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LEASE
New South Wales
Real Property Act 1900

Leave this space clear. Affix additional pages to the top left-hand corner.

PRIVACY NOTE: Section 31B of the Real Property Act 1900 (RP Act) authorises the Registrar General to collect the information required by this form for the establishment and maintenance of the Real Property Act Register. Section 96B RP Act requires that the Register is made available to any person for search upon payment of a fee, if any.

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(A) TORRENS TITLE Property leased
Lots 1, 2 and 3 in Deposited Plan 1222625

(B) LODGED BY	Document Collection Box	Name, Address or DX, Telephone, and Customer Account Number, if any	CODE L
	599D	MINTER ELLISON Customer Account Number: 123438 S 1 Farrer Place, Sydney Telephone (02) 9921 8888 Reference: SJDM: 207714952	

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

The lessor leases to the lessee the property referred to above.

(D) Encumbrances (if applicable): _____

(E) LESSEE Downer EDI Rail Pty Ltd ABN 92 000 002 031

(F) TENANCY:

- (G) 1. TERM:** 5 years
- 2. COMMENCING DATE:** 8 October 2013
- 3. TERMINATING DATE:** 7 October 2018
- 4.** With an **OPTION TO RENEW** for a period of 5 x 5 years set out in clause 2.5 of Annexure A
- 5.** With an **OPTION TO PURCHASE** set out in clause N.A. of N.A.
- 6.** Together with and reserving the **RIGHTS** set out in **ANNEXURE A**
- 7.** Incorporates the provisions or additional material set out in **ANNEXURE A** hereto.
- 8.** Incorporates the provisions set out in N.A. with the Land and Property Management Authority as No(s). N.A.
- 9.** The **RENT** is set out in Item 9 of Annexure A

 Lease

DATE: _____

SEE PAGES 88 AD 89 FOR EXECUTION

Note: where applicable, the lessor must complete the statutory declaration below.

(I) STATUTORY DECLARATION *

I
solemnly and sincerely declare that-

- 1. The time for the exercise of option to renew in expired lease No. _____ has ended; and
- 2. The lessee under that lease has not exercised the option.

I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Oaths Act 1900

Made and subscribed at _____ in the State of New South Wales on
in the presence of _____ of

Justice of the peace Practising Solicitor Other qualified witness (specify)

** who certifies the following matters concerning the making of this statutory declaration by the person who made it:

- 1. I saw the face of the person *OR* I did not see the face of the person because the person was wearing a face covering, but I am satisfied that the person had a special justification for not removing the covering; and
- 2. I have known the person for at least 12 months *OR* I have not known the person for at least 12 months, but I have confirmed the person's identity using an identification document and the document I relied on was.....

Signature of witness:

Signature of lessor:

* As the services of a qualified witness cannot be provided at lodgment, the declaration should be signed and witnessed prior to lodgment. ** If made outside NSW, cross out the witness certification. If made in NSW, cross out the text which does not apply.

***s117 RP Act requires that you must have known the signatory for more than 12 months or have sighted identifying documentation.*

THIS IS THE ANNEXURE 'A' REFERRED TO IN THE LEASE BETWEEN RAIL CORPORATION
NEW SOUTH WALES ABN 59 325 778 353 (AS LESSOR) AND DOWNER EDI RAIL PTY LTD
ABN 92 000 002 031 (AS LESSEE)

DATED

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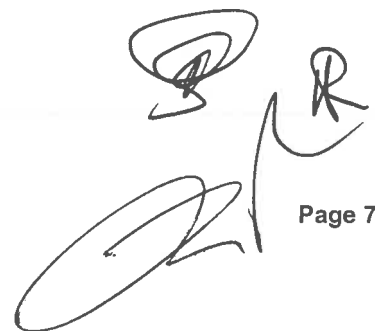


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REFERENCE SCHEDULE

Item 1

Not used

Item 2

Land (Clause 1.1)

The land comprised in Lots 1, 2 and 3 in Deposited Plan 1222625

Item 3

Lessor

(a) Name: Rail Corporation New South Wales (being a corporation constituted by the *Transport Administration Act 1988 (NSW)* as amended from time to time)

(b) ABN: 59 325 778 353

(c) Address: Level 20
477 Pitt Street
Sydney NSW 2000

(d) Facsimile: (02) 8575 0316

(e) Attention: General Manager, Property

Item 4

Lessee

(a) Name: Downer EDI Rail Pty Ltd

(b) ABN: 92 000 002 031

(c) Address: Level 2
Trinity Business Campus
39 Delhi Road
North Ryde NSW 2113

(d) Facsimile: (02) 8775 5755

(e) Attention: General Manager, Commercial

Item 5

Not Used

Item 6

Premises (Clause 1.1)

The Land and the Buildings



Item 7 **Permitted Use (Clauses 1.1, 8.1(a) and 8.1(c))**
Rolling stock manufacturing, including testing and maintenance and general engineering (including fabrication, machining and assembling)

Item 8 **Occupation Date (Clauses 1.1 and 8.2(c))**

8 October 2013

Item 9 **Rent (Clauses 1.1 and 3.1)**

\$ 652,008.72 per annum (excluding GST)

Item 10 **Rent Commencement Date (Clauses 1.1 and 3.1)**

The Commencing Date

Item 11 **Rent Review (Clauses 1.1 and 3.2)**

	(a) Review Dates	(b) Type of Review
At CommencingDate	Rent Commencement Date	Current Market Rent
During Term:	Annually on each anniversary of the Rent Commencement Date	3%
During First Option:	8 October 2018	Current Market Rent
	Annually on each anniversary of the Rent Commencement Date	3%
During Second Option:	8 October 2023	Current Market Rent
	Annually on each anniversary of the Rent Commencement Date	3%
During Third Option	8 October 2028	Current Market Rent
	Annually on each anniversary of the Rent Commencement	3%

	Date	
During Fourth Option	8 October 2033	Current Market Rent
	Annually on each anniversary of the Rent Commencement Date	3%
During Fifth Option	8 October 2038	Current Market Rent
	Annually on each anniversary of the Rent Commencement Date	3%

Item 12

Public liability insurance (Clause 12)

\$100,000,000 (one hundred million dollars) for each occurrence and unlimited in the aggregate

Item 13

Other conditions for public liability insurance (Clause 12)

- (a) All insurance policies name as insured, and operate as if there was a separate policy of insurance covering the Lessor and the Lessee.
- (b) For a new policy: be current and paid up for a 12 month period.
- (c) For an existing policy: be current and paid up as at the date of the Lease.
- (d) Identify the risk situation as 'Address of Premises Leased' and include cover for any licensed areas including the Access Road, storage or other areas that the Lessee has the Lessor's consent to use.

Item 14

Options (Clause 2.5)

First Option

Applicable

- (a) Option Term: 5 years
- (b) Commencing Date: 8 October 2018
- (c) Terminating Date: 7 October 2023

Second Option

Applicable

- (d) Option Term: 5 years
- (e) Commencing Date: 8 October 2023
- (f) Terminating Date: 7 October 2028

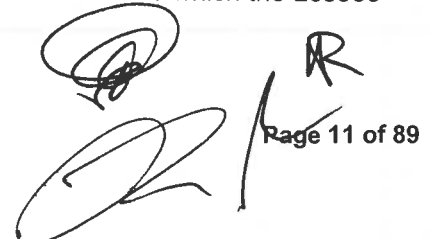
	Third Option	Applicable
	(g)	Option Term: 5 years
	(h)	Commencing Date: 8 October 2028
	(i)	Terminating Date: 7 October 2033
	Fourth Option	Applicable
	(j)	Option Term: 5 years
	(k)	Commencing Date: 8 October 2033
	(l)	Terminating Date: 7 October 2038
	Fifth Option	Applicable
	(m)	Option Term: 5 years
	(n)	Commencing Date: 8 October 2038
	(o)	Terminating Date: 7 October 2043
Item 15	Not used	
Item 16	Not used	
Item 17	Bank Guarantee (Clause 16)	
		An amount equal to 6 months' Rent (plus GST)
Item 18	Environmental security bond (Clause 15.3(a)(vii))	
		\$100,000.00
Item 19	Interest rate (Clause 6.2(a))	
		2% above the base lending rate from time to time of the Commonwealth Bank of Australia (or such other institution as the Lessor may reasonably nominate)
Item 20	Not used	
Item 21	Not used	
Item 22	Not used	

1. DEFINITIONS

1.1 Definitions

In this Lease unless the contrary intention appears:

Access Road means the road including bridge off Main Road, Glendale owned by RailCorp which is located near the northern boundary of the Premises which the Lessee



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utilises to gain access to the Premises as shown on the plan annexed to this Lease at Schedule 1.

Advertising Guidelines means any guidelines or policies in relation to advertising published from time to time by the Lessor in relation to advertising standards in and around railway stations and other property owned by the Lessor, the guidelines being available from the Lessor on written request by the Lessee to the Lessor.

Appurtenance means all mechanical ventilation, stop-cocks, water closets, lavatories, grease traps, water apparatus, wash basins, washrooms, fixtures, fittings and other services (other than air-conditioning and equipment used for the prevention or extinguishment of fires) and the Lessor's Property situated in the Premises from time to time.

Asset Management Plan means the plan prepared by the Lessee and approved by the Lessor from time to time pursuant to clause 8.2A which addresses the way in which the Premises will be cared for, managed and maintained during the term of this Lease to the standard required under this Lease, including (without limitation) external appearance, services, public areas, grounds, landscaping, security, garbage collection and storage, cleaning, lighting in and around the Premises, emergency evacuation and fire and life safety issues.

Authorisation means any approval, consent, licence, concurrence, permission, permit, certificate, registration, exemption, decree, direction, agreement, right, or similar granted or issued by a Government Agency.

Authority means any government, semi or local government, statutory or other authority or body.

Baseline Environmental Report means the Final Report, Stage 2 Investigation Cardiff Railway Workshop Glendale NSW prepared by Woodward-Clyde dated 12 September 1997, a copy of which is contained within the Lease Exhibit.

Buildings means all Improvements and the Lessor's Property, excluding the Lessee's Property and excluding the Excluded Improvements.

Business Day means a day that is not a Saturday, Sunday or public holiday in Sydney.

Commencing Date means the date specified on the front cover of the Lease.

Contaminated or Contamination has the same meaning given to it in the *Contaminated Land Management Act 1997* (NSW) as amended from time to time.

Control of a corporation includes the possession directly or indirectly of the power (whether or not having statutory, legal or equitable force, and whether or not based on statutory, legal or equitable principles) directly or indirectly to control the membership of the board of directors of the corporation or to otherwise directly or indirectly direct or cause the direction of the management and policies of that corporation, whether by means of trusts, arrangements, agreements, understandings, practices, the ownership of any interest in shares or stock of that corporation or otherwise.

Corporations Act means the *Corporations Act 2001* (Cth) as amended from time to time.

Costs or Claims means any:

- (a) duty, liability or obligation to any person;
- (b) cost or expense;
- (c) loss or damage; and

(d) claim, proceeding, demand, notice, order or other requirement.

CPI means the Sydney Consumer Price Index (All Groups) published by the Commonwealth Statistician, or any similar index which replaces it.

Dangerous Goods has the same meaning as in the *Dangerous Goods (Road and Rail Transport) Act 2008* as amended from time to time.

Emergency Event means an actual or likely event or circumstance which arises, may arise or is likely to arise, and which, in the opinion of the Lessor, may interfere with or threaten the use of the Railway Land by the Lessor for Railway Purposes and/or the continued and safe operation of the railway and Rail Infrastructure Facilities.

Environment means all components of the earth, including land, air and water and any ecosystems and all elements of the biosphere.

Environmental Aspect means in respect of any land (including the Premises):

- (a) each interaction of any activity on the Land with the Environment; and
- (b) each of the following:
 - (i) heritage items on the Premises or heritage values or significance of the land or anything on it;
 - (ii) Contamination or Pollution of or from the land or Premises or from activities on the land and Premises; and
 - (iii) the flora and fauna on or in the vicinity of the land including threatened species, populations or ecological communities or their habitats on or in the vicinity of land.

Environmental Assessment Report means a report prepared by a consultant from the RailCorp Panel which contains:

- (a) the results of a detailed site inspection of the condition of the premises and the activities performed within the premises, to determine areas at risk of being contaminated by the Lessee's activities;
- (b) an assessment of the adequacy of existing data and groundwater monitoring wells to provide a suitable network for the Environmental Monitoring Reports, to allow those reports to be capable of detecting contamination which may be caused by the lessee;
- (c) recommendations for additional sampling locations and groundwater monitoring wells (if required) to provide a suitable network for the Environmental Monitoring Reports, with appropriate reference to the Baseline Environmental Report and the outcomes of the detailed site inspection in (a);
- (d) details of additional sampling locations and groundwater monitoring wells installed in accordance with (c);
- (e) the results of sampling and analysis performed at all sampling locations/groundwater monitoring wells during this assessment;
- (f) any associated risks and management actions required to mitigate the risk and/or make the site suitable for its intended use; and
- (g) the scope of work, including sampling, analytical and quality processes to be followed in undertaking the Environmental Monitoring Reports.

Environmental Auditor means a person accredited as a site auditor under Part 4 of the *Contaminated Land Management Act 1997 (NSW)* or a person otherwise agreed by the Lessor and the Lessee.

Environmental Expert means a person with professional qualifications and expertise with respect to Contamination and Remediation, which person must be an Environmental Auditor where the law requires that the role of the person under this Lease may only be fulfilled by an Environmental Auditor.

Environmental Guidelines means:

- (a) Contaminated Sites: Sampling Design Guidelines, NSW EPA (1995);
- (b) Contaminated Sites: Guidelines for Consultants reporting on Contaminated Sites, NSW EPA (1997);
- (c) National Environmental Protection (Assessment of Site Contamination) Measure, NEPC (1999);
- (d) Contaminated Sites: Guidelines for the Assessment and Management of Groundwater Contamination, DEC NSW (2007); and
- (e) Guidelines of the Duty to Report Contamination under the Contaminated Land Management Act 1997, DECCW NSW (2009).

Environmental Law means any legislation which regulates or has as its objective the protection or enhancement of any Environmental Aspect.

Environmental Monitoring Report means a report prepared by a consultant from the RailCorp Panel which contains:

- (a) a statement reporting on the results of a detailed visual inspection of the condition of the Premises in comparison with the conditions identified in the Baseline Environmental Report and the Environmental Assessment Report. In particular, the report must assess the ground surfaces for signs of leaks/spills of fuels, oils and/or chemicals;
- (b) a groundwater assessment, involving the sampling and analysis of groundwater taken from the network of groundwater monitoring wells established as part of the Baseline Environmental Report and the Environmental Assessment Report. Groundwater conditions are to be assessed in comparison with the conditions identified by the Baseline Environmental Report and the Environmental Assessment Report; and

where changes in conditions are identified, the report must provide an assessment of any associated risks of harm, likely sources and management actions.

Environmental Notice means any direction, order, demand, licence or other requirement from a Government Agency to take any action or refrain from taking any action in respect of the Premises or its use in connection with any Environmental Law (whether issued to the Lessee or to the Lessor).

Environmental Reports has the meaning given in clause 10.1A(ii).

EPA Regulations has the meaning given in clause 8.4(a).

Excluded Improvements means the improvements identified in Schedule 2.

Expert has the meaning given in clause 24.5.

Expert Determination Notice has the meaning given in clause 24.4.

Final Contamination Assessment Report means an environmental contamination report:

- (a) procured for the purpose of determining the nature and extent of Contamination or Pollution existing on, in or under the Premises as at the date of the report and for determining the nature and extent of contamination caused by the Lessee versus the nature and extent of contamination caused by the Lessor;
- (b) prepared in accordance with the Environmental Guidelines;
- (c) prepared by a consultant from the RailCorp Panel (Ref No. P10031);
- (d) which assesses the Contamination or Pollution status of the Premises in comparison to the Contamination or Pollution status of the Premises as identified in the Baseline Environmental Report, the Environmental Assessment Report and the Environmental Monitoring Reports;
- (e) which contains the following information:
 - (i) the condition of the Premises, including thorough documentation of the condition of all ground surfaces;
 - (ii) the nature and extent of contamination present at the Premises, including identification and description of past and present sources of contamination;
 - (iii) an assessment of the suitability of the Premises for industrial land use, and, if the Premises are so unsuitable, provides recommendations for any management actions or Remediation necessary to make the Premises suitable for industrial land use;
- (f) which includes, as part of the report, a 'Sampling, Analysis and Quality Plan' prepared in accordance with 'Contaminated Sites: Guidelines for Consultants Reporting on Contaminated Sites NSW EPA (1997)', and provided to the Lessor for endorsement prior to the commencement of field investigations; and
- (g) which complies with any other of the Lessor's reasonable requirements or directions.

Fifth Option means the option term, if any, specified in Item 14(m).

First Option means the option term, if any, specified in Item 14(a).

Fourth Option means the option term, if any, specified in Item 14(j).

Future Road has the meaning given in clause 7.5(a).

Government Agency means:

- (a) any court or tribunal of competent jurisdiction;
- (b) any agency, authority, board, department, government, instrumentality, ministry, official or public or statutory person of the Commonwealth or of any State or Territory of Australia; or

any local or municipal government or government bodies.

GST means the same as in the GST Law.

GST Law means the same as 'GST law' means in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Hazardous Material means material which, because it is toxic, corrosive, flammable, explosive or infectious or because it possesses some other dangerous characteristic, is potentially dangerous to the Environment when stored or handled or any part of the Environment is exposed to it.

Improvements means the improvements from time to time existing on the Land and any other improvements to the Land which are constructed, erected or located on the Land during the Term.

Insolvency Event means, for a person, being in liquidation or provisional liquidation or under administration, having a controller (as defined in the Corporations Act) or analogous person appointed to it or any of its property, being taken under section 459F(1) of the Corporations Act to have failed to comply with a statutory demand, being unable to pay its debts or otherwise insolvent, dying, ceasing to be of full legal capacity or otherwise becoming incapable of managing its own affairs for any reason, taking any step that could result in the person becoming an insolvent under administration (as defined in section 9 of the Corporations Act), entering into a compromise or arrangement with, or assignment for the benefit of any of its members or creditors, or any analogous event.

Interface Agreement means the agreement of the same name between the Lessor and the Lessee and executed and dated by Lessor on 26 June 2012.

Item means an item in the Reference Schedule.

Land means the land described in Item 2 and includes any building erected on that land.

Lease means this lease and any equitable lease or common law tenancy evidenced by this lease.

Lease Exhibit means the Lease Exhibit to this Lease annexing the Baseline Environmental Report.

Lessee means the party named in Item 4 and if more than one both separately and together.

Lessee Contamination means any contamination or pollution to the Land that is not Lessor Contamination and any Contamination or Pollution of the Buildings irrespective of when such Contamination or Pollution occurred or who caused it.

Lessee's Agents means every agent, employee, licensee, contractor, invitee and business patron of the Lessee.

Lessee's Property means all the Lessee's fixtures, fittings, equipment, furnishings and other property of the Lessee on the Premises.

Lessor means the party named in Item 3.

Lessor Contamination means any contamination which is:

- (a) Contamination or Pollution of the Land which was present as at 8 October 1998; and
- (b) Contamination or Pollution of the Land occurring after 8 October 1998 that was caused by the Lessor; and
- (c) in the context of this definition, "Land" does not include Buildings.

Lessor's Agents means every agent, employee, licensee, contractor, invitee and business patron of the Lessor.

Lessor's Assessment means the Lessor's written determination of the current market rent for the Premises from the relevant Review Date, having regard to the considerations required under this Lease and anything else the Lessor in its absolute discretion considers relevant.

Lessor's Property means the Lessor's plant, equipment, fixtures, fittings, furnishings and other property of the Lessor on or in the Land, including the railway tracks located on Lots 1 and 2.

Lots 1 and 2 means that part of the Premises known as lots 1 and 2 in deposited plan 1222625.

Lot 3 means that part of the Premises known as lot 3 in deposited plan 1222625.

LPI means Land and Property Information - NSW.

Main Northern Line means the railway lines owned by the Lessor from time to time.

Occupation Date means the date specified in Item 8.

Option Term means each period, if any, specified in Item 14 (a)(d)(g)(j) and (m).

Outgoings means all amounts paid or payable for all rates, taxes (excluding income tax and capital gains tax), charges, levies, assessments and impositions and which for the purposes of this definition includes, without limitation, whether parliamentary, municipal or otherwise and whether assessed, charged or imposed by or under any law or Authority and whether on a capital or revenue value or any other basis and even though a novel character, which may from time to time be assessed, charged or imposed (whether or not so assessed, charged or imposed at the Commencing Date or whether assessed during the Term or not) upon or in respect of the Lessor, the Lessee, the Land, the Premises or the business conducted in the Premises whether assessed against the Lessor or directly against the Lessee by any Authority, and includes supplying, renting, operating, maintaining, servicing, repairing and replacing Services and upgrading Services to comply with any laws or requirements of authorities, charges for the supply (including charges for installation, connection, consumption and upgrading) of Services to or on the Premises.

Overhead Wiring means the overhead electrical traction wire that provide 1500 volts DC power supply to that section of the electrified rail network located within the premises which is detailed in Schedule 1 to this Lease on the plan.

Parent of a person means the person directly or indirectly exercising the decision making power of the first mentioned person including:

- (a) if the first mentioned person is a corporation, a person who:
 - (i) controls the composition of the board of directors of the first mentioned person;
 - (ii) is in a position to cast or control the casting of more than one half of the maximum number of votes that might be cast at a general meeting of the first mentioned person; or
 - (iii) holds or has a Relevant Interest in more than one half of the issued share capital of the first mentioned person (excluding any part of that issued share capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital);

- (b) if the first mentioned person is a trustee of a unit trust and, in the case of the Lessee, its interest in this Lease is property subject to that trust, a person who:
 - (i) is in a position to cast, or control the casting of, more than one half of the maximum number of votes that might be cast at a meeting of holders of units at that meeting; or
 - (ii) holds or has a Relevant Interest in more than one half of the issued units of that trust (excluding any of the issued units that carries no right to participate beyond a specified amount in a distribution of either profits or capital); and
- (c) if the first mentioned person is a trustee of a trust and, in the case of the Lessee, its interest in this Lease is property subject to that trust, a person who:
 - (i) is a beneficiary of that trust entitled directly or indirectly to more than one half of the corpus or profits of the trust; or
 - (ii) is entitled to or whose consent is required to:
 - (A) appoint or change the trustee;
 - (B) give directions to the trustee;
 - (C) vary the constituent document of the trust;
 - (D) appoint or remove beneficiaries; or
 - (E) decide to whom any distribution is made or the amount of any distribution.

