
Country Regional Network – Operations and Maintenance Deed

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Country Regional Network Operations and Maintenance Deed

Country Rail Infrastructure Authority

(CRIA)

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Date	16 December 2010
Parties	<ol style="list-style-type: none">Country Rail Infrastructure Authority (ABN 21 298 300 693) of Level 3, 237 Wharf Rd, Newcastle, NSW 2300 (<i>CRIA</i>).John Holland Rail Pty Ltd (ABN 61 009 252 653) registered in Western Australia of 70 Trenerry Crescent, Abbotsford, Victoria 3067 (<i>Contractor</i>).
Recitals	<p>A CRIA is a corporation constituted by section 19A of the <i>Transport Administration Act 1988</i> (NSW).</p> <p>B CRIA is the owner of the Country Regional Network.</p> <p>C In order to achieve the objectives set out in clause 3.1 and:</p> <ol style="list-style-type: none">a seamless management of the CRIA Assets;the effective, efficient and safe carrying out of the Services and railway operations (as that term is defined in the Act);a balance between cost effectiveness and continual improvements, whilst meeting legislative and safety requirements;an efficient unit cost of maintenance activities;an appropriate allocation and management of risk; andhonest, open and timely communication, disclosure of information and access to records, systems and reports relevant to the CRIA Assets, <p>CRIA wishes to engage the Contractor to manage, operate, maintain and upgrade the CRIA Assets and carry out other associated and ancillary obligations as set out in the terms of this Deed.</p> <p>D This Deed sets out the terms on which the Contractor agrees to manage, operate, maintain and upgrade the CRIA Assets.</p>

1. Interpretation and Definitions

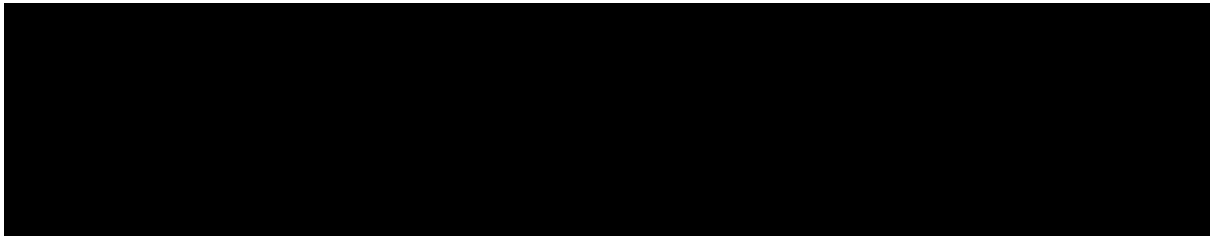
1.1 Defined Terms

In this Deed unless the subject matter or context otherwise requires:

Abandonment means where the Contractor has failed by way of Wilful Default to, or has refused to, carry out the whole or a substantial part of the Services under this Deed for:

- (a) no less than 30 consecutive days; or
- (b) no less than 60 days (whether consecutive or not) in any 6 consecutive month period,

except when relieved of the obligation to carry out the Services under this Deed by the express provisions of this Deed.



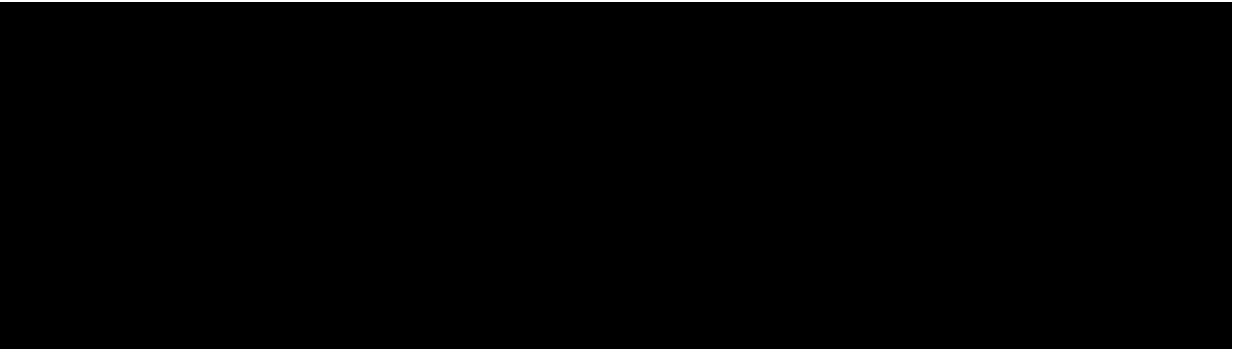
Access Agreement means an agreement for access onto the CRN between CRIA (or the Contractor as agent for CRIA) and one or more RTOs.

