documentation*), the SLR Documentation does not include any documentation prepared by or on behalf of the Managing Contractor, any Other Contractor or the ETS Contractor.

9.20 AEO status

OpCo must, or must procure that its relevant contractors:

- (a) obtain prior to commencing OpCo's Activities; and
- (b) maintain during the Term,

AEO status in accordance with SPR Appendix 35 (*Authorised Engineering Organisation*).

9.21 Third Party requirements

Despite any other provision in this deed:

- (a) OpCo:
 - (i) acknowledges that it has been provided a copy of the Third Party Agreements prior to the date of this deed;
 - (ii) acknowledges that it has reviewed and carefully considered the Third Party Agreements;
 - (iii) must, on behalf of TfNSW, comply with all the obligations of TfNSW under the Third Party Agreements, except to the extent specified in Schedule B3 (*Requirements of Third Parties*);
 - (iv) must comply with the requirements of Third Parties specified in clause 7 of Schedule B3 (*Requirements of Third Parties*);
 - (v) may not exercise any of TfNSW's discretions or rights under the Third Party Agreements unless otherwise agreed by TfNSW in writing;
 - (vi) in carrying out OpCo's Activities, is subject to the same restrictions, liabilities, requirements and obligations that apply to TfNSW under, and in relation to, the Third Party Agreements as if TfNSW were to exercise those functions; and
 - (vii) must not cause TfNSW to be in breach of any of the Third Party Agreements;
- (b) subject to clause 9.21(c):
 - (i) to the extent that the obligations on OpCo in relation to the Third Party Agreements under clause 9.21(a)(iii) impose greater or more onerous obligations on OpCo than other provisions of this deed, OpCo must satisfy and meet the obligations of TfNSW under the Third Party Agreements; and
 - (ii) to the extent that the obligations on OpCo in relation to the requirements of Third Parties under clause 9.21(a)(iv) impose greater or more onerous obligations on OpCo than other provisions of this deed, OpCo must satisfy and meet the obligations of the Third Parties;
- (c) if OpCo discovers that:
 - (i) compliance with this clause 9.21 (*Third Party requirements*) will:
 - (A) reduce the operational reliability or efficiency of the SLR; or

(B) have an adverse impact on the safety of the SLR or its Customers; or

- (ii) a requirement under a Third Party Agreement or a Third Party requirement specified in Schedule B3 (*Requirements of Third Parties*) is not physically feasible to implement,

OpCo must immediately notify TfNSW's Representative and comply with any Direction given by TfNSW's Representative;

- (d) in complying with this clause 9.21 (*Third Party requirements*), OpCo must:

- (i) liaise directly with TfNSW's Representative and not communicate or deal directly with the Third Party unless TfNSW's Representative has issued a Direction to OpCo requiring direct communication;

- (ii) in relation to notices, documents or information required to be given by TfNSW under a Third Party Agreement or a Third Party requirement specified in Schedule B3 (*Requirements of Third Parties*), prepare and submit the notice, documents or information to TfNSW's Representative:

(A) within the relevant time specified in Schedule B3 (*Requirements of Third Parties*); or

(B) if no time is specified, within a reasonable time having regard to the nature of the notice,

so as to allow TfNSW reasonable time to review and, where applicable, consider the notice; and

- (iii) where TfNSW is required to respond to any request or notice given under a Third Party Agreement or a Third Party requirement specified in Schedule B3 (*Requirements of Third Parties*), upon receipt of the request or notice from TfNSW's Representative, respond to TfNSW:

(A) within the time specified in Schedule B3 (*Requirements of Third Parties*); or

(B) if no time is specified, within a reasonable time having regard to the nature of the request,

so as to allow TfNSW reasonable time to review OpCo's response and respond to the third party;

- (e) where a Third Party Agreement provides for a notice, document or information to be given to TfNSW, to the extent that the notice, document or information is relevant to the rights and obligations of OpCo under this deed, TfNSW must provide a copy of the notice, document or information to OpCo within a reasonable time after receipt of the notice, document or information;

- (f) OpCo's compliance with this clause 9.21 (*Third Party requirements*) or any Direction given by TfNSW's Representative in accordance with clauses 9.21(c) or 9.21(d)(i) will not:

- (i) entitle OpCo to make any Claim arising out of, or in connection with, the Direction;

- (ii) relieve OpCo from, or alter its liabilities or obligations whether under this deed or otherwise according to law; or
 - (iii) prejudice or limit TfNSW's rights against OpCo whether under this deed or otherwise according to law;
- (g) if OpCo fails to comply with any cleaning requirements in a Third Party Agreement or a Third Party requirement specified in Schedule B3 (*Requirements of Third Parties*), TfNSW may carry out such cleaning itself; and
- (h) TfNSW agrees that:
- (i) it shall enter into the agreements referred to in paragraphs (d) and (e) of the definition of Third Party Agreement and the Utility Provider Agreements; and
 - (ii) if the final form of those agreements are different in any material respect (materiality being judged from OpCo's perspective), TfNSW will issue a Modification Request under clause 29 (*TfNSW initiated Modification*). TfNSW's right to withdraw the Modification Request, elect not to proceed with the proposed Modification or reject the Modification Impact Proposal in accordance with clauses 29.1(b), 29.6(b), 29.6(c) and 29.12(b) (as applicable) will not apply. If TfNSW does not agree on any aspect of the Modification Impact Proposal submitted by OpCo, the parties will consult in good faith and use reasonable endeavours to agree on an acceptable resolution to the matters set out in the Modification Impact Proposal and clauses 29.9 (*Parties reach agreement*) and 29.10 (*If parties fail to reach agreement*) will apply.

9.21A Enforcement of obligations under Third Party Agreements

- (a) If OpCo incurs, or is likely to incur, any cost or expense in the performance of its obligations under this deed as a direct result of:
- (i) damage to the SLR Works caused by:
 - (A) City of Sydney accessing the SLR Site in accordance with clause 18.4(a) of the City of Sydney Development Agreement;
 - (B) Centennial Park and Moore Park Trust accessing the SLR Site in accordance with clause 12.11(a) of the CPMPT Development Agreement;
 - (C) Sydney Harbour Foreshore Authority accessing the SLR Site in accordance with the SHFA Development Agreement; or
 - (D) Randwick City Council accessing the SLR Site in accordance with clause 18.4 of the RCC Development Agreement; or
 - (ii) existing Contamination on, in or under the SLR Site for which OpCo is not responsible under this deed,

OpCo may request TfNSW to enforce the obligations owed to TfNSW by the relevant Third Party:

- (iii) In relation to clause 9.21A(a)(i), under:

- (A) clause 18.4(c) of the City of Sydney Development Agreement;
 - (B) clause 12.11(c) of the CPMPT Development Agreement; or
 - (C) clause 17(b) of the SHFA Development Agreement;
 - (D) clause 18.4(c) of the RCC Development Agreement; and
- (iv) in relation to clause 9.21A(a)(ii), under:
- (A) clause 18.5(b) of the City of Sydney Development Agreement;
 - (B) clause 12.12(b) of the CPMPT Development Agreement;
 - (C) clause 13.9(b) of the SHFA Development Agreement; or
 - (D) clause 18.5(c) of the RCC Development Agreement,

as applicable, each a "**TPA Enforcement Claim**".

- (b) Any request by OpCo under clause 9.21A(a) must be made by notice in writing to TfNSW and set out the following:
- (i) details of the circumstances which caused OpCo to incur, or rendered it likely that OpCo will incur, a cost or expense; and
 - (ii) substantiation of the costs or expenses incurred, or likely to be incurred, by OpCo.
- (c) TfNSW may refuse to enforce a TPA Enforcement Claim if:
- (i) TfNSW, acting reasonably, believes that pursuing the TPA Enforcement Claim is likely to have a detrimental effect on the business or reputation of TfNSW or the State;
 - (ii) TfNSW has received an opinion from counsel reasonably acceptable to both parties that there is no reasonable prospect of the enforcement of the TPA Enforcement Claim being successful; or
 - (iii) OpCo is entitled to recover the cost or expense to which the TPA Enforcement Claim relates from insurances.
- (d) In respect of any TPA Enforcement Claim, the parties acknowledge and agree that:
- (i) the enforcement of the TPA Enforcement Claim is subject to the relevant provisions of the City of Sydney Development Agreement or the CPMPT Development Agreement (as applicable) and any limitations or restrictions on TfNSW's rights in this respect;
 - (ii) OpCo must indemnify TfNSW or provide reasonable security in respect of TfNSW's reasonable costs arising, or which may arise, out of the enforcement of a TPA Enforcement Claim;
 - (iii) OpCo must prepare and provide TfNSW with all information and documents (including any documents required under the dispute resolution process) reasonably necessary or required by TfNSW or the relevant Third Party to assist TfNSW in enforcing the TPA Enforcement Claim; and

- (iv) TfNSW will provide OpCo with regular updates of the progress of the TPA Enforcement Claim with any supporting information that OpCo may reasonably request.
- (e) If TfNSW recovers any amount from the relevant Third Party or from a party which caused the Contamination in respect of a TPA Enforcement Claim, whether in proceedings or by way of settlement, TfNSW agrees that it will pay OpCo the amount, but only to the extent that the amount is referable to the cost or expense incurred by OpCo referred to in clause 9.21A(a) (the **TPA Recovery**) and subject to the following:
 - (i) TfNSW will be entitled to deduct all reasonable costs (including legal costs) incurred by TfNSW in the enforcement of the TPA Enforcement Claim, such costs being the subject of the indemnity under clause 9.21A(d)(i);
 - (ii) if prior to TfNSW's receipt of the TPA Recovery OpCo has made good the damage to the SLR Works or disposed of, or otherwise dealt with, the Contamination to the reasonable satisfaction of TfNSW, OpCo must furnish TfNSW with details of all work carried out together with the costings for such work and may use the TPA Recovery for its own benefit; and
 - (iii) if at the time of TfNSW's receipt of the TPA Recovery OpCo has not made good the damage to the SLR Works or disposed of, or otherwise dealt with, the Contamination then OpCo must, on behalf of TfNSW, apply the TPA Recovery in making good the damage to the SLR Works or dispose of, or otherwise deal with, the Contamination referred to in clause 9.21A(a) to the reasonable satisfaction of TfNSW and upon completion of all remedial work OpCo must furnish TfNSW with details of all work carried out together with the costings for such work.
- (f) Subject to clauses 26 (*Compensation Events*), 27 (*Relief Events*) and 37.1 (*Reinstatement*), this clause 9.21A (*Enforcement of obligations under Third Party Agreements*) is exhaustive of OpCo's rights against TfNSW whether at law or under this deed in respect of any cost or expense incurred by OpCo contemplated under clause 9.21A(a) and OpCo must not under any circumstances make any Claim or assert any right whatsoever against TfNSW arising out of or at any way relating to any cost or expense incurred by OpCo contemplated under clause 9.21A(a) except under this clause 9.21A (*Enforcement of obligations under Third Party Agreements*).

9.21B Consent under Third Party Agreements

- (a) If TfNSW's consent is requested by:
 - (i) City of Sydney under clause 8.3 of the City of Sydney Development Agreement; or
 - (ii) Centennial Park and Moore Park Trust under clause 3.3 of the CPMPT Development Agreement,

TfNSW must not provide such consent unless:

- (iii) TfNSW has notified OpCo of the request from the relevant Third Party; and
- (iv) OpCo (acting reasonably and without delay) has agreed to TfNSW providing such consent.

- (b) OpCo will be deemed to have provided its consent under clause 9.21B(a)(iv) if, after 5 Business Days of receiving a notification from TfNSW under clause 9.21B(a)(iii), OpCo has not notified TfNSW in writing that it does not agree to TfNSW providing the relevant consent.

9.22 Sustainability

- (a) OpCo must comply with the sustainability requirements set out in the SPR, including those in SPR Appendix 7 (*Sustainability*).
- (b) Without limiting clause 9.22(a), OpCo must achieve:
 - (i) a "Design" rating score of at least 65 for the design of the SLR Works; and
 - (ii) an "As Built" rating score of at least 65 for the construction of the SLR Works,
 from the Infrastructure Sustainability Council Australia (**ISCA**).
- (c) In order to achieve the ratings referred to in clause 9.22(b), but without limiting that clause, OpCo must:
 - (i) register with the ISCA for the purposes of obtaining a rating;
 - (ii) cooperate and liaise with the ISCA and TfNSW as required; and
 - (iii) provide any documentation required by the ISCA and TfNSW.

9.23 Aboriginal participation in construction

- (a) OpCo must comply with the NSW Government Aboriginal Participation in Construction Guidelines as amended from time to time (as at the date of signing of this deed, the edition of the Guidelines applying to projects commencing after 1 January 2007).
- (b) OpCo must:
 - (i) prior to commencing OpCo's Activities on the Construction Site, submit to TfNSW a "Statement of Opportunities for Aboriginal Participation" (as defined in the Guidelines) and document and submit a Project Aboriginal Participation Plan; and
 - (ii) implement the Project Aboriginal Participation Plan.
- (c) OpCo must systematically manage its Aboriginal participation processes in accordance with the Project Aboriginal Participation Plan.
- (d) OpCo must demonstrate to TfNSW, whenever requested, that it has met and is meeting at all times its obligations under clauses 9.23(a) to 9.23(c) inclusive.
- (e) OpCo acknowledges that TfNSW's Representative may review the Project Aboriginal Participation Plan:
 - (i) prior to the commencement of OpCo's Activities on the Construction Site; and
 - (ii) periodically during the course of the carrying out of OpCo's Activities,

including by conducting an on-site verification that the Project Aboriginal Participation Plan is being correctly implemented, that performance targets are being met and that the stated outcomes are being achieved.

9.24 **Access by Managing Contractor and Early Works Contractors**

OpCo must provide the Managing Contractor and Early Works Contractors (and any person authorised by the Managing Contractor) with such access to the SLR Site as may be required by the Managing Contractor in order to meet its obligations under the Managing Contractor Contract, including the rectification of any Early Works Defects, subject to the Managing Contractor and Early Works Contractors (and any person authorised by the Managing Contractor) complying with OpCo's site access and work, health and safety procedures.

9.25 **Legacy Ticketing System**

- (a) OpCo and TfNSW acknowledge and agree that:
 - (i) OpCo will be responsible for providing the LTS for the IWLR from the Date of Revenue Service until the LTS End Date; and
 - (ii) TfNSW will be responsible for setting fares and establishing fare policies.
- (b) OpCo must comply with its obligations under SPR Appendix 50 (*Legacy Ticketing System*) in relation to the LTS.

10. **NSW CODE AND NSW GUIDELINES**

10.1 **NSW Code and NSW Guidelines**

In addition to terms defined in this deed, terms used in this clause 10 (*NSW Code and NSW Guidelines*) have the same meaning as is attributed to them in the NSW Guidelines. The NSW Code and NSW Guidelines are available at www.industrialrelations.nsw.gov.au.

10.2 **Primary obligation**

- (a) In carrying out OpCo's Activities, OpCo must at all times comply with, and meet any obligations imposed by, the NSW Code and the NSW Guidelines.
- (b) OpCo must notify the Construction Compliance Unit (**CCU**) and TfNSW of any possible non-compliance with the NSW Code and NSW Guidelines and of remedial action taken, within 24 hours of becoming aware of the possible non-compliance.
- (c) Where OpCo engages a subcontractor or consultant, OpCo must ensure that the contract with the subcontractor or consultant imposes on the subcontractor or consultant equivalent obligations to those in this clause 10 (*NSW Code and NSW Guidelines*), including that the subcontractor or consultant must at all times comply with, and meet any obligations imposed by, the NSW Code and the NSW Guidelines.
- (d) OpCo must not appoint or engage another party in relation to OpCo's Activities where that appointment or engagement would breach a sanction imposed on the other party in relation to the NSW Code or NSW Guidelines.

10.3 Access and information

- (a) OpCo must maintain adequate records of compliance with the NSW Code and NSW Guidelines by it and its subcontractors and consultants.
- (b) OpCo must allow, and take reasonable steps to facilitate, authorised personnel (including personnel of the CCU) to:
 - (i) enter and have access to sites and premises controlled by OpCo, including the Construction Site and the Permanent Light Rail Corridor;
 - (ii) inspect any work, material, machinery, appliance, article or facility;
 - (iii) access information and documents;
 - (iv) inspect and copy any record relevant to the project;
 - (v) have access to personnel; and
 - (vi) interview any person,

as is necessary for the authorised personnel to monitor and investigate compliance with the NSW Code and NSW Guidelines by OpCo and its subcontractors and consultants.
- (c) OpCo must agree to, and comply with, any request from authorised personnel (including personnel of the CCU) for the production of specified documents by a certain date, whether in person, by post or electronic means.

10.4 Sanctions

- (a) OpCo warrants that, at the time of entering into this deed, neither it, nor any of its Related Bodies Corporate, are subject to a sanction in connection with the NSW Code or NSW Guidelines that would have precluded it from responding to a procurement process for work to which the NSW Code and NSW Guidelines apply.
- (b) If OpCo does not comply with, or fails to meet any obligation imposed by, the NSW Code or NSW Guidelines, a sanction may be imposed against it in connection with the NSW Code or NSW Guidelines.
- (c) Where a sanction is imposed:
 - (i) it is without prejudice to any rights that would otherwise accrue to the parties; and
 - (ii) the State (through its agencies, Ministers and the CCU) is entitled to:
 - (A) record and disclose details of non-compliance with the NSW Code or NSW Guidelines and the sanction; and
 - (B) take them into account in the evaluation of future procurement processes and responses that may be submitted by OpCo, or its Related Bodies Corporate, in respect of work to which the NSW Code and NSW Guidelines apply.

10.5 Compliance

- (a) OpCo bears the cost of ensuring its compliance with the NSW Code and NSW Guidelines, including in respect of any positive steps it is obliged to take to meet its obligations under the NSW Guidelines. OpCo is not entitled to make, and TfNSW and the State will not be liable for, any Claim against TfNSW or the State arising out of or in any way in connection with OpCo's compliance with the NSW Code and the NSW Guidelines.
- (b) Compliance with the NSW Code and NSW Guidelines does not relieve OpCo from responsibility to perform OpCo's Activities or any other obligation under this deed, or from liability for any Defect in the Temporary Works, the SLR Works or the SLR or from any other legal liability, whether or not arising from its compliance with the NSW Code and NSW Guidelines.
- (c) Where a Modification is proposed that may be likely to affect compliance with the NSW Code and NSW Guidelines, OpCo must immediately notify TfNSW of:
 - (i) the extent to which compliance with the NSW Code and NSW Guidelines will be, or is likely to be, affected by the Modification; and
 - (ii) the steps OpCo proposes to take to mitigate any adverse impact of the Modification (including any amendments it proposes to the Workplace Relations Management Plan).

11. INFORMATION DOCUMENTS AND ENVIRONMENTAL ISSUES

11.1 Physical conditions

- (a) **(Examination and investigation):** OpCo warrants, and for all purposes it will be deemed to be the case that, prior to the date of this deed, OpCo:
 - (i) examined this deed (including the SPR), the IWLR, the SLR Site and its surroundings and any other information that was made available in writing by TfNSW or any other person on TfNSW's behalf, to OpCo or its Associates for the purpose of submitting its Proposal;
 - (ii) examined, and relied solely upon its own assessment, skill, expertise and enquiries in respect of, all information relevant to the risks, contingencies and other circumstances having an effect on its Proposal and its obligations under this deed;
 - (iii) satisfied itself as to the correctness and sufficiency of its Proposal and that it has made adequate allowance for the costs of complying with all of its obligations under this deed and of all matters and things necessary for the due and proper performance and completion of OpCo's Activities;
 - (iv) informed itself of all matters relevant to the employment of labour and all industrial matters on the SLR Site;
 - (v) was given the opportunity prior to submitting its Proposal to itself undertake tests, enquiries and investigations:
 - (A) relating to the subject matter of the Information Documents; and
 - (B) for design purposes and otherwise;

- (vi) had a sufficient opportunity to obtain and obtained all necessary legal, geotechnical and other technical advice in relation to the terms of this deed, each Deed of Disclaimer, the Information Documents, the Site Conditions, as well as the risks, contingencies and other circumstances having an effect on its Proposal, the performance of its obligations and its potential liabilities under this deed; and
 - (vii) had sufficient access to the IWLR and the SLR Site, undertook sufficient tests, enquiries and investigations, had sufficient information and obtained a sufficient understanding of the risks involved to enable it to make an informed decision about whether or not to enter into this deed and assume the obligations and potential risks and liabilities which it imposes on OpCo.
- (b) (**Site Conditions**): Subject to clauses 11.4A (*Responsibility for asbestos in the IWLR Permanent Light Rail Corridor*), 11.4B (*Responsibility for Coal Tar*), 26 (*Compensation Events*), 27 (*Relief Events*) and 28 (*Force Majeure*) OpCo is responsible for, and assumes the risk of:
- (i) all Loss or delay it suffers or incurs; and
 - (ii) any adverse effect on the SLR Works,
- arising out of, or in any way in connection with, the Site Conditions encountered in performing OpCo's Activities.

11.2 Information Documents

- (a) (**Deeds of Disclaimer**): Prior to the date of this deed, Acciona, Alstom, Transdev and Capella Capital Pty Ltd ABN 63 127 727 771 (as agent for Capella Capital Partnership) signed Deeds of Disclaimer and provided them to TfNSW in respect of Information Documents provided by TfNSW to OpCo.
- (b) (**No warranty**): Without limiting clause 11.2(c) or the warranties or acknowledgements in any Deed of Disclaimer:
 - (i) TfNSW does not warrant, guarantee, assume any duty of care or other responsibility for or make any representation about the accuracy, adequacy, suitability or completeness of the Information Documents;
 - (ii) OpCo acknowledges that:
 - (A) whether or not an Information Document or any part thereof forms a schedule or appendix to this deed, the Information Document or part thereof does not form part of this deed and clause 11.2(c) applies to the Information Document or part thereof; and
 - (B) where an Information Document or any part thereof forms a schedule or appendix to this deed, it does so only for the purposes of identification of that document or part thereof; and
 - (iii) TfNSW will not be liable upon any Claim by OpCo arising out of or in any way in connection with:
 - (A) the provision of, or the purported reliance upon, or use of the Information Documents to or by OpCo or any other person to whom the Information Documents are disclosed; or

- (B) a failure by TfNSW to provide any information to OpCo.
- (c) **(No reliance):** OpCo:
- (i) warrants that it did not in any way rely upon:
- (A) any Information Document or any other information, data, representation, statement or document made, or provided to OpCo, by TfNSW or anyone on behalf of TfNSW, or any other information, data, representation, statement or document for which TfNSW is responsible or may be responsible whether or not obtained from TfNSW or anyone on behalf of TfNSW; or
- (B) the accuracy, adequacy, suitability or completeness of such Information Document or other information, data, representation, statement or document,
- for the purposes of entering into this deed or carrying out OpCo's Activities but nothing in this subparagraph will limit or otherwise affect OpCo's obligations under this deed;
- (ii) warrants that it enters into this deed based on its own investigations, interpretations, deductions, information and determinations; and
- (iii) acknowledges that it is aware that TfNSW has entered into this deed relying upon:
- (A) the warranties, acknowledgements and agreements in clauses 11.2(c)(i) and 11.2(c)(ii); and
- (B) the warranties and acknowledgements in the Deeds of Disclaimer and the Proposal.
- (d) **(Release and indemnity):** OpCo releases and indemnifies TfNSW from and against:
- (i) any Claim against TfNSW by, or liability of TfNSW to, any person; or
- (ii) (without being limited by clause 11.2(d)(i)) any Loss incurred by TfNSW,
- arising out of or in any way in connection with:
- (iii) the provision of, or the purported reliance upon, or use of, the Information Documents to or by OpCo or any other person to whom the Information Documents are disclosed by OpCo or a failure by TfNSW to provide any information to OpCo;
- (iv) any breach by OpCo of clause 11.1 (*Physical conditions*) or this clause 11.2 (*Information Documents*); or
- (v) the Information Documents being relied upon or otherwise used by OpCo, or by any other person to whom the Information Documents are disclosed by OpCo, in the preparation of any information or document, including any Information Document which is "misleading or deceptive" or "false and misleading" (within the meaning of those terms in sections 18 and 29 (respectively) of the *Australian Consumer Law* in Schedule 2 to the

Competition and Consumer Act 2010 (Cth) or any equivalent provision of State or Territory legislation).

11.3 Condition of the SLR Site and structures

- (a) TfNSW makes no representations and gives no warranty to OpCo in respect of:
- (i) the Site Conditions likely to be encountered during the execution of OpCo's Activities or otherwise in respect of the condition of:
 - (A) the SLR Site, Extra Land or their surroundings; or
 - (B) any structure or other thing on, under, above or adjacent to the SLR Site or Extra Land;
 - (ii) the adequacy or suitability of the SLR Site for the SLR PPP;
 - (iii) the existence, location, condition or availability of Utility Services on, under, above, adjacent to or related to the SLR Site or Extra Land; or
 - (iv) the feasibility or fitness for purpose of the Concept Design including in respect of the constructability of the Concept Design having regard to the physical conditions and characteristics of the SLR Site.
- (b) Subject to clauses 11.4A (*Responsibility for asbestos in the IWLRL Permanent Light Rail Corridor*), 11.4B (*Responsibility for Coal Tar*), 26 (*Compensation Events*), 27 (*Relief Events*) and 28 (*Force Majeure*), OpCo accepts:
- (i) the SLR Site and any Extra Land; and
 - (ii) any structures or other things on, above or adjacent to, or under the surface of, the SLR Site and any Extra Land,
- in their present condition subject to all defects and Site Conditions and agrees that it is responsible for, and assumes the risk of:
- (iii) all Loss, delay or disruption it suffers or incurs; and
 - (iv) any adverse effect on the SLR Works, the Temporary Works or the SLR,
- arising out of, or in any way in connection with any defects or Site Conditions encountered in performing OpCo's Activities.
- (c) OpCo must investigate, design and construct the SLR Works and Temporary Works in accordance with this deed and will not be relieved of its obligations under this deed, irrespective of:
- (i) the Site Conditions encountered in performing OpCo's Activities;
 - (ii) whatever may be the condition or characteristics (including all sub-surface conditions) of:
 - (A) the SLR Site or any Extra Land, the Environment or their surroundings; or
 - (B) any structure or other thing on, above or adjacent to, or under the surface of, the SLR Site or any Extra Land, the Environment or their surroundings; and

- (iii) any assumptions, projections, estimates, contingencies or otherwise that OpCo may have made in relation to the Site Conditions or the conditions or the characteristics of any of the matters referred to in clause 11.3(c)(ii).

11.4 Contamination

In addition to the Planning Approvals and without limiting clause 11.3 (*Condition of the SLR Site and structures*), OpCo is responsible for all Contamination on, in, over, under or about the SLR Site or any Extra Land which:

- (a) is disturbed by or interfered with in the carrying out of OpCo's Activities;
- (b) migrates:
 - (i) to the SLR Site or any Extra Land as a result of OpCo's Activities provided that OpCo was aware, or ought reasonably to have been aware, of such Contamination; or
 - (ii) from the SLR Site or any Extra Land as a result of OpCo's Activities; or
- (c) otherwise arises out of or in connection with OpCo's Activities,

and OpCo must:

- (d) dispose of, or otherwise deal with, such Contamination in accordance with law and the Planning Approvals;
- (e) remediate to the standard required by law, the SLR Site and any Extra Land (and any other land to which any Contamination has migrated as contemplated by clause 11.4(b)) to the extent to which:
 - (i) it is in any way degraded by such Contamination; and
 - (ii) the Contamination is of such a nature that an Authority could issue a statutory notice requiring it to be remediated; and
- (f) except to the extent prohibited by law, indemnify TfNSW against any Loss incurred by TfNSW arising out of or in any way in connection with such Contamination or any failure by OpCo to comply with any obligation under this deed in connection with such Contamination.

11.4A Responsibility for asbestos in the IWLR Permanent Light Rail Corridor

- (a) If and to the extent that any Contamination for which OpCo is responsible under clause 11.4 (*Contamination*) relates to asbestos within the IWLR Permanent Light Rail Corridor, then TfNSW will be liable to OpCo for [REDACTED] of the demonstrated additional direct costs of the removal and disposal of asbestos (which in the case of disposal will be those costs paid to a Licensed Disposal Site), provided that the demonstrated additional direct costs of OpCo shall, for the purposes of this clause 11.4A (*Responsibility for asbestos*), not be greater than the amounts set out in the table below (CPI Indexed) for each tonne of asbestos removed and disposed of:

SIZE (Tonnes)	x < 500 T	> 500 T but < 1000 T	1000 T > x
Rate (per Tonne) - Asbestos*	██████	██████	██████

The above table applies to the aggregate of material removed and not on a per event basis.

- (b) Subject to OpCo's express entitlements under this deed, the parties acknowledge and agree that:
- (i) the approach set out in this clause 11.4A (*Responsibility for Contamination*) shall be OpCo's only entitlement in respect of; and
 - (ii) TfNSW shall have no other liability, and OpCo shall not be entitled to Claim against the State or TfNSW for any Loss or any extension to the Date for Completion in relation to,

asbestos Contamination within the IWLR Permanent Light Rail Corridor for which OpCo is responsible under clause 11.4 (*Contamination*).

11.4B Responsibility for Coal Tar

- (a) Without prejudice to OpCo's responsibility for Contamination under clause 11.4 (*Contamination*), OpCo must undertake testing for the presence of Coal Tar along the Construction Site (and must complete all testing within ██████ of Financial Close) and:
- (i) if such testing demonstrates the presence of Coal Tar at a hazardous level which means that it cannot be disposed of as general waste (**Hazardous Coal Tar**), then the regime in clauses 11.4(b) and 11.4(c) below and paragraph 2(d) of Schedule D4 (*Net Financial Impact*) shall apply and OpCo must within 60 days of the results of such tests being received, develop and provide to TfNSW a mitigation and treatment plan for dealing with both identified Hazardous Coal Tar and any future Hazardous Coal Tar which OpCo may discover. OpCo shall not be entitled to make any claim pursuant to this clause 11.4B (*Responsibility for Coal Tar*) or paragraph 2(d) of Schedule D4 (*Net Financial Impact*) to the extent OpCo does not undertake the tests or where the test shows Hazardous Coal Tar and OpCo does not provide the mitigation and treatment plan; and
 - (ii) if such testing does not demonstrate the presence of Hazardous Coal Tar, OpCo shall proceed with the SLR Works and accepts all delay risks associated with all Coal Tar and paragraph 2(d)(ii) of Schedule D4 (*Net Financial Impact*) shall not apply.
- (b) Whether or not the testing referred to in clause 11.4B(a) determines the presence of Hazardous Coal Tar contaminated material that cannot be disposed of as general waste, upon discovery of Hazardous Coal Tar TfNSW will be liable to OpCo for ██████ of the demonstrated additional direct costs of the removal and disposal of any subsequent discovery of Hazardous Coal Tar contaminated material above those that OpCo would have paid had the Hazardous Coal Tar contaminated material been able to be disposed of as part of general waste (which in the case of disposal will be those costs paid to a Licensed Disposal Site), provided that the

demonstrated additional direct costs of OpCo shall, for the purposes of this clause 11.4B(b), not be greater than the amounts set out in the table below (CPI Indexed) for each tonne of Coal Tar contaminated material removed and disposed of:

SIZE (Tonnes)	x < 500 T	> 500 T but < 1000 T	1000 T > x
Rate (per Tonne) – Coal Tar*	██████	██████	██████

The above table applies to the aggregate of material removed and not on a per event basis.

- (c) Subject to OpCo's express entitlements under this deed, the parties acknowledge and agree that:
- (i) the approach set out in this clause 11.4B (*Responsibility for Coal Tar*) shall be OpCo's only entitlement in respect of; and
 - (ii) TfNSW shall have no other liability, and OpCo shall not be entitled to Claim against the State or TfNSW for any Loss or any extension to the Date for Completion in relation to,

Contamination relating to Coal Tar contaminated material for which OpCo is responsible under clause 11.4 (*Contamination*).

11.5 Environmental compliance

OpCo must:

- (a) **(no improper use of SLR Site or Extra Land)**: not use the SLR Site or Extra Land, or allow OpCo's Contractors to use the SLR Site or Extra Land, so that:
 - (i) any hazardous substance is abandoned or dumped on the SLR Site or Extra Land;
 - (ii) any hazardous substance is handled in a manner which is likely to cause an Environmental Hazard; or
 - (iii) any other substance is released from, deposited to, or emanates from, the SLR Site or Extra Land such that a state of Contamination occurs;
- (b) **(be environmentally responsible)**: at all times carry out, and ensure that OpCo's Contractors carry out, OpCo's Activities in an environmentally responsible manner, in accordance with Good Industry Practice, and so as to protect the Environment and keep the SLR Site in a good and safe condition;
- (c) **(comply with Environmental laws)**: without limiting clause 6 (*Law and Approvals*):
 - (i) comply with, and ensure that OpCo's Contractors in performing OpCo's Activities comply with:
 - (A) all laws relating to the Environment;
 - (B) the Planning Approvals; and

- (C) all Environmental Notices; and
- (ii) obtain and comply with all requirements of, and ensure that OpCo's Contractors in performing OpCo's Activities obtain and comply with all requirements of, any Approvals required in order to release or emit anything from the SLR Site into the air or water or onto the ground or otherwise into the Environment or to emit any substantial noise or vibrations;
- (d) **(notification)**: immediately notify TfNSW in writing as soon as OpCo:
 - (i) becomes aware of any non-compliance with the requirements of any law or Approval regarding the Environment, or any Planning Approval, in the performance of OpCo's Activities;
 - (ii) becomes aware of any information, fact or circumstance where, if TfNSW were to be aware of such information, fact or circumstance, TfNSW would be required to notify any Authority of that information, fact or circumstance pursuant to any law relating to the Environment (without limiting any other obligation of OpCo in relation to the information, fact or circumstances); or
 - (iii) notifies any Authority of any matter pursuant to any law relating to the Environment, in which case OpCo must provide to TfNSW a copy of such notification and of any subsequent correspondence with the Authority in relation to the subject of the notification; and
- (e) **(indemnity)**: indemnify TfNSW against any Loss incurred by TfNSW arising out of or in any way in connection with an Environmental Notice received by TfNSW that arises out of or in connection with any Contamination:
 - (i) for which OpCo is responsible under this deed; or
 - (ii) that occurs as a result of a breach by OpCo of this deed.

11.6 Environmental Management Plans

OpCo:

- (a) must comply with, and ensure that OpCo's Contractors in performing OpCo's Activities comply with, the Environmental Management Plans; and
- (b) will not be relieved from compliance with any of its obligations under this deed or from any of its liabilities whether under this deed or otherwise according to law as a result of:
 - (i) compliance with the Environmental Management Plans;
 - (ii) any audits or other monitoring by TfNSW's Representative of OpCo's compliance with the Environmental Management Plans; or
 - (iii) any failure by TfNSW's Representative, or anyone else acting on behalf of TfNSW, to detect any non-compliance.

11.7 Liability under the NGER Legislation

- (a) OpCo acknowledges and agrees that:

- (i) if OpCo's Activities constitute a "facility" within the meaning of the NGER Legislation, then for the purposes of the NGER Legislation:
 - (A) it has operational control of that facility or facilities and will comply with any obligations arising in respect of OpCo's Activities under the NGER Legislation; or
 - (B) where an OpCo Contractor has operational control of that facility or facilities, OpCo must ensure that the OpCo Contractor will comply with any obligations arising in respect of OpCo's Activities under the NGER Legislation; and/or
 - (ii) if OpCo is part of a group (as defined in the NGER Legislation) of which the controlling corporation (as defined in the NGER Legislation) is registered under the NGER Legislation, OpCo will use its reasonable endeavours to procure that the relevant controlling corporation complies with the NGER Legislation in relation to OpCo's Activities.
- (b) If, despite the operation of clause 11.7(a), TfNSW incurs, or but for this clause would incur, a liability under or in connection with the NGER Legislation as a result of or in connection with OpCo's Activities, and the NGER Legislation provides that such liability can be transferred by TfNSW to OpCo, OpCo must, upon the written request of TfNSW, do all things reasonably necessary to transfer the liability to OpCo.

11.8 Provision of Emissions and Energy Data to TfNSW

- (a) OpCo must provide OpCo's Emissions and Energy Data to TfNSW's Representative:
 - (i) at such times as may be agreed by TfNSW and OpCo, or, if no such agreement is reached, within 10 Business Days of receiving written notice from TfNSW indicating that it requires OpCo's Emissions and Energy Data to be provided; and
 - (ii) on each occasion that OpCo is required to provide OpCo's Emissions and Energy Data to an Authority under the NGER Legislation or any other applicable law.
- (b) TfNSW may use OpCo's Emissions and Energy Data for any purpose as it sees fit.

11.9 Reporting Emissions and Energy Data

- (a) This clause 11.9 (*Reporting Emissions and Energy Data*) applies if despite the operation of clause 11.7 (*Liability under the NGER Legislation*), TfNSW incurs a liability under or in connection with the NGER Legislation as a result of or in connection with OpCo's Activities.
- (b) OpCo must assist TfNSW to comply with the NGER Legislation in relation to any aspect of OpCo's Activities.
- (c) Without limiting clause 11.9(b), if TfNSW notifies OpCo in writing that OpCo is required to provide OpCo's Emissions and Energy Data to TfNSW, then OpCo must:
 - (i) provide OpCo's Emissions and Energy Data to TfNSW in the same manner, form and level of detail, based on the same methods and at the same times:

- (A) as if OpCo were obliged under the NGER Legislation to provide Emissions and Energy Data to an Authority and TfNSW was that Authority;
 - (B) in accordance with the requirements or approvals of any Authority and any Directions by TfNSW; and
 - (C) without limiting clauses 11.9(c)(i)(A) or 11.9(c)(i)(B), as may be required to enable TfNSW:
 - (aa) to discharge, as and when they fall due, any obligations that it may have to provide OpCo's Emissions and Energy Data to any Authority; and
 - (bb) to provide to any Authority any OpCo's Emissions and Energy Data concerning any greenhouse gas project;
 - (ii) keep all such OpCo's Emissions and Energy Data as may be required to enable it to discharge its obligations under clause 11.9(c)(i);
 - (iii) retain records of its activities that are the basis of OpCo's Emissions and Energy Data for any financial year, for a period of not less than 7 years from the end of the year in which the relevant activities take place; and
 - (iv) permit OpCo's Emissions and Energy Data to be examined, monitored, measured, copied, audited and verified by any persons appointed or authorised for that purpose by TfNSW or any Authority, and co-operate with and provide all reasonable assistance to any such persons, including giving access to premises, plant and equipment, producing and giving access to documents (including any records kept and retained under clauses 11.9(c)(ii) and 11.9(c)(iii)) and answering questions.
- (d) OpCo acknowledges and agrees that:
- (i) OpCo's Emissions and Energy Data is provided to TfNSW:
 - (A) to discharge any obligations that TfNSW may have to provide such Emissions and Energy Data to an Authority; and
 - (B) so that TfNSW may provide to any Authority any OpCo's Emissions and Energy Data concerning any greenhouse gas project;
 - (ii) TfNSW may provide or otherwise disclose OpCo's Emissions and Energy Data to any Authority; and
 - (iii) nothing in this clause 11.9 (*Reporting Emissions and Energy Data*) is to be taken as meaning that TfNSW has agreed to perform on behalf of OpCo, any obligation that OpCo itself may have under any legislative requirement regarding the provision of Emissions and Energy Data to any Authority (including any obligation under the NGER Legislation).

12. LAND

12.1 Construction Site Licence

- (a) TfNSW grants to OpCo a non-exclusive Construction Site Licence to use and occupy, and to permit OpCo's Contractors to use and occupy, each Section of the

Construction Site for the purpose of performing OpCo's Activities in consideration of the receipt by TfNSW of a licence fee of \$10 (receipt of which is acknowledged by TfNSW) and in accordance with, and subject to, the terms set out in this deed.

- (b) This licence:
- (i) commences, in respect of each Section of the Construction Site, on:
 - (A) the Section Access Date for that Section;
 - (B) such later date as notified by OpCo to TfNSW's Representative if OpCo intends to take possession of the Section later than the Section Access Date for that Section provided that OpCo has given TfNSW at least 60 days' notice of such date; or
 - (C) such earlier date as may be agreed between the parties for that Section,

provided that OpCo has complied with all requirements under any relevant Third Party Agreement, Third Party requirement specified in Schedule B3 (*Requirements of Third Parties*) or Utility Provider Agreement for obtaining access to that Section;
 - (ii) terminates, in respect of each Section of the Construction Site, on the earlier of:
 - (A) to the extent that the licence is subject to the terms of a Third Party Agreement, Third Party requirement specified in Schedule B3 (*Requirements of Third Parties*) or Utility Provider Agreement, the expiry or earlier determination of the licence granted in accordance with the Third Party Agreement or a Third Party requirement specified in Schedule B3 (*Requirements of Third Parties*);
 - (B) if not terminated previously in accordance with clause 12.1(b)(ii)(A), the Date of Completion; and
 - (C) the termination of this deed;
 - (iii) is subject to:
 - (A) restrictions upon the access, occupation and use of the Section;
 - (B) OpCo providing the required notices,

referred to in Schedule B3 (*Requirements of Third Parties*), the Utility Provider Agreements and the Section Access Schedule; and

 - (C) OpCo obtaining road occupancy licences, if required, as set out in clause 12.5 (*Road Occupancy Licences*).
- (c) OpCo must comply with the terms of:
- (i) the Existing Land Arrangements; and
 - (ii) any easements, restrictions on use, covenants, agreements or other similar arrangements burdening or benefiting the land contained in the Construction Site (including each Section) as recorded in the register maintained by Land

and Property Information New South Wales under the *Real Property Act 1900* (NSW) as at the date of this deed,

including those identified or referred to in Schedule B5 (*Easement and land arrangements*).

- (d) OpCo is responsible for gaining access to and from each Section of the Construction Site and, except as expressly provided in this deed, will not be entitled to make any Claim against TfNSW in connection with access, the failure to gain access or delay in gaining access, to and from each Section of the Construction Site.
- (e) OpCo:
 - (i) must access each Section of the Construction Site only at the points of entry and exit and via the routes set out in the Section Access Schedule and the Planning Approvals; and
 - (ii) bears the risk of coordinating its access to each Section of the Construction Site with any other person that uses the access ways to each Section of the Construction Site.
- (f) OpCo must not use each Section of the Construction Site, or permit it to be used, for any purpose other than the Delivery Activities, without TfNSW's prior consent.
- (g) Without limiting OpCo's obligations under this clause 12.1 (*Construction Site Licence*), OpCo may, prior to the commencement of the Construction Site Licence, request access to parts of the Construction Site from the Transport Management Centre for the purposes of carrying out non-destructive testing, investigations and surveys in connection with the Delivery Activities.
- (h) Provided that OpCo is complying with its obligations in relation to access to the SLR Site in accordance with this deed, TfNSW's Representative agrees that it will not seek to prevent any such access granted by the Transport Management Centre pursuant to clause 12.1(g).

12.2 Vacating a Section

- (a) Subject to clause 12.2(g), TfNSW may, on 10 Business Days' written notice, require OpCo to vacate a Section for the period specified in the notice.
- (b) Prior to vacating the Section, OpCo must provide written notice to TfNSW and the Independent Certifier requesting the Independent Certifier to certify that the relevant Section has been vacated in accordance with the requirements of Schedule B6 (*Section Access Schedule*).
- (c) The Independent Certifier must, within 2 Business Days of receipt of OpCo's notice under clause 12.2(b):
 - (i) provide a notice to TfNSW's Representative and OpCo certifying that OpCo has:
 - (A) complied with the requirements of clause 12.2(b); or
 - (B) not complied with the requirements of clause 12.2(b) (with reasons).

- (d) If the Independent Certifier issues a notice under clause 12.2(c)(i)(B), OpCo must promptly work to rectify any non-compliance and clauses 12.2(b) and 12.2(c) will reapply.
- (e) If the Independent Certifier issues a notice under clause 12.2(c)(i)(A), then OpCo will be deemed to have vacated the Section, on the date specified in OpCo's notice under clause 12.2(b).
- (f) TfNSW must pay OpCo the reasonable demobilisation and remobilisation costs incurred by OpCo as a result of OpCo complying with its obligations under this clause 12.2 (*Vacating a Section*) to the extent that OpCo's obligation to vacate the Section was not otherwise contemplated by the Section Access Schedule.
- (g) The parties agree that:
 - (i) TfNSW may only issue a maximum total of five notices to OpCo under clause 12.2(a); and
 - (ii) any notice issued by TfNSW to OpCo under clause 12.2(a) must:
 - (A) not require OpCo to vacate more than 3 Sections at any one time; and
 - (B) not require OpCo to vacate a Section for longer than 3 days.

12.3 Occupation of Fee Areas and Fee Zones

- (a) OpCo and TfNSW agree that:
 - (i) OpCo will be liable to TfNSW for a percentage of the Daily Fee for each day that the Actual Fee Zone Occupation Period exceeds the Base Fee Zone Occupation Period as follows:
 - (A) if the Actual Fee Zone Occupation Period exceeds the Base Fee Zone Occupation Period by up to and including [REDACTED], [REDACTED] of the Daily Fee;
 - (B) if the Actual Fee Zone Occupation Period exceeds the Base Fee Zone Occupation Period by more than [REDACTED] and up to [REDACTED], [REDACTED] of the Daily Fee;
 - (C) if the Actual Fee Zone Occupation Period exceeds the Base Fee Zone Occupation Period by more than [REDACTED] and up to [REDACTED], [REDACTED] of the Daily Fee; and
 - (D) if the Actual Fee Zone Occupation Period exceeds the Base Fee Zone Occupation Period by [REDACTED] and over, [REDACTED] of the Daily Fee, capped at [REDACTED] in the aggregate for all Daily Fees for which OpCo becomes liable under paragraphs (A) to (D) of this clause 12.3(a)(i);
 - (ii) at Financial Close, OpCo will be allocated a credit of [REDACTED] (**Base Fee Zone Credit**); and
 - (iii) if following the final Occupation Cessation Date of a Fee Zone the Actual Fee Zone Occupation Period is less than or equal to the Base Fee Zone Occupation Period, then TfNSW shall credit OpCo with [REDACTED] of the Daily Fee for each day that the Actual Fee Zone Occupation Period is less than the

Base Fee Zone Occupation Period (an **OpCo Fee Zone Credit**) which shall be added to any existing and unused Fee Zone Credits provided that:

- (A) TfNSW is only required to pay or reimburse any monies to OpCo in accordance with clause 12.3(h); and
 - (B) OpCo is only entitled to apply Fee Zone Credits to reduce the Monthly Zone Fees Payment Amounts payable to TfNSW in accordance with clause 12.3(b), but is not otherwise entitled to reduce or offset any other amounts against the Monthly Zone Fees Payment Amounts payable to TfNSW.
- (b) OpCo may apply any part of the Fee Zone Credits to reduce the amount of any subsequent Monthly Zone Fees Payment Amount payable to TfNSW provided:
- (i) a Fee Zone Credit can only be used on one occasion;
 - (ii) after the application of any Fee Zone Credits a Monthly Zone Fees Payment Amount can never be less than zero;
 - (iii) Fee Zone Credits may not be applied to reduce or offset any other amounts payable by OpCo to TfNSW under the TfNSW Project Agreements; and
 - (iv) any Fee Zone Credits which are not applied to reduce the amount of a Monthly Zone Fees Payment Amount shall only be reimbursed to OpCo in accordance with clause 12.3(h).
- (c) OpCo acknowledges and agrees that in respect of Fee Zones (other than Double Occupation Fee Zones):
- (i) if, after Occupation Cessation – Type A has been achieved for a particular Type A Fee Zone, OpCo subsequently requires traffic to be diverted from the traffic lanes located in that Type A Fee Zone for a further continuous period greater than 56 hours, then the Actual Fee Zone Occupation Period is deemed to have continued from the initial Occupation Commencement Date and ends on the revised Occupation Cessation Date – Type A; and
 - (ii) if, after Occupation Cessation – Type B has been achieved for a particular Type B Fee Zone, TfNSW or the Independent Certifier subsequently establishes that less than 50% of that Type B Fee Zone is open for safe and unrestricted public access during Key Times, then the Actual Fee Zone Occupation Period is deemed to have continued from the initial Occupation Commencement Date and ends on the revised Occupation Cessation Date – Type B.
- (d) OpCo acknowledges and agrees that in respect of Double Occupation Fee Zones:
- (i) if after a second Occupation Cessation - Type A has been achieved for a particular Type A Fee Zone, OpCo subsequently requires traffic to be diverted from the traffic lanes located in that Type A Fee Zone for a further continuous period greater than 56 hours, then that part of the Actual Fee Zone Occupation Period is deemed to have continued from the second Occupation Commencement Date and ends on the latest Occupation Cessation Date – Type A; or
 - (ii) if after a second Occupation Cessation – Type B has been achieved for a particular Type B Fee Zone, TfNSW or the Independent Certifier

subsequently establishes that less than 50% of the Type B Fee Zone is open for safe and unrestricted public access during Key Times, then that part of the Actual Fee Zone Occupation Period is deemed to have continued from the second Occupation Commencement Date and ends on the latest Occupation Cessation Date – Type B.

- (e) OpCo must provide written notice to TfNSW's Representative and the Independent Certifier of:
- (i) the Occupation Commencement Date;
 - (ii) the Occupation Cessation Date; and
 - (iii) any revised Occupation Cessation Dates,
- within 5 Business Days of each of these dates occurring.
- (f) Each month, TfNSW will issue a tax invoice to OpCo setting out the Monthly Zone Fees Payment Amount in respect of the previous month, including details of any Fee Zone Credits which OpCo has utilised to reduce the Monthly Zone Fees Payment Amount that would otherwise be payable if such Fee Zone Credits were not utilised. The amount set out in the tax invoice is a debt due and payable by OpCo.
- (g) OpCo must pay to TfNSW the amount set out in the tax invoice within 20 Business Days of the issue of the tax invoice.
- (h) If, following the application of clause 12.3(b) above, at the Date of Completion there remain Fee Zone Credits which have not been utilised by OpCo to reduce the amount of a Monthly Zone Fees Payment Amount, OpCo may issue a tax invoice to TfNSW equal to the lesser of:
- (i) the amount of any un-utilised Fee Zone Credits; and
 - (ii) ██████████.

To the extent that the total of the Fee Zone Credits which have not been utilised by OpCo as at the Date of Completion exceed ██████████, then Fee Zone Credits equal to the amount of the excess shall automatically be cancelled.

- (i) If a Utility Works Event, or a Relief Event falling within paragraph (b) of the definition of "Relief Event" occurs (each a **Relevant Event**) and this will cause a delay to the Occupation Cessation Date for a Fee Zone which is occupied by OpCo on the date on which the Relevant Event occurs, then if OpCo wishes to claim an extension to the Base Fee Zone Occupation Period for the relevant Fee Zone, OpCo may make an application for such extension following the procedure set out in clause 27 (*Relief Events*), but as if such procedure applies to a delay to the relevant Occupation Cessation Date. If the conditions precedent to relief referred to in clause 27.4(a) have been complied with TfNSW will grant an extension to the relevant Occupation Cessation Date, but only to the extent and for so long as the Relevant Event prevents OpCo from performing the works for which the relevant Base Fee Zone Occupation Period was required.
- (j) If a Relevant Event occurs in a Fee Zone and such Relevant Event is likely to extend the Occupation Cessation Date, OpCo may alter such Fee Zone to be a Double Occupation Fee Zone for the purposes of this clause 12.3 (*Occupation of*

Fee Areas and Fee Zones) provided that the Base Fee Zone Occupation Period is not greater than prior to such alteration.

- (k) If a Relevant Event occurs in a Fee Zone after the Base Fee Zone Occupation Period for a Fee Zone has been exceeded by OpCo, then OpCo may request that TfNSW alter such Fee Zone to be a Double Occupation Fee Zone, notwithstanding that the Base Fee Zone Occupation Period has been exceeded but without extending such Base Fee Zone Occupation Period and TfNSW will act reasonably in considering any such request.

12.4 **Licence**

- (a) Subject to the terms of this deed, TfNSW grants to OpCo a non-exclusive licence to use and occupy, and to permit OpCo's Contractors to use and occupy:
 - (i) the IWLR Permanent Light Rail Corridor; and
 - (ii) the CSELR Permanent Light Rail Corridor,
 for the purpose of performing OpCo's Activities.
- (b) TfNSW grants to OpCo a non-exclusive licence to access, and to permit OpCo's Contractors to access, the Non-Corridor Assets for the purpose of performing Operations Activities in relation to Non-Corridor Assets:
 - (i) only to the extent TfNSW and its authorised persons are permitted to do so under; and
 - (ii) subject to and in accordance with the terms of,
 - any Utility Provider Agreement, Existing Land Arrangements, Easements or Land Arrangements concerning, benefiting or burdening any Non-Corridor Assets.
- (c) OpCo agrees, in consideration of the grant of the Operations Phase Licence, to pay the Licence Payment to TfNSW on each Licence Payment Date and which Licence Payment Date shall commence on or after the Date of Completion.
- (d) The licence granted:
 - (i) under clause 12.4(a):
 - (A) in relation to the IWLR Permanent Light Rail Corridor, commences on the Date of Revenue Service; and
 - (B) in relation to the CSELR Permanent Light Rail Corridor, commences on the Date of Completion; and
 - (ii) under clause 12.4(b) commences on the Date of Revenue Service,
 and the licences terminate on the earlier of:
 - (iii) the Expiry Date; and
 - (iv) the termination of this deed.
- (e) The rights conferred by these licences are personal rights in contract only and do not create any tenancy or any estate or interest in the Permanent Light Rail Corridor or any land on which any Non-Corridor Assets are located.