A person is also a Parent of another person if a part of this definition is satisfied in respect of each trust and company, in any chain of trusts or companies connecting that person and the other person.

Permitted Use means the use specified in Item 7.

Personal Information means personal information, as defined in the *Privacy Act 1988* (Cth), about the Lessee.

Planned Track Possession means a Track Possession that is identified in Sydney Trains 2 Year Major Closedowns and Weekend Possession Program (as varied, or updated by Sydney Trains, from time to time).

Pole Route means the overhead high tension transmission lines ('HTTL') which are detailed in Schedule 1 to this Lease and are described as the HTTL on the plan.

Pollution has the meaning given to it in the *Protection of the Environment Operations Act 1997* (NSW) as amended or supplemented from time to time and **Polluted** has the same meaning as Pollution.

Premises has the meaning set out in Item 6 and includes the whole of the Buildings, any Lessor's Property located on the Premises and any pipes, wires, ducting and other connections which are located on the Premises and used for the supply of Services to the Premises, other than the substation and Pole Route servicing the mainline overheads referred to in clause 8.18(c) of this Lease.

Principal Contractor has the same meaning as in the WHS Regulation.

RailCorp Panel means the panel (currently P10031) of organisations approved by the Lessor for carrying out services in relation to Contamination reporting or management as notified by the Lessor to the Lessee and as updated or amended by the Lessor by notice in writing to the Lessee from time to time.

Rail Infrastructure Facilities has the same meaning as in the *Transport Administration Act 1988 (NSW)* as amended from time to time and includes 'rail infrastructure' as that term is defined in the *Rail Safety National Law as applied (with modifications) as a law of New South Wales by the Rail Safety (Adoption of National Law) Act 2012 No 82* as amended from time to time.

Railway Legislation means the *Transport Administration Act 1988 (NSW)* (as amended from time to time), the *Rail Safety National Law as applied (with modifications) as a law of New South Wales by the Rail Safety (Adoption of National Law) Act 2012 No.82* (as amended from time to time) and any other legislation or regulation governing the Lessor's operations, including but not limited to the operation of railway passenger or freight services.

Railway Land means all or any part of any land (including the Premises), together with all improvements from time to time on that land, owned or used by the Lessor or the Lessor's Agents for Railway Purposes or for any other purpose and includes but is not limited to any:

- (a) Rail Infrastructure Facilities;
- (b) underground and overhead passages which join improvements on the relevant land to any other land; and
- (c) plant, machinery, fittings, equipment, conveniences and amenities owned, leased or controlled by the Lessor, including but not limited to all railway track, railway stations, tunnels, civil works, associated track structures, over track structures, signalling systems, train control systems, communication systems, equipment, nodes, conduits, ducting, cable, cable support structures and other plant, equipment, buildings or facilities owned, leased or used by the Lessor.

Railway Purposes means any action or activity undertaken or required to be undertaken by the Lessor or the Lessor's Agent, in its absolute discretion, under the Railway Legislation for the use, control, safe operation, management, maintenance or repair of any railway infrastructure, facility or service, the Lessor's Property and Rail Infrastructure Facilities.

Reference Schedule means the reference schedule at the beginning of this Lease.

Related Body Corporate has the meaning given in section 50 of the *Corporations Act 2001 (Cth)*.

Relevant Interest means the power:

- (a) to exercise, or to control the exercise of, the right to vote attached to a share or unit; or
- (b) to dispose of, or to exercise control over the disposal of, a share or unit.

Remediation means:

- (a) preparing a long-term management plan (if any) for the Premises;
- (b) removing, dispersing, destroying, reducing, mitigating or containing the Contamination or Pollution of the Premises; and

(c) eliminating or reducing any hazard arising from the Contamination of the Premises.

Remediation Report has the meaning given in clause 11.9(a)(ii).

Removable Items has the meaning given in clause 15.10(b)(i).

Rent means the annual rent specified in Item 9 (which applies on the Rent Commencement Date) as adjusted in accordance with clause 3 of this Lease.

Rent Commencement Date means the date specified in Item 10.

Rent Day means the Rent Commencement Date and the first day of every month.

Review Date means each date specified in Item 11(a).

Second Option means the option term, if any, specified in Item 14(d).

Special Track Possession means any Track Possession that is not a Planned Track Possession.

Services means any services provided to the Premises by a Government Agency or service provider or the Lessor (for example air conditioning, communication, drainage, power, escalators, fire and emergency services, garbage, gas, heating, lifts, information booths, sewerage, telephone, televisions, trade waste and water) and the pipes, wires, ducting and other means of providing those services to the Premises.

Sydney Trains means Sydney Trains ABN 38 284 779 682.

Term means the term of this Lease as specified on the front cover of this Lease, which begins at midnight at the beginning of the Commencing Date and ends at midnight at the end of the Terminating Date.

Terminating Date means the date specified on the front cover of this Lease.

Third Option Term means the option term specified in Item 14(g).

Totally Destroyed means destroyed or damaged to such an extent that 80% or more of the net lettable area of the Premises is unable to be used as contemplated by this Lease or is otherwise in the reasonable opinion of the Lessee so destroyed or damaged that it would be impractical or not commercially viable to make good such damage and therefore the whole of the Premises will require reinstatement **Total Destruction** has a corresponding meaning.

Track Possession means the temporary closure, or alteration of the operation of the Railway, upon a defined portion of the Railway for a specified period of time and includes any Planned Track Possession and any Special Track Possession.

Validation Report means a Report prepared by a consultant from the RailCorp Panel engaged for the purposes of clause 10.7 which certifies that the Remediation required under a Environmental Notice has been completed.

Valuer means a full member (for at least 10 years) of the NSW Division of the Australian Property Institute Inc. who:

- (a) is licensed to practice as a valuer of the same type of property as the Premises;
- (b) has at least 10 years' experience in valuing that type of property;
- (c) is active in the market for valuation of that type of property;

- (d) has not acted in providing valuation advice to either party for a period of 24 months before the valuer's appointment; and
- (e) does not have any conflicts of interest.

Variation Notice has the meaning given in clause 3.1(a).

Waste means a substance that is discarded, rejected, unwanted, surplus or abandoned whether or not intentionally, has a value or use or is intended for sale or recycling, reprocessing, recovery or purification but does not include Hazardous Materials or Dangerous Goods.

Works has the meaning given in clause 8.8(a).

WHS means work health and safety.

WHS Law means the *Work Health and Safety Act 2011* (NSW) and the WHS Regulation, as amended or replaced from time to time.

WHS Regulation means the *Work Health and Safety Regulation 2011* (NSW) as amended from time to time.

Work means any work in relation to the Premises carried out by or on behalf of the Lessee (including by or on behalf of any sub-tenant or licensee), including 'construction work' and a 'construction project' as those terms are defined in the WHS Law.

Works Notice means a notice from either party that work in respect of the ongoing repair, maintenance (including any replacement works that form part of the maintenance works) of the Access Road as a trafficable vehicular roadway is required in the opinion of the Lessor or Lessee, which notice must describe the work.

WHS Management Plan means a plan which must include:

- (a) a statement of responsibilities listing the names, positions and responsibilities of all persons who have specific responsibilities at the Premises in relation to WHS;
- (b) details of the arrangements in place to ensure compliance with any relevant requirements for WHS induction training;
- (c) details of the arrangements in place to manage WHS incidents, including the identity and contact details of the person or persons who will be available to prevent, prepare for, respond to occupational health and safety incidents and issues; and
- (d) any site safety rules and details of the arrangements in place to ensure that all persons at the Premises (whether employees or visitors) are informed of the rules.

2. GRANT OF LEASE

2.1 Grant

In consideration for the Lessee's agreement to pay the Rent and to perform its other obligations under this Lease, the Lessor leases the Premises to the Lessee for the Term.

2.2 Nature of tenancy

The Lessor and the Lessee acknowledge and agree that this Lease is for a term of 5 years and the Lessee:

- (a) without limiting clause 3, must pay all Costs in relation to the Premises and the Lessor has no responsibility, liability or obligation in that regard except as expressly provided to the contrary in this Lease; and
- (b) takes and is subject to the same responsibilities, risks and liabilities in regard to the Premises including in respect of:
 - (i) persons, property, Costs and otherwise; and
 - (ii) capital or structural works repairs, replacement and maintenance,
which the Lessee would take and be subject to if the Lessee were the owner of the Premises (subject to the provisions of clauses 10 and 11),

and the provisions of this Lease are to be read, interpreted and applied in the context of and incorporating those principles. The express provisions of this Lease do not limit the scope of this clause 2.2.

2.3 Title

The Lessee must at all times observe and perform the restrictions, stipulations, easements and covenants referred to in the folio of the register for the Land as if the Lessee were the registered proprietor of the Land.

2.4 Holding over

- (a) If the Lessee continues to occupy the Premises with the Lessor's consent after the Terminating Date, the Lessee is a monthly tenant and occupies the Premises on the same terms as this Lease, but subject to clause 2.4(b) and including any changes necessary to make the terms appropriate for a monthly tenancy.
- (b) Without limiting clause 2.4(d), the Rent payable during the monthly tenancy under clause 2.4(a) will be payable monthly in advance and will be an amount equivalent to the Rent payable by the Lessee immediately prior to the commencement of the monthly tenancy, increased by a fixed percentage increase of 3% in accordance with clause 3.3, with the first of such increases occurring on the first day of the monthly tenancy, and each subsequent increase occurring on each anniversary of the first day of the monthly tenancy.
- (c) The Lessor and the Lessee may each terminate the monthly tenancy by giving at least one month's notice to the other, ending on any day.
- (d) Notwithstanding clauses 2.4(a) and 2.4(b), the Lessor is entitled at any time during the monthly tenancy and upon giving one month's prior written notice to increase the monthly Rent to the amount nominated by the Lessor at its discretion.

2.5 Option to renew

If an Option Term is specified in Item 14, the Lessor must grant to the Lessee, at the Lessee's cost, a new lease of the Premises for that Option Term if the Lessee:

- (a) notifies the Lessor in writing (at least 6 months, but not more than 12 months, before the Terminating Date) that the Lessee wants a lease of the Premises for the Option Term; and

- (b) at the date of the giving of the notice and at the Terminating Date, is not in default in complying with any notice given by the Lessor to the Lessee requiring the Lessee to remedy any breach committed by the Lessee of any of the covenants, conditions or agreements contained in this Lease, within the time specified in the Lessor's notice and where the time so specified is in accordance with the requirements of this Lease.

2.6 Terms of new lease

The new lease for the Option Term contains the same terms and conditions as this Lease except that:

- (a) **(Rent)** the Rent is to be reviewed to current market rental value as provided for in this Lease, with the exception of clause 3.5(c) which is deleted from any further Option Term;
- (b) **(Term)** the Term, Commencing Date and Terminating Date will be replaced by the applicable further Option Term set out in Item 14 or, if there is more than one further Option Term in Item 14;
 - (i) Item 14 will be amended to reduce the number of further Option Terms by removing the applicable Option Term that has been exercised under clause 2.5 from Item 14; and
 - (ii) if this is the only further Option Term referred to in Item 14, then clause 2.5 and 2.6 will be deleted and Item 14 will be noted as "Nil";
- (c) **(reviews)** the Review Dates and types of reviews specified in Item 11 for the Term are replaced with those for the applicable Option Term also stated in Item 11
- (d) **(public liability insurance)** the amount specified in Item 12 is replaced with the amount applicable on the last day of the Term;
- (e) **(cover page)** any necessary changes are made to the term details on the cover page;
- (f) **(variations)** the new lease includes any variations made to this Lease during the Term;

3. RENT AND RENT REVIEW

3.1 Payment of Rent

- (a) The Lessee must pay the Rent without demand or any deduction or right of set-off on and from the Rent Commencement Date to the Lessor by equal monthly instalments in advance on or by each Rent Day (as directed by the Lessor), unless otherwise agreed by the parties in writing (**Variation Notice**). For the Variation Notice to be effective, it must specifically refer to this clause 3.1(a) of this Lease.
- (b) Unless otherwise directed by the Lessor from time to time the Lessee will as and when required by the Lessor pay the Rent by way of electronic funds transfer.
- (c) Within 14 days of the Lessor notifying the Lessee that it requires the Lease payments to be made by electronic funds transfer the Lessee will:
 - (i) inform the Lessor of the details of the Lessee's account or accounts from which the Lease payments are to be made; and

- (ii) provide such written authorisations as are required to authorise the Lessor to debit or charge the Lessee's account through the direct debit system or otherwise by electronic funds transfer.
- (d) The Lessee must not close the Lessee's account nor revoke the authorisation required to be given by clause 3.1(c) during the Term or any renewed term and any period of holding over without the prior written consent of the Lessor, provided that the Lessee may change the bank or account from which the Lease payments are to be made provided notice of this change is given to the Lessor and the appropriate direction is given to the appropriate banker with regards to the future Lease payments.

3.2 Rent reviews

The rent review method applicable on any Review Date is the method specified in Item 11(b) next to that Review Date.

3.3 Percentage Increase

If Item 11(b) specifies a percentage for a particular review date, then the Rent is increased by that percentage on the relevant review date.

3.4 CPI rent review

If the letters 'CPI' appear in Item 11(b) next to a Review Date, the Rent payable from that Review Date (**relevant Review Date**) until the next Review Date is determined as follows:

$$\text{New Rent} = \frac{\text{Old Rent} \times \text{CPI}}{\text{LCPI}}$$

where:

- New Rent = the Rent applicable from the relevant Review Date until the next Review Date;
- Old Rent = the Rent payable immediately before the relevant Review Date;
- CPI = the CPI for the quarter ending immediately before the relevant Review Date;
- LCPI = the CPI last published before:
 - (a) in the case of the first Review Date, the Commencing Date; or
 - (b) in every other case, the Review Date immediately preceding the relevant Review Date.

3.5 Market rent review

- (a) Subject to clause 3.5(c), if the words 'current market rent' or their equivalent appear in Item 11(b) next to a Review Date, the Lessor may give the Lessee a Lessor's Assessment no more than 3 months before and no later than 3 months after the Review Date.
- (b) The amount stated in the Lessor's Assessment is the Rent from the Review Date unless the Lessee gives the Lessor notice that it does not agree with the amount within 35 days of the Lessor giving a Lessor's Assessment (or any longer period agreed between the parties in writing).

- (c) Despite any other clause of this Lease, the parties agree that as at the Commencing Date the Rent is to be reviewed to current market value by a Valuer jointly appointed under clause 3.6, without the requirement for a Lessor's Assessment and notice in 3.5(a) and 3.5(b). This clause 3.5(c) will only apply at the Commencement Date of this Lease and will not apply to any further Rent review during the term or any subsequent Option Term.

3.6 Appointment of Valuer

- (a) If:
 - (i) the Lessee gives a written notice under clause 3.5(b); and
 - (ii) the Lessor and the Lessee do not agree in writing on the Rent from the relevant Review Date within 21 days of the Lessee's notice under clause 3.5(b),then the Lessee and the Lessor must, within 35 days of the Lessee's notice, jointly appoint a Valuer to do the following within 28 days of the Valuer's appointment:
 - (i) determine the current market rent for the Premises (exclusive of GST), which is the Rent from the relevant Review Date;
 - (ii) determine the proportions in which the Lessee and the Lessor must pay the Valuer's costs; and
 - (iii) give the Lessor and the Lessee a written copy of its determination and reasons for its determination.
- (b) If the Lessor and Lessee do not agree on and appoint a Valuer under clause 3.6(a), the Lessor must request the President of the NSW division of the Australian Property Institute Inc. to appoint a Valuer on behalf of the Lessor and the Lessee to do those things, and must notify the Lessee of the Valuer's appointment.
- (c) Time is of the essence in this clause 3.6.
- (d) If any Valuer appointed under this clause declines its appointment or does not make its determination in time, the Lessor and the Lessee may (and must, if one party gives a notice requesting the other to do so before the Valuer makes its determination) appoint another Valuer in its place. If the Lessor and the Lessee do not agree on the appointment of another Valuer within 14 days of a notice being given, clause 3.6(b) applies.

3.7 Determination by Valuer

- (a) When determining the current market rent of the Premises as at the relevant Review Date, the Valuer must observe all relevant valuation principles and:
 - (i) take the following into account:
 - (A) the terms of this Lease;
 - (B) the Term, including the expired part of the Term and any Option Term;
 - (C) the value of the Lessor's Property in or on the Premises including the value of any improvements erected or fixtures paid for by the Lessor; and
 - (D) the rent currently paid for comparable premises;

- (ii) make a determination on the basis that the Premises are offered with vacant possession; and
- (iii) not take account of:
 - (A) the value of the Lessee's Property or the Lessee's goodwill or of any improvements erected or fixtures paid for by the Lessee, other than improvements the Lessee is obliged to pay for under this Lease;
 - (B) any condition of the Premises resulting from the Lessee's default under this Lease; or
 - (C) any rent incentive or reduction, rent free period or other incentive or benefit applicable to the Lessee's occupation of the Premises under this Lease or to any other lease considered by the Valuer when making the determination.
- (b) The Valuer acts as an expert and not as an arbitrator and the Valuer's decision is final and binding. The Lessor and the Lessee may make written submissions to the Valuer, but the Valuer is not obliged to take account of the submissions.

3.8 Adjustment

- (a) The Lessee must continue to pay the Rent payable immediately before the relevant Review Date until the current market rent is determined under this clause.
- (b) The current market rent determined under this clause 3 is the Rent payable from the relevant Review Date and the Lessor and the Lessee must make any adjustment necessary immediately after the determination of the current market rent.

3.9 Agreement to co-operate

The Lessor and the Lessee must act reasonably and co-operate in conducting any market rent review.

4. LESSEE'S CHARGES

- (a) Subject to clause 4(e) the Lessee must pay directly to the relevant Government Agency or service provider all amounts charged to the Premises by any Government Agency or service provider and for any Services consumed in the Premises on or before the due date for those payments (or at such times as may otherwise be agreed with the relevant Government Agency).
- (b) The Lessee must, within 14 days of a request by the Lessor, provide the Lessor with evidence of payment of the amounts referred to in this clause.
- (c) Should the Lessee make default in payment of the charges contained in clause 4(a), the Lessor may pay the same and immediately recover the amount so paid as if the same were Rent in arrears payable by the Lessee (such amount being payable to the Lessor within 14 days of demand).
- (d) In the event of any Authority or private contractor providing any cleaning or refuse service for the Premises (whether at the request of the Lessor or of the Lessee or by direction of any officer of such Authority) the Lessee must pay the cost of the assessing Authority on or before the due date for payment if assessed directly against the Lessee but otherwise to the Lessor within 14 days of being billed for the money by the Lessor.

- (e) Where any Services utilised by both the Lessee and the Lessor are not separately metered, then:
 - (i) the Lessor and the Lessee may agree to install separate meters to measure their respective consumption of those Services, the cost and payment of which is to be agreed between the parties; or
 - (ii) if separate meters are not installed, then:
 - (A) subject to sub-clause B, the party to whom the invoice in respect of each Service is rendered (**Invoiced Party**) must pay the invoice rendered to it and the other party (**Non-invoiced Party**) must reimburse the Invoiced Party a proportion of the amount invoiced based on a reasonable estimate of consumption for that Service, together with any other agreed factor; or
 - (B) if the Invoiced Party is not the dominant user of the relevant Service, that party may forward the invoice to the Non-Invoiced Party for payment and must reimburse that Non-Invoiced Party a proportion of the Service Charge based on a reasonable estimate of consumption for that Service.

5. OUTGOINGS

5.1 Payment of Lessee's Contribution

The Lessee must:

- (a) pay all Outgoings as and when they become due for payment; and
- (b) if required by the Lessor, produce to the Lessor the receipts for those payments within 28 days after the respective due dates for payment.

If the Lessee does not pay the Outgoings when they become due the Lessor may, if it thinks fit, pay the same and any sum or sums so paid may be recovered by the Lessor as if the sum or sums were Rent in arrears.

5.2 Special Services

The Lessee must pay to the Lessor upon demand by the Lessor the total amount of any additional or unusual costs, charges and expenses incurred by the Lessor at the request of the Lessee in having any alterations, repairs or maintenance to the Premises or to any fire equipment in the Premises effected outside of the normal working hours of the tradespeople concerned or in providing any special additional or unusual services for the Lessee.

5.3 Access Road

- (a) The Lessor and Lessee agree to share the costs of all work in respect of the repair and maintenance (including any replacement works that form part of the maintenance works) of the Access Road in the following proportions:
 - (i) 60% Lessee; and
 - (ii) 40% Lessor.
- (b) In the event that work in respect of the ongoing repair and maintenance of the Access Road as a trafficable vehicular roadway is required in the opinion of either party, then that party must serve a Works Notice on the other party giving the other

party 30 days' notice of the proposed Works. The Lessor and the Lessee agree to cooperate with each other in relation to the scope, schedule and cost of the works.

- (c) The Lessee acknowledges and agrees that the Lessor may carry out work in respect of the ongoing repair and maintenance of the Access Road as a trafficable vehicular roadway at any time without notice if that work is required in the opinion of the Lessor in the interest of public safety or as required by an Authority (other than the Lessor) and the costs of such works will be borne by the Lessee and the Lessor in their respective proportions.
- (d) If the use of the Access Road by the Lessee or the Lessor varies from time to time in a significant and sustained way, then the Lessor and the Lessee shall discuss in good faith:
 - (i) where the use of the Access Road has increased – then an increase in the contribution payable by the party who has the increased use;
 - (ii) where the use of the Access Road has been reduced – then a reduction in the contribution payable by that party who has the reduced use;
 - (iii) where the use of the Access Road has ceased – a cessation of the contribution payable by the party who has ceased to use the Access Road; and
 - (iv) the rights under this clause 5.3(d) may be exercised only once (subject to the Lessor and Lessee agreeing to the contrary) in each two year period, with the first period commencing on the Commencing Date.