Accredited means the state of having obtained Rail Safety Accreditation.

Act means the *Rail Safety Act 2008* (NSW).



Actual TOC Scope means the scope of the work actually completed by the Contractor in a Contract Year as TOC Activities, which is to be reported in accordance with section 8.2 of Schedule 2.



Agency Principles means those principles in respect of the Contractor's role, as agent for CRIA, referred to in clause 8.2.

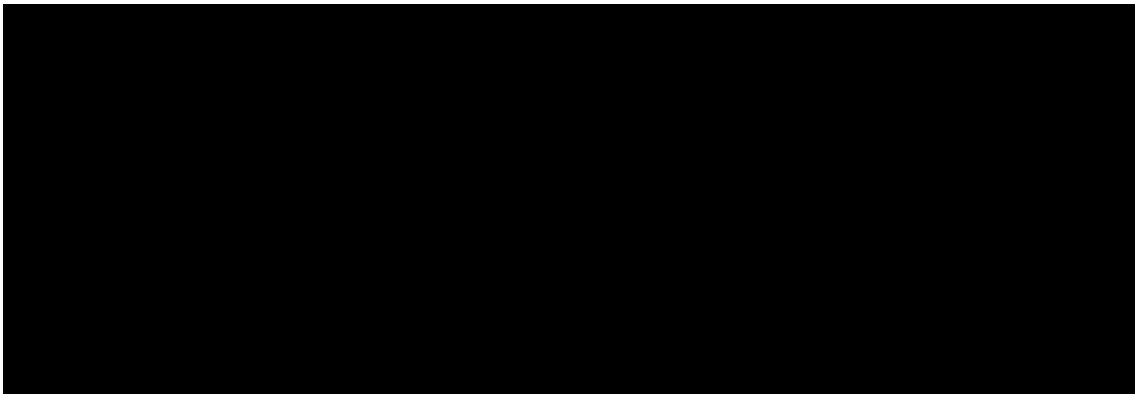
Agents means, in respect of a party, the employees, agents, invitees (other than the other party), consultants, contractors and subcontractors of the party (and includes each of their respective employees and agents), and in respect of CRIA:

- (a) includes CRIA's Representative; and
- (b) excludes the Contractor, and any counterparty to a Relevant Document.

Annual Works Plan means:

- (a) for the Initial Stage, the scope of work and Services referable to that period described in the Estimate Build-Up and Price Schedule, as referred to in clause 3.7 of Schedule 2; and
- (b) otherwise, a detailed plan of the scope of work and Services proposed to be carried out during each Contract Year (where each project or service is listed individually and scoped in detail), prepared in accordance with sections 3.1 to 3.6 of Schedule 2 and the SWTC,

in each case as may be amended from time to time by Variations.