- (f) OpCo acknowledges that TfNSW has agreed to assign the Licence Payments (exclusive of GST) due in connection with the Operations Phase Licence to Finance Co pursuant to the Receivables Purchase Deed. On receipt of a notice of assignment issued by TfNSW in accordance with the Receivables Purchase Deed:
- (i) OpCo must pay each Licence Payment and any other amounts (exclusive of GST) to Finance Co in accordance with the notice;
 - (ii) any such payment will discharge the liability of OpCo to pay the Licence Payments to TfNSW under this deed; and
 - (iii) OpCo must pay the GST payable in respect of each Licence Payment to TfNSW, but it is only obliged to make that payment when it has been provided with a tax invoice in respect of the relevant Licence Payment.

12.5 Road Occupancy Licences

- (a) OpCo must obtain approval from the Transport Management Centre for road occupancies and closures required to perform OpCo's Activities.
- (b) OpCo must, in carrying out OpCo's Activities, comply with the requirements of each road occupancy licence.
- (c) TfNSW will not be liable for any Claim by OpCo arising out of or in any way in connection with any delay, additional costs or other effects on OpCo's Activities related to the ability of OpCo or OpCo's Contractors to obtain any road occupancy licences required to perform OpCo's Activities.

12.6 CSELR Permanent Light Rail Corridor

TfNSW and OpCo acknowledge that:

- (a) the CSELR Permanent Light Rail Corridor is to be detailed by OpCo in the Design Documentation, based on the principles set out in SPR Appendix 6 (*Permanent Light Rail Corridor*);
- (b) the Design Documentation will be developed and finalised in accordance with clause 13 (*Design*);
- (c) the SLR Works will be constructed in accordance with the Design Documentation that OpCo is entitled to use for construction purposes under clause 13.9(a) and otherwise in accordance with this deed; and
- (d) OpCo will survey the CSELR Permanent Light Rail Corridor in accordance with SPR Appendix 11 (*TfNSW's General Specifications*) as a condition of Completion.

12.7 Existing Land Arrangements, Easements and Land Arrangements

Provisions regarding Existing Land Arrangements, Easements and Land Arrangements in respect of the Permanent Light Rail Corridor and the Assets are set out in Schedule B5 (*Easement and Land Arrangements*).

12.8 Native Title Claims

- (a) If there is a Native Title Claim with respect to the SLR Site or any part of the SLR Site, OpCo must:

- (i) continue to perform OpCo's Activities, except to the extent otherwise:
 - (A) directed by TfNSW's Representative;
 - (B) ordered by a court or tribunal; or
 - (C) required by law; and
 - (ii) at the request of TfNSW, or if required to do so under any law or by order of a court or tribunal, provide all reasonable assistance in connection with dealing with the Native Title Claim (including giving TfNSW and any other persons authorised by TfNSW access to the SLR Site or that part of the SLR Site which is the subject of the Native Title Claim when reasonably required by TfNSW for that purpose).
- (b) For the purposes of clause 12.8(a)(i)(A), TfNSW may by written notice direct OpCo to suspend performance of any or all of OpCo's Activities until such time as TfNSW gives OpCo further notice.

12.9 **Artefacts**

- (a) All Artefacts found on or under the surface of the SLR Site will, as between the parties, be the absolute property of TfNSW.
- (b) Where such an Artefact is found, OpCo must:
 - (i) immediately notify TfNSW's Representative;
 - (ii) ensure that the Artefact is protected and not disturbed further;
 - (iii) comply with all requirements of Authorities; and
 - (iv) continue to perform OpCo's Activities, except to the extent otherwise:
 - (A) ordered by a court or tribunal; or
 - (B) required by law.

12.10 **Working hours**

Unless otherwise agreed between OpCo and TfNSW's Representative, the hours of work applicable to OpCo's Activities to be carried out on the SLR Site are those permitted by relevant law and relevant Authorities.

12.11 **Extra Land**

- (a) OpCo must procure for itself and at its own cost the occupation or use of or relevant rights over any land or buildings in addition to the SLR Site which is necessary or which it requires for the execution of OpCo's Activities, including where Property Works are undertaken.
- (b) Where any Property Works are required to be carried out on Extra Land, OpCo must give a written notice to the owner or owners of the property (with a copy to TfNSW's Representative) which:
 - (i) describes the Property Works to be carried out;
 - (ii) requests access for the purpose of carrying out the Property Works; and

- (iii) specifies the intended date for commencement of the Property Works,
not less than 10 Business Days prior to the day which OpCo intends to commence the Property Works.
- (c) OpCo will be liable for the consequences of, and will have no Claim against TfNSW arising out of or in any way in connection with, any delay in accessing Extra Land to carry out the Property Works.
- (d) Upon being given access to any Extra Land for the purpose of carrying out any Property Works, OpCo must promptly carry out those Property Works in a manner which minimises inconvenience and disruption to the owners, occupiers and users of the Extra Land.
- (e) OpCo must, in relation to Property Works:
 - (i) rehabilitate any part of Extra Land to the state agreed between OpCo and the owner of such Extra Land prior to commencing the work or, if no such agreement is reached, the state it was in immediately prior to OpCo obtaining access; and
 - (ii) otherwise repair any damage or degradation to such a part arising out of or in any way in connection with the performance of its obligations under this clause 12.11 (*Extra Land*).
- (f) As a condition precedent to Final Completion, OpCo must:
 - (i) rehabilitate any Extra Land in accordance with the requirements of all relevant Authorities and other relevant persons; and
 - (ii) provide to TfNSW's Representative:
 - (A) a properly executed release in favour of TfNSW, on terms satisfactory to TfNSW's Representative, from all Claims from the owner or occupier of, and from any other persons having an interest in, such Extra Land; or
 - (B) if OpCo is unable to obtain such a release, despite using best endeavours to do so, a statement signed by OpCo to the effect that, such owner or occupier or other person having an interest in the Extra Land, has failed or refused to execute such a release within 15 Business Days of it being provided by OpCo to the owner, occupier or other person following completion of the work on the Extra Land.
- (g) OpCo must indemnify TfNSW against any Loss incurred by TfNSW in connection with any claim by the owner or occupier of any part of the Extra Land where:
 - (i) the owner or occupier has not executed such a release; or
 - (ii) the claim arises out of or in connection with OpCo's Activities.
- (h) OpCo acknowledges that:
 - (i) integration of the requirements for access to Extra Land is at the sole risk of OpCo; and

- (ii) TfNSW will not be liable for any Claim by OpCo arising out of or in any way in connection with:
 - (A) identifying and obtaining access to Extra Land; or
 - (B) any delay, additional costs or other effects on OpCo's Activities related to the ability of OpCo or OpCo's Contractors to obtain access to Extra Land or integrate such Extra Land with the SLR Site.

12.12 Permitted use

OpCo must not:

- (a) undertake the SLR Works (other than the Third Party Works) such that the final location of such works is outside the Project Site;
- (b) undertake the Temporary Works outside the Construction Site; or
- (c) undertake the Local Area Works outside the Construction Site and the Local Areas.

12.13 Temporary Areas

OpCo must, as a condition precedent to Final Completion, reinstate the Temporary Areas to a condition at least equivalent to the condition existing before that occupation or use.

13. DESIGN

13.1 Design obligations

OpCo must design the SLR Works, the Temporary Works and any works carried out as part of the Operations Activities in accordance with:

- (a) the SPR;
- (b) the Third Party Agreements and the Third Party requirements specified in Schedule B3 (*Requirements of Third Parties*);
- (c) any Modification:
 - (i) directed by TfNSW by a Modification Order; or
 - (ii) approved by TfNSW by a Modification Approval; and
- (d) the other requirements of this deed.

13.2 Concept Design

- (a) OpCo acknowledges that prior to the date of this deed it prepared the Concept Design. OpCo agrees that it bears absolutely all risks howsoever they may arise as a result of the use by OpCo of, or the reliance by OpCo upon, the Concept Design in performing OpCo's Activities and that such use and reliance will not limit any of its obligations under this deed.
- (b) OpCo is responsible for, and assumes the risk of, any Loss it suffers or incurs arising out of or in connection with:
 - (i) the design and construction of the SLR Works and the Temporary Works in accordance with the Concept Design; and

- (ii) any differences between the Concept Design and the SLR Works and the Temporary Works which OpCo is required to design and construct (ignoring any differences which are the subject of a Modification Order) to satisfy the requirements of this deed including:
 - (A) differences necessitated by any Site Conditions encountered; and
 - (B) differences required to ensure that the SLR Works and the Temporary Works will be and remain fit for their intended purposes and satisfy the requirements of this deed,

and irrespective of any assumptions, projections, estimates, contingencies, or otherwise that OpCo may have made in relation to the Concept Design.

- (c) OpCo warrants that:
 - (i) the Concept Design has been prepared by OpCo;
 - (ii) if the SLR Works and the Temporary Works are designed and constructed in accordance with the Concept Design, the SLR Works and the Temporary Works will satisfy the requirements of this deed (but nothing in this clause 13.2(c)(ii) affects or limits clauses 13.2(a) or 13.2(b), which will prevail to the extent of any inconsistency);
 - (iii) it will carry out and complete OpCo's Activities in accordance with the Concept Design (but nothing in this clause 13.2(c)(iii) affects or limits clauses 13.2(a) or 13.2(b), which will prevail to the extent of any inconsistency);
 - (iv) it will not depart from the Concept Design in a manner that is prohibited by section 5.1(b) of the SPR; and
 - (v) it remains responsible for ensuring that the SLR Works and the Temporary Works will satisfy the requirements of this deed despite the Concept Design.

13.3 Design warranties

- (a) OpCo warrants that:
 - (i) it has checked, examined, analysed and carefully considered the SPR and Planning Approvals and that:
 - (A) it has satisfied itself as to the completeness, correctness, accuracy, appropriateness, suitability and adequacy of the SPR;
 - (B) it has satisfied itself that there are no omissions, ambiguities, discrepancies or inconsistencies in or between the SPR and Planning Approval;
 - (C) the SPR is proper, adequate and fit for its intended purpose of enabling OpCo to carry out OpCo's Activities in accordance with, and to ensure that the SLR Works and the Temporary Works comply with, this deed;
 - (D) it will be fully and exclusively responsible and liable for all risks howsoever they may arise as a result of the use by OpCo of, or reliance upon, the SPR; and

- (E) the use of, or reliance upon, the SPR does not affect any of its obligations under this deed or entitle OpCo to make any Claim against TfNSW arising out of or in any way in connection with the SPR; and
- (ii) the Design Documentation will:
 - (A) satisfy the requirements of the SPR and the other requirements of this deed; and
 - (B) be fit for its intended purpose.
- (b) The warranties given in clauses 13.2(c) and 13.3(a) will not be affected by:
 - (i) the Early Works carried out under the Managing Contractor Contract;
 - (ii) any design work carried out by others prior to the date of this deed and incorporated in this deed; or
 - (iii) the termination (for any reason) of this deed.

13.4 Preparation and submission of Design Documentation

OpCo must:

- (a) prepare the Design Documentation (other than Design Documentation for CSELRVs) in the following two or three Design Stages (as specified in the Design Management Plan):
 - (i) Design Stage 1;
 - (ii) Design Stage 2; and
 - (iii) Design Stage 3,
 or as otherwise contemplated by the Design Management Plan;
- (b) prepare Design Documentation for CSELRVs in accordance with SPR Appendix 37 (*Rolling Stock*);
- (c) during the Delivery Phase, submit all Design Documentation (not including any Design Documentation to the extent that it relates solely to Non-Reviewable Temporary Works) to the Independent Certifier (with a copy to TfNSW's Representative):
 - (i) in accordance with the Design Management Plan (if applicable);
 - (ii) in a manner and at a rate which, having regard to the quantum of Design Documentation submitted, will give the Independent Certifier a reasonable opportunity to review the submitted Design Documentation; and
 - (iii) in accordance with the requirements of the SPR, including SPR Appendix 37 (*Rolling Stock*);
- (d) within 5 Business Days of a request by the Independent Certifier, provide the Independent Certifier (with a copy to TfNSW's Representative) with any Design Documentation to the extent that it relates solely to Non-Reviewable Temporary Works;

- (e) in relation to Design Documentation prepared in accordance with clause 13.4(a), ensure the Design Stage 2 Design Documentation (where only two Design Stages are to apply) and Design Stage 3 Design Documentation submitted is of a level of detail which is sufficient to permit the Independent Certifier to determine whether:
 - (i) the Design Documentation complies with this deed; and
 - (ii) the SLR Works which will be constructed in accordance with the Design Documentation will comply with this deed; and
- (f) in relation to Design Documentation prepared in accordance with clause 13.4(b), ensure the Design Documentation submitted is of a level of detail which is sufficient to permit the Independent Certifier to determine whether:
 - (i) the Design Documentation complies with this deed; and
 - (ii) the CSELRVs which will be constructed in accordance with the Design Documentation will comply with this deed.

13.5 Certification of Design Documentation

- (a) All Design Documentation submitted pursuant to clause 13.4(a) for Design Stage 1 and Design Stage 2 must be accompanied by a certificate in the form of Schedule C1 (*Form of Design Certification – Stage 1 and 2*):
 - (i) from OpCo certifying that the Design Documentation complies with all the requirements of this deed including the SPR; and
 - (ii) from the O&M Contractor certifying that the Design Documentation is acceptable from an operational perspective to enable the O&M Contractor to meet its obligations under the O&M Contract.
- (b) All Design Documentation submitted pursuant to clause 13.4(a) for Design Stage 3 must be accompanied by a certificate in the form of Schedule C2 (*Form of Design Certification – Stage 3*):
 - (i) from OpCo certifying that the Design Documentation:
 - (A) complies with this deed including the SPR; and
 - (B) is appropriate for construction;
 - (ii) from the D&C Contractor certifying that the Design Documentation:
 - (A) complies with this deed including the SPR; and
 - (B) is appropriate for construction; and
 - (iii) from the O&M Contractor certifying that the Design Documentation is acceptable from an operational perspective to enable the O&M Contractor to meet its obligations under the O&M Contract.
- (c) All Design Documentation submitted pursuant to clause 13.4(b) for CSELRVs must be accompanied by a certificate in the form of Schedule C16 (*Form of Design Certification – CSELRVs*) from OpCo certifying that the Design Documentation:
 - (i) complies with this deed including the SPR; and

- (ii) is appropriate for construction.

13.6 Explanation of Design Documentation

OpCo must, whenever it submits Design Documentation pursuant to clause 13.4 (*Preparation and submission of Design Documentation*):

- (a) deliver a design presentation workshop within 5 Business Days of its submission; and
- (b) if required by TfNSW or the Independent Certifier, make available the appropriate design personnel to:
 - (i) explain the Design Documentation; and
 - (ii) provide such information regarding the Design Documentation as TfNSW or the Independent Certifier reasonably requests.

13.7 Review of Design Documentation

- (a) (**TfNSW's Representative review**): TfNSW's Representative may (but is not obliged to), within 18 Business Days for Design Documentation submitted in accordance with clause 13.4 (*Preparation and submission of Design Documentation*), review the Design Documentation and notify the Independent Certifier in writing of any comments which TfNSW has in respect of the Design Documentation.
- (b) (**Independent Certifier review**): The Independent Certifier will, within 22 Business Days for Design Documentation submitted in accordance with clause 13.4 (*Preparation and submission of Design Documentation*):
 - (i) review the Design Documentation (taking into account any comments received from TfNSW under clause 13.7(a) and any comments from the Urban Design Reference Group under clauses 13.8(b) and 13.8(c)); and
 - (ii) in respect of Design Stage 1 or Design Stage 2 for Design Documentation submitted pursuant to clause 13.4(a), notify OpCo of any actual non-compliances with the requirements of this deed. The Independent Certifier may also notify OpCo of any potential non-compliance with the requirements of this deed, together with detailed reasons, or any other observation or comment which the Independent Certifier has on the Design Documentation;
 - (iii) in respect of Design Stage 3 for Design Documentation submitted pursuant to clause 13.4(a):
 - (A) reject the Design Documentation (with detailed reasons) if the Independent Certifier considers that the Design Documentation:
 - (aa) does not comply with the requirements of this deed (minor errors and omissions excepted); or
 - (bb) is not sufficiently complete to enable the Independent Certifier to form a view on whether it is compliant; or
 - (B) certify the Design Documentation by:

- (aa) including a notation on each document forming part of the Design Documentation; and
 - (bb) providing to TfNSW's Representative and OpCo a certificate in the form of Schedule C3 (*Independent Certifier Design Certificate –Stage 3*);
- (iv) in respect of Design Documentation submitted pursuant to clause 13.4(b) for CSELRVs:
 - (A) reject the Design Documentation (with detailed reasons) if the Independent Certifier considers that the Design Documentation:
 - (aa) does not comply with the requirements of this deed (minor errors and omissions excepted); or
 - (bb) is not sufficiently complete to enable the Independent Certifier to form a view on whether it is compliant; or
 - (B) certify the Design Documentation by:
 - (aa) including a notation on each document forming part of the Design Documentation; and
 - (bb) providing to TfNSW's Representative and OpCo a certificate in the form of Schedule C17 (*Independent Certifier Design Certificate - CSELRVs*).
- (c) Not used
- (d) **(Non-compliance in Stage 1 or Stage 2 Design Documentation):** If the Independent Certifier notifies OpCo under clause 13.7(b)(ii) that any Design Stage 1 or Design Stage 2 Design Documentation submitted pursuant to clause 13.4(a) contains an actual non-compliance with the requirements of this deed, OpCo:
 - (i) must, within 20 Business Days of receiving such notice, give the Independent Certifier a written response which explains how OpCo will address the non-compliance in sufficient detail to satisfy the Independent Certifier that compliance will be achieved in the next Design Stage; and
 - (ii) must, prior to submitting the next Design Stage Design Documentation, give the Independent Certifier a written statement which explains how the non-compliance has been addressed;
- (e) **(Rejection or amendment of Design Documentation):** If any Design Documentation is rejected by the Independent Certifier under clause 13.7(b)(iii)(A):
 - (i) OpCo must promptly amend the relevant part of the Design Documentation which was non-compliant and re-submit it, along with any other information reasonably required by the Independent Certifier, in accordance with clause 13.4 (*Preparation and submission of Design Documentation*); and
 - (ii) the process in this clause 13.7 (*Review of Design Documentation*) will be reapplied to the amended Design Documentation.
- (f) Not used

- (g) **(Minor errors or omissions):** If the certificate provided by the Independent Certifier pursuant to clause 13.7(b)(iii)(B) lists any minor errors or omissions:
- (i) the Independent Certifier may, in the certificate, recommend the action that could be taken by OpCo to address the minor error or omission; and
 - (ii) OpCo must:
 - (A) complete the recommended action, or if there is no recommended action, take the action OpCo deems reasonable in the circumstances to correct the minor error or omission to the extent required for the Design Documentation to comply with this deed, within the timeframe (if any) specified by the Independent Certifier; and
 - (B) demonstrate to the Independent Certifier that it has complied with clause 13.7(g)(ii)(A),

both as a pre-condition to undertaking any activities related to the minor errors and omissions or commencing the Tests specified in sections 3.5 and 3.7 of SPR Appendix 33 (*Testing and Commissioning*).

13.8 Urban Design Reference Group

- (a) The Urban Design Reference Group has been constituted by TfNSW to:
 - (i) review the Design Documentation; and
 - (ii) advise TfNSW on the quality of the urban design, architecture and landscape architecture aspects of the Design Documentation.
- (b) The Urban Design Reference Group may (but is not obliged to), within 13 Business Days for Design Documentation for any Design Stage, review the Design Documentation and notify the Independent Certifier of any comments which the Urban Design Reference Group has in respect of the Design Documentation.
- (c) TfNSW may, in respect of any Design Documentation submitted by OpCo:
 - (i) provide copies of any such Design Documentation received from OpCo; and
 - (ii) seek comments from and take into account the views of,

the Urban Design Reference Group.
- (d) OpCo must be available at all reasonable times to:
 - (i) present to the Urban Design Reference Group on; and
 - (ii) answer any questions from the Urban Design Reference Group in relation to,

the Design Documentation.
- (e) Without limiting any other provision of this deed:
 - (i) nothing which occurs during any workshop or meeting at which members of the Urban Design Reference Group are present will:

- (A) relieve OpCo of its obligations, or constitute a waiver of any of TfNSW's rights, under this deed; or
 - (B) be construed as a direction or notice by TfNSW to do or not to do anything and the parties confirm that all discussions on any matters raised at any workshop or meeting at which members of the Urban Design Reference Group are present, or any comments made by the Urban Design Reference Group, will not give rise to any obligation on the part of OpCo to comply with anything which the members of the Urban Design Reference Group say or do during such workshops or meetings;
- (ii) OpCo must not comply with any directions given or purported to be given by the Urban Design Reference Group or a member of the Urban Design Reference Group unless TfNSW's Representative has given OpCo a Direction to the same effect; and
 - (iii) if OpCo considers that any Direction by TfNSW's Representative under clause 13.8(e)(ii) constitutes or involves a Modification, OpCo must if it wishes to make a Claim in relation to the matter give a notice and submit a claim in accordance with, and otherwise comply with, clause 57.1 (*Notice of Modification*).

13.9 Design Documentation for construction

- (a) Unless otherwise approved in writing by TfNSW's Representative, OpCo must not use for construction purposes any Design Documentation (not including any Design Documentation to the extent it relates solely to Non Reviewable Temporary Works, unless requested by the Independent Certifier under clause 13.4(d)), unless:
 - (i) Design Documentation for Design Stage 3 has been:
 - (A) certified by OpCo, the D&C Contractor and by the O&M Contractor under clause 13.5(b);
 - (B) submitted to the Independent Certifier (and copies to TfNSW's Representative) under clause 13.4 (*Preparation and submission of Design Documentation*); and
 - (C) certified by the Independent Certifier under clause 13.7(b)(iii)(B)(bb); or
 - (ii) Design Documentation for Design Stage 2:
 - (A) has been certified by OpCo and by the O&M Contractor under clause 13.5(a);
 - (B) has been submitted to the Independent Certifier (and copies to TfNSW's Representative) under clause 13.4 (*Preparation and submission of Design Documentation*); and
 - (C) is not the subject of a notice of any actual non-compliance with the requirements of this deed by the Independent Certifier under clause 13.7(b)(ii).

- (ab) If OpCo uses Design Documentation for construction purposes as permitted by clause 13.9(a)(ii), OpCo does so at its own risk (including all costs and risks associated with proceeding with such construction and the risk that a Certificate of Completion may not be issued if construction in accordance with that Design Documentation does not comply with the requirements of this deed, including the SPR).
- (b) OpCo must give TfNSW's Representative four hard copy sets, and one electronic copy, of:
 - (i) all Design Documentation which it is entitled pursuant to clause 13.9(a) to use for construction purposes in accordance with the requirements of the SPR; and
 - (ii) surveys and work as executed Design Documentation in accordance with the requirements of the SPR.

13.10 Amendments to Final Design Documentation

Subject to clause 29 (*TfNSW initiated Modifications*) and clause 30 (*OpCo initiated Modifications*), if OpCo wishes to amend Final Design Documentation prior to the Date of Final Completion:

- (a) OpCo must submit the amended Design Documentation to the Independent Certifier (with a copy to TfNSW's Representative) together with:
 - (i) the certifications referred to in clause 13.9(a); and
 - (ii) an explanation as to why it is seeking to amend the Final Design Documentation; and
- (b) clause 13.7 (*Review of Design Documentation*) will apply as if the Design Documentation is Design Stage 3 Design Documentation.

13.11 Design Life

- (a) OpCo represents and warrants that:
 - (i) each Asset that falls within a category referred to in section 5.2 of the SPR will:
 - (A) be designed and constructed so that, at Completion, it is fit for its intended purpose at the Date of Completion;
 - (B) be operated and maintained during the Term so that it is fit for its intended purpose at all times during the Term; and
 - (C) be capable of remaining fit for its intended purpose at all times during its Design Life provided it is operated and maintained in accordance with the Asset Management System;
 - (ii) where an Asset that falls within a category referred to in section 5.2 of the SPR is Replaced or Refurbished during the Term, the replacement or refurbished Asset will:

- (A) be designed and constructed so that, at the time of its Replacement or Refurbishment, it is fit for its intended purpose;
 - (B) be operated and maintained during the Term so that it is fit for its intended purpose at all times during the Term; and
 - (C) be designed and constructed so as to be capable of being fit for its intended purpose at all times during its Extended Design Life provided it is operated and maintained in accordance with the Asset Management System.
- (b) The representations and warranties made by OpCo under clause 13.11(a) are made, and will be deemed to have been made, in respect of each Asset that falls within a category referred to in section 5.2 of the SPR:
- (i) in the case of the representations and warranties made under clause 13.11(a)(i), on:
 - (A) the date of this deed; and
 - (B) [REDACTED]; or
 - (ii) in the case of the representations and warranties made under clause 13.11(a)(ii), on:
 - (A) the date that replacement or refurbishment of the relevant Asset has been completed; and
 - (B) [REDACTED].
- (c) Clause 13.11(b) will survive the rescission, termination or expiration of this deed.
- (d) OpCo:
- (i) waives any right to; and
 - (ii) must not,
- assert, make or rely on a plea, defence, claim or argument in any forum whatsoever that a cause of action that TfNSW has or may have against OpCo arising out of or in connection with any false representation, or breach of warranty, under this clause 13.11 (*Design Life*) in respect of an Asset is statute-barred, before the period ending on the Expiry Date.
- (e) OpCo must not enforce any judgment or award obtained on the basis of a plea, defence, claim or argument asserted, made or relied on by OpCo in breach of clause 13.11(d).
- (f) OpCo must indemnify TfNSW against any Loss suffered by TfNSW as a result of:
- (i) any action by OpCo in breach of clause 13.11(d); and
 - (ii) the enforcement of any judgment or award by OpCo in breach of clause 13.11(e).

14. COMMENCEMENT OF REVENUE SERVICE ON THE IWLR

14.1 Commencement of Revenue Service on the IWLR

- (a) OpCo must commence Revenue Service on the IWLR on the Date for Revenue Service unless the parties agree otherwise.
- (b) OpCo must pay to TfNSW all costs and losses incurred by TfNSW, including additional costs payable to Transdev, which would not have been incurred by TfNSW but for OpCo's failure to commence Revenue Service on the Date for Revenue Service.

14.2 Requirements for commencement of Revenue Service

The following requirements must be satisfied prior to OpCo commencing Revenue Service:

- (a) **(Rail safety)**: OpCo has complied with all its obligations under clause 7 (*Rail Safety*);
- (b) **(Project Plans)** each of the Project Plans specified in SPR Appendix 43 (*Project Plan Requirements*) as covering the IWLR Operations Phase has been submitted to TfNSW's Representative and TfNSW's Representative has not issued a notice under clause 8.5(a) within 20 Business Days following submission of the Project Plan;
- (c) **(Service Payment Monitoring System)**: the Service Payment Monitoring System is operational;
- (d) **(Asset Management System)**: OpCo has developed and implemented an Asset Management System that complies with the requirements of section 9.2 of the SPR;
- (e) **(Asset Information System)**: OpCo has implemented the Asset Information System for the IWLR that complies with the requirements of SPR Appendix 40 (*Asset Information Management Systems*);
- (f) **(Transition In Management Plan)**: OpCo has complied with all its obligations under the Transition In Management Plan; and
- (g) **(Everything else)**: OpCo has done everything else which this deed requires it to have done as a condition precedent or precondition to commencement of Revenue Service.

14.3 Notice of commencement of Revenue Service

OpCo must give TfNSW's Representative:

- (a) a first notice at least 4 months prior to the date on which it expects to satisfy the requirements for commencement of Revenue Service or if Financial Close occurs later than the date which is 4 months before the Date for Revenue Service, on the day after Financial Close;
- (b) a second notice at least 1 month prior to the date on which it expects to satisfy the requirements for commencement of Revenue Service;
- (c) a final notice at least 5 Business Days prior to the date on which it expects to satisfy the requirements for commencement of Revenue Service; and

- (d) a written request for a Certificate of Readiness for Revenue Service when it believes it has satisfied the requirements for commencement of Revenue Service referred to in clause 14.2 (*Requirements for commencement of Revenue Service*) (which request must not be given earlier than 5 Business Days after the date on which OpCo gives notice under clause 14.3(a)).

14.4 Certification of Readiness for Revenue Service

- (a) Within 5 Business Days of receipt of the request under clause 14.3(d), TfNSW's Representative must either:
 - (i) if the requirements for commencement of Revenue Service referred to in clause 14.2 (*Requirements for commencement of Revenue Service*) have been satisfied issue a Certificate of Readiness for Revenue Service to OpCo stating as the Date of Revenue Service, the date of which OpCo will commence Revenue Service; or
 - (ii) if the requirements for commencement of Revenue Service have not been satisfied, issue a notice to OpCo which:
 - (A) lists the items which remain to be completed to satisfy the requirements for commencement of Revenue Service; or
 - (B) states that OpCo is so far from satisfying the requirements for commencement of Revenue Service that it is not practicable to provide the list referred to in clause 14.4(a)(ii)(A).
- (b) If TfNSW's Representative issues a notice under clause 14.4(a)(ii), OpCo must continue to satisfy the requirements for commencement of Revenue Service and clause 14.3 (*Notice of commencement of Revenue Service*) and this clause 14.4 (*Certification of Readiness for Revenue Service*) will reapply.
- (c) If TfNSW's Representative issues the Certificate of Readiness for Revenue Service and a notice under clause 14.4(a)(i), OpCo must commence Revenue Service on the Date of Revenue Service.

14.5 Journey Time Detection Device

- (a) TfNSW will (or procure that an Other Contractor will) carry out works to install the Journey Time Detection Device prior to the Date for Revenue Service (**Installation Works**).
- (b) TfNSW must give the Independent Certifier a notice in writing (with a copy to OpCo) at least 15 Business Days prior to the date on which it expects the installation of the Journey Time Detection Device to be completed, together with any information that may be reasonably required by the Independent Certifier.
- (c) Within 5 Business Days of receipt of a notice from TfNSW under clause 14.5(b) the Independent Certifier must either:
 - (i) notify TfNSW in writing (with a copy to OpCo) that the Installation Works are complete and the Journey Time Detection Device is fit for its intended purpose (as at the date of completion of the Installation Works) to enable OpCo to comply with its obligations under Schedule D1 (*Service Payment Regime*) (**Installation Completion Notice**); or

- (ii) notify TfNSW in writing (with a copy to OpCo) that the installation of the Journey Time Detection Device is not sufficiently complete to enable the Independent Certifier to form a view.
- (d) Upon issue of an Installation Completion Notice, OpCo agrees that:
- (i) the Installation Works cease to be a Proximate Work Activity for the purpose of paragraph (k) of the definition of "Compensation Event";
 - (ii) it will accept all risks in relation to the Journey Time Detection Device from the date of the Installation Notice; and
 - (iii) other than expressly set out in this deed, OpCo will not be entitled to make any Claim against the State or TfNSW for any Loss in relation to OpCo's use of the Journey Time Detection Device.
- (e) If the Independent Certifier issues a notice to TfNSW under clause 14.5(c)(ii), clauses 14.5(b) and 14.5(c) will reapply, except that the notice period under clause 14.5(b) will be reduced to 5 Business Days.
- (f) If the Independent Certifier has not issued the Installation Completion Notice by the Date for Revenue Service, the parties agree that the Alternative Journey Time Detection Method will apply from the Date for Revenue Service until the date that is one day after receipt of the Installation Completion Notice.

15. CONSTRUCTION

15.1 Construction obligations

- (a) OpCo must construct the SLR Works and the Temporary Works in accordance with:
- (i) the SPR;
 - (ii) any Design Documentation prepared by OpCo in accordance with the requirements of this deed and which OpCo is entitled to use for construction purposes under clause 13.9(a);
 - (iii) any Modification Request for an Emergency Modification, Modification Order or Modification Approval issued by TfNSW; and
 - (iv) the other requirements of this deed.
- (b) Subject to clause 8.7 (*Permitted use, implementation and compliance*), OpCo must not commence any work upon the Construction Site:
- (i) until each of the following Project Plans have been submitted to TfNSW's Representative under clause 8.5 (*Review of Project Plans*) and the time specified in clause 8.5(a) has expired without TfNSW's Representative having issued a notice under that clause during that time:
 - (A) Project Management Plan;
 - (B) Quality Management Plan;
 - (C) Risk Management Plan;
 - (D) Safety Management Plan;

- (E) Delivery Phase Sustainability Plan;
 - (F) Safety Accreditation Plan;
 - (G) Construction Management Plan;
 - (H) Incident Management Plan covering the Delivery Phase; and
 - (I) Security Management Plan covering the Delivery Phase;
- (ii) until the Traffic and Transport Management Plan has been certified by the Independent Certifier under clause 8.5 (*Review of Project Plans*); and
 - (iii) all Hold Points required to be released prior to commencement of work upon the Construction Site have been released in accordance with the requirements of this deed, including the Quality Management Plan.
- (c) OpCo accepts full responsibility for all construction means, methods and techniques used in the performance of the Delivery Activities.

15.2 Construction warranties

OpCo warrants that:

- (a) construction will be carried out in accordance with the Design Documentation which OpCo is entitled to use for construction purposes in accordance with clause 13.9(a);
- (b) construction carried out in accordance with the Design Documentation which OpCo is entitled to use in accordance with clause 13.9(a) will satisfy the requirements of this deed;
- (c) the SLR Works and the Temporary Works will be completed in accordance with, and satisfy the requirements of, this deed; and
- (d) the SLR Works will, upon Completion and thereafter at all relevant times, be safe and fit for their intended purposes.

15.3 Managing Contractor Collateral Warranty

- (a) TfNSW has procured from the Managing Contractor the Managing Contractor Collateral Warranty in favour of OpCo.
- (b) TfNSW will provide OpCo with "as built" drawings to the extent such drawings are received from the Managing Contractor as part of completion of the Early Works under the Managing Contractor Contract.
- (c) The warranties in clause 15.2 (*Construction warranties*) will not be affected by the Early Works carried out under the Managing Contractor Contract.

15.4 Required IWLR Works

- (a) Prior to the Date of Revenue Service TfNSW, an Other Contractor, the Managing Contractor or an Early Works Contractor may carry out Required IWLR Works.
- (b) If, by the Date of Revenue Service there are any Required IWLR Works that:
 - (i) have not commenced; or

- (ii) are not the subject of an executed agreement for the performance of the Required IWLR Works,

the parties agree the following:

- (iii) TfNSW must, within 40 Business Days from the Date of Revenue Service, issue a Modification Order to OpCo under clause 29.14 (*Instruction to proceed*) in relation to the outstanding Required IWLR Works;
- (iv) the procedure in clause 29 (*TfNSW initiated Modifications*) will apply; and
- (v) TfNSW's right to withdraw the Modification Request in accordance with clauses 29.1(b) and 29.6(c) will not apply.

15.5 **Alison Road Works**

The parties acknowledge and agree that:

- (a) OpCo will carry out the Alison Road Works;
- (b) as at the date of this deed, the exact scope of the Alison Road Works is unknown;
- (c) the Net Financial Impact of the Alison Road Works will be calculated and paid in accordance with Schedule D4 (*Net Financial Impact*); and
- (d) subject to clauses 26 (*Compensation Events*) and 27 (*Relief Events*), OpCo will not be entitled to make any Claim against the State or TfNSW arising out of, or in any way in connection with, the Alison Road Works other than as contemplated in Schedule D4 (*Net Financial Impact*).

16. **QUALITY**

OpCo must, in performing OpCo's Activities:

- (a) use workmanship:
 - (i) of:
 - (A) the standard set out in the SPR; or
 - (B) to the extent it is not so set out, a standard consistent with Good Industry Practice for work of a similar nature to the construction of the SLR Works; and
 - (ii) which is fit for its intended purpose; and
- (b) use Materials:
 - (i) which:
 - (A) comply with the requirements of the SPR and the Third Party Agreements and Third Party requirements specified in Schedule B3 (*Requirements of Third Parties*); or
 - (B) if not fully described in the SPR or the Third Party Agreements and Third Party requirements specified in Schedule B3 (*Requirements of Third Parties*), are consistent with the Good Industry Practice for work of a similar nature to the relevant OpCo's Activities; and

- (ii) which:
 - (A) are free from defects and other imperfections; and
 - (B) are safe and fit for their intended purpose.

17. TIME

17.1 Commencement

OpCo must promptly commence performance of the Delivery Activities following Financial Close.

17.2 Dates for Completion

OpCo must:

- (a) use its best endeavours to achieve Completion by the Date for Completion;
- (b) achieve Completion by the Longstop Date; and
- (c) consistent with its obligations under clause 17.2(a), diligently progress the Delivery Activities.

17.3 Delivery Program

- (a) The initial Delivery Program is contained in Schedule A10 (*Initial Delivery Program*).
- (b) OpCo must:
 - (i) update the Delivery Program periodically at intervals no less than monthly to take account of:
 - (A) changes to the program; and
 - (B) any corrective action plan submitted by OpCo under clause 17.5 (*Delays*) for which TfNSW does not issue any comments under clause 17.6(b);
 - (ii) ensure that each update of the Delivery Program contains the details required by the SPR and any other details which TfNSW's Representative reasonably directs;
 - (iii) explain any changes to the critical path in the Delivery Program;
 - (iv) periodically at intervals no less than monthly and having regard to the current Delivery Program, confirm whether or not OpCo will, or is likely to, achieve Completion before, within or after the Conversion Period;
 - (v) ensure that each update of the Delivery Program makes allowance for the Project Plans and Design Documentation to be submitted to the Independent Certifier in a manner and at a rate which will give the Independent Certifier a reasonable opportunity to review the submitted Project Plans or Design Documentation within the 20 Business Day period referred to in clause 8.5 (*Review of Project Plans*) or the periods referred to in clause 13 (*Design*) (as the case may be); and

- (vi) give the Independent Certifier copies of each update of the Delivery Program for its review.
- (c) Nothing in the Delivery Program will bind TfNSW or otherwise affect the time for the performance of TfNSW's obligations under this deed.

17.4 Acceleration by OpCo

If OpCo chooses to accelerate progress of the Delivery Activities then:

- (a) TfNSW may elect to assist OpCo but will not be obliged to take any action to assist or enable OpCo to achieve Completion before the Date for Completion;
- (b) the time for the performance of TfNSW's or TfNSW's Representative's obligations will not be affected; and
- (c) other than in accordance with clause 19.12 (*Early Completion*), OpCo will not be entitled to make any Claim against TfNSW in relation to such acceleration (or any failure or inability by OpCo or TfNSW to accelerate).

17.5 Delays

- (a) If OpCo becomes aware of any matter (other than a Relief Event) which will, or is likely to, give rise to a delay in achieving Completion, OpCo must give TfNSW:
 - (i) a notice setting out detailed particulars of the delay; and
 - (ii) a detailed corrective action plan in accordance with clause 17.6 (*Corrective action plan*),

in each case as soon as reasonably practicable.

- (b) If TfNSW reasonably believes that OpCo will be delayed in achieving Completion, other than as a result of a Relief Event, TfNSW may give notice to that effect to OpCo, and OpCo must then give TfNSW a detailed corrective action plan in accordance with clause 17.6 (*Corrective action plan*).
- (c) OpCo must take all reasonable steps to:
 - (i) prevent the cause of any delay to the Delivery Activities; and
 - (ii) avoid or minimise the consequences or duration of any delay,

including any delay arising from a Relief Event or a Modification, provided OpCo is not required to incur any additional expense or apply any additional resources in order to comply with its obligations under this clause 17.5(c).

17.5A Unilateral extension

- (a) Where TfNSW considers that any act or omission of TfNSW or an Associate of TfNSW will, or is likely to, delay OpCo in a manner that will prevent OpCo from achieving Completion, whether or not OpCo has made, or is entitled to make, a claim for an extension of time under clause 27 (*Relief Events*), TfNSW's Representative may, at any time and from time to time by written notice to OpCo, unilaterally extend the Date for Completion (but the discretion must not be exercised as an alternative to the obligation of TfNSW to compensate OpCo in

respect of a Compensation Event in accordance with clause 26 (*Compensation Events*)).

- (b) Whether or not OpCo has made or is entitled to make a Claim for an extension of time under clause 27 (*Relief Events*), TfNSW's Representative may at any time and from time to time by written notice to OpCo unilaterally extend the Longstop Date.
- (c) The parties acknowledge and agree that:
 - (i) TfNSW is not required to exercise its discretion under this clause 17.5A (*Unilateral extension*) for the benefit of OpCo or at all; and
 - (ii) the exercise or failure to exercise the TfNSW's discretion under this clause 17.5A (*Unilateral extension*) is not capable of being the subject of a Dispute or difference or otherwise subject to review.
- (d) If TfNSW unilaterally extends the Date for Completion under this clause 17.5A (*Unilateral extension*), nothing in this deed restricts OpCo from achieving Completion earlier than the extended Date for Completion (provided that Completion occurs on or after the Date for Completion prior to such unilateral extension).
- (e) TfNSW's discretion under clauses 17.5A(a) and 17.5A(b) must not be used where the Independent Certifier would be otherwise required to extend the Date for Completion or the Longstop Date (or both) under clause 27 (*Relief Events*).

17.6 Corrective action plan

- (a) Each corrective action plan which OpCo must provide pursuant to clause 17.5 (*Delays*) must show how OpCo proposes to avoid, mitigate or minimise the consequences of the delay consistent with its obligations under clause 17.2 (*Dates for Completion*) and be accompanied by a proposed updated Delivery Program.
- (b) TfNSW may, within 20 Business Days of receipt of a corrective action plan reject the corrective action plan (with detailed reasons) if the corrective action plan does not comply with the requirements of this deed.
- (c) If TfNSW rejects the corrective action plan under clause 17.6(b), OpCo must amend and resubmit the corrective action plan to TfNSW, after which clause 17.6(b) and this clause 17.6(c) will re-apply.
- (d) OpCo must comply with any corrective action plan which is not rejected under clause 17.6(b).
- (e) OpCo will not be relieved of any liability or responsibility under this deed or otherwise at law arising out of or in connection with:
 - (i) any notice given by TfNSW under clause 17.6(b); or
 - (ii) the implementation of any corrective action plan.
- (f) OpCo will not be entitled to make any Claim against TfNSW arising out of or in connection with any notice by TfNSW under clause 17.6(b) or any Loss suffered or incurred by OpCo in preparing, or complying with, a corrective action plan.

17.7 Delivery Phase Progress Reports

In addition to OpCo's obligations under clauses 17.5 (*Delays*) and 17.6 (*Corrective action plan*), OpCo must give TfNSW a Delivery Phase Progress Report containing the details required by the SPR each month during the Delivery Phase.

18. TESTING AND COMMISSIONING

18.1 Testing and Commissioning Plan

OpCo must carry out the Tests in accordance with the Testing and Commissioning Plan.

18.2 Test Procedures

- (a) For each Test, OpCo must
 - (i) prepare a Test Procedure which complies with clause 2.3 of SPR Appendix 33 (*Testing and Commissioning*); and
 - (ii) submit the Test Procedure to TfNSW's Representative and the Independent Certifier at least 60 Business Days prior to the date on which OpCo proposes to conduct the Test.
- (b) TfNSW's Representative may (but is not obliged to):
 - (i) review any Test Procedure submitted under this clause 18.2 (*Test Procedures*); and
 - (ii) notify the Independent Certifier in writing (with a copy to OpCo) of any comments which TfNSW has in respect of the Test Procedure, within 15 Business Days of the date on which it is submitted to TfNSW's Representative.
- (c) The Independent Certifier must, within 20 Business Days of the date on which it receives the Test Procedure under this clause 18.2 (*Test Procedures*), review each Test Procedure (taking into account any comments received from TfNSW's Representative under clause 18.2(b)(ii)) and:
 - (i) if the Independent Certifier considers that the Test Procedure does not comply with the requirements of this deed, notify OpCo of the non-compliances (with detailed reasons); or
 - (ii) certify the Test Procedure by providing to OpCo and TfNSW's Representative a certificate in the form of Schedule C4 (*Independent Certifier test procedure certificate*).
- (d) If OpCo receives a notice in accordance with clause 18.2(c)(i) OpCo must submit a revised Test Procedure to the Independent Certifier whereupon the provisions of this clause 18.2 (*Test Procedures*) will reapply to the revised Test Procedure.
- (e) OpCo may not conduct a Test until the Test Procedure for that Test has been certified by the Independent Certifier.
- (f) OpCo may update any Test Procedure whereupon this clause 18.2 (*Test Procedures*) will reapply.

18.3 Notice of Tests

- (a) OpCo must give TfNSW's Representative and the Independent Certifier at least 20 Business Days' notice of the date, time and place of each Test.
- (b) OpCo must give TfNSW's Representative and the Independent Certifier:
 - (i) a Test Program that specifies the date, time and place of each Test to be conducted for the following 25 Business Day period (**Test Program**); and
 - (ii) an updated Test Program each week during the period that OpCo is carrying out Tests.
- (c) Unless otherwise agreed by TfNSW's Representative, OpCo will be deemed to have failed a Test if it fails to give TfNSW and the Independent Certifier the required notice of when the Test will be conducted.

18.4 Conduct of Tests

- (a) OpCo must conduct all Tests in accordance with:
 - (i) the relevant Test Procedure, as certified by the Independent Certifier in accordance with clause 18.2 (*Test Procedures*); and
 - (ii) the other requirements of this deed.
- (b) OpCo must ensure that the conduct of Tests do not affect the Contract Service Level Requirements for the IWLR during the IWLR Operations Phase.
- (c) TfNSW and the Independent Certifier may (but are not obliged to) attend and witness the conduct of all Tests.

18.5 Test Reports

- (a) OpCo must, within 10 Business Days of carrying out a Test, submit a Test Report to TfNSW's Representative and the Independent Certifier for that Test, irrespective of the result of the Test.
- (b) Each Test Report must comply with and be submitted in accordance with the requirements of SPR Appendix 33 (*Testing and Commissioning*).
- (c) The Independent Certifier must, within 10 Business Days of the date on which it receives the Test Report:
 - (i) certify that the Test has been passed in accordance with the Test Procedure by issuing a certificate in the form of Schedule C5 (*Independent Certifier Test result certificate*); or
 - (ii) notify OpCo that:
 - (A) the Test has been failed; and/or
 - (B) the Test Report does not comply with the requirements of this deed.

18.6 Failure of Test

- (a) If the Independent Certifier notifies OpCo that a Test has been failed, OpCo must:

- (i) carry out all necessary rectification work; and
 - (ii) when it believes it has completed all necessary rectification work, give a further notice in accordance with clause 18.3(a) whereupon clauses 18.4 (*Conduct of Tests*) and 18.5 (*Test Reports*) will re-apply.
- (b) If OpCo gives a further notice under clause 18.6(a)(ii), OpCo must give TfNSW's Representative and the Independent Certifier at least 3 Business Days' notice of the date, time and place of the Test.

18.7 **Non-compliant Test Report**

If the Independent Certifier notifies OpCo that a Test Report is non-compliant, OpCo must amend and re-submit the Test Report whereupon clause 18.5 (*Test Reports*) will re-apply.

18.8 **Additional testing by TfNSW**

- (a) TfNSW's Representative may carry out additional tests in respect of the SLR Works and the SLR. TfNSW's Representative must give OpCo reasonable prior notice of these tests (being at least 24 hours). OpCo must provide all reasonable assistance required by TfNSW's Representative and the Independent Certifier in relation to these tests.
- (b) TfNSW's Representative may, in relation to these tests, direct that any part of the SLR Works not be covered up or made inaccessible without TfNSW's Representative's prior written approval.
- (c) If TfNSW's Representative requires additional tests under this clause 18.8 (*Additional testing by TfNSW*) within 1 month prior to the Date for Completion (or if the Date for Completion has occurred, the anticipated Date of Completion by reference to the current Delivery Program) then if:
 - (i) the additional tests, or related direction of TfNSW's Representative under clause 18.8(b), give rise to a delay in achieving Completion by the Date for Completion (or if the Date for Completion has passed, a delay in achieving Completion); and
 - (ii) the additional tests do not demonstrate any non-compliance with the requirements of this deed (excluding any Minor Defects),

then TfNSW's Representative shall issue a Modification Order under clause 29 (*TfNSW initiated Modifications*) in respect of those additional tests. This clause 18.8(c) does not apply to additional tests required under the Rail Safety National Law, Rail Safety Regulations or any Accreditation held by OpCo or its Associates.

19. **FIRST PASSENGER SERVICE, COMPLETION, FULL OPERATIONS, FINAL COMPLETION AND EARLY COMPLETION**

19.1 **Requirements for First Passenger Service**

The following requirements must be satisfied before OpCo provides the First Passenger Service:

- (a) **(SLR Works are complete):** the SLR Works (excluding the Additional Required CSELRVs and Option 1A CSELRVs) are complete and comply with the requirements of this deed, except for Minor Defects;

- (b) **(Third Party Works)**: OpCo has:
- (i) completed all Third Party Works in accordance with clauses 19.5 (*Local Area Works*), 19.6 (*Utility Service Works*) and 19.7 (*Property Works*), except for Minor Defects; and
 - (ii) provided TfNSW's Representative with the written notices, statements or certificates (as the case may be) referred to in clause 19.6(a) and 19.7(a),
- and the Independent Certifier has provided TfNSW's Representative with the certificates referred to in clause 19.5(d);
- (c) **(Conditions of Planning Approvals)**: OpCo has, in accordance with the requirements of this deed:
- (i) fulfilled all conditions of the Planning Approvals and implemented all mitigation measures which OpCo must fulfil or implement prior to commencement of operations; and
 - (ii) complied with all obligations imposed on OpCo in respect of any conditions of the Planning Approvals and mitigation measures which must be fulfilled or implemented prior to commencement of operations;
- (d) **(Approvals)**: OpCo has provided the Independent Certifier and TfNSW's Representative with copies of all Approvals which this deed requires OpCo to obtain (or contemplates OpCo will obtain) prior to First Passenger Service (including any variation required to OpCo's Accreditation);
- (e) **(Certifications)**: OpCo has provided the Independent Certifier and TfNSW's Representative with a certificate in the form of Schedule C7 (*Form of Certificate for First Passenger Service*):
- (i) from the D&C Contractor certifying that the SLR Works (excluding the Additional Required CSELRVs and Option 1A CSELRVs) have been constructed in accordance with the Design Documentation which OpCo is entitled to use for construction purposes under clause 13.9(a), except for Minor Defects;
 - (ii) from OpCo certifying that the SLR Works (excluding the Additional Required CSELRVs and Option 1A CSELRVs) comply with all the requirements of this deed (including the SPR), except for Minor Defects and have been constructed in accordance with the Design Documentation which OpCo was entitled to use for construction purposes (but without prejudice to clause 13.9(ab)); and
 - (iii) from the O&M Contractor certifying that the SLR Works (excluding the Additional Required CSELRVs and Option 1A CSELRVs) are acceptable to the O&M Contractor and will enable it to comply with its obligations under the O&M Contract;
- (f) **(Project Plans)** each of the following Project Plans have been submitted to TfNSW's Representative under clause 8.5 (*Review of Project Plans*) and the time specified in clause 8.5(a) has expired without TfNSW's Representative having issued a notice under that clause during that time:
- (i) Incident Management Plan;

- (ii) Operations Plan; and
 - (iii) Security Management Plan,
- covering the Full Operations Phase;
- (g) **(Final Performance Test)**: the conditions precedent to the Final Performance Tests set out in section 3.8.3(a) of SPR Appendix 33 (*Testing and Commissioning*) have been satisfied, except for conditions precedent which cannot be satisfied due to a Minor Defect;
 - (h) **(Asset Management System)**: OpCo has updated the Asset Management System to incorporate the CSELR;
 - (i) **(Asset Information System)**: OpCo has implemented the Asset Information System for the CSELR that complies with the requirements of SPR Appendix 40 (*Asset Information Management Systems*); and
 - (j) **(Everything else)**: OpCo has done everything else which this deed (including the SPR) requires it to have done as a condition precedent or precondition to First Passenger Service.

19.2 Notice of First Passenger Service

OpCo must give the Independent Certifier:

- (a) at least 20 Business Days' notice of the date on which it expects to satisfy the requirements for the First Passenger Service referred to in clause 19.1 (*Requirements for First Passenger Service*); and
- (b) a written request for a Certificate of Readiness for First Passenger Service when it believes it has satisfied the requirements for the First Passenger Service referred to in clause 19.1 (*Requirements for First Passenger Service*) (which request must not be given earlier than 5 Business Days after the date on which OpCo gives notice under clause 19.2(a)).

19.3 Certification of Readiness for First Passenger Service

- (a) Within 5 Business Days of receipt of the request under clause 19.2(b), the Independent Certifier must either:
 - (i) if the requirements for the First Passenger Service referred to in clause 19.1 (*Requirements for First Passenger Service*) have been satisfied, issue a Certificate of Readiness for First Passenger Service to OpCo and TfNSW; or
 - (ii) if the requirements for First Passenger Service have not been satisfied, issue a notice to OpCo and TfNSW which:
 - (A) lists the items which remain to be completed to satisfy the requirements for First Passenger Service; or
 - (B) states that OpCo is so far from satisfying the requirements for First Passenger Service that it is not practicable to provide the list referred to in clause 19.3(a)(ii)(A).
- (b) If the Independent Certifier issues a notice under clause 19.3(a)(ii), OpCo must continue with the Delivery Activities to satisfy the requirements for the First

Passenger Service and clause 19.2 (*Notice of First Passenger Service*) and this clause 19.3 (*Certification of Readiness for First Passenger Service*) will reapply.