6. PAYMENTS AND INTEREST

6.1 Liability for expenses

The Lessee must pay to the Lessor on demand the amount of all reasonable costs and reasonable expenses incurred in connection with:

- (a) the stamping (if it becomes applicable) and registration of this Lease and any further lease and all reasonable search fees;
- (b) any proposed or actual assignment, sublease, licence, mortgage, charge or other encumbrance permitted by the Lessor under and in accordance with this Lease;
- (c) any default by the Lessee or the Lessee's Agents under this Lease and the enforcement or protection, or attempted enforcement or protection of any right under or in relation to this Lease;
- (d) the termination of this Lease by the Lessor where the Lessee is in default;
- (e) any transactions or dealings that this Lease contemplates;
- (f) any amendment to, or surrender of, this Lease by the Lessee;
- (g) any waiver of or under this Lease;
- (h) the Lessor's solicitors' reasonable costs on any assignment, mortgage, sublease or any other dealing by the Lessee with its interest in the Lease or the Premises and of any surrender or termination of this Lease by the Lessee otherwise than by effluxion of time;

- (i) any request for the consent or approval of the Lessor, the Lessor's mortgagee or any head lessor; and
- (j) the cost of preparing or amending any plan needed for this Lease and all other Costs arising from any necessary survey works,

including legal expenses and expenses incurred in engaging consultants.

6.2 Interest on overdue money

- (a) The Lessee must pay interest on each amount that is not paid when due, from (and including) the day on which it falls due to (but excluding) the day on which it is paid in full, at the rate calculated on a daily basis as set out in Item 19. This interest must be paid on demand.

All interest payable under clause 6.2(a) accrues daily from (and including) the due date to (but excluding) the date of actual payment and is calculated on actual days elapsed, and any such interest is to be capitalised at the end of each month so that interest calculated under this clause 6.2 shall be payable on all such capitalised interest.

- (b) Nothing in this clause affects the Lessee's obligation to pay each amount under this Lease when it is due.

6.3 Litigation

If the Lessor is made a party to any litigation commenced by or against the Lessee (other than litigation between the Lessor and the Lessee) regardless of whether the litigation arises directly or indirectly out of the Lessee's occupancy of the Premises, the Lessee must pay to the Lessor on demand by the Lessor all legal fees and disbursements (as between solicitor and client) incurred by the Lessor in connection with that litigation except to the extent that the Lessor caused or contributed to the commencement of the litigation.

7. LESSOR'S RIGHTS AND OBLIGATIONS

7.1 Quiet enjoyment

Subject to the Lessor's rights under this Lease, and while the Lessee complies with all of its obligations under this Lease, the Lessee may occupy the Premises without disturbance by the Lessor.

7.2 Services

The Lessor will do all that it is able to keep the Services supplied directly by the Lessor functioning.

If any of the Services fail to function properly for any reason, the Lessee:

- (a) must not terminate this Lease;
- (b) must not make any claim for compensation or damages against the Lessor; and
- (c) does not have any right of abatement of Rent or of any other amount payable under this Lease due to the failure.

The Lessor is not liable for any Loss or injury suffered or incurred by the Lessee or any other person due to the failure of any Services (for any reason).

7.3 Lessor's works

The Lessor may:

- (a) carry out any work to the Railway Land including, but not limited to, alterations, additions, refurbishment and redevelopment; and
- (b) only exercise its rights under clause 7.3(a) in relation to the Railway Land if it can do so without causing more than minor disruption to the Lessee. The Lessor must take reasonable steps to minimise any disruption to the Lessee under clause 7.3(a).

7.4 Lessor's right to enter Premises

- (a) Subject to clause 7.4(b), the Lessor and every agent, employee, licensee and contractor of the Lessor may enter the Premises together with all necessary workmen and equipment at all reasonable times, if it gives the Lessee reasonable notice, to:
 - (i) determine the condition of the Premises or whether the Lessee is complying with this Lease;
 - (ii) exercise its rights under any provision of this Lease;
 - (iii) carry out any alterations or repairs which the Lessor may wish to carry out by reason of safety and preservation of the Premises or other Railway Land;
 - (iv) erect, lay or install in or under or over the Premises any poles, masts, posts, drains, conduits, pipes, mains, cables, electric or other wires which may be required for any existing or future Services to the Premises;
 - (v) carry out any Work to the Railway Land any services or any adjacent property, including but not limited to for the purpose of installing any new services for Railway Purposes or for any other reason;
 - (vi) enable it to comply with any law or any notice from any Government Agency affecting the Railway Land;
 - (vii) show the Premises to prospective purchasers or mortgagees at any time or to prospective tenants during the last 12 months of the Term;
 - (viii) ensure that the Premises are locked and secure;
 - (ix) display a usual 'for sale' notice or, during the last three months of the Term, a 'for lease' notice (unless an option to renew this Lease has been validly exercised by the Lessee);
 - (x) do anything for Railway Purposes or to avoid or rectify an Emergency Event (the Emergency Event to be determined by the Lessor in its absolute discretion).
- (b) When exercising its rights under clause 7.4(a), the Lessor:
 - (i) must take reasonable steps to minimise any disruption to the Lessee (however in the case of an Emergency Event, the Lessor is only required to comply with this clause 7.4(b)(i) if, in the Lessor's opinion, it is reasonably practicable to do so, having regard to the nature and extent of the Emergency Event);

- (ii) is not required to give reasonable notice or enter at a reasonable time in the case of an emergency; and
- (iii) must reasonably take into account reasonable directions of the Lessee as to the manner and extent of the Lessor's exercise of such rights.

7.5 Future Road

- (a) The Lessee acknowledges and agrees that:
 - (i) there may in the future be constructed a road and a bridge on or over the Premises (including pylons to be situated on the Premises) by Lake Macquarie Council (**Future Road**).
 - (ii) the Future Road is a project that has been proposed by and is being progressed by Lake Macquarie Council.
 - (iii) Lake Macquarie Council may require the Future Road to be the Lessee's access point to the Premises rather than the Access Road, and the Lessee must comply with Lake Macquarie Council's requirements and directions in relation to the Future Road and the Access Road. In the event that the Future Road is to be the Lessee's access point to the Premises, then the Lessor and the Lessee agree to share the reasonable costs of any driveway works necessary to connect the Premises to the Future Road. Such works are to be agreed between the parties, acting reasonably.
 - (iv) the Lessor accepts no responsibility and is not liable in any way in relation to or in connection with:
 - (A) the construction of the Future Road;
 - (B) the closure of the Access Road; or
 - (C) if the location of the Future Road materially and detrimentally affects the Lessee's use of the Premises or the Access Road.
- (b) The Lessor and Lessee acknowledge and agree that the exact location of the Future Road will ultimately be a matter for Lake Macquarie Council to determine.
- (c) The Lessee must:
 - (i) permit the Lessor (or any person nominated by the Lessor including Lake Macquarie Council and its employees, contractors, agents and authorised personnel) access to the Premises for the purposes of constructing the Future Road (including pylons to be situated on the Premises); and
 - (ii) use its best endeavours (including, if necessary, by permitting the Lessor, to move the position of railway tracks on the Premises) to accommodate the pylons referred to in clause 7.5(c)(i).
- (d) The Lessor must, to the extent that such work is within the control of the Lessor, use reasonable endeavours to ensure that any work referred to in clause 7.5 causes the least disruption to the Lessee's use of the Premises and to the conduct by the Lessee of the business of rolling stock manufacturing and maintenance on the Premises.

- (e) If the Future Road is constructed on or over the Premises in accordance with clause 7.5:
- (i) the Lessee shall not be entitled to any abatement of Rent or other relief by reason of:
 - (A) the construction of the Future Road; or
 - (B) the partial surrender of the Lease referred to in clause 7.5(e)(iv)(A); or
 - (C) the creation of the stratum lot or other lot referred to in clause 7.5(e)(iv)(B); or
 - (D) the location of the Future Road; or
 - (E) any other matter in connection with the Future Road.
 - (ii) the Lessee's rights under the Lease will be subject to the rights of Lake Macquarie Council or any other relevant Authority to leave the Future Road and the pylons in place, to enter, maintain and carry out works to maintain those things and the rights of vehicles and people to pass and re-pass and use the Future Road or other infrastructure relevant to the Future Road for its intended purpose.
 - (iii) the Lessee must consent to the creation of an easement or other dealing (if any) required by Lake Macquarie Council or any other relevant Authority to document the rights referred to in clause 7.5(e)(ii), including signing any consents or other documentation required to enable registration of such easement or other dealing with LPI.
 - (iv) the Lessee must, if required by the Lessor, or Lake Macquarie Council or any other Authority:
 - (A) execute a partial surrender of this Lease in relation to the area of the Premises affected by the Future Road; and
 - (B) to the extent that it is necessary to create a stratum lot or a lot in a plan of subdivision for the Future Road to enable it to be excised from the Premises, the Lessee must cooperate with any request regarding the creation of the stratum lot or a lot in a plan of subdivision for the Future Road, including allowing surveyors or other consultants, agents or employees of the Lessor, Lake Macquarie Council or any other Authority onto the Premises, and signing any consents or other documentation required to enable registration of such plan with LPI,and following the partial surrender there will be no change to the Rent or any other terms of the Lease.
- (f) The Lessor and the Lessee acknowledge and agree that this clause 7.5 is not subject to clause 7.7.
- (g) The Lessee acknowledges and agrees that the exercise of any rights by the Lessor, Lake Macquarie Council or any other Authority under this clause 7.5 will not constitute a breach of covenant by the Lessor under any express or implied term of this Lease for breach of quiet enjoyment including clause 7.1.

7.6 Resumption

The Lessor may terminate this Lease by notice to the Lessee if the Premises or any part of it is resumed by any Government Agency. The Lessor is not liable to the Lessee in respect of the termination.

7.7 Subdivide and grant easements

The Lessor may subdivide the Land or grant an easement or other right over it or the Premises unless this would have a substantial adverse effect on the Lessee. The Lessee, at the Lessor's cost, must do anything the Lessor reasonably requires concerning the subdivision or grant of easement. The Lessor and the Lessee acknowledge and agree that this clause 7.7 does not apply in respect of clause 7.5.

7.8 Benefit of Lessee's obligations

- (a) Prior to dealing in any way with its interest in the Premises, the Lessor must provide at least 10 Business Days' notice of such dealing to the Lessee.
- (b) If the Lessor deals with its interest in the Premises so that another person becomes the lessor:
 - (i) the Lessor is released from any obligation under this Lease arising after it ceases to be the lessor but not from any antecedent breaches; and
 - (ii) the Lessor must procure that the other person signs a deed with the Lessee under which:
 - (A) the Lessee agrees with the other person to comply with this Lease as if the other person was the Lessor; and
 - (B) the other person assumes the Lessor's obligations under this Lease arising after the Lessor ceases to be lessor.

7.9 Licence for Access Road

On and from the date of this Lease, the Lessor grants to the Lessee a non-exclusive licence for no fee to pass and re-pass over the Access Road by foot or in vehicles for the purposes of accessing the Premises on the following terms:

- (a) the Lessee does not have exclusive possession or occupation of the Access Road.
- (b) the Lessee must not do anything to interfere with the Lessor's, or its employees' or agents', access to the Access Road.
- (c) for the purposes of this licence, any reference to 'Premises' in the clauses of this Lease referred to below is deemed to include the Access Road and those clauses apply mutatis mutandis to this licence:
 - (i) clause 7.5 to clause 7.15 (inclusive);
 - (ii) clause 8.1(a) (occupation and use of Premises), (d) (compliance with all laws and the requirements of all Government Agencies), (e) (comply with policies and procedures) and (i) (notification);
 - (iii) clause 8.2(a)(iv) (Lessee's Property), (v) (remove Waste), (vi) (damage), (xiii) (floor loading) and (xiv) (damaged items);

- (v) clause 8.3(f) (Lessor's Property), (g) (no nuisance), (j) (smoking) & (k) (Lessor's interest);
 - (vi) clause 8.8 (no alternations by Lessee);
 - (vii) clause 8.9 (cost and risk of Lessee's obligations);
 - (viii) clause 8.11 (Upgrade of services);
 - (ix) clause 8.12 (Services);
 - (x) clause 8.13 (Waste removal);
 - (xi) clause 8.14 (Emergency Events);
 - (xii) clause 8.15 (Lessee must not interfere);
 - (xiii) clause 8.16 (Advertising);
 - (xiv) clause 8.17 (Overhead Wiring);
 - (xv) clause 8.18 (Rail Infrastructure Facilities);
 - (xvi) clause 9 (Work Health and Safety);
 - (xvii) clause 10 and 11 (Environmental Issues)(Contamination Management) to the extent the Lessee or the Lessee's Agents cause or permit the Access Road to become Contaminated or Polluted;
 - (xviii) clauses 12.1(a) and 12.1(b) and clauses 12.2 to 12.12 (inclusive); and
 - (xix) clause 15 (Default, Termination and Expiry).
- (d) this licence shall not operate or be deemed to operate in any way as a demise of any part of the Access Road nor shall the Lessee have or be entitled to any estate, right or interest in the Access Road or any part of it other than such interest as contemplated under this Lease.
- (e) the Lessee may only transfer or assign its rights to the licence created by this clause 7.9 or otherwise to any person to whom it assigns this Lease in accordance with clause 14 (Assignment, Sublease and Mortgage).
- (f) the Lessee is responsible for its proportion of costs for the Access Road as set out in clause 5.3.
- (g) the provisions of clause 5.3 apply with respect to any repairs and maintenance of the Access Road.
- (h) this non-exclusive licence will end on the earlier of:
- (i) the expiry or earlier termination of this Lease; and
 - (ii) the date Lake Macquarie Council or the Lessor notifies the Lessee that it is required to use the Future Road (and not the Access Road) as the access point to the Premises.

7.10 Lessor may rectify

- (a) The Lessor may, at the Lessee's cost, do anything which the Lessee should have done under this Lease if the Lessee does not promptly do so or if, in the Lessor's opinion, the Lessee does not do so properly.

- (b) The Lessee must reimburse the Lessor on demand for any costs and expenses incurred by the Lessor under clause 7.10(a).
- (c) In exercising its rights under clause 7.10(a), except in the case of anything the Lessor does in the case of an emergency or an Emergency Event, the Lessor must act reasonably.
- (d) The Lessor may request, and, within 5 Business Days of such request, the Lessee must provide evidence that it has complied with any of the Lessee's obligations under this Lease. In providing evidence of compliance, the Lessee must provide to the Lessor all details and information the Lessor reasonably requires.

7.11 **Appoint agents and managers**

The Lessor may appoint or authorise an agent or others to do anything it may or must do under this Lease or to conduct the day to day running of the Premises.

7.12 **Keys**

If the Lessor gives the Lessee any key, access card or other opening device to access the Premises:

- (a) the Lessee must not copy it without the Lessor's prior consent;
- (b) the Lessee must reimburse the Lessor for any cost it incurs as a result of the Lessee losing any opening device;
- (c) the Lessee must give the opening device to current employees, service or delivery contractors or permitted invitees only, and must keep a list of those employees and give the list to the Lessor on request; and
- (d) the Lessee must return all opening devices to the Lessor on the expiration or termination of this Lease.

7.13 **Rights in relation to Railway Land**

The Lessor may at any time:

- (a) permit functions, displays, parades and other activities on the Railway Land (excluding the Premises);
- (b) change the direction or flow of pedestrian or vehicular traffic around the Premises (except that in the case of an Emergency Event the Lessor may change the direction or flow of pedestrian or vehicular traffic on the Premises); and
- (c) issue a direction to the Lessee requiring the Lessee to assist in the management or rectification of any Emergency Event which takes place on or near the Railway Land, including but not limited to any direction requiring the Lessee to cease or suspend the Permitted Use for a specified period of time. The Lessee must immediately comply with any such direction of the Lessor.

7.14 **Government Policy**

In making any discretionary determination available to it under this Lease, the Lessor will take into consideration government policy current at the time of such determination. If the government policy changes subsequent to any consent being given, the Lessor may withdraw its consent with the intent that no activities will be permitted on the Premises inconsistent with the then current government policy. If any consent is withdrawn by the Lessor, the Lessee will without delay cease any prohibited activity and, if applicable,

remove any offending article. The Lessor must not withdraw any consent pursuant to this clause if it would derogate from the grant of this Lease or impair the ability of the Lessee to carry on the Permitted Use. In withdrawing any consent, the Lessor must use its best endeavours to ensure that no costs are incurred by the Lessee.

7.15 Main Northern Line

- (a) The Lessor may, during the Term (at the Lessor's cost), alter the location of the existing railway track which connects Lot 3 to the Main Northern Line, provided that the alternate railway track is located within the vicinity of the south west corner of Lot 1 and Lot 2 of the Premises.
- (b) Despite any other provision of this Lease, the Lessee acknowledges that the Lessor's ability to provide access to the Main Northern Line is subject to:
 - (i) Track Possessions; and
 - (ii) the Future Road pursuant to clause 7.5.
- (c) The Lessee acknowledges and agrees that it must not object to or make a Claim against the Lessor in connection with this clause 7.15.

7.16 Electricity supply

- (a) The Lessor and the Lessee acknowledge that the Lessor has installed a separate electrical meter to the Premises to measure the supply and use of electricity by the Lessee in the Premises.
- (b) The Lessee will pay the Lessor for the electricity consumed on the premises by the Lessee as measured by the meter referred to in clause 7.16(a) at the rates or tariffs that the Lessor purchases the electricity from any independent electricity supplier plus the Lessor's applicable overhead costs (to be determined by the Lessor in its absolute discretion) charged to the Lessee, in addition to the electricity tariffs.
- (c) The Lessor will do all that it is practically able to ensure the continuity of electricity supply to the Premises.

8. LESSEE'S OBLIGATIONS

8.1 General obligations

The Lessee must:

- (a) **(occupation and use of Premises)** occupy and use the Premises only for the Permitted Use and must not carry out or permit the carrying out of any activity which causes or may cause any interference or damage or which may impact on the continued safe operation of the Rail Infrastructure Facilities;
- (b) **(conduct of business)** at all times carry on its business in the Premises in a professional and competent way;
- (c) **(consents)** at its cost, obtain all consents required from any Government Agency to carry on the Permitted Use in the Premises and/or to carry out any additions or alterations approved by the Lessor in accordance with this Lease. If requested by the Lessor, the Lessee must promptly provide a copy of any such consents;
- (d) **(compliance with all laws and the requirements of all Government Agencies)** at its cost, comply with all applicable laws and the requirements of all Government

Agencies in connection with the Premises, the Lessee's use of the Premises, the Lessee's Property and any work carried out by the Lessee under this Lease including undertaking any alterations or repairs to the Premises required by law or any notice from any Government Agency affecting the Premises, including but not limited to laws in relation to work health and safety;

- (e) **(comply with policies and procedures)** at its cost, comply at all times with any policies and procedures of the Lessor notified by the Lessor to the Lessee from time to time, including but not limited to policies and procedures in relation to rail safety;
- (f) **(Services)** pay all charges for all Services relating to the Lessee's use of the Premises;
- (g) **(fire prevention)** at its cost, comply with all requirements and recommendations of any Government Agency or Authority with enforceable jurisdiction, the Lessor or any insurer in respect of fire safety in the Premises, including by installing, at its cost, further equipment and upgrading the fire safety facilities in the Premises, and shall pay the Lessor on demand the cost of any alteration to any sprinkler or fire prevention equipment and installation (including alarms) which may become necessary by reason of the non-compliance by the Lessee or by the Lessee's Agents with any requirements, including those of any insurer of partitions in the Premises;
- (h) **(security)** at its cost, keep the Premises securely locked when unoccupied, and comply with the Lessor's directions regarding security of the Premises. The Lessee has the sole responsibility for security of the Premises and the Lessee must not rely on the Lessor in keeping any part of the Premises secure;
- (i) **(notification)** at its cost, immediately give the Lessor notice of:
 - (i) any damage to or defect in the Premises or any Service provided by the Lessor, any infectious diseases or pests on the Premises, and any notice from a Government Agency (other than an account for Services provided to the Premises); and
 - (ii) any circumstances likely to cause any such damage or defect described in clause 8.1(i);
- (j) **(separate rates)** at its cost, pay on time any rates, taxes or other charges payable to a Government Agency exclusively in respect of the Premises (or the Lessee's occupancy or use of the Premises);
- (k) **(business name)** not use a business name which connects it to the Railway Land;
- (l) **(list of Lessee's Agents)** promptly, when requested by the Lessor, give the Lessor a list of the Lessee's Agents who have been provided with a key or other access authority in respect of the Railway Land (excluding the Premises); and
- (m) **(no smoking signs)** at its cost, erect signs:
 - (i) in the Buildings and the Excluded Improvements prohibiting smoking; and
 - (ii) outside the Buildings and the Excluded Improvements prohibiting smoking near any entrances, exits or windows that lead to an enclosed area.