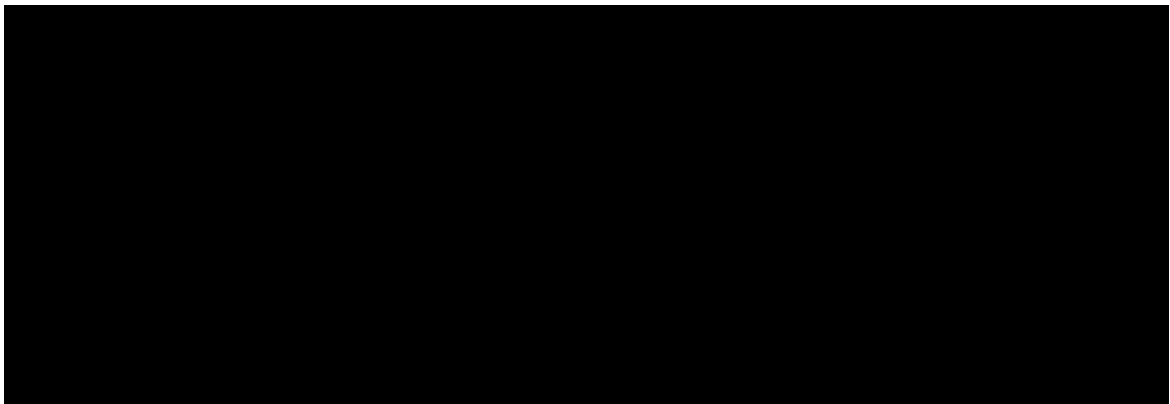


Approval means any licence, permit, consent, approval (including any required ministerial approval), determination, certificate or permission from any Authority.

ARTC means Australian Rail Track Corporation Limited (ABN 75 081 455 754).

ARTC Lease means the deed titled 'Deed of Lease' entered into by CRIA, the State Rail Authority of NSW and ARTC dated 4 June 2004.

Authority means any governmental or semi-governmental or local government authority, administrative or judicial body or tribunal, department, commission, agency, minister, statutory corporation or instrumentality or any other person having jurisdiction over the CRIA Assets or the Services but excludes CRIA.



Business Day means a day on which banks are open for business in Sydney (other than Saturdays, Sundays and public holidays) and for the purpose of clauses 21 and 37, has the meaning given to that term by the Security of Payment Act.

Carbon Scheme means any law or regulation of the Commonwealth of Australia or of a State or Territory of Australia, or any requirement or condition of a licence, permit, governmental consent or approval, with respect to the production or emission of, or to record, report, reduce, limit, prevent, offset or sequester (whether directly or indirectly) greenhouse gas emissions, including without limitation any statutory certificate or allowance trading scheme or tax.

Change in Control means in relation to an entity:

- (a) a change in the shareholding of the entity such that a change in control (as defined in the *Corporations Act 2001* (Cth)) of the entity occurs (whether occurring at the one time or through a series of transfers or issues of securities); or
- (b) any other event (including a change or alteration in the corporate structure of the entity or the group of companies of which the entity is a member) which results in a person other than the shareholders of the entity at the date of this Deed:
 - (i) controlling the composition of the board of directors of the entity;
 - (ii) controlling the voting power of the board of directors or any class of shareholders, or both, of the entity; or
 - (iii) holding more than one-half of the issued share capital (either beneficially or otherwise) of the entity,

other than where shares or other equity interests in an entity are listed on any recognised Australian or overseas stock exchange and a Change in Control occurs due to any change in the legal or beneficial ownership of any such listed shares or interests.

Claim means any claim by the Contractor including any claim for, or entitlement of the Contractor to:

- (a) adjustment or addition to the Services Fee or any other consideration payable by CRIA for the Services;
- (b) any costs, expenses, losses, damages, liabilities or other amounts of whatever nature;
- (c) relief from any of the Contractor's obligations or liabilities under this Deed; or
- (d) any other right, remedy or claim,

whether under this Deed, for breach of contract, or otherwise at law or in equity (including under statute, in tort (including negligence) or for restitution, quantum meruit or unjust enrichment).

Clean-Up Notice means any order, direction, notice or other requirement of any Authority issued under an Environmental Law or any agreement entered into with any Authority under an Environmental Law, whether imposed as a condition of a planning approval or otherwise, in respect of the Remediation of any Contamination on or from any part of the CRIA Assets, as amended, varied, modified or re-issued under an Environmental Law.