19.4 Requirements for Completion

Completion will be achieved when:

- (a) **(Final Performance Test passed)**: the Independent Certifier has certified that the SLR Works (excluding the Additional Required CSELRVs and Option 1A CSELRVs) have passed the Final Performance Test;
- (b) **(Certifications)**: OpCo has provided the Independent Certifier and TfNSW's Representative with a certificate in the form of Schedule C8 (*Form of Certification for Completion*):
 - (i) from the D&C Contractor re-certifying that the SLR Works (excluding the Additional Required CSELRVs and Option 1A CSELRVs) have been constructed in accordance with the Design Documentation which OpCo is entitled to use for construction purposes under clause 13.9(a), except for Minor Defects;
 - (ii) from OpCo re-certifying that the SLR Works (excluding the Additional Required CSELRVs and Option 1A CSELRVs) comply with all the requirements of this deed (including the SPR), except for Minor Defects; and
 - (iii) from the O&M Contractor re-certifying that the SLR Works (excluding the Additional Required CSELRVs and Option 1A CSELRVs) are acceptable from an operational perspective to enable it to meet its obligations under the O&M Contract;
- (c) **(CSELRV tests)**: the Independent Certifier has certified that not less than 25 CSELRVs have passed the CSELRV Completion Tests;
- (d) **(Transfer of Moveable Assets)**: OpCo has ensured that ownership of Moveable Assets (excluding the Additional Required CSELRVs and Option 1A CSELRVs) has transferred to TfNSW in accordance with clause 51.2 (*Moveable Assets*); and
- (e) **(Everything else)**: OpCo has done everything else which this deed requires it to have done as a condition precedent or precondition to Completion.

19.4A Delivery of CSELRVs by Completion

- (a) By the Date for Completion (but not as a condition to Completion being achieved pursuant to clause 19.4 (*Requirements for Completion*)), OpCo must:
 - (i) deliver 5 CSELRVs (the **Additional Required CSELRVs**) in addition to the number of CSELRVs required to achieve Completion (which must not be less than 25);
 - (ii) if Pre-Agreed Option 1A has been exercised by TfNSW in accordance with clause 31 (*Pre-Agreed Options*) and Schedule D5 (*Pre-Agreed Options*), deliver the Option 1A CSELRVs; and
 - (iii) achieve the Additional CSELRV Acceptance Requirements for each Additional Required CSELRV and, if Pre-Agreed Option 1A has been exercised by TfNSW in accordance with clause 31 (*Pre-Agreed Options*) and Schedule D5 (*Pre-Agreed Options*), each Option 1A CSELRV.

- (b) The Additional CSELRV Acceptance Requirements in respect of each Additional Required CSELRV and, if Pre-Agreed Option 1A has been exercised, each Option 1A CSELRV will be achieved when:
- (i) **(CSELRV Works are complete)**: the CSELRV are complete and comply with the terms of this deed, except for Minor Defects;
 - (ii) **(Certification)**: OpCo has provided the Independent Certifier and TfNSW's Representative with a certificate in the form of Schedule C20 (*Form of Certificate for Additional CSELRV Acceptance Requirements*):
 - (A) from the D&C Contractor certifying that the CSELRV has been constructed in accordance with the Design Documentation which OpCo is entitled to use for CSELRV construction purposes under clause 13.9(a)(i), except for Minor Defects;
 - (B) from OpCo certifying that the CSELRV complies with all the requirements of this deed (including the SPR), except for Minor Defects and has been constructed in accordance with the Design Documentation which OpCo was entitled to use for CSELRV construction purposes); and
 - (C) from the O&M Contractor certifying that the CSELRV is acceptable to the O&M Contractor and will enable it to comply with its obligations under the O&M Contract;
 - (iii) **(CSELRV Completion Tests)**: the Independent Certifier has certified that the CSELRV has passed the CSELRV Completion Tests; and
 - (iv) **(Ownership of Additional Required CSELRVs)**: OpCo has ensured that ownership of the Additional Required CSELRVs and Option 1A CSELRVs has transferred to TfNSW in accordance with clause 51.2 (*Moveable Assets*).

19.5 Local Area Works

- (a) **(Area by area assessment)**: The completion of the Local Area Works will be assessed on an area by area basis.
- (b) **(Notice and joint inspection)**: When OpCo considers that a discrete part of the Local Area Works is complete, it must notify the Independent Certifier in writing and TfNSW's Representative, the Independent Certifier and the representative of any relevant Authority must jointly inspect the relevant Local Area Works at a mutually convenient time.
- (c) **(Independent Certifier to determine completion)**: Following the joint inspection under clause 19.5(b) and subject to clause 19.5(d), TfNSW and OpCo acknowledge that the Independent Certifier will determine whether the discrete part of the Local Area Works has been completed in accordance with this deed and will, within 5 Business Days of the date of the inspection:
 - (i) if the discrete part is complete, execute and provide a certificate in the form of Schedule C9 (*Certificate of Local Area Works Completion*) to TfNSW's Representative and OpCo stating the date on which OpCo has completed the discrete part of the Local Area Works in accordance with this deed, which, subject to clause 19.5(e), will be the relevant date for the purposes of clause 19.5(g)(i); or

- (ii) if the discrete part is not complete, notify OpCo and TfNSW in writing of the items which remain to be completed (after which the procedure in clause 19.5(b) and this clause 19.5(c) will reapply).
- (d) **(Preconditions to completion):** Each discrete part of the Local Area Works will not be regarded as complete unless the Independent Certifier has executed and provided to TfNSW's Representative a certificate in the form of Schedule C9 (*Certificate of Local Area Works Completion*) with respect to the discrete part of the Local Area Works.
- (e) **(Preconditions to First Passenger Service):** It is a condition precedent to First Passenger Service that the certificates required under clause 19.5(d) have been provided to TfNSW's Representative for each discrete part of the Local Area Works.
- (f) **(No approval):** The acceptance by TfNSW's Representative of a certificate, notice and/or statement provided by the Independent Certifier under clause 19.5(d) is not approval by TfNSW of OpCo's performance of its obligations with respect to the discrete part of the Local Area Works.
- (g) **(Defects Correction Period):** Each discrete part of the Local Area Works has:
- (i) a Defects Correction Period of 12 months; or
 - (ii) if there is a longer period stated in a Third Party Agreement for that part of the Local Area Works, the longer period,
- which begins when the relevant works are complete (being the date notified under clause 19.5(c)(i)); and
- (iii) a further Defects Correction Period of 12 months in respect of any work the subject of a Direction under clause 19.5(h) (relating to the discrete part of the Local Area Works) during the Defects Correction Period, which begins on the date of the correction of the Defect (or part of it) or completion of the Modification,
- provided that the aggregate of the initial Defects Correction Period and any further Defects Correction Period for each discrete part of the Local Area Works will not exceed 24 months, other than where there is a longer period stated in a Third Party Agreement for that part of the Local Area Works.
- (h) **(Correction of Defects):** If, during the relevant Defects Correction Period, TfNSW considers (or is notified by the relevant Authority) that there is a Defect in respect of any Local Area Works, TfNSW may give OpCo a Direction (with a copy to the relevant Authority) identifying the Defect and doing one or more of the following:
- (i) requiring OpCo to correct the Defect or a part of it, specifying the reasonable time within which this must occur;
 - (ii) requiring OpCo to carry out a Modification to overcome the Defect or a part of it, at OpCo's cost, specifying the reasonable time within which this must be carried out; or
 - (iii) advising OpCo that TfNSW will accept the work or part of it despite the Defect.

19.6 Utility Service Works

- (a) **(Preconditions to completion):** Each discrete part of the Utility Services Works will not be regarded as complete unless OpCo has provided to TfNSW's Representative:
- (i) a written notice from the Authority which has jurisdiction over the discrete part stating that the Authority is satisfied that the discrete part is complete; or
 - (ii) if OpCo is unable to obtain a notice required under clause 19.6(a)(i) despite having used its best endeavours to do so:
 - (A) a statement from OpCo to the effect that:
 - (aa) the discrete part of the Utility Services Works is complete and OpCo has notified the relevant Authority of this matter; and
 - (bb) the relevant Authority has failed or refused to provide the written notice required under clause 19.6(a)(i) despite being given 15 Business Days to provide the notice requested by OpCo; and
 - (B) a written confirmation from the Independent Certifier that the Utility Services Works are complete.
- (b) **(Precondition to First Passenger Service):** It is a condition precedent to First Passenger Service that the written notice or statement required under clause 19.6(a) has been provided to TfNSW's Representative for each discrete part of the Utility Service Works.
- (c) **(No approval):** The acceptance by TfNSW's Representative of a notice or statement provided by OpCo under clause 19.6(a) is not approval by TfNSW of OpCo's performance of its obligations with respect to the discrete part of the Utility Services Works.
- (d) **(Defects Correction Period):** Each discrete part of the Utility Service Works has:
- (i) a Defects Correction Period of 24 months; or
 - (ii) if there is a longer period stated in a Third Party Agreement for that part of the Utility Service Works, the longer period,
- which begins when the written notice or statement required under clause 19.6(a) has been provided to TfNSW's Representative for that discrete part; and
- (iii) a further Defects Correction Period of 12 months in respect of any work the subject of a Direction under clause 19.6(e) (relating to the discrete part of the Utility Service Works) during the Defects Correction Period, which begins:
 - (A) when the relevant Authority gives written notice that the Defect (or the part of it) has been corrected and TfNSW's Representative has been provided with a copy of the notice; or

- (B) if the relevant Authority fails or refuses to give the notice required under clause 19.6(d)(iii)(A), when TfNSW's Representative determines that the Defect (or the part of it) has been corrected or the Modification completed,

provided that the total Defects Correction Period as extended under this clause 19.6(d) will not exceed the longer of:

- (iv) 36 months; and
 - (v) the period ending 24 months after the Date of Completion.
- (e) **(Correction of Defects):** If, during the relevant Defects Correction Period, TfNSW considers (or is notified by the relevant Utility Service Authority) that there is a Defect in respect of any Utility Service Work, TfNSW may give OpCo a Direction (with a copy to the relevant Utility Service Authority) identifying the Defect and doing one or more of the following:
- (i) requiring OpCo to correct the Defect or a part of it, specifying the reasonable time within which this must occur;
 - (ii) requiring OpCo to carry out a Modification to overcome the Defect or a part of it, at OpCo's cost, specifying the reasonable time within which this must be carried out; or
 - (iii) advising OpCo that TfNSW will accept the work or part of it despite the Defect.

19.7 Property Works

- (a) **(Preconditions to completion):** Each discrete part of the Property Works will not be regarded as complete unless OpCo has provided to TfNSW's Representative:
- (i) a certificate in the form of Schedule C10 (*Property Owners Certificate*), duly executed by the owner or owners of any part of the Extra Land; or
 - (ii) a statement signed by OpCo to the effect that such owner or owners have failed or refused to sign a certificate in the form of Schedule C10 (*Property Owners Certificate*) within 15 Business Days of it being provided by OpCo to the owner or owners following completion of the Property Works including the work described in clause 12.11(f); and
 - (iii) a written confirmation from the Independent Certifier that the Property Works are complete.
- (b) **(Precondition to First Passenger Service):** It is a condition precedent to First Passenger Service that the certificate or statement required under clause 19.7(a) has been provided to TfNSW's Representative for each discrete part of the Property Works.
- (c) **(Indemnity):** OpCo must indemnify TfNSW against any Loss suffered by TfNSW arising out of or in any way in connection with a claim by the owner or owners of any part of Extra Land where:
- (i) such owner or owners have not duly signed a certificate in the form of Schedule C10 (*Property Owners Certificate*); and

- (ii) the claim arises out of or in any way in connection with the carrying out of the Property Works.
- (d) **(No approval)**: The acceptance by TfNSW's Representative of a certificate or statement provided by OpCo under clause 19.7(a) is not approval by TfNSW of OpCo's performance of its obligations with respect to the discrete part of the Property Works.
- (e) **(Defects Correction Period)**: Each discrete part of the Property Works has:
 - (i) a Defects Correction Period of:
 - (A) 12 months; or
 - (B) if there is a longer period stated in a Third Party Agreement for that part of the Property Works, the longer period,

which begins when the certificate or statement required under clause 19.7(a) has been provided to TfNSW's Representative for that discrete part; and
 - (ii) a further Defects Correction Period of 12 months in respect of any work the subject of a Direction under clause 19.7(f) (relating to the discrete part of the Property Works) during the Defects Correction Period, which begins on the date of correction of the Defect (or the part of it) or completion of the Modification,

provided that the aggregate of the initial Defects Correction Period and any further Defects Correction Period for each discrete part of the Property Works will not exceed 24 months, other than where there is a longer period stated in a Third Party Agreement for that part of the Property Works.

- (f) **(Correction of Defects)**: If, during the relevant Defects Correction Period, TfNSW considers (or is notified by the relevant property owner) that there is a Defect in respect of any Property Works, TfNSW may give OpCo a Direction (with a copy to the relevant Authority) identifying the Defect and doing one or more of the following:
 - (i) requiring OpCo to correct the Defect or a part of it, specifying the reasonable time within which this must occur;
 - (ii) requiring OpCo to carry out a Modification to overcome the Defect or a part of it, at OpCo's cost, specifying the reasonable time within which this must be carried out; or
 - (iii) advising OpCo that TfNSW will accept the work or part of it despite the Defect.

19.8 Notice of Completion

OpCo must give the Independent Certifier:

- (a) at least 5 Business Days' notice of the date on which it expects to achieve Completion; and

- (b) a written request for a Certificate of Completion when it believes Completion has been achieved (which request must not be given earlier than 5 Business Days after the date on which OpCo gives notice under clause 19.8(a)).

19.9 Certification of Completion

- (a) Within 5 Business Day of receipt of the request under clause 19.8(b), the Independent Certifier must either:
 - (i) if Completion has been achieved, issue a Certificate of Completion to OpCo and TfNSW:
 - (A) stating as the Date of Completion, the date on which Completion was achieved; and
 - (B) specifying any Minor Defects; or
 - (ii) if Completion has not been achieved, issue a notice to OpCo and TfNSW which:
 - (A) lists the items which remain to be completed before Completion; or
 - (B) states that the SLR Works are so far from achieving Completion that it is not practicable to provide the list referred to in clause 19.9(a)(ii)(A).
- (b) If the Independent Certifier issues a notice under clause 19.9(a)(ii), OpCo must continue with the Delivery Activities to achieve Completion and clause 19.8 (*Notice of Completion*) and this clause 19.9 (*Certificate of Completion*) will reapply.
- (c) OpCo will commence Full Operations on the Date of Completion.

19.9A Notice of Additional CSELRV Acceptance

OpCo must give the Independent Certifier:

- (a) at least 5 Business Days' notice of the date on which it expects to achieve the Additional CSELRV Acceptance Requirements in respect of an Additional Required CSELRV or an Option 1A CSELRV; and
- (b) a written request for a Certificate of Additional CSELRV Acceptance when it believes the Additional CSELRV Acceptance Requirements have been achieved in respect of an Additional Required CSELRV or an Option 1A CSELRV (which request must not be given earlier than 5 Business Days after the date on which OpCo gives notice under clause 19.9A(a)).

19.9B Certification of Additional CSELRV Acceptance

- (a) Within 5 Business Day of receipt of the request under clause 19.9A(b), the Independent Certifier must either:
 - (i) if the Additional CSELRV Acceptance Requirements have been achieved in respect of the CSELRV, issue a Certificate of Additional CSELRV Acceptance to OpCo and TfNSW:
 - (A) stating the date on which Additional CSELRV Acceptance Requirements were achieved in respect of the CSELRV; and

- (B) specifying any Minor Defects; or
- (ii) if the Additional CSELRV Acceptance Requirements have not been achieved, issue a notice to OpCo and TfNSW which:
 - (A) lists the items which remain to be completed before the Additional CSELRV Acceptance Requirements are achieved; or
 - (B) states that the Additional CSELRV Acceptance Requirements are so far from being achieved that it is not practicable to provide the list referred to in clause 19.9B(a)(ii)(a).
- (b) If the Independent Certifier issues a notice under clause 19.9B(a)(ii), OpCo must continue with the Delivery Activities to achieve the Additional CSELRV Acceptance Requirements in respect of the CSELRV and clause 19.9A (*Notice of Additional CSELRV Acceptance*) and this clause 19.1B (*Certificate of Additional CSELRV Acceptance*) will reapply.
- (c) If the Independent Certifier issues a Certificate of Additional CSELRV Acceptance to OpCo and TfNSW which specifies any Minor Defects in respect of a CSELRV then OpCo must remedy the Minor Defect as soon as reasonably practicable. If in TfNSW's opinion (acting reasonably) OpCo does not remedy the Minor Defect then it may issue a notice to OpCo requiring it to remedy the Minor Defect and specifying the time within which this must occur.

19.10 Final Completion

- (a) **(OpCo to achieve Final Completion):** Immediately after the Date of Completion, OpCo must expeditiously and diligently progress the Delivery Activities required to achieve Final Completion.
- (b) **(Requirements for Final Completion):** Final Completion will be achieved when:
 - (i) **(Minor Defects):** the Minor Defects specified in the Certificate of Completion have been corrected or waived by TfNSW;
 - (ii) **(Extra Land):** OpCo has rehabilitated any Extra Land, and provided TfNSW's Representative with a document in relation to the Extra Land as required by clause 12.11(b);
 - (iii) **(Temporary Areas):** OpCo has reinstated all Temporary Areas in accordance with clause 12.13 (*Temporary Areas*);
 - (iv) **(Intellectual Property report):** OpCo has provided TfNSW with a current copy of the IP Register updated to the end of the Delivery Phase in accordance with Schedule A5 (*Intellectual Property*);
 - (v) **(Sustainability):** OpCo has demonstrated that it has complied with the sustainability requirements under clause 9.22 (*Sustainability*); and
 - (vi) **(Everything else):** OpCo has done everything else which this deed (including the SPR) requires OpCo to have done as a condition precedent or precondition to Final Completion.

- (c) **(Request for Final Completion):** When OpCo considers that Final Completion has been achieved, OpCo must:
 - (i) notify the Independent Certifier of its opinion; and
 - (ii) request the Independent Certifier to issue a Certificate of Final Completion.
- (d) **(Certification of Final Completion):** Within 15 Business Days of OpCo's request under clause 19.10(c), the Independent Certifier must either:
 - (i) if Final Completion has been achieved, issue to TfNSW and OpCo a Certificate of Final Completion stating as the Date of Final Completion the date on which Final Completion was achieved; or
 - (ii) if Final Completion has not been achieved, issue a notice to the TfNSW and OpCo listing the work remaining to be performed to achieve Final Completion.
- (e) **(If Final Completion not achieved):** If the Independent Certifier issues a notice under clause 19.10(d)(ii) OpCo must continue with the Delivery Activities to achieve Final Completion and clause 19.10(d) will reapply.
- (f) **(No restriction):** The Independent Certifier, in making a determination as to whether Final Completion has been achieved:
 - (i) will not be restricted by any:
 - (A) certification, notice, list or opinion already provided under this deed; or
 - (B) obligation of OpCo under this deed to correct any Defects which may be discovered after Final Completion; and
 - (ii) will be entitled to raise any items of work as a ground for determining that Final Completion has not been achieved.

19.11 Effect of Certificates

- (a) The Independent Certifier's certification as set out in a Certificate of Readiness for First Passenger Service is final and binding on the parties for the purposes only of establishing that the requirements for First Passenger Service have been satisfied.
- (b) The Independent Certifier's certification as set out in a Certificate of Completion is final and binding on the parties for the purposes only of establishing that Completion has occurred and the date on which it occurred.
- (c) The Independent Certifier's certification as set out in the Certificate of Additional CSELRV Acceptance is final and binding on the parties for the purposes only of establishing that the Additional CSELRV Acceptance Requirements have been achieved in respect of an Additional Required CSELRV or an Option 1A CSELRV, as relevant and the date on which it occurred.
- (d) The Independent Certifier's certification as set out in a Certificate of Final Completion is final and binding on the parties for the purposes only of establishing that Final Completion has occurred and the date on which it occurred.

- (e) Subject to clauses 19.11(a), 19.11(b), 19.11(c) and 19.11(d), a certification of the Independent Certifier will not:
 - (i) constitute an approval by TfNSW of OpCo's performance of its obligations under this deed;
 - (ii) be taken as an admission or evidence that the SLR Works comply with this deed; or
 - (iii) prejudice any rights or powers of TfNSW under this deed or otherwise according to law, including any rights which TfNSW may have in respect of Defects.

19.12 Early Completion

- (a) OpCo must, as part of its Delivery Phase Progress Report identify as soon as reasonably practicable any Proposed Early Completion Date.
- (b) OpCo must not achieve Completion earlier than the Original Date for Completion unless:
 - (i) OpCo has provided TfNSW's Representative with at least 9 months written notice (or another period as agreed by the parties) that OpCo anticipates it will achieve Completion on the Proposed Early Completion Date;
 - (ii) if the Proposed Early Completion Date is in a different financial year to the Original Date for Completion, OpCo has provided TfNSW with a Proposed Early Completion Notice by 1 March of the financial year prior to the financial year the Proposed Early Completion Date falls in; and
 - (iii) TfNSW has provided OpCo with its written consent that OpCo is permitted to achieve Completion on the Proposed Early Completion Date.
- (c) Provided OpCo has complied with the requirements of clauses 19.12(b)(i) and clause 19.12(b)(ii), and for the purpose of clause 19.12(b)(iii), if TfNSW has not provided OpCo with its written consent to the Proposed Early Completion Notice within 30 Business Days of the later of:
 - (i) receiving OpCo's notice under clause 19.12(b)(i); and
 - (ii) if applicable, receiving OpCo's notice under clause 19.12(b)(ii),

TfNSW will be deemed to have consented to OpCo's Proposed Early Completion Date.
- (d) Subject to clause 19.12(b), if OpCo achieves Completion prior to the Date for Completion, OpCo must commence Full Operations on the date that is the later of:
 - (i) the Proposed Early Completion Date; and
 - (ii) the Date of Completion.
- (e) TfNSW may assist OpCo, but will not be obliged to take any action to assist or enable OpCo, to achieve early Completion.

- (f) Except as set out in Schedule D1 (*Service Payment Regime*), OpCo will not be entitled to any payment or make any Claim against TfNSW in relation to early Completion.

19.13 Fair Wear and Tear

For the avoidance of doubt OpCo's obligation to rectify Defects pursuant to clause 19.5(g), 19.6(d) or 19.7(e), does not include rectifying fair wear or tear after those works have been handed over to the relevant owner or Authority.

19.14 Liquidated Damages in respect of Additional Required CSELRVs and Option 1A CSELRVs

- (a) If the Additional CSELRV Acceptance Requirements in respect of an Additional Required CSELRV or an Option 1A CSELRV (if Pre-Agreed Option 1A has been exercised by TfNSW) have not been achieved prior to the Date of Completion then OpCo must pay liquidated damages in respect of that CSELRV, calculated at the rate of ██████ per day, during the period commencing on the day after the Date of Completion and ending on the date on which the Additional CSELRV Acceptance Requirements for that CSELRV are satisfied as stated in the Certificate of Additional CSELRV Acceptance issued by the Independent Certifier, or the date on which this deed terminates, whichever occurs earlier. The parties acknowledge that the liquidated damages apply on a per CSELRV basis and that where more than one Additional Required CSELRV or Option 1A CSELRV has not satisfied the Additional CSELRV Acceptance Requirements by Completion OpCo's liability to pay liquidated damages will apply in respect of each CSELRV.
- (b) The parties:
- (i) agree that the amount of liquidated damages referred to in clause 19.14(a) constitutes a reasonable and good faith pre-estimate of the anticipated or actual loss that will be incurred by TfNSW if the relevant CSELRV has not passed the Additional CSELRV Acceptance Requirements on or before Completion;
 - (ii) wish to avoid the difficulties of proving damages in connection with such failure and therefore agree that the liquidated damages payable by OpCo in accordance with clause 19.14(a) are reasonable and do not constitute nor are they intended to be a penalty;
 - (iii) agree that the maximum liability of OpCo for liquidated damages payable in respect of a CSELRV under clause 19.14(a) will be capped at ██████ of the contract price of each CSELRV on a per CSELRV basis;
 - (iv) agree that the amount of liquidated damages payable under clause 19.14(a) will be a debt due from OpCo to TfNSW; and
 - (v) without prejudice to TfNSW's right to terminate this deed pursuant to clause 43.1(j), agree that the liquidated damages payable by OpCo in accordance with clause 19.14(a) will be TfNSW's sole remedy in respect of any delay in the delivery of a CSELRV by the Date of Completion.
- (c) Subject to clauses 26 (*Compensation Events*) and 27 (*Relief Events*), OpCo agrees that its obligation to pay liquidated damages under clause 19.14(a) will not be affected by any circumstance, including:

- (i) any set off, counter-claim or other right which OpCo may have against TfNSW; or
- (ii) any other circumstance, happening or event whatsoever, whether or not unforeseen or similar to the foregoing,

including the occurrence of a Relief Event (unless such Relief Event is also a Compensation Event or an Alstom Relief Event).

- (d) For the avoidance of doubt OpCo's liability for, or payment of, liquidated damages, does not limit or otherwise reduce its obligation to achieve the Additional CSELRV Acceptance Requirements in respect of relevant CSELRV.
- (e) Without in any way limiting clause 19.4A (*Delivery of CSELRVs by Completion*) if clause 19.14(a) or any part thereof is found to be void, invalid or inoperative, so as to disentitle TfNSW from recovering any liquidated damages referred to in that paragraph, TfNSW remains entitled to recover damages in connection with any failure by OpCo to satisfy the Additional CSELRV Acceptance Requirements for the relevant CSELRV by Completion, provided that the damages will be limited (daily) to the liquidated damages TfNSW would otherwise have been entitled to recover from OpCo in respect of that CSELRV.

19.15 Additional Required CSELRVs and Option 1A CSELRVs

OpCo acknowledges and agrees that:

- (a) the Additional Required CSELRVs and any Option 1A CSELRVs (if Pre-Agreed Option 1A has been exercised) are required to be available to provide additional services requested by TfNSW under this deed, including Service Changes; and
- (b) if OpCo requires more than 25 CSELRVs to achieve Completion under clause 19.4 (*Requirements for Completion*) the provision of such additional CSELRVs shall be at the risk and cost of OpCo and do not limit OpCo's obligations to provide the Additional Required CSELRVs and the Option 1A CSELRVs (if Pre-Agreed Option 1A has been exercised) and meet the Additional CSELRV Acceptance Requirements in respect of those CSELRVs.

19.16 Civils and Systems Completion and Completion bonuses

- (a) TfNSW agrees to pay OpCo:
 - (i) a bonus of [REDACTED] if OpCo achieves Civils and Systems Completion no later than [REDACTED];
 - (ii) a bonus of [REDACTED] if OpCo achieves Completion no later than [REDACTED]; and
 - (iii) only where OpCo is not entitled to the bonus under clause 19.16(a)(ii), a bonus of [REDACTED] if OpCo achieves Completion no later than [REDACTED],

provided that, and for the avoidance of doubt, the dates set out in this clause 19.16(a) are fixed and cannot be extended in accordance with any terms of this deed.

- (b) For the purpose of clause 19.16(a)(i) only, Civils and Systems Completion will be achieved when:

- (i) **(Civils and Systems Works are complete)**: the Civils and Systems Works are complete and comply with the requirements of this deed, except for Minor Defects and minor finishes; and
- (ii) **(Certifications)**: the Independent Certifier has issued to TfNSW and OpCo a Certificate of Civils and Systems Completion:
 - (A) certifying that the Civils and Systems Works are complete;
 - (B) stating the date on which completion of the Civils and Systems Works was achieved; and
 - (C) specifying any Minor Defects and minor finishes.

20. OPERATIONS

20.1 Operations Activities

OpCo must:

- (a) perform the Operations Activities during the Operations Phase;
- (b) perform the Operations Activities in accordance with the SPR and the other requirements of this deed;
- (c) perform the Operations Activities:
 - (i) in a professional, timely, safe and environmentally responsible manner;
 - (ii) in accordance with Good Industry Practice; and
 - (iii) so that the SLR remains fit for its purposes at all times during the Term; and
- (d) report on the Operations Activities in accordance with clause 46.3(b).

20.2 Required Services

OpCo must provide the Required Services from the Date of Revenue Service.

20.3 Operations Activities Review

- (a) Either party may request that the other party participates in a review of the Operations Activities at any time (**Operations Activities Review**).
- (b) OpCo and TfNSW must cooperate with each other in any Operations Activities Review.
- (c) Factors that may be addressed in an Operations Activities Review include:
 - (i) data generated from Customer feedback records;
 - (ii) measures to improve the reliability of the Services;
 - (iii) measures to reflect patronage demand;
 - (iv) measures to improve modal coordination;

- (v) measures to address seasonality issues particular to the provision of the Services;
 - (vi) measures to address material changes to intersection wait times;
 - (vii) trends or changes in the demographics, land use and infrastructure that impact on the Services;
 - (viii) measures to overcome any identified inefficiencies;
 - (ix) recommendations arising from incidents and accidents;
 - (x) measures to address security issues or matters that affect Customer or public safety;
 - (xi) requests for:
 - (A) additional Special Events;
 - (B) changes to existing Special Events;
 - (C) changes to the Minimum Operating Standards;
 - (D) changes to the Contract Service Level Requirements; and
 - (E) changes to staffing levels; and
 - (xii) any other factors that TfNSW or OpCo consider relevant.
- (d) Following any Operations Activities Review, TfNSW may:
- (i) direct a Service Change in accordance with clause 11 of Schedule D1 (*Service Payment Regime*); or
 - (ii) if outside the parameters of a Service Change, direct a Modification to change the Contract Service Level Requirements in accordance with clause 29 (*TfNSW initiated Modifications*).
- (e) Without prejudice to clause 20.3(d), TfNSW will direct a Service Change in accordance with clause 11 of Schedule D1 (*Service Payment Regime*) or a Modification under clause 20.3(d) to the extent necessary to overcome the effects of the relevant change in operational circumstances beyond the control of OpCo:
- (i) if actual patronage for any Service Period (disregarding patronage relating to a Special Event Service), measured as an average over two or more consecutive Operating Quarters, results in a loading density more than ■ per cent (■) greater than AW3 at any load point on the SLR averaged over a continuous one hour period, such that OpCo cannot meet the:
 - (A) Contract Level Service Level Requirements; and
 - (B) system performance requirements set out in section 3 of SPR Appendix 38 (*Minimum Service Requirements*);
 - (ii) if the Traffic Signal Aggregate Delay increases or decreases by more than ■ per cent (■) measured over three consecutive Operating Months such that, in the case of an increase only, OpCo cannot meet the:

- (A) Contract Level Service Level Requirements; and
- (B) system performance requirements set out in section 3 of SPR Appendix 38 (*Minimum Service Requirements*); or

(iii) if:

- (A) there is a Change in Law or a Change in NSW Government Policy that has the effect of imposing more or less onerous speed restrictions on light rail vehicles operating on the Sydney Transport Network generally and, as a result, the maximum line operation speed for a section will be different to the maximum line operation speed that would have been possible on that section had the CSELRVs been operating in accordance with the requirements of the SPR at the date of this deed; or
- (B) an Authority imposes more or less onerous speed restrictions on the CSELRVs when compared to those originally imposed on the CSELRVs by an Authority after the Independent Certifier has certified all Design Documentation in respect of the CSELRVs under clause 13.7(b)(iv)(B) and, as a result, the maximum line operation speed for a section is different to that in force when speed restrictions on the CSELRVs were originally imposed,

such that, in the case of more onerous speed restrictions only OpCo cannot meet:

- (C) the Contract Level Service Level Requirements; and
- (D) the system performance requirements set out in section 3 of SPR Appendix 38 (*Minimum Service Requirements*),

provided that if paragraph (A) or paragraph (B) above occurs and more onerous speed restrictions are imposed as a result of a wrongful act or omission of OpCo (or an OpCo Contractor) or a breach of OpCo's obligations under this deed by OpCo (or an OpCo Contractor) or as a result of the manner in which OpCo or an OpCo Contractor performs OpCo's Activities, then TfNSW is not required to direct a Service Change or Modification to overcome the effects of the change in operational circumstances, which shall be OpCo's risk.

- (f) In the case of a decrease in the Traffic Signal Aggregate Delay as provided for in clause 20.3(e)(ii) above, or less onerous speed restrictions are imposed as provided for in clause 20.3(e)(iii) above then the Service Change or Modification will amend the Contract Level Service Level Requirements and/or the system performance requirements set out in section 3 of SPR Appendix 38 (*Minimum Service Requirements*) to reflect the nature of the change which, where relevant, shall take into account the provisions of section 5 of Attachment 2 of SPR Appendix 16 (*Road Works*).
- (g) Following an approval or Direction contemplated by clause 20.3(d) or clause 20.3(e), OpCo must update the Operations Plan in accordance with clause 8.3 (Updated Project Plans).
- (h) Without prejudice to clause 20.3(d) and clause 20.3(e) above, TfNSW will request a Service Change in accordance with clause 11 of Schedule D1 (*Service Payment Regime*) or Modification under clause 20.3(d) to the extent necessary to overcome

the effects of the change in operational circumstances beyond the control of OpCo if, prior to the Date of Completion, the Traffic Signal Aggregate Delay increases or decreases by more than ■ per cent (■) such that, in the case of an increase only, OpCo will not be in a position to meet at the Date of Completion:

- (i) the Contract Level Service Level Requirements; and
- (ii) the system performance requirements set out in Section 3 of SPR Appendix 38 (*Minimum Service Requirements*).

In the case of a decrease in the Traffic Signal Aggregate Delay the Service Change or Modification will amend the Contract Level Service Level Requirements and/or the system performance requirements set out in section 3 of SPR Appendix 38 (*Minimum Service Requirements*) to reflect the nature of the change.

- (i) Without limiting any other obligation under this deed, OpCo and TfNSW must consult in good faith, and use their reasonable endeavours, to establish in consultation with RMS options and related methodology to provide for traffic intersection priority for LRVs at those intersections set out in SPR Appendix 16 (*Road Works*). Where the option is agreed by the parties, OpCo may request a Modification under clause 30 (*OpCo initiated Modifications*) to the extent necessary to provide for traffic intersection priority for LRVs utilising the agreed option and methodology.

20.4 Service Changes required by TfNSW

- (a) TfNSW may direct a Service Change in accordance with clause 11 of Schedule D1 (*Service Payment Regime*) (whether or not the Service Change has been discussed during an Operations Activities Review).
- (b) If TfNSW directs a Service Change in accordance with clause 11 of Schedule D1 (*Service Payment Regime*) the Service Payment will be adjusted for the associated Service Level Adjustment Amount in accordance with Schedule D1 (*Service Payment Regime*).
- (c) This clause does not limit TfNSW's right to direct a Modification under clause 29 (*TfNSW initiated Modifications*).

20.5 Service Changes proposed by OpCo

- (a) OpCo may propose a Service Change at any time during the Operations Phase (whether or not the Service Change has been discussed during an Operations Activities Review).
- (b) TfNSW may approve or reject, in its absolute discretion, a Service Change proposed by OpCo.
- (c) If TfNSW approves a Service Change, TfNSW's Representative will issue a "Service Change Notice" in accordance with clause 11.2(a) of Schedule D1 (*Service Payment Regime*).
- (d) This clause does not limit OpCo's right to propose a Modification under clause 30 (*OpCo initiated Modifications*).

20.6 Provision of real-time information

- (a) OpCo must provide real time information to TfNSW and Customers in accordance with SPR Appendices 15 (*Branding, Wayfinding, Signage and Customer Information*) and 23 (*Communications Systems and Passenger Information*).
- (b) OpCo must:
 - (i) actively participate in the governance processes for NSWTI as reasonably required by TfNSW's Representative;
 - (ii) promote NSWTI as the primary Customer interface for service information, trip planning and Customer feedback, particularly on published information such as websites, promotional material and other literature at Stops and within Light Rail Vehicles in a format reasonably required by TfNSW; and
 - (iii) not compete with or duplicate NSWTI services or Customer information channels.

20.7 Publication and display of information

- (a) OpCo must ensure that current, accurate, up to date and relevant information relating to:
 - (i) Services and the SLR; and
 - (ii) the interface of Services and the SLR with other public transport services including as to disruptions (to the extent that relevant information is provided to OpCo by TfNSW or other public transport providers),
 is provided to Customers in accordance with the requirements of clause 8.4 of the SPR.
- (b) OpCo must facilitate the delivery of that information to Customers at locations including on the Light Rail Vehicles and at the Stops via systems and technologies:
 - (i) specified in the SPR, including SPR Appendix 15 (*Branding, Wayfinding, Signage and Customer Information*); or
 - (ii) as may be determined and directed from time to time by TfNSW's Representative as a Modification.
- (c) Any initiative by OpCo to enhance passenger information must be developed in consultation with TfNSW.

20.8 Cooperation with other transport providers

OpCo must cooperate, coordinate and share information with other public transport providers in accordance with the procedures and requirements of the SPR, including section 3.2 of SPR Appendix 39 (*Operations and Customer Service Requirements*).

20.9 Customer feedback

- (a) OpCo must comply with the procedures and requirements of the SPR, including SPR Appendices 8 (*Stakeholder and Community Engagement*) and 39 (*Operations and Customer Service Requirements*), with respect to Customer feedback.

- (b) OpCo must advise TfNSW the category of feedback received and action taken by OpCo to resolve the matter in the Monthly Operations Performance Report.
- (c) OpCo must provide all reasonable information and assistance to TfNSW in relation to any investigation undertaken by TfNSW with respect to Customer feedback.

20.10 Ticketing, fare collection and revenue protection

- (a) Subject to the terms of this deed:
 - (i) TfNSW will be responsible for the collection of fare revenue in relation to the ETS;
 - (ii) OpCo will be responsible for the collection of fare revenue on the IWLR in relation to the LTS; and
 - (iii) OpCo will be responsible for protection of fare revenue to the extent specified in SPR Appendix 39 (*Operations and Customer Service Requirements*).
- (b) Without limiting clause 20.10(a), OpCo must:
 - (i) provide Customers with ticketing and fare information and directions;
 - (ii) work to minimise fare evasion;
 - (iii) issue penalty notices for fare evasion;
 - (iv) direct a fare evader to leave the Light Rail Vehicle;
 - (v) give Transport Officers and the NSW Police Force access to the SLR;
 - (vi) report any faults with the ETS and ETS Equipment to the ETS Contractor; and
 - (vii) report any faults with the LTS and LTS Equipment to TfNSW,

in accordance with the SPR, including SPR Appendix 39 (*Operations and Customer Service Requirements*) and SPR Appendix 50 (*Legacy Ticketing System*).

20.11 Customer security

OpCo must:

- (a) operate and maintain:
 - (i) a CCTV system;
 - (ii) Help Points;
 - (iii) passenger emergency alarms;
 - (iv) an access control system; and
 - (v) lighting of the Light Rail Vehicles and Stops; and

- (b) provide CCTV surveillance of Help Points and ticket vending machines,

in accordance with the requirements of the SPR (including SPR Appendices 13 (*Stops*), 23 (*Communication Systems and Passenger Information*) 37 (*Rolling Stock*) and 39 (*Operations and Customer Service Requirements*)).

20.12 **NSW Police Force**

OpCo must:

- (a) report incidents to, provide intelligence to, cooperate with and interface with the NSW Police Force regarding operational security and crime prevention interfaces; and
- (b) provide the NSW Police Force with all assistance, information, access, accommodation, data, equipment, resources and/or materials as the NSW Police Force may reasonably require.

20.13 **Stops**

OpCo must maintain the Stops:

- (a) so that they are safe, clean and in a good state of repair; and
- (b) so that they comply with the requirements of the SPR, including SPR Appendix 39 (*Operations and Customer Service Requirements*).

20.14 **Cleaning and presentation**

OpCo must ensure that:

- (a) the Light Rail Vehicles;
- (b) the Stops;
- (c) the ETS Equipment; and
- (d) the Assets,

meet the cleanliness and presentation standards set out in the SPR at all times.

20.15 **Graffiti removal and Vandalism**

(a) OpCo must:

- (i) operate the SLR so as to minimise the occurrence of Graffiti and Vandalism;
- (ii) maintain:
 - (A) the Light Rail Vehicles;
 - (B) the Stops;
 - (C) the ETS Equipment; and
 - (D) the Assets,

so that:

- (E) Graffiti is removed; and
 - (F) Vandalism is rectified,
- in accordance with the SPR;
- (iii) monitor the Additional Areas for the presence of Graffiti and Vandalism, and notify TfNSW's Representative of any observed incidents of Graffiti and Vandalism, in accordance with the Minimum Operating Standards; and
 - (iv) otherwise comply with the Security Management Plan and the requirements of section 8.5 of the SPR.
- (b) Upon receipt of any notification from OpCo under clause 20.15(a)(iii), TfNSW's Representative may request OpCo remove the Graffiti or rectify Vandalism in the Additional Area.
- (c) Promptly, and in any case no later than 5 Business Days, after receipt of a request from TfNSW's Representative under clause 20.15(b), OpCo must:
- (i) submit to TfNSW's Representative a proposal for the removal of Graffiti or rectification of Vandalism on the Additional Areas which specifies:
 - (A) the timeframe within which the work will be completed; and
 - (B) the amount which OpCo will charge for the work; or
 - (ii) if requested by TfNSW's Representative in the notice under clause 20.15(b), seek competitive tenders using best procurement practice for the removal of Graffiti or rectification of Vandalism from no less than three appropriately qualified and experienced contractors acceptable to TfNSW (acting reasonably).
- (d) Within 10 Business Days of receiving:
- (i) a proposal from OpCo under clause 20.15(c)(i); or
 - (ii) the competitive tenders under clause 20.15(c)(ii),
- TfNSW may accept the proposal or a tender by giving written notice to OpCo, in which case:
- (iii) OpCo must remove the Graffiti or rectify the Vandalism within the timeframe set out in TfNSW's notice; and
 - (iv) TfNSW will pay OpCo the amount set out in the proposal or tender (as applicable) in accordance with clause 25 (*Payment provisions*).

20.16 Customer Service Officers

OpCo must:

- (a) ensure that each Light Rail Vehicle is staffed as required by the SPR; and
- (b) otherwise comply with the requirements of the SPR, including SPR Appendix 39 (*Operations and Customer Service Requirements*).

20.17 Customer facing Staff

OpCo must ensure that all Customer facing Staff:

- (a) are properly qualified, accredited, trained and experienced to discharge their duties;
- (b) are attired in a clean, well maintained and appropriate uniform that complies with work health and safety laws and is in accordance with the requirements of the SPR;
- (c) possess a thorough knowledge of:
 - (i) Services;
 - (ii) other public transport services; and
 - (iii) ticketing, including ticketing and fares related to the wider TfNSW transport network;
- (d) are provided with a formal induction and knowledge of policies dealing with equal employment, discrimination, harassment and work health and safety issues; and
- (e) are provided with passenger service training on at least annual intervals and, in particular, training with regard to:
 - (i) service requirements of passengers with disabilities or from culturally or linguistically diverse backgrounds;
 - (ii) the management of confrontation, difficult passengers and personal safety; and
 - (iii) work health and safety issues.

20.18 Operations Activities construction warranties

OpCo warrants that:

- (a) the construction or maintenance of any works carried out as part of the Operations Activities will satisfy the requirements of this deed; and
- (b) the works carried out as part of the Operations Activities will, when complete and thereafter at all times during the Term, be safe and fit for their intended purposes.

20.19 Post Final Completion design changes

- (a) Subject to clauses 29 (*TfNSW initiated Modifications*) and 30 (*OpCo initiated Modifications*), OpCo may only amend Final Design Documentation after the Date of Final Completion if:
 - (i) OpCo submits the amended Final Design Documentation to TfNSW's Representative together with:
 - (A) the certifications referred to in clause 13.9(a), except that:
 - (aa) the certification required under clause 13.9(a)(i)(A) will be amended to be certified by OpCo, the O&M Contractor and the relevant OpCo Contractor responsible for carrying out the design work; and

- (bb) the certification required under clause 13.9(a)(i)(C) will be amended to be certified by TfNSW's Representative; and
 - (B) an explanation as to why it is seeking to amend the Final Design Documentation;
 - (ii) a period of 20 Business Days after submission of the amended Final Design Documentation has expired; and
 - (iii) TfNSW's Representative has not notified OpCo that, in TfNSW's Representative's opinion, the amended Final Design Documentation does not comply with the requirements of this deed (with reasons).
- (b) The exercise (or failure to exercise) by TfNSW's Representative of any of its rights under this clause 20.19 (*Post Final Completion design changes*) will not preclude TfNSW from subsequently asserting that the amended Final Design Documentation does not comply with the requirements of this deed.

21. ASSET MANAGEMENT

21.1 OpCo's Asset management obligations

OpCo must perform the Asset Management Activities in accordance with:

- (a) the Asset Management System;
- (b) the SPR; and
- (c) the other requirements of this deed,

so that:

- (d) the Assets comply with the requirements of this deed;
- (e) the SLR:
 - (i) remains fit for purpose during the Term;
 - (ii) is in a condition to permit the Services to be provided; and
 - (iii) complies with the Handback Condition at the end of the Term; and
- (f) provided each Asset is operated and maintained after the end of the Term in accordance with the Asset Management System, each Asset is capable of remaining fit for its intended purpose throughout:
 - (i) the Design Life of that Asset; or
 - (ii) in the case of a Replacement or Refurbished Asset, the Extended Design Life of that Asset.

21.2 Assets

TfNSW and OpCo acknowledge that:

- (a) the fixed Assets to be designed and constructed by OpCo for the CSELR are generally described in SPR Appendix 3 (*Assets*);

- (b) the SLR Works will be constructed in accordance with the Design Documentation that OpCo is entitled to use for construction purposes under clause 13.9(a) and otherwise in accordance with this deed; and
- (c) the fixed Assets when constructed will be defined within the Asset Management System.

21.3 **Asset Management System**

- (a) OpCo must:
 - (i) prior to the Date of Revenue Service, develop the Asset Management System to include the Assets for the IWLR;
 - (ii) prior to the Date of Completion, update the Asset Management System to include the Assets for the CSELR; and
 - (iii) otherwise develop and update the Asset Management System in accordance with the SPR.
- (b) The Asset Management System will include the:
 - (i) Asset Management Plan;
 - (ii) Operations and Maintenance Manuals; and
 - (iii) Asset Maintenance Standards.

21.4 **Spares**

OpCo must maintain the minimum specified stock of Spares in accordance with:

- (a) the Asset Management Plan; and
- (b) the SPR.

21.5 **Asset Management Plan**

- (a) OpCo must prepare and update the Asset Management Plan in accordance with clause 8 (*Project Plans*).
- (b) The Asset Management Plan must:
 - (i) cover all Assets;
 - (ii) include the Maintenance Works Program, which must:
 - (A) comply with the requirements of the SPR;
 - (B) describe the Asset Management Activities for the following 2 year period; and
 - (C) be of sufficient detail to facilitate effective monitoring of Asset Management Activities; and
 - (iii) otherwise comply with the requirements of the SPR.

21.6 Rectification of Defects

Subject to clause 20.15 (*Graffiti removal and Vandalism*), after the Date of Completion, OpCo must rectify all Defects (fair wear and tear excepted) within a reasonable time.

21.7 Asset Information System

- (a) OpCo must provide and maintain the Asset Information System in accordance with the SPR, including SPR Appendix 40 (*Asset Information Management Systems*).
- (b) The Asset Information System must:
 - (i) cover all Assets;
 - (ii) record OpCo's compliance with the Asset Management Plan including:
 - (A) the condition of Assets;
 - (B) changes to the condition of Assets; and
 - (C) remaining life of Assets;
 - (iii) be capable of producing periodic reports that allow OpCo and TfNSW to monitor Asset condition and OpCo's compliance with its obligations under this deed; and
 - (iv) at all times accurately represent the true status and condition of all Assets and all Asset Management Activities.
- (c) TfNSW:
 - (i) is the owner of all information held within the Asset Information System; and
 - (ii) may access the Asset Information System at any time in accordance with the SPR.

21.8 Asset Management Failures

- (a) The parties will meet annually within 3 months of the end of each Operating Year to review OpCo's compliance with the Maintenance Works Program during the previous Operating Year (as applicable).
- (b) An Asset Management Failure will occur if:
 - (i) OpCo failed to comply with the Maintenance Works Program and in TfNSW's reasonable opinion, OpCo's failure to comply with the Maintenance Works Program constitutes a material non-compliance with the Asset Management Plan; or
 - (ii) OpCo fails in any material respect to comply with any of its maintenance obligations under this deed.
- (c) If an Asset Management Failure occurs TfNSW may give OpCo a notice stating the nature of the Asset Management Failure.
- (d) OpCo must remedy the Asset Management Failure within:

- (i) 3 months of the date on which the notice referred to in clause 21.8(c) is issued; or
 - (ii) such other period agreed between the parties (acting reasonably),
(the **Remediation Period**).
- (e) If OpCo fails to remedy the Asset Management Failure within the Remediation Period, TfNSW may withhold [REDACTED] from the Service Payment each month from the expiry of the Remediation Period until OpCo remedies the Asset Management Failure.
- (f) If OpCo remedies the Asset Management Failure after the Remediation Period:
- (i) TfNSW will retain any interest accrued on all amounts retained pursuant to clause 21.8(e); and
 - (ii) the Service Payment will be adjusted in accordance with Schedule D1 (*Service Payment Regime*).

21.9 Reporting

During the Operations Phase, OpCo must provide to TfNSW's Representative, monthly, quarterly and annual reports on the Asset Management Activities in accordance with, and including the information specified in, section 3 of SPR Appendix 10 (*Reporting Requirements*).

21.10 Handback Audit

- (a) Without limiting clause 45 (*Access, inspections and audits*):
- (i) no earlier than 18 months; and
 - (ii) no later than 6 months,
prior to the Original Expiry Date, TfNSW's Representative may procure the carrying out of an audit of the SLR (**Handback Audit**) by an independent expert (**Handback Auditor**):
 - (iii) appointed by agreement between the parties; or
 - (iv) failing agreement within 10 Business Days of a request made in writing by TfNSW, nominated by the President of Engineers Australia.
- (b) TfNSW's Representative must:
- (i) notify OpCo at least 10 Business Days in advance of the date it wishes to procure the carrying out of a Handback Audit and specify the Assets that will be the subject of the Handback Audit (**Handback Audit Assets**); and
 - (ii) consider in good faith any reasonable request by OpCo for the Handback Audit to be carried out on a different date.
- (c) The Handback Auditor will inspect and assess the Handback Audit Assets and notify TfNSW and OpCo in writing of:
- (i) whether the Handback Audit Assets have been and are being maintained by OpCo in accordance with this deed;

- (ii) any rectification, maintenance and remediation works required to be carried out by OpCo to bring the condition of the Handback Audit Assets to the condition it would have been in had OpCo complied with its obligations under this deed; and
 - (iii) any rectification, maintenance and remediation works required to be carried out by OpCo to bring the condition of the Handback Audit Assets to the Handback Condition at the end of the Term.
- (d) OpCo must, at its cost, co-operate with the Handback Auditor and provide the Handback Auditor with any reasonable assistance required by the Handback Auditor.
 - (e) TfNSW's Representative must use its reasonable endeavours to procure that the Handback Auditor minimises any disruption caused to OpCo's Activities by the Handback Audit.
 - (f) The cost of the Handback Audit will be borne by TfNSW, except where the results of the Handback Audit show that OpCo has not complied with its obligations under this deed in relation to the maintenance of the Handback Audit Assets in which case the cost of the Handback Audit will be a debt due and payable by OpCo to TfNSW.

21.11 Rectification work

OpCo must carry out any required rectification, maintenance and remediation work notified pursuant to clauses 21.10(c)(ii) and 21.10(c)(iii):

- (a) to the satisfaction of the Handback Auditor; and
- (b) so as to satisfy the standards and other requirements applicable to the SLR under this deed,

prior to the Original Expiry Date and any costs it incurs in carrying out such rectification, maintenance or remediation work will be at its own expense.

21.12 Handback obligations

- (a) At the end of the Term, OpCo must:
 - (i) surrender and return to TfNSW or TfNSW's nominee the SLR and the ETS Equipment;
 - (ii) transfer all of OpCo's rights, title and interest (if any) in the Assets to TfNSW or TfNSW's nominee free from any Security Interests;
 - (iii) ensure that the Assets are in a state and condition which complies with the requirements of this deed including the Handback Condition;
 - (iv) have completed all works scheduled to be carried out under the current Maintenance Works Program;
 - (v) ensure that:
 - (A) all LRVs meet the "Level 3" requirements on the "Exterior Assessment Scale" and the "Interior Assessment Scale" as set out in Schedule D1 Annexure 2 Part A: KPI Tables KPI No 1 (*Service Payment Regime*);

- (B) all Stops meet the "Level 3" requirements on the "Stop Assessment Scale" as set out in Schedule D1 Annexure 2 Part A: KPI Tables KPI No 2 (*Service Payment Regime*);
- (C) all Non-Corridor Assets meet the "Level 3" requirements on the "Non-Corridor Assets Assessment Scale" as set out in Schedule D1 Annexure 2 Part A: KPI Tables KPI No 2 (*Service Payment Regime*); and
- (D) the Permanent Light Rail Corridor (excluding the Excluded Assets) meet the "Level 3" requirements on the "Permanent Light Rail Corridor Assessment Scale" as set out in Schedule D1 Annexure 2 Part A: KPI Tables KPI No 3 (*Service Payment Regime*),

except that the condition assessment for such Assets shall permit evidence of regular wear and tear, but excluding any wear and tear that arises as a result of OpCo having failed to comply with its obligations under clause 20.1 (*Operations Activities*);

- (vi) have completed the transfer of the Asset Information System database to TfNSW or TfNSW's nominee such that:
 - (A) all data has the capability of being processed, evaluated and viewed using standard commercially available systems;
 - (B) it remains fully functional and retains interface capabilities;
 - (C) all data entry is fully up to date;
 - (D) all data archives are included; and
 - (E) all supporting documentation is included;
 - (vii) deliver to TfNSW or TfNSW's nominee (or both, if required) all and any documents and information concerning OpCo's Activities which is required for the efficient transfer of responsibility for their performance, including:
 - (A) the SLR Documentation;
 - (B) all TfNSW Data;
 - (C) any documentation or programs required to be provided under Schedule A5 (*Intellectual Property*); and
 - (D) any other documentation specified in the SPR;
 - (viii) transfer all of OpCo's rights, title and interest (if any) in such Extra Land held by OpCo at the end of the Term; and
 - (ix) procure the novation to TfNSW or its nominee of, or execute any document required to effect OpCo ceasing to be a party to, any Subcontract relating to OpCo's Activities which TfNSW may nominate (in its absolute discretion), with effect from the end of the Term or such other date as TfNSW may agree.
- (b) If this deed is terminated prior to the Date of Completion, the parties agree:

- (i) clauses 21.12(a)(iii), 21.12(a)(iv) and 21.12(a)(v) will not apply to the CSELR or the SLR Works; and
- (ii) in respect of clause 21.12(a)(vi), the Asset Information System database:
 - (A) in respect of the IWLR will be complete; and
 - (B) in respect of the CSELR will be provided in its "as-is" stage of development at the time.