8.2 Maintenance of Premises and other matters

- (a) The Lessee must, at its own cost:
- (i) **(good and substantial repair)** at all times keep the Premises in good and substantial repair and working condition (including undertaking repairs, replacement and maintenance of a capital or structural nature; excluding:
 - (A) all repairs and maintenance in respect of the Excluded Improvements (except to the extent (if any) required by Lake Macquarie Council);
 - (B) fair, wear and tear; and
 - (C) any damage caused by fire, flood, lightning, storm, war or any act of Godunless:
 - (D) the damage occurred as a result of, or was substantially contributed to by, the Lessee's default under this Lease or the act, neglect or default of the Lessee or the Lessee's Agents; or
 - (E) the Lessor is legally unable to recover from its insurer insurance money for the damage because of some act, neglect, default or misconduct by the Lessee or the Lessee's Agents;
 - (ii) **(fencing)** erect a fence enclosing the whole of the Premises, including (if required by the Lessor) gates for access to the Premises to the satisfaction of the Lessor;
 - (iii) **(remove graffiti)** remove any graffiti or other disfigurement on the interior or exterior of the Premises and the Lessee's Property within a reasonable time after it occurring;
 - (iv) **(Lessee's Property)** keep the Lessee's Property in good and substantial repair and working condition;
 - (v) **(remove Waste):**
 - (A) remove all Waste from the Premises regularly; and
 - (B) ensure that no Waste is visible from outside the Premises;
 - (vi) **(damage)** immediately repair any damage to, or defect in the Premises or the Railway Land caused by the Lessee or the Lessee's Agents;
 - (vii) **(plate glass)** immediately repair or replace all damaged plate glass in the Premises, including interior and exterior windows, with glass of the same or similar gauge or quality;
 - (viii) **(heating, lighting, plumbing and electrical)** immediately repair or replace any faulty or damaged heating, lighting, plumbing and electrical equipment (including light globes and fluorescent tubes) on the Premises and maintain any drainage required for the Premises;
 - (ix) **(grease traps)** pump out and clean any grease traps and waste lines in or adjacent to the Premises to the satisfaction of the Lessor;

- (x) **(pests)** keep the Premises free of pests and, regularly engage a pest exterminator to fumigate the Premises;
 - (xi) **(cleaning)** keep the Premises clean, including but not limited to all signs, carpets and the exterior and interior surfaces of the Buildings, and all windows of the Buildings;
 - (xii) **(landscaped areas)** if relevant, keep in good condition any part of the Premises that is landscaped, keep that part of the Premises free of weeds and engage a gardener approved by the Lessor to do so;
 - (xiii) **(floor loading)** comply with the maximum floor loading weights for the Premises or as specified by the Lessor;
 - (xiv) **(damaged items)** promptly repair or replace with items of a similar quality any damaged, faulty or worn items in the Premises; and
 - (xv) **(Lessor's Property)** keep in good and substantial repair and working condition the Lessor's Property (excluding the Excluded Improvements) located in the Premises including any air-conditioning, plant and fire equipment, and enter into and maintain any comprehensive maintenance contracts in respect of the Lessor's Property or Services.
- (b) The Lessee's obligation under this clause to keep the Premises in good and substantial repair and working condition includes an obligation where appropriate to procure or effect replacement of the relevant part of the Premises.
 - (c) The Lessee accepts the Premises in its state of repair, order and condition as at the Occupation Date.
 - (d) The Lessee acknowledges that the Lessor is not responsible for any maintenance, replacement and repair including maintenance, replacement and repair of a structural and capital nature in respect of any part of the Premises, except any damage caused by the negligence of the Lessor.

8.2A Asset Management Plan

- (a) On or before the date of this Lease, the Lessee must provide a draft Asset Management Plan to the Lessor for its approval.
- (b) Within 90 Business Days from receiving the draft Asset Management Plan, the Lessor agrees to either:
 - (i) approve the Asset Management Plan prepared by the Lessee; or
 - (ii) issue to the Lessee a notice containing amendments reasonably required to be made to the Asset Management Plan provided by the Lessee.
- (c) The Lessee must accommodate the amendments required by the Lessor in its notice in the draft Asset Management Plan and re-submit that plan to the Lessor for its approval.
- (d) Every five years after the first anniversary of the Commencing Date, the Lessee must update the Asset Management Plan by preparing a draft updated Asset Management Plan for approval by the Lessor and clauses 8.2A(b) and (c) shall apply for the purposes of that updated Asset Management Plan.
- (e) The Lessee must, at its own cost, comply with the Asset Management Plan.

8.3 General prohibitions on Lessee

The Lessee must not, and must ensure that the Lessee's Agents do not:

- (a) **(no damage)** put anything which is likely to cause obstruction or damage down any sink, toilet or drain;
- (b) **(no animals)** keep any animals or birds on the Premises;
- (c) **(no advertising)** advertise or display in or in the vicinity of the Premises so that it can be seen from outside the Premises any material otherwise than in accordance with the Advertising Guidelines (provided that this clause does not apply to signs used to identify the Lessee and the Lessee's business operated from the Premises or any directional signs);
- (d) **(dangerous substances)** store or use flammable, toxic, explosive or dangerous substances, whether solid, liquid or gaseous, on the Premises, including but not limited to Hazardous Materials and Dangerous Goods except in accordance with approvals granted to conduct the Permitted Use (provided such approvals remain current and proof of such currency is provided to the Lessor upon request by the Lessor) and also excepting where those items are kept in the containers in which they are supplied where no separate approvals are necessary;
- (e) **(use)** allow anyone to sleep on the Premises or hold any auction, fire or bankruptcy sale or public meeting on the Premises;
- (f) **(Lessor's Property)** alter the Lessor's Property or use the Lessor's Property for anything other than its intended use;
- (g) **(no nuisance)** cause any nuisance, disturbance or damage to the Lessor, any user of any neighbouring land, or any other occupant or user of the Railway Land;
- (h) **(no obstruction)** obstruct any air or light from entering any part of the Buildings through any shaft or opening, and must not obstruct any air vent, duct or skylight in the Buildings or any emergency exit;
- (i) **(passage ways)** use entrance passages, halls, staircases and fire escapes other than for entering and exiting the Premises, and must not obstruct them;
- (j) **(smoking)** smoke in any Building, Excluded Improvement or near any entrances, exits or windows that lead to an enclosed area;
- (k) **(Lessor's interest)** do anything which could prejudice the Lessor's interest in the Premises;
- (l) **(Services)** overload or obstruct the Services provided to the Premises, or use them for other than their intended purpose;
- (m) **(caveat)** lodge a caveat on the title of the Land, except a caveat noting the interest of the Lessee under this Lease;
- (n) **(access to railway tracks)** unless it has the prior written consent of the Lessor, enter, access or place any item on or near any railway tracks situated on the Premises unless it is required for the Permitted Use and only in accordance with the requirements of this Lease;
- (o) **(no activity to cause signal failure)** carry out or allow the carrying out of any activity which may give rise to or cause a failure of any railway signalling instruments or which may cause any other railway equipment to fail to operate or to malfunction for any period of time; and

- (p) **(no encroachment)** subject to the terms of this Lease, encroach on the area outside the Premises or do not cause or permit anything to be done which, in the opinion of the Lessor, would amount to an encroachment and any breach of this provision entitles the Lessor to terminate the Lease if the Lessee has not complied with a notice requiring the Lessee to remedy any breach of this provision within one month of the date of the notice.

8.4 **Commission of Annual Fire Statement**

- (a) The Lessee must, at its cost, comply with the requirements set out in Division 5, clauses 175-178 of the *Environmental Planning & Assessment Regulations 2000* (NSW) **(the EPA Regulations)**.
- (b) The Lessee must, at its cost, cause to be prepared, by a properly qualified person, an Annual Fire Safety Statement **(AFS)** in accordance with the EPA Regulations.

8.5 **Issue of AFS**

- (a) The Lessee must ensure the assessment and inspection of an essential fire safety measure or building must have been carried out by the date on which the AFS is issued in accordance with the EPA Regulations.
- (b) The Lessee is required to give the prepared AFS to the Lessor promptly after the Lessee has given a copy to the relevant Authority.
- (c) The choice of the person to carry out the assessment or inspection is up to the Lessee, but must be a properly qualified person in accordance with the Regulations.
- (d) The person who carries out the assessment must inspect and verify performance of each fire safety measure assessed.

8.6 **Compliance with the Regulations**

- (a) The Lessee must not fail to maintain each essential fire safety measure in the Premises:
 - (i) in the case of an essential fire safety measure applicable by virtue of a Fire Safety Schedule, to a standard no less than that specified in that schedule; or
 - (ii) in the case of an essential fire safety measure applicable otherwise than by virtue of a Fire Safety Schedule, to a standard no less than that to which the measure was originally designed and implemented.
- (b) The Lessee must, at its cost, comply with any notice it receives from either the Lessor, the local council or the fire commissioner arising out of or in connection with fire safety and the EPA Regulations.

8.7 **Essential Condition**

- (a) The Lessee's obligations under this clause 8 (including but not limited to the obligations under clause 8.3) are essential obligations of this Lease.
- (b) The terms in clauses 8.4 to 8.6 (inclusive) have the same meaning as given to those terms in the *Environmental Planning & Assessment Regulations 2000* (NSW).

8.8 No alterations by Lessee

- (a) The Lessee must not make any alterations or additions to the Premises (**Works**) without the Lessor's consent (such consent not to be unreasonably withheld or delayed).
- (b) The following procedures and conditions apply in the case of any Works, except to the extent that the Lessor may in writing waive compliance:
 - (i) the Lessee must, prior to the commencement of the drawing of plans, specifications and details of the proposed Works, ascertain from the Lessor the clearances that may be required from any railway track, platform, building, structure, pole signal, electric wires or services on or adjacent to the Premises;
 - (ii) the Lessee must submit plans and specifications of the proposed Works to the Lessor showing, without limitation, the location, design, lay-out, access to the Premises and the proposed materials to be used, and must contain full details of such Works and details of the qualified tradesmen the Lessee proposes to use for the Works and full particulars of the foundations and, if required by the Lessor, be accompanied by design calculations for the Works including the foundations for the Premises;
 - (iii) completion of the Works must be consistent with the plans and specifications as approved by the Lessor and must be of such design and construction as any Authority having jurisdiction affecting the Works deems applicable and all materials and workmanship used in the construction of the Works must be to the standard required by the Lessor;
 - (iv) the Lessee must reimburse the Lessor for:
 - (A) all reasonable costs incurred by the Lessor in considering the proposed Works and the approval (but not for supervision) of the Works including no more than reasonable fees for architects, building or other consultants employed by the Lessor; and
 - (B) any reasonable costs or expenses as may be incurred by the Lessor as a result of installation, operation or removal of any equipment, fixture, fitting or machinery;
 - (v) the Lessee must obtain at its expense from any competent Authority all approvals or permits necessary to enable the Works to be lawfully executed and on request by the Lessor will produce for inspection copies of all such approvals and permits from any such competent Authority;
 - (vi) upon completion of the Works the Lessee must if requested by the Lessor produce to the Lessor any certificates of occupancy and compliance issued by any such competent Authority;
 - (vii) the Lessee must ensure that explosive power tools are not used for the purpose of securing any material to any prestressed concrete components of any building structure, fixture or improvement erected, placed or made upon the Premises and the Lessee must at the direction of the Lessor erect suitable prohibiting notices to such effect as may be required by the Lessor from time to time;
 - (viii) should any levels or grading of the surface of the Premises be found to be necessary the Lessee must at its sole cost carry out such work under the supervision and to the satisfaction of the Lessor;

- (ix) the Lessee must not erect, place or make any building, structure, fixture or improvement over any existing water supply pipelines or water supply facilities, telephone or electricity cables, pipes, conduits or sewer lines or any other services or like items. No approval by the Lessor under clause 8.8(a) will be construed as a waiver of the Lessee's obligation under this clause 8.8(b)(ix);
 - (x) the Lessee must not without the written consent of the Lessor interfere with any existing drainage or water supply facilities or with any of the Appurtenances and the Lessee must to the satisfaction of the Lessor keep in a clean, clear and free flowing condition any drains which pass through the Premises, and provide and maintain any drainage which in the opinion of the Lessor is required for the Premises; and
 - (xi) the Lessee must when undertaking the Works comply with all laws and requirements of Authorities including but not limited to the provisions of the WHS Act and all permits and approvals issued in connection with the Works.
- (c) The Lessee must before commencing the Works ensure that the Works are covered by the Lessee's insurances and provide the Lessor with evidence that such Works are covered by the Lessee's insurances.

8.9 Cost and risk of Lessee's obligations

Unless specified or agreed otherwise, if the Lessee is obliged to do anything under this Lease, it must do so at its cost and at its risk.

8.10 No overloading

- (a) Subject to clause 8.10(b), the Lessee must not bring into the Premises, without the Lessor's written consent, any equipment or article which does or could, in the Lessor's reasonable opinion, overload or damage the Premises or disturb the efficient operation of any Service.
- (b) Clause 8.10(a) does not apply to any equipment or article that is consistent with the Permitted Use (including, without limitation, a passenger train or locomotive).

8.11 Upgrade of services

The Lessee acknowledges and agrees that:

- (a) the Lessor has no responsibility or liability in respect of any Services;
- (b) the Lessor does not warrant the suitability or performance of the Services generally, or the suitability or otherwise of the Services being upgraded; and
- (c) if the Lessee requires the upgrade of any Services the Lessee must pay for the upgrade either directly to the Service provider or, if applicable, by way of Outgoings, and must at all times indemnify the Lessor in respect of any Costs which the Lessor may incur in connection with the upgrade of any Service.

8.12 Services

- (a) Any alteration to the Services supplied to the Premises is the responsibility of the Lessee.
- (b) The Lessee may utilise electricity supplied to the Premises. If the Lessee does utilise electricity supplied to the Premises, then the Lessee must purchase the electricity from the Lessor at the rates or tariffs that the Lessor purchases the

electricity from any independent electricity supplier plus the Lessor's applicable overhead costs (to be determined by the Lessor in its absolute discretion) charged to the Lessee, in addition to the electricity rates or tariffs.

- (c) The Lessor agrees that the Lessee may in its absolute discretion at any time during the term of this Lease on giving 60 days prior written notice to the Lessor elect to purchase electricity to be consumed in or in relation to the Premises from a licensed retailer of the Lessee's choice.

8.13 **Waste removal**

In addition to the matters raised in clause 8.2(a)(v), the Lessee acknowledges that:

- (a) removal of Waste from the Premises is the sole responsibility of the Lessee; and
- (b) the Lessor will not provide any Waste removal service for the Lessee.

8.14 **Emergency Events**

- (a) If the Lessee becomes aware of an event which may be an Emergency Event occurring at any time, the Lessee must:
 - (i) immediately inform the Lessor of such event;
 - (ii) keep the Lessor informed in respect of such event; and
 - (iii) provide the Lessor with sufficient information to enable the Lessor to assess the nature of the Emergency Event and the likely effect of the Emergency Event.
- (b) The Lessee must co-operate with the Lessor and assist the Lessor to take such action as the Lessor directs is necessary to avert any danger or minimise or remove the risk or adverse impact of the Emergency Event.
- (c) If an Emergency Event occurs in part or in whole as a result of any activity of the Lessee:
 - (i) the Lessee is not entitled to make any claim against the Lessor in relation to that Emergency Event; and
 - (ii) the Lessee must immediately on demand reimburse the Lessor for any cost or expense incurred by the Lessor as a result of that Emergency Event,

but only except to the extent that the Lessee caused or contributed to the Emergency Event.

8.15 **Lessee must not interfere**

Despite any other provision in this Lease, the Lessee must not at any time interfere with or obstruct any Rail Infrastructure Facility or the operations of the Lessor.

8.16 **Advertising**

- (a) If the Lessor determines (acting in its absolute discretion) that the Lessee has displayed material in breach of clause 8.3(c), the Lessor may serve written notice on the Lessee requiring removal from display of the material which in the Lessor's opinion breaches the Advertising Guidelines.

- (b) If the Lessee does not comply with any notice served under clause 8.16(a) within 2 days, the Lessor may enter the Premises and remove the offending material from display, at the Lessee's cost.

8.17 Overhead Wiring

- (a) Subject to clause 8.17(d), any Overhead Wiring installed in the Premises by the Lessee shall be maintained and repaired by the Lessor at the cost of the Lessor.
- (b) The Lessor shall be entitled to access the Premises at all reasonable times in order to inspect, repair and maintain the Overhead Wiring.
- (c) The Lessor shall not require the Lessee to make any contribution to electricity charges which arise from the use of electricity which emanates from the use of the Overhead Wiring.
- (d) If, in the Lessor's reasonable opinion, the need for maintenance or repair to the Overhead Wiring is caused or contributed to by the Lessee or the Lessee's Agent including by testing processes, clause 8.17(a) will not apply, and such maintenance and repair to the Overhead Wiring will be undertaken by the Lessor at the Lessee's cost to the extent caused or contributed to by the Lessee or the Lessee's Agent.
- (e) The Lessee must not remove the Overhead Wiring from the Premises at the end of the Term and title to the Overhead Wiring is transferred to the Lessor at the end of the Term.
- (f) The Lessee acknowledges and agrees that the exercise of any rights and obligations by the Lessor under this clause 8.17 will not constitute a breach of covenant by the Lessor under any express or implied term of this Lease for breach of quiet enjoyment including clause 7.1 nor will it constitute a derogation from the grant provided that the Lessor will not unduly interfere with the Lessee's use and occupation of the Premises in exercising its rights pursuant to this clause.

8.18 Rail Infrastructure Facilities

- (a) The Lessor draws to the attention of the Lessee that clauses 8(1) and (3) of Schedule 6A of the *Transport Administration Act 1988* (**the Act**) impose obligations on the Lessor and on the Lessee, including provisions that the Lessee must not damage, interfere with or obstruct any Rail Infrastructure Facilities.
- (b) The Lessee:
 - (i) acknowledges its obligations under clause 8(3) of Schedule 6A; and
 - (ii) indemnifies the Lessor against all claims for which the Lessor becomes liable arising from the Lessee's breach of its obligations under clause 8(3) of Schedule 6A of the Act.
- (c) Upon giving to the Lessee not less than 24 hours' notice, except in the case of emergency where no notice is required, the Lessee permits the Lessor, its employees, contractors and agents access at all times to the Rail Infrastructure Facilities on the Premises. The Lessee acknowledges that the sub-station, and Pole Route servicing the mainline overheads, do not form part of the Premises. The Lessor will not unduly interfere with the Lessee's use and enjoyment of the Premises in exercising its rights pursuant to this clause and the Lessor agrees to comply with any reasonable security directions of the Lessee when accessing the Premises, provided that any such directions do not affect the Lessor's statutory obligations.

9. WORK HEALTH AND SAFETY

9.1 Acknowledgement by Lessee

The Lessee acknowledges and agrees that:

- (a) it has management and control of the Premises for the purposes of the WHS Law;
- (b) if the Work includes a 'construction project' (as defined in the WHS Laws), it will have principal contractor obligations under the WHS Law in respect of the Work, unless it engages another person as principal contractor and authorises the person to have the necessary management and control of the Premises to perform their duties as principal contractor and to discharge the duties of a principal contractor including under Chapter 6 of the WHS Regulation;
- (c) it must comply with the WHS Law in relation to the Premises, any Work and any other activities on the Premises (including the obligations of a principal contractor when applicable and the obligations of a person with management and control of the Premises);
- (d) there may be risks and hazards associated with the Work;
- (e) it will ensure it obtains information about risks and hazards at or in the vicinity of the Premises and that it provides information that it has about relevant risks and hazards at or in the vicinity of the Premises to any person engaged by or on behalf of the Lessee to carry out Work and, to the extent that information did not come from the Lessor, the Lessor;
- (f) it provides to the Lessor information it receives from designers of Work concerning hazards relating to the design of the Work or conditions of use applicable to the Work which impact the Lessor or as otherwise required by the WHS Law; and
- (g) the Lessee is responsible for all costs associated with performing the role of principal contractor.

9.2 Other Obligations of Lessee

The Lessee must:

- (a) as required by the WHS Law, have adequate systems in place to assess and mitigate as far as reasonably practical all risks and hazards associated with the Premises and any Work;
- (b) as required by the WHS Law, ensure that where risks and hazards associated with the Premises and any Work cannot be eliminated, the Lessee does, or procures to be done, all things reasonable to ensure that the risks and hazards involved are adequately controlled and minimised;
- (c) ensure that only competent persons are engaged by or on behalf of the Lessee to carry out Work;
- (d) immediately comply with directions on safety issued by any relevant Authority or by the landlord;
- (e) if it engages another person as principal contractor under the WHS Law:
 - (i) ensure that the person fulfils its obligations as principal contractor under the WHS Law; and

- (ii) to the extent reasonably practical impose obligations on the principal contractor in the terms of this clause 9.2;
- (f) if the Work includes a 'construction project' (as defined in the WHS Laws), ensure that a site-specific WHS Management Plan is prepared for the Premises and any Work (and any area in the vicinity of the Premises and any Work which may be used or affected by the performance of the Work) before the Works commence, which complies with all relevant laws. The WHS Management Plan must include, as a minimum:
- (i) a WHS policy statement;
 - (ii) a statement of responsibilities listing the names, positions and responsibilities of all personnel who will have specific responsibilities for WHS;
 - (iii) details of the arrangements for ensuring compliance with the requirements for WHS induction training;
 - (iv) details of the arrangements for managing WHS incidents and the identity of and contact details for the person or persons who will be available to prevent, prepare for, respond to and recover from WHS incidents;
 - (v) any site safety rules and details of the arrangements for ensuring that all persons at the Premises (whether employees or visitors) and/or involved in the Works are informed of the rules;
 - (vi) safe work method statements for all work activities assessed as having safety risks (the safe work method statements are to be no greater than one year old);
 - (vii) competency certificates and licences of personnel performing the Works;
 - (viii) a hazardous substance register for chemicals stored or used at the Premises; and
 - (ix) material safety data sheets for hazardous chemicals (the data sheets are to be no greater than 5 years old);
- (g) provide a copy of the WHS Management Plan under clause 9.2(f) to the Lessor:
- (i) prior to commencing the Works; and
 - (ii) if any change is made to the WHS Management Plan during the course of the Works;
- (h) ensure that the WHS Management Plan under clause 9.2(f) is maintained and kept up to date during the performance of the Works;
- (i) ensure that a copy of the WHS Management Plan under clause 9.2(f) is available for inspection during the performance of the Works by any personnel working at the Premises, by any personnel about to commence work at the Premises and by the Lessor or any person nominated by the Lessor;
- (j) provide all statutory notices and correspondence concerning work health and safety to the Lessor within 5 Business Days after the receipt of such notice or correspondence;
- (k) notify the Lessor forthwith, and in any event within 5 Business Days of any:

- (i) hazards, risks or incidents causing:
 - (A) loss or damage to the Premises or the Works owned by the Lessor; and/or
 - (B) any-notifiable incidents under the WHS Law; and
- (ii) incidents involving a near miss which, but for the near miss, could have caused:
 - (A) loss or damage to the Premises, the Works or any Rail Infrastructure owned by the Lessor; and/or
 - (B) any notifiable incidents under the WHS Law; and
- (l) do all things necessary to ensure the Lessor complies with its obligations under the WHS Law in relation to the Premises and any Work.