Commencement Date means the later of:

- (a) the date when each of the following is satisfied:
 - (i) the Contractor is Accredited; and
 - (ii) the Contractor is lawfully entitled to carry out that part of the Services comprising the railway operations (as defined in the Act); and
- (b) the date on which the conditions precedent set out in the definition of Conditions Precedent (Commencement) are satisfied or waived.

Commercially Available Third Party Software means software that is generally commercially available on reasonable commercial terms (and which has not been modified).

Conditions Precedent (Commencement) means:

- (a) the satisfaction or waiver of the of the Conditions Precedent (Mobilisation) in accordance with clause 2;

- (d) the Contractor obtaining any Environment Protection Licences necessary to enable it to commence carrying out the Services and demonstrating to CRIA's satisfaction that it is capable of obtaining all Environment Protection Licences necessary to enable it to carry out the Services in relation to the CRN;
- (e) any exemption (such as that provided under clause 46A of the *Rail Safety (General) Regulation 2008 (NSW)*) from the requirement for Rail Safety Accreditation or any similar requirement imposed by Law being granted on terms acceptable to CRIA; and
- (f) if, before the Date for Commencement, CRIA gives a direction pursuant to clause 14.2, the Contractor and the escrow agent signing the Escrow Deed in accordance with clause 14.

Conditions Precedent (Mobilisation) means:

- (a) the Contractor producing to CRIA evidence of policies of insurance required to be effected under clause 20;
- (b) the Contractor lodging the Security required by this Deed in accordance with clause 19.1 and provision of the Parent Company Guarantee in accordance with clause 19.7;

Contamination means any waste, pollution, hazardous substance, toxic substance, dangerous goods, hazardous waste or special waste or any constituent of any such

substance in any water, soil or in the air including acid sulphate soils that is present at a concentration above the concentration at which the substance, or the constituent of that substance, is normally present.

Contract Year means each Financial Year, but:

- (a) the first Contract Year commences on the first day after the last day of the Initial Stage and ends on the last day of the Financial Year in which that day falls; and
- (b) the last Contract Year ends on the Termination Date.

Contractor Default means:

- (a) any negligent or unlawful act or omission of the Contractor or its Agents; or
- (b) any breach by the Contractor of this Deed.

Contractor's Intellectual Property means Intellectual Property in, in relation to, forming part of, describing, or necessary or used by the Contractor in connection with the Services.

Contractor's IP Enhancements means:

- (a) all alterations, modifications and enhancements to, and applications, developments and adaptations of, CRIA's Intellectual Property; and
- (b) all other materials based upon or derived from CRIA's Intellectual Property, made or created by or for the Contractor.

Contractor's Leader has the meaning given to that term in clause 12.1.

Contractor's New Intellectual Property means Intellectual Property created on or from the date of this Deed or brought into existence by or for the Contractor (or any Related Body Corporate) after the date of this Deed in connection with the Services, but does not include Intellectual Property in existence at the date of this Deed.

Contractor's Representative means the person named as such in Schedule 1, or other person from time to time appointed by the Contractor to be the Contractor's Representative under clause 10.3.

Country Regional Network or **CRN** means the regional rail network owned by or vested in CRIA comprising the CRIA Operational Network and the CRIA Non-operational Network, as it exists from time to time, including as a result of any:

- (a) enhancements to the network (including those resulting from Enhancement Works);
- (b) property or assets added to, or removed from, the network, including in accordance with clause 35.5,

and includes:

- (c) all abutting property or assets owned or controlled by CRIA or any other property or assets involved in the operation and maintenance of the network (including signalling); and
- (d) all public and private road overbridges on the network referred to above and all public road overbridges on the network the subject of the ARTC Lease,

but in each case does not include any property the subject of the ARTC Lease.

CRIA Assets means all property owned or, at the date of this Deed, controlled by CRIA (including the CRN) other than the property the subject of the ARTC Lease and any property notified by CRIA from time to time.