21.13 Power of attorney

OpCo irrevocably appoints, with effect from the end of the Term, TfNSW and such persons as are from time to time nominated by TfNSW, jointly and severally, as its attorney with full power and authority to execute any agreement or novation contemplated by clause 21.12 (*Handback obligations*).

21.14 Final inspection

- (a) As soon as practicable following the end of the Term, an independent expert (**Final Inspection Auditor**):
 - (i) appointed by agreement between the parties; or
 - (ii) failing agreement within 10 Business Days of a request made in writing by TfNSW, nominated by the President of Engineers Australia,

will inspect and assess the SLR and notify TfNSW and OpCo in writing of the estimated cost (without double counting) of making good or rectifying any failure by OpCo to carry out:

 - (iii) where the end of the term is the Expiry Date, the work (if any) required under clauses 21.10(c)(ii) and 21.10(c)(iii); and
 - (iv) its obligations under clause 21.12 (*Handback obligations*).
- (b) In assessing OpCo's compliance with clause 21.12(a)(v), the Final Inspection Auditor will have regard to:
 - (i) the instructions for the use of the relevant assessment scale described in Schedule D1, Annexure 2, Part A: KPI Tables (*Service Payment Regime*); and
 - (ii) the Reference Pictures.
- (c) The amount notified by the Final Inspection Auditor under clause 21.14(a) will be a debt due and payable from OpCo to TfNSW.
- (d) TfNSW may deduct or set off any amount payable by OpCo under clause 21.14(c) against any amount otherwise payable by TfNSW to OpCo, or may take other enforcement action available to it including under the Handback Security Bond or any security provided under clause 22.1(b) provided that TfNSW may not deduct or set off such amounts if and to the extent such amounts been taken into account in any Termination Payment.

21.15 Interim inspection

- (a) Without limiting OpCo's obligations under clause 21.12 (*Handback obligations*), if the Term is extended in accordance with clause 3.3 (*Term extension*):
- (i) at the Original Expiry Date OpCo must:
- (A) ensure that the Assets are in a state and condition which complies with the requirements of this deed including the Handback Condition;
- (B) have completed all works scheduled to be carried out under the current Maintenance Works Program; and
- (C) ensure that:
- (aa) all LRVs meet the "Level 3" requirements on the "Exterior Assessment Scale" and the "Interior Assessment Scale" as set out in Schedule D1 Annexure 2 Part A: KPI Tables KPI No 1 (*Service Payment Regime*);
- (bb) all Stops meet the "Level 3" requirements on the "Stop Assessment Scale" as set out in Schedule D1 Annexure 2 Part A: KPI Tables KPI No 2 (*Service Payment Regime*);
- (cc) all Non-Corridor Assets meet the "Level 3" requirements on the "Non-Corridor Assets Assessment Scale" as set out in Schedule D1 Annexure 2 Part A: KPI Tables KPI No 2 (*Service Payment Regime*); and
- (dd) the Permanent Light Rail Corridor (excluding the Excluded Assets) meet the "Level 3" requirements on the "Permanent Light Rail Corridor Assessment Scale" as set out in Schedule D1 Annexure 2 Part A: KPI Tables KPI No 3 (*Service Payment Regime*); and
- (ii) as soon as practicable following the Original Expiry Date, an independent expert (**Interim Inspection Auditor**):
- (A) appointed by agreement between the parties; or
- (B) failing agreement within 10 Business Days of a request made in writing by TfNSW, nominated by the President of Engineers Australia,
- will inspect and assess the SLR and notify TfNSW and OpCo in writing of the estimated cost (without double counting) of making good or rectifying any failure by OpCo to carry out:
- (C) the work (if any) required under clause 21.10(c)(ii); and
- (D) its obligations under clause 21.15(a)(i).
- (b) In assessing OpCo's compliance with clause 21.15(a)(i)(C), the Interim Inspection Auditor will have regard to:
- (i) the instructions for the use of the relevant assessment scale described in Schedule D1 Annexure 2 Part A: KPI Tables (*Service Payment Regime*); and

- (ii) the Reference Pictures.
- (c) TfNSW may withhold the amount notified by the Interim Inspection Auditor under clause 21.15(a)(ii) from one or more Service Payments payable to OpCo, until OpCo makes good or rectifies any relevant failure by OpCo to carry out:
 - (i) the work (if any) required under clause 21.10(c)(ii); and
 - (ii) its obligations under clause 21.15(a)(i).

If OpCo makes good or rectifies such failure prior to the Expiry Date:

 - (iii) TfNSW will retain any interest accrued on all amounts retained pursuant to this clause 21.15(c); and
 - (iv) TfNSW will pay OpCo the amount retained in respect of the relevant failure.
- (d) To the extent OpCo has not made good or rectified any failure notified by the Interim Inspection Auditor under clause 21.15(a)(ii) prior to the Expiry Date, TfNSW may:
 - (i) retain any amounts withheld under clause 21.15(c); and
 - (ii) to the extent the amounts retained under clause 21.15(d)(i) are less than the amount notified by the Interim Inspection Auditor under clause 21.15(a)(ii) that relates to the work that OpCo has not made good or rectified:
 - (A) deduct or set off against any amount otherwise payable by TfNSW to OpCo; or
 - (B) take other enforcement action available to it including under the Handback Security Bond or any security provided under clause 22.1(b).

21.16 **Planned Service Disruption and Connection Shutdown**

- (a) If OpCo wishes to implement a Planned Service Disruption or a Connection Shutdown, OpCo must set out the timing and proposed date:
 - (i) for such Planned Service Disruption:
 - (A) in relation to Planned Service Disruptions required for the purposes of maintenance of the SLR, in the Asset Management Plan; and
 - (B) in relation to Planned Service Disruptions required by an Authority, in a schedule which is provided to TfNSW and updated every six months; and
 - (ii) for such Connection Shutdown, in the Delivery Program.
- (b) No later than:
 - (i) for Planned Service Disruptions:
 - (A) in relation to Specified Planned Service Disruptions, four months; and
 - (B) in relation to all other Planned Service Disruptions, three months,

prior to the date indicated in the Asset Management Plan for the proposed Planned Service Disruption or the schedule referred to in clause 21.16(a)(i)(B) (or a shorter period approved by TfNSW); and

- (ii) for Connection Shutdowns, three months prior to the date indicated in the Delivery Program,

OpCo must:

- (iii) confirm with TfNSW the date and timing of;
- (iv) provide to TfNSW all details of the work to be carried out in relation to;
- (v) provide to TfNSW the details of the Services affected by; and
- (vi) demonstrate to TfNSW's reasonable satisfaction how disruption to passengers will be minimised during,

the Planned Service Disruption or Connection Shutdown.

(c) OpCo must:

- (i) take into account any reasonable direction of TfNSW in relation to any Planned Service Disruption or Connection Shutdown;
- (ii) provide appropriate replacement services at its cost to ensure the continuation of customer services during the period of any Planned Service Disruption or Connection Shutdown;
- (iii) notify and provide information to customers in relation to any Planned Service Disruption or Connection Shutdown, including details of replacement services; and
- (iv) in consultation with TMC, prepare a comprehensive plan for any Planned Service Disruption or Connection Shutdown.

(d) Where OpCo requires service disruptions in addition to any Planned Service Disruptions or Connection Shutdown, OpCo may make a request to TfNSW. Subject to clause 21.16(f), TfNSW, acting reasonably, may agree to the request.

(e) At any time:

- (i) for Specified Planned Service Disruptions, before three months;
- (ii) for all other Planned Service Disruptions, before one month; and
- (iii) for Connection Shutdowns, before one month,

from the proposed Planned Service Disruption, Connection Shutdown or additional service disruption contemplated in clause 21.16(d), TfNSW may, acting reasonably, cancel the Planned Service Disruption, Connection Shutdown or additional service disruption contemplated in clause 21.16(d) where TfNSW believes it is necessary for the efficient delivery of passenger services.

(f) If TfNSW cancels a Connection Shutdown pursuant to clause 21.16(e) OpCo must, having regard to the Delivery Program and using best endeavours, reschedule the Connection Shutdown as soon as possible so that it is not on the critical path and will not cause a delay to achieving Completion by the Date for Completion.

- (g) Any additional service disruption agreed by the parties in accordance with clause 21.16(d) will not entitle OpCo to relief from any Missed Service or Customer Delay Measure in accordance with Schedule D1 (*Service Payment Regime*) but OpCo shall not be responsible for providing appropriate replacement services in relation to such disruption.

22. SECURITY

22.1 Provision of security

- (a) OpCo must provide TfNSW with:
- (i) a bond (**Handback Security Bond**) for [REDACTED] at least 18 months prior to the Original Expiry Date; and
 - (ii) if the Term is extended in accordance with clause 3.3 (*Term extension*), a bond (**Extension Security Bond**) for [REDACTED] within 10 Business Days of:
 - (A) TfNSW accepting the Extension Proposal under clause 3.3(f)(i); or
 - (B) if TfNSW rejects the Extension Proposal under clause 3.3(f)(ii), the parties reaching agreement on the terms of the Extension Proposal,

which satisfies the requirements of clause 22.3 (*Requirements of Bond*).
- (b) If OpCo fails to provide a Handback Security Bond in accordance with clause 22.1(a)(i), then OpCo will not be in breach of this deed but TfNSW may withhold [REDACTED] from each payment of the Service Payment each month for a period of 10 months.

22.2 Return of security

Subject to TfNSW's right to have recourse to the security, TfNSW must release any security provided under clause 22.1 (*Provision of security*) as soon as practicable after TfNSW has received the Final Inspection Auditor's notice under clause 21.14(a).

22.3 Requirements of Bond

Each Bond must be:

- (a) in the form of Schedule D8 (*Form of Bond*) or such other form as TfNSW may approve;
- (b) in favour of TfNSW;
- (c) provided by a bank or insurance company that at all times maintains the Required Rating and is regulated by the Australian Prudential Regulation Authority; and
- (d) payable at an office of the issuer in Sydney (or such other place as TfNSW may approve).

22.4 Issuer ceases to have Required Rating

- (a) If the issuer of any Bond ceases to have the Required Rating and, at that time, another bank or insurance company acceptable to TfNSW maintains the Required Rating and is regulated by the Australian Prudential Regulation Authority, then OpCo must:

- (i) promptly notify TfNSW of that circumstance; and
- (ii) within 20 Business Days of being requested to do so, procure the issue to TfNSW of a replacement bond which must have a face value equal to that of the Bond being replaced and must satisfy the requirements of clause 22.3 (*Requirements of Bond*),

and TfNSW must promptly surrender the original Bond to OpCo following the issue of the replacement Bond.

- (b) If the issuer of any Bond ceases to have the Required Rating and, at that time, no Major Australian Bank has the Required Rating, then:
 - (i) if the current issuer of the Bond has a rating of less than the second highest rated Major Australian Bank, OpCo must procure the issue to TfNSW of a replacement bond from an issuer which has a rating equal to or higher than the second highest rated Major Australian Bank which otherwise satisfies the requirements of clause 22.3 (*Requirements of Bond*);
 - (ii) OpCo must monitor the credit rating of the issuer of the replacement Bond and the credit rating of the Major Australian Banks and procure a replacement Bond from an issuer which has the Required Rating within 15 Business Days after any Major Australian Bank regains a rating equal to or greater than the Required Rating; and
 - (iii) TfNSW must promptly surrender the original Bond to OpCo following the issue of the replacement Bond.

22.5 **No injunction**

TfNSW may make a demand under any Bond at any time. OpCo must not take any steps to injunct or otherwise restrain:

- (a) the issuer of a Bond from paying TfNSW pursuant to the Bond;
- (b) TfNSW from making a demand under a Bond or receiving payment under a Bond; or
- (c) TfNSW from using the proceeds of a Bond in accordance with clause 22.6 (*Proceeds of security*).

22.6 **Proceeds of security**

TfNSW may only apply the proceeds of:

- (a) the Handback Security Bond or any security provided under clause 22.1(b) towards payment of any amount due and payable by OpCo to TfNSW under clause 21.14(c); and
- (b) the Extension Security Bond to reimburse it for any Loss for which OpCo is liable after the Original Expiry Date, and in payment or any other moneys owing by OpCo to TfNSW (including moneys owing under any indemnity) after the Original Expiry Date.

22.7 **No interest**

TfNSW is not obliged to pay OpCo interest on a Bond, the proceeds of a Bond or any security provided under clause 22.1(b).

22.8 **No trust**

If TfNSW makes a demand under a Bond, it does not hold the proceeds on trust for OpCo.

23. **COMMERCIAL OPPORTUNITIES**

23.1 **Commercial Opportunities**

Subject to TfNSW providing its consent in accordance with clause 23.2 (*TfNSW consent*), OpCo may engage in the following commercial opportunities for the SLR:

- (a) advertising:
 - (i) within the interior of LRVs; and
 - (ii) on the exterior of LRVs; and
- (b) any other commercial opportunities as approved by TfNSW.

23.2 **TfNSW consent**

TfNSW consents to OpCo entering into, and undertaking, any commercial arrangements proposed by OpCo in accordance with clause 23.3 (*Commercial Opportunity Proposals*) and accepted by TfNSW under clause 23.3(b)(i) (each an **Agreed Commercial Arrangement**).

23.3 **Commercial Opportunity Proposals**

- (a) If OpCo identifies a commercial opportunity under clause 23.1 (*Commercial Opportunities*) that requires TfNSW's consent (**Proposed Commercial Arrangement**), OpCo may prepare and submit a proposal to TfNSW's Representative (**Commercial Arrangement Proposal**), which includes the following:
 - (i) details of the person or company who will enter into the Proposed Commercial Arrangement with OpCo;
 - (ii) details of the proposed contractual obligations of both OpCo and the proposed person or company who will enter into the Proposed Commercial Arrangement with OpCo;
 - (iii) the term of the Proposed Commercial Arrangement;
 - (iv) for commercial opportunities specified in clause 23.1, the location or locations on the SLR where the Proposed Commercial Arrangement will take place or be situated;
 - (v) for commercial opportunities specified in clause 23.1(a):
 - (A) the design for the advertising;
 - (B) the location or locations on the SLR where the advertising will be placed; and

- (C) the period for which the advertising will appear on the SLR;
 - (vi) the gross revenue to be received by OpCo for the Proposed Commercial Arrangement;
 - (vii) the proposed percentage of the gross revenue to be passed to TfNSW, if OpCo is proposing that the percentage be different to the percentage set out in clause 23.7(a)(i);
 - (viii) the proposed approach to the management and maintenance of the Proposed Commercial Arrangement; and
 - (ix) any other information TfNSW may reasonably require.
- (b) TfNSW must, within 20 Business Days of receipt of the Commercial Arrangement Proposal submitted under clause 23.3(a):
- (i) accept; or
 - (ii) reject,
- the Commercial Arrangement Proposal.
- (c) If TfNSW accepts the Commercial Arrangement Proposal under clause 23.3(b)(i):
- (i) the Proposed Commercial Arrangement will become an Agreed Commercial Arrangement; and
 - (ii) OpCo must implement the Agreed Commercial Arrangement in accordance with the Commercial Arrangement Proposal as accepted by TfNSW under clause 23.3(b)(i).
- (d) If TfNSW rejects the Commercial Arrangement Proposal under clause 23.3(b)(ii), OpCo may amend the Commercial Arrangement Proposal and clause 23.3(a) will reapply.

23.4 Requirements and standards

OpCo must ensure that all Agreed Commercial Arrangements:

- (a) comply with applicable law and Approvals;
- (b) comply with applicable TfNSW policies and guidelines as notified to OpCo by TfNSW;
- (c) will not breach the Intellectual Property rights of any person;
- (d) in relation to advertising, comply with any voluntary codes of conduct established by the advertising industry;
- (e) do not depict or involve political, religious, racist, sexually explicit, offensive goods, activities or materials or other subject matter which is contentious or offensive;
- (f) do not resemble and is not capable of confusion with any directional or informational signs either by location, shape, size or colour;
- (g) do not detract from, or interfere with, the function of the SLR;

- (h) do not detract from, or interfere with, OpCo's Activities; and
- (i) do not impede or discourage safe access and use by Customers of the SLR and the ETS (including by impeding the flow of Customers at, approaching or leaving Stops).

23.5 TfNSW to withdraw consent or require removal

TfNSW may, in its complete discretion:

- (a) withdraw its consent to an Agreed Commercial Arrangement; and
- (b) require OpCo to remove any advertising the subject of an Agreed Commercial Arrangement,

that:

- (c) TfNSW considers is inappropriate;
- (d) impedes or conflicts with Customer wayfinding, Customer flows or Customer facilities;
- (e) impedes or conflicts with operational signage or safety requirements;
- (f) is required to be removed by the Australian Advertising Standards Board; or
- (g) does not comply with the requirements of clause 23.4 (*Requirements and standards*).

23.6 TfNSW access to information

OpCo must, upon request by TfNSW, provide TfNSW with access to information and documentation created for the purposes of commercial opportunities on the SLR on an Open Book Basis.

23.7 Revenue from commercial opportunities

- (a) The parties agree that TfNSW will be entitled to:
 - (i) [REDACTED]; or
 - (ii) if applicable, another percentage as accepted by TfNSW under clause 23.3(b)(i),
 of the gross revenue derived from all Agreed Commercial Arrangements.
- (b) The Service Payment will be adjusted in accordance with Schedule D1 (*Service Payment Regime*) to take into account TfNSW's entitlement under clause 23.7(a).

23.8 TfNSW's right to undertake commercial opportunities

TfNSW may enter into its own commercial opportunities in connection with the SLR, provided that the commercial opportunity:

- (a) is not a commercial opportunity under clause 23.1 (*Commercial Opportunities*); and
- (b) does not directly interfere with an Agreed Commercial Arrangement,

unless TfNSW has obtained OpCo's consent.

23.9 **OpCo's ongoing obligations**

For the duration of any Agreed Commercial Arrangement on the SLR:

- (a) all of OpCo's obligations under this clause 23 (*Commercial opportunities*) remain ongoing; and
- (b) TfNSW retains the right to assess any aspect of OpCo's obligations under this clause 23 (*Commercial opportunities*).

24. **NAMING AND BRANDING**

24.1 **Name**

The SLR will be called Sydney Light Rail (or such other name as is notified by TfNSW to OpCo).

24.2 **Government logo and corporate image**

- (a) OpCo must display the NSW Government Transport, TfNSW, and/or NSW NOW logo and corporate image and the name Sydney Light Rail (or such other name as is notified by TfNSW to OpCo) on the SLR in the locations and manner designated in the SPR.
- (b) TfNSW may at any time direct OpCo to display the NSW Government Transport, TfNSW and/or NSW NOW logo and corporate image and the name of the Sydney Light Rail on the SLR in areas not designated by the SPR.
- (c) The State and/or TfNSW may change the NSW Government Transport, TfNSW and/or NSW NOW name/corporate image and may direct OpCo to display the new NSW Government Transport, TfNSW and/or NSW NOW logo/corporate image on the SLR in those areas designated in the SPR or as directed by TfNSW under clause 24.2(b).
- (d) During the Operations Phase, OpCo must apply branding and logos in accordance to the TfNSW Light Rail - Kit of Tools, including vehicle livery, uniforms, print and electronic communication.
- (e) TfNSW may at any time direct OpCo to display the 'Hop' branding and associated marks and the name Light Rail on the SLR in areas not designated by the SPR.
- (f) The State and/or TfNSW may change the 'Hop' branding and may direct OpCo to display the new branding on the SLR in those areas designated in the SPR or as directed by TfNSW under clause 24.2(e).
- (g) TfNSW will compensate OpCo for all reasonable costs incurred in compliance with clauses 24.2(b) to 24.2(e).

24.3 **OpCo name/corporate image**

- (a) OpCo must display its livery, name/corporate image on the SLR in the manner designated by the SPR.
- (b) OpCo must not change its livery, name/corporate image without the prior written consent of TfNSW.

24.4 Stop names

Subject to clause 23 (*Commercial Opportunities*):

- (a) the Stops will be named as set out in the SPR or as notified by TfNSW;
- (b) TfNSW may at any time change any Stop name;
- (c) TfNSW will be entitled to retain all revenue received from any person in connection with any Stop name; and
- (d) OpCo:
 - (i) may use the Stop names only for activities and purposes directly related to the SLR PPP and this deed; and
 - (ii) may not use for public purposes any name for the Stops other than the Stops names described in clauses 24.4(a) and 24.4(b).

24.5 Wayfinding

OpCo must comply with the requirements of SPR Appendix 15 (*Branding, Wayfinding, Signage and Customer Information*) and all the other requirements of the SPR in respect of wayfinding.

24.6 Other signage and displays

Without limiting clauses 24.1 (*Name*) to 24.5 (*Wayfinding*), OpCo must display wayfinding, signage and other information, public art and branding at all times during the Term (including on hoardings, SLR Works, Light Rail Vehicles and Stops) as required in accordance with the SPR.

25. PAYMENT PROVISIONS

25.1 TfNSW's payment obligation

Subject to this clause 25 (*Payment provisions*), TfNSW must pay OpCo (or procure the payment to OpCo of) or, in the case of the CDPD Amount, pay Finance Co:

- (a) the CDPD Amount;
- (b) the Service Payments; and
- (c) any other amounts which are payable by TfNSW to OpCo under this deed.

25.2 Conditional Debt Pay Down

- (a) (**CDPD Conditions**): TfNSW's obligation to pay the CDPD Amount is subject to the following conditions precedent (**CDPD Conditions**):
 - (i) the CDPD Period has commenced and not expired;
 - (ii) there is no subsisting OpCo Event of Default or OpCo Termination Event;
 - (iii) no OpCo Event of Default (other than an OpCo Event of Default occurring under clause 41.1(p)) has occurred in the 6 month period immediately prior to the CDPD Notice Date;

- (iv) not more than one OpCo Event of Default (other than an OpCo Event of Default occurring under clause 41.1(p)) has occurred in the 18 month period immediately prior to the CDPD Notice Date;
 - (v) no OpCo Termination Event has occurred in the 12 month period immediately prior to the CDPD Notice Date;
 - (vi) the costs of rectification of any single subsisting Defect will not exceed [REDACTED];
 - (vii) the aggregate cost of rectification of all subsisting Defects will not exceed [REDACTED];
 - (viii) no amounts have been retained from the Service Payment pursuant to clause 21.8(e) and not subsequently released; and
 - (ix) TfNSW has not issued an Equity Purchase Exercise Notice.
- (b) **(CDPD Payment Date):** Subject to clause 25.2(a), TfNSW must pay the CDPD Amount on the CDPD Payment Date to Finance Co in accordance with the Receivables Purchase Deed to repurchase the CDPD Receivables.
- (c) **(Satisfaction of CDPD Conditions):**
- (i) OpCo must use its best endeavours to procure the satisfaction of the CDPD Conditions prior to expiry of the CDPD Period.
 - (ii) When OpCo considers that a CDPD Condition has been satisfied, OpCo must promptly and in any event within 5 Business Days give TfNSW's Representative:
 - (A) a written notice stating that it considers that the CDPD Condition has been satisfied; and
 - (B) reasonable evidence that the CDPD Condition has been satisfied.
 - (iii) When OpCo considers that all of the CDPD Conditions have been satisfied (or waived by TfNSW), OpCo must:
 - (A) give TfNSW's Representative a written notice stating that it considers that all of the CDPD Conditions have been satisfied (or waived by TfNSW); and
 - (B) provide TfNSW's Representative with the information required in clause 2 of Schedule D2 (*Information requirements and Base Case Financial Model amendments in relation to the CDPD Payment*).
 - (iv) Within 10 Business Days after receiving a notice under clause 25.2(c)(iii)(A), TfNSW's Representative will give OpCo:
 - (A) written notice:
 - (aa) that TfNSW's Representative agrees that all of the CDPD Conditions have been satisfied (or waived by TfNSW);
 - (bb) that TfNSW's Representative accepts OpCo's calculation of the CDPD Amount; and

- (cc) confirming the CDPD Payment Date,
(**CDPD Satisfaction Notice**); or
- (B) written notice:
 - (aa) that TfNSW's Representative does not agree that all of the CDPD Conditions have been satisfied (or waived by TfNSW);
 - (bb) that TfNSW's Representative does not accept OpCo's calculation of the CDPD Amount; and
 - (cc) the reasons for TfNSW's Representative's determination.
- (v) If TfNSW's Representative gives a notice under clause 25.2(c)(iv)(B), OpCo must continue to use its best endeavours to procure the satisfaction of the outstanding CDPD Conditions and this clause 25.2(c) will re-apply.
- (vi) A breach of clause 25.2(c)(i) by OpCo will not, of itself, be an OpCo Event of Default or an OpCo Termination Event.
- (d) (**Waiver of CDPD Conditions**):
 - (i) TfNSW may waive one or more of the CDPD Conditions in its absolute discretion by giving written notice to OpCo.
 - (ii) Any waiver by TfNSW of a CDPD Condition does not constitute a waiver by TfNSW of any of its rights, powers or discretions in respect of any subsisting breach of this deed, OpCo Event of Default, OpCo Termination Event or Defect (as may be relevant).
 - (iii) TfNSW may specify the CDPD Payment Date in the notice under clause 25.2(d)(i).
- (e) (**Amendments to the Base Case Financial Model**): OpCo will provide to TfNSW an updated Base Case Financial Model in accordance with clause 4 of Schedule D2 (*Information requirements and Base Case Financial Model amendments in relation to the CDPD Payment*).

25.3 Payment claims for Service Payments and other amounts

- (a) OpCo must give TfNSW's Representative claims for payment of the Service Payment and any other amounts payable by TfNSW to OpCo (other than the CDPD Amount):
 - (i) in the case of a claim for payment of:
 - (A) the Service Payment, within 5 Business Days after the end of each month of the Operations Phase; and
 - (B) any other amount payable by TfNSW, within 5 Business Days after the end of each month;
 - (ii) in the case of a claim for payment of a Service Payment, in the format set out in Annexure 3 of Schedule D1 (*Service Payment Regime*) or such other format as TfNSW's Representative reasonably requires;

- (iii) which are valid Tax Invoices for any Taxable Supplies to which the payment relates; and
- (iv) which include:
 - (A) in the case of a claim for payment of a Service Payment, the Monthly Service Payment Report required under clause 25.12(a)(iii); and
 - (B) any other evidence of the amounts claimed reasonably required by TfNSW's Representative.
- (b) OpCo cannot include in any payment claim under this clause 25.3 (*Payment claims for Service Payments and other amounts*), a Claim which is barred by clause 57.5 (*Time bar*).

25.4 **Payment schedule**

- (a) TfNSW must, within 20 Business Days of receiving a payment claim which complies with requirements of clause 25.3 (*Payment claims for Service Payments and other amounts*), issue a payment schedule which sets out TfNSW's determination as to the amount then payable to OpCo, together with reasons for any difference in the amount so determined from the amount in OpCo's payment claim.
- (b) If the amount set out in the payment schedule as then payable to OpCo is different to the amount in OpCo's payment claim, OpCo must issue a revised Tax Invoice or Adjustment Note (as the case may be) to reflect the amount in the payment schedule.
- (c) The issue of a payment schedule by TfNSW does not constitute approval of any work or services nor will it be taken as an admission or evidence that the work or services covered by the payment schedule have been satisfactorily carried out in accordance with this deed.
- (d) The parties may refer any dispute in relation to an amount referred to in this clause 25.4 (*Payment schedule*) for resolution in accordance with clause 56 (*Dispute resolution*).

25.5 **Payment**

- (a) Subject to clauses 25.10 (*Set-off*) and 25.11 (*Payment of employees and subcontractors*), TfNSW must within 20 Business Days of receiving a payment claim which complies with the requirements of clause 25.3 (*Payment claims for Service Payments and other amounts*), pay OpCo the amount as set out as then payable in the payment schedule, less any amounts disclosed as unpaid under clause 25.11(a) or 25.11(b).
- (b) TfNSW is not obliged to pay any amounts disclosed as unpaid under clause 25.11(a) or 25.11(b) until OpCo produces evidence that the amounts have been paid to the relevant persons.

25.6 **Net amount due from OpCo to TfNSW**

Where a payment schedule states that a net amount is due from OpCo to TfNSW, OpCo must (at TfNSW's election):

- (a) pay that amount to TfNSW within 20 Business Days of being requested by TfNSW's Representative to do so; or

- (b) otherwise carry forward the amount and set it off against the next payment claim.

25.7 **Payment on account**

Any payment of moneys by TfNSW to OpCo is not:

- (a) evidence of the value of work or services, or that any work or services have been satisfactorily carried out in accordance with this deed;
- (b) an admission of liability; or
- (c) approval by TfNSW of OpCo's performance or compliance with this deed,

but is only taken to be payment on account.

25.8 **Correction of payment schedules**

TfNSW may, in any payment schedule:

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

issued by TfNSW.

25.9 **Interest**

Any late payment of amounts that are properly due and payable by either TfNSW or OpCo to the other under any Project Agreement (including a previously disputed amount or an amount which is not paid due to the application of set-off by TfNSW under clause 25.10(a) where the amount set-off is determined to be incorrect) will incur simple interest at the Default Rate from the day after the date on which the payment was due to (and including) the date of payment.

25.10 **Set-off**

- (a) TfNSW will (subject to clauses 25A.1(d) and 25A.1(c) and Schedule D6 (*Termination payments*)) be entitled to set-off or deduct from any amount due from TfNSW to OpCo under a TfNSW Project Agreement:

- (i) any debt or other monies due from OpCo to TfNSW; and
- (ii) any Claim to money which TfNSW may make in good faith against OpCo whether for damages or otherwise and whether or not the amount is disputed,

whether under a Project Agreement or otherwise at law relating to the SLR PPP.

- (b) OpCo must make all payments due to TfNSW under the TfNSW Project Agreements without set-off or counterclaim, and without any deduction to the extent permitted by law.
- (c) Nothing in this clause 25.10 (*Set-off*) affects TfNSW's right to recover from OpCo the whole of the debt or any balance that remains owing after any set-off.

25.11 Payment of employees and subcontractors

OpCo is not entitled to give TfNSW a payment claim under clause 25.3 (*Payment claims for Service Payments and other amounts*), and TfNSW's Representative is not obliged to make any payment under clause 25.4 (*Payment schedule*), unless OpCo has provided TfNSW's Representative with:

- (a) a statutory declaration, together with any supporting evidence which may be reasonably required by TfNSW's Representative, duly signed by OpCo's Representative, that, except to the extent disclosed in the statutory declaration (such disclosure to specify all relevant amounts, employees and subcontractors):
 - (i) all employees of OpCo have at the date of the payment claim been paid all moneys due and payable to them; and
 - (ii) all subcontractors of OpCo have been paid all moneys due and payable to them in respect of OpCo's Activities;
- (b) a statutory declaration from each Core Contractor which satisfies the requirements of clause 25.11(a) in relation to the employees and subcontractors of that Core Contractor;
- (c) a written statement for the purposes of, and which complies with, section 127 of the *Industrial Relations Act 1996* (NSW), section 175B of the *Workers Compensation Act 1987* (NSW) and schedule 2 part 5 of the *Pay-Roll Tax Act 2007* (NSW), which is in a form approved by TfNSW's Representative, covering the period covered by the relevant payment claim; and
- (d) copies of all relevant certificates of currency in respect of workers compensation insurance which OpCo has in place in connection with OpCo's Activities.

Clauses 25.11(c) and 25.11(d) will only apply in respect of those parts of OpCo's Activities carried out in New South Wales.

25.12 Service Payment Monitoring System

- (a) OpCo must:
 - (i) establish a system for the monitoring of its performance of the Operations Activities which are relevant to the calculation of the Service Payment in accordance with, and containing the information required by, the SPR (**Service Payment Monitoring System**);
 - (ii) monitor the performance of those Operations Activities in accordance with the Service Payment Monitoring System and the SPR; and
 - (iii) with each payment claim under clause 25.3 (*Payment claims for Service Payments and other amounts*), provide the Monthly Service Payment Report to TfNSW's Representative.
- (b) OpCo warrants that the performance data which results from the Service Payment Monitoring System will, at all times, be accurate, complete and correct.
- (c) Each Monthly Service Payment Report provided to TfNSW's Representative must:
 - (i) include sufficient information to enable TfNSW's Representative to confirm the calculation of the Service Payment for the preceding month; and

- (ii) be accompanied by a statutory declaration from OpCo's Representative warranting that, to the best of his or her knowledge and belief, the Monthly Service Payment Report is accurate.

25A SECURITISED LICENCE STRUCTURE

25A.1 Construction Price

- (a) Subject to this clause 25A (*Securitized Licence Structure*), TfNSW agrees to pay the Construction Price to OpCo (or as OpCo directs) by paying the Construction Payment on the Construction Payment Date.
- (b) TfNSW has no obligation to pay the Construction Payment unless and to the extent that TfNSW receives the corresponding Receivables Purchase Payment from Finance Co under the Receivables Purchase Deed.
- (c) The amount of the Construction Payment and the corresponding Receivables Purchase Payment may only be adjusted:
 - (i) as described in clause 25A.2 (*Construction Change Payment*), to reflect a Construction Change Payment;
 - (ii) as described in clause 25A.3 (*Reduction in Service Payment*), to reflect a Change Saving in the Delivery Phase where the Service Payment is reduced and there is a corresponding reduction in the debt finance procured by Finance Co and reflected in the Securitized Licence Structure; or
 - (iii) by written agreement between the parties,

provided that no adjustment to the Construction Payment or the corresponding Receivables Purchase Payment will affect the limitation referred to in clause 25A.1(b).
- (d) Notwithstanding any other clause of any Project Agreement, TfNSW may not set off any amount due and payable by OpCo or Finance Co to TfNSW under the Project Agreements against the Construction Payment.
- (e) If the Construction Payment and the Receivables Purchase Payment are adjusted in accordance with clause 25A.1(c), TfNSW and OpCo agree to adjust the Licence Payments payable under the Operations Phase Licence as appropriate to reflect the adjustment made to the Construction Payment and the Receivables Purchase Payment.
- (f) Notwithstanding anything else in the Project Agreements, TfNSW acknowledges that if it does not receive the Receivables Purchase Payment in full or at all from Finance Co under the Receivables Purchase Deed, TfNSW's only right or remedy in respect of such non-payment is the relief from payment of the whole or part of the corresponding Construction Payment under clause 25A.1(b) until such time as the relevant payment is received in accordance with the Receivables Purchase Deed.

25A.2 Construction Change Payment

- (a) If a Construction Change is to be carried out in the Delivery Phase and:
 - (i) the Construction Change Date has occurred in respect of that Construction Change; and

- (ii) TfNSW has requested or agreed that OpCo (either itself or via Finance Co) provides financing for that Construction Change, and OpCo (or Finance Co) has agreed to provide that financing,

then (without double-counting):

- (iii) the Construction Price will be increased by the amount of the Construction Change Payment; and
 - (iv) TfNSW must pay the Construction Change Payment in respect of that Construction Change to OpCo (or as OpCo directs) on the Construction Payment Date.
- (b) TfNSW has no obligation to pay the Construction Change Payment unless and to the extent that it receives the corresponding additional Receivables Purchase Payment from Finance Co under the Receivables Purchase Deed in relation to that Construction Change.
 - (c) Notwithstanding any other clause of any Project Agreement, TfNSW may not set off any amount due and payable by OpCo or Finance Co to TfNSW under the Project Agreements against any Construction Change Payment.
 - (d) TfNSW acknowledges that, notwithstanding any provision in the Project Agreements to the contrary, if the Receivables Purchase Payment in relation to a Construction Change is not received in full or at all under the Receivables Purchase Deed, TfNSW's only right or remedy in respect of such non-payment is the relief from payment of the whole or part of the corresponding Construction Change Payment under clause 25A.2(b) until such time as the relevant payment is received in accordance with the Receivables Purchase Deed.

25A.3 Reduction to Service Payment

Where there is a Change Saving in relation to a Construction Change during the Delivery Phase, the Construction Price and therefore the Service Payment shall be reduced and there shall be a corresponding reduction in the debt finance procured by Finance Co and reflected in the Securitised Licence Structure as follows:

- (a) the Construction Price will be reduced by an amount reflecting the capital component of the Change Saving;
- (b) the Receivables Purchase Price payable by Finance Co under the Receivables Purchase Deed will be reduced by the same amount as calculated at clause 25A.3(a); and
- (c) the Licence Payments payable by OpCo under the Operations Phase Licence will be adjusted to reflect, as appropriate, the reduction in the Construction Price.

25A.4 No change in risk allocation

- (a) The parties acknowledge and agree that the Securitised Licence Structure is not intended to result in an Increased State Risk Allocation.
- (b) If TfNSW reasonably believes that the Securitised Licence Structure results or is likely to result in an Increased State Risk Allocation, then it may give OpCo a notice stating that the Securitised Licence Structure is to be amended to the extent necessary to ensure there is no Increased State Risk Allocation.

- (c) OpCo agrees to do anything reasonably requested by TfNSW in a notice given by TfNSW under clause 25A.4(b) or otherwise reasonably necessary to modify the Securitised Licence Structure to ensure there is no Increased State Risk Allocation.
- (d) OpCo undertakes not to make any Claim inconsistent with the acknowledgement in clause 25A.4(a) and must ensure that neither Finance Co nor any Related Body Corporate of Finance Co or OpCo will make any such Claim.
- (e) OpCo acknowledges and agrees that:
 - (i) damages may not be an adequate remedy for TfNSW for any failure by OpCo to comply with the undertaking in clause 25A.4(a) or 25A.4(d); and
 - (ii) if there is a breach or purported breach by OpCo of its obligation in clause 25A.4(b) or 25A.4(d), TfNSW may seek, and is entitled to, injunctive or declaratory relief.
- (f) OpCo indemnifies TfNSW against:
 - (i) any Loss incurred by TfNSW in connection with any Increased State Risk Allocation to the extent that it is not removed or remedied by changes to the Securitised Licence Structure made in accordance with clause 25A.4(c); and
 - (ii) any Claim brought against TfNSW by Finance Co, OpCo or any of their respective Related Bodies Corporate which is inconsistent with the acknowledgement in Clause 25A.4(a).

25A.5 **GST**

- (a) TfNSW must pay an additional amount on account of GST in relation to a Construction Payment or Construction Change Payment.
- (b) Notwithstanding any other provision of clause 61.2 (*GST*), TfNSW is not obliged to make a payment to OpCo in respect of GST on the Construction Payment or Construction Change Payment until the 18th day of the month following the month that OpCo has provided TfNSW with a valid tax invoice in respect of this additional amount provided that if the 18th day of the month is not a Business Day, TfNSW will make the payment on the preceding Business Day.

26. **COMPENSATION EVENTS**

26.1 **Entitlement to claim compensation**

- (a) If a Compensation Event causes OpCo to incur Loss, OpCo may claim compensation in accordance with this clause 26 (*Compensation Events*).
- (b) To the extent that any Claim for compensation under this clause 26 (*Compensation Events*) includes a Claim by OpCo for any Losses it has incurred and which arise out of or in connection with any delay to the Delivery Activities, OpCo is only entitled to compensation for Loss if and only in respect of the period of time for which it has been granted an extension to the Date for Completion in accordance with clause 27.4 (*Relief from obligations*).

26.2 Claim for compensation

To claim compensation in respect of a Compensation Event, OpCo must:

- (a) within 20 Business Days after the earlier of when OpCo becomes aware, or ought reasonably to have become aware, that the Compensation Event is likely to cause OpCo to incur Loss, give to TfNSW's Representative a written notice, expressly stating:
 - (i) that OpCo proposes to make a Claim; and
 - (ii) the Compensation Event upon which the Claim will be based; and
- (b) within 10 Business Days of giving the notice under clause 26.2(a), give TfNSW's Representative a written Claim which must include (to the extent practicable):
 - (i) detailed particulars concerning the Compensation Event upon which the Claim is based;
 - (ii) details of the obligations which have been affected by the Compensation Event;
 - (iii) details of any Net Financial Impact of the Compensation Event and how it has been calculated;
 - (iv) if pursuant to clause 26.1 (*Entitlement to claim compensation*) OpCo is entitled to include in its Claim a delay component, detailed particulars of how the delay for which it has been granted an extension of time has caused a Net Financial Impact; and
 - (v) details of the steps which OpCo has taken to mitigate the effects of the relevant Compensation Event.

26.3 Continuing Compensation Events

If the Compensation Event (or its effects) is continuing, OpCo must:

- (a) continue to give the information required by clause 26.2(b) every 40 Business Days after the notice under clause 26.2(b) was provided to TfNSW's Representative until after the Compensation Event (or its effects) has ceased; and
- (b) provide a final written Claim within 5 Business Days after the Compensation Event (or its effects) have ceased.

26.4 Condition precedent to compensation

- (a) It is a condition precedent to OpCo's entitlement to compensation that:
 - (i) a Compensation Event has occurred which has caused OpCo to incur a Loss; and
 - (ii) OpCo has complied with the requirements of clauses 26.2 (*Claim for compensation*) and 26.3 (*Continuing Compensation Events*).
- (b) If OpCo fails to comply with the requirements of clauses 26.2 (*Claim for compensation*) and 26.3 (*Continuing Compensation Events*):

- (i) TfNSW will not be liable (in so far as it is possible to exclude such liability) upon any Claim by OpCo; and
- (ii) OpCo will be absolutely barred from making any Claim against TfNSW, arising out of or in connection with the relevant Compensation Event.

26.5 **Compensation for Net Financial Impact**

If the condition precedent in clause 26.4 (*Condition precedent to compensation*) has been satisfied, TfNSW must compensate OpCo for the Net Financial Impact of the Compensation Event.

26.6 **Calculation and payment of Net Financial Impact**

The Net Financial Impact of a Compensation Event will be calculated and paid in accordance with Schedule D4 (*Net Financial Impact*).

26.7 **Mitigation**

- (a) OpCo must use all reasonable endeavours to mitigate the effects of any Compensation Event (including by putting in place temporary measures reasonably acceptable to TfNSW's Representative).
- (b) Without limiting clause 26.7(a), OpCo must use all reasonable endeavours to:
 - (i) avoid or minimise the duration and consequences of any delay caused by a Compensation Event;
 - (ii) minimise any incremental costs or loss of revenue incurred or suffered as a result of a Compensation Event; and
 - (iii) maximise any cost savings or additional revenue derived as a result of a Compensation Event.
- (c) OpCo's entitlement to compensation will be reduced to the extent that OpCo fails to comply with its obligations under this clause 26.7 (*Mitigation*).

26.8 **Non-compliance**

OpCo's entitlement to compensation will be reduced to:

- (a) exclude any incremental costs or loss of revenue which would not have been incurred or suffered; and
- (b) include any cost savings or additional revenue which would have been derived, had OpCo complied with its obligations under the Project Agreements.

26.9 **OpCo conduct**

OpCo's entitlement to compensation will be reduced to:

- (a) exclude any incremental costs or loss of revenue which would not have been incurred or suffered; and
- (b) include any cost savings or additional revenue which would have been derived,

to the extent that the Compensation Event occurs or arises as a result of any act or omission of OpCo or OpCo's Contractor.

26.10 **Limitation of liability**

- (a) Except as provided for in this clause 26 (*Compensation Events*), TfNSW will not be liable upon any Claim by OpCo arising out of or in connection with a Compensation Event, including in respect of any breach of this deed by TfNSW.
- (b) The parties agree that OpCo's entitlements under this clause 26 (*Compensation Events*) are a limitation on TfNSW's liability to OpCo for any breach of this deed by TfNSW and that OpCo will not be entitled to make, nor will TfNSW be liable upon, any Claim in these circumstances other than in respect of the matters for which TfNSW may be liable under this clause 26 (*Compensation Events*).
- (c) Nothing in this clause 26.10 (*Limitation of liability*) will affect or limit OpCo's rights or entitlements under clause 27 (*Relief Events*) or 43.12 (*Termination Payments*) or OpCo's right to terminate this deed.

27. **RELIEF EVENTS**

27.1 **Notification**

If a Relief Event occurs and:

- (a) affects, or is likely to affect, the ability of OpCo to comply with its obligations under this deed; or
- (b) delays an activity:
 - (i) on the critical path contained and shown in the Delivery Program; or
 - (ii) which was not on the critical path contained and shown in the Delivery Program but which has become critical as a result of the Relief Event giving rise to the delay,

in a manner which will delay OpCo in achieving Completion, OpCo must:

- (c) within 10 Business Days after it becomes aware, or ought reasonably to have become aware, that a Relief Event is likely to cause delay or affect the ability of OpCo to comply with its obligations under this deed, give to TfNSW's Representative a written notice stating that a Relief Event has occurred; and
- (d) within 10 Business Days of giving the notice under clause 27.1(c), give TfNSW's Representative full particulars of the Relief Event including (to the extent practicable):
 - (i) details of the obligations which have been affected by the Relief Event;
 - (ii) details of the steps which OpCo has taken to mitigate the effects of the relevant Relief Event;
 - (iii) whether OpCo considers that the Relief Event may also reasonably be expected to give rise to a Force Majeure Event; and
 - (iv) for Relief Events (other than an Alstom Relief Event), details of any extension of time required to the Date for Completion (or if the Relief Event

occurs after the Date for Completion but before the Longstop Date, the Longstop Date) and how it has been calculated.

27.2 Continuing Relief Event

If the Relief Event (or its effects) is continuing, OpCo must continue to give the information required by clause 27.1(d) every 40 Business Days after the notice under clause 27.1(d) was provided to TfNSW's Representative until after the Relief Event (or its effects) has ceased. If a Relief Event (or its effects) continues for such a period or in such a manner that a Force Majeure Event occurs, OpCo must, within the earlier of 20 Business Days after the occurrence of the Force Majeure Event or the date of the next notice given by OpCo under this clause 27.2 (*Continuing Relief Event*) after the occurrence of the Force Majeure Event, notify TfNSW of the occurrence of the Force Majeure Event.

27.3 Condition precedent to relief

- (a) It is a condition precedent to OpCo's entitlement to relief from its obligations under clause 27.4 (*Relief from obligations*) that OpCo has complied with the requirements of clauses 27.1 (*Notification*) and 27.2 (*Continuing Relief Event*).
- (ab) Without limiting clause 27.3(a), in respect of a Compensation Event under paragraph (ka) of the definition of Compensation Event, it is a condition precedent to OpCo's entitlement to any extension of the Date for Completion that:
 - (i) OpCo is actually delayed in achieving Completion by the Date for Completion as a result of that Compensation Event; and
 - (ii) OpCo has used all reasonable and practicable methods for mitigating the delay (including re-sequencing and reprogramming the D&C Activities and, in respect of a Utility Works Event, temporary diversion or connection of the utility or redesigning the permanent works to avoid the utility (temporarily or permanently)).
- (ac) Without limiting clause 27.3(a), in respect of a Compensation Event under paragraph (kc) of the definition of Compensation Event, it is a condition precedent to OpCo's entitlement to any extension of the Date for Completion that:
 - (i) OpCo is actually delayed in achieving Completion by the Date for Completion;
 - (ii) OpCo has undertaken the tests in accordance with clause 11.4B(a)(i) and if Hazardous Coal Tar has been discovered, developed the mitigation and treatment plan in accordance with clause 11.4B(a)(i); and
 - (iii) OpCo has used all reasonable and practicable methods of mitigating the delay (including re-sequencing and reprogramming the D&C Activities).
- (b) If OpCo fails to comply with the requirements of clauses 27.1 (*Notification*) and 27.2 (*Continuing Relief Event*):
 - (i) TfNSW will not be liable (in so far as it is possible to exclude such liability) upon any Claim by OpCo; and
 - (ii) OpCo will be absolutely barred from making any Claim against TfNSW, arising out of or in connection with the relevant Relief Event.

27.4 Relief from obligations

- (a) If:
- (i) a Relief Event occurs; and
 - (ii) the conditions precedent in:
 - (A) clause 27.1(a); or
 - (B) clause 27.1(b); and
 - (C) clause 27.3(a),
 have been satisfied,

TfNSW will, taking into account the notices given by OpCo under clauses 27.1 (*Notification*) and 27.2 (*Continuing Relief Event*):

- (iii) in respect of a Relief Event (other than an Alstom Relief Event), grant OpCo such relief from its non-financial obligations under this deed which are affected by the Relief Event, but only to the extent and for so long as the Relief Event affects or delays OpCo from performing those obligations including, where relevant, extending the Date for Completion (or if the Relief Event occurs after the Date for Completion but before the Longstop Date, extending the Longstop Date) by such time as reasonable for such Relief Event, taking into account the likely effect of such delay; and
 - (iv) in respect of an Alstom Relief Event, grant OpCo such relief:
 - (A) from its non-financial obligations under this deed which are affected by the Alstom Relief Event; and
 - (B) from the liquidated damages under clause 19.14 (*Liquidated Damages in respect of Additional CSELRVs and Option 1A CSELRVS*),
 and:
 - (C) only to the extent and for so long as the Alstom Relief Event affects or delays OpCo from performing those obligations; and
 - (D) an Alstom Relief Event shall not extend the Date for Completion or the Longstop Date.
- (b) The parties acknowledge and agree that any such relief granted by TfNSW under this clause 27 (*Relief Event*) will not apply to extend the Date for Revenue Service.

27.5 Mitigation

OpCo must use all reasonable endeavours to mitigate the effects of any Relief Event (including by putting in place temporary measures reasonably acceptable to TfNSW's Representative).

27.6 Payment regime not affected

Nothing in this clause 27 (*Relief Events*) will affect the operation of Schedule D1 (*Service Payment Regime*) and the Service Payment will be calculated as if obligations affected by a Relief Event subsisted during the period in which the Relief Event is subsisting.

27.7 **Fee zone regime not affected**

Except to the extent of OpCo's rights under clause 12.3(i), nothing in this clause 27 (*Relief Events*) will affect the operation of clause 12.3 (*Occupation of Fee Areas and Fee Zones*) and the Daily Fee will be calculated as if obligations affected by a Relief Event subsisted during the period in which the Relief Event is subsisting.

28. **FORCE MAJEURE**

28.1 **Force Majeure Event**

A Force Majeure Event is a Relief Event (other than a Compensation Event or a Relief Event described in paragraphs (b) and (h) of the definition of Relief Event to the extent occurring in an Alstom Manufacturing Country) which:

- (a) exists or occurs, or the impacts of which exist or occur for a continuous period exceeding 180 days; and
- (b) directly causes OpCo to be unable to achieve Completion or to comply with a material part of its obligations under this deed,

provided that:

- (c) the Relief Event (or its effects) was beyond the reasonable control of OpCo and OpCo's Contractors; and
- (d) the Relief Event did not occur or arise as a result of any act or omission of OpCo or OpCo's Contractors.

28.2 **Meeting**

As soon as practicable after notice of the occurrence of a Force Majeure Event is given under clauses 27.1(c) or 27.2 (*Continuing Relief Event*), the parties must meet and consult with each other in good faith and use all reasonable endeavours to determine whether a Force Majeure Event has occurred.

28.3 **Termination for Force Majeure Event**

- (a) Subject to clause 28.3(b), if:
 - (i) the parties are unable to agree on appropriate measures to mitigate the effects of the Force Majeure Event and facilitate the continued performance of this deed on or before the date falling 20 Business Days after the date of the commencement of the relevant Force Majeure Event (or the date on which the relevant Relief Event became a Force Majeure Event); and
 - (ii) the Force Majeure Event is continuing or its consequence remain such that the affected party has been or is unable to comply with a material part of its obligations under this deed during that 20 Business Day period,

then, subject to clause 28.4 (*Suspension of OpCo's right to terminate*), either party may terminate this deed by giving 20 Business Days' written notice to the other party.

- (b) OpCo may only terminate this deed in accordance with clause 28.3(a) if OpCo is:

- (i) entitled to recover (or would have been entitled to recover if OpCo had fully complied with its insurance obligations under this deed and made a proper claim) under the advance business interruption insurance policy described in Schedule D10 (*Insurances*) during the Delivery Phase or under the business interruption insurance policy described in Schedule D10 (*Insurances*) during the Operations Phase, and the maximum indemnity period stated in relevant insurance policy has been exceeded; or
- (ii) not entitled to recover under the advance business interruption insurance policy described in Schedule D10 (*Insurances*) during the Delivery Phase or under the business interruption insurance policy described in Schedule D10 (*Insurances*) during the Operations Phase (other than because OpCo has not complied with its insurance obligations under this deed or made a proper claim), at the end of the 20 Business Day period referred to in clause 28.3(a).