9.3 Indemnity

To the fullest extent permitted by law, the Lessee indemnifies the Lessor against liability or loss arising from, or cost incurred in connection with, any breach by the Lessee of its obligations under this clause 9 or of the obligations applicable to a principal contractor (whether it be the Lessee or a third party engaged by the Lessee).

10. ENVIRONMENTAL ISSUES

10.1 No warranty or representation

The Lessor does not warrant or represent:

- (a) that the Premises are suitable for any use, or for any particular use;
- (b) anything about the Environmental Aspects of the Premises or of any other premises, whether or not arising as a result of activities on the Premises;
- (c) that any information about any past use of the Premises is accurate; or
- (d) that the Premises are or are not Contaminated or Polluted, or the nature or extent of any Contamination or Pollution.

10.1A Acknowledgements

The Lessee acknowledges and agrees that the Premises contain Lessor Contamination. The parties acknowledge and agree that:

- (i) the Baseline Environmental Report provides evidence of the nature and extent of Contamination in, on, under or emanating from the Premises as at the date of the Baseline Environmental Report; and
- (ii) the Environmental Assessment Report, the Environmental Monitoring Report and all subsequent Environmental Monitoring Reports (**the Environmental Reports**) will provide evidence of the nature and extent of Contamination in, on, under or emanating from the Premises as at the date of each of the Environmental Reports.

10.2 Environmental Notice obligations

- (a) Despite any other clause in this Lease the Lessor and the Lessee acknowledge and agree that:
 - (i) subject to 10.3, the Lessor is responsible for any Environmental Notice that is served in relation to any Contamination that is Lessor Contamination and the provisions of clause 11 shall apply;
 - (ii) the Lessee is responsible for complying with any Environmental Notice that is served in relation to any Contamination that is Lessee Contamination and the provisions of this clause 10 shall apply;
 - (iii) the Lessee is responsible for any Contamination caused whether directly or indirectly by the Lessee arising from any activity by or on behalf of the Lessee in relation to the Premises; and
 - (iv) if an Environmental Notice is served and it applies to both Lessee Contamination and Lessor Contamination then the provisions of clause 11 apply.

10.3 Disturbance of Lessor Contamination

- (a) Despite any other clause in this Lease, the Lessor is not responsible for an Environmental Notice or liable to the Lessee for any Costs or Claims that are served or arise as a result of any disturbance of Lessor Contamination caused by the Lessee or the Lessee's Agent.
- (b) The Lessee:
 - (i) must prevent environmental damage, degradation, pollution, additional Contamination or the exacerbation of, or disturbance of any Lessor Contamination in, on, under or emanating from the Premises as a result of the Lessee's use or occupation of the Premises; and
 - (ii) must comply with all reasonable directions given by the Lessor or any lawful directions given by a relevant Authority concerning compliance with an Environmental Law or any Contamination in, on under or emanating from the Premises.

10.4 Environmental obligations

Subject to the obligations set out in clause 10.2 the Lessee must, at its own cost:

- (a) **(Environmental Assessment Report)** within 6 months of the Commencing Date, provide the Lessor with an Environmental Assessment Report;
- (b) **(prepare report)** within 6 months of each second anniversary of the Commencing Date, provide the Lessor with an Environmental Monitoring Report;
- (c) **(carry out recommendations);**
 - (i) within 6 months of the date of the Environmental Assessment Report and each Environmental Monitoring Report, carry out the recommendations, including any recommended program or timetable, set out in either the Environmental Assessment Report or the Environmental Monitoring Report regardless of whose act or omission occasioned or gave rise to the recommendations or need for corrective actions and, as soon as practicable, give the Lessor a certification by the consultant who prepared

the relevant report that the recommendations and corrective actions in the report have been complied with; and

- 1) with the exception of timing (which is to be agreed between the Lessor and Lessee), the obligations set out above in 10.4(c)(i) will also apply to any recommendations, including any recommended program or timetable, set out in the Baseline Environmental Report regardless of whose act or omission occasioned or gave rise to the recommendations or need for corrective actions;
- (d) **(comply with laws)** at all times during the Term, comply with:
 - (i) all Environmental Laws, including obtaining all necessary Authorisations for any activity conducted on the Premises;
 - (ii) any Environmental Notice, regardless of whose act or omission occasioned or gave rise to the Environmental Notice; and
 - (iii) any applicable environmental licence, permit or approval (including any attached conditions);
 - (e) **(pollution control equipment)** properly install, operate and maintain in the Premises all Pollution control equipment that is required by any law to be installed as a consequence of the Lessee's use or occupation of the Premises;
 - (f) **(operation of equipment)** operate the Pollution control equipment and all industrial plant and equipment (including fuel burning equipment) in accordance with any applicable Authorisation and otherwise in a proper and efficient manner, and maintain it in good working order;
 - (g) **(not Contaminate)** not Contaminate or Pollute the Premises or any adjacent land;
 - (h) **(no dangerous materials)** not use, keep or handle on the Premises any Dangerous Goods or Hazardous Material without the prior consent of the Lessor;
 - (i) **(access)** allow the Lessor and the Lessor's Agents access to the Premises to carry out environmental audits, comply with any Environmental Notices (if required), assessments and investigations of any part of the Premises at any time during the Term;
 - (j) **(compliance)** at its sole cost and expense, promptly comply with any direction from the Lessor to implement any recommendation of an environmental audit, assessment, investigation or report in respect of the Premises or any activity conducted on the Premises (whether or not the recommendation is required in order to comply with an Environmental Law or Environmental Notice) including carrying out any remediation under clause 10.7; and
 - (k) **(notify Lessor)** promptly notify the Lessor if:
 - (i) it becomes aware of any breach or alleged breach of an Environmental Law in respect of the Premises or any activity carried out on or in the Premises or any circumstance of which the Lessor or the Lessee could be lawfully required to notify any Authority pursuant to any Environmental Law;
 - (ii) any Environmental Aspect of the Premises is or may be adversely affected to a material extent;

- (iii) any 'Pollution Incident' occurs within the meaning of that term under the *Protection of the Environment Operations Act 1997* (NSW) which must be notified to a Government Agency, in which case the Lessee must provide the Lessor a copy of all information relevant to the notice and the 'Pollution Incident';
- (iv) an Environmental Notice is served on the Lessee;
- (v) the Premises becomes or may become Contaminated or Polluted or the Lessee believes or should reasonably be aware that the Premises has become or may become Contaminated or Polluted, other than Contamination or Pollution already identified in the Baseline Environmental Report;
- (vi) the Lessee is in breach of any of its obligations under this clause 10; or
- (vii) there is a disturbance of the Lessor Contamination.

10.5 **Environmental Notice for Lessee Contamination**

Subject to clause 10.2 if the Lessee is required to comply with any Environmental Notice under this clause 10 in respect of Lessee Contamination, the Lessee must:

- (a) prior to commencing any works pursuant to that notice and at its cost, engage a qualified environmental expert from the RailCorp Panel to prepare a remediation action plan including a timetable in consultation with the Lessor and in accordance with the requirements of the Environmental Notice and all Environmental Laws;
- (b) provide details to the Lessor of the remediation action plan and any other relevant information or correspondence and regularly inform the Lessor of the progress of the remediation works;
- (c) comply with the remediation action plan and timetable as prepared by the environmental expert (and approved in consultation with the Lessor);
- (d) provide certification from the environmental expert that the remediation action plan has been complied with and completed and written confirmation from the relevant Government Agency that the Environmental Notice has been complied with; and
- (e) make good any damage to the Premises or other property of the Lessor caused by carrying out the corrective action program as soon as practicable.

10.6 **Final Contamination Assessment Report**

The Lessee must, at its own cost, not more than nine months or less than three months before the Terminating Date (unless the Lessee exercises its option, in which case the relevant period is between three months before and three months after the terminating date of the option lease), provide the Lessor with a Final Contamination Assessment Report.

10.7 **Remediation etc**

Subject to clause 10.2 the Lessee must at its sole cost and expense, do whatever is necessary or the Lessor reasonably requires to:

- (a) Remediate any Contamination of or from the Premises and following Remediation obtain a Remediation Report to be issued to the Lessor;
- (b) clean up, manage or abate any Pollution occurring on or from the Premises;

- (c) remedy any breach of an Environmental Law that occurs on or affects the Premises as soon as it occurs (including by restoring the Premises to a state as close as practicable to the state the Premises were in before that breach); and
- (d) remedy any breach of this clause 10.

10.8 Release and indemnity

- (a) To the extent permitted by law, the Lessee releases the Lessor from any Costs or Claims incurred by the Lessee or for which the Lessee is liable, that arise out of or in connection with any Environmental Aspect or Lessee Contamination.
- (b) To the extent permitted by law, the Lessee must indemnify and keep indemnified the Lessor and the Lessor's Agents and consultants against, and pay the Lessor the amount of, all Costs or Claims incurred in connection with;
 - (i) any Environmental Aspect to the extent the Costs or Claims are incurred by the Lessor or the Lessor's Agents due to an act or omission including the wilful act, default or negligence of the Lessee;
 - (ii) Lessee Contamination; and
 - (iii) the Remediation of any Lessee Contamination.
- (c) The release referred to in clause 10.8(a) and the indemnity referred to in clause 10.8(b) are in addition to, and without derogating from, any other right, power or privilege of the Lessor, or from any liability, duty or obligation of the Lessee however arising.
- (d) The provisions of this Lease govern all rights, powers, privileges, liabilities, duties and obligations as between the parties in respect of any Environmental Aspect.

10.9 Environmental security bond

- (a) The Lessee must provide a security bond in the amount set out in Item 18.
- (b) The Lessor may call on the security bond if the Lessee is in breach of this clause for the purpose of reimbursing the Lessor in respect of any loss incurred by the Lessor as a result of a breach of this clause by the Lessee.
- (c) The Lessee may provide the security bond referred to in clause 10.9(a) in the form of cash or a bank guarantee. If the Lessee provides a bank guarantee, clause 16 shall apply.

10.10 Downer EDI

Notwithstanding anything else contained in this Lease, the environmental security bond referred to in clause 10.9 does not need to be provided for so long as Downer EDI Rail Pty Ltd or a Related Body Corporate of Downer EDI Limited is the lessee.

10.11 Excluded Improvements

- (a) The Lessor acknowledges that there is a building on Lot 1 known as the dog spike shed and that there is a building on Lot 3 known as the station master's shed which contain asbestos and which are not to be used by the Lessee.
- (b) Notwithstanding any other provision of this clause 10 or otherwise in this Lease, the Lessor acknowledges that the Lessee has no liability in respect of the Excluded Improvements and that the Lessor will remain liable for all Contamination

or Pollution relating to the Excluded Improvements and any Environmental Notice issued in respect of the Excluded Improvements.

- (c) Upon giving the Lessee not less than 24 hours' notice, except in the case of emergency where no notice is required, the Lessee permits the Lessor and the Lessor's Agents to access and use at all times the C&CS Communications Room which is identified as Excluded Improvement B44 set out in Schedule 2 to this Lease. The Lessee acknowledges that the C&CS Communications Room does not form part of the Premises as it is an Excluded Improvement.

11. CONTAMINATION MANAGEMENT

11.1 Consultation and Cooperation in Relation to Lessor Contamination

- (a) The Lessee will consult in good faith and cooperate with the Lessor in relation to the management of any known or likely Lessor Contamination so as to minimise as far as reasonably practicable:
 - (i) the likelihood of any Environmental Notice being served in relation to any Contamination known or likely to comprise any Lessor Contamination, including in relation to any discussions or negotiations with any Government Agency; and
 - (ii) the cost of any Remediation of Lessor Contamination consistent with the requirements of any applicable Environmental Laws.
- (b) In relation to the carrying out of any Works that would be likely to have an impact on any Contamination in, on, under or emanating from the Premises, the Lessee must consult with the Lessor in good faith and cooperate in a manner that is reasonable in the circumstances with each other so as to minimise as far as reasonably practicable:
 - (i) in relation to the preparation and lodgement of any application or the carrying out of any assessment under any town planning law or Environmental Law, the likelihood that any such application or assessment may reasonably result in an Environmental Notice in respect of any Contamination known or likely to comprise any Lessor Contamination, which consultation and cooperation may involve giving consideration to the withdrawal of any such application or assessment or the amendment of any such application or assessment to provide for the subject of that application or assessment to be done or carried out in a different manner and/or in a different location; and
 - (ii) in relation to the planning, design or carrying out of any Works, the likelihood of the issue of an Environmental Notice in respect of any Contamination known or likely to comprise any Lessor Contamination which consultation and cooperation may involve giving consideration to the planning, design or carrying out of any such Works in a different manner and/or in a different location.
- (c) Except as expressly provided in clause 11.2(b) nothing in this clause 11.1 limits in any way the operation of clauses 11.2 to 11.12 inclusive.
- (d) If:
 - (i) compliance with clause 11.1(a) or (b) requires the carrying out of any Remediation; or

- (ii) the parties otherwise agree to the carrying out of any Remediation, the provisions of clause 11.4 - 11.12 inclusive will apply to the carrying out of that Remediation as if the carrying out of that Remediation arose from service of an Environmental Notice.

11.2 Environmental Notice

If either party is served with an Environmental Notice relating to all or part of the Land or the Premises during the Term then:

- (a) that party must promptly provide a copy of the Environmental Notice to the other party; and
- (b) clauses 11.1(c) and 11.3 to 11.12 inclusive apply.

11.3 Consultation

- (a) When compliance with an Environmental Notice may reasonably impact on Lessor Contamination then the Lessee agrees as soon as practicable after being served with that Environmental Notice:
 - (i) to consult and cooperate with the Lessor in respect of the Lessee's compliance with that Environmental Notice, and in particular whether to challenge the validity or merits of the Environmental Notice; and
 - (ii) each party must provide to each other copies of any documents which may reasonably assist the parties to determine whether to challenge the validity or merits of the Environmental Notice.
- (b) To the extent that any communications or documents referred to in this clause 11.3 concern the validity of the Environmental Notice or a possible challenge to the Environmental Notice, then the parties acknowledge and agree that they have a common interest for the purposes of those communications and documents.

11.4 Nomination by the Lessor

If the Lessor has reasonable grounds for belief that any Contamination the subject of any Environmental Notice comprises any Lessor Contamination, the Lessor may, within 20 Business Days of receipt of the Environmental Notice by the Lessor, nominate by notice in writing to the Lessee whether compliance with the relevant Environmental Notice is to be carried out by the Lessor or by the Lessee, failing which nomination, Lessee shall be deemed to have been nominated.

11.5 Negotiation and Preparation of Remediation Agreement

- (a) As soon as reasonably practicable after each party has received a copy of an Environmental Notice, and having regard to any communications under clause 11.3, the parties must use their best endeavours to negotiate and reach agreement in writing on:
 - (i) the nature and extent of the matters relating to the Remediation required to comply with the Environmental Notice and the carrying out of that Remediation which matters are listed in 11.5(d) either:
 - (A) prior to any Remediation being carried out; or
 - (B) if that is not practicable because of the operation of clause 11.7, as soon as practicable after Remediation has commenced; and

- (ii) whether, and if so, the manner in which, each of clauses 11.9 to 11.10 inclusive will apply in respect of the Environmental Notice (and if any such agreement is reached, clauses 11.9 to 11.10 inclusive will not apply or will only apply as modified by that agreement), within a reasonable period having regard to the terms of the Environmental Notice.
- (b) If no agreement is reached by the parties under clause 11.5(a)(ii) in respect of the application of any of clauses 11.9 or 11.10, within 20 Business Days of both parties receiving an Environmental Notice or such other period as the parties may agree, then that clause will apply under this clause 11.
- (c) For the avoidance of doubt, clauses 11.9 - 11.10 inclusive will only apply as provided in this clause 11.5 or clause 11.7.
- (d) The matters in relation to which the parties must have regard under clause 11.5(a)(i) must include:
 - (i) the scope of the proposed Remediation;
 - (ii) the identification of the resources to be used, including the parties' resources, and any contractors to be used (including, unless the parties agree otherwise, any Environmental Expert engaged for the purpose of clause 11.9) and the process by which those contractors are to be appointed and managed, including the calling of tenders if necessary or desirable;
 - (iii) the mechanism for developing Remediation action plans; and
 - (iv) the minimisation so far as reasonably practicable of:
 - (A) the cost of compliance with any such Environmental Notice consistent with the requirements of any applicable Environmental Law; and
 - (B) the impact of any such compliance on the parties.
- (e) If agreement cannot be reached under clause 11.5(a)(i) within 20 Business Days of receipt of the Environmental Notice by the Lessor (or such other time as agreed by the parties) or if the parties agree that it is otherwise desirable or appropriate to do so, then the party nominated or deemed to be nominated under clause 11.4 must appoint an Environmental Expert from the RailCorp Panel to provide an expert opinion in respect of the matters set out in clause 11.5(d), a copy of which must be provided to both parties.

11.6 **Nominee to carry out Remediation**

The party nominated or deemed to be nominated under clause 11.4 must carry out and fulfil the requirements of the relevant Environmental Notice in accordance with:

- (a) all applicable laws;
- (b) the relevant Environmental Notice;
- (c) any agreement reached under clause 11.5(a)(i) or, failing agreement, in accordance with the opinion provided under clause 11.5(e); and
- (d) clauses 11.9 - 11.10 inclusive subject to any agreement reached under clause 11.5(a)(ii),

and subject to any other lawful requirements of the Government Agency which issued the Environmental Notice.

11.7 Lessee to carry out Remediation

- (a) Notwithstanding clauses 11.4 - 11.10 inclusive, the Lessee may commence any Remediation which:
 - (i) is required by the relevant Environmental Notice to be carried out in a timeframe which (in the reasonable opinion of Lessee) does not allow the procedures specified in clauses 11.4, 11.5 and 11.6(c) and (d) to be undertaken; or
 - (ii) (in the reasonable opinion of the Lessee) is otherwise required to be carried out to prevent or ameliorate any serious risk of harm to persons or the Environment or to prevent or ameliorate any serious loss which will or may be incurred if the Remediation is not carried out urgently.
- (b) The Lessee must, however, promptly notify the Lessor of the commencement of that Remediation and comply with clause 11.5 (to the extent that it may be applied) as soon as reasonably practicable and with clauses 11.6(c) and (d) and 11.9 – 11.10 inclusive (to the extent that they may be applied), and with clauses 11.6(a) and (b).

11.8 Not Used

11.9 Remediation Report

- (a) Prior to the commencement of any Remediation, the party which is to commence or carry out the Remediation in accordance with 11.6 or 11.7 must:
 - (i) engage an Environmental Expert from the RailCorp Panel, and who (subject to compliance with any Environmental Law) may be the same as any Environmental Expert appointed under 11.5; and
 - (ii) arrange for that Environmental Expert to prepare a report (**Remediation Report**) as soon as reasonably practicable after the completion of any relevant Remediation which:
 - (A) describes the nature and extent of any Remediation undertaken and certifies that the Remediation required under the Environmental Notice has been completed;
 - (B) incorporates a statement setting out full details of the calculation of the costs of carrying out the Remediation;
 - (C) identifies on the balance of probabilities the extent to which the Contamination is:
 - Lessee Contamination; and/or
 - Lessor Contamination; and
 - (D) apportions the costs of the Remediation on the basis of clause 11.9(a)(ii)(C).
- (b) As soon as reasonably practicable after receiving the Remediation Report from the Environmental Expert, the party which performed the Remediation in accordance with clause 11.6 or 11.7 must serve the other party with a copy of the Remediation

Report. For the avoidance of doubt, if the Remediation is carried out in stages, then a staged Remediation Report may be issued in respect of the Remediation.

- (c) The parties may make submissions to the Environmental Expert in relation to the matters referred to in sub-clause 11.9(a)(ii) (provided that a party making a submission must inform the other party of the submission and provide a copy of the submission to the other party prior to or at the same time as making the submission to the Environmental Expert) and must provide any documents and/or assistance reasonably required by the Environmental Expert in order to fulfil his obligations under this clause.

11.10 Additional matters: Environmental Experts

The parties acknowledge and agree that, in exercising its functions under this clause 11 any Environmental Expert appointed under this clause:

- (a) will be an Environmental Expert from the RailCorp Panel;
- (b) will be engaged on behalf of, and for the benefit of, both parties;
- (c) will act as an expert not an arbiter; and
- (d) may provide an opinion on such other matters as are agreed by the parties acting reasonably.

11.11 Notification and repayment of Remediation and mitigation costs

- (a) Following the provision of a Remediation Report to both parties under clause 11.9, if the Remediation was carried out by the Lessee the Lessor must, within 20 Business Days of receiving a claim from the Lessee, reimburse to the Lessee that part of the Lessee's Remediation Costs incurred to the extent those Remediation Costs relate to any Lessor Contamination.
- (b) If the Remediation was carried out by the Lessor, the Lessee must within 20 Business Days of receiving a claim from the Lessor, reimburse to the Lessor that part of the Lessor's Remediation Costs incurred to the extent that those Remediation Costs relate to Lessee Contamination.
- (c) For the avoidance of doubt, a party may make more than one claim under this clause 11.11, but any particular costs or liabilities must not be the subject of more than one claim.
- (d) Notwithstanding clauses 11.1(a) to (d) inclusive, the parties may agree in writing an allocation of responsibility for notification and repayment of Remediation Costs in relation to any Environmental Notices or any costs referred to in clause 11.1(d).

11.12 Disputes

For the avoidance of doubt, any dispute arising under this clause 11, under any agreement under clause 11.5(a)(ii), or in relation to the decision of any Environmental Expert, may be referred for resolution under clause 24.