CRIA Assets Conditions means any physical conditions on, above, below or about the CRIA Assets or its surroundings including:

- (a) natural and artificial conditions, including water, atmospheric and subsurface conditions or characteristics;
- (b) Contamination or the existence of any hazardous substance or thing;
- (c) characteristics and Environment of the CRIA Assets or suitability or otherwise of any material on the CRIA Assets;
- (d) geotechnical and subsurface conditions;
- (e) services or facilities; and
- (f) the presence of artefacts on or under the surface of the CRIA Assets.

CRIA Non-operational Network means that part of the network containing the non-operational lines detailed in section 1.3 of Appendix 3 to the SWTC.

CRIA Nominated Items means those items or materials nominated by CRIA in accordance with section 3.6 of Schedule 2.

CRIA Operational Network means that part of the network containing the Passenger Lines, Freight Lines and Grain Lines detailed in section 1.2 of Appendix 3 to the SWTC.

CRIA Prevention means:

- (a) any negligent or unlawful act or omission;
- (b) any breach of this Deed; or
- (c) any Wilful Default,

committed by CRIA, CRIA's Representative or CRIA's Agents.

CRIA Standards means those standards listed in Appendix 12 to the SWTC.

CRIA Supplied Assets means any materials, plant or equipment in which the ownership, or the relevant interest (such as a leasehold interest), has been transferred to the Contractor, by or on behalf of CRIA from time to time for the purposes of carrying out the Services.

CRIA Supplied Information means any information, data, representation, statement or document (whether written or otherwise) supplied or made available to the Contractor by or on behalf of CRIA on, before or after the date of this Deed other than documents which comprise part of this Deed.

CRIA's Approvals has the meaning given to that term in clause 6.2.

CRIA's Intellectual Property means Intellectual Property in, in relation to, forming part of, describing or used by CRIA as at the date of this Deed in connection with the CRIA Assets.

CRIA's Leader has the meaning given to that term in clause 12.1.

CRIA's Representative means the person named as such in Schedule 1, or other person from time to time appointed by CRIA to be CRIA's Representative and notified as such in writing to the Contractor by CRIA.

CRN Asset Management Plan means the plan referred to in section 2.1 of Schedule 2 to this Deed as amended and updated in accordance with Schedule 2 to this Deed.

Date for Commencement means the earlier of:

- (a) the date specified in Schedule 1; or
- (b) the date notified by CRIA in accordance with clause 2.4.

Date for Start of Mobilisation means the date specified in Schedule 1.

Deed means this operations and maintenance deed, including all schedules and annexures.

Default Notice has the meaning given to that term in clause 30.3.

Defect includes any defect, deficiency, fault or omission in the CRIA Assets or the Services, or any aspect of the CRIA Assets or the Services which is not in accordance with the requirements of this Deed.

Direction includes agreement, approval, authorisation, certificate, decision, demand, determination, explanation, instruction, notice, order, permission, rejection, request or requirement.

Disengagement Costs has the meaning given to that term in clause 30.2.

Disengagement Plan means the plan prepared in accordance with section 12.6 of the SWTC.

Documentation means all Software, drawings, plans, specifications, samples, models, patterns, certificates, instruments and indicia of title, licences, agreements, documents evidencing Approvals, operating, maintenance and other manuals, books of account,

correspondence, records and other information or data of whatever nature and whether stored by means of paper-writing, magnetic tape, computer disk or otherwise that in all cases relate to or are relevant to activities carried out under this Deed.

Early Works Agreement means the agreement of that name for the provision of certain preliminary services between the Contractor and CRIA dated 3 December 2010.

Emergency means any situation, event, occurrence, or multiple occurrences that:

- (a) causes or may cause damage or harm to any part of the CRIA Assets or any other property, buildings or equipment;
- (b) constitutes or may constitute a hazard to or jeopardises or may jeopardise the health or safety of any person; or
- (c) materially interferes with or prejudices or may materially interfere with or prejudice the safe operation of any part of the CRIA Assets or the provision of the Services.