28.4 Suspension of OpCo's right to terminate

- (a) If OpCo gives a termination notice under clause 28.3(a), TfNSW may suspend OpCo's right to terminate by giving a suspension notice within 20 Business Days of receipt of OpCo's termination notice. TfNSW may suspend OpCo's right to terminate for up to a maximum period of 12 months, following the expiry of which OpCo may exercise its right to terminate under clause 28.3 (*Termination for Force Majeure Event*) and TfNSW may not suspend that right under this clause 28.4 (*Suspension of OpCo's right to terminate*).
- (b) If TfNSW gives OpCo a suspension notice under clause 28.4(a) TfNSW must:
 - (i) if the right to terminate is suspended after the Date of Completion, during the period in which OpCo's right to terminate is suspended pay OpCo the Service Payment which would have been payable if OpCo's Activities then required to be carried out under this deed, which OpCo is relieved from performing in accordance with this deed due to the Force Majeure Event, were being performed in full based on the average performance of OpCo for the 6 months (or lesser period if the Force Majeure Event occurred less than 6 months after the Date of Completion) immediately prior to the Force Majeure Event first occurring less the aggregate of (without double counting):
 - (A) TfNSW's reasonable estimate of the costs not incurred by OpCo as a result of the non-performance of OpCo's Activities; and
 - (B) the amount of the proceeds OpCo receives from any business interruption or advance business interruption insurances; and
 - (ii) if the right to terminate is suspended before the Date of Completion, from the date on which OpCo would have achieved Completion but for the Force Majeure Event, pay OpCo the sum of:
 - (A) the Service Payment which would have been payable in respect of IWLR Operations then required to be carried out under this deed which OpCo is relieved from performing in accordance with this deed due to a Force Majeure Event if OpCo's Activities in respect of IWLR Operations were being performed in full based on the average performance of OpCo for the 6 months (or lesser period if the Force Majeure Event occurred less than 6 months after the Date of Revenue

Service) immediately prior to the Force Majeure Event first occurring;
and

- (B) OpCo's debt servicing costs under the Debt Financing Documents,
less the aggregate of (without double counting):
- (C) TfNSW's reasonable estimate of the costs not incurred by OpCo as a result of the non-performance of OpCo's Activities; and
- (D) the amount of the proceeds OpCo receives from any business interruption or advance business interruption insurances; and

- (iii) subject to clause 28.4(a), this deed will not terminate until expiry of written notice (of at least 30 Business Days) from TfNSW to OpCo that it is ending the suspension of OpCo's right to terminate.

28.5 **Event ceases**

If OpCo becomes able to recommence performing the relevant obligations after TfNSW gives OpCo a suspension notice:

- (a) OpCo must recommence performance of those obligations; and
- (b) OpCo's termination notice under clause 28.3(a) will cease to have any effect.

28.6 **Payment regime not affected**

Except where TfNSW gives OpCo a suspension notice under clause 28.4(a), nothing in this clause 28 (*Force Majeure*) will affect the operation of Schedule D1 (*Service Payment Regime*) and the Service Payment will be calculated as if obligations affected by a Force Majeure Event subsisted during the period in which the Force Majeure Event is subsisting.

29. **TfNSW INITIATED MODIFICATIONS**

29.1 **Modification Request**

- (a) TfNSW's Representative may at any time issue to OpCo a Modification Request setting out the details of a proposed Modification which TfNSW is considering.
- (b) TfNSW will not be obliged to proceed with any Modification proposed in a Modification Request.

29.2 **Emergency Modification**

If TfNSW issues a Modification Request for an Emergency Modification, OpCo must immediately (or as soon as reasonably practicable) implement the Emergency Modification in accordance with the Modification Request notwithstanding that the full process in this clause 29 (*TfNSW initiated Modifications*) has not been followed. The clauses in the remainder of this clause 29 (*TfNSW initiated Modifications*) will apply to such Emergency Modification save that where the context requires such provisions will be read having regard to the fact that OpCo has already commenced implementation of the Emergency Modification.

29.3 Modification Impact Proposal

- (a) If the Modification Request requests that OpCo provide an estimate of the third party costs that OpCo will incur in preparing a Modification Impact Proposal, OpCo must provide that estimate within 5 Business Days of receipt of the Modification Request.
- (b) If the Modification Request requests that OpCo provide TfNSW with a Modification Impact Proposal, then as soon as practicable after:
 - (i) receipt of a Modification Request; or
 - (ii) if the Modification Request requests that OpCo provide an estimate of the third party costs that OpCo will incur in preparing a Modification Impact Proposal, TfNSW advising OpCo that the fee estimate is acceptable,

OpCo must provide TfNSW with a Modification Impact Proposal.

- (c) The Modification Impact Proposal must set out detailed particulars of OpCo's view on:
 - (i) the Net Financial Impact of the proposed Modification;
 - (ii) the basis (if any) on which OpCo is able to fund the Modification and difference to the Net Financial Impact, if OpCo, rather than TfNSW, funds the Modification;
 - (iii) if the Modification is proposed to be carried out during the Delivery Phase in relation to the Delivery Activities, the effect which the proposed Modification will have on the Delivery Program (including any extension of time required to the Date for Completion and the Longstop Date);
 - (iv) if the Modification is proposed to be carried out during the Operations Phase in relation to the Operations Activities, the time within which the proposed Modification will be implemented;
 - (v) any Approvals required to implement the proposed Modification, and the effect of the proposed Modification on any existing Approvals;
 - (vi) the effects which the proposed Modification will have on OpCo's ability to satisfy its obligations under this deed (including any warranties given by OpCo under this deed);
 - (vii) any relief which is required from OpCo's obligations under this deed to ensure that it is left in a no better and no worse position than it would be in if the Modification were not implemented; and
 - (viii) any other information requested by TfNSW in the Modification Request, having regard to:
 - (ix) the type of Modification;
 - (x) where relevant to the type of Modification, the agreed price options as set out in Schedule D5 (*Pre-Agreed Options*); and
 - (xi) Schedule D4 (*Net Financial Impact*),

as applicable and relevant to the Modification Request.

29.4 **Cost of preparing Modification Impact Proposal**

If:

- (a) OpCo prepares a Modification Impact Proposal in accordance with clause 29.3 (*Modification Impact Proposal*); and
- (b) TfNSW does not issue a Modification Order in respect of the proposed Modification, then TfNSW will reimburse the reasonable third party costs incurred by OpCo or its Core Contractors (which will be deemed to include the reasonable costs (excluding overheads and profit) of Alstom in respect of design works carried out by Alstom in relation to any additional equipment requirements (including power simulation and alignment design) and installation, noise and electromagnetic compatibility studies) in:
 - (c) preparing the Modification Impact Proposal; and
 - (d) if applicable, performing its obligations under clause 29.5 (*Tender for works*) or 29.8 (*TfNSW rejects Modification Impact Proposal*),

capped at the amount of any estimate provided by OpCo for the Modification Impact Proposal under clause 29.3(a).

29.5 **Tender for works**

- (a) During the Operations Phase, TfNSW may require that OpCo conduct a tender process for all or part of the works which would be required to effect the Modification.
- (b) If TfNSW elects to require the tender process, the tender process must be carried out promptly, in accordance with TfNSW's reasonable requirements.
- (c) Following completion of the tender process, OpCo must:
 - (i) prepare a Modification Impact Proposal, having regard to the outcome of the tender process (including the tendered prices) in the Modification Impact Proposal; or
 - (ii) if a Modification Impact Proposal has been submitted before the completion of the tender process, promptly submit an appropriately amended Modification Impact Proposal.

29.6 **Election by TfNSW**

Within 30 Business Days after receiving a Modification Impact Proposal, TfNSW's Representative may:

- (a) accept the Modification Impact Proposal;
- (b) reject the Modification Impact Proposal; or
- (c) inform OpCo that it does not wish to proceed with the proposed Modification,

by written notice to OpCo (which in the case of paragraph (a) must be a Modification Order).

29.7 TfNSW accepts Modification Impact Proposal

If TfNSW accepts the Modification Impact Proposal in accordance with clause 29.6(a):

- (a) OpCo must implement the Modification on the basis of the Modification Impact Proposal (as accepted by TfNSW);
- (b) OpCo will be relieved of its obligations under this deed to the extent specified in the Modification Impact Proposal (as accepted by TfNSW); and
- (c) the Date for Completion and the Longstop Date will be extended as specified in the Modification Impact Proposal.

29.8 TfNSW rejects Modification Impact Proposal

If TfNSW rejects the Modification Impact Proposal in accordance with clause 29.6(b), TfNSW may require that:

- (a) the parties consult in good faith and use their reasonable endeavours to agree on a mutually acceptable resolution to the matters set out in the Modification Impact Proposal; and/or
- (b) if this occurs during the Operations Phase, OpCo conduct a tender process (to the extent it has not already done so) under clause 29.5 (*Tender for works*).

29.9 Parties reach agreement

If the parties reach agreement on the Modification Impact Proposal and TfNSW directs OpCo to implement the Modification by issuing a Modification Order:

- (a) OpCo must implement the Modification on the basis of the Modification Impact Proposal (as varied by the parties' agreement);
- (b) OpCo will be relieved of its obligations under this deed to the extent specified in the Modification Impact Proposal (as varied by the parties' agreement); and
- (c) the Date for Completion and the Longstop Date will be extended as specified in the Modification Impact Proposal (if applicable) (as varied by the parties' agreement).

29.10 If parties fail to reach agreement

If the parties are unable to reach agreement within 20 Business Days after TfNSW rejects the Modification Impact Proposal, TfNSW may refer the matter for dispute resolution in accordance with clause 56 (*Dispute resolution*).

29.11 TfNSW may direct that Modification proceed

- (a) If TfNSW refers the matter for dispute resolution under clause 29.10 (*If parties fail to reach agreement*), TfNSW may also direct OpCo to implement the Modification by issuing a Modification Order whether or not any matters in dispute have been agreed in accordance with clause 56 (*Dispute resolution*).
- (b) If TfNSW issues such a Modification Order:
 - (i) any disputed matters will, until TfNSW and OpCo otherwise agree or a determination is made in accordance with clause 56 (*Dispute resolution*), be reasonably determined by TfNSW's Representative. In making his or her determination, TfNSW's Representative will:

- (A) assume that funding for the Modification will be provided by TfNSW, unless the parties otherwise agree; and
- (B) determine all matters required to enable the Modification to be implemented;
- (ii) OpCo must proceed to implement the Modification on the basis determined by TfNSW's Representative (notwithstanding that any matters in dispute have not been agreed or determined in accordance with clause 56 (*Dispute resolution*));
- (iii) OpCo will be relieved of its obligations under this deed to the extent specified in the Modification Order;
- (iv) the Date for Completion will be extended as specified in the Modification Order (if applicable); and
- (v) any necessary adjustments will be made following the determination of a dispute (where applicable).

29.12 TfNSW options following determination

Following determination of the dispute referred to in clause 29.10 (*If parties fail to reach agreement*) in accordance with clause 56 (*Dispute resolution*), TfNSW may, only if it has not already exercised its right under clause 29.11 (*TfNSW may direct that Modification proceed*), elect to do either of the following:

- (a) require OpCo to implement the Modification in accordance with the Modification Impact Proposal as varied by the determination; or
- (b) withdraw the proposed Modification,

by written notice to OpCo (which in the case of paragraph (a) must be a Modification Order).

29.13 OpCo to implement Modification

If TfNSW gives a Modification Order pursuant to clause 29.12 (*TfNSW options following determination*):

- (a) OpCo must carry out the Modification described in the Modification Order on the basis of the Modification Impact Proposal (as varied by the determination, once made);
- (b) OpCo will be relieved of its obligations under this deed to the extent specified in the Modification Impact Proposal (as varied by the determination, once made); and
- (c) the Date for Completion will be extended as specified in the Modification Impact Proposal (as varied by the determination, once made, as applicable).

29.14 Instruction to proceed

- (a) Whether or not TfNSW has issued a Modification Request under clause 29.1 (*Modification Request*) and whether or not OpCo has issued a Modification Impact Proposal under clause 29.3 (*Modification Impact Proposal*) in response to a Modification Request, TfNSW's Representative may at any time instruct OpCo to implement a Modification by issuing a Modification Order. In these circumstances,

the matters set out in clauses 29.3(c)(i), 29.3(c)(iii) and 29.3(c)(vii) will, until TfNSW and OpCo agree otherwise or a determination is made in accordance with clause 56 (*Dispute resolution*), be reasonably determined by TfNSW's Representative.

- (b) In making his or her determination, TfNSW's Representative will:
 - (i) assume that funding for the Modification will be provided by TfNSW, unless the parties otherwise agree; and
 - (ii) determine all matters required to enable the Modification to be implemented.
- (c) If OpCo disagrees with a matter determined by TfNSW's Representative
 - (i) OpCo may refer the matter for dispute resolution in accordance with clause 56 (*Dispute resolution*);
 - (ii) OpCo must proceed to implement the Modification on the basis determined by TfNSW's Representative notwithstanding that the matters in dispute have not been agreed or determined in accordance with clause 56 (*Dispute resolution*); and
 - (iii) any necessary adjustments will be made following any agreement or determination under clause 56 (*Dispute resolution*).

29.15 Omissions

If a Modification omits any part of the SLR Works or OpCo's Activities, TfNSW may carry out those omitted SLR Works or OpCo's Activities itself or by engaging an Other Contractor or the ETS Contractor.

29.16 Calculation and payment of Net Financial Impact

The Net Financial Impact of a Modification directed by TfNSW under this clause 29 (*TfNSW initiated Modifications*) will be calculated and paid in accordance with Schedule D4 (*Net Financial Impact*).

29.17 No liability unless Modification Order

OpCo will not be entitled to make any Claim against TfNSW arising out of, or in any way in connection with, any Modification, except where OpCo is directed to implement a Modification pursuant to a Modification Order issued by TfNSW under this clause 29 (*TfNSW initiated Modifications*).

30. OPCO INITIATED MODIFICATIONS

30.1 OpCo may propose a Modification

OpCo may propose a Modification by giving to TfNSW a written notice with details of:

- (a) the proposed Modification;
- (b) the reason for the proposed Modification;
- (c) the time within, and the manner in which, OpCo proposes to implement the proposed Modification;

- (d) the effect the proposed Modification will have on the Delivery Program (including any extension of time required to the Date for Completion and the Longstop Date);
- (e) any Approvals required to implement the proposed Modification, and the effect of the proposed Modification on any existing Approvals;
- (f) the effects which the proposed Modification will have on OpCo's ability to satisfy its obligations under this deed (including any warranties given by OpCo under this deed); and
- (g) the value for money for TfNSW arising from the Modification, including the proposed cost savings to be paid to TfNSW.

30.2 TfNSW may approve or reject

- (a) If OpCo gives a notice under clause 30.1 (*OpCo may propose a Modification*), TfNSW:
 - (i) will consider OpCo's proposed Modification in good faith; and
 - (ii) subject to clause 30.3 (*Modification required as a result of a Change in Law or Change in NSW Government Policy*), may:
 - (A) approve (with or without conditions) the proposed Modification in its absolute discretion by issuing a Modification Approval to OpCo; or
 - (B) reject the proposed Modification in its absolute discretion; and
 - (iii) will be under no obligation to approve the proposed Modification for the convenience of or to assist OpCo.
- (b) If TfNSW issues a Modification Approval under clause 30.2(a)(ii)(A) without conditions:
 - (i) OpCo must proceed to implement the Modification on the basis set out in the Modification Approval; and
 - (ii) OpCo will be relieved of its obligations under this deed to the extent specified in the Modification Approval.
- (c) If TfNSW issues a Modification Approval under clause 30.2(a)(ii)(A) with conditions:
 - (i) OpCo may proceed to implement the Modification on the basis set out in the Modification Approval, in which case OpCo will be relieved of its obligations under this deed to the extent specified in the Modification Approval; or
 - (ii) OpCo may withdraw the proposed Modification if OpCo, acting reasonably, does not accept any of the conditions attached to the Modification Approval.

30.3 Modification required as a result of a Change in Law or Change in NSW Government Policy

- (a) To the extent that any Modification requested by OpCo is required to ensure that the SLR Works, Temporary Works and the SLR comply with:
 - (i) a Change in Law; or

- (ii) a Change in NSW Government Policy directed by TfNSW under clause 36.3(a)(i),

TfNSW must, in its discretion, either:

- (iii) approve the Modification proposed by OpCo by issuing a Modification Approval;
 - (iv) direct OpCo to carry out a Modification in accordance with clause 29 (*TfNSW initiated Modifications*) to ensure that the SLR Works, the Temporary Works and the SLR comply with the Change in Law or the Change in NSW Government Policy; or
 - (v) take such other action as TfNSW considers necessary to ensure the SLR Works, the Temporary Works and the SLR comply with the Change in Law or the Change in NSW Government Policy.
- (b) If TfNSW approves or directs a Modification in accordance with clause 30.3(a)(iii) or clause 30.3(a)(iv):
- (i) OpCo must proceed to implement the Modification on the basis of OpCo's notice under clause 30.1 (*OpCo may propose a Modification*) or in accordance with clause 29 (*TfNSW initiated Modifications*); and
 - (ii) if the Modification is required to ensure that the SLR Works, the Temporary Works or the SLR comply with a Compensable Change in Law or a Compensable Change in NSW Government Policy, clauses 26 (*Compensation Events*) and 27 (*Relief Events*) will apply.

30.4 **OpCo to bear risks and costs**

Unless otherwise agreed in writing by TfNSW and subject to clause 30.3(b)(ii), OpCo will:

- (a) bear all risks and costs associated with a Modification proposed by OpCo; and
- (b) not be entitled to make any Claim against TfNSW arising out of, or in any way in connection with, a Modification proposed by OpCo.

31. **PRE-AGREED OPTIONS**

- (a) TfNSW may at any time prior to the relevant Election Date, in its absolute discretion and without being under any obligation to do so, direct OpCo to implement any Pre-Agreed Option by giving notice to OpCo.
- (b) If a notice is given pursuant to clause 31(a) in respect of a Pre-Agreed Option by the relevant Election Date, this deed will be deemed to be amended in accordance with the relevant amendments set out in Schedule D5 (*Pre-Agreed Options*) with effect from the date specified as the "Effective Date" in Schedule D5 (*Pre-Agreed Options*) in respect of that Pre-Agreed Option.
- (c) Where TfNSW directs OpCo to carry out a Pre-Agreed Option in accordance with clause 31(a), OpCo, in respect of that Pre-Agreed Option:
 - (i) must carry out its obligations under this deed as those obligations are amended by clause 31(b); and

- (ii) acknowledges that the amendments made to this deed pursuant to clause 31(b), including amendments made in respect of payments to which OpCo is entitled, will be full compensation for any Loss OpCo may incur arising out of or in connection with the implementation of the relevant Pre-Agreed Option.
- (d) Nothing in this clause 31 (*Pre-Agreed Options*) prevents TfNSW from:
- (i) issuing a Modification Request or directing a Modification under clause 29 (*TfNSW initiated Modifications*);
 - (ii) issuing a Notice of Proposed Augmentation (as defined in Schedule D9 (*Augmentations*)) under clause 6 of Schedule D9 (*Augmentations*);
 - (iii) carrying out Proximate Work Activities under clause 34 (*Proximate Work Activities*); or
 - (iv) engaging an Other Contractor or the ETS Contractor to carry out any works, that involves the same (or similar) changes to the Delivery Activities, SLR Works, the SLR or the Operations Activities as a Pre-Agreed Option, whether before or after the relevant Election Date.
- (e) Part B of Schedule D5 (*Pre-Agreed Options*) sets out the principles that will apply to a Modification arising as a result of TfNSW exercising, or intending to exercise, its rights under Option 1B and/or Option 2 of the Alstom CSELRV Supply Agreement (each as defined therein). Part C of Schedule D5 (*Pre-Agreed Options*) sets out certain principles that will apply to a Modification arising as a result of TfNSW exercising its rights, or intending to exercise its rights, in respect of an Additional Option IWLRV (as defined in Part C of Schedule D5 (*Pre-Agreed Options*)). The parties agree to comply with such principles in relation to a Modification arising in respect of Option 1B, Option 2 or Additional Option IWLRVs.

32. TRANSPORT PLANNING

- (a) OpCo acknowledges that nothing in the Project Agreements restrict the State or any Authority in making policy decisions as it sees fit in relation to the development and implementation of transport planning in New South Wales.
- (b) OpCo must participate as reasonably required by TfNSW in the development and implementation of transport planning. This participation may involve:
 - (i) attending meetings, consultation forums and other similar events;
 - (ii) reviewing and contributing to the development of proposals and strategies put forward by the State or other transport operators and stakeholders;
 - (iii) providing comments of the impact of proposals and strategies on the SLR; and
 - (iv) cooperating in good faith in the implementation of TfNSW's public transport policy objectives, as notified to OpCo.
- (c) OpCo will have no entitlement to make any Claim against TfNSW or the State with respect to any consequence of the State, TfNSW or any Authority exercising, or not exercising, any right or power in relation to the development and implementation of transport planning in New South Wales, except as expressly provided in this deed.

33. **AUGMENTATIONS**

33.1 **Augmentations**

The parties agree that the principles in Schedule D9 (*Augmentations*) apply to the Augmentation process.

33.2 **Termination in connection with an Augmentation**

If any of the circumstances in clause 20 (*Right to terminate*) of Schedule D9 (*Augmentations*) occur, TfNSW may terminate this deed. This clause does not in any way limit TfNSW's right to terminate this deed at any time pursuant to clause 43.7 (*Voluntary termination by TfNSW*).

33.3 **No limitation**

This clause 33 (*Augmentations*) does not limit any of TfNSW's other rights under this deed.

34. **PROXIMATE WORK ACTIVITIES**

34.1 **Right to carry out Proximate Work Activities**

Subject to this clause 34 (*Proximate Work Activities*), TfNSW (or its nominees) may carry out Proximate Work Activities, including to:

- (a) build and connect an augmentation or other extension to the SLR;
- (b) alter any Stop;
- (c) build an additional connection between the SLR and its local environment, including by developing any areas around a Stop;
- (d) build, operate and maintain a retail, commercial or residential development and associated infrastructure above, below or adjacent to the SLR;
- (e) close off areas, including to prevent public access;
- (f) open up any areas that are closed off;
- (g) install, operate and maintain equipment;
- (h) install Utility Services and connect to existing Utility Services (including those under the control of OpCo);
- (i) build, connect, operate and maintain any other infrastructure or improvement above, below or adjacent to the SLR;
- (j) carry out Minor Works on the SLR; and
- (k) carry out any associated work.

34.2 **Proposed Proximate Work Activity**

If TfNSW proposes to undertake a Proximate Work Activity:

- (a) TfNSW must give OpCo reasonable written notice of its intention to do so; and

- (b) OpCo must co-operate with TfNSW (and its nominees) to enable TfNSW to plan the undertaking of the Proximate Work Activity.

34.3 Carrying out Proximate Work Activities

If TfNSW carries out any Proximate Work Activity, OpCo must:

- (a) comply with its obligations under clause 9.12 (*Cooperation and coordination with Other Contractors*);
- (b) assist TfNSW in ensuring that any works constructed as part of the Proximate Work Activity are compatible with the SLR and the ETS;
- (c) allow TfNSW to adjust the SLR Works, the Temporary Works or the SLR to interface with any works constructed as part of the Proximate Work Activity;
- (d) co-operate with TfNSW and its nominees to facilitate the undertaking of the Proximate Work Activity, including permitting reasonable temporary closure of parts of the SLR Site, managing passengers and others in areas affected by the Proximate Work Activity and rescheduling or otherwise adjusting OpCo's Activities; and
- (e) do anything which TfNSW reasonably requires in order to give full effect to this clause 34.3 (*Carrying out Proximate Work Activities*) (including executing any document or entering into an agreement with a third party on terms which TfNSW's Representative considers to be commercially reasonable).

34.4 No limitation

This clause 34 (*Proximate Work Activities*) does not limit TfNSW's other rights under this deed.

35. CHANGE IN LAW

35.1 Non-compensable changes in law

Subject to clause 35.2 (*Compensable Change in Law*), OpCo will be liable for the consequences of, and will have no Claim against TfNSW arising out of or in any way in connection with, a Change in Law.

35.2 Compensable Change in Law

Subject to clauses 26 (*Compensation Events*) and 27 (*Relief Events*) and Schedule D4 (*Net Financial Impact*), OpCo will be entitled to compensation for a Compensable Change in Law.

35.3 Beneficial Change in Law

Where there is a Change in Law which results in a positive Net Financial Impact, OpCo must pay the amount of the Net Financial Impact to TfNSW calculated in accordance with Schedule D4 (*Net Financial Impact*).

36. NSW GOVERNMENT POLICY

36.1 OpCo to comply with NSW Government Policy

Subject to clauses 36.2 (*OpCo to notify of any Change in NSW Government Policy*) and 36.3 (*TfNSW's Direction*), OpCo must comply with all NSW Government Policies, as published from time to time, which apply to OpCo's Activities.

36.2 OpCo to notify of any Change in NSW Government Policy

OpCo must, within a reasonable time, notify TfNSW of any Change in NSW Government Policy which applies to OpCo's Activities.

36.3 TfNSW's Direction

- (a) Upon receipt of any notification from OpCo under clause 36.2 (*OpCo to notify of any Change in NSW Government Policy*), TfNSW may:
- (i) direct OpCo to implement the changes required for OpCo to comply with its obligation under clause 36.1 (*OpCo to comply with NSW Government Policy*); or
 - (ii) direct OpCo to not implement any changes, despite any Change in NSW Government Policy.
- (b) Without limiting any other provisions within this deed, OpCo must not implement any changes as a result of the Change in NSW Government Policy, unless directed to do so by TfNSW.

36.4 Non-compensable changes in NSW Government Policy

Subject to clause 36.5 (*Compensable Change in NSW Government Policy*), OpCo will be liable for the consequences of, and will have no Claim against TfNSW arising out of or in any way in connection with, a Change in NSW Government Policy.

36.5 Compensable Change in NSW Government Policy

Subject to clauses 17 (*Time*), 26 (*Compensation Events*) and 27 (*Relief Events*) and Schedule D4 (*Net Financial Impact*), where TfNSW has issued a Direction for OpCo to implement a change under clause 36.3(a)(i), OpCo will be entitled to compensation for a Compensable Change in NSW Government Policy.

36.6 Beneficial Change in NSW Government Policy

Where OpCo has implemented changes as a result of a Change in NSW Government Policy in accordance with this clause 36 (*NSW Government Policy*) and that change results in a positive Net Financial Impact, OpCo must pay the amount of the Net Financial Impact to TfNSW calculated in accordance with Schedule D4 (*Net Financial Impact*).

37. REINSTATEMENT OF LOSS OR DAMAGE

37.1 Reinstatement

- (a) If any part of:
- (i) the SLR Works;
 - (ii) the Temporary Works;

- (iii) the Construction Site;
- (iv) the SLR;
- (v) the Assets; or
- (vi) unfixed goods and materials (whether on or off the SLR Site), including anything brought on to the SLR Site by an OpCo Contractor, used or to be used in carrying out OpCo's Activities,

is lost, damaged or destroyed, OpCo must, to the extent that OpCo's obligations under clause 20.15 (*Graffiti removal and Vandalism*) do not apply:

- (vii) promptly provide TfNSW's Representative with written notice of any such loss, damage or destruction and any required reinstatement or repair;
 - (viii) consult with TfNSW's Representative as to the programming of the works needed to effect the relevant reinstatement or repair;
 - (ix) promptly reinstate or otherwise make good the loss, or repair the damage, so that OpCo continues to comply with its obligations under the Project Agreements to the greatest extent possible; and
 - (x) keep TfNSW's Representative fully informed of the progress of the reinstatement and repair activities.
- (b) To the extent that the loss, damage or destruction arises from any of the following events:
- (i) war or armed conflict in each case occurring within Australia;
 - (ii) chemical or biological contamination, ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel in each case occurring in Australia and not caused by OpCo or its Associates;
 - (iii) a breach of any TfNSW Project Agreement by TfNSW; or
 - (iv) any fraudulent, negligent or other wrongful act or omission of the State, TfNSW or their Associates,

then TfNSW must pay OpCo the reasonable cost of carrying out the reinstatement or repair work (to the extent the Insurance Proceeds, if any, are insufficient).

37.2 Direction by TfNSW to reinstate to different specifications

TfNSW may require OpCo to reinstate or repair the SLR Works or the SLR on the basis of different specifications by directing a Modification pursuant to clause 29 (*TfNSW initiated Modifications*). The reinstatement or repair work will only constitute a Modification to the extent that it differs from what would have otherwise been required under this deed. The available Insurance Proceeds will be taken into account in calculating the Net Financial Impact of the Modification.

37.3 Damage to third party property

- (a) Without limiting clause 38 (*Indemnity and liability exclusions*), but subject to clause 39.12 (*General insurance obligations*), where any damage to or loss or

destruction of real or personal property of a third party occurs which arises out of a breach by OpCo of this deed or a wrongful act or omission of OpCo, OpCo must do one of the following (where it has a legal liability to do so):

- (i) promptly repair, replace or reinstate the damage, loss or destruction; or
 - (ii) reasonably compensate the third party.
- (b) If OpCo fails to carry out the repair, replacement or reinstatement work or pay reasonable compensation within a reasonable time, TfNSW may carry out the repair, replacement or reinstatement work or pay reasonable compensation and any Loss incurred by TfNSW will be a debt due and payable from OpCo to TfNSW.

38. INDEMNITY AND LIABILITY EXCLUSIONS

38.1 Indemnity from OpCo

OpCo must indemnify TfNSW, RMS, the State and Other Contractors (**Indemnified Party**) from and against:

- (a) any Loss incurred by an Indemnified Party in respect of:
 - (i) damage to, loss or destruction of, or loss of use of (whether total or partial), any real or personal property belonging to an Indemnified Party; or
 - (ii) any claim against an Indemnified Party (including by another Indemnified Party) in respect of:
 - (A) any illness, personal injury to, or death of, any person; or
 - (B) damage to, loss or destruction of, or loss of use of or access to (whether total or partial), any real or personal property,
 caused by, arising out of, or as a consequence of any act or omission of OpCo;
- (b) any Loss incurred by an Indemnified Party arising out of or in any way in connection with:
 - (i) any breach or failure to comply with the terms of any Project Agreement by OpCo; or
 - (ii) any fraudulent, negligent or other wrongful act or omission by OpCo; or
- (c) any Loss incurred by an Indemnified Party in respect of any claim by a Third Party against an Indemnified Party or any liability of an Indemnified Party to a Third Party arising out of, or in any way in connection with:
 - (i) any breach or failure to comply with the terms of any Project Agreement by OpCo; or
 - (ii) any fraudulent, negligent or other wrongful act or omission by OpCo.

38.2 Exclusions from indemnity

OpCo's liability under clauses 38.1(a), 38.1(b) and 38.1(c) or under any other indemnity given by OpCo under any Project Agreement will be reduced to the extent that the Loss is caused by, arises out of, or in any way in connection with:

- (a) a fraudulent, negligent or other wrongful act or omission of the Indemnified Party or its Associates;
- (b) a breach by TfNSW of its obligations under a TfNSW Project Agreement;
- (c) a third party claim for pure economic loss arising solely as a result of:
 - (i) the decision by the State or TfNSW to proceed with the SLR; or
 - (ii) the existence or location of the SLR; or
- (d) a Relief Event which is not insured under the insurances which OpCo is required to effect and maintain under this deed and only if and to the extent that OpCo has been granted relief under clause 27 (*Relief Events*) in respect of that Relief Event.

38.3 Exclusion of Consequential or Indirect Loss

- (a) Subject to clause 38.3(b), but otherwise despite any other provision of this deed, OpCo has no liability to any Indemnified Party (whether in contract, tort, negligence, under an indemnity or otherwise), nor will any Indemnified Party be entitled to make any Claim against OpCo, in respect of Consequential or Indirect Loss incurred or sustained by the Indemnified Party as a result of any act or omission of OpCo (whether negligent or otherwise).
- (b) Clause 38.3(a) does not operate to limit or restrict OpCo's liability to an Indemnified Party in respect of Consequential or Indirect Loss:
 - (i) to the extent that OpCo has:
 - (A) recovered from a third party (including any subcontractor and whether by way of indemnity or otherwise); or
 - (B) would have recovered from a third party, had it diligently pursued a claim against the third party provided that OpCo is not required to pursue such a claim where the cost of doing so would be disproportionate to the amount reasonably expected to be recovered by OpCo,

an amount in respect of that liability; and
 - (ii) to the extent that OpCo:
 - (A) is indemnified in respect of that liability by a policy of insurance required under this deed; or
 - (B) would have been indemnified in respect of that liability by a policy of insurance required under this deed if OpCo had:
 - (aa) diligently pursued a claim under that policy of insurance;
 - (bb) complied with the terms and conditions of that policy or insurance; or
 - (cc) complied with its insurance obligations under this deed;
 - (iii) in respect of any liability of an Indemnified Party to a third party (including to another Indemnified Party), except to the extent that the liability to the

third party is in respect of Consequential or Indirect Loss arising under a contractual claim;

- (iv) arising from any criminal acts or fraud on the part of OpCo or an Associate of OpCo;
- (v) arising from wilful misconduct on the part of OpCo or an Associate of OpCo; or
- (vi) to the extent to which, by law, the parties cannot limit or contract out of such liability.

38.4 Liability for events triggering Service Payment Deductions

- (a) Subject to clauses 38.4(b) and 38.4(c), OpCo will not be liable for any Loss incurred by TfNSW as a result of any breach by OpCo of:
 - (i) its obligation to provide the Required Services without any Missed Platforms; or
 - (ii) any other obligation the breach of which results in a Service Payment Deduction.
- (b) Clause 38.4(a) does not affect:
 - (i) the application of any Service Payment Deduction; or
 - (ii) OpCo's liability under clause 38.1(a).
- (c) If a Service Payment Deduction is held to be legally unenforceable, OpCo will be liable for any Loss incurred by TfNSW as a result of any event which would have triggered that Service Payment Deduction up to the amount of the Service Payment Deduction which would have applied if it were enforceable.

38.5 Procedure for Third Party Claims

- (a) In respect of any third party Claim in respect of which TfNSW is indemnified by OpCo under clause 38.1 (*Indemnity from OpCo*), subject to clauses 38.5(b) and 38.5(c) TfNSW must, as soon as is reasonably practicable after it becomes aware of the Claim:
 - (i) notify OpCo of the Claim;
 - (ii) give OpCo at the time of notification the option to conduct the defence of the Claim (at OpCo's expense); and
 - (iii) provide OpCo (at OpCo's expense) with reasonable assistance in conducting the defence of such Claim.
- (b) Clause 38.5(a) does not apply if:
 - (i) interlocutory proceedings are commenced against TfNSW on an urgent basis;
 - (ii) TfNSW reasonably considers that there is insufficient time to notify OpCo and for OpCo to commence defence of such proceedings on behalf of TfNSW; and

(iii) TfNSW initially defends such proceedings,

in which circumstances, TfNSW will give OpCo, as soon as practical after commencement of the proceedings, the option to conduct the defence of such proceedings.

- (c) Clause 38.5(a) does not apply to any Claim which would prevent the continued development or operation of the SLR PPP or continued conduct of OpCo's Activities, in which circumstances TfNSW will notify OpCo as soon as is reasonably practicable after it becomes aware of the Claim.
- (d) TfNSW will, in respect of any Claim managed by TfNSW:
- (i) give OpCo prior notice before agreeing to any compromise or settlement of such Claim; and
 - (ii) consult in good faith with OpCo and obtain OpCo's written agreement (not to be unreasonably withheld or delayed) prior to agreeing to any such compromise or settlement.
- (e) In respect of any Claim managed by OpCo, OpCo will use reasonable endeavours:
- (i) to give TfNSW prior notice before agreeing to any compromise or settlement of such a Claim; and
 - (ii) to consult in good faith with TfNSW prior to agreeing to any such compromise or settlement.

38.6 Obligations not affected

- (a) Clause 38.1 (*Indemnity from OpCo*) does not limit or otherwise affect OpCo's other obligations under this deed or otherwise according to law.
- (b) OpCo is not relieved of any obligation to indemnify an Indemnified Party under clause 38.1 (*Indemnity from OpCo*) by reason of effecting insurance or being an insured party under an insurance policy effected by TfNSW.

38.7 Indemnified Parties

- (a) To the extent that the indemnity in clause 38.1 (*Indemnity from OpCo*) is of Indemnified Parties other than TfNSW, TfNSW has sought and obtained that indemnity as agent on behalf of each Indemnified Party and TfNSW hereby confirms that it has the authority to act as agent on behalf of RMS. TfNSW may also enforce that indemnity as agent on behalf of each Indemnified Party.
- (b) If TfNSW does not have authority to act as agent on behalf of an Indemnified Party other than TfNSW, then TfNSW will be deemed to have sought and obtained that indemnity as trustee for that Indemnified Party and holds the benefit of that indemnity as trustee. TfNSW may also enforce that indemnity as trustee for the benefit that Indemnified Party.
- (c) If the indemnity in clause 38.1 (*Indemnity from OpCo*) is unenforceable to the extent that it is expressed to be given in favour of an Indemnified Party other than TfNSW, all references in this clause 38 (*Indemnity and liability exclusions*) to "the Indemnified Party" or "an Indemnified Party" will be read as a reference to "TfNSW" only.

38.8 State exclusion

- (a) Despite any other provision of this deed but subject to clauses 4.6 (*Project risks*) and 38.8(b), none of the State, RMS, TfNSW or any Associate of TfNSW has any liability to OpCo (whether in contract, tort or otherwise), nor will OpCo be entitled to make any Claim against the State, RMS or TfNSW or any Associate of TfNSW, in respect of Consequential or Indirect Loss incurred or sustained by OpCo as a result of any act or omission of the State, RMS or TfNSW or any Associate of TfNSW (whether negligent or otherwise).
- (b) Clause 38.8(a) does not operate to limit or restrict the State or TfNSW's liability in respect of Consequential or Indirect Loss:
- (i) to the extent payable for a Compensation Event or other NFI Event pursuant to Schedule D4 (*Net Financial Impact*);
 - (ii) to the extent included in any interest payable under clause 25.9 (*Interest*);
 - (iii) to the extent payable under clause 40.3(b) if an Uninsurable Material Risk materialises;
 - (iv) to the extent payable under clauses 28.4 (*Suspension of OpCo's right to termination*) or 43.6(g) if TfNSW suspends OpCo's right to terminate;
 - (v) to the extent payable as part of a Termination Payment under clause 43.12 (*Termination Payments*);
 - (vi) to the extent payable as part of any CDPD Amount payable under clause 25.2(b);
 - (vii) to the extent that TfNSW, RMS or the State:
 - (A) has recovered from a third party (including any subcontractor and whether by way of indemnity or otherwise); or
 - (B) would have recovered from a third party, had it diligently pursued a claim against the third party provided that none of TfNSW, RMS or the State is not required to pursue such a claim where the cost of doing so would be disproportionate to the amount reasonably expected to be recovered by TfNSW,

an amount in respect of that liability;
 - (viii) to the extent that TfNSW, RMS or the State:
 - (A) is indemnified in respect of that liability by a policy of insurance required under this deed; or
 - (B) would have been indemnified in respect of that liability by a policy of insurance required under this deed if TfNSW had:
 - (aa) complied with the terms and conditions of that policy of insurance; or
 - (bb) complied with its insurance obligations under this deed;

- (ix) arising from any criminal acts or fraud on the part of TfNSW, RMS or the State;
- (x) arising from wilful misconduct on the part of TfNSW, RMS, the State, or an Associate of TfNSW, RMS or the State; or
- (xi) to the extent to which, by law, the parties cannot limit or contract out of such liability.

39. INSURANCE

39.1 Delivery Phase insurance obligations

OpCo must effect and maintain (or cause to be effected and maintained) the following insurances for amounts not less than and with deductibles specified in Schedule D10 (*Insurances*):

- (a) (**contract works insurance**): a contract works material damage insurance policy which covers physical loss or damage to the SLR Works (including demolition, temporary and permanent works) and any other property in connection with the carrying out of OpCo's Activities. This policy must include an allowance for removal of debris, professional fees and expediting expenses and coverage for all testing and commissioning activities in connection with the Project;
- (b) (**third party liability**): a third party liability insurance policy written on an occurrence basis (in the aggregate with respect to products or completed operations liability) which covers the liability of OpCo, its employees, OpCo's Contractors, consultants and agents (including liability to TfNSW and RMS) in respect of loss of or damage to any real or personal property and personal injury of, disease or illness (including mental illness) to, or death of any person in connection with the carrying out of OpCo's Activities;
- (c) (**advance consequential loss**): an advance consequential loss policy which covers the loss of the Service Payment and increased cost of working arising from a delay in achieving the Date for Completion by the Original Date for Completion caused by physical loss or damage to the SLR Works, plus additional increased cost of working and claims preparation costs;
- (d) (**plant and equipment insurance**): a plant and equipment insurance policy which covers physical loss or damage to any plant or equipment (whether owned, hired or leased by OpCo or OpCo's Contractors) which is used in connection with the carrying out of OpCo's Activities;
- (e) (**marine cargo and marine advance consequential loss**): a marine cargo and marine advance consequential loss insurance policy covering the Light Rail Vehicles and any other equipment delivered from overseas against physical damage, loss or destruction, and loss of the Service Payment as a consequence of such damage and such other insurable risks as are reasonably required by TfNSW;
- (f) (**professional indemnity insurance**): a project specific professional indemnity insurance policy covering the liability of OpCo in respect of any breach of a duty owed in a professional capacity by OpCo, the D&C Contractor and anyone engaged by OpCo or the D&C Contractor in a professional capacity in relation to the Delivery Activities;
- (g) (**employers' liability and workers' compensation insurance**): workers' compensation insurance as required by law (and on the basis that, where

permitted under the relevant statutory workers compensation or accident compensation scheme, the insurance must extend to cover the vicarious liability of TfNSW for the acts or omissions of OpCo) and, where common law claims can be brought outside of the relevant statutory workers compensation or accident compensation scheme, employer's liability insurance covering any injury, damage, expense, loss or liability suffered or incurred by any persons employed by OpCo or engaged in performing OpCo's Activities or their dependants (and on the basis that such insurance must extend to cover the vicarious liability of TfNSW for the acts or omissions of OpCo);

- (h) **(own damage motor vehicle insurance)**: a motor vehicle insurance policy which covers all physical loss or damage to motor vehicles (whether owned, hired or leased by OpCo or OpCo's Contractor) which are used in connection with OpCo's Activities;
- (i) **(third party property damage motor vehicle insurance)**: a motor vehicle insurance policy which covers third party property damage related to any motor vehicles which are used in connection with OpCo's Activities; and
- (j) **(compulsory third party motor vehicle insurance)**: compulsory third party motor vehicle insurance, in respect of all registrable motor vehicles which are used in connection with OpCo's Activities; and
- (k) **(terrorism insurance)** terrorism insurance for the assembly plant in Barcelona only, which covers physical damage caused by a terrorist act and OpCo's debt service and fixed costs following an indemnifiable loss due to a delay in the Project.

39.2 **Operations Phase insurance obligations**

OpCo must effect and maintain (or cause to be effected and maintained) the following insurances for amounts not less than and with deductibles specified in Schedule D10 (*Insurances*):

- (a) **(industrial special risks insurance)**: an industrial special risks insurance policy:
 - (i) covering the SLR (including the IWLR during the IWLR Operations Phase and the IWLR and CSELR during the Full Operations Phase);
 - (ii) against destruction, loss or damage and other insurable risks as are reasonably required by TfNSW; and
 - (iii) including cover for business interruption arising from such destruction, loss or damage;
- (b) **(plant and equipment insurance)**: a plant and equipment insurance policy which covers physical loss or damage to any plant or equipment (whether owned, hired or leased by OpCo or OpCo's Contractors) which is used in connection with the carrying out of OpCo's Activities;
- (c) **(public and products liability insurance)**: a public and products liability insurance policy, written on an occurrence basis, which covers the liability of OpCo and OpCo's Contractors (including to TfNSW and RMS) in respect of:
 - (i) damage to, loss or destruction of, or loss of use of, real or personal property;
 - (ii) injury to, or death or disease of, any persons (other than employees); and

- (iii) advertising injury or advertising liability risks (including libel, slander or defamation, infringement of copyright or of title or slogan, piracy or unfair competition or idea misappropriation under an implied contract and invasion of privacy) committed or alleged to have been committed in any advertisement, publicity article, broadcast or telecast,
arising out of, or in connection with, OpCo's Activities;
- (d) (**professional indemnity insurance**): a professional indemnity insurance policy or policies covering the liability of OpCo and OpCo's Contractors in respect of any breach of a duty owed in a professional capacity by OpCo, OpCo's Contractors and anyone engaged by them in a professional capacity, to the extent specified in Schedule D10 (*Insurances*);
- (e) (**employers' liability and workers' compensation insurance**): workers' compensation insurance as required by law (and on the basis that, where permitted under the relevant statutory workers compensation or accident compensation scheme, the insurance must extend to cover the vicarious liability of TfNSW for the acts or omissions of OpCo) and, where common law claims can be brought outside of the relevant statutory workers compensation or accident compensation scheme, employer's liability insurance covering any injury, damage, expense, loss or liability suffered or incurred by any persons employed by OpCo or engaged in performing OpCo's Activities or their dependants (and on the basis that such insurance must extend to cover the vicarious liability of TfNSW for the acts or omissions of OpCo);
- (f) (**own damage motor vehicle insurance**): a motor vehicle insurance policy which covers all physical loss or damage to motor vehicles (whether owned, hired or leased by OpCo or OpCo's Contractors) which are used in connection with OpCo's Activities;
- (g) (**third party property damage motor vehicle insurance**): a motor vehicle insurance policy which covers third party property damage related to any motor vehicles which are used in connection with OpCo's Activities;
- (h) (**compulsory third party motor vehicle insurance**): compulsory third party motor vehicle insurance, in respect of all registrable motor vehicles which are used in connection with OpCo's Activities; and
- (i) (**terrorism insurance**) terrorism insurance which covers physical loss or damage to the LRVs caused by a Terrorist Act and including cover for business interruption arising from such loss or damage.

39.3 Periods of OpCo's insurance

OpCo must maintain:

- (a) the insurances referred to in clause 39.1 (*Delivery Phase insurance obligations*) (other than the professional indemnity insurance policy referred to in clause 39.1(f)) from the date of Financial Close until the Date of Completion and the completion of the Additional Required CSELRVs and Option 1A CSELRVs (if Pre-Agreed Option 1A has been exercised) and including any relevant Defects Correction Period;
- (b) the professional indemnity insurance policy referred to in clause 39.1(f) from the date of Financial Close until the date which is 7 years after the Date of Completion;

- (c) the insurances referred to in clause 39.2 (*Operations Phase insurance obligations*) (other than the professional indemnity insurance policy referred to in clause 39.2(d)) from the Date of Revenue Service until the end of the Term; and
- (d) the professional indemnity insurance policy or policies referred to in clause 39.2(d) from the Date of Revenue Service until the date which is 7 years after the end of the Term.

39.4 **Additional, increased or varied Insurances**

- (a) If TfNSW at any time reasonably requires OpCo to:
 - (i) insure against a risk not specifically provided for or contemplated under clauses 39.1 (*Delivery Phase insurance obligations*) or 39.2 (*Operations Phase insurance obligations*); or
 - (ii) increase the extent of, or change the terms of, an existing Insurance from that set out in clauses 39.1 (*Delivery Phase insurance obligations*) or 39.2 (*Operations Phase insurance obligations*),
 it may notify OpCo in writing and request that OpCo give effect to TfNSW's requirements.
- (b) OpCo must promptly inform TfNSW of the amount of any additional premium payable in giving effect to a requirement of TfNSW under clause 39.4(a) before it implements the requirement (using reasonable endeavours to minimise any increase in or maximise any reduction in the cost of any additional, increased or varied Insurances), and TfNSW will advise OpCo in writing whether it still requires OpCo to give effect to that requirement.
- (c) Any additional premiums paid on any additional, increased or varied Insurances required by TfNSW under clause 39.4(b), as well as any brokerage and Taxes payable in respect of those premiums, will be reimbursed by TfNSW to OpCo within 20 Business Days after OpCo provides evidence satisfactory to TfNSW (acting reasonably) that the insurance cover has been so effected and the premium paid.

39.5 **Review of Insurance limits and deductibles**

- (a) The minimum sums insured and deductibles for the insurances referred to in clause 39.2 (*Operations Phase insurance obligations*) (other than the insurances referred to in clauses 39.2(e) and 39.2(h)) will be reviewed by TfNSW's Representative on each anniversary of the Date of Completion to determine whether and by how much the minimum sums insured and deductibles should be increased or decreased, having regard to the opinion of a reputable insurance broker as to prudent insurance practice at the time. TfNSW may only require OpCo to increase the deductibles above the maximums specified in Schedule D10 (*Insurances*) with the consent of OpCo.
- (b) Clause 39.4 (*Additional, increased or varied Insurances*) will not apply to any increase or decrease in the minimum sums insured or deductibles pursuant to this clause 39.5 (*Review of Insurance limits and deductibles*). Rather, any change in insurance costs due to an increase or decrease in the minimum sums insured or deductibles pursuant to this clause 39.5 (*Review of Insurance limits and deductibles*) will be subject to the benchmarking regime in clause 39.15 (*Benchmarking of Insurances*).

39.6 Insureds

OpCo must ensure that all Insurances effected by OpCo in compliance with this clause 39 (*Insurance*) insure those parties as required in Schedule D10 (*Insurances*).

39.7 Insurance requirements generally

All Insurances effected by OpCo in compliance with this clause 39 (*Insurance*), other than the Insurances referred to in clauses 39.1(g), 39.1(h), 39.1(i) 39.1(j), 39.2(e), 39.2(f), 39.2(g) and 39.2(h):

- (a) (**insurers**): must be taken out with Reputable Insurers or with insurers approved by TfNSW's Representative (such approval not to be unreasonably withheld);
- (b) (**terms**): must be on the terms required by this clause 39 (*Insurance*) or otherwise as approved by TfNSW's Representative (such approval not to be unreasonably withheld);
- (c) (**exclusions**): must not contain any exclusion, endorsement or alteration unless it is first approved in writing by TfNSW's Representative (such approval not to be unreasonably withheld);
- (d) (**contractually assumed liability**): in the case of the Insurances specified in clause 39.1(b) or 39.2(c), will not expressly exclude liability arising under clause 38.1 (*Indemnity from OpCo*) solely on the basis that it is a contractually assumed liability;
- (e) (**proportionate liability**): in the case of the Insurances specified in clauses 39.1(f) and 39.2(d), must:
 - (i) cover any legal liability contractually assumed to the extent that OpCo, TfNSW and any other insureds under those Insurances have contracted out of the operation of Part 4 of the *Civil Liability Act 2002* (NSW) or assumed liability for others under this deed;
 - (ii) without limiting clause 39.7(e)(i), cover OpCo for potential liability to TfNSW assumed by reason of the exclusion of Part 4 the *Civil Liability Act 2002* (NSW); and
 - (iii) not exclude any potential liability OpCo may have to TfNSW under or by reason of this deed;
- (f) (**waiver and cross liability clause**): which name more than one insured, must include a waiver and cross liability clause in which the insurer agrees:
 - (i) to waive all rights of subrogation or action that it may have or acquire against all or any of the persons comprising the insured;
 - (ii) that the term "insured" applies to each of the persons comprising the insured as if a separate policy of insurance had been issued to each of them (subject always to the overall sum insured not being increased as a result); and
 - (iii) that any non-disclosure, breach of any duty or act or omission by one insured does not prejudice the right of any other insured to claim under any Insurance;

- (g) **(prior notice)**: must contain a term which requires the insurer to give TfNSW 30 Business Days' notice prior to:
 - (i) the insurer giving OpCo a notice of cancellation;
 - (ii) the insurer cancelling the policy on the request of OpCo;
 - (iii) OpCo allowing the policy to expire; or
 - (iv) the insurer giving OpCo any other notice in respect of the policy;
- (h) **(loss payee)**: in the case of the Insurances specified in clauses 39.1(a) and 39.2(a) (other than in respect of the business interruption cover referred to in clause 39.2(a)(iii)), must specify TfNSW, OpCo and the Security Trustee as joint loss payees;
- (i) **(reinstatement)**: in the case of the Insurances specified in clauses 39.1(a), 39.1(d), 39.1(e), 39.2(a) and 39.2(b) must be endorsed to note and allow OpCo's obligations under clause 37.1 (*Reinstatement*), to the effect that compliance with the provisions of those clauses will not prejudice OpCo's or any other insured's rights to indemnity under the Insurances; and
- (j) **(notice of a claim)**: must provide that notice of a claim by any insured will be accepted by the insurer as notice by all insureds.

39.8 Premiums

OpCo must punctually pay all premiums and other amounts payable in respect of the Insurances effected by it, and give TfNSW evidence of payments for premiums if and when requested by TfNSW.

39.9 Evidence of insurance

In respect of the Insurances required to be effected and maintained by OpCo under this clause 39 (*Insurance*), OpCo must give TfNSW's Representative:

- (a) certified copies of all:
 - (i) other than in respect of the insurances required by clauses 39.1(f), 39.1(g), 39.1(j), 39.2(d), 39.2(e) and 39.2(h) policies (including policy schedules, wordings and endorsements);
 - (ii) renewal certificates; and
 - (iii) slips and cover notes,
 within 10 Business Days after it receives them from the insurer or broker; and
- (b) a certificate of currency satisfactory to TfNSW's Representative (acting reasonably) to confirm that the Insurances which OpCo must effect and maintain pursuant to this clause 39 (*Insurance*) have been effected and maintained in accordance with the requirements of this clause 39 (*Insurance*), whenever requested by TfNSW's Representative.

39.10 Failure to produce proof of insurance

If OpCo fails to provide evidence satisfactory to TfNSW's Representative in accordance with clause 39.9(a) or within 10 Business Days of a request under clause 39.9(b), TfNSW

may effect and maintain the relevant Insurances and pay the premium. The costs incurred by TfNSW in connection with taking such action will be recoverable from OpCo as a debt due and payable from OpCo to TfNSW.

39.11 **OpCo's obligations not limited**

The effecting of Insurances does not limit the liabilities or obligations of OpCo under this deed. OpCo bears the risk of the Insurances being inadequate to enable OpCo to fulfil its obligations under this deed.