12. INSURANCE, RISK AND INDEMNITIES

12.1 Lessee's insurance obligations

The Lessee must effect and maintain, or cause to be effected and maintained, the following insurances (under one or more policies of insurance) relevant to its obligations

under this Lease for the duration of the Term (including any extension or renewal of the Term or any holding over):

- (a) public liability insurance written on an occurrence basis which covers the liability of the Lessee, the Lessee's employees, contractors and agents to third parties in respect of:
 - (i) bodily injury of, disease or illness to, and death of any person (other than an employee of the insured); and
 - (ii) loss of, damage to, or loss of use of real or personal property, arising out of or in connection with the Lessee's occupation of the Premises (including the Permitted Use) and any indemnity or other liability of the Lessee under this Lease and which has a limit of the amount specified in Item 12 for each and every occurrence in respect of public liability claims. The policy must insure the Lessor for its vicarious liability for the acts or omissions of the other insureds;
- (b) workers' compensation insurance policy or registrations as required by law to fully insure liability of the Lessee under statute to the Lessee's employees who work in or around the Premises;
- (c) property insurance which covers loss of or damage to contents of the Premises (including fixtures, fittings and stock and plate glass) owned by or in the care, custody or control of the Lessee as a result of all insurable risks which a prudent insured with a risk profile similar to that of the Lessee would maintain acting on the advice of a reputable broker, for the full replacement value;
- (d) building insurance to insure all Improvements on a fully comprehensive basis including, without limitation, the cost of demolition and removal of debris in the joint names of the Lessor and the Lessee to the full insurable value on a replacement and reinstatement basis against fire, lightning, storm and tempest and other risks determined by the Lessor. The Lessee must keep the same insured during the continuance of this Lease and as often as the Premises are damaged or destroyed. The proceeds of any insurance are to be applied towards the re-building or repairing of the Premises or such parts as are so destroyed or damaged; and
- (e) the insurance policies must comply with the conditions stated at Item 13.

12.2 **Rated insurer**

The Lessee must take out and keep current all of the insurance policies referred to in clause 12.1 (with the exception of statutory insurances) with an insurer authorised under the *Insurance Act 1973* (Cth), as amended from time to time, to carry on an insurance business, and supervised by the Australian Prudential Regulation Authority (**APRA**) which shall include Lloyd's of London syndicates, provided that the rated insurer has a minimum rating equivalent to S&P A-rating.

12.3 **Evidence of insurance**

Prior to the commencement date of this Lease and any other time thereafter after receiving a written request from the Lessor (but no more than once per annum), the Lessee must, within a reasonable time, provide to the Lessor a copy of certificates of currency (for all insurances) evidencing the insurances effected and maintained, or caused to be effected and maintained, in compliance with clause 12.1.

12.4 Proceeds of insurance

If any loss or damage occurs which is covered by any insurance the Lessee is required to maintain under this Lease, the Lessee must, unless otherwise agreed in writing by the Lessor:

- (a) apply for the insurance proceeds immediately; and
- (b) use the proceeds to restore, replace, repair or reinstate the loss or damage and must supplement the proceeds with the Lessee's own money to the extent that the proceeds are insufficient.

12.5 Maintain insurance

- (a) The Lessee must not, without the Lessor's prior consent, do or omit to do, anything which it is aware could:
 - (i) increase the premium payable on any insurance policy taken out by the Lessor; or
 - (ii) affect the Lessor's rights under any insurance policy or make the policy invalid or able to be cancelled.

The Lessee must pay any extra premium payable by the Lessor on account of extra risk caused by the Lessee's use or occupation of the Premises.

12.6 Requirements of and proof of insurance

In respect of the insurances required to be effected by the Lessee under clause 12.1, the Lessee shall:

- (a) ensure that the public liability policy provides that:
 - (i) all insurance agreements and endorsements (with the exception of limits of indemnity) name as insureds and operate as if there was a separate policy of insurance covering the Lessor (for the Lessor's vicarious liability only for the acts or omissions of other insureds), the Lessee and its employees, contractors and agents;
 - (ii) failure by any insured to observe and fulfil the terms of the policy or to comply with the duty of disclosure does not prejudice the insurance of any other insured; and
 - (iii) the insurer waives all rights, remedies or relief to which it might become entitled by way of subrogation against named insureds (to the extent they are insured under the policy),

and any other provisions reasonably required by the Lessor provided the provisions are commercially available to businesses engaged in similar activities as the Lessee;

- (b) give full, true and 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;
- (c) punctually pay all premiums, statutory charges, excesses and other sums due under the policies;
- (d) comply with and abide by all the terms and conditions of the policies;

- (e) not do, or omit to do, anything that would entitle the insurers to void or cancel the policies or reduce their liability in respect of any claim;
- (f) not cancel, vary or allow any of the insurances to lapse without the Lessor's prior written consent;
- (g) reinstate a policy if it lapses;
- (h) do everything reasonably required to claim and to collect or recover monies due under any policy;
- (i) ensure that any insurance policy taken out and maintained by the Lessee or on its behalf do not contain an exclusion in respect of risks associated with rail or for premises situated on, near or in railway stations, tracks or other land owned by a rail operator; and
- (j) notify the Lessor if an event relating to this Lease occurs which gives rise, or may give rise, to:
 - (i) a claim under any insurance policy required under clause 12.1 in excess of \$100,000.00 or any number of claims under any one such insurance policy in excess of \$500,000.00; or
 - (ii) such an insurance policy being cancelled, lapsing or being avoided; or
 - (iii) a claim under any insurance policy required under clause 12.1 is refused either in part or in full.

12.7 Lessee's risk

Subject to clause 10.2, the Lessee accepts all risks in connection with the use and occupation of the Premises including that a law or a requirement of an Authority may affect the use or occupation of the Premises.

- (a) If the Lessee is obliged to do anything under this Lease, it does so at its own risk.

12.8 Release of Lessor

To the extent permitted by law, the Lessee releases the Lessor from:

- (a) any Costs or Claims caused by any reason and in connection with any damage, loss, injury or death to or of any person or property on or near the Premises, including but not limited to by reason of the fact that the Premises may be near any land used for Railway Purposes; and
- (b) any liability for damage to the Lessee's Property or for any other loss, including but not limited to:
 - (i) financial or economic loss to the Lessee or to any other person;
 - (ii) loss of goodwill in relation to the business being carried on by the Lessee;
 - (iii) loss of the Lessee's profits;
 - (iv) indirect or consequential loss; and/or
 - (v) loss resulting from:
 - (A) the liability of another person; or

- (B) the Lessor granting any other lease, licence or other right to operate a business on land adjacent to the Premises which may be a use which competes with the Permitted Use or has an adverse effect on the ability of the Lessee to carry out the Permitted Use, except to the extent such loss or damage is caused or contributed to by an act or omission including the wilful act, default or negligence of either the Lessor or any one or more of the Lessor's Agents;
- (vi) the vacancy of any other tenancy or area on the Railway Land from time to time (for whatever reason);
 - (vii) the Lessor carrying out any maintenance, refurbishment, alteration, upgrade or other works or other activity in and around the Railway Land for Railway Purposes (including but not limited to works required under the *Disability Discrimination Act 1992 (Cth)*) provided that the Lessor gives the Lessee at least 2 months' notice in writing of the proposed works (or in the case of an emergency, a period of notice that is reasonably practicable in the circumstances);
 - (viii) any special events in the area of the Railway Land and crowd control and other measures taken by the Lessor in relation to those events, including but not limited to closing the Railway Land, changing the location of entrances and exits and changing the flow of people through the Railway Land;
 - (ix) the frequency of trains passing through the Railway Land and changes to train timetables which may be made in the absolute discretion of the Lessor;
 - (x) any incidents or accidents occurring in or around the Railway Land which require temporary closure or shutdown of the Railway Land;
 - (xi) any delay in rectifying a breakdown or failure of any fixtures, fittings, plant and equipment in the Premises (excluding the Overhead Wiring) and under the control of the Lessor;
 - (xii) any industrial dispute associated with employees or contractors responsible for operating the Railway Land;
 - (xiii) noise, vibration or stray electrical currents emanating from the Railway Land; and
 - (xiv) if the Premises is located within an area of the Railway Land which is only accessible to paying customers of the Lessor, the fact that only those members of the public may have access to the Premises.
- (c) In addition to the matters set out in clause 12.8(a), nothing the Lessor does in relation to carrying out the Railway Purposes or operating and maintaining the Rail Infrastructure Facilities constitutes a nuisance under or in relation to this Lease or a breach of covenant by the Lessor under any express or implied term of this Lease for breach of quiet enjoyment including clause 7.1 nor a derogation from the grant and the Lessee must not take any action or make any claim against the Lessor by reason of the fact that the Premises may be in or in the vicinity of:
- (i) a railway being operated by the Lessor for Railway Purposes or otherwise; and/or
 - (ii) Rail Infrastructure Facilities.

12.9 Indemnity

The Lessee indemnifies the Lessor against any Costs or Claims which the Lessor incurs or is liable for in connection with:

- (a) any damage, loss, injury or death, caused or contributed to by the Lessee or the Lessee's Agents, including but not limited to any loss or damage caused to any Rail Infrastructure Facility;
- (b) any default by the Lessee under this Lease;
- (c) the use or occupation of the Premises by the Lessee or Lessee's Agents;
- (d) any Service to the Premises not working properly, being unavailable or being interrupted which is caused by or contributed to by the Lessee or the Lessee's Agents, or the misuse of any Service provided to the Premises by the Lessee or the Lessee's Agents, unless caused or contributed to by an act or omission including the wilful act, default or negligence of either the Lessor or any one or more of the Lessor's Agents; and
- (e) the escape of any water from the Premises caused or contributed to by the Lessee or Lessee's Agents.
- (f) the Lessor or the Lessor's Agents doing anything which the Lessee must do under this Lease but has not done or which the Lessor considers (acting reasonably) the Lessee has not done properly; and
- (g) the Lessor or the Lessor's Agents exercising, or attempting to exercise, a right or remedy in connection with this Lease after the Lessee defaults under this lease or in an emergency under clause 7.4(a)(ix).

12.10 Continuing indemnity

Each indemnity of the Lessee contained in this Lease is a:

- (a) continuing obligation of the Lessee and remains in full force and effect after the termination of this Lease.
- (b) separate and independent obligation of the Lessee.

12.11 Public Liability Insurance Index

On every fifth anniversary of the Commencing Date, the minimum limit of the public liability insurance policy (as referred to in Item 12 and effected in accordance with clause 12.1(a)) shall be varied as follows:

$$\text{New Public Liability Insurance Limit} = \frac{\text{Current Limit} \times \text{CPI}}{\text{LCPI}}$$

Where:

New Public Liability Insurance Limit = the limit of the public liability insurance policy from the Public Liability Review Date until the next Public Liability Review Date;

Current Limit = the limit of the public liability insurance policy applicable immediately before the Public Liability Review Date;

CPI = the CPI for the quarter ending immediately before the relevant Public Liability Review Date;

LCPI = the CPI last published before:

- (a) in the case of the first Public Liability Review Date, the Commencing Date.
- (b) in every other case, the Public Liability Review Date immediately preceding the relevant Public Liability Review Date.

Public Liability Review Date means each fifth anniversary of the Commencing Date (including each fifth anniversary of any Option Term).

12.12 Global or Australia wide insurances

Where the Downer EDI Rail Pty Limited or a Related Body Corporate of Downer EDI Limited is the lessee, the incorporation of the Premises and the interests of the Lessor in accordance with this clause 12 in any global or Australia wide insurances of that lessee will be deemed to be sufficient compliance with the obligations of the Lessee with respect to insurances in accordance with the provisions of this clause.

13. DAMAGE

13.1 Total Destruction

- (a) Subject to clause 13.3, if the Premises are Totally Destroyed the Lessee must promptly, at its cost, reinstate the Premises in accordance with its original design subject to any modifications as may be required by any competent Authority and approved by the Lessor (such approval not to be unreasonably withheld).
- (b) If any of the proposed works requires lodgement of an application with the Authority, then at least three months before the Lessee lodges an application, the Lessee must seek the Lessor's consent (which is not to be unreasonably withheld or delayed), and provide to the Lessor such details as the Lessor reasonably requires.
- (c) The Rent payable by the Lessee under this Lease from the date of the reinstatement will remain unchanged and the Lessee is not liable to pay any additional consideration with respect to the reinstated Premises.

13.2 Partial Destruction

If the Premises are partially destroyed or damaged, the Lessee must promptly at its cost obtain all necessary approvals from the Authority and repair, replace and make good the whole of the destroyed or damaged portion of the Premises as nearly as possible to the condition required under this lease immediately prior to such damage or destruction, with such modifications as the Lessee may seek and the Lessor approve (such approval not to be unreasonably withheld) or as may be required by any Authority and approved by the Lessor (such approval not to be unreasonably withheld).

13.3 Last 6 months

- (a) If the Premises are Totally Destroyed during the last 6 months of the Term and the Lessee receives the proceeds of a policy of insurance which are sufficient (in the Lessor's opinion) to reinstate the Premises, then, subject to the legal rights of the insurer the Lessee must promptly pay those proceeds to the Lessor.
- (b) If the Lessor receives the proceeds of a policy of insurance in accordance with clause 13.3(a), the Lessee will not be required to reinstate the Premises in accordance with clause 13.1.

13.4 Dispute

- (a) If any dispute arises under this clause 13, the Lessor or the Lessee may request the President of the Australian Property Institute Inc - NSW Division to appoint a Valuer to determine the dispute and the proportion of the Valuer's costs that each party must pay.
- (b) The Valuer acts as an expert and not as an arbitrator and the Valuer's decision is final and binding.
- (c) In all other respects the provisions of clause 24 apply in respect of any dispute which arises under this clause 13.

14. ASSIGNMENT, SUBLEASE AND MORTGAGE

14.1 Restriction on assignment and other dealings

The Lessee must not do any of the following unless it first complies with the applicable provisions in the rest of this clause:

- (a) assign this Lease; or
- (b) mortgage, charge or otherwise encumber this Lease.

This clause 14 does not apply to any assignment, sublease, licence, mortgage, charge or other encumbrance to or in favour of a Related Body Corporate of Downer EDI.

14.2 General requirements

The Lessee must not do anything specified in clause 14.1 unless:

- (a) **(notice)** the Lessee has given the Lessor at least three months' notice of its desire to do that thing, together with details of the proposed transaction, details of the parties, a copy of the proposed documentation and all other relevant information, including but not limited to at least two independent financial references and two independent business references for the proposed assignee, sublessee or licensee;
- (b) **(no default in relation to payments and no unremedied breach)** all Rent and other moneys due or payable as at the date of assignment are paid by the Lessee and any dispute as to the amount of the Rent payable pursuant to a rent review in accordance with the provisions of this Lease is resolved and the Rent determined and there is no existing unremedied breach of the terms, covenants, conditions and restrictions of this Lease, unless the default is waived by the Lessor;
- (c) **(costs)** the Lessee pays to the Lessor, within a reasonable time after demand by the Lessor, the costs and expenses incurred by the Lessor of and incidental to any enquiries which may be made by or on behalf of the Lessor as to the respectability, responsibility, solvency, fitness and suitability of any proposed assignee and otherwise relating to the proposed assignee;
- (d) **(reputation)** the Lessee establishes to the Lessor's reasonable satisfaction that any proposed assignee, sublessee or licensee:
 - (i) is respectable and financially sound;
 - (ii) has experience and business expertise in conducting the same business as the Permitted Use; and

(iii) financial capability,

that is at least equal to that of Downer EDI Rail Pty Ltd as at the Commencing Date;

- (e) **(security)** where the proposed assignee is a company (other than a company whose shares are listed on the Australian Securities Exchange or a wholly owned subsidiary of a company listed on the Australian Securities Exchange the Lessor is given any additional guarantee by the directors and/or principal shareholders of the company the Lessor reasonably requires in relation to the proposed transaction, prepared and stamped by the Lessor's lawyer at the Lessee's cost, and any guarantor acknowledges its new obligations to guarantee the new Lessee's obligations under this Lease; and
- (f) **(consent)** the Lessor and its mortgagee consent to the proposed transaction (such consent not to be unreasonably withheld in the case of the Lessor); and
- (g) the Lessee complies with clause 14.7.

14.3 Requirements for assignment

If the Lessee proposes to assign this Lease:

- (a) the Lessee and assignee must enter into a deed (at the cost of the Lessee) in the form reasonably required by the Lessor under which (among other things):
 - (i) the assignee agrees to perform all of the Lessee's express and implied obligations under this Lease, including the obligation to indemnify the Lessor (such deed to be prepared by the Lessor's solicitor); and
 - (ii) the Lessee acknowledges its continuing obligations under this Lease;
- (b) if requested by the Lessor, the Lessee must ensure that the proposed assignee procures a guarantor acceptable to the Lessor who will give guarantees and indemnities on terms acceptable to the Lessor; and
- (c) the Lessee must give the Lessor a signed, stamped and registrable transfer of this Lease.

14.4 Requirements for sublease

The Lessee will not sublease or part with possession of the Premises or any part of the Premises without the prior consent in writing of the Lessor and upon the granting of consent, the Lessor may impose any conditions on a sublessee which are necessary to protect the interests of the Lessor including requiring the Lessee and sublessee to enter into a deed in the form reasonably required by the Lessor containing such conditions as the Lessor requires including a condition obliging the sublessee to comply with the provisions of this Lease. The Lessee must pay to the Lessor, within a reasonable time after demand by the Lessor, the costs and expenses incurred by the Lessor associated with the granting of consent to sublease, including but not limited to the legal costs associated with the negotiation and entry into the deed referred to in clause 14.3.

14.5 Licensees and Concessionaires

The Lessee must not permit any licensee or concessionaire to conduct business on its own account in any part of the Premises without the prior consent in writing of the Lessor. Upon the granting of consent the Lessor may impose any conditions on a licensee or concessionaire including requiring any such licensee or concessionaire to execute at the

cost of the Lessee a deed or other document containing such conditions as the Lessor requires.

14.6 Change of control

A person may become or cease to be a Parent of the Lessee if, before the proposed event occurs:

- (a) the Lessee complies with clause 14.2 as if the Lessee's proposal for a person to become or cease to be a Parent of the Lessee is an assignment of this Lease for the purposes of clause 14.1; and
- (b) the Lessee and the proposed Parent of the Lessee and the person proposing to cease being a Parent of the Lessee comply with all reasonable requirements of the Lessor.

The Lessee is not to be taken to have complied with this clause 14.6 until a notice to that effect is given by the Lessor to the Lessee.

This clause 14.6 does not apply whilst Downer EDI Rail Pty Ltd, or a Related Body Corporate of Downer EDI Ltd, is the lessee.

14.7 Guarantees required in respect of assignments or changes in Control

If asked to do so by the Lessor, the Lessee must procure that a guarantee or a guarantee and indemnity in connection with:

- (a) the obligations to be assumed by the proposed new lessee under this Lease (in the case of a proposed assignment), is given by a person acceptable to the Lessor; or
- (b) the obligations of the Lessee under this Lease (in the case of a person becoming or ceasing to be a Parent of the Lessee), is given by the proposed Parent of the Lessee, and, if required by the Lessor, another person acceptable to the Lessor.

The Lessor need not accept a guarantee or a guarantee and indemnity if the Lessor is not satisfied with its terms including the extent of the liability of the proposed guarantor.

15. DEFAULT, TERMINATION AND EXPIRY

15.1 Events of default

Each of the following is a default by the Lessee under this Lease:

- (a) **(non-payment of Rent)** if the Lessee does not pay the Rent within 14 days of the due date for payment, whether or not demanded by the Lessor.
- (b) **(non-payment of other amounts)** if the Lessee does not pay the Outgoings or any other amount that is due and payable by it under this Lease within 14 days of its due date whether or not demanded, by the Lessor.
- (c) **(essential terms)** if the Lessee does not comply with any other essential term of this Lease.
- (d) **(repudiation)** if the Lessee repudiates its obligations under this Lease.
- (e) **(other obligations)** if the Lessee does not comply with any other express or implied obligation under this Lease.
- (f) **(Insolvency Event)** if an Insolvency Event occurs in respect of the Lessee or any of its subsidiaries.

15.2 Lessor's termination after default

The Lessor may terminate this Lease after:

- (a) the Lessee defaults under clause 15.1; and
- (b) the Lessor has served notice of breach of covenant and the Lessee has failed to remedy the default within a reasonable time (having regard to the nature and extent of the default and not being less than 14 days) after receiving the Lessor's notice,

by:

- (c) re-entering and taking possession of the Premises, using reasonable force to secure possession; and
- (d) serving notice of termination on the Lessee; or
- (e) serving notice of termination on the Lessee; and
- (f) instituting proceedings for possession of the Premises against the Lessee.

15.3 Essential terms

- (a) Each of the following obligations of the Lessee under this Lease are essential terms of this Lease:
 - (i) to pay Rent or any other amount under this Lease, including GST;
 - (ii) use of the Premises and obtaining all consents to carry on the Permitted Use, including carrying on the Permitted Use;
 - (iii) to maintain the Premises;
 - (iv) to comply with all laws and the requirements of all authorities, including but not limited to all Environmental Laws and contamination management under clause 10 and 11 and all laws in relation to work health and safety;
 - (v) to take out and maintain insurance;
 - (vi) regarding assignment of this Lease, or anything else under clause 14;
 - (vii) to give a bank guarantee/environmental security bond (if relevant); and
 - (viii) regarding the Lessee's obligations under clause 13 (Damage).

15.4 Breach of essential term

- (a) Subject to clause 15.4(b), the Lessor may treat the Lessee's breach of an essential term under clause 15.3 as a repudiation of this Lease and may terminate this Lease for breach of the essential term and for repudiation. The Lessor is then entitled to immediate possession of the Premises.
- (b) The Lessor may only treat the Lessee's breach of an essential term as a repudiation of this Lease, and may only terminate this Lease for such a breach, if the breach has continued for at least 14 days after written notice of that breach has been given by the Lessor to the Lessee.

15.5 **Lessor's entitlement to damages**

- (a) If the Lessee:
 - (i) repudiates this Lease;
 - (ii) breaches an essential term of this Lease; or
 - (iii) defaults under this Lease in any other way,the Lessee must compensate the Lessor for the loss or damage suffered by the Lessor as a consequence of the repudiation, breach or other default.
- (b) The compensation payable by the Lessee under clause 15.5(a) extends to the loss or damage suffered by the Lessor during the Term, including the periods before and after any termination of this Lease.
- (c) The Lessee's obligation to compensate the Lessor for loss or damage is not affected if:
 - (i) the Lessee abandons or vacates the Premises;
 - (ii) the Lessor elects to re-enter or to terminate this Lease;
 - (iii) the Lessor accepts the Lessee's repudiation; or
 - (iv) the parties' conduct constitutes a surrender by operation of law.
- (d) The Lessor's entitlement to damages is in addition to any other remedy or entitlement, including termination of this Lease.