Emergency Defect has the meaning given to it in the 'Emergency Defects' section of the KPI Regime Annexure to Schedule 2.

Enhancement Works means those Services which:

- (a) constitute an upgrade, enhancement or expansion to the CRIA Assets; and
- (b) are not otherwise specified or ascertainable as being required to be undertaken from the SWTC (including the CRN Asset Management Plan referred to in the SWTC) or this Deed (other than expressly described as Enhancement Works),

to be provided by the Contractor pursuant to clause 4.2.

Environment includes the meaning given to that term at Law including any land, water, atmosphere, climate, sound, odours, tastes, the biological factors of animals and plants and the social factors of aesthetics.

Environmental Law means any Law relating to the Environment including any Law relating to land use, planning, pollution of air, soil or groundwater, chemicals, waste, the use of transport, the storage and handling of dangerous goods, the health or safety of any person, or any other matters relating to but not limited to the protection of the Environment, health or property.

Environment Protection Licence means any licence required under Chapter 3 of the *Protection of the Environment Operations Act 1997* (NSW).

Escrow Deed means the escrow deed referred to in clause 14.

Escrow Document means any Documentation or material that:

- (a) CRIA reasonably requires should be lodged in escrow; or
- (b) the parties agree should be lodged in escrow,

and includes any and all updates to any Documentation or material listed in (a) or (b) above, but does not include any State Records.

Estimate Build-Up means the document setting out (in more detail than contained in the Price Schedule) the Contractor's rates and prices as applied to the scope of work for the

Initial Stage and the proposed 2011/12 Annual Works Plan which is set out at Exhibit C of this Deed and is in Excel format on the O&M Deed CD.

Excepted Contamination means Contamination in, on or under land or which migrated onto or from any land, that:

- (a) the Contractor establishes existed prior to the Commencement Date (which, in any case, was not caused or contributed to by any Contractor Default) and includes, without limitation, the continued migration after the Commencement Date of a Contamination plume in soil or groundwater which existed prior to the Commencement Date; or
- (b) the Contractor establishes was caused by a party other than the Contractor or its Agents, and the Contamination was not caused by an activity (or lack of activity) that the Contractor should and could have prevented in carrying out the Services.

Excepted Risk means:

- (a) any unlawful or negligent act or omission of CRIA or any of the Agents of CRIA; and
- (b) use or occupation by CRIA or the Agents of CRIA of any part of the CRIA Assets, except such use or occupation that:
 - (i) is expressly permitted, allowed or contemplated by this Deed or any Relevant Document (including to enable CRIA to exercise its rights or to comply with its obligations under this Deed or any Relevant Document); or
 - (ii) is for the Intended Purposes.

Event of Default means any one or more of the following events:

- (a) Abandonment;
- (b) any breach of clauses 19.1 to 19.3;
- (c) any breach of clause 24;
- (d) any breach of clause 23;
- (e) the Contractor has failed to achieve the Commencement Date on or before the Date for Commencement except where due to CRIA's breach of clause 2;
- (f) either:
 - (i) a non-compliance with a provision of the Act, the *Occupational Health and Safety Act 2000 (NSW)* or any Environmental Law applicable to the carrying out of the Services which is serious or material, having regard to:
 - (A) the nature of the conduct giving rise to the non-compliance, including the extent to which it falls below the appropriate standard; and
 - (B) the nature and severity of actual or potential damage or risks of injury to human health and safety or the environment;

including, without limitation:

- (C) reckless conduct on the part of the Contractor which has caused the death of a person to whom the Contractor owed a duty under the *Occupational Health and Safety Act 2000 (NSW)*; or
- (D) wilful or negligent conduct on the part of the Contractor which has caused or which is likely to cause material harm to the environment within the meaning of the *Protection of the Environment Operations Act 1997 (NSW)*; or
- (ii) more than 6 non-compliances with the Act, the *Occupational Health and Safety Act 2000 (NSW)* or any Environmental Law applicable to the carrying out of the Services in any continuous 12 month period.
- (g) the Contractor has committed 6 or more breaches of this Deed in any continuous 12 month period and CRIA has provided the Contractor with written notice of at least 6 of the breaches within 1 month after the breach has occurred (and in each such notice has indicated that the relevant breach may contribute to an Event of Default) and committing another breach of this Deed in that 12 month period; and
- (h) for any breach of this Deed by the Contractor (other than an Event of Default or a breach referred to above or referred to in clause 30.3(b)), failure by the Contractor to show reasonable cause within 21 days following a notice from CRIA requiring reasonable cause to be shown as to why this Deed should not be terminated.

Financial Year means a year commencing 1 July and finishing 30 June.

Force Majeure means the following events:

- (a) fire, storm, flood, disruption to power exceeding 8 hours, earthquake, cyclone named by the Australian Bureau of Meteorology, tempest, tornado, hurricane, lightning, explosion, landslide, insurrection, civil war, military or usurped power, sabotage, act of a public enemy, hostile act of a foreign enemy, acts of terrorism, war whether declared or not, revolution, riot, invasion, armed conflict, confiscation, nationalisation, resumption or damage to property (including part or all of the CRIA Assets) by or under the order of the Federal or State governments, radiation or chemical or nuclear contamination, ionising radiation, plague or other serious epidemics or acts of God; and
- (b) industrial disputes or actions, except those which are directed at, or emanate from the employees of:
 - (i) if the Contractor is the party seeking to claim force majeure, the Contractor or its Agents; or
 - (ii) if CRIA is the party seeking to claim force majeure, CRIA or its Agents,

and which events (or the effect of such events) could not have reasonably been prevented, avoided or overcome but, in any event, does not include:

- (c) mechanical or electrical breakdown or failure of Plant and Equipment. other than a breakdown or failure caused by an event listed in paragraph (a) above, which

could not have reasonably been prevented, avoided or overcome by the party seeking to claim force majeure;

- (d) a lack of, or inability to use, money or available funds for any reason; and
- (e) a failure of a subcontractor unless the failure is due to an event of Force Majeure.

Good Operating Practice means the practices, policies, methods and acts that, with the exercise of skill, diligence, prudence and foresight, would be expected from an experienced and highly competent operator and maintainer providing services of a similar nature to the Services (including the need to carry out the Services safely).

Holding Costs has the meaning given to it in clause 2.4(d).

Incident means any:

- (a) notifiable occurrence, as defined in the Act;
- (b) any Emergency; or
- (c) other event that compromises any legal, safety or quality requirements (including under any Law or under this Deed or any Relevant Document) in relation to the CRIA Assets or the Services or otherwise prevents any part of the CRIA Assets from being used for the Intended Purposes.

Initial Stage means the period beginning on the Commencement Date and ending on the date stated in Schedule 1.

Inland Route means:

- (a) the Gap to Bogabilla section of the CRN as set out in the diagram included at Schedule 10 and the interface with operational lines described in more detail in the table set out in Schedule 10.
- (b) including any parts of the CRN, whether or not described above or shown on the diagram, that CRIA agrees to lease to ARTC in order to give effect to, or otherwise as a result of, ARTC exercising its option to lease the Inland Route.

Insolvency Event means:

- (a) a party informs the other party in writing or creditors generally that the party is insolvent or is financially unable to proceed with this Deed;
- (b) execution is levied against a party by a creditor that is not stayed or satisfied within 14 days of the service of the execution;
- (c) notice is given of a meeting of creditors with a view to the corporation entering a deed of company arrangement;
- (d) the party enters a deed of company arrangement with creditors;
- (e) a controller or administrator is appointed;
- (f) an application is made to a court for the winding up of the party and not stayed within 14 days;

- (g) a winding up order is made in respect of the party;
- (h) a party resolves by special resolution that it be wound up voluntarily (other than for a members' voluntary winding-up);
- (i) a mortgagee of any property of the party takes possession of that property;
- (j) the shareholders or directors of a party attempt to pass or pass a resolution which has as an object the winding up of that party; or
- (k) a party goes into voluntary administration.