39.12 **General insurance obligations**

OpCo must:

- (a) not knowingly do or permit, or omit to do, anything which prejudices any Insurance;
- (b) rectify anything which might prejudice any Insurance;
- (c) reinstate an Insurance required to be maintained under clauses 39.1 (*Delivery Phase insurance obligations*) or 39.2 (*Operations Phase insurance obligations*) if it lapses;
- (d) not cancel, vary or allow any Insurance required to be maintained under clauses 39.1 (*Delivery Phase insurance obligations*) or 39.2 (*Operations Phase insurance obligations*) to lapse without the prior written consent of TfNSW's Representative;
- (e) immediately notify TfNSW of any fact or circumstance or change in circumstances which may prejudice an Insurance;
- (f) without limiting clause 39.13(a), immediately notify TfNSW's Representative if it receives any claim or notice in connection with an Insurance;
- (g) give full and true particular information to the insurer of all matters and things the non-disclosure of which might in any way prejudice or affect any such policy or the payment of all or any benefits under the Insurance; and
- (h) comply at all times with the terms of each Insurance.

39.13 **Claims under Insurances**

In addition to the obligations to notify the insurer under any Insurance, OpCo must:

- (a) notify TfNSW's Representative of any occurrence of which it is aware that may give rise to a claim (other than a claim by TfNSW or its Associates) under any Insurance other than statutory insurance;
- (b) keep TfNSW's Representative informed of subsequent developments of which it is aware concerning the claim;
- (c) do everything reasonably required by TfNSW (or any other person in whose name the relevant policy is effected) to enable TfNSW or such other person to claim, collect or recover money due under an Insurance;
- (d) subject to clause 39.13(e), diligently pursue any material claim which it has under any Insurance in relation to that occurrence; and

- (e) not compromise, settle, prosecute or enforce a claim under any Insurance without the prior written consent of TfNSW's Representative (which must not be unreasonably withheld or delayed).

39.14 Insurance Proceeds Account

- (a) **(Insurance Proceeds):** This clause 39.14 (*Insurance Proceeds Account*) applies to the following insurance proceeds:
 - (i) all amounts received under the Insurances referred to in clauses 39.1(a), 39.1(d), 39.1(e), 39.2(a) and 39.2(b); and
 - (ii) any amounts paid by TfNSW pursuant to clause 40.3(b)(i) (*Uninsurable Risks*) representing the insurance proceeds that would have been payable under the Insurances referred to in clause 39.14(a)(i), had such insurance remained available,

but excluding:

 - (iii) any proceeds of advance consequential loss, marine advance consequential loss or business interruption insurance; and
 - (iv) any payments to RMS under a policy of insurance, provided that if RMS receives any insurance proceeds which relates to damage of an Asset for which OpCo is responsible under this deed, then TfNSW will either pay OpCo the equivalent of the insurance proceeds and OpCo will be required to reinstate the damage in accordance with this deed or relieve OpCo of its obligation to reinstate.
- (b) **(Establish account):** OpCo must:
 - (i) establish an account to be known as the Insurance Proceeds Account;
 - (ii) maintain that account in the name of OpCo and the Security Trustee with a financial institution nominated by OpCo and approved by TfNSW (which approval not to be unreasonably withheld) or with a financial institution which is a party to the Financiers Tripartite Deed;
 - (iii) give details of that account to TfNSW;
 - (iv) notify the financial institution referred to in clause 39.14(b)(ii) of the charge over the Insurance Proceeds Account in accordance with the TfNSW Deed of Charge and procure, and provide TfNSW with a copy of, acknowledgment of that notice from the financial institution; and
 - (v) procure the agreement of the financial institution referred to in clause 39.14(b)(ii) not to exercise any right of set off or combination of accounts in relation to the Insurance Proceeds Account.
- (c) **(Deposit Insurance Proceeds):** All Insurance Proceeds must be deposited into the Insurance Proceeds Account.
- (d) **(Application of moneys):** Subject to clause 39.14(f), moneys in the Insurance Proceeds Account may only be applied towards the cost of repair or reinstatement.
- (e) **(Records):** OpCo must give TfNSW records of expenditure from the Insurance Proceeds Account within 30 Business Days of such expenditure.

- (f) **(Early termination):** If this deed is terminated under clause 28 (*Force Majeure*), 37 (*Reinstatement of loss or damage*), 40 (*Uninsurable Risks*) or 43 (*Termination*), TfNSW will be entitled to any moneys remaining in the Insurance Proceeds Account on the date of termination.

39.15 **Benchmarking of Insurances**

- (a) Three months prior to each Insurance Benchmark Date, OpCo must, where possible, obtain separate quotations from three Reputable Insurers in the commercial insurance market at that time, for annual premium costs of obtaining the Benchmarked Insurances.
- (b) TfNSW's Representative will select one quotation for each Benchmarked Insurance which will form the basis of the benchmarking of the Benchmarked Insurance Component.
- (c) On each Insurance Benchmark Date, if the annual insurance premiums for the Benchmarked Insurances (as specified in the quotations selected by TfNSW's Representative) are greater or less than the insurance premiums for the Benchmarked Insurances at the commencement of the Operations Phase or the last Insurance Benchmark Date on which an adjustment to the Benchmarked Insurance Component occurred under this clause 39.15 (*Benchmarking of Insurances*) (as applicable), the Benchmarked Insurance Component will be adjusted by the amount by which the insurance premium for the Benchmarked Insurance:
- (i) exceeds the Benchmarked Insurance Component; or
 - (ii) is less than the Benchmarked Insurance Component,
- provided that:
- (iii) any increase or decrease in the cost of obtaining the Benchmarked Insurance which is attributable to the insurance history or other relevant acts or omissions of OpCo or an OpCo Contractor will be disregarded; and
 - (iv) the increase or decrease in the cost of obtaining the Benchmarked Insurances is due to circumstances generally prevailing in the Australian and overseas insurance market for the relevant class of insurance or a direction of TfNSW under clause 39.5 (*Review of insurance limits and deductibles*).

40. **UNINSURABLE RISKS**

40.1 **Notice and meeting**

If either party considers that a risk that:

- (a) this deed requires to be insured; and
- (b) was insurable at the date of this deed,

has become an Uninsurable Risk:

- (c) the party must immediately notify the other party in writing, giving particulars; and
- (d) the parties will meet and discuss the means by which the risk should be managed.

40.2 **Relief from obligation to insure**

If:

- (a) a risk that:
 - (i) this deed requires to be insured; and
 - (ii) was insurable at the date of this deed,
 has become an Uninsurable Risk; and
- (b) the risk did not become an Uninsurable Risk as a result of an act or omission of OpCo or its Associates,

then, for so long as the risk is and remains an Uninsurable Risk, the relevant party is not required to effect and maintain insurance against that risk.

40.3 **If no agreement**

If the risk that has become an Uninsurable Risk is a risk which, at the date of this deed, is usually covered by the insurance referred to in clauses 39.2(a), 39.2(c) or 39.2(i) (an **Uninsurable Material Risk**) and the parties cannot reach agreement on how the risk should be managed, then:

- (a) this deed will continue but Annexure 1 of Schedule D1 (*Service Payment Regime*) will be amended to reduce the Benchmarked Insurance Component by an amount equal to the premium that was last paid for insuring the Uninsurable Material Risk (indexed in accordance with clause 14 of Schedule D1 (*Service Payment Regime*)); and
- (b) if the Uninsurable Material Risk materialises, TfNSW must (at TfNSW's option) do one of the following within a reasonable period of the relevant event occurring:
 - (i) pay to OpCo an amount equal to the insurance proceeds that would have been payable had the relevant insurance continued to be available (after deducting any deductibles that would have been deducted); or
 - (ii) where the Uninsurable Material Risk causes material damage, loss or destruction to the SLR or the SLR Works and the insurance proceeds that would have been payable had the relevant insurance continued to be available exceed \$100 million, terminate this deed.

40.4 **Obligation to monitor and reinsure**

- (a) If a risk that:
 - (i) this deed requires to be insured; and
 - (ii) was insurable at the date of this deed,

is an Uninsurable Risk, the party who is required to effect the relevant insurance must approach the insurance market on a regular basis to establish whether that risk remains uninsurable and advise the other party accordingly.

- (b) Upon the insurance becoming available for the Uninsurable Risk referred to in clause 40.4(a):

- (i) the party who is required to effect the relevant insurance must immediately notify the other party; and
- (ii) if the insurance is to be effected by OpCo, OpCo must:
 - (A) obtain separate quotations to cover the risk in accordance with the requirements set out in clause 39 (*Insurance*) from three Reputable Insurers and provide these quotations to TfNSW within 10 Business Days of submission to TfNSW of the notice described in clause 40.4(b)(i) together with such other documentation or information as TfNSW reasonably requires in connection with those quotations;
 - (B) within 2 Business Days of receipt of confirmation from TfNSW that one of the quotations provided under clause 40.4(b)(ii)(A) is acceptable, effect insurance with the provider of the quotation to cover the risk in accordance with the requirements set out in clause 39 (*Insurance*); and
 - (C) update Annexure 1 of Schedule D1 (*Service Payment Regime*) to increase the Benchmarked Insurance Component by an amount equal to the price of the quotation that is accepted by TfNSW.

41. **DEFAULT**

41.1 **OpCo Events of Default**

Each of the following events is an OpCo Event of Default:

- (a) (**failure to commence Revenue Service**): OpCo fails to commence Revenue Service by the Date for Revenue Service or such later date as the parties have agreed under clause 14.1(a);
- (b) (**failure to progress**): OpCo fails to diligently progress the Delivery Activities as required under clause 17.2(c);
- (c) (**funding cancelled**): the obligation of a Debt Financier or an Equity Investor to provide funding under the Debt Financing Documents or the Equity Documents, respectively, is cancelled due to an event of default under a Debt Financing Document or an Equity Document (as applicable), or a Debt Financier or Equity Investor fails (in whole or in part) to provide funding under the Debt Financing Documents or the Equity Documents and no other Debt Financier or Equity Investor has committed to funding an equivalent amount within 10 Business Days;
- (d) (**unacceptable availability**): during the Operations Phase:
 - (i) the number of Missed Services in a month exceeds either:
 - (A) in any of the initial 6 months following Completion, ■ of the total number of Required Services for that month; or
 - (B) ■ of the total number of Required Services for that month for any 4 out of 12 rolling months, but disregarding any Missed Services which occur in the initial 6 months following Completion;
 - (ii) the number of Missed Services in any rolling 3 month period exceeds ■ of the total number of Required Services for that period, but disregarding any Missed Services which occur in the initial 6 months following Completion;

- (iii) the First Service in either direction does not depart within [REDACTED] of the required departure time for the First Service on more than [REDACTED] in a rolling 3 month period; or
- (iv) the Last Service in either direction does not depart within [REDACTED] of the required departure time for the Last Service on more than [REDACTED] in a rolling 3 month period,

in each case disregarding any such unacceptable availability which is:

- (v) directly caused by a Relief Event during a period when OpCo's non-financial obligations are relieved under clause 27.4 (*Relief from obligations*); or
 - (vi) excluded from the calculations of Availability Deductions in accordance with clause 18 of Schedule D1 (*Service Payment Regime*);
- (e) **(unacceptable timeliness)**: during the Operations Phase more than [REDACTED] of Actual Headways in a month exceed the relevant Maximum Headway by more than [REDACTED] for each of 3 consecutive months or any 4 out of 12 rolling months, in each case disregarding any such unacceptable timeliness which is:
- (i) directly caused by a Relief Event during a period when OpCo's non-financial obligations are relieved under clause 27.4 (*Relief from obligations*); or
 - (ii) excluded from the calculations of Timeliness Deductions in accordance with clause 18 of Schedule D1 (*Service Payment Regime*);
- (f) **(unacceptable quality)**: during the Operations Phase, OpCo accrues:
- (i) [REDACTED] or more Service Failure Points over a rolling period of 4 consecutive quarters; or
 - (ii) a Service Failure Point for the same Service Quality KPI in any 3 quarters in a rolling 12 month period,

in each case, disregarding any such unacceptable quality which is directly caused by a Relief Event during a period when OpCo's non-financial obligations are relieved under clause 27.4 (*Relief from obligations*);

- (g) **(failure to pay)**: OpCo fails to pay an amount that is due under any TfNSW Project Agreement or any Core Contract when it is due and the failure is not remedied with 10 Business Days (or, in the case of payment under a Core Contract, 30 Business Days) of a written demand from TfNSW;
- (h) **(failure to remedy an Asset Management Failure)**: OpCo fails to remedy an Asset Management Failure within 6 months of the expiry of the Remediation Period;
- (i) **(failure to report)**: OpCo fails to comply with its reporting obligations under this deed or a report from OpCo contains an inaccuracy which in either case has a material impact on TfNSW or Customers;
- (j) **(refinancing)**: OpCo breaches its obligations under clause 49.1 (*Debt Financing Documents*);
- (k) **(subcontracting)**: OpCo breaches its obligations under clauses 54.3(a), 54.3(b), 54.3(e) or 54.3(f);

- (l) **(lack of or breach of Accreditation)**: OpCo or an OpCo Contractor:
 - (i) undertakes any of OpCo's Activities which require Accreditation without being Accredited to do so; or
 - (ii) breaches the terms of its Accreditation in performing OpCo's Activities;
- (m) **(threatened suspension or revocation of OpCo's Accreditation)**: ONRSR notifies OpCo that:
 - (i) OpCo must improve a part of OpCo's Activities to which OpCo's Accreditation relates and a failure to do so within the time period specified by ONRSR may result in ONRSR suspending or revoking OpCo's Accreditation;
 - (ii) it proposes to suspend or revoke OpCo's Accreditation or a Core Contractor's Accreditation; or
 - (iii) a failure to take action specified by ONRSR within a time period specified by ONRSR may result in ONRSR suspending or revoking OpCo's Accreditation or a Core Contractor's Accreditation;
- (n) **(fraud)**: TfNSW is the victim of any fraud or dishonest conduct by OpCo or a Core Contractor in connection with the SLR PPP, or the Independent Commission Against Corruption or similar public body determines that OpCo (or a Core Contractor, in performing OpCo's Activities) has engaged in corrupt conduct, collusive pricing or other similar activity;
- (o) **(incorrect representation or warranty)**: a representation or warranty made or given by OpCo in this deed or any other TfNSW Project Agreement proves to be untrue which has a material adverse effect on OpCo's ability to comply with its obligations under this deed;
- (p) **(other breach)**: any other material breach by OpCo of an obligation under this deed (other than a breach which results in a Service Payment Deduction) or any other TfNSW Project Agreement;
- (q) **(restriction on Change in Control of O&M Contractor)**: OpCo breaches its obligations under clause 53.4(a); and
- (r) **(Illegality Event)**: the occurrence of any of the following events:
 - (i) any Debt Financing Document or Equity Document:
 - (A) being revoked, repudiated or terminated or ceasing to be legal, valid and binding and enforceable against OpCo or any other person (other than TfNSW or the State) or any other party to a Debt Financing Document or Equity Document, other than as contemplated by the Debt Financing Documents and Equity Documents; or
 - (B) becoming invalid, void or voidable in any material respect other than where TfNSW has caused it to be invalid, void or voidable; or
 - (ii) it is or becomes unlawful for OpCo or a Core Contractor to perform any of its material obligations under any Debt Financing Document or Equity Document.

41.2 **Default Notice**

If an OpCo Event of Default occurs, TfNSW may give OpCo a notice (the **Default Notice**):

- (a) stating that it is a notice under this clause 41.2 (*Default Notice*); and
- (b) specifying the nature of the OpCo Event of Default.

41.3 **Cure Plan**

- (a) If:
 - (i) a Default Notice is given; and
 - (ii) the OpCo Event of Default is capable of being Remedied,

OpCo must, within 10 Business Days after receipt of the Default Notice:

 - (iii) Remedy the OpCo Event of Default; or
 - (iv) prepare and submit to TfNSW a draft plan describing the actions and measures which OpCo will diligently pursue to Remedy the OpCo Event of Default (including the proposed cure period which must be no longer than 6 months) (**Draft Cure Plan**).
- (b) Within 10 Business Days after receipt of the Draft Cure Plan, TfNSW must either:
 - (i) approve the Draft Cure Plan by notifying OpCo; or
 - (ii) reject the Draft Cure Plan by notifying OpCo and providing reasons to OpCo for its rejection.
- (c) If TfNSW approves a Draft Cure Plan pursuant to clause 41.3(b)(i) (**Approved Cure Plan**):
 - (i) the period of time in the Approved Cure Plan to Remedy the OpCo Event of Default is the cure period (**Applicable Cure Period**); and
 - (ii) OpCo must comply with and implement the Approved Cure Plan (or otherwise diligently pursue the Remediation of the OpCo Event of Default) and Remedy the OpCo Event of Default within the Applicable Cure Period.
- (d) If TfNSW rejects a Draft Cure Plan pursuant to clause 41.3(b)(ii), OpCo, in consultation in good faith with TfNSW, must amend the Draft Cure Plan to meet TfNSW's reasonable requirements and submit the amended Draft Cure Plan to TfNSW for its approval, in which case this clause 41.3 (*Cure Plan*) will apply to the amended Draft Cure Plan as if it were originally submitted under clause 41.3(a).
- (e) The parties acknowledge and agree that an Applicable Cure Period will not take into account any period of time during which the performance of the relevant obligations by OpCo is suspended by operation of clause 27.4 (*Relief from obligations*).
- (f) If:
 - (i) a Default Notice is given;
 - (ii) the OpCo Event of Default is capable of being Remedied; and

- (iii) OpCo fails to:
 - (A) Remedy the OpCo Event of Default, or submit a Draft Cure Plan, in accordance with clause 41.3(a);
 - (B) if TfNSW rejects a Draft Cure Plan pursuant to clause 41.3(b)(ii), amend the Draft Cure Plan to meet TfNSW's requirements and submit the amended Draft Cure Plan in accordance with clause 41.3(d); or
 - (C) comply with and implement the Approved Cure Plan (or otherwise diligently pursue the Remediation of the OpCo Event of Default),

and such failure is not Remedied by OpCo within 5 Business Days of notice from TfNSW regarding that failure, an OpCo Termination Event will occur.

- (g) If at any time prior to the expiry of an Applicable Cure Period OpCo reasonably considers that it requires an extension to the Applicable Cure Period it may request an extension to the Applicable Cure Period by notifying TfNSW in writing setting out the reasons for that belief and the reasonable period of time proposed by OpCo for the extension of the Applicable Cure Period.
- (h) If:
 - (i) OpCo gives TfNSW a notice under clause 41.3(g); and
 - (ii) TfNSW is reasonably satisfied that OpCo has diligently pursued and is continuing to diligently pursue a Remedy of the applicable OpCo Event of Default but that the OpCo Event of Default cannot, despite such diligence, be Remedied within the Applicable Cure Period,

TfNSW must, subject to clause 41.3(i), not unreasonably refuse to grant an extension of the Applicable Cure Period for such period as TfNSW considers is reasonably required to Remedy the OpCo Event of Default, provided that TfNSW is not required to grant more than one extension to an Applicable Cure Period.

- (i) Any Applicable Cure Period agreed under clause 41.3(c)(i), including any extension granted to OpCo under clause 41.3(h), must not exceed 6 months and TfNSW may, in its complete discretion, refuse to grant an extension under clause 41.3(h) if the grant will result in an extension to the Applicable Cure Period that is beyond 6 months.

41.4 Prevention Plan

- (a) If:
 - (i) a Default Notice is given; and
 - (ii) the OpCo Event of Default is not capable of being Remedied,

OpCo must, within 10 Business Days after receipt of the Default Notice prepare and submit to TfNSW a draft plan describing the actions and measures which OpCo will diligently pursue to prevent the OpCo Event of Default from recurring (**Draft Prevention Plan**).

- (b) Within 10 Business Days after receipt of the Draft Prevention Plan, TfNSW must either:
 - (i) approve the Draft Prevention Plan by notifying OpCo; or
 - (ii) reject the Draft Prevention Plan by notifying OpCo and providing reasons to OpCo for its rejection.
- (c) If TfNSW approves a Draft Prevention Plan pursuant to clause 41.4(b)(i) (**Approved Prevention Plan**), OpCo must comply with and implement the Approved Prevention Plan.
- (d) If TfNSW rejects a Draft Prevention Plan pursuant to clause 41.4(b)(ii), OpCo, in consultation in good faith with TfNSW, must amend the Draft Prevention Plan to meet TfNSW's reasonable requirements and submit the amended Draft Prevention Plan to TfNSW for its approval, in which case this clause 41.4 (*Prevention Plan*) will apply to the amended Draft Prevention Plan as if it were originally submitted under clause 41.4(a).
- (e) If:
 - (i) a Default Notice is given;
 - (ii) the OpCo Event of Default is not capable of being Remedied; and
 - (iii) OpCo fails to:
 - (A) submit a Draft Prevention Plan in accordance with clause 41.4(a);
 - (B) if TfNSW rejects a Draft Prevention Plan pursuant to clause 41.4(b)(ii), amend the Draft Prevention Plan to meet TfNSW's requirements and submit the amended Draft Prevention Plan in accordance with clause 41.4(d); or
 - (C) comply with and implement the Approved Prevention Plan,

and such failure is not remedied by OpCo within 5 Business Days of notice from TfNSW regarding that failure, an OpCo Termination Event will occur.

41.5 **Persistent Breach**

- (a) TfNSW may issue a notice to OpCo (**Persistent Breach Notice**) if a breach of the same OpCo obligation under this deed or any other TfNSW Project Agreement occurs more than once in any 12 month period (**Persistent Breach**).
- (b) A Persistent Breach Notice must:
 - (i) state that it is a Persistent Breach Notice;
 - (ii) identify the breach;
 - (iii) not relate to:
 - (A) an OpCo Event of Default which is the subject of a current Approved Cure Plan or Approved Prevention Plan which OpCo is diligently implementing; or

- (B) a breach which results in a Service Payment Deduction or a breach of the Maximum Journey Time in clause 3.3(b) of SPR Appendix 38 (*Minimum Service Requirements*); or
 - (C) a breach in relation to which TfNSW has issued a Frequent Breaches Notice under clause 41.6(a) and which OpCo is diligently remedying; and
- (iv) state that, if the breach continues beyond 30 Business Days or recurs within the 12 month period commencing 30 Business Days after the date of service of the Persistent Breach Notice, it may result in TfNSW becoming entitled to terminate this deed.
- (c) If, following the issue of a Persistent Breach Notice, the breach specified in the Persistent Breach Notice has continued beyond 30 Business Days or recurred within the 12 month period commencing 30 Business Days after the date of service of the Persistent Breach Notice, then TfNSW may issue a notice to OpCo (**Final Persistent Breach Notice**).
- (d) A Final Persistent Breach Notice must:
- (i) state that it is a Final Persistent Breach Notice;
 - (ii) identify the breach;
 - (iii) state that the breach has been the subject of a Persistent Breach Notice served within the period of 12 months and 30 Business Days prior to the date of the service of the Final Persistent Breach Notice; and
 - (iv) state that if the breach continues beyond 30 Business Days or recurs 3 or more times within the 6 month period after the date of service of the Final Persistent Breach Notice, TfNSW will become entitled to terminate this deed.

41.6 Frequent Breaches

- (a) TfNSW may issue a Frequent Breaches Notice to OpCo if OpCo commits frequent breaches of this deed which, in aggregate:
- (i) substantially frustrate the objects of this deed;
 - (ii) significantly impair TfNSW's ability to fulfil any of its objectives under the Transport Administration Act;
 - (iii) have a material adverse effect on the SLR, the ETS or Customers; or
 - (iv) in TfNSW's reasonable opinion indicate that OpCo does not intend to be or does not regard itself as being bound by this deed,
- whether or not such breaches are of the same type or class (**Frequent Breaches**).
- (b) A Frequent Breaches Notice must:
- (i) state that it is a Frequent Breaches Notice;
 - (ii) identify the Frequent Breaches; and
 - (iii) not relate to:

- (A) an OpCo Event of Default which is the subject of a current Approved Cure Plan or Approved Prevention Plan which OpCo is diligently implementing; or
 - (B) a breach which results in a Service Payment Deduction or a breach of the Maximum Journey Time in clause 3.3(b) of SPR Appendix 38 (*Minimum Service Requirements*); or
 - (C) a breach in relation to which TfNSW has issued a Persistent Breaches Notice under clause 41.5(a) and which OpCo is diligently remedying; and
- (iv) state that, if Frequent Breaches continue to occur, they may result in TfNSW becoming entitled to terminate this deed.
- (c) If Frequent Breaches continue to occur during the 12 month period commencing 30 Business Days after the date of service of a Frequent Breaches Notice, TfNSW may issue a Final Frequent Breaches Notice to OpCo.
- (d) A Final Frequent Breaches Notice must:
- (i) state that it is a Final Frequent Breaches Notice;
 - (ii) identify the Frequent Breaches;
 - (iii) state that the Frequent Breaches have been the subject of a Frequent Breaches Notice served within the period of 12 months and 30 Business Days prior to the date of service of the Final Frequent Breaches Notice; and
 - (iv) state that if Frequent Breaches continue to occur at any time in the 6 month period after the date of service of the Final Frequent Breaches Notice, TfNSW will become entitled to terminate this deed.

42. STEP-IN

42.1 Step-in Events

Each of the following is a Step-in Event:

- (a) an OpCo Termination Event; and
- (b) an event or circumstance which arises out of or in connection with OpCo's Activities or the SLR PPP that poses a serious threat to, or causes or will cause material damage or material disruption to:
 - (i) the health or safety of persons;
 - (ii) the Environment;
 - (iii) any property; or
 - (iv) the safe and secure performance of OpCo's Activities.

42.2 Step-in Rights

- (a) If:
 - (i) a Step-in Event occurs; and

(ii) TfNSW has given notice to OpCo in accordance with clause 42.2(b),

then a Step-in Party may exercise all or any of the Step-in Powers set out in clause 42.3 (*Step-in Powers*) in an endeavour to remedy the Step-in Event or overcome the risk or mitigate any consequences resulting from the Step-in Event (**Step-in Right**).

- (b) The notice referred to in clause 42.2(a)(ii) must be in writing and must specify:
- (i) the Step-in Event which has triggered the Step-in Right;
 - (ii) the OpCo's Activities which TfNSW proposes the Step-in Party will perform;
 - (iii) the date on which the relevant Step-in Party proposes to commence performing the relevant OpCo's Activities; and
 - (iv) the date on which, if any, the relevant Step-in Party proposes to cease exercising the relevant OpCo's Activities.
- (c) The Step-in Right is without prejudice to TfNSW's other rights in respect of a Step-in Event, including its rights under clause 43 (*Termination*).

42.3 **Step-in Powers**

A Step-in Party may, in performing OpCo's Activities referred to in the notice under clause 42.2(b), do anything in respect of those activities that OpCo could do including:

- (a) enter into and remain in possession of all or any of the Assets;
 - (b) operate and manage all or any of the Assets;
 - (c) exercise all or any of OpCo's rights, and perform all or any of OpCo's obligations:
 - (i) in connection with the performance of OpCo's Activities;
 - (ii) under or in relation to a Project Agreement (other than a Debt Financing Document or Equity Document) or any other document to which OpCo is a party; and
 - (iii) under or in relation to any Accreditation or other Approval held by OpCo, as if it were OpCo, to the exclusion of OpCo;
 - (d) do anything the Step-in Party considers necessary or desirable to remedy the Step-in Event or overcome the risk or mitigate any consequences resulting from the Step-in Event; and
 - (e) do anything incidental to the matters listed in paragraphs (a) to (d),
- (Step-in Powers).**

42.4 **OpCo's obligations**

- (a) OpCo must:
 - (i) cooperate with the Step-in Party in the exercise of the Step-in Powers;

- (ii) assist the Step-in Party to enable the Step-in Party to perform all or any of OpCo's obligations under or in relation to any Accreditation or other Approval held by OpCo;
 - (iii) take any step which the Step-in Party considers necessary or desirable to remedy the Step-in Event or overcome the risk or mitigate any consequences resulting from the Step-in Event; and
 - (iv) ensure that its Significant Contractors and all other OpCo Contractors do likewise.
- (b) Without limiting clause 42.4(a), OpCo must:
- (i) allow the Step-in Party to access and use:
 - (A) all or any of the land and assets used in the performance of OpCo's Activities;
 - (B) its Staff; and
 - (C) any information the Step-in Party reasonably requires;
 - (ii) to the extent necessary, procure any consents to disclose Personal Information to the Step-in Party;
 - (iii) assist the Step-in Party in dealing with ONRSR in relation to any Accreditation issues;
 - (iv) comply with all reasonable directions given by the Step-in Party; and
 - (v) ensure that its Significant Contractors and all other OpCo Contractors do likewise,
- to enable the Step-in Party to exercise its Step-in Powers.
- (c) OpCo irrevocably appoints TfNSW as its attorney with full power to exercise the Step-in Powers (or to delegate the exercise of the Step-in Powers to another Step-in Party).
 - (d) OpCo's obligations under this deed will be suspended to the extent and for such period as is necessary to permit TfNSW to exercise its Step-in Rights.
 - (e) OpCo acknowledges that a Step-in Party is not under any obligation to remedy the Step-in Event nor to overcome the risk or mitigate any consequences resulting from the Step-in Event.

42.5 TfNSW's obligations

TfNSW must ensure that each Step-in Party, in exercising the Step-in Powers, uses its reasonable endeavours to perform OpCo's Activities in accordance with the requirements of this deed.

42.6 Payments during step-in

- (a) During the period when TfNSW is exercising its Step-in Rights, if OpCo's performance of obligations under this deed which affect the calculation of the Service Payment:

- (i) is continuing, then those parts of the Service Payment affected by OpCo's performance will continue to be calculated in accordance with Schedule D1 (*Service Payment Regime*) based on the actual performance of those obligations by OpCo during the period when TfNSW is exercising its Step-in Rights; or
 - (ii) is suspended, then those parts of the Service Payment which would have been affected but for OpCo's suspension will continue to be calculated in accordance with Schedule D1 (*Service Payment Regime*) based on the average performance of those obligations by OpCo for the 6 months immediately prior to TfNSW exercising the Step-in Right.
- (b) TfNSW will be entitled to deduct the following amount, without double counting from any Service Payment payable in respect of a period when TfNSW is exercising its Step-in Rights:
- (i) where the Step-in Event was an OpCo Termination Event:
 - (A) the costs avoided by OpCo as a result of the exercise of the Step-in Right; and
 - (B) the reasonable costs incurred by TfNSW in exercising the Step-in Right, including all reasonable costs incurred by a Step-in Party in performing OpCo's Activities; or
 - (ii) where the Step-in Event was not an OpCo Termination Event, the costs avoided by OpCo as a result of the exercise of the Step-in Right.
- (c) If the aggregate amount to be deducted under clause 42.6(b)(i) or 42.6(b)(ii) is greater than the Service Payment payable in respect of the relevant period, the difference will be a debt due and payable from OpCo to TfNSW.

42.7 **No liability**

OpCo acknowledges that TfNSW will have no liability to OpCo, and OpCo will not be entitled to make any Claim against TfNSW, arising out of or in connection with:

- (a) any conduct, delay, negligence or breach of duty in the exercise or non-exercise of a Step-in Power; nor
- (b) for any Loss which results,
except where it arises from:
 - (c) fraud, wilful default or gross negligence on the part of the Step-in Party or its Associates;
 - (d) a Compensation Event; or
 - (e) a Relief Event.

42.8 **Step-out**

- (a) A Step-in Party must cease to exercise the Step-in Powers as soon as reasonably practicable and, in any event, upon the earlier of:

- (i) the relevant Step-in Event being remedied (or the risk or consequences resulting from the Step-in Event being overcome) to the satisfaction of TfNSW; and
 - (ii) TfNSW's Representative notifying OpCo in writing that the Step-in Party will no longer exercise the Step-in Powers.
- (b) TfNSW must give written notice to OpCo of the date on which the Step-in Party will cease to exercise the Step-in Powers (which notice must be given by TfNSW to OpCo at least 5 Business Days prior to the date the Step-in Party propose ceases to exercise the Step-in Powers).
 - (c) TfNSW and OpCo must consult with each other with the intention of ensuring that the transition from the Step-in Party ceasing to exercise the Step-in Powers to OpCo resuming the performance of the relevant OpCo Activities is effected without interruption to OpCo's Activities.
 - (d) Upon the Step-in Party ceasing to exercise the Step-in Powers, OpCo must resume the performance of relevant OpCo's Activities in accordance with this deed (unless this deed has been terminated).

43. TERMINATION

43.1 OpCo Termination Events

Each of the following events is an OpCo Termination Event:

- (a) **(failure to commence Revenue Service)**: OpCo has not commenced Revenue Service on the IWLR by 31 December 2015 or the date that is six months after such other date as the parties have agreed under clause 14.1(a);
- (b) **(unacceptable availability)**: during the Operations Phase:
 - (i) the number of Missed Services in a month exceeds ■■■ of the total number of Required Services for that month for each of any 4 out of 12 rolling months, but disregarding any Missed Services which occur in the initial 6 months following Completion; or
 - (ii) the number of Missed Services exceeds either:
 - (A) in any of the initial 6 months following Completion, ■■■ of the total number of Required Services for that month; or
 - (B) after the initial 6 months following Completion, in any rolling 3 month period, ■■■ of the total number of Required Services for that period,
 in each case, disregarding any such unacceptable availability which is:
 - (iii) directly caused by a Relief Event during a period when OpCo's non-financial obligations are relieved under clause 27.4 (*Relief from obligations*); or
 - (iv) excluded from the calculations of Availability Deductions in accordance with clause 18 of Schedule D1 (*Service Payment Regime*);
- (c) **(unacceptable timeliness)**: during the Operations Phase, more than ■■■ of Services in a month exceed the Maximum Headway by ■■■ for each of 3 consecutive months or any 4 out of 12 rolling months,

in each case, disregarding any such unacceptable timeliness which is:

- (i) directly caused by a Relief Event during a period when OpCo's non-financial obligations are relieved under clause 27.4 (*Relief from obligations*); or
 - (ii) excluded from the calculations of Timeliness Deductions in accordance with clause 18 of Schedule D1 (*Service Payment Regime*);
- (d) (**unacceptable quality**): during the Operations Phase, OpCo accrues ■ or more Service Failure Points over a rolling period of 4 consecutive quarters, in each case, disregarding any such unacceptable quality directly caused by a Relief Event during a period when OpCo's non-financial obligations are relieved under clause 27.4 (*Relief from obligations*);
- (e) (**Persistent Breach**): TfNSW has issued a Final Persistent Breach Notice and the relevant breach has continued beyond 30 Business Days or recurred 3 or more times within the 6 month period after the date of service of the Final Persistent Breach Notice;
- (f) (**Frequent Breaches**): TfNSW has issued a Final Frequent Breaches Notice and Frequent Breaches continue to occur at any time in the 6 month period after the date of service of the Final Frequent Breaches Notice;
- (g) (**failure to Remedy**): a failure by OpCo to Remedy an OpCo Event of Default which is capable of being Remedied within the Applicable Cure Period;
- (h) (**failure to prevent**): a failure by OpCo to prevent the recurrence of a OpCo Event of Default which is the subject of an Approved Prevention Plan;
- (i) (**failure to submit, amend or implement cure/prevention plan**): an event described in clause 41.3(f) or 41.4(e);
- (j) (**failure to achieve Completion by Longstop Date**): Completion has not occurred by the Longstop Date;
- (k) (**abandonment**): OpCo abandons the SLR PPP;
- (l) (**insolvency of a ALR Partner**): an Insolvency Event occurs in relation to an ALR Partner, whether or not an ALR Partner has been in breach of this deed;
- (m) (**suspension or revocation of Accreditation**): ONRSR suspends (other than a suspension not exceeding 6 weeks under section 74 of the Rail Safety National Law) or revokes any Accreditation required by OpCo or a Core Contractor to perform OpCo's Activities;
- (n) (**Equity Purchase Deed**): any Seller is in material breach of its obligations under the Equity Purchase Deed;
- (o) (**insolvency of contractor or guarantor**): an Insolvency Event occurs in relation to a Core Contractor or a Core Contractor Guarantor (and which, in relation to the D&C Contractor or a D&C Contractor Guarantor, only occurs prior to the Date of Final Completion) whether or not OpCo is then in breach of this deed, and:
- (i) that Core Contractor or Core Contractor Guarantor is not replaced within 120 Business Days; or

- (ii) at any time during that period, OpCo is not diligently pursuing the replacement of that Core Contractor or Core Contractor Guarantor (as applicable),

by a person that:

- (iii) satisfies the requirements of clause 54.3(b); or
 - (iv) is otherwise acceptable to TfNSW (acting reasonably);
- (p) **(failure to insure)**: OpCo does not effect and maintain (or cause to be effected and maintained) an insurance as required by this deed, and fails to do so within 10 Business Days after receipt of a notice from TfNSW directing it to do so;
 - (q) **(assignment etc)**: OpCo breaches its obligations under clause 52.2(b);
 - (r) **(restriction on Change of Ownership of OpCo)**: OpCo breaches its obligations under clause 53.2 (*Change of Ownership of OpCo Group Member*);
 - (s) **(restriction on Change in Control of D&C Contractor)**: a Change in Control of the D&C Contractor occurs without TfNSW's approval under clause 53.3(a) and OpCo fails to comply with the requirements of clause 53.3(e);
 - (t) **(restrictions on replacement of a Significant Contractor)**: a Significant Contractor is replaced by OpCo without TfNSW's approval under clause 54.3(a) and OpCo fails to terminate any Significant Contract with the replacement Significant Contractor and retender the works or services within 60 days after receipt of a notice from TfNSW directing it to do so;
 - (u) **(Illegality Event)**: the occurrence of any of the following events:
 - (i) OpCo or a Core Contractor ceases to hold an Approval or breaches a law, and such failure or breach is, in the reasonable opinion of TfNSW, material to the performance of OpCo's obligations under this deed and is not Remedied within 30 days of the earlier of:
 - (A) the date on which TfNSW notifies OpCo of the failure or breach; or
 - (B) the date on which OpCo becomes aware of the failure or breach;
 - (ii) any Project Agreement (excluding the Debt Financing Documents, Equity Documents, the Alstom CSELRV Supply Agreement and the Alstom CSELRV Supply Agreement Guarantee):
 - (A) being revoked, repudiated or terminated or ceasing to be legal, valid and binding and enforceable against OpCo or any other person (other than TfNSW or the State) or any other party to a Project Agreement (excluding the Debt Financing Documents and Equity Documents), other than as contemplated by the Project Agreements (excluding the Debt Financing Documents and Equity Documents); or
 - (B) becoming invalid, void or voidable in any material respect other than where TfNSW has caused it to be invalid, void or voidable,
- and, where the event is capable of being Remedied, the event is not Remedied within 30 days of the relevant event occurring; or

- (iii) it is or becomes unlawful for OpCo or a Core Contractor to perform any of its obligations under the Project Agreements, and such event is not Remedied within 30 days of the relevant event occurring; and
- (v) **(failure to achieve Additional CSELRV Acceptance Requirements by Longstop Date)**: satisfaction of the Additional CSELRV Acceptance Requirements in respect of each Required Additional CSELRV and each Option 1A CSELRV (if Pre-Agreed Option 1A has been exercised by TfNSW), as certified by the Independent Certifier, has not occurred by the Longstop Date.

43.2 Notice of OpCo Termination Event

Without limiting TfNSW's other rights or OpCo's other obligations under this deed, OpCo must notify TfNSW's Representative immediately upon becoming aware of an OpCo Termination Event or an event or occurrence that, with the giving of notice, or lapse of time, would or is likely to become an OpCo Termination Event.

43.3 TfNSW action following OpCo Termination Event

Without limiting TfNSW's other rights and remedies under this deed, if an OpCo Termination Event has occurred and is subsisting, TfNSW may take any action it considers appropriate or necessary to:

- (a) overcome the effects of the OpCo Termination Event; or
- (b) preserve the SLR PPP,

including TfNSW (or its nominees) entering and remaining on or in the SLR Site or the SLR. The amount of any Loss incurred by TfNSW in taking such action will be a debt due and payable from OpCo to TfNSW.

43.4 Termination for OpCo Termination Event

If an OpCo Termination Event has occurred, TfNSW may give a written notice to OpCo immediately terminating this deed. The notice must set out details of the OpCo Termination Event for which TfNSW is giving the notice.

43.5 TfNSW Termination Events

Each of following events is a TfNSW Termination Event:

- (a) **(Failure to pay)**: TfNSW fails to comply with its payment obligations under clauses 25 (*Payment provisions*), 25A (*Securitised Licence Structure*) or the Receivables Purchase Deed and the failure is not remedied within 20 Business Days of a written demand from OpCo, provided that if;
 - (i) an amount disputed under clause 25.8 (*Correction of payment schedules*); or
 - (ii) TfNSW has not made a payment to OpCo of the Construction Payment in circumstances where TfNSW has not received payment from Finance Co of the corresponding Receivables Purchase Payment,

this is not to be taken into account for the purposes of this clause 43.5(a);

- (b) **(Expropriation)**: the State expropriates, sequesters or requisitions a material part of the SLR or any Equity Interest, other than in accordance with its rights under this deed, including under clause 43.15 (*Equity Purchase Option*); or
- (c) **(Frustration)**: a breach by TfNSW of this deed which substantially frustrates or renders it impossible for OpCo to achieve Completion or comply with a material part of its obligation under this deed for a continuous period of 2 months.

43.6 Termination for TfNSW Termination Event

- (a) If a TfNSW Termination Event occurs, OpCo may give TfNSW 30 Business Days' notice of its intention to terminate this deed.
- (b) If OpCo gives a notice under clause 43.6(a), TfNSW may suspend OpCo's right to terminate by giving a suspension notice within 30 Business Days of receipt of OpCo's notice under clause 43.6(a).
- (c) TfNSW's suspension of OpCo's right to terminate expires on the earliest of:
 - (i) TfNSW notifying OpCo in writing that it is ending the suspension period;
 - (ii) in the case of the TfNSW Termination Event referred to in clause 43.5(a), 30 Business Days after the date of OpCo's notice under clause 43.6(a);
 - (iii) in the case of any other TfNSW Termination Event, 24 months after the date of OpCo's notice under clause 43.6(a); and
 - (iv) when the relevant TfNSW Termination Event has been remedied (or its effects overcome).
- (d) If TfNSW's suspension of OpCo's right to terminate expires:
 - (i) under clause 43.6(c)(i), 43.6(c)(ii) or 43.6(c)(iii) and the TfNSW Termination Event has not been Remedied, OpCo may immediately terminate this deed by notice to TfNSW; and
 - (ii) under clause 43.6(c)(iv), this deed will continue in force.
- (e) OpCo must continue to perform its obligations under this deed while its right to terminate is suspended, to the extent that it is lawful and practicable to do so.
- (f) If TfNSW does not give a suspension notice under clause 43.6(b) and the relevant TfNSW Termination Event has not been remedied (or its effects overcome) within 30 Business Days of receipt of OpCo's notice under clause 43.6(a), OpCo may, if the TfNSW Termination Event is still subsisting, immediately terminate this deed by notice to TfNSW.
- (g) If TfNSW issues a notice to OpCo under clause 43.6(b) TfNSW must pay OpCo monthly an amount sufficient to place OpCo in the net after tax position it would have been in had the relevant TfNSW Termination Event not occurred, from the date TfNSW issues a notice under clause 43.6(b) until the end of the period of suspension.
- (h) TfNSW will not be entitled to give any notice under clause 41.2 (*Default Notice*) or 43.4 (*Termination for OpCo Termination Event*) to the extent the occurrence or circumstance which would otherwise entitle TfNSW to give such a notice results from the relevant TfNSW Termination Event.

43.7 Voluntary termination by TfNSW

TfNSW may:

- (a) at any time for its sole convenience and without giving reasons terminate this deed by written notice to OpCo with effect from the date stated in the notice (which date must not precede the date the notice is received by OpCo); and
- (b) thereafter either itself or by third parties carry out some or all of OpCo's Activities (if TfNSW elects to do so).

43.8 Termination for Force Majeure Event

Either party may terminate this deed pursuant to clause 28.3 (*Termination for Force Majeure Event*).

43.9 Termination in connection with Augmentations

TfNSW may terminate this deed if TfNSW is entitled to pursuant to clause 20 of Schedule D9 (*Augmentations*).

43.10 Termination for Uninsurable Risk

TfNSW may terminate this deed pursuant to clause 40 (*Uninsurable Risks*).

43.11 Consequences of termination

Upon expiry or termination of this deed, the rights and obligations of the parties under this deed will cease except for:

- (a) any accrued rights and obligations under this deed, including those arising out of the termination of this deed; and
- (b) any rights and obligations which expressly or impliedly continue after termination of this deed, including those referred to in clause 62.6 (*Survival of certain provisions; no merger*).

43.12 Termination Payments

- (a) Subject to clause 43.12(b) if this deed is terminated under this clause 43 (*Termination*) or clauses 28.3 (*Termination for Force Majeure Event*), 33.2 (*Termination in connection with an Augmentation*) or 40 (*Uninsurable Risks*), TfNSW must pay or procure the payment to OpCo:
 - (i) if this deed is terminated under clause 43.4 (*Termination for OpCo Termination Event*) (other than as the result of an OpCo Termination Event referred to in clause 43.1(k)), the Termination Payment determined in accordance with paragraph 3 or 7 of Schedule D6 (*Termination payments*);
 - (ii) if this deed is terminated under clauses 43.6 (*Termination for TfNSW Termination Event*), 43.7 (*Voluntary termination by TfNSW*) or 33.2 (*Termination in connection with an Augmentation*), the Termination Payment calculated in accordance with paragraph 4 or 7 of Schedule D6 (*Termination payments*); and

- (iii) if this deed is terminated under clauses 28.3 (*Termination for Force Majeure Event*) or 40 (*Uninsurable Risks*), the Termination Payment calculated in accordance with paragraph 5 or 7 of Schedule D6 (*Termination payments*).
- (b) If this deed is terminated as the result of an OpCo Termination Event referred to in clause 43.1(k), OpCo will receive no compensation.
- (c) In the calculation of Termination Payments under Schedule D6 (*Termination payments*), there will not be any double counting of any amount payable, whether such amounts are referred to in Schedule D6 (*Termination payments*) or elsewhere in this deed.
- (d) If this deed is terminated as a result of a TfNSW Termination Event or a breach by TfNSW:
 - (i) payment of the relevant Termination Payment will be full and final settlement of any Claim which OpCo has against TfNSW arising out of that breach and/or the termination of this deed; and
 - (ii) OpCo will not be entitled to pursue a claim of restitution of any kind, including a claim of unjust enrichment or quantum meruit.

43.13 **No other termination rights**

Despite any rule of law or equity to the contrary, this deed may not be terminated other than as provided for in this deed.

43.14 **Option to assume Project Debt**

- (a) If:
 - (i) either:
 - (A) this deed is terminated; or
 - (B) TfNSW exercises the Equity Purchase Option in accordance with the Equity Purchase Deed; and
 - (ii) as at the date of such termination or exercise (as the case may be), OpCo or Finance Co has any outstanding Financial Indebtedness,

TfNSW may elect, and if TfNSW exercises the Equity Purchase Option in accordance with the Equity Purchase Deed must elect, to assume (or procure that its Qualifying Nominee assumes) all of OpCo's and Finance Co's rights and liabilities under the Debt Financing Documents.

- (b) If TfNSW elects to assume (or procure that its Qualifying Nominee assumes) all of OpCo's or Finance Co's rights and liabilities under clause 43.14(a) then subject to clause 2(c) of Schedule D6 (*Termination Payments*):
 - (i) OpCo must ensure that such rights and liabilities are novated to TfNSW (or its Qualifying Nominee) on the date of termination of this deed (but subject to clause 43.14(b)(iv)) or as soon as practicable after the exercise of the Equity Purchase Option (as the case may be);
 - (ii) (subject to the terms of the Financiers Tripartite Deed) TfNSW agrees to meet (or procure that its Qualifying Nominee will meet) all further

obligations to the Debt Financiers on the same terms and conditions as contained in the Debt Financing Documents;

- (iii) TfNSW's assumption (or TfNSW's Qualifying Nominee's assumption) of OpCo's or Finance Co's rights and liabilities will be supported by a guarantee from the State on terms no less favourable than those contained in the PAFA Act Deed Poll of Guarantee;
 - (iv) (where this deed has been terminated) the Securitisation Refund Payment which TfNSW would otherwise be obliged to pay to Finance Co as defined in the Receivables Purchase Deed will be reduced by:
 - (A) the principal payable directly to the Debt Financiers by TfNSW following any novation of the Debt Financing Documents to TfNSW under this clause 43.14 (*Option to assume Project Debt*); and
 - (B) the amount of any costs of terminating the Debt Financing Documents which would otherwise have been taken into account in determining the Termination Payment, but which are not incurred by reason of the novation; and
 - (v) (where this deed has been terminated) subject to clause 43.14(b)(iv), TfNSW must pay the Termination Payment to OpCo and the Securitisation Refund Payment to Finance Co prior to the novation becoming effective.
- (c) OpCo must ensure that both it and Finance Co are permitted, under the terms of all of the Debt Financing Documents, to procure the novation of its rights and obligations under those Debt Financing Documents pursuant to this clause 43.14 (*Option to assume Project Debt*).

43.15 **Equity Purchase Option**

Without prejudice to its rights contained in clause 43.7 (*Voluntary termination by TfNSW*), TfNSW may exercise the Equity Purchase Option in accordance with the Equity Purchase Deed.

44. **TRANSITION OUT PROVISIONS**

44.1 **Right to appoint Successor OpCo**

- (a) OpCo acknowledges that TfNSW may, on or before the expiry or termination of the Term, invite any person (including OpCo) to perform all or any part of OpCo's Activities for the period commencing after expiry or termination of the Term.
- (b) The following clauses will not apply if OpCo becomes the Successor OpCo:
 - (i) clause 44.6 (*Assistance in securing continuity*); and
 - (ii) clause 44.7 (*Access*).
- (c) If this deed is terminated prior to the Date of Completion, TfNSW will (acting reasonably and having regard to the circumstances and timing of the termination) determine if, and to the extent to which, clauses 44.2 (*Transition Out Management Plan*), 44.3 (*Preparation for and contracting at end of Term*), 44.6(a)(ii), 44.6(b), 44.8 (*Required SLR Employee details*), 44.9 (*Variation of terms and conditions of employment*) and 44.10 (*Transfer of employees to Successor OpCo*) will apply.

44.2 **Transition Out Management Plan**

- (a) OpCo must prepare, update and submit the Transition Out Management Plan in accordance with clause 8 (*Project Plans*).
- (b) OpCo must ensure that a Step-in Party, prospective Successor OpCo, Successor OpCo or nominee of TfNSW has, to the extent permitted by law, immediate access to the information required to be included in the Transition Out Management Plan on reasonable notice from TfNSW and in any case on the dates OpCo is required to submit the Transition Out Management Plan to TfNSW in accordance with clause 8 (*Project Plans*).

44.3 **Preparation for contracting at end of Term**

- (a) OpCo must, to the extent permitted by law, provide TfNSW with reasonable access to the Staff and the information, books and records, kept by or on behalf of OpCo in connection with the SLR PPP, for the purpose of TfNSW preparing reports and documents in connection with any invitation to a person for the performance of all or part of OpCo's Activities.
- (b) OpCo must use reasonable endeavours to assist TfNSW in the preparation for, and the conduct of, a fair and competitive expression of interest or tendering process.
- (c) Without limiting clause 44.3(b), OpCo must, to the extent permitted by law, make available to TfNSW any information, and assist in the verification of any information (including the provision of answers to verification questions), as they reasonably require in connection with the contracting of OpCo's Activities.
- (d) OpCo warrants to TfNSW that to the best of its belief all information provided under clause 44.2 (*Transition Out Management Plan*) and this clause 44.3 (*Preparation for contracting at end of Term*) will be, at the time it is provided, true and correct in all material respects and will not be misleading, by omission or otherwise.

44.4 **Continuity of OpCo's Activities**

OpCo must manage, perform and maintain OpCo's Activities in a way that an appropriately qualified and resourced Step-in Party or Successor OpCo (or nominee of TfNSW) is able at any time to immediately take over the performance of OpCo's Activities without interruption.

44.5 **Non-frustration of transfer**

OpCo must not do anything that directly or indirectly avoids or materially prejudices or frustrates the transfer of the performance of OpCo's Activities at termination or expiry of the Term to a Successor OpCo (or nominee of TfNSW).

44.6 **Assistance in securing continuity**

- (a) OpCo must do everything, both before and after the expiry or termination of the Term, as TfNSW may reasonably require to assist and advise any Step-in Party, prospective Successor OpCo, Successor OpCo or nominee of TfNSW in performing OpCo's Activities, including the provision of:
 - (i) information and records related to the performance of OpCo's Activities (excluding Commercially Sensitive Information); and

- (ii) training sessions to any person nominated by TfNSW in relation to the performance of OpCo's Activities.
- (b) Where OpCo is required to provide the training sessions contemplated under clause 44.6(a)(ii) after the expiry or termination of the Term, TfNSW will pay OpCo its reasonable costs of doing so, as agreed between the parties.

44.7 Access

OpCo must ensure that a prospective Successor OpCo, Successor OpCo or nominee of TfNSW has access to the Assets, systems, Light Rail Maintenance and Stabling Facilities and the Required SLR Employees for the purpose of:

- (a) the prospective Successor OpCo, Successor OpCo or nominee of TfNSW receiving information in respect of OpCo's Activities; and
- (b) preparations by the prospective Successor OpCo, Successor OpCo or nominee of TfNSW to take over the performance of OpCo's Activities following expiry or termination of the Term,

but only to the extent that any of the above does not unduly interfere with the performance of OpCo's Activities.