15.6 **Instituting proceedings**

The Lessor may institute legal proceedings claiming damages against the Lessee in respect of the Term:

- (a) including the periods before and after the Lessee vacates the Premises;
- (b) including the periods before and after the abandonment, termination, repudiation, acceptance of repudiation or surrender by operation of law referred to in clause 15.5(c); and
- (c) whether the proceedings are instituted before or after the conduct referred to in clause 15.5(c).

15.7 **Lessor's other rights**

The Lessor's right to compensation for loss or damage is in addition to its right to:

- (a) recover Rent until the Terminating Date or termination of this Lease;
- (b) recover costs and expenses under clause 5; and
- (c) receive interest under this Lease.

15.8 **Indemnity in connection with termination**

Without limitation to clause 12.9 of this Lease, if an event of default occurs and as a consequence this Lease is terminated, then the Lessee indemnifies the Lessor against any liability or loss arising from, and any Costs incurred:

- (a) in connection with the Lessor re-entering the Premises;
- (b) because the Lessor will not receive the benefit of the Lessee performing its obligations under this lease from the date of that termination until the Terminating Date; and
- (c) in connection with anything else relating to that termination including the Lessor attempting to mitigate its loss,

whether before or after termination of this Lease including legal Costs on a full indemnity basis or solicitor and own client basis, whichever is the higher. The Lessor's rights under this clause 15.8 are in addition to its rights under clause 12.9 but are subject to the Lessor's obligation to mitigate its loss.

15.9 Calculation assumptions

Subject to the Lessor's obligation to mitigate its loss in accordance with clause 15.8, the benefit of the Lessee performing its obligations referred to in clause 15.8(b) is to be calculated:

- (a) on the assumption that this Lease continues in force until the Terminating Date; and
- (b) having regard to the provisions in this Lease relating to:
 - (i) Rent and the Outgoings;
 - (ii) the performance of the Lessee's obligations under clause 8.2; and
 - (iii) the performance of the Lessee's other obligations under this lease.

15.10 Lessee's obligations on termination

- (a) The Lessee must do the following at its cost before the earlier of the Terminating Date and the termination of this Lease:
 - (i) remove all rubbish and the Lessee's Property from the Premises, (other than any Buildings or other fixtures, alterations, additions or Improvements erected by the Lessee which are not required to be removed in accordance with this clause 15.10(a)), and make good any damage caused by removal;
 - (ii) promptly give vacant possession of the Premises in a condition consistent with the Lessee's performance of its obligations under this Lease to maintain, repair and decorate the Premises and unless otherwise agreed by the parties;
 - (iii) remove any signs, advertisements, notices or hoardings erected or painted by it on the Premises;
 - (iv) hand over all keys to the Premises, including security access devices;
 - (v) immediately repair any damage caused to the Premises in the course of complying with this clause; and
 - (vi) comply with clauses 10 and 11.

Without limiting clause 15.8, if the Lessee fails to carry out any of the obligations set out in this clause within a reasonable period of time or within the period specified in the clause, the Lessor may, at the Lessee's cost and without the

requirement to provide notice, do any of those things and the Lessee must reimburse the Lessor on demand for any costs and expenses incurred by the Lessor under this clause.

- (b) The Lessee must comply with the following conditions when dealing at any time with the Premises and the Improvements:
 - (i) within the period of three months before the earlier of the Terminating Date and the termination of this Lease, the Lessor may direct the Lessee to remove at its own Cost any fixtures and Improvements that the Lessee or its predecessors in title have made upon the Premises either before or during the Term but not before 8 October 1998 (the **Removable Items**);
 - (ii) if the Lessee does not within 14 days of service of the Lessor's direction under clause 15.10(b)(i) notify the Lessor that it intends to remove the Removable Items then:
 - (A) the Removable Items become the property of the Lessor;
 - (B) the Lessor may deal with the Removable Items as the landlord thinks fit without being liable to the Lessee; and
 - (C) the Lessor shall be entitled to make a Claim against the Lessee in relation to the non-removal of the Removable Items.
 - (iii) if the Lessee within 14 days of service of the Lessor's direction under clause 15.10(b)(i) notifies the Lessor that it intends to remove the Removable Items or such of the Removable Items as are specified by the Lessee then the Lessee must within the period one month before the earlier of the Terminating Date and the termination of this Lease effect such removal and do as little damage as possible and must remove and carry away all debris from the Premises and must restore to the satisfaction of the Lessor, the Premises to the same or substantially the same condition as they were in immediately prior to the erection or construction of the Removable Items but if, with the Lessor's consent, the Lessee or its predecessors in title, demolished any Improvements in the course of carrying out any works, the Lessee will not be required to restore the same; and
 - (iv) if the Lessee does not comply with this clause 15,
 - (A) the Removable Items become the property of the Lessor;
 - (B) the Lessor may deal with the Removable Items as the Landlord thinks fit without being liable to the Lessee; and
 - (C) the Lessor shall be entitled to make a Claim against the Lessee in relation to the non-removal of the Removable Items;
- (c) This clause 15.10 does not require the Lessee to remove any:
 - (i) repair or maintenance work the Lessee has done to Improvements existing at the Commencement Date; or
 - (ii) Improvements made by the Lessee as a result of the Lessor exercising its rights under any provision of this Lease.
- (d) Nothing in this clause or any other provision of this Lease (especially clauses 10 and 11) shall require the Lessee to remove from the Property any item,

Improvements or Buildings where to do so would expose any Lessor Contamination or Pollution which is otherwise not exposed or contained and is not required to be removed or remediated.

15.11 Storage of Lessee's Property

- (a) If the Lessee does not remove the Lessee's Property or remedy any damage under clause 15.10, the Lessor may do so and store the Lessee's Property at the Lessee's cost.
- (b) If the Lessee does not remove any Lessee's Property from the Premises or from the place where it is stored by the Lessor within seven days of being asked to do so by the Lessor, that Lessee's Property becomes the property of the Lessor if the Lessor so elects.

15.12 Lessor's rights after Lessee vacated during Term

- (a) If the Lessee vacates or abandons the Premises during the Term, the Lessor may:
 - (i) accept the keys to the Premises from the Lessee;
 - (ii) renovate, restore and clean the Premises;
 - (iii) change the locks and secure the Premises; or
 - (iv) allow prospective tenants to inspect the Premises.
- (b) The Lessor may take any action in clause 15.12(a) without the Lessor's conduct constituting:
 - (i) a re-entry or termination of this Lease; or
 - (ii) the acceptance of a surrender of this Lease.
- (c) The Lessee's obligation to pay Rent, to comply with other financial obligations under this Lease and to comply with other obligations continues, even if the Lessee vacates or abandons the Premises, until the termination or expiry of this Lease.

16. SECURITY

16.1 Bank guarantee

- (a) If an amount is specified in Item 17, the Lessee must give a bank guarantee to the Lessor before the Commencing Date. The bank guarantee must:
 - (i) be issued by a bank or other financial institution approved by the Lessor;
 - (ii) contain an unconditional undertaking to pay the Lessor on demand, and any other terms required by the Lessor;
 - (iii) subject to clause 16.1(b), be for the amount specified in Item 17; and
 - (iv) not expire earlier than six months after the Terminating Date; and
 - (v) otherwise be on terms agreed by the Lessor in its absolute discretion.
- (b) If the Rent increases on exercise of any Option, the Lessee must give the Lessor an additional or replacement guarantee required to ensure that the amount specified in Item 17 is guaranteed.

- (c) If the Lessee defaults under this Lease the Lessor may call on the bank guarantee without notice to the Lessee, and apply the proceeds towards remedying the default. If the Lessor calls on all or part of the bank guarantee, the Lessee must give the Lessor an additional or a replacement guarantee so that the amount specified in Item 17 is guaranteed.
- (d) If the Lessor has called on the bank guarantee and, after the Lessee's default has been remedied, there are surplus funds held by the Lessor, the Lessor may hold that surplus as a security deposit until the Lessee replaces the bank guarantee.
- (e) If the Lessor (the **transferor**) transfers its interest in the Premises and hands over the bank guarantee to the transferee, the transferor is released from all obligations to the Lessee in relation to the bank guarantee. If requested by the transferee, the Lessee must promptly give to the transferee a replacement bank guarantee in favour of the transferee at the Lessor's cost. If the Lessee does not provide the replacement bank guarantee, the transferor may make demand under the bank guarantee and hand over the proceeds to the transferee to hold as a security deposit instead of the bank guarantee until the Lessee provides the replacement bank guarantee to the transferee.
- (f) The Lessor will, subject to the rights of the Lessor under this clause 16, return the bank guarantee to the Lessee on the later of:
 - (i) the expiration or termination of this Lease; and
 - (ii) satisfactory completion of all of the Lessee's duties and obligations under this Lease, including payment to the Lessor of any damages arising from any breach of this Lease by the Lessee.

16.2 Expiry of Bank Guarantees

- (a) If any bank guarantee provided by the Lessee is expressed as expiring on a certain date and where the Lease is still in existence immediately prior to the expiry date of that bank guarantee, the Lessee must provide the Lessor with a replacement bank guarantee 20 Business Days prior to the expiry of any bank guarantee subject to clause 16.2(b).
- (b) The provision of the bank guarantee does not:
 - (i) relieve the Lessee from any of its obligations under any other provision of this Lease; or
 - (ii) limit the right of the Lessor to recover from the Lessee in full all money payable to the Lessor under this Lease, including without limitation, interest on any such amounts or damages or other losses incurred by the Lessor.

16.3 Failure to replace expired bank guarantees

If the Lessee fails to provide the Lessor with a replacement bank guarantee in accordance with clause 16.2, the Lessor may call on the full amount of such bank guarantee after giving 10 Business Days prior written notice to the Lessee.

16.4 **Not Used**

16.5 **Downer EDI**

Notwithstanding anything else contained in this Lease, a bank guarantee does not need to be provided for so long as Downer EDI Rail Pty Ltd or a Related Body Corporate of Downer EDI Ltd is the lessee.

17. **RAIL LEGISLATION AND RELATED MATTERS**

17.1 **Acknowledgment**

The Lessee acknowledges the effect of the Railway Legislation in relation to this Lease, including but not limited to any obligations imposed under that legislation on the Lessee.

17.2 **Statutory succession**

(a) In this clause, the following definitions have the following meaning:

Alternate Lessor means any Government Agency the subject of a Vesting.

Statutory Instrument means any act, ordinance, regulation, by-law, declaration, order, award or proclamation of the State of New South Wales.

Vesting means a vesting or transfer described in this clause.

(b) If, at any time:

- (i) this Lease is vested in or transferred to (pursuant to any Statutory Instrument or otherwise) an Alternate Lessor; or
- (ii) the Minister of Transport directs or otherwise orders (pursuant to any Statutory Instrument or otherwise) that the assets, rights and liabilities of the Lessor are vested in or transferred to an Alternate Lessor;

then:

- (iii) the Lessee consents unconditionally to the Vesting; and
- (iv) the person who is the Lessor immediately before the Vesting is released from its obligations under this Lease from the date of the Vesting.

17.3 **Importation of statutory provisions**

If any law, including but not limited to the Railway Legislation, requires that this Lease includes any provision or any provision is deemed to be included in this Lease, then this Lease contains that provision in the form prescribed by the law.

17.4 **Rights in relation to Railway Land**

- (a) The Lessee acknowledges and agrees that the Lessor and the Lessor's Agents has full and unfettered access to the Railway Land at all times and may not be excluded from entering the Railway Land by any action of the Lessee.
- (b) Despite any other provision in this Lease, the Lessee acknowledges that this Lease does not permit the Lessee to access any part of the Railway Land not comprising the Premises, except with the consent of the Lessor.
- (c) Despite any other provision in this Lease, the Lessee must not do anything which interferes with the normal operation of the railway or the Railway Land.

17.5 Early termination for Bus/Rail Interchange, Commuter Car Park

- (a) If the Lessor requires Lot 1 in DP1222625 (**Lot 1**) or Lot 2 in DP1222625 (**Lot 2**) (or both) for a bus/rail interchange or a commuter car park (or both), the Lessor may, by giving the Lessee at least 6 months' notice in writing given at any time and expiring at any time, require the Lessee to vacate and deliver up possession of either or both Lot 1 and/or Lot 2 (as applicable) and upon the expiration of the said notice the lease of Lot 1 and/or Lot 2 (or both, as applicable) will cease and determine but without prejudice to the rights and remedies of the Lessor in respect of any breach by the Lessee of any covenants, conditions or restrictions on the part of the Lessee expressed or implied in the Lease without giving rise to any claim for compensation whatsoever by the Lessee. The Lessor may give more than one notice during the Term pursuant to this early termination clause.
- (b) Upon the expiration of the notice referred to in clause 17.5(a):
 - (i) the Lessee must execute a surrender of lease of Lot 1 or Lot 2 (or both, as applicable) at the Lessor's expense within one month of receiving the surrender from the Lessor; and
 - (ii) (in the case only of the first notice issued pursuant to this early termination clause), this Lease is amended by reducing the then current Rent by 4%.
 - (iii) the Lessee must relocate any Buildings, infrastructure and Lessee's Property located on Lot 1 or Lot 2 (or both, as applicable) (which are the subject of a surrender pursuant to this clause) and erected in accordance with the terms of this Lease or a previous lease for the Premises and extend the traverser to existing line number 10, and the Lessor must reimburse the Lessee for the reasonable costs associated with the relocation and extension within 60 days of presentation of an invoice by the Lessee together with all other supporting information as required by the Lessor. If the Lessor fails to reimburse the Lessee within this period, the Lessee will be entitled to deduct the amount of the invoice from the next payment or payments of Rent unless the whole or part of an invoice is in dispute in which case the Lessee may only deduct from the next payment or payments of Rent the amount which is not in dispute.
- (c) Nothing in this clause 17.5 varies, modifies or otherwise alters the parties' rights and obligations under this Lease to the extent those rights and obligations relate to Lot 3. The parties confirm the terms of this Lease to the extent those terms apply to Lot 3.
- (d) Subject to clause 7.5, in the case of surrender of Lot 1 the Lessor will grant to the Lessee a licence to use the existing or relocated railway track located on Lot 1 for the purpose of rail access to the Premises for the balance of the duration of the Term.

18. POWER OF ATTORNEY

18.1 Appointment of attorney

The Lessee irrevocably appoints the Lessor and each officer (as defined in the Corporations Act) of the Lessor severally as its attorney to:

- (a) complete and register this Lease (if required for the exercise of any power);
- (b) do anything that the Attorney considers is necessary to remedy any breach of this Lease by the Lessee of this Lease;

- (c) exercise any right, power, authority, discretion or remedy of the Lessee under this Lease, after the Lessee has breached this Lease; and
- (d) execute a transfer or surrender of this Lease or a withdrawal of any caveat, after the Lessee has breached this Lease.

Each Attorney may appoint and remove substitutes, and may delegate its powers (including this power of delegation) and revoke any delegation.

18.2 General

- (a) The Lessee must ratify anything done by an Attorney under this clause.
- (b) The Lessee gives the power of attorney in this clause:
 - (i) to secure performance by the Lessee of its obligations to the Lessor under this Lease and any property interest of the Lessor under this Lease; and
 - (ii) for valuable consideration, receipt of which is acknowledged by the Lessee.
- (c) If the Lessee is a natural person, the power of attorney is given with the intention that it continues even if the Lessee suffers loss of capacity through unsoundness of mind after signing this Lease.

19. GST

19.1 Payment of GST

- (a) In addition to paying the Rent (which is exclusive of GST), the Outgoings and other consideration under this Lease, the Lessee must:
 - (i) pay to the Lessor an amount equal to any GST for which the Lessor is liable on any supply by the Lessor under this Lease, without deduction or set-off of any other amount; and
 - (ii) make that payment as and when the Rent, Outgoings or other consideration or part of it must be paid or provided. If the Lessee does not pay the GST at that time, then it must pay the GST within 7 days of a written request by the Lessor for payment of the GST.
- (b) Each party making a taxable supply under this Lease must issue a tax invoice to the other party for each taxable supply within 14 days of making the taxable supply and no moneys will be payable by the party receiving the taxable supply until after a valid tax invoice has been received from the supplier.
- (c) If a party is obliged to make a payment under an indemnity or is required to reimburse a party for a cost (for example, a party's obligation to pay another party's legal costs) on which that other party must pay GST, the indemnity or reimbursement is for the cost plus all GST (except any GST for which that party can obtain an input tax credit).

20. NOT USED

21. NOT USED

22. NOTICES

22.1 How to give a notice

A notice, consent or other communication under this Lease is only effective if it is:

- (a) in writing, signed by or on behalf of the person giving it (in the case of the Lessor, it may be signed by the Lessor's in-house or external solicitors or any authorised officer of the Lessor, and, in the case of the Lessee, it may be signed by the Lessee's in-house or external solicitors or any authorised officer of the Lessee);
- (b) addressed to the person to whom it is to be given; and
- (c) either:
 - (i) delivered or sent by pre-paid mail (by airmail, if the addressee is overseas) to that person's address or to the Premises; or
 - (ii) subject to clause 22.1(c)(iii), sent by fax to that person's fax number and the machine from which it is sent produces an activity report, which has not been altered by any person, that states the fax was sent in full. If the parties are in dispute in relation to the nature and content of the relevant activity report, the party sending the fax must produce an activity report which has not been altered by any person and which accurately shows the date and time on which the fax was sent; and
 - (iii) despite anything in this clause 22.1, if there is a dispute as to the time and/or date of sending and/or receiving any notice by fax pursuant to this Lease, the details recorded by the sender's facsimile machine in this respect are deemed to be conclusive evidence of such time and date and the Lessee is not entitled to make any claim or provide any evidence to the contrary.

22.2 When a notice is given

A notice, consent or other communication that complies with this clause is regarded as given and received:

- (a) if it is delivered or sent by fax:
 - (i) by 5.00pm (local time in the place of receipt) on a Business Day - on that day; or
 - (ii) after 5.00pm (local time in the place of receipt) on a Business Day, or on a day that is not a Business Day - on the next Business Day; and
- (b) if it is sent by mail:
 - (i) within Australia - 3 Business Days after posting; or
 - (ii) to or from a place outside Australia - 7 Business Days after posting.

22.3 Address for notices

A person's address and fax number are those set out in the Reference Schedule in this Lease, specifically at:

- (a) Item 3(c) and (d) in respect of the Lessor's address for notice; and
 - (b) Item 4(c) and (d) in respect of the Lessee's address for notice,
- or as notified from time to time.

23. GENERAL CLAUSES AND INTERPRETATION

23.1 Privacy

The Lessee acknowledges and agrees that:

- (a) the Lessor has collected or may collect Personal Information (as defined in the *Privacy Act 1988 (Cth)*) about the Lessee for the purpose of assessing its suitability as a lessee;
- (b) that Personal Information may be disclosed to prospective purchasers of the Premises or an existing or prospective mortgagee;
- (c) the Lessee has a right under the *Privacy Act 1988 (Cth)*, subject to certain exceptions, to obtain access to that Personal Information;
- (d) if that Personal Information is not provided to the Lessor, the Lessor will be hindered in deciding whether or not to lease the Premises to the Lessee; and
- (e) this clause does not limit or affect any other acknowledgment or agreement that the Lessee has given or entered into, or gives or enters into in the future, in relation to the *Privacy Act 1988 (Cth)*.

23.2 Governing law

- (a) This Lease is governed by the law in force in New South Wales.
- (b) Each party submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in New South Wales, and any court that may hear appeals from any of those courts, for any proceedings in connection with this Lease, and waives any right it might have to claim that those courts are an inconvenient forum.

23.3 Giving effect to this Lease

Each party must do anything (including execute any document), and must ensure that its employees and agents do anything (including execute any document), that any other party may reasonably require to give full effect to this Lease.

23.4 Waiver of rights

- (a) A right may only be waived in writing, signed by the party giving the waiver, and:
 - (i) no other conduct of a party (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right;
 - (ii) a waiver of a right on one or more occasions does not operate as a waiver of that right if it arises again; and

- (iii) the exercise of a right does not prevent any further exercise of that right or of any other right.
- (b) The Lessor's acceptance of any arrears or late payment of Rent, or other money under this Lease, does not operate as a waiver of:
 - (i) the essentiality of the Lessee's obligation in respect of arrears or late payment; or
 - (ii) the Lessee's continuing obligation to pay Rent or other money during the Term.

23.5 Operation of this Lease

- (a) This Lease contains the entire agreement between the parties about its subject matter. Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by this Lease and has no further effect.
- (b) Any right that a person may have under this Lease is in addition to, and does not replace or limit, any other right that the person may have.
- (c) Any provision of this Lease which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this Lease enforceable, unless this would materially change the intended effect of this Lease.

23.6 Operation of indemnities

- (a) Each indemnity in this Lease survives the expiry or termination of this Lease.
- (b) A party may recover a payment under an indemnity in this Lease before it makes the payment in respect of which the indemnity is given.
- (c) Nothing in any indemnity contained in this Lease derogates from or limits the right of the Lessor to:
 - (i) seek recovery of damages; or
 - (ii) exercise any rights it has at common law.

23.7 Consents

- (a) Unless expressly stated otherwise where the Lessor has a discretion or the Lessor's consent or approval is required pursuant to any provision of this Lease, the Lessor may, consistent with its rights and obligations as Lessor, grant or withhold its decision, consent or approval at its discretion acting reasonably.
- (b) In making a discretionary determination, the Lessor will take into consideration any current government policy. The Lessor may withdraw a consent if it is inconsistent with government policy and the Lessee must, without delay, cease the relevant activity and comply with the directions of the Lessor.

23.8 No merger

The provisions of this Lease do not merge on termination.

23.9 Exclusion of contrary legislation

Any legislation that adversely affects an obligation of the Lessee, or the exercise by the Lessor of a right or remedy, under or relating to this Lease is excluded to the full extent permitted by law.

23.10 Expiry or termination

Expiry or termination of this Lease does not affect any rights arising from a breach of this Lease before then.