44.8 Required SLR Employee details

- (a) No later than 30 Business Days prior to the Expiry Date, or, in the event that this deed is terminated, within 7 Business Days of any notice of termination, OpCo must:
 - (i) provide to each Required SLR Employee a statement setting out that Required SLR Employees:
 - (A) grade/classification;
 - (B) rate of pay;
 - (C) date of commencement of employment; and
 - (D) estimated accrued entitlements (including annual leave, long-service leave, sick pay and rostered days off) as at the Expiry Date or termination of this deed; and
 - (b) provide to TfNSW information on the Required SLR Employees, including:
 - (i) the statement provided to each Required SLR Employee pursuant to clause 44.8(a)(i);
 - (ii) a list of the names of the Required SLR Employees;
 - (iii) each Required SLR Employee's terms and conditions of employment; and
 - (iv) each Required SLR Employee's roster.
- (c) In the event that a Required SLR Employee notifies OpCo that he or she disputes any of the information contained in the statement provided to that Required SLR Employee pursuant to clause 44.8(a)(i), OpCo must notify TfNSW of such dispute and TfNSW must refer the disputed issue to an actuary.

44.9 Variation of terms and conditions of employment

OpCo must not, without the prior written consent of TfNSW (which must not be unreasonably withheld), vary, or purport or promise to vary, the terms or conditions of employment (including superannuation entitlements) of any Required SLR Employee where:

- (a) the variation takes effect in the 12 months prior to the Expiry Date unless:
 - (i) it is in the ordinary course of business and, when aggregated with any other variation which takes effect during that period, represents a percentage increase in the remuneration of the Required SLR Employee of no more than the percentage increase in the index referred to in clause 14.2(b) of Schedule D1 (*Service Payment Regime*) over the 12 month period ending on the month for which that index was last published; or
 - (ii) is a variation imposed by a determination of the Fair Work Commission or the New South Wales Industrial Relations Commission;
- (b) all or part of the variation first takes effect after the end of the Term;
- (c) the variation relates to the provision of a financial or non-financial benefit (but excluding base salary and the Required SLR Employee's legal entitlements) which the Required SLR Employee will or may have a contractual right to receive after the expiry or termination of the Term; or
- (d) the variation prevents, restricts or hinders the Required SLR Employee from working for a Successor OpCo in any capacity whether as an employee, independent contractor or otherwise, or from performing any duties which are the same as or similar to the duties the Required SLR Employee performed in the course of his or her employment with OpCo.

44.10 Transfer of employees to Successor OpCo

- (a) At the Expiry Date, TfNSW will ensure that Successor OpCo (or a contractor of Successor OpCo) makes offers of employment to the Required SLR Employees on terms which are similar to and are, on an overall basis, no less favourable than their terms of employment with OpCo (or the relevant O&M Contractor).
- (b) Notwithstanding clause 44.10(a), OpCo will (or will ensure that the relevant OpCo Contractor will) pay to any employee who becomes entitled to any redundancy payment upon the cessation of their employment with OpCo (or the relevant O&M Contractor), an amount which:
 - (i) complies with the terms of any relevant employment agreement and applicable laws; and
 - (ii) is consistent with general standards applicable at that time.
- (c) For the purposes of this clause 44.10 (*Transfer of employees to Successor OpCo*), any offer of employment by Successor OpCo (or a contractor of Successor OpCo) must:
 - (i) recognise continuity of service for all service related entitlements;

- (ii) expressly waive any qualifying period which would otherwise preclude an employee's access to Commonwealth unfair dismissal laws in place from time to time; and
 - (iii) meet any criteria as to 'acceptable alternative employment' for the purposes of any exemption from the liability of OpCo (or the O&M Contractor) to make redundancy payments set under any applicable contract, policy or enterprise agreement which applies to the employee as at the end of the Term.
- (d) This clause 44.10 (*Transfer of employees to Successor OpCo*) does not apply if this deed is terminated under clause 43 (*Termination*), 28.3 (*Termination for Force Majeure Event*), 33.2 (*Termination in connection with an Augmentation*) or 40 (*Uninsurable Risks*).

44.11 **Asset Information System**

OpCo must commence the transfer of the Asset Information System database to TfNSW, as required by clause 21.12(a)(vi), at least 12 months prior to the Expiry Date.

45. **ACCESS, INSPECTIONS AND AUDITS**

45.1 **TfNSW's right of entry**

- (a) TfNSW (and any person authorised by TfNSW) may, at any time, enter the SLR Site and any other premises where OpCo's Activities are being carried out for the purpose of:
 - (i) observing or inspecting OpCo's Activities;
 - (ii) monitoring compliance by OpCo with its obligations under this deed; or
 - (iii) exercising any right or performing any obligation which TfNSW has under any TfNSW Project Agreement.
- (b) OpCo must use reasonable endeavours to:
 - (i) coordinate OpCo's Activities so they do not interfere with the exercise by TfNSW of its right of entry; and
 - (ii) provide TfNSW with every reasonable facility and other assistance necessary for any inspection by TfNSW, including providing access to any relevant systems, registers, manuals, records (including financial records), plans and programs.
- (c) If an inspection shows that OpCo has not complied or is not complying with its obligations under this deed, TfNSW's Representative:
 - (i) may notify OpCo of the details of the non-compliance;
 - (ii) will specify a reasonable period within which OpCo must carry out appropriate rectification and/or remedy activities; and
 - (iii) will be entitled to be reimbursed by OpCo for the reasonable costs of the inspection including any reasonable administrative costs incurred by TfNSW in relation to the inspection.

- (d) Where, in accordance with clause 45.1(a), TfNSW (or any person authorised by TfNSW) enters the SLR Site and any other premises where OpCo's Activities are being carried out, TfNSW must (or must procure that any person authorised by TfNSW) comply with:
- (i) the Safety Management Plan; and
 - (ii) any other reasonable site safety and security requirements as advised by OpCo.

45.2 Access to information

Without limiting any other provision of this deed:

- (a) TfNSW may at any time notify OpCo that it requires access to any information held by OpCo or OpCo's Contractors which relates to OpCo's Activities;
- (b) upon receipt of a notice under clause 45.2(a), OpCo must immediately provide TfNSW (and any person authorised by TfNSW) with access to, or a copy of, the required information, except to the extent that the information is subject to legal professional privilege; and
- (c) TfNSW (and any person authorised by TfNSW) may review, copy, retain or otherwise deal with such information.

45.3 Access to third parties' information

OpCo must:

- (a) ensure that TfNSW (and any person authorised by TfNSW) has direct access to any information, documents or material that:
 - (i) is maintained by a third party (including OpCo's Associates); and
 - (ii) TfNSW is entitled to have access to, or have copies of, from OpCo under this deed;
- (b) ensure that any contractual arrangements between OpCo or OpCo's Contractors and any third parties acknowledge TfNSW's right of access under clause 45.3(a); and
- (c) on demand, provide to TfNSW written evidence (including copies of any contractual arrangements referred to in clause 45.3(b)) showing compliance by OpCo with its obligations under clause 45.3(b).

45.4 OpCo to cooperate

OpCo must cooperate, and must ensure that OpCo's Contractors cooperate, with TfNSW and any persons authorised by TfNSW in the exercise of TfNSW's rights under this clause 45 (*Access, inspections and audits*).

46. RECORDS, REPORTING OBLIGATIONS AND PRIVACY

46.1 Records

- (a) OpCo must keep appropriate books of account, records, documentation and systems which evidence its performance of OpCo's Activities and its compliance with the Project Agreements.

- (b) OpCo must ensure its books of account, records, documentation and systems are available to TfNSW in accordance with clause 45.2 (*Access to information*).

46.2 Financial reporting

- (a) Not later than 4 months after the end of each financial year, OpCo must give TfNSW:
 - (i) unconsolidated audited financial statements for the previous financial year for each of OpCo and Finance Co;
 - (ii) the audited financial statements for the previous financial year of any consolidated entity of which OpCo forms part; and
 - (iii) the audited financial statements for the previous financial year of the Core Contractors.
- (b) Each of the documents to be provided to TfNSW in accordance with this clause 46.2 (*Financial reporting*) must be accompanied by a certificate signed by two authorised officers of the relevant entity certifying that the information provided is accurate, complete and correct in all respects.
- (c) OpCo must prepare (or procure the preparation of) the accounts and financial statements required under this clause 46.2 (*Financial reporting*) in compliance with law and, without limitation, in accordance with the accounting principles generally accepted in Australia and consistently applied.

46.3 Project reporting

Without limiting OpCo's other reporting obligations under this deed, OpCo must provide the following reports:

- (a) during the Delivery Phase:
 - (i) the Delivery Phase Progress Report;
 - (ii) Test Reports in accordance with clause 18.5 (*Test Reports*);
 - (iii) an Intellectual Property report under clause 19.10 (*Final Completion*);
 - (iv) a report on the effects of OpCo's Activities under section 4.3 of the SPR;
 - (v) site investigation reports under section 4.5 of the SPR;
 - (vi) survey reports under section 4.5 of the SPR;
 - (vii) Quality Management Plan audit reports under section 11.5.2 of the SPR;
 - (viii) as constructed documentation and construction completion reports under section 11.12 of the SPR;
 - (ix) design reports under section 5.8 of the SPR;
 - (x) durability assessment reports under section 11.12 of the SPR; and
 - (xi) all other reports and programs required under this deed (including the SPR);
- (b) during the Operations Phase:

- (i) reports on the Asset Management Activities in accordance with clause 21.9 (*Reporting*);
 - (ii) the Monthly Operations Performance Report;
 - (iii) the Monthly Service Payment Report;
 - (iv) Asset Condition Assessment reports under section 9.9 of the SPR; and
 - (v) the reports required by section 5 of SPR Appendix 10 (*Reporting Requirements*); and
- (c) during the Term, written reports of all work health, safety and rehabilitation matters under clause 9.4(f).

46.4 **Notices under Project Agreements or Rail Safety Interface Agreements**

OpCo must give TfNSW, as soon as practicable, certified copies of all notices of default, breach or dispute given or received by it under the Project Agreements or any Rail Safety Interface Agreements from any of its co-contracting parties.

46.5 **Advice on rights of third parties under Project Agreements**

OpCo undertakes to advise TfNSW as soon as practicable after an event has occurred which, to OpCo's actual knowledge, could in any way materially prejudice TfNSW's rights under the Project Agreements by reason of the exercise of rights available to third parties arising from the Project Agreements.

46.6 **Not used**

46.7 **ASIC and ASX notices**

OpCo must give TfNSW, as soon as practicable, copies of all notices and other documents given or received by a member of the OpCo Group to or from the Australian Securities and Investments Commission or the Australian Stock Exchange Limited.

46.8 **Other information**

OpCo must promptly give TfNSW such other information relating to the SLR PPP or OpCo's Activities as TfNSW may reasonably require from time to time.

46.9 **Retention of records**

OpCo must retain all records in relation to the SLR PPP:

- (a) until they are delivered to TfNSW pursuant to clause 21.12(a)(vii); or
- (b) if not so delivered to TfNSW, for at least 7 years after the end of the Term.

46.10 **Privacy**

- (a) **(Definitions):** In this clause **Privacy Obligations** means:
 - (i) while the PPIPA is in force, obligations imposed on public sector agencies under the PPIPA; and

- (ii) if the PPIPA is repealed, obligations imposed on Authorities and private sector organisations by any Commonwealth or New South Wales legislation that replaces the PPIPA in whole or in part.
- (b) (**PPIPA**): OpCo acknowledges that:
 - (i) under this deed it is providing "data services" as that term is defined in the PPIPA; and
 - (ii) it is a "public sector agency" as that term is defined in the PPIPA.
- (c) (**Compliance with Privacy Obligations and privacy plans**): OpCo must:
 - (i) comply with the Privacy Obligations and OpCo's Privacy Plan; and
 - (ii) provide all reasonable assistance to enable TfNSW to comply with the Privacy Obligations.
- (d) (**Personal Information**): Without limiting clause 46.10(c), OpCo must ensure that Personal Information is collected, used, disclosed and handled by it in accordance with OpCo's Privacy Plan and this deed.
- (e) (**OpCo's Privacy Plan**): At least 20 Business Days prior to the first occasion on which OpCo will handle any Personal Information in undertaking OpCo's Activities, OpCo must submit to TfNSW's Representative OpCo's Privacy Plan which sets out OpCo's procedures in relation to privacy protection and includes, as a minimum, procedures which:
 - (i) ensure that OpCo will comply with the Privacy Obligations;
 - (ii) are consistent with the Privacy Obligations as they apply to TfNSW; and
 - (iii) are consistent with Good Industry Practice.
- (f) (**TfNSW's review**): TfNSW's Representative will have the right to comment on OpCo's Privacy Plan and OpCo must amend OpCo's Privacy Plan to address any comments by TfNSW's Representative.
- (g) (**Updating of OpCo's Privacy Plan**): Throughout the Term, OpCo must review and, if necessary, update OpCo's Privacy Plan:
 - (i) to take account of:
 - (A) events or circumstances which will, or may, affect the manner in which OpCo carries out OpCo's Activities; and
 - (B) any evolution in technology and in security threats; and
 - (ii) upon written request by TfNSW's Representative.
- (h) (**Submission of updated plan**): OpCo must submit any plan updated in accordance with clause 46.10(g) to TfNSW's Representative, in which case clause 46.10(f) will reapply.
- (i) (**Subcontracts**): OpCo must ensure that all Subcontracts with any OpCo Contractor who collects, uses, stores, disposes or discloses Personal Information contains provisions to the same or similar effect as this clause 46.10 (*Privacy*).

- (j) **(Audit):** TfNSW may require OpCo and OpCo's Contractors to have their privacy procedures audited by a qualified nationally recognised firm. OpCo and OpCo's Contractors must take such action as is reasonable to comply with any exceptions or discrepancies discovered by any such audit.

47. **DISCLOSURE, CONFIDENTIALITY AND PUBLICITY**

47.1 **Disclosure by TfNSW**

- (a) TfNSW may publish or disclose (on the internet or otherwise):
 - (i) the terms and conditions of this deed or any other TfNSW Project Agreement; and
 - (ii) any document or information arising under, out of or in connection with this deed or any other Project Agreement or relating to the performance of this deed or any other Project Agreement,

provided TfNSW redacts any Commercially Sensitive Information.

- (b) Despite the provisions of clauses 47.1(a) and 47.2(b), TfNSW may disclose, or require OpCo to disclose in any form and at times TfNSW considers appropriate, any of the following information, and whether or not the information is Commercially Sensitive Information (other than the Debt Financing Documents and Equity Documents):

- (i) any information reasonably required in connection with the re-tendering or contracting of all or part of the SLR PPP, provided that the information may only be published during the period of, or during the period leading up to, the re-tendering or contracting;
- (ii) any information reasonably required in connection with any option, Modification, variation, augmentation or Augmentation, or proposed option, Modification, variation, augmentation or Augmentation, of the SLR; or
- (iii) any information TfNSW reasonably considers necessary at or around the expiry or termination of this deed in order to secure the continuity of services on the SLR,

provided that:

- (iv) such information shall not include pricing information which is specific to OpCo or its subcontractors; and
- (v) TfNSW shall ensure that any party to which the information is disclosed is required to comply with appropriate confidentiality requirements.

47.2 **Confidentiality**

- (a) Subject to clause 47.2(c), OpCo must:
 - (i) keep confidential the Project Agreements and information relating to the SLR PPP, OpCo's Activities and any discussions concerning the Project Agreements (including the materials and information referred to in the definition of ETS IP, LTS IP and IWLR IP (as those terms are defined in Schedule A5 (*Intellectual Property*))); and

- (ii) ensure that each of its Associates comply with the terms of clause 47.2(a)(i).
- (b) TfNSW must keep confidential the Commercially Sensitive Information.
- (c) Neither party is obliged to keep confidential any information:
 - (i) which is in the public domain through no fault of the disclosing party; or
 - (ii) the disclosure of which is:
 - (A) required by law;
 - (B) required by any recognised stock exchange or a New South Wales or Commonwealth regulator;
 - (C) given with the written consent of the discloser;
 - (D) given to a court in the course of proceedings to which OpCo is a party; or
 - (E) in the case of TfNSW, required by a House of Parliament, a Committee of a House of Parliament or for any legitimate government purpose.
- (d) If TfNSW requires OpCo to provide a confidentiality deed in favour of a third party in respect of any of that third party's confidential information that is provided to OpCo, then OpCo must execute such a confidentiality deed in the form reasonably specified by TfNSW.
- (e) OpCo may disclose the information referred to in clause 47.2(a)(i) to:
 - (i) its Associates to the extent necessary for the purpose of undertaking the Project; or
 - (ii) any prospective financier or equity investor of the Project, subject to TfNSW having been provided necessary information in respect of the proposed parties and having carried out any probity investigation that TfNSW considers necessary.

Before disclosing any information referred to in clause 47.2(a)(i), OpCo must ensure that the person to whom the information is disclosed enters into a confidentiality deed with OpCo on terms reasonably acceptable to TfNSW.

47.3 Public Disclosure Obligations

- (a) OpCo acknowledges and agrees that disclosures regarding the SLR PPP by TfNSW, the State or any Authority may be required:
 - (i) under law, including the *Government Information (Public Access) Act 2009* (NSW) or any similar or replacement legislation;
 - (ii) to satisfy the disclosure requirements of the Auditor General and to satisfy the requirements of Parliamentary accountability,

(Public Disclosure Obligations).

- (b) OpCo must use all reasonable endeavours to assist TfNSW, the State or an Authority in meeting their Public Disclosure Obligations in connection with the SLR PPP.

47.4 **Publicity**

Except for notices which OpCo is required to disclose to any recognised stock exchange, OpCo must:

- (a) not make any public announcements or statements in relation to the SLR PPP (including by posting any information relating to the SLR PPP on any website) without TfNSW's prior consent;
- (b) give TfNSW a draft of any proposed media release relating to the SLR PPP and obtain TfNSW's approval of the media release before distributing it;
- (c) prior to release, revise the wording and timing of all media releases, public announcements and statements by OpCo or its Associates relating to the SLR as requested by TfNSW; and
- (d) ensure that its Associates comply with the requirements referred to in this clause 47.4 (*Publicity*).

48. **INTELLECTUAL PROPERTY**

The parties' rights and obligations in relation to Intellectual Property are set out in Schedule A5 (*Intellectual Property*).

49. **FINANCING AND REFINANCING**

49.1 **Debt Financing Documents**

OpCo must not (and must ensure that Finance Co does not), without the prior written consent of TfNSW's Representative:

- (a) enter into any financing agreements (including in respect of present or contingent indebtedness, deferred purchase or leasing arrangements or similar obligations, but excluding indebtedness incurred in the ordinary course of business) other than the Debt Financing Documents or any intercompany finance agreement between OpCo and Finance Co; or
- (b) make any material amendment to, or waive, vary or change any material provision of, the Debt Financing Documents,

other than in respect of a Refinancing implemented in accordance with this clause 49 (*Financing and Refinancing*) or an event or circumstance described in paragraphs (d) to (h) of the definition of "Refinancing".

49.2 **Copies of Debt Financing Documents**

OpCo must deliver to TfNSW's Representative a certified complete copy of each financing agreement entered into by OpCo or Finance Co and each amendment to, or waiver, variation or change of any provision of, the Debt Financing Documents, in each case within 5 Business Days after its execution.

49.3 General

- (a) The Financial Indebtedness assumed by OpCo or Finance Co under any Refinancing must be used:
 - (i) solely for the SLR PPP; or
 - (ii) for refinancing Financial Indebtedness used solely for the SLR PPP and for paying legal, swap break and other costs reasonably and properly incurred in connection with the Refinancing including those costs paid to TfNSW in accordance with clause 49.10 (*Costs relating to a Refinancing*).
- (b) OpCo must (and must ensure that Finance Co does the same):
 - (i) promptly and efficiently procure any Refinancing required to ensure that both it and Finance Co comply with their obligations under the Debt Financing Documents; and
 - (ii) in undertaking any Refinancing, act reasonably as any reasonable borrower would in the circumstances and given the market conditions at that time.

49.4 OpCo to provide details of Refinancing

- (a) OpCo must promptly provide TfNSW with full details of any proposed Refinancing, including:
 - (i) a copy of the then current Base Case Financial Model as adjusted for the proposed Refinancing, showing all of the material changes to OpCo's or Finance Co's obligations to the Debt Financiers in a format that allows the calculation of the anticipated Refinancing Gain or Refinancing Loss in accordance with clause 49.8 (*Calculation of Refinancing Gain or Refinancing Loss*);
 - (ii) the basis for assumptions used in the financial model referred to in clause 49.4(a)(i);
 - (iii) a certificate on terms and in a form acceptable to TfNSW from the auditors of the financial model referred to in clause 49.4(a)(i), as to its operation and effect;
 - (iv) all information, including terms and conditions, provided by OpCo or Finance Co to its existing and prospective financiers, or by OpCo's or Finance Co's existing and prospective financiers to OpCo or Finance Co, in relation to the proposed Refinancing; and
 - (v) whether OpCo considers that the consent of TfNSW under clause 49.5 (*TfNSW consent to Refinancing*) is required for the proposed Refinancing.
- (b) TfNSW may, within 10 Business Days after receiving details of the proposed Refinancing referred to in clause 49.4(a) (or any revised proposed Refinancing submitted under clause 49.6(c)), request any further information which TfNSW reasonably requires from OpCo regarding the proposed Refinancing. If such further information is available to OpCo or Finance Co, OpCo must (to the extent that further information is available to OpCo or Finance Co) provide it to TfNSW as soon as reasonably practicable but no later than 5 Business Days after TfNSW's request.

49.5 TfNSW consent to Refinancing

- (a) OpCo must not (and ensure that Finance Co does not) enter into any Refinancing which:
- (i) gives rise to a Refinancing Gain;
 - (ii) increases the amount of outstanding Project Debt at or beyond the Refinancing date above that forecast in the Base Case Financial Model;
 - (iii) increases the amount of outstanding Project Debt beyond that forecast for any future period in the Base Case Financial Model;
 - (iv) reduces the tenor of greater than 18 months from that forecast in the Base Case Financial Model at Financial Close for the relevant Refinancing tranche; or
 - (v) incorporates an Exotic Swap,

without the prior written consent of TfNSW, which must be provided in accordance with this clause 49.5 (*TfNSW consent to Refinancing*).

- (aa) If following the date on which a Notice of Proposed Augmentation (as defined in Schedule D9 (*Augmentations*)) has been issued and until the earlier of the date on which:
- (i) TfNSW accepts OpCo's Augmentation Proposal in accordance with the terms of Schedule D9 (*Augmentations*), whether the Augmentation Proposal was accepted as originally proposed or as a result of negotiation between the parties; and
 - (ii) TfNSW has rejected OpCo's Augmentation Proposal as contemplated by clause 12(a) of Schedule D9 (*Augmentations*), provided that 45 Business Days have elapsed since TfNSW (acting reasonably and in good faith) communicated to OpCo that it is unlikely the parties will be able to reach agreement on the Augmentation Proposal,

OpCo must not, and ensure that Finance Co does not, enter into any Refinancing which:

- (iii) gives the Debt Financiers the right to demand repayment of the Project Debt as a result of TfNSW exercising its rights under the Equity Purchase Deed;
- (iv) prohibits, or imposes additional non-market standard fees or costs on Finance Co in connection with, an early repayment of the Project Debt; or
- (v) involves a bond issue,

without the prior written consent of TfNSW (which may be given or withheld in its absolute discretion).

- (b) Without prejudice to clause 49.5(aa), TfNSW may only withhold its consent to a Refinancing under clause 49.5(a) if:
- (i) TfNSW's Representative reasonably believes that the Refinancing will bring about an increase or adverse change in the potential liabilities or the profile of the risks or potential liabilities of TfNSW under any Project Agreement

- (other than as consented to by TfNSW and reflected in the Base Case Financial Model) without adequate compensation to TfNSW;
- (ii) the Refinancing is prior to the Date of Completion; or
 - (iii) the Refinancing incorporates an Exotic Swap.
- (c) Without prejudice to clause 49.5(aa), TfNSW will not withhold its consent to a Refinancing under clause 49.5(a) if:
- (i) the sole purpose of the Refinancing is to prevent a maturity date under the Debt Financing Documents being reached;
 - (ii) the circumstances in clause 49.5(b) have not or will not arise; and
 - (iii) OpCo has:
 - (A) complied with its obligations under clause 49.4 (*OpCo to provide details of Refinancing*); and
 - (B) delivered to TfNSW the information required under clause 49.4(b) no less than 40 Business Days but no more than 90 Business Days before the relevant maturity date under the Debt Financing Documents.
- (d) The granting of consent under clause 49.5(a) or 49.5(aa) by TfNSW will be without prejudice to TfNSW's rights under this deed, including its right to any TfNSW Refinancing Share.

49.6 **Review Process**

- (a) If under clause 49.5(a) TfNSW is required to provide its consent to a Refinancing, TfNSW must provide or withhold its consent within the period commencing on the date OpCo provides all of the material details of the proposed Refinancing referred to in clause 49.4(a) and ending 20 Business Days after that date (**Review Period**).
- (b) During the Review Period, prior to providing or withholding consent, TfNSW may provide comments (and sufficient detail to substantiate those comments) to OpCo in respect of the proposed Refinancing if TfNSW has reasonably formed the view that any of the events in clause 49.5(b) will occur as a result of the proposed Refinancing.
- (c) Following receipt of comments from TfNSW under clause 49.6(b), OpCo may vary the proposed Refinancing in order to ensure that none of the events in clause 49.5(b) will occur as a result of the proposed Refinancing and resubmit the revised proposed Refinancing to TfNSW for review during the Review Period.
- (d) Upon receipt of the revised proposed Refinancing TfNSW may request further information that is reasonably required from OpCo regarding the revised proposed Refinancing in accordance with clause 49.4(b).
- (e) If OpCo resubmits the proposed Refinancing to TfNSW in accordance with clause 49.6(c), the Review Period will be extended for a further period of 20 Business Days (or such shorter period as requested by OpCo and agreed to by TfNSW) from the date of such resubmission.

- (f) If TfNSW does not notify OpCo of its consent or refusal to consent to the Refinancing within the Review Period, TfNSW will be deemed to have consented to the proposed Refinancing.
- (g) Any dispute as to whether TfNSW's consent is required for a proposed Refinancing or TfNSW is entitled to withhold its consent to a proposed Refinancing may be referred by either party for resolution in accordance with clause 56 (*Dispute resolution*).

49.7 Refinancing documents

- (a) OpCo must deliver a certified true copy of each amended and amending Debt Financing Documents to TfNSW within 5 Business Days after execution.
- (b) OpCo must not, and must ensure that Finance Co does not, execute any Refinancing until:
 - (i) any new Debt Financiers have executed a deed with TfNSW substantially in the form of the Financiers Tripartite Deed or become bound by the Financiers Tripartite Deed; and
 - (ii) any retiring Debt Financiers have executed any documents reasonably requested by TfNSW to terminate their rights under the Financiers Tripartite Deed.

49.8 Calculation of Refinancing Gain or Refinancing Loss

- (a) For each proposed Refinancing, the impact of the proposed Refinancing on Distributions to Equity Investors in the then current Base Case Financial Model must be calculated in order to establish the extent to which gains may arise that may need to be shared with TfNSW in accordance with clause 49.9 (*Sharing Refinancing Gains*).
- (b) The impact of the proposed Refinancing will be calculated in accordance with the following definitions:

Refinancing Gain means any amount greater than zero when calculated in accordance with the below formula, in which case clause 49.9 (*Sharing Refinancing Gains*) will apply.

Refinancing Loss means any amount equal to or less than zero when calculated in accordance with the below formula, in which case clause 49.9 (*Sharing Refinancing Gains*) will not apply.

Formula = A - B

where:

A = the net present value of Distributions projected over the remaining period of the Term if the proposed Refinancing is executed, using the Base Case Equity Return and the then current Base Case Financial Model as adjusted to reflect the proposed Refinancing, in a manner consistent with clause 49.11 (*Adjustments to Base Case Financial Model upon a Refinancing Gain*) but without taking into account any adjustment for any sharing with TfNSW of any Refinancing Gain arising from the proposed Refinancing; and

B = the net present value of the Distributions projected over the remaining period of the Term immediately prior to the proposed Refinancing using the Base Case Equity Return and the then current Base Case Financial Model prior to any adjustments to reflect the proposed Refinancing.

49.9 **Sharing Refinancing Gains**

- (a) TfNSW will be entitled to 50% of the benefit of any Refinancing Gain that arises from a Refinancing (**TfNSW Refinancing Share**).
- (b) TfNSW may, taking into account the nature and timing of the Refinancing Gain, elect to receive the TfNSW Refinancing Share as:
 - (i) a direct payment (to the extent OpCo receives an amount referable to the Refinancing Gain as a direct payment);
 - (ii) a reduction in the Service Payments for the period of the Refinancing; or
 - (iii) a combination of the above.
- (c) TfNSW and OpCo must act reasonably to agree the manner and timing of payments of the TfNSW Refinancing Share and failing agreement either party may refer the matter for resolution under clause 56 (*Dispute resolution*).

49.10 **Costs relating to a Refinancing**

OpCo must pay to TfNSW its reasonable costs incurred in relation to considering a proposed Refinancing or consenting to a Refinancing.

49.11 **Adjustments to Base Case Financial Model upon a Refinancing Gain**

On execution of a Refinancing that results in a Refinancing Gain, the Base Case Financial Model will be adjusted in accordance with clause 50.1 (*Updates to Base Case Financial Model*) as follows:

- (a) Project Debt, fees and margins for the period of the Refinancing will be updated to reflect the amended or amending Debt Financing Documents;
- (b) the actual Project Debt balance after the Refinancing and the forecast amortisation profile of Project Debt balances for the remainder of the Term will be updated to reflect the amended or amending Debt Financing Documents;
- (c) the impact of financial covenants which result in the forced retention of cash amounts within OpCo will be updated to reflect the amended or amending Debt Financing Documents;
- (d) legal, swap break and other costs reasonably and properly incurred in connection with the Refinancing will replace those equivalent costs previously forecast for the period of the Refinancing including those costs paid to TfNSW in accordance with clause 49.10 (*Costs relating to a Refinancing*);
- (e) the Service Payments for the period of the Refinancing will be adjusted and direct payments to TfNSW will be recorded to reflect the TfNSW Refinancing Share in accordance with clause 49.9 (*Sharing Refinancing Gains*) as adjusted in accordance with close protocols for the Refinancing to be agreed prior to the financial close of the relevant Refinancing; and

- (f) further required adjustments as otherwise agreed between TfNSW and OpCo.

50. FINANCIAL MODELS

50.1 Updates to Base Case Financial Model

- (a) **(When BCFM must be updated):** The Base Case Financial Model must be updated:
- (i) as required by clause 25.2 (*Conditional Debt Pay Down*);
 - (ii) as required by clause 49.11 (*Adjustments to Base Case Financial Model upon a Refinancing Gain*);
 - (iii) if the Indexed Availability Fee (as defined in Schedule D1 (*Service Payment Regime*)) or the Indexed Life Cycle Component (as defined in Schedule D1 (*Service Payment Regime*)) is adjusted in accordance with clause 6.1(a)(i) of Schedule D4 (*Net Financial Impact*) as a result of a Compensation Event, a Modification directed by TfNSW under clause 29 (*TfNSW initiated Modifications*) or Proximate Work Activities; and
 - (iv) if the Base Availability Fee (as defined in Schedule D1 (*Service Payment Regime*)), Based Lifecycle Component (as defined in Schedule D1 (*Service Payment Regime*)) or Floating Rate Amount (as defined in Schedule D1 (*Service Payment Regime*)) is adjusted under a Pre-Agreed Option.
- (b) **(Information to be submitted):** When an update of the Base Case Financial Model is required under clause 50.1(a), OpCo must submit to TfNSW's Representative:
- (i) a proposed revised Base Case Financial Model (**Proposed Base Case Financial Model**) (incorporating all adjustments to the Service Payment made in accordance with this deed) and all supporting formulae and data;
 - (ii) an instruction manual outlining how to use the Proposed Base Case Financial Model, which is acceptable to TfNSW's Representative, acting reasonably;
 - (iii) a proposed financial close protocol (**Proposed Financial Close Protocol**)(if applicable) outlining the interest rate and/or foreign exchange setting procedures and model solving procedures for adjusting the Proposed Base Case Financial Model to incorporate updated interest rates and/or foreign exchange rates;
 - (iv) a revised Model Outputs Schedule; and
 - (v) a certificate from an auditor acceptable to TfNSW's Representative confirming that an independent audit of the Proposed Base Case Financial Model has been completed and that:
 - (A) calculations in the Proposed Base Case Financial Model have been checked and are in all material respects internally consistent and mathematically correct;
 - (B) the Proposed Base Case Financial Model allows changes in assumptions to correctly flow through to the results;

- (C) any macros in the Proposed Base Case Financial Model that govern the calculation of the Proposed Base Case Financial Model are correct;
 - (D) the input data used in the Proposed Base Case Financial Model is consistent with all relevant supporting project documentation, formulae or constants;
 - (E) the calculations of any relevant ratios and financial covenants in the Proposed Base Case Financial Model have been checked and that the Proposed Base Case Financial Model correctly reflects the definitions contained in the Debt Financing Documents;
 - (F) the Proposed Base Case Financial Model correctly incorporates the relevant structural features in the Debt Financiers' term sheets such as reserve accounts, lock up provisions, default provisions and amortisation;
 - (G) the accounting assumptions and outputs from the Proposed Base Case Financial Model are in accordance with the generally accepted accounting principles in Australia; and
 - (H) the income taxation assumptions and outputs from the Proposed Base Case Financial Model are in accordance with the relevant income tax legislation.
- (c) **(TfNSW's review):** OpCo must:
- (i) allow TfNSW's Representative 15 Business Days to either approve or submit proposed amendments to the Proposed Base Case Financial Model and the Proposed Financial Close Protocol (if applicable); and
 - (ii) if required by TfNSW's Representative:
 - (A) make available, at the cost and expense of OpCo, the appropriate personnel to explain; and/or
 - (B) provide information, in such form as TfNSW's Representative reasonably requests, in relation to,

the Proposed Base Case Financial Model and the Proposed Financial Close Protocol (if applicable).
- (d) **(Approval):** TfNSW's Representative must, within 15 Business Days of receipt of the Proposed Base Case Financial Model and the Proposed Financial Close Protocol (if applicable), either approve or submit proposed amendments to the Proposed Base Case Financial Model and the Proposed Financial Close Protocol (if applicable).
- (e) **(Consultation in good faith):** If TfNSW's Representative submits amendments to the Proposed Base Case Financial Model or the Proposed Financial Close Protocol, then OpCo and TfNSW's Representative must consult in good faith with respect to, and use their reasonable endeavours to agree on, the amendments required to the Proposed Base Case Financial Model and the Proposed Financial Close Protocol (if applicable).

- (f) **(Dispute resolution)**: If:
- (i) TfNSW's Representative and OpCo do not agree on the amendments required to be made to the Proposed Base Case Financial Model or the Proposed Financial Close Protocol (if applicable) within 10 Business Days after the commencement of the consultation pursuant to clause 50.1(e); or
 - (ii) no consultation has been held within 12 Business Days after the date when TfNSW's Representative submitted the amendments,
- then TfNSW's Representative and OpCo must refer the dispute for resolution in accordance with clause 56 (*Dispute resolution*).
- (g) **(Adjustment of Base Case Financial Model)**: Once the Proposed Base Case Financial Model and the Proposed Financial Close Protocol (if applicable) has been approved by TfNSW's Representative, agreed between the parties or determined under clause 56 (*Dispute resolution*), the Proposed Base Case Financial Model (as adjusted in accordance with the Proposed Financial Close Protocol, if applicable) will be the Base Case Financial Model for the purposes of this deed.
- (h) **(Further audit)**: If the Proposed Base Case Financial Model is adjusted under clause 50.1(g) in accordance with the Proposed Financial Close Protocol, OpCo must submit to TfNSW's Representative a certificate from an auditor acceptable to TfNSW's Representative confirming that an independent audit of the Base Case Financial Model has been completed in accordance with the requirements of clause 50.1(b)(iv).
- (i) **(Annexure 1 of Schedule D1 (Service Payment Regime))**: Whenever the Base Case Financial Model is updated, Annexure 1 of Schedule D1 (*Service Payment Regime*) must be updated to reflect the updated Base Case Financial Model.
- (j) **(Model Outputs Schedule)**: Whenever the Base Case Financial Model is updated, the Model Outputs Schedule must be updated to reflect the updated Base Case Financial Model.

50.2 Operational Financial Model

- (a) Not later than 4 months after the end of each financial year, OpCo must give TfNSW certified copies of:
- (i) an electronic copy of the Base Case Financial Model updated in accordance with this clause 50.2 (**Operational Financial Model**) showing the actual performance of OpCo in the previous financial year and cumulatively since the date of Financial Close and the then current performance projections for the remaining years of the Term (assuming no, or no further, extension);
 - (ii) a statement in such detail as TfNSW may reasonably require reconciling the information in the electronic copy of the Operational Financial Model provided under clause 50.2(a)(i) with the audited financial statements of OpCo for the same period and the Base Case Financial Model; and
 - (iii) a statement in such detail as TfNSW may reasonably require reconciling the information in the electronic copy of the Operational Financial Model provided under clause 50.2(a)(i) with any financial information or financial model provided for or utilised for the purposes of the Debt Financing Documents.

- (b) OpCo must ensure that the assumptions book for the Operational Financial Model (and consequently the Operational Financial Model itself) incorporates relevant and accurate data (including actual data when available).
- (c) TfNSW will not be bound by any forecasts or other data contained in the Operational Financial Model.

51. OWNERSHIP OF ASSETS AND LICENCES TO USE

51.1 Fixtures

All fixtures affixed to the SLR Site will be owned by TfNSW from the time they are affixed.

51.2 Moveable Assets

- (a) All Moveable Assets will be owned by TfNSW.
- (b) OpCo must ensure that ownership of the Moveable Assets transfers to TfNSW:
 - (i) on the date which OpCo acquires title to the relevant Moveable Asset;
 - (ii) in the case of chattels forming part of the SLR Works (excluding for these purposes the Additional Required CSELRVs and Option 1A CSELRVs) and without limiting clause 51.2(b)(i), no later than the Date of Completion;
 - (iii) in the case of the Additional Required CSELRVs and, if Option 1A has been exercised, the Option 1A CSELRVs, no later than the later of the Date of Completion and the date on which the Additional CSELRV Acceptance Requirements are achieved for that CSELRV, as stated in the Certificate of Additional CSELRV Acceptance; and
 - (iv) free from any Security Interests, other than Permitted Encumbrances (as defined in the TfNSW Deed of Charge).
- (c) TfNSW grants OpCo an exclusive licence to use the Moveable Assets for the purpose of fulfilling OpCo's obligations under this deed. This licence commences in respect of each Moveable Asset on the date on which ownership of the Moveable Asset transfers to TfNSW and terminates at the end of the Term.

51.3 Existing Moveable Assets

- (a) TfNSW grants OpCo an exclusive licence to use the Existing Moveable Assets for the purpose of fulfilling OpCo's obligations under this deed.
- (b) This licence commences on the Date of Revenue Service and terminates at the end of the Term.
- (c) TfNSW makes no representations and gives no warranty to OpCo in respect of the condition, location, adequacy or suitability of the Existing Moveable Assets.
- (d) Subject to clauses 26 (*Compensation Events*), 27 (*Relief Events*), 28 (*Force Majeure*) and 37.1 (*Reinstatement*) and Schedule D1 (*Service Payment Regime*), OpCo accepts the Existing Moveable Assets in their present condition subject to all defects and agrees that it is responsible for, and assumes the risk of:
 - (i) all Loss, delay or disruption it suffers or incurs; and

- (ii) any adverse effect on the SLR Works, the Temporary Works, the Operations Activities or the SLR,

arising out of, or in any way in connection with the Existing Moveable Assets.

- (e) OpCo must ensure that each Existing Moveable Asset is operated in accordance with the applicable manufacturer's specifications, recommendations and service standards, including in accordance with any operating instruction manuals provided by TfNSW to OpCo.

51.4 Moveable Asset register

OpCo must maintain a register of all Moveable Assets and Existing Moveable Assets and provide it to TfNSW upon request.

51.5 IWLR Contracts

- (a) If OpCo incurs, or is likely to incur, any cost or expense in the performance of its obligations under this deed:

- (i) in relation to the CAF Supply Contract, at any time; and
- (ii) in relation to the Transdev O&M Contract, prior to the Date of Revenue Service,

arising solely by reason of a breach of that IWLR Contract (**IWLR Breach**) by a counter party (**Relevant Party**), OpCo must as soon as practicable provide a written notice to TfNSW setting out the following:

- (iii) details of the IWLR Breach complained of;
 - (iv) details of the circumstances which caused OpCo to incur, or rendered it likely that OpCo would incur, a cost or expense arising solely by reason of the IWLR Breach; and
 - (v) substantiation of the costs or expenses incurred, or likely to be incurred, by OpCo arising solely as a result of the IWLR Breach.
- (b) Subject to clause 51.5(c), TfNSW must in respect of an IWLR Breach prosecute without delay any available claim (**IWLR Claim**) against the Relevant Party whether such claim arises at law or under an IWLR Contract (including without limitation under any applicable warranty).
 - (c) TfNSW may refuse to prosecute an IWLR Claim if:
 - (i) TfNSW, acting reasonably, believes that prosecution of the IWLR Claim is likely to have a detrimental effect on the business or reputation of TfNSW or the State;
 - (ii) TfNSW has received an opinion of counsel reasonably acceptable to both parties that there is no reasonable prospect of the IWLR Claim being successful; or
 - (iii) OpCo is entitled to recover the cost or expense to which the IWLR Claim relates from insurances.
 - (d) In respect of any IWLR Claim, the parties acknowledge and agree that:

- (i) OpCo must indemnify TfNSW or provide reasonable security in respect of TfNSW's reasonable costs arising, or which may arise, out of the prosecution of an IWLR Claim;
 - (ii) OpCo must prepare and provide TfNSW with all information and documents (including any documents required under the dispute resolution process) reasonably necessary or required by TfNSW or the Relevant Party to assist TfNSW in prosecuting the IWLR Claim;
 - (iii) TfNSW will provide OpCo with regular updates of the progress of the IWLR Claim with any supporting information that OpCo may reasonably request; and
 - (iv) TfNSW will, at the request of OpCo, consult in good faith with OpCo about the conduct and potential settlement of the IWLR Claim.
- (e) If TfNSW recovers any amount (the **Recovery**) from a Relevant Party in respect of an IWLR Claim, whether in proceedings or by way of settlement, TfNSW agrees that it will pay OpCo the amount of that Recovery but only to the extent that the Recovery is referable to the cost or expense of making good the IWLR Breach, but subject to the following:
- (i) a deduction in respect of all reasonable costs (including legal costs) incurred by TfNSW in the prosecution of the IWLR Claim, such costs being the subject of the indemnity under clause 51.5(d)(i);
 - (ii) where OpCo has made good the IWLR Breach to the reasonable satisfaction of TfNSW prior to receipt of the Recovery, OpCo may hold the Recovery for its own benefit; and
 - (iii) where OpCo has not made good the IWLR Breach at the time of receipt of the Recovery it must, on behalf of TfNSW, apply the Recovery in making good the IWLR Breach to the reasonable satisfaction of TfNSW and upon completion of all remedial work OpCo must furnish TfNSW with details of all work carried out together with the costings for such work.
- (f) Except where expressly provided under this deed, this clause 51.5 (*IWLR Contracts*) is exhaustive of OpCo's rights against TfNSW whether at law or under this deed in respect of any IWLR Breach and OpCo must not under any circumstances make any claim or assert any right whatsoever against TfNSW arising out of or at any way relating to an IWLR Contract or an IWLR Breach except under this clause 51.5 (*IWLR Contracts*).
- (g) Without affecting any other rights or obligations of the parties under this clause 51.5 (*IWLR Contracts*):
- (i) OpCo may by written notice request TfNSW to exercise a right or enforce an obligation under an IWLR Contract (**Request**);
 - (ii) TfNSW shall within a reasonable time use its reasonable endeavours to comply with a Request to the extent it is reasonably able to do so, except where TfNSW, acting reasonably, considers that OpCo is capable of discharging its obligations under this deed without the exercise of the right or the enforcement of the obligation, the subject of the Request; and
 - (iii) all costs reasonably incurred by TfNSW in complying with a Request are to be borne by OpCo.

51.6 PPSA registration in respect of the Moveable Assets

- (a) OpCo acknowledges and agree that from the date on which TfNSW owns fixtures and Assets in accordance with clauses 51.1 (*Fixtures*) and 51.2 (*Moveable Assets*):
 - (i) TfNSW is the owner of the Assets;
 - (ii) due to uncertainties with respect to the impact of the PPSA, TfNSW may register PPS Security Interests against OpCo with respect to some or all of the Assets;
 - (iii) without prejudice to clauses 51.2 (*Moveable Assets*) or 51.3 (*Existing Moveable Assets*) TfNSW's interest in the Assets, whether as owner or as a secured party under a PPS Security Interest, will take priority over any Security Interest or other interest of the Security Trustee in the Assets; and
 - (iv) OpCo will do all things reasonably required by TfNSW to give effect to the priority of TfNSW's interest in the Assets and to ensure that TfNSW is able to fully and effectively deal with the Assets as owner of those Assets, free from any Encumbrance in favour of any other party, including delivering up any Assets to TfNSW that come into its possession.
- (b) OpCo acknowledges and agrees that:
 - (i) OpCo is only permitted to use the Assets for the purpose of performing its obligations to TfNSW under the Project Deed and is not for any other purpose;
 - (ii) OpCo does not provide any specific value to TfNSW for the licences to use the Moveable Assets and ancillary arrangements under the Project Deed; and
 - (iii) other than as permitted under the Project Agreements, OpCo has no right to dispose of or deal with the Assets, including that, other than as permitted under the Project Agreements, it has no right to sell or lease the Assets.
- (c) OpCo must:
 - (i) ensure that the O&M Contract contains an acknowledgement and agreement from the O&M Contractor to OpCo:
 - (A) on the same terms as clause (b); and
 - (B) that (without limiting OpCo's right to register one or more security interests against the O&M Contractor on the Personal Property Security Register in respect of the Assets), TfNSW may register one or more security interests against the O&M Contractor on the Personal Property Security Register in respect of the Assets;
 - (ii) unless TfNSW (in its sole discretion) otherwise agrees in writing, register a purchase money security interest and any other financing statement TfNSW reasonably requests against the O&M Contractor with respect to the Assets;
 - (iii) unless required by law, not amend, discharge, or otherwise vary its security interest in the Assets or any registration on the Personal Property Security Register without TfNSW's prior written consent;

- (iv) provide, and procure that the O&M Contractor provides, details of any serial numbers of serial numbered goods that are comprised in the Assets from time to time; and
- (v) ensure and procure that the O&M Contractor ensures, that the LRVs and other significant Moveable Assets are clearly and prominently labelled as follows:

"Property of the State. No person has any right to deal with this property in any way, including to sell, lease or bail it, without the prior written consent of the State".

52. RESTRICTIONS

52.1 Restrictions on amendment to Project Agreements

OpCo must not:

- (a) make or permit any amendment to, replacement of or waiver of a provision of or any supplement or agreement collateral to;
- (b) terminate, surrender, rescind or accept the repudiation of;
- (c) permit the novation, assignment or substitution of any counterparty's right, obligation or interest in; or
- (d) enter into any agreement or arrangement which affects the operation or interpretation of,

any Project Agreement (other than a Debt Financing Document) to which TfNSW is not a party, without TfNSW's written consent (which consent will not be unreasonably withheld or delayed).

52.2 Restrictions on assignment

- (a) (**TfNSW**): TfNSW may assign, novate, transfer or otherwise deal with its rights or obligations under any Project Agreement without OpCo's prior approval, provided the transferee is supported by a guarantee from the State on terms no less favourable than those contained in the PAFA Act Deed Poll of Guarantee.
- (b) (**OpCo**): Except as expressly permitted by this deed, the Financiers Tripartite Deed or the TfNSW Deed of Charge, OpCo must not assign, novate, transfer, mortgage, charge or otherwise deal with its rights or obligations under any Project Agreement, without TfNSW's prior approval.

52.3 Financier's Securities

OpCo may, after execution of the Financiers Tripartite Deed, mortgage or charge its interest under the Project Agreements to secure obligations to any Debt Financier (or trustee or agent for any Debt Financier) under the Debt Financing Documents, if, and for so long only as, the Debt Financier (or the trustee or agent for the Debt Financier) is a party to the Financiers Tripartite Deed.

52.4 **Restrictions on dealings with SLR**

OpCo must not:

- (a) create, permit or suffer any Security Interest over;
- (b) lease, licence, transfer, sell, part with possession of, or otherwise deal with; or
- (c) operate or use, or permit any other person to operate or use,

the SLR, the ETS or any part of the SLR Site, except as expressly permitted under the TfNSW Project Agreements, the Financiers Tripartite Deed or the Debt Financing Documents or as otherwise approved by TfNSW.

52.5 **Restrictions on business**

OpCo must not conduct any business other than the SLR PPP and the performance of its obligations and the exercise of its rights under the Project Agreements without TfNSW's prior consent.

52.6 **Restrictions on revenue**

- (a) **(OpCo):** OpCo may only derive revenue or other returns from:
 - (i) payments received from TfNSW under the TfNSW Project Agreements;
 - (ii) interest or other returns on monies held by or on behalf of OpCo;
 - (iii) surplus funds in the Insurance Proceeds Account after application in accordance with clause 39.14(d);
 - (iv) other activities contemplated by this deed or any other Project Agreement; and
 - (v) activities approved in writing by TfNSW.
- (b) **(Significant Contractors):** OpCo must ensure that, after the date of this deed, none of its Significant Contractors derive revenue or other returns from the SLR PPP other than revenue or returns derived:
 - (i) directly or indirectly from payments made by OpCo or otherwise contemplated by a Project Agreement; or
 - (ii) under an arrangement approved in writing by TfNSW (such approval not to be unreasonably withheld if the arrangement is on arm's length commercial terms).

52.7 **Restrictions on acquisition of property and liabilities being incurred**

OpCo must not acquire or hold any property, or incur any liability, other than for purposes of the Project without TfNSW's prior consent.

52.8 **Restrictions on related party contracts**

OpCo must not (and must ensure that OpCo's Contractors do not) enter into any contract relating to OpCo's Activities with a Related Body Corporate (other than on arm's length commercial terms) without TfNSW's prior consent.

52.9 **Restriction on tax consolidation**

OpCo must not become a member of a consolidated group for the purposes of the *Income Tax Assessment Act 1997* (Cth) without TfNSW's prior consent.

53. **CHANGE OF OWNERSHIP / CONTROL**

53.1 **Initial status of ownership**

OpCo represents and warrants that, at Financial Close, the legal and beneficial ownership of each member of OpCo Group and the OpCo Group structure will be as set out in Schedule A7 (*OpCo Group Structure*).

53.2 **Change of Ownership of OpCo Group Member**

- (a) **(No change without consent):** Subject to clause 53.2(b), OpCo must not permit any direct or indirect change to the legal or beneficial ownership of any Equity Interest (**Change of Ownership**) without TfNSW's prior written consent (which must not be unreasonably withheld).
- (b) **(Exceptions):** TfNSW's consent is not required for a Change of Ownership resulting from:
 - (i) a transfer of any share or unit or other interest in the nature of equity which is listed on a recognised stock exchange;
 - (ii) any transfer of a share or unit or other interest in the nature of equity by a person to a Related Body Corporate of that person, provided OpCo gives TfNSW prior written notice of the transfer; or
 - (iii) a Permitted Change in Ownership, provided OpCo gives TfNSW prior written notice.
- (c) **(When consent may be withheld):** TfNSW will be deemed to be acting reasonably if it withholds its consent to a proposed Change of Ownership where TfNSW is of the reasonable opinion that:
 - (i) OpCo has not provided it with full details of the proposed Change of Ownership and any further information requested by TfNSW;
 - (ii) the Change of Ownership is to take effect prior to the date which is 2 years after the Date of Completion;
 - (iii) the new Equity Investor or Equity Investors (or any direct or indirect holding company of the new Equity Investor or Equity Investors):
 - (A) is or are not solvent and reputable; or
 - (B) has or have an interest or duty which conflicts in a material way with the interests of the SLR PPP and is or are involved in a business or activity which is incompatible, or inappropriate, in relation to the SLR PPP; or
 - (iv) the proposed Change of Ownership:
 - (A) is against the public interest;

- (B) would adversely affect the ability or capability of OpCo to perform its obligations under any Project Agreement; or
 - (C) would increase the liability of, or risks accepted by, TfNSW under the Project Agreements.
- (d) **(No relief):** TfNSW's consent to a Change of Ownership will not relieve OpCo of any of its obligations under this deed.

53.3 Change in Control of an entity comprising D&C Contractor

- (a) **(TfNSW to approve):** If a Change in Control of an entity comprising the D&C Contractor has occurred, OpCo must promptly notify TfNSW's Representative and obtain TfNSW's approval (which must not be unreasonably withheld).
- (b) **(Details to be provided):** OpCo must provide to TfNSW's Representative in its notification under this clause 53.3 (*Change in Control of an entity comprising D&C Contractor*):
 - (i) full details of the Change in Control, including the acquisition of voting power, the change in equity interests or any other event which has caused or constituted the Change in Control; and
 - (ii) all other information necessary for TfNSW to determine whether to exercise its rights under clause 53.3(d), in relation to the Change in Control.
- (c) **(Exceptions):** TfNSW's approval is not required for a Change in Control arising from:
 - (i) a transfer of any share or unit or other interest in the nature of equity which is listed on a recognised stock exchange;
 - (ii) any transfer of a share or unit or other interest in the nature of equity by a person to a Related Body Corporate of that person, provided OpCo gives TfNSW prior written notice of the transfer; or
 - (iii) a Permitted Change in Control, provided OpCo gives TfNSW prior written notice.
- (d) **(When approval must be given):** TfNSW must give its approval to a Change in Control of an entity comprising the D&C Contractor if:
 - (i) the person which now exercises Control of the relevant entity comprising the D&C Contractor:
 - (A) is solvent and reputable; or
 - (B) does not have an interest or duty which conflicts in a material way with the interests of the SLR PPP and is not involved in a business or activity which is incompatible, or inappropriate, in relation to the SLR PPP; and
 - (ii) the D&C Contractor continues to:
 - (A) have sufficient expertise and ability; and
 - (B) be of sufficiently high financial and commercial standing,

to properly carry out the obligations of the D&C Contractor under the relevant Project Agreements.

- (e) **(If approval is withheld):** If TfNSW notifies OpCo that TfNSW does not approve the Change in Control of the D&C Contractor, OpCo must, within 60 days of receiving such notice, terminate the D&C Contract and re-tender those works or services or take such other action as TfNSW may agree.
- (f) **(No relief):** TfNSW's approval of a Change in Control of the D&C Contractor will not relieve OpCo of any of its obligations under this deed.

53.4 Change in control of O&M Contractor

- (a) **(No change without consent):** Subject to clause 53.4(b), OpCo must not permit a Change in Control of the O&M Contractor without TfNSW's prior written consent (which must not be unreasonably withheld).
- (b) **(Exceptions):** TfNSW's consent is not required for a Change in Control resulting from:
 - (i) a transfer of any share or unit or other interest in the nature of equity which is listed on a recognised stock exchange;
 - (ii) any transfer of a share or unit or other interest in the nature of equity by a person to a Related Body Corporate of that person, provided OpCo gives TfNSW prior written notice of the transfer; or
 - (iii) a Permitted Change in Control, provided OpCo gives TfNSW prior written notice.
- (c) **(When approval may be withheld):** TfNSW will be deemed to be acting reasonably if it withholds its approval to a proposed Change in Control of the O&M Contractor (or an entity comprising the O&M Contractor) where TfNSW is of the reasonable opinion that:
 - (i) OpCo has not provided it with full details of the proposed Change in Control and any further information requested by TfNSW;
 - (ii) the person or entity proposed to exercise Control of the O&M Contractor (or an entity comprising the O&M Contractor):
 - (A) is not solvent and reputable; or
 - (B) has an interest or duty which conflicts in a material way with the interests of the SLR PPP and is or are involved in a business or activity which is incompatible, or inappropriate, in relation to the SLR PPP; or
 - (iii) as a result of the proposed Change in Control, the O&M Contractor (or an entity comprising the O&M Contractor) will no longer:
 - (A) have sufficient expertise and ability; or
 - (B) be of sufficiently high financial and commercial standing,
 to properly carry out its obligations under the relevant Project Agreements.

- (d) **(No relief):** TfNSW's approval of a Change in Control of the O&M Contractor (or an entity comprising the O&M Contractor) will not relieve OpCo of any of its obligations under this deed.

54. SUBCONTRACTING

54.1 Subcontracting

- (a) OpCo must not subcontract the performance of OpCo's Activities or any part of them except in accordance with this clause 54 (*Subcontracting*).
- (b) OpCo will be liable to TfNSW for the acts and omissions of OpCo's Contractors in connection with the SLR PPP as if such acts or omissions were acts or omissions of OpCo. Subcontracting by OpCo of any obligation under the TfNSW Project Agreements will not relieve OpCo of, or otherwise affect, any obligation or liability it has to TfNSW under the TfNSW Project Agreements.

54.2 Core Contracts

Subject to clause 54.3 (*Significant Contracts*), OpCo may subcontract the performance of its obligations:

- (a) in relation to the design and construction of the SLR Works, to the D&C Contractor; and
- (b) in relation to the operation and maintenance of the SLR, to the O&M Contractor.

54.3 Significant Contracts

- (a) **(TfNSW consent required):** OpCo must not, and must ensure that OpCo Contractors do not:

- (i) enter into;
- (ii) make or permit any amendment to, or replacement of or waiver of a provision of;
- (iii) terminate, surrender, rescind or accept repudiation of (or give the relevant Significant Contractor an entitlement to terminate, surrender, rescind or accept repudiation of);
- (iv) permit the novation, assignment or substitution of any counterparty's right, obligation or interest in; or
- (v) enter into any agreement or arrangement which affects the operation or interpretation or relates to the subject matter of,

a Significant Contract without obtaining TfNSW's prior consent (which consent must not be unreasonably withheld or delayed).

- (b) **(Qualifications):** OpCo must:

- (i) use its best endeavours to ensure that each Significant Contractor:
- (A) is solvent and reputable;
- (B) does not have any interest or duty which conflicts in a material way with the interests of the SLR PPP and is not involved in any business

- or activity which is incompatible, or inappropriate, in relation to the SLR PPP; and
- (C) has sufficient expertise and ability, and is of sufficiently high financial and commercial standing, to properly carry out the obligations of OpCo which are being subcontracted to it; and
- (ii) immediately upon becoming aware that a Significant Contractor does not satisfy the requirements of clause 54.3(b)(i), use its best endeavours to cause:
- (A) the Significant Contractor to do whatever is necessary to promptly satisfy the requirements of clause 54.3(b)(i); or
- (B) subject to clause 54.3(a), the relevant Significant Contract to be terminated.
- (c) **(Provisions to be included in Significant Contracts):** OpCo must ensure that each Significant Contract contains provisions which:
- (i) satisfy the requirements of clauses 9.4(i), 46.10(i) and 60.3 (*Subcontracts*);
- (ii) recognise TfNSW's rights under clause 42 (*Step-in*), 43.14(c) and 45 (*Access, inspections and audits*);
- (iii) enable OpCo to comply with its novation obligations under clause 21.12(a)(ix); and
- (iv) are consistent with TfNSW's rights under Schedule A5 (*Intellectual Property*).
- (d) **(Monitoring of Significant Contracts):** OpCo must:
- (i) use its best endeavours to ensure that each Significant Contractor complies with the terms of its Significant Contract;
- (ii) notify TfNSW of:
- (A) any material breach of a Significant Contract; or
- (B) any dispute which is notified as such under a Significant Contract, immediately upon becoming aware of such breach or dispute; and
- (iii) keep TfNSW informed of the status of any such breach or dispute.
- (e) **(Side Deed):** OpCo must, if requested by TfNSW, ensure that each Significant Contractor enters into a side deed with TfNSW containing terms equivalent to those in the D&C Contract Side Deed and the O&M Contract Side Deed or such other terms as TfNSW may reasonably require.
- (f) **(Copy):** OpCo must provide TfNSW with a copy of each Significant Contract (subject to removal, exclusion or redaction of any "commercial-in-confidence provision" as that term is defined in the *Government Information (Public Access) Act 2009* (NSW)).

55. REPRESENTATIONS AND WARRANTIES

55.1 TfNSW representations and warranties

TfNSW represents and warrants for the benefit of OpCo that:

- (a) it is a statutory body validly constituted and existing under the Transport Administration Act;
- (b) it has or will have in full force and effect all authorisations necessary under its constituent legislation to enter into and perform its obligations under each TfNSW Project Agreement (or will have them in full force and effect at the time the obligation is to be performed);
- (c) each TfNSW Project Agreement constitutes a valid and legally binding obligation of it in accordance with its terms; and
- (d) the execution, delivery and performance of each TfNSW Project Agreement does not violate any law, or any document or agreement to which it is a party or which is binding on it or its assets.

55.2 OpCo representations and warranties

OpCo represents and warrants for the benefit of TfNSW that:

- (a) it is duly registered and remains in existence;
- (b) the execution, delivery and performance of each Project Agreement to which it is a party does not violate any law, or any document or agreement to which it is a party or which is binding on it or any of its assets;
- (c) it has taken all action required to enter into any Project Agreement to which it is a party and to authorise the execution and delivery of that Project Agreement and the satisfaction of its obligations under it;
- (d) each Project Agreement to which it is a party constitutes a valid and legally binding obligation of it in accordance with its terms;
- (e) it subsists and is properly constituted;
- (f) except as contemplated by the Equity Documents, it is not the trustee or responsible entity of any trust, nor does it hold any property subject to or impressed by any trust;
- (g) OpCo has no subsidiaries;
- (h) except as disclosed in writing to TfNSW prior to the date of this deed, it is not a member of any consolidated group for purposes of the *Income Tax Assessment Act 1997* (Cth);
- (i) no OpCo Event of Default or OpCo Termination Event has occurred or is subsisting;
- (j) it is not in default of its material obligations under any TfNSW Project Agreement;
- (k) it has not traded since its formation other than for the purposes of entering into the Project Agreements to which it is a party and has no liabilities other than those that have arisen in connection with entering into those Project Agreements;

- (l) except as contemplated by the Financiers Tripartite Deed, subject to laws from time to time, its obligations under the TfNSW Deed of Charge will rank ahead of, and its obligations under each TfNSW Project Agreement (other than the TfNSW Deed of Charge) will rank at least equally with, all its present and future unsecured obligations;
- (m) it does not have immunity from the jurisdiction of a court or from legal process (whether through service of notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise);
- (n) there has been no material change in the financial condition of OpCo (since its formation) or the Equity Investors or Core Contractors (since the date of their last audited accounts) which would prejudice the ability of OpCo to perform its obligations under the Project Agreements;
- (o) the most recently published financial statements of the Equity Investors and Core Contractors have been prepared on a basis consistently applied and using accounting principles which are generally accepted and give a true and fair view of the financial condition of the Equity Investors and Core Contractors;
- (p) OpCo is not aware of any material facts or circumstances that have not been disclosed to TfNSW and which might, if disclosed, materially adversely affect the decision of a prudent person considering whether or not to enter into this deed with OpCo;
- (q) it has provided to TfNSW all material documents relating to the financing of the SLR PPP; and
- (r) no litigation, arbitration, mediation, conciliation, criminal or administrative procedures are current, pending or to its knowledge, threatened, which, if adversely determined, would or could have a material adverse effect upon it or its ability to perform its financial or other obligations under any Project Agreement to which it is expressed to be a party.

55.3 Repetition of representation and warranties

The representations and warranties contained in clauses 55.2(h), 55.2(i), 55.2(j), 55.2(k), 55.2(n), 55.2(o), 55.2(p) and 55.2(r) are made on the date of this deed. Each other representation and warranty contained in this clause 55 (*Representations and warranties*):

- (a) is made on the date of this deed; and
- (b) will be deemed to be repeated at Financial Close and on each anniversary of the date of this deed,

with reference to the facts and circumstances then subsisting.

56. DISPUTE RESOLUTION

56.1 Disputes generally

- (a) Any:
 - (i) issue, dispute, difference, controversy or Claim (**Dispute**) between the parties to this deed directly or indirectly based upon, arising out of, relating

to or in connection with the SLR PPP, OpCo's Activities, the SLR, the ETS and this deed; or

- (ii) questions relating to the existence, validity, interpretation or termination of this deed),

must be resolved in accordance with this clause 56 (*Dispute resolution*).

- (b) Without limiting the process set out in this clause 56 (*Dispute resolution*), the parties acknowledge that the Dispute Avoidance Board will assist the parties to prevent and resolve Disputes as described in Appendix 1 of the DAB Agreement.

56.2 Procedure for resolving Disputes

The sequential order to resolve a Dispute is as follows:

- (a) **(negotiation by OpCo's Representative and TfNSW's Representative)**: the parties must first negotiate the Dispute in accordance with clause 56.3 (*Letter of Dispute and meeting of party representatives*); and
- (b) **(executive negotiation and subsequent steps)**: if the Dispute remains unresolved (in whole or in part) after the expiration of the period for negotiation referred to in clause 56.6 (*Escalation of Dispute*), the Dispute must be referred to executive negotiation and the parties must seek to resolve the Dispute in accordance with clause 56.7 (*Executive Negotiation*).

56.3 Letter of Dispute

- (a) A party (**Party A**) may give the other party's representative (**Party B**) a Letter of Dispute.
- (b) A Letter of Dispute given under clause 56.3(a) must:
 - (i) state that the Letter of Dispute is a letter under clause 56.3(a);
 - (ii) specify the Dispute;
 - (iii) provide reasonable particulars of Party A's reasons for being dissatisfied; and
 - (iv) set out the position which Party A believes is correct,
 with a copy to the Dispute Avoidance Board.
- (c) Party A must provide a Letter of Dispute as required under clause 56.3(a) within 100 Business Days of the earlier of the date on which:
 - (i) Party A first became aware of; and
 - (ii) Party A ought reasonably to have become aware of,
 the fact, matter or thing on which the Dispute is based.
- (d) If Party A fails to comply with clause 56.3(c):
 - (i) Party B will not be liable (insofar as it is possible to exclude such liability); and

- (ii) Party A will be absolutely barred from issuing a Letter of Dispute, arising out of, or in any way in connection with, the fact, matter or thing (as the case may be) on which the Dispute is based.

56.4 **Other provisions unaffected**

Nothing in clauses 56.3(c) or 56.3(d) will limit the operation or effect of any other provision of this deed.

56.5 **Meeting of party representatives**

- (a) Within 10 Business Days of a Letter of Dispute being given under clause 56.3(a), Party B may, in writing, seek further particulars of Party A's reasons for being dissatisfied.
- (b) Within 10 Business Days of receiving that request for further particulars under clause 56.3(c), Party A must, in writing, provide to Party B any further particulars of which it has knowledge.
- (c) The parties must provide the Dispute Avoidance Board with copies of any communication under clauses 56.5(a) and 56.5(b).
- (d) Within 25 Business Days of a Letter of Dispute being given under clause 56.3(a), TfNSW's Representative and OpCo's Representative must meet with the Dispute Avoidance Board and attempt to resolve the Dispute.
- (e) Any meeting under clause 56.5(d) may be attended by such other persons as agreed between TfNSW's Representative and OpCo's Representative.

56.6 **Escalation of Dispute**

If TfNSW's Representative and OpCo's Representative have not met or have not resolved the Dispute within 30 Business Days after the date on which the Letter of Dispute was given under clause 56.3(a) (or such longer period of time as TfNSW's Representative and OpCo's Representative may have agreed in writing), then either party may:

- (a) require that those parts of the Dispute that remain unresolved be referred to the Executive Negotiators; and
- (b) issue a notice to the Executive Negotiators (**Notice to Executive Negotiators**) stating that the Notice to Executive Negotiators is a notice under this clause 56.6(b).

56.7 **Executive Negotiation**

- (a) The Executive Negotiators must, within 10 Business Days after the date on which the Notice to the Executive Negotiators was given under clause 56.6(b), commence meetings and negotiations with a view to resolving the Dispute.
- (b) Any meetings under clause 56.7(a):
- (i) will be assisted by a person who will act independently and facilitate negotiations between the Executive Negotiators and, where agreed between the Executive Negotiators, be the chairperson of the Dispute Avoidance Board; and

- (ii) may be attended by such other persons as agreed between the Executive Negotiators.
- (c) The Executive Negotiators may, by agreement:
- (i) meet, at any time, together with the Dispute Avoidance Board; or
 - (ii) in writing, refer the Dispute to a form of alternative dispute resolution including:
 - (A) mediation;
 - (B) expert determination in accordance with clause 56.10 (*Expert determination*);
 - (C) arbitration in accordance with clause 56.12 (*Arbitration*); or
 - (D) the Dispute Avoidance Board for its opinion by providing a written notice to the chairperson of the Dispute Avoidance Board (**Notice of Referral to DAB**) stating that the Notice of Referral to DAB is a notice under this clause 56.7(c)(ii)(D).
- (d) If, within 30 Business Days after the date on which the Notice to Executive Negotiators was given under clause 56.6(b), the Executive Negotiators have not:
- (i) resolved the Dispute (in whole or in part);
 - (ii) referred the Dispute in accordance with clause 56.7(c)(ii); or
 - (iii) reached a written agreement upon a procedure to resolve the Dispute,
- then Party A may, if it wishes to pursue the Dispute, issue Party B with a referral to arbitration which must:
- (iv) state that the referral is a referral under this clause 56.7(d); and
 - (v) identify those parts of the Dispute that remain unresolved and the process referred to in clause 56.12 (*Arbitration*) will commence.
- (e) If Party A fails to refer the Dispute to arbitration in accordance with clause 56.7(d) within 20 Business Days of being entitled to do so:
- (i) Party B will not be liable (insofar as it is possible to exclude such liability); and
 - (ii) Party A will be absolutely barred from issuing a referral to arbitration under clause 56.7(d),
- arising out of, or in any way in connection with fact, matter or thing (as the case may be) on which the Dispute is based.

56.8 Obtaining Dispute Avoidance Board's assistance

- (a) If the Executive Negotiators request any meeting with the Dispute Avoidance Board under clause 56.7(c)(i):
 - (i) the procedures in Schedule A18 (*Dispute resolution procedures*) will apply; and

- (ii) the Dispute Avoidance Board will act independently in assisting the parties and in doing so may:
 - (A) attend any meeting as agreed by the parties;
 - (B) facilitate the attendance at any meeting by such other persons as agreed between the Executive Negotiators; and
 - (C) facilitate negotiations between the parties.
- (b) Any assistance provided on a Dispute by the Dispute Avoidance Board under this clause 56.8 (*Obtaining Dispute Avoidance Board's assistance*) will:
 - (i) be on a 'without prejudice' basis; and
 - (ii) continue until either party notifies the Dispute Avoidance Board in writing that its assistance is no longer required.

56.9 **Obtaining Dispute Avoidance Board's opinion**

- (a) If a Dispute is referred to the Dispute Avoidance Board under clause 56.7(c)(ii)(D), the Dispute Avoidance Board will be deemed to have received such reference on the date when the Notice of Referral to DAB is received by the chairperson of the Dispute Avoidance Board.
- (b) The opinion provided on a Dispute by the Dispute Avoidance Board under this clause 56.9 (*Obtaining Dispute Avoidance Board's decision*) must be given in accordance with the rules in Appendix 2 of the DAB Agreement or such rules as may otherwise be agreed between the parties.
- (c) Within 30 Business Days after receiving a Notice of Referral to DAB under clause 56.6 (*Escalation of Dispute*), or within such other period as may be proposed by the Dispute Avoidance Board and approved by both parties, the Dispute Avoidance Board must give its opinion in writing, which must be reasoned and must state that it is given under this clause 56.9 (*Obtaining Dispute Avoidance Board's opinion*).
- (d) Any opinion by the Dispute Avoidance Board under this clause 56.9 (*Obtaining Dispute Avoidance Board's decision*) will be on a 'without prejudice' basis and will not be binding unless the parties agree in writing to be bound by it.
- (e) If Party A wishes to pursue the Dispute following the Dispute Avoidance Board providing an opinion in accordance with this clause 56.9 (*Obtaining Dispute Avoidance Board's opinion*), Party A may refer the Dispute to arbitration within 20 Business Days of receipt of the opinion.
- (f) If Party A fails to refer the Dispute to arbitration in accordance with clause 56.9(e):
 - (i) Party B will not be liable; and
 - (ii) Party A will be absolutely barred from issuing a referral to arbitration under clause 56.9(e),

arising out of, or in any way in connection with, the fact, matter or thing (as the case may be) on which the Dispute is based.

56.10 Expert determination

- (a) Where, in accordance with clause 56.7(c)(ii)(B), the Executive Negotiators have referred the Dispute to expert determination, the Dispute will be determined in accordance with the expert determination rules set out in clause 2 of Schedule A18 (*Dispute resolution procedures*).
- (b) The determination of the expert:
 - (i) must be given to the parties in writing;
 - (ii) unless otherwise agreed between the parties, must be notified to the parties within the period set out in the agreement between the parties and the expert;
 - (iii) will be final and binding on the parties, except where a party gives notice of dissatisfaction to the other party within 20 Business Days of the determination being given stating that the notice is a notice under this clause 56.10(b)(iii), in which case either party may refer the Dispute to arbitration; and
 - (iv) is to be given effect to by the parties unless and until it is reversed, overturned or otherwise changed under any arbitration.

56.11 Amicable settlement

- (a) Where:
 - (i) Party A has issued a referral under clause 56.9(e); or
 - (ii) a notice of dissatisfaction has been given under clause 56.10(b)(iii),
 the Executive Negotiators must attempt to settle the Dispute before the commencement of arbitration.
- (b) If no amicable settlement has been reached within 10 Business Days after the day on which the notice of dissatisfaction was given under clause 56.10(b)(iii), the Dispute will be determined in accordance with clause 56.12 (*Arbitration*), whether or not the Executive Negotiators have met and undertaken any negotiations.

56.12 Arbitration

Where:

- (a) a notice referring the Dispute to arbitration has been provided under clauses 56.9(e) or 56.7(c)(ii)(C); or
 - (b) a notice of dissatisfaction has been provided under clause 56.10(b)(iii),
- the Dispute will be finally settled by binding arbitration in accordance with clause 3 of Schedule A18 (*Dispute resolution procedures*).

56.13 Exclusion from determination or award

- (a) The powers conferred and restrictions imposed on a court by Part 4 of the *Civil Liability Act 2002* (NSW) are not conferred on an arbitral tribunal appointed in accordance with this clause 56 (*Dispute resolution*).

- (b) The arbitral tribunal has no power to make a binding or non-binding determination or any award in respect of a claim by applying or considering the provisions of Part 4 of the *Civil Liability Act 2002* (NSW) (and any equivalent statutory provisions in any other state or territory) which might, in the absence of this provision, have applied to any Dispute referred to the arbitral tribunal.

56.14 **Payments**

TfNSW may withhold payment of that part of any amount which is the subject of a Dispute.

56.15 **OpCo to continue performing obligations**

Despite the existence of any Dispute, OpCo must:

- (a) continue to perform OpCo's Activities; and
- (b) perform its other obligations under this deed.

56.16 **Urgent relief**

Nothing in this clause 56 (*Dispute resolution*) will prejudice the right of a party to seek urgent injunctive or declaratory relief from a court.

56.17 **Core Contract disputes**

- (a) The parties acknowledge that a dispute or difference arising under a Core Contract may concern the respective rights and obligations of TfNSW and OpCo under this deed.
- (b) Without limiting clause 46.4 (*Notices under Project Agreements or Rail Safety Interface Agreements*) or 46.5 (*Advice on rights of third parties under Project Agreements*), OpCo must inform TfNSW's Representative immediately of any formal disputes and differences under any Core Contracts and the consequences (if any) on the operation of this deed.

56.18 **Third Party Works**

TfNSW may request, in its absolute discretion, the attendance of a person with a direct interest in a Third Party Agreement or Third Party Works at any meeting held under this clause 56 (*Dispute resolution*) for that party to observe any part of the process.

56.19 **Survive termination**

This clause 56 (*Dispute resolution*) will survive termination of this deed.

57. **NOTICE OF CLAIMS**

57.1 **Notice of Modification**

- (a) If a Direction of TfNSW, other than a Modification Order under clause 29 (*TfNSW initiated Modifications*), in OpCo's opinion constitutes a Modification, OpCo must, if it wishes to make a Claim against TfNSW arising out of or, or in any way in connection with, the Direction:
 - (i) within 10 Business Days of receiving the Direction and before commencing work on the subject matter of the Direction or otherwise complying with the Direction, give written notice to TfNSW's Representative that sets out:

- (A) that it considers the Direction constitutes or involves a Modification;
 - (B) details of the relevant Direction; and
 - (C) details of why it considers the Direction constitutes or involves a Modification;
- (ii) within 10 Business Days of giving the notice under clause 57.1(a)(i), submit a written claim to TfNSW's Representative which includes the details required by clause 57.3(b); and
 - (iii) continue to carry out OpCo's Activities in accordance with this deed including any Direction in respect of which notice has been given under this clause 57.1 (*Notice of Modification*).
- (b) If OpCo issues a notice under clause 57.1(a)(i), TfNSW may:
 - (i) confirm that the Direction constitutes or involves a Modification, or entitles OpCo to make a Claim, by the giving of a notice under this clause 57.1(b)(i), in which case OpCo must comply with the Direction and that Direction will be deemed to be a Modification Order to which clause 29.11(b) will apply;
 - (ii) deny that the Direction constitutes or involves a Modification, or entitles OpCo to make a Claim, by the giving of a notice under this clause 57.1(b)(ii), in which case OpCo:
 - (A) may within 10 Business Days of the receipt of the notice issue a Letter of Dispute under clause 56.3 (*Letter of Dispute*); and
 - (B) unless otherwise directed in writing by TfNSW's Representative, must comply with the Direction irrespective of any Claim or Dispute in relation to the Direction or any part of it; or
 - (iii) withdraw the Direction by giving a notice under this clause 57.1(b)(iii).
 - (c) If within 20 Business Days after first receipt of the notice under clause 57.1(a)(i), TfNSW's Representative has not taken any action under clause 57.1(b), TfNSW's Representative will be deemed to have given a notice under 57.1(b)(ii).

57.2 Notices of other Claims

- (a) Subject to clause 57.2(b), OpCo must give TfNSW the notices required by clause 57.3 (*Prescribed notices*) if it wishes to make a Claim against TfNSW in respect of any Direction or any other fact, matter or thing (including a breach of this deed by TfNSW) under, arising out of, or in connection with OpCo's Activities or this deed, including anything in respect of which it is given an express entitlement under this deed.
- (b) Clause 57.2(a) does not apply to the following claims:
 - (i) a Claim in respect of a Compensation Event under clause 26.2 (*Claim for compensation*);
 - (ii) a Claim in respect of a Relief Event under clause 27 (*Relief Events*);

- (iii) a Claim in respect of a Modification ordered in accordance with clause 29 (*TfNSW initiated Modifications*) or to which clause 57.1 (*Notice of Modification*) applies; or
- (iv) a Claim for payment under clause 25 (*Payment provisions*) of:
 - (A) the CDPD Amount;
 - (B) a Service Payment;
 - (C) an amount payable in connection with an Augmentation in accordance with Schedule D9 (*Augmentations*); or
 - (D) a Termination Payment in accordance with clause 43.12(a).

57.3 Prescribed notices

The notices referred to in clause 57.2 (*Notices of other Claims*) are:

- (a) a written notice within 20 Business Days after the earlier of when OpCo first became aware of, or ought reasonably to have become aware of, the Direction or any other fact, matter or thing on which the Claim is based, expressly specifying:
 - (i) that OpCo intends to submit a Claim; and
 - (ii) the Direction or any other fact, matter or thing upon which the Claim will be based; and
- (b) a written Claim within 10 Business Days of giving notice under clause 57.3(a), which must include:
 - (i) detailed particulars concerning the Direction or any other fact, matter or thing on which the Claim is based;
 - (ii) the legal basis for the Claim, whether based on a term of this deed or otherwise, and if based on a term of this deed, clearly identifying the specific term;
 - (iii) the facts relied upon in support of the Claim in sufficient detail to permit verification; and
 - (iv) details of the amount claimed and how it has been calculated.

57.4 Continuing events

If the Direction or any other fact, matter or thing upon which the Claim under clause 57.3(b) is based or the consequences of the events are continuing, OpCo must continue to give information required by clause 57.3(b) within 10 Business Days after the end of each calendar month after the written claim under clause 57.1(a)(ii) or 57.3(b) (as the case may be) was submitted, until after the Direction or fact, matter or thing upon which the Claim is based has, or the consequences thereof have, ceased.

57.5 Time bar

If OpCo fails to comply with clauses 57.1 (*Notice of Modification*), 57.2 (*Notices of other Claims*), 57.3 (*Prescribed notices*) or 57.4 (*Continuing events*):

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

arising out of, or in any way in connection with, the relevant Direction or fact, matter or thing (as the case may be) to which clause 57.1 (*Notice of Modification*) or 57.3 (*Prescribed notices*) applies.

57.6 **Other provisions unaffected**

Nothing in clauses 57.1 (*Notice of Modification*) to 57.5 (*Time bar*) will limit the operation or effect of any other provision of this deed which requires OpCo to give notice to TfNSW or TfNSW's Representative in order to preserve an entitlement to make a Claim against TfNSW.

58. **NOTICES**

- (a) Wherever referred to in this clause, **Notice** means each communication (including each notice, consent, approval, request and demand) under or in connection with this deed.
- (b) At any time and from time to time TfNSW's Representative may notify OpCo that a PDCS will be used for giving Notices under or in connection with this deed. TfNSW's Representative's notice will set out:
 - (i) the name of the relevant PDCS;
 - (ii) the commencement date for use of the PDCS;
 - (iii) any password, login details or similar information required for OpCo to use the PDCS; and
 - (iv) any other information reasonably necessary for the use and service of Notices via the PDCS.
- (c) Each Notice must:
 - (i) before the date referred to in clause 58(b)(ii)
 - (A) be in writing;
 - (B) be addressed:
 - (aa) in the case of a Notice from OpCo, be addressed to TfNSW's Representative; or
 - (bb) in the case of a Notice from TfNSW, be addressed to OpCo's Representative;
 - (C) be signed by the party making it or (on that party's behalf) by the solicitor for, or any attorney, director, secretary or authorised agent of, that party; and
 - (D) be delivered or posted to the relevant address or sent to the facsimile number shown below (or to any new address or facsimile number notified by the intended recipient):

TfNSW

Name: TfNSW, a New South Wales Government agency
Address: Level 11
338 Pitt Street
Sydney NSW 2000
Fax: (02) 9200 0290
For the attention of: TfNSW's Representative

With a copy to:

Name: TfNSW, a New South Wales Government agency
Address: Level 5
Tower A, Zenith Centre
821 Pacific Highway
Chatswood NSW 2067
Fax: (02) 9200 0290
For the attention of: Deputy Director General, Transport Projects Division

OpCo

Name: ALTRAC Light Rail Partnership
Address: c/- Capella Capital
Level 31
AMP Centre
50 Bridge Street
Sydney NSW 2000
Fax: (02) 8224 3800
For the attention of: Malcolm Macintyre

- (ii) on and from the commencement date for use of the PDCS referred to in clause 58(b)(ii):
 - (A) be sent through the PDCS in accordance with the requirements set out in clause 58(e) and:
 - (aa) in the case of a Notice from OpCo, be addressed to the TfNSW's Representative; or
 - (bb) in the case of a Notice from TfNSW, be addressed to OpCo's Representative; or
 - (B) in circumstances where the PDCS is temporarily disabled or not operating, be issued in accordance with clause 58(c)(i).
- (d) Subject to clause 58(d)(iv), a communication is taken to be received by the addressee:
 - (i) (in the case of a Notice sent through the PDCS) at the time recorded on the PDCS as being the time at which the Notice was sent;
 - (ii) (in the case of prepaid post sent to an address in the same country) 2 Business Days after the date of posting;
 - (iii) (in the case of international post) 7 Business Days after the date of posting;
 - (iv) (in the case of delivery by hand) on delivery; and

- (v) (in the case of fax) at the time in the place to which it is sent equivalent to the time shown on the transmission confirmation report produced by the fax machine from which it was sent,

provided that if the communication would be deemed to be received on a day which is not a Business Day or after 5.00 pm on a Business Day, it is deemed to be received at 9.00 am on the next Business Day.

- (e) With respect to Notices sent through the PDCS:
 - (i) all Notices must be submitted by the party making it or (on that party's behalf) by the solicitor for, or any attorney, director, secretary or authorised agent of, that party;
 - (ii) only the text in any Notice, or subject to paragraph 58(e)(iii), any attachments to such Notice which are referred to in the Notice, will form part of the Notice. Any text in the subject line will not form part of the Notice; and
 - (iii) an attachment to a Notice will only form part of a Notice if it is uploaded to the PDCS in:
 - (A) .pdf format;
 - (B) a format compatible with Microsoft Office; or
 - (C) such other format as may be agreed between the parties in writing from time to time.
- (f) OpCo must:
 - (i) ensure that it has internet access which is sufficient to facilitate use of the full functionality of the PDCS;
 - (ii) ensure that relevant personnel log on and use the PDCS and check whether Notices have been received on each Business Day;
 - (iii) ensure all relevant personnel attend all necessary training required by TfNSW's Representative;
 - (iv) advise TfNSW's Representatives of which personnel require access to the PDCS;
 - (v) at all times, ensure that it has access to personnel trained in the use of the PDCS so as to be able to view, receive and submit communications (including Notices) using the PDCS; and
 - (vi) as soon as practicable, at the first available opportunity following any period of time during which the PDCS is temporarily disabled or not operating, send all communications which have been issued pursuant to clause 58(c)(ii)(B) to TfNSW's Representative through the PDCS.
- (g) TfNSW has no liability for any losses OpCo may suffer or incur arising out of or in connection with its access to or use of the PDCS or any failure of the PDCS, and OpCo will not be entitled to make, and TfNSW will not be liable upon, any Claim against TfNSW arising out of or in connection with OpCo's access to or use of the PDCS or any failure of the PDCS.

59. **PPSA**

- (a) In this clause, **Security Interest** has the meaning given to the term "security interest" in the PPSA.
- (b) If the terms of this deed constitute one or more Security Interests in favour of TfNSW:
 - (i) OpCo agrees to promptly do anything (including executing any new document, obtaining consents, signing and producing documents, getting documents completed and signed and supplying information) which TfNSW may require for the purposes of:
 - (A) ensuring that any Security Interest of TfNSW is enforceable, perfected and otherwise effective;
 - (B) ensuring that any Security Interest of TfNSW is continuously perfected and/or perfected by control and/or perfected in a way that will reduce as far as reasonably possible the risk of a third party acquiring an interest in any property the subject of the Security Interest, to the extent possible under the PPSA;
 - (C) enabling TfNSW to apply for registration, or give any notification, in connection with a Security Interest so that the Security Interest has the priority required by TfNSW; or
 - (D) enabling TfNSW to exercise any right or power in connection with the Security Interest;
 - (ii) OpCo agrees that it will bear all costs and expenses:
 - (A) that it incurs in complying with clause 59(b)(i); and
 - (B) incurred by TfNSW for the purposes set out in clause 59(b)(i);
 - (iii) to the extent permitted by law, and in respect of any Security Interest created by this deed:
 - (A) the parties contract out of sections 95, 121(4), 125, 130, 132(3)(d), 132(4), 142 and 143 of the PPSA (to the extent, if any, mentioned in section 115(1) of the PPSA);
 - (B) the application of Part 4.3 of the PPSA is contracted out of if that Part would apply by virtue of section 116(2) of the PPSA; and
 - (C) OpCo waives its right to receive any verification statement in respect of any financing statement or financing change statement relating to a Security Interest, and also its right to receive any other notice required under the PPSA unless the provision of such notice cannot be excluded;
 - (iv) the parties agree to the full extent permitted by law not to disclose information of the kind mentioned in section 275(1) of the PPSA;
 - (v) OpCo agrees that it will only authorise the disclosure of information under section 275(7)(c), or request information under section 275(7)(d), if TfNSW approves;

- (vi) TfNSW's Security Interest attaches to any proceeds (including any proceeds within the definition of that term in the PPSA) derived, directly or indirectly from any sale or dealing with the collateral that is the subject of the Security Interest or otherwise arising out of or relating to the collateral whether or not the sale or dealing is permitted under this deed;
- (vii) OpCo will not, without TfNSW's prior written consent, create, purport, or attempt to create or permit to exist any other Security Interest, however ranking, over the collateral; and
- (viii) for the avoidance of doubt, pursuant to section 80 of the PPSA, OpCo covenants not to assert any rights it would otherwise have under section 80(1) of the PPSA and it is intended specifically that any person TfNSW assigns some or all of its rights and obligations under this deed should have the benefit of this covenant.

60. PROPORTIONATE LIABILITY

60.1 Exclusion of proportionate liability scheme

- (a) To the extent permitted by law, Part 4 of the *Civil Liability Act 2002* (NSW) (and any equivalent statutory provision in any other state or territory) is excluded in relation to all and any rights, obligations or liabilities of either party under this deed whether these rights, obligations or liabilities are sought to be enforced in contract, tort or otherwise.
- (b) Without limiting the above, the rights, obligations and liabilities of TfNSW and OpCo under this deed with respect to proportionate liability are as specified in this deed and not otherwise, whether these rights, obligations or liabilities are sought to be enforced by a claim in contract, in tort or otherwise.

60.2 Contractor not to apply proportionate liability scheme

To the extent permitted by law:

- (a) OpCo must not seek to apply the provisions of Part 4 of the *Civil Liability Act 2002* (NSW) in relation to any claim by TfNSW against OpCo (whether in contract, tort or otherwise); and
- (b) if any of the provisions of Part 4 of the *Civil Liability Act 2002* (NSW) are applied to any claim by TfNSW against OpCo (whether in contract, tort or otherwise), OpCo will indemnify TfNSW against any loss, damage, cost or expense that forms part of a claim by TfNSW against OpCo which TfNSW cannot recover from OpCo because of the operation of Part 4 of the *Civil Liability Act 2002* (NSW).

60.3 Subcontracts

OpCo must:

- (a) in each Subcontract into which it enters for the performance of OpCo's Activities, include a term that (to the extent permitted by law) excludes the application of Part 4 of the *Civil Liability Act 2002* (NSW) in relation to all and any rights, obligations or liabilities of either party under each Subcontract whether these rights, obligations or liabilities are sought to be enforced by a claim in contract, tort or otherwise; and

- (b) require each OpCo Contractor to include, in any further contract that it enters into with a third party for the performance of OpCo's Activities, a term that (to the extent permitted by law) excludes the application of Part 4 of the *Civil Liability Act 2002* (NSW) in relation to all and any rights, obligations or liabilities of either party under each further agreement whether such rights, obligations or liabilities are sought to be enforced by a claim in contract, tort or otherwise.

61. TAXES

61.1 Liability for Taxes

- (a) Subject to clause 61.2 (*GST*), OpCo must indemnify TfNSW against, and must pay TfNSW on demand the amount of, all Taxes (excluding Rates, Land Tax and any stamp or like duty (**Duty**), and any penalty, fine, charge or interest in respect of any Rates, Land Tax or Duty) incurred in connection with:
 - (i) the negotiation, preparation, execution and registration of this deed or any Project Agreement;
 - (ii) the transactions that this deed or any Project Agreement contemplates (including, for the avoidance of doubt, any Taxes in respect of Extra Land to which clause 12.11 (*Extra Land*) applies); and
 - (iii) any amendment to, or any consent, approval, waiver, release or discharge of or under, this deed or any Project Agreement.
- (b) OpCo must (or ensure that Finance Co must):
 - (i) attend to the timely lodgement for stamping of the TfNSW Project Agreements and the Debt Financing Documents on or before the due date for lodgement prescribed by law (**Lodgement Due Date**);
 - (ii) at least 20 Business Days prior to the Lodgement Due Date give TfNSW an estimate of the Duty payable (**Duty Estimate**) and an opportunity to review and comment on all submissions, correspondence and other materials before they are provided to the NSW Office of State Revenue and not refuse to adopt any changes to the contents of those documents or to the Duty Estimate that are reasonably requested by TfNSW provided that any changes are requested within 10 Business Days prior to the Lodgement Due Date: and
 - (iii) give TfNSW a copy of all correspondence, notices and assessments issued by the NSW Office of State Revenue in connection with Duty payable in respect of the TfNSW Project Agreements, the Debt Financing Documents or any transaction contemplated by any of them, within 5 Business Days after OpCo receives the relevant correspondence, notices or assessments.
- (c) TfNSW will pay and indemnify OpCo and any parties to the Debt Financing Documents against, and reimburse OpCo and any parties to the Debt Financing Documents for, all Duty (including any penalty, fine, charge or interest payable in respect of Duty) in respect of the TfNSW Project Agreements, the Debt Financing Documents or any document or transaction expressly contemplated by, any of them which is payable to the State, the Chief Commissioner of State Revenue or the NSW Office of State Revenue, provided that TfNSW will not pay, indemnify or reimburse OpCo for any Duty, penalty, fine, charge or interest payable in respect of Duty:

- (i) which results from any failure or any delay by OpCo:
 - (A) in lodging a document required to be lodged with the NSW Office of State Revenue by the due date for lodgement prescribed by law;
 - (B) in paying an amount to the NSW Office of State Revenue, for which OpCo has been put in immediately available funds by TfNSW, by the due date for payment prescribed by law;
 - (ii) arising from any Refinancing, a change to financiers or any change in the equity interest of OpCo or the OpCo Group; or
 - (iii) for Extra Land to which clause 12.11 (*Extra Land*) applies
- (d) Without limiting clause 61.1(c), TfNSW must put OpCo in immediately available funds to pay the amount of the Duty Estimate to the NSW Office of State Revenue at least 5 Business Days prior to the Lodgement Due Date and OpCo must pay the amount of the Duty Estimate to the NSW Office of State Revenue by the Lodgement Due Date. OpCo must provide evidence of payment having been made (such as a copy of the stamped page of a document or a receipt) to TfNSW within 5 Business Days after receipt of such evidence.
- (e) If the NSW Office of State Revenue issues an assessment or reassessment for an amount greater than the Duty Estimate then, without limiting clause 61.1(c), OpCo must promptly notify TfNSW and TfNSW must put OpCo in immediately available funds to pay the amount due to the NSW Office of State Revenue within the earlier of 10 Business Days after notification and at least 5 Business Days prior to the due date and OpCo must pay the amount due to the NSW Office of State Revenue by the due date.
- (f) If the amount of Duty assessed by the NSW Office of State Revenue is less than the Duty Estimate, OpCo must, to the extent permitted by law, promptly seek a refund of the amount overpaid and pass any refund on to TfNSW within 5 Business Days of receipt.
- (g) TfNSW must pay OpCo and Finance Co, and indemnify OpCo and Finance Co against, all Rates and Land Tax, if any, in respect of the SLR Site until the end of the Term, provided that if the SLR Site or part thereof becomes subject to Rates or Land Tax as a result of commercial opportunities under clause 23 (*Commercial Opportunities*), OpCo must pay for, or procure the payment of, such Rates and/or Land Tax and must, as soon as practicable after written request from TfNSW's Representative, arrange for the relevant Rates and Land Tax to be invoiced to OpCo and paid direct to the relevant Authority by OpCo in respect of that part of the SLR Site.
- (h) OpCo must (or ensure that Finance Co must) promptly provide to TfNSW a copy of any notices, assessments or correspondence which it receives in relation to any Rates and Land Tax to which the indemnity in clause 61.1(g) applies.
- (i) In the event that TfNSW is dissatisfied with any assessment, or threatened assessment, or notice in relation to the calculation of, any Duty, Rates or Land Tax which TfNSW is required to pay under this clause 61.1 (*Liability for Taxes*):
- (i) TfNSW may notify OpCo that it wishes to take carriage of negotiations with the relevant Authority in respect of the assessment, threatened assessment or notice (**Tax Proceedings**);

- (ii) TfNSW will be responsible for all costs in relation to the conduct, defence or settlement of the Tax Proceedings (including the costs of OpCo in providing any co-operation or assistance);
- (iii) subject to TfNSW complying with its obligations under this clause 61.1(i), OpCo will provide (or ensure that Finance Co provides) all reasonable assistance to TfNSW in relation to the conduct, defence or settlement of the Tax Proceedings, including, if requested by TfNSW, to be named as the taxpayer in any objections or appeals;
- (iv) TfNSW must act in good faith at all times;
- (v) TfNSW must not take any action which it is objectively unreasonable to take in all the circumstances;
- (vi) TfNSW must pay to OpCo so much of any Tax as is required by the relevant Authority to be paid in relation to the Tax Proceedings;
- (vii) TfNSW must provide to OpCo an indemnity in a form agreed to by OpCo (such agreement to not be unreasonably withheld or delayed) against all liability, loss, damage, cost, expense, judgment, charge, diminution in value or deficiency which may result from any action taken at the request of TfNSW by OpCo in connection with the conduct of the Tax Proceedings; and
- (viii) TfNSW will liaise with and keep OpCo and Finance Co informed of its negotiations, and provide copies of all relevant correspondence to OpCo and Finance Co on a timely basis.

61.2 GST

(a) **(Interpretation):**

- (i) Except where the context suggests otherwise, terms used in this clause 61.2 (*GST*) have the meanings given to those terms by the GST Act (as amended from time to time).
- (ii) Any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause 61.2 (*GST*).
- (iii) Unless otherwise expressly stated, all consideration to be provided under this deed is exclusive of GST. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purpose of this clause 61.2 (*GST*).
- (iv) A reference to something done (including a supply made) by a party includes a reference to something done by any entity through which that party acts.

- (b) **(Reimbursements):** Any payment or reimbursement required to be made under this deed that is calculated by reference to a cost, expense, or other amount paid or incurred will be limited to the total cost, expense or amount less the amount of any input tax credit to which an entity is entitled for the acquisition to which the cost, expense or amount relates.

- (c) **(Additional amount of GST payable):** Subject to clause 61.2(e), if GST becomes payable on any supply made by a party (**Supplier**) under or in connection with this deed:
- (i) any amount payable or consideration to be provided under any provision of this deed (other than this clause 61.1 (GST)), for that supply is exclusive of GST;
 - (ii) any party (**Recipient**) that is required to provide consideration to the Supplier for that supply must pay an additional amount to the Supplier equal to the amount of the GST payable on that supply (**GST Amount**), at the same time as any other consideration is to be first provided for that supply; and
 - (iii) the Supplier must provide a Tax Invoice to the Recipient for that supply, no later than the time at which the GST Amount for that supply is to be paid in accordance with clause 61.2(c)(ii).
- (d) **(Variation of GST):**
- (i) If the GST Amount properly payable in relation to a supply (as determined in accordance with clause 61.2(c) and clause 61.2(e)), varies from the additional amount paid by the Recipient under clause 61.2(c), then the Supplier will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient. Any payment, credit or refund under this clause 61.2(d) is deemed to be a payment, credit or refund of the GST Amount payable under clause 61.2(c).
 - (ii) The Supplier must issue an Adjustment Note to the Recipient in respect of any adjustment event occurring in relation to a supply made under or in connection with this deed as soon as reasonably practicable after the Supplier becomes aware of the adjustment event.
- (e) **(Exchange of non-monetary consideration):**
- (i) To the extent that the consideration provided for the Supplier's Taxable Supply to which clause 61.2(c) applies is a Taxable Supply made by the Recipient (the **Recipient Supply**), the GST Amount that would otherwise be payable by the Recipient to the Supplier in accordance with clause 61.2(c) will be reduced by the amount of GST payable by the Recipient on the Recipient Supply.
 - (ii) The Recipient must issue to the Supplier an invoice for any Recipient Supply on or before the time at which the Recipient must pay the GST Amount in accordance with clause 61.2(c) (or the time at which such GST Amount would have been payable in accordance with clause 61.2(c) but for the operation of clause 61.2(e)).
- (f) **(No merger):** This clause will not merge on completion or termination of this deed.

62. GENERAL

62.1 Certification

For the purposes of this deed, a copy of a document will be regarded as duly certified by OpCo if it is certified as a true copy by a director, secretary or general manager of OpCo.

62.2 **Cost of performing obligations**

Each party must perform its obligations under this deed at its own cost, unless expressly provided otherwise.

62.3 **Governing law**

This deed is governed by and must be construed according to the law applying in New South Wales.

62.4 **Amendments**

This deed may only be varied by a deed executed by or on behalf of each party.

62.5 **Waiver**

- (a) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy provided by law or under this deed by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by law or under this deed.
- (b) A waiver or consent given by a party under this deed is only effective and binding on that party if it is given or confirmed in writing by that party.
- (c) No waiver of a breach of a term of this deed operates as a waiver of another breach of that term or of a breach of any other term of this deed.

62.6 **Survival of certain provisions; no merger**

- (a) Without limiting clause 62.13(a):
 - (i) clauses 1 (*Definitions and interpretation*), 5.1 (*TfNSW's Representative*), 11.2 (*Information Documents*), 13.11 (*Design life*), 21.1(f), 21.14 (*Final inspection*), 22 (*Security*), 25.9 (*Interest*), 25.10 (*Set-off*), 38 (*Indemnity and liability exclusions*), 43.11 (*Consequences of termination*), 43.12 (*Termination Payments*), 44 (*Transition Out provisions*), 46.1 (*Records*), 47 (*Disclosure, confidentiality and publicity*), 48 (*Intellectual Property*), 55 (*Representations and Warranties*), 56 (*Dispute resolution*), 57 (*Notice of Claims*), 58 (*Notices*), 59 (*PPSA*), 60 (*Proportionate liability*), 61 (*Taxes*), 62 (*General*), the representations, warranties and indemnities given by OpCo under this deed and any other provisions which are expressed to survive termination (together, the **Surviving Clauses**) will survive rescission, termination or expiration of this deed; and
 - (ii) if this deed is rescinded or terminated, no party will be liable to any other party except:
 - (A) under the Surviving Clauses; or
 - (B) in respect of any breach of this deed occurring before such rescission or termination.
- (b) No right or obligation of any party will merge on completion of any transaction under this deed. All rights and obligations under this deed survive the execution and delivery of any transfer or other document which implements any transaction under this deed.

62.7 Further acts and documents

Each party must promptly do all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to that party) required by law or reasonably requested by another party to give effect to this deed.

62.8 Consents

A consent required under this deed from a party may be given or withheld, or may be given subject to any conditions, as that party (in its absolute discretion) thinks fit, unless this deed expressly provides otherwise.

62.9 No representation or reliance

- (a) Each party acknowledges that no party (nor any person acting on a party's behalf) has made any representation or other inducement to it to enter into this deed, except for representations or inducements expressly set out in this deed.
- (b) Each party acknowledges and confirms that it does not enter into this deed in reliance on any representation or other inducement by or on behalf of any other party, except for representations or inducements expressly set out in this deed.

62.10 Severance

If at any time any provision of this deed is or becomes illegal, invalid or unenforceable in any respect under applicable law, that provision is to be severed to the extent necessary to make this deed enforceable, and it will not affect or impair the legality, validity or enforceability of any other provision of this deed.

62.11 Exercise of remedies

- (a) If OpCo breaches any of its obligations under this deed or any other Project Agreement, TfNSW may exercise any or all of the rights and powers and pursue any or all of the remedies available to TfNSW under the Project Agreements and/or enforce any other legal or equitable remedy available under applicable law.
- (b) Each and every right, power and remedy of TfNSW is cumulative and in addition to any other right, power and remedy, whether under a Project Agreement or applicable law, which may be exercised by TfNSW and the exercise of a right, power or remedy will not be construed to be a waiver of the right to exercise any other right, power or remedy.
- (c) No delay or omission by TfNSW in the exercise of any right, power or remedy will impair such right, power or remedy or constitute a waiver of the relevant breach.

62.12 Entire agreement

To the extent permitted by law, in relation to its subject matter, this deed:

- (a) embodies the entire understanding of the parties, and constitutes the entire terms agreed by the parties; and
- (b) supersedes any prior written or other agreement of the parties.

62.13 Indemnities

- (a) Each indemnity in this deed is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiration of this deed.
- (b) It is not necessary for a party to incur expense or to make any payment before enforcing a right of indemnity conferred by this deed.
- (c) A party must pay on demand any amount it must pay under an indemnity in this deed.
- (d) Where OpCo gives any indemnity or release to TfNSW under any of the Project Agreements, it gives an equivalent indemnity and release to the State. TfNSW holds for itself and on trust for the State the benefit of each such indemnity and release in this deed.
- (e) OpCo holds for itself and on trust for the parties to the Debt Financing Documents the benefit of the indemnities in clause 61.1(c).
- (f) Each party must use reasonable endeavours to mitigate any Loss for which it would be indemnified by the other party under this deed.

62.14 Counterparts

This deed may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes the deed of each party who has executed and delivered that counterpart.

62.15 Attorneys

Each person who executes this deed on behalf of a party under a power of attorney declares that he or she is not aware of any fact or circumstance that might affect his or her authority to do so under that power of attorney.

62.16 Relationship between TfNSW and OpCo

Nothing in, or contemplated by, this deed or any other TfNSW Project Agreement will be construed or interpreted as:

- (a) constituting a relationship between TfNSW and OpCo, or any other person, of partners, joint venturers, fiduciaries, employer and employee or principal and agent; or
- (b) imposing any general duty of good faith on TfNSW to OpCo or its Associates in relation to or arising out of this deed, other than to comply with the obligations (if any) expressly stated to be assumed by TfNSW under this deed or any other TfNSW Project Agreement on a good faith basis.

62.17 Contract documents to be in English

All documentation in computer readable or other written forms brought (whether before or after the date of this deed) or required to be brought into existence as part of, or for the purpose of, performing OpCo's Activities, and which must be provided to TfNSW, must be written in the English language.

62.18 Vienna convention

The UN Convention on Contracts for the International Sale of Goods (1980) does not apply to this deed.

62.19 Civil penalties

Clause 21.8 (*Asset Management Failures*) and Schedule D1 (*Service Payment Regime*) are civil penalty provisions for the purposes of section 38 of the *Passenger Transport Bill 1990* (NSW).

Executed as a deed.

EXECUTED on behalf of **TRANSPORT FOR NSW** by its authorised delegate **IN THE PRESENCE OF:**



Signature of Witness

Justine Gray

Name of Witness (print)



Authorised Delegate

CHRISTOPHER DECCAN LOCK

Name of Authorised Delegate (print)

Signed by the ALTRAC Light Rail Partnership by being signed by each of its partners as at the date of this deed

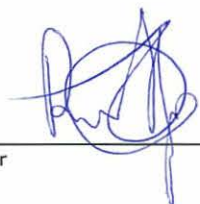
SIGNED, SEALED AND DELIVERED by **ALTRAC LIGHT RAIL 1 PTY LIMITED ACN 603 192 203** as trustee for **ALTRAC LIGHT RAIL TRUST 1:**



Director

KIRSTY MAYER

Name of Director (print)



Director

ROBERTO AGUDO

Name of Director (print)


SIGNED, SEALED AND DELIVERED by **ALTRAC LIGHT RAIL 2 PTY LIMITED ACN 603 194 476** as trustee for **ALTRAC LIGHT RAIL TRUST 2:**



Company Secretary/Director

Ian Pendleton

Name of Company Secretary/Director (print)



Director

CRAEME ARNOTT

Name of Director (print)

SIGNED, SEALED AND DELIVERED by
ALTRAC LIGHT RAIL 3 PTY LIMITED
ACN 603 190 601 as trustee for
ALTRAC LIGHT RAIL TRUST 3 by its
Attorney **IN THE PRESENCE OF:**



Witness

BLAIR TOWNSEND

Name of Witness (print)



Attorney

DAVID BEATON

Name of Attorney (print)