23.11 Payments under this Lease

- (a) The Lessee must make payments under this Lease:
 - (i) to the Lessor (or to a person nominated by the Lessor in a notice to the Lessee) by the method the Lessor reasonably requires;
 - (ii) when due and payable whether or not demanded by the Lessor; and
 - (iii) without withholding any part of any payment by way of deduction, set off or counterclaim.
- (b) If no date for payment is specified, the Lessee must make payments under this Lease within 14 days of being asked by the Lessor.
- (c) Where any money the Lessor charges the Lessee is calculated using a time period and this Lease starts or ends during that time period, the Lessor must make proportional adjustments.
- (d) If either the Lessor or the Lessee prove an error in any money charged, the Lessor must correct it and make any necessary adjustment in a notice to the Lessee. On the next Rent Day, the Lessee must pay the Lessor or the Lessor must credit the Lessee with the difference between what the Lessee has paid and what the Lessee should have paid.

23.12 Exclusion of statutory provisions

- (a) The covenants, powers and provisions implied in leases by sections 84, 84A, 85 and 86 of the *Conveyancing Act 1919* (NSW) do not apply to this Lease.
- (b) The employment of this Lease of any words in any of the forms of words contained in the first column of Part 11 of Schedule 18 to the *Conveyancing Act 1919* do not imply any covenant under Section 86 of the Act.

23.13 Mitigation of damages

- (a) Each party must take all reasonable steps to minimise any loss or damage resulting from a breach of this Lease by the other party.
- (b) The Lessor's conduct in performing the duty to mitigate does not:
 - (i) constitute acceptance of the Lessee's breach or repudiation or a surrender by operation of law; or
 - (ii) apply if the Lessee vacates or abandons the Premises during the last year of the Term and the Lessor intends to renovate or demolish the Premises.

23.14 Payment after notice

- (a) If either party gives a notice terminating this Lease, or the Lessor gives a notice demanding immediate possession of the Premises, the Lessor's acceptance of, or demand for, Rent or any other money:
 - (i) is not evidence of a new lease for the Premises; and

- (ii) does not alter the legal effect of the notice.
- (b) If the Lessee continues to occupy the Premises unlawfully after termination of this Lease the Lessee must pay (by weekly instalments) an amount equal to the total of the Rent plus other money payable by the Lessee to the Lessor under this Lease as compensation for its occupation of the Premises.

23.15 Lessee's warranty

The Lessee warrants that it has not been induced to enter into this Lease by any express or implied statement, warranty or representation:

- (a) whether oral, written or otherwise;
- (b) other than as set out in clauses 10 and 11, made by or on behalf of the Lessor in respect of the Premises or anything relating to, or which could have an effect on, the Premises including but not limited to:
 - (i) the fitness or suitability of the Premises for any purpose;
 - (ii) any fixtures, facilities or amenity in or on the Premises; or
 - (iii) the conduct of any other business in the Premises.

23.16 Not used

23.17 Compliance

Each party must comply with all applicable statutes, regulations and by-laws relating to health, safety, noise and other standards with respect to the Premises.

23.18 Interpretation

- (a) Headings are for convenience only and do not affect interpretation. The following rules also apply in interpreting this Lease, except where the context makes it clear that a rule is not intended to apply.
- (b) A reference to:
 - (i) legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
 - (ii) a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
 - (iii) a party to this Lease or to any other document or agreement includes a permitted substitute or a permitted assign of that party;
 - (iv) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and
 - (v) anything (including a right, obligation or concept) includes each part of it.
- (c) A singular word includes the plural, and vice versa.
- (d) A word which suggests one gender includes the other genders.
- (e) If a word is defined, another part of speech has a corresponding meaning.

- (f) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.
- (g) The word agreement includes an undertaking or other binding arrangement or understanding, whether or not in writing.
- (h) The words **subsidiary**, **holding company** and **related body corporate** have the same meaning as in the Corporations Act.
- (i) A reference to a month is to a calendar month.
- (j) A reference to an **Item** is to the relevant Item in the Reference Schedule in this Lease.

23.19 Business Days

If the day on or by which a person must do something under this Lease is not a Business Day:

- (a) if the act involves a payment that is due on demand, the person must do it on or by the next Business Day; and
- (b) in any other case, the person must do it on or by the previous Business Day.

23.20 Multiple parties

If a party to this Lease is made up of more than one person, or a term is used in this Lease to refer to more than one party:

- (a) an obligation of those persons is joint and several;
- (b) a right of those persons is held by each of them severally; and
- (c) any other reference to that party or that term is a reference to each of those persons separately, so that (for example):
 - (i) a representation, warranty or undertaking is given by each of them separately; and
 - (ii) a reference to that party or that term is a reference to each of those persons separately.

24. DISPUTES

24.1 Definitions

Dispute means (subject to clauses 24.14(c) and 24.15) a dispute arising out of or relating to this Lease.

Expert means an expert appointed under clause 24.7.

Resolution Period means 49 days after a Dispute Notice is given under clause 24.2.

24.2 Resolution of Dispute by negotiation

If a Dispute arises between the Lessor and the Lessee:

- (a) one of them may notify the other of the existence of a Dispute under this clause 24 and the nature of the Dispute; and

- (b) they must each, within 21 days after the notice under clause 24.2(a) is given:
 - (i) prepare, and exchange with the other, a brief statement setting out their position on the Dispute and their reasons for adopting that position; and
 - (ii) give to the other any information the other may reasonably require to determine the issues relevant to the Dispute; and
- (c) within 28 days after statements are exchanged under clause 24.2(b), the general manager/a senior representative from each of the Lessor and the Lessee, with full authority to resolve the Dispute, must meet and consult to try to resolve the Dispute.

24.3 **Where Dispute resolved by negotiation**

If the Dispute is resolved under clause 24.2 within the Resolution Period:

- (a) the parties must, as soon as possible, execute a statement setting out the terms of the agreement reached; and
- (b) each party must do anything (including execute any document) reasonably required by the other to give effect to the agreement.

24.4 **Resolution of Dispute by Expert**

If the Dispute is not resolved under clause 24.2 within the Resolution Period, a party may, within 14 days after the end of the Resolution Period, give a notice (**Expert Determination Notice**) to the other party, requiring the Dispute to be referred to an Expert for determination.

24.5 **Who is an Expert?**

An Expert is a person, having the qualifications set out in clause 24.6:

- (a) selected by the parties within 10 days after the Expert Determination Notice is given; or
- (b) if the parties fail to select an Expert under clause 24.5(a), nominated by the President for the time being of Australian Property Institute Inc. who must choose the Expert on the basis of the type of Dispute and the nature of the expertise necessary to consider the relevant issues.

24.6 **Expert's qualifications**

An Expert must:

- (a) have suitable and reasonable qualifications (including suitable rail expertise, if considered necessary by the Lessor) and at least 10 years current and continuous standing in their profession as at the date of the appointment;
- (b) be independent of each party and not be, or have been, an employee, agent, contractor, advisor or consultant of a party;
- (c) have no interest or duty which conflicts or may conflict with the Expert's function as an expert; and
- (d) have professional indemnity insurance of an amount reasonable and customary for a person undertaking the Expert's activities.

24.7 Referring Dispute to the Expert

If an Expert Determination Notice is given:

- (a) the parties must, within fourteen days after an Expert is selected or nominated:
 - (i) arrange for the Expert to be appointed; and
 - (ii) refer the Dispute to the Expert by written submissions setting out the Dispute to be determined as well as all other reasonably relevant matters together with copies of statements referred to in clause 24.2(b); and
- (b) each party must provide the Expert with any information reasonably required by the Expert.

24.1 Expert not an arbitrator

The Expert acts as an expert and not as an arbitrator and must resolve the Dispute:

- (a) having regard to the terms of this document;
- (b) according to whatever procedures the Expert decides, in the Expert's absolute discretion, but subject to the requirements of procedural fairness;
- (c) exercising the Expert's own skill, judgment and experience; and
- (d) having regard to applicable Australian standards or guidelines.

24.2 Expert to give decision

The parties must use their best efforts to ensure the Expert gives the parties a written decision within 28 days after the Dispute is referred to the Expert under clause 24.7.

24.3 Expert's decision is final

The Expert's decision is, in the absence of manifest error, final and binding on the parties.

24.4 Expert must give reasons

The Expert must be required to give detailed written reasons for the decision.

24.5 Parties to give effect to decision

The parties must give effect to the Expert's decision promptly.

24.6 Lease should not be terminated

From the time the notice under clause 24.2(a) is given with respect to a Dispute, the Lessor must not take action to terminate this Lease by physical re-entry or otherwise because of that Dispute unless:

- (a) the Dispute has been referred to an Expert under clause 24.7(a)(ii) and the Expert has not made a decision within the 28 day period specified in clause 24.2; or
- (b) there is manifest error in the Expert's decision.

24.7 **Costs**

Each party must pay:

- (a) its own expenses incurred in connection with the dispute resolution processes under this clause 24; and
- (b) an equal proportion of the Expert's costs and the costs of the Expert's advisers unless the Expert in its absolute discretion decides otherwise.

24.8 **Continued performance required**

- (a) Each party must continue to perform its obligations under this Lease despite the existence of a Dispute except to the extent that the matter, the subject of the Dispute and matters necessarily dependent on it, cannot be proceeded with until the Dispute has been resolved.

24.9 **Information to be used for no other purpose**

- (a) The parties agree that the purpose of a party providing any information, including the making of any offer of settlement, under this clause 24, is to attempt to resolve the Dispute between the parties.
- (b) A party may not use the information provided under this clause 24 for any purpose other than to resolve the Dispute between them.

24.10 **Breach of clause releases the other party**

If, in relation to a Dispute, a party breaches any provision of this clause 24, the other party is not bound by the clause in relation to that Dispute.

24.11 **No arbitration**

This clause 24 is not an arbitration agreement within the meaning of the *Commercial Arbitration Act 1984* (NSW).

24.12 **Place for dispute resolution**

The procedure in this clause 24 must take place in New South Wales.

24.13 **Clause survives termination**

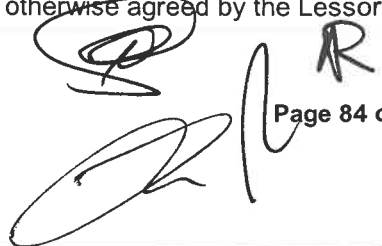
This clause 24 survives the termination of this Lease.

24.14 **Legal action**

- (a) Before the Lessor or the Lessee takes any action in a court of law in respect of a Dispute, that Dispute must have been dealt with under clause 24.1 and a final and binding determination made in accordance with that clause.
- (b) This clause does not prevent the Lessor or the Lessee from seeking relief in the nature of interlocutory relief.
- (c) This clause 24 does not apply to disputes that relate to a breach of an essential term of this Lease.

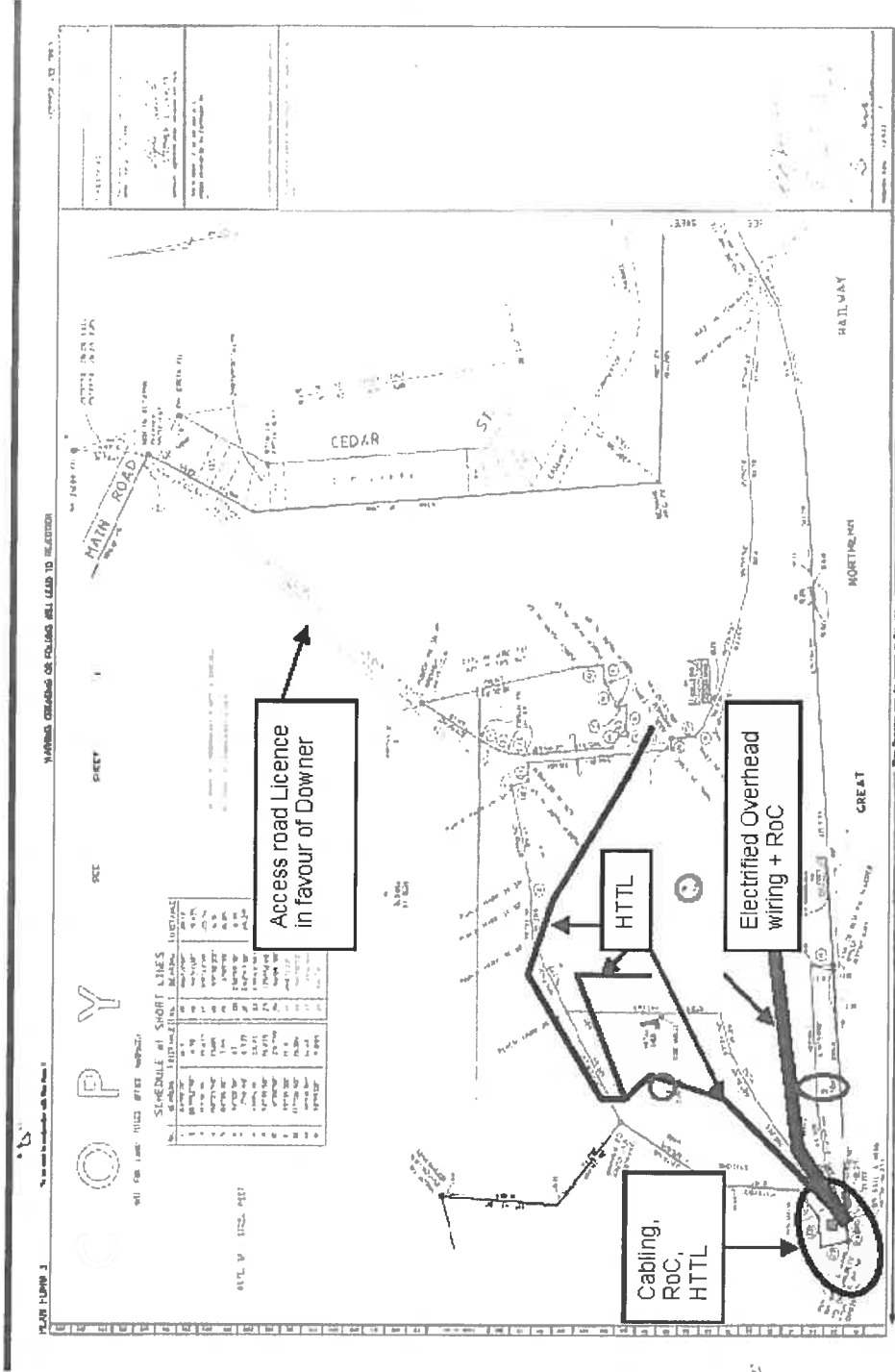
24.15 **Railway Purposes**

If a Dispute arises which the Lessor determines (acting in its absolute discretion) could result in a determination by an Expert which may have an impact on Railway Purposes, then this clause 24 will not apply to that Dispute unless otherwise agreed by the Lessor.

Handwritten signatures and initials in black ink, including a large signature and the letter 'R'.

Schedule 1 – Access Road & Overhead Wiring (HTTL)

THIS IS THE SCHEDULE 1 REFERRED TO IN THE LEASE BETWEEN RAIL CORPORATION NEW SOUTH WALES ABN 59 325 778 353 (AS LESSOR) AND DOWNER EDI RAIL PTY LTD ABN 92 000 002 031 (AS LESSEE) DATE



[Handwritten signature]

Schedule 2 – Excluded Improvements

THIS IS THE SCHEDULE 2 REFERRED TO IN THE LEASE BETWEEN RAIL CORPORATION NEW SOUTH WALES ABN 59 325 778 353 (AS LESSOR) AND DOWNER EDI RAIL PTY LTD ABN 92 000 002 031 (AS LESSEE) DATED

EXCLUDED IMPROVEMENTS

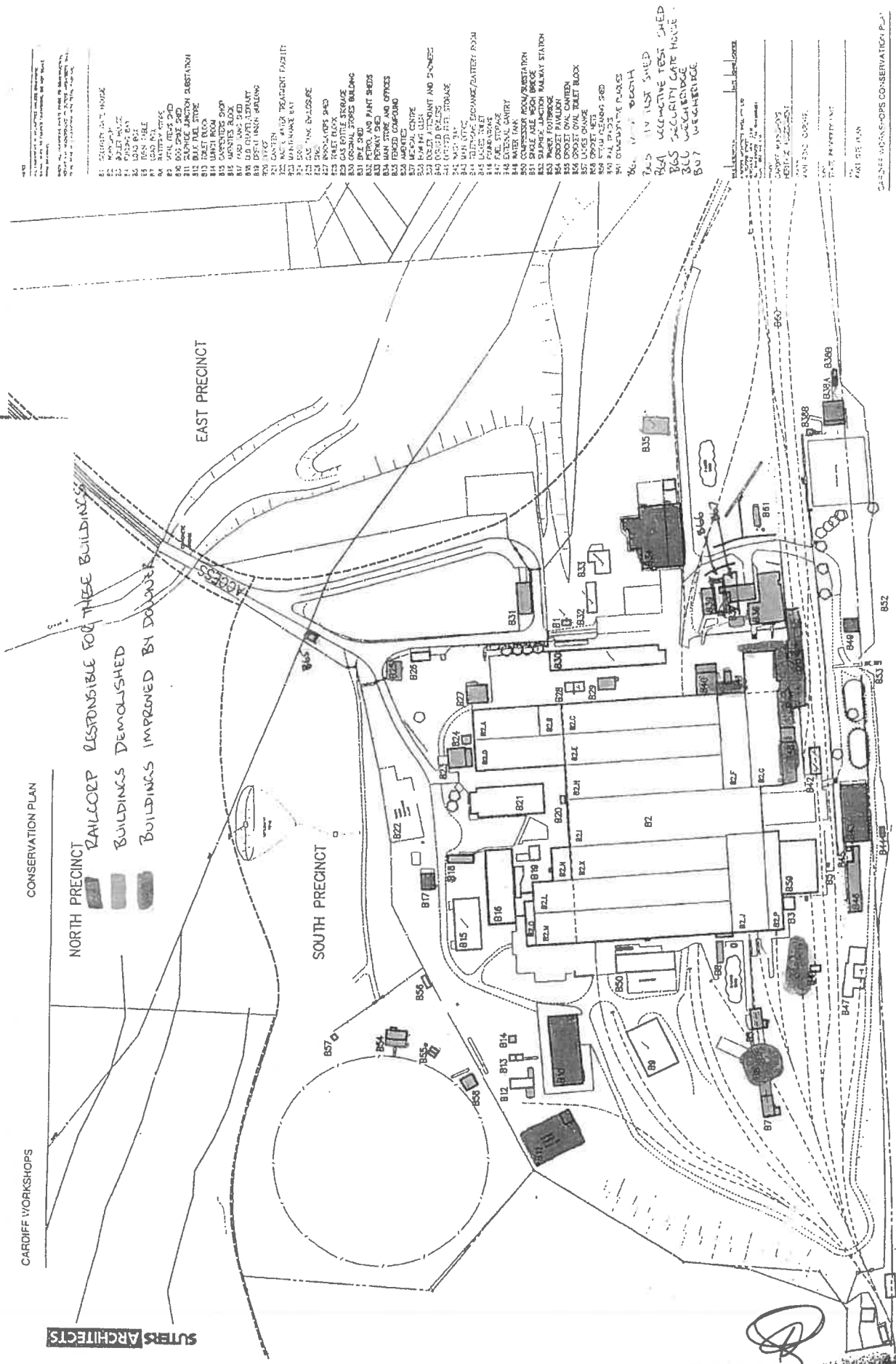
Building	Details
B10	Dog Spike Shed
B11	Sulphide Junction Substation
B17	Yard Gang Shed
B34	Main Store and Offices
B38A	Bowling Club
B38B	Store Shed & Bowling Club amenities
B43	Main Office
B44	C&CS Communications Room (also known as the Telephone Exchange/ Battery Room)
B49	Water Tank

NORTH PRECINCT

RAILCORP RESPONSIBLE FOR THESE BUILDINGS
BUILDINGS DEMOLISHED
BUILDINGS IMPROVED BY DONOR

EAST PRECINCT

SOUTH PRECINCT



- B1 SECURITY GUARD HOUSE
- B2 BULLET PROOF
- B3 FISHING BAY
- B4 IRON SHED
- B5 LEAD BAY
- B6 RAILWAY STORES
- B7 BULL DOG
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Map 3.1

Building Workshops, Cardiff

Suters Architects Snell - 4768 - February 1996

Panel 1.21

3/1

RAILWAY

RAILWAY

RAILWAY

RAILWAY

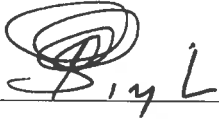
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Signing Page

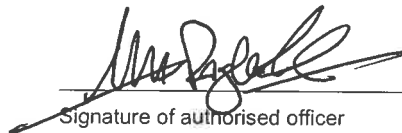
We certify this dealing to be correct for the purposes of the *Real Property Act 1900* (NSW).

I certify that the authorised officer signing opposite, with whom I am personally acquainted or as to whose identity I am otherwise satisfied, signed this lease in my presence.

Certified correct for the purposes of the *Real Property Act 1900* by the authorised officer named below.



Signature of witness



Signature of authorised officer

VIN SINGH

Name of witness

ALEXANDER BASIL ROSLEFF

Authorised officer's name

LG 477 PITT STREET

Address of witness

A/EXECUTIVE MANAGER STRATEGIC PROPERTY SERVICES

Authority of officer

Signing on behalf of

SYDNEY NSW 2000

Rail Corporation New South Wales
ABN 59 325 778 353

Certified correct for the purposes of the Real Property Act 1900 and executed on behalf of the corporation named below by the authorised person(s) whose signature(s) appear(s) below pursuant to the authority specified.

Corporation: Downer EDI Rail Pty Ltd ABN 92 000 002 031

Authority: Section 127 of the Corporations Act



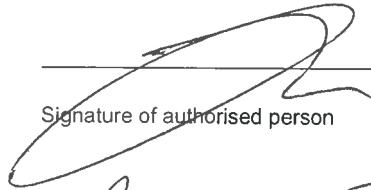
Signature of authorised person

PETER LYONS

Name of authorised person

~~Director, Secretary, Sole Director/Secretary~~

Office held



Signature of authorised person

PETER TOMALINS

Name of authorised person

~~Director, Secretary, Sole Director/Secretary~~

Office held