Intellectual Property means any and all intellectual or industrial property rights in relation to inventions, ideas, patents, applications for patents, copyright, registered and unregistered designs, registered and unregistered trademarks, rights in relation to circuit layouts and circuit layout designs, rights in relation to technologies in development, trade secrets, know-how and confidential information and all other intellectual property as defined in article 2 of the Convention establishing the World Intellectual Property Organization of July 1967, including but not limited to any right to register those rights, whether created before or after the date of this Deed, whether existing in Australia or any other country and in all cases for the duration of those rights and includes Moral Rights.

Intended Purposes means the purposes for which the Services and the CRIA Assets are intended, as stated in, or ascertainable from, this Deed and the Relevant Documents.

Interface Agreements means an 'interface agreement' as that term is defined in Division 3 of the Act, executed, or to be executed, between the Contractor and other parties who have a relevant interest in the CRN.

ITSR means the Independent Transport Safety Regulator of New South Wales.

ITSR Rules means any rules, policies or requirements of ITSR pursuant to its functions under the Act or under any network regime for rail safety.

John Holland Group means John Holland Group Pty Ltd and its Subsidiaries.

Law means:

- (a) those principles of law established by decisions of courts;
- (b) statutes, regulations, by-laws and other subordinate regulations of the Commonwealth or the state of New South Wales or an Authority;
- (c) binding requirements and Approvals (including any conditions required under them); and
- (d) the lawful requirements of an Authority (and include the ITSR Rules).

Lease means any lease, property licence or short-term property licence referred to in Schedule 3 or otherwise entered into by CRIA or the Contractor relating to the CRIA Assets.

Major Incident means any Incident that involves:

- (a) a fatality or serious injury;
- (b) a main line derailment;
- (c) a train collision; or
- (d) an environmental incident that may cause 'material harm' as that term is defined in the *Protection of the Environment Operations Act 1997* (NSW).

Mobilisation Date means the later of:

- (a) the Date for Start of Mobilisation; and
- (b) the date on which the conditions precedent set out in the definition of Conditions Precedent (Mobilisation) are satisfied or waived.

Mobilisation Services means all activities and work required to be carried out to achieve the milestones set out in the Mobilisation Milestone Annexure, and all obligations to be carried out (except to the extent that they relate only to work or activities to be carried out under any Annual Works Plan) by the Contractor under this Deed during the Mobilisation Stage.

Mobilisation Stage means the period commencing on the Mobilisation Date and ending immediately before the Commencement Date.

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

Network Control Centre means the network control centre established by the Contractor as part of carrying out the Mobilisation Services.

Nominated Budget is the amount nominated by CRIA in respect of a given Contract Year as the amount that CRIA has allocated to be spent on the Services for that Contract Year.

O&M Deed CD means the read only CD-ROM labelled as such and signed for identification by the parties.

Parent Company means the company or companies set out in Schedule 1.

Parent Company Guarantee means the guarantee provided by each Parent Company under clause 19.7.

Payment Claim has the meaning given to that term in clause 21.2.

Payment Response has the meaning given to that term in clause 21.3.

Performance Requirements means the requirements as to the quantity or quality of the Services to be carried out by the Contractor under this Deed.

Personal Information has the meaning given to that term in clause 36.3.

Plant and Equipment means all vehicles, plant, equipment (including hand-held tools), machinery, facilities, apparatus, appliances and things used by or on behalf of the Contractor in the carrying out of the Services but not forming part of the CRIA Assets.

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

Privileged Document means any Documentation in respect of which the Contractor is entitled to claim legal professional privilege other than Documentation that:

- (a) relates or is relevant to an Incident; or
- (b) relates or is relevant to:
 - (i) compliance with Law (including any Environmental Law);
 - (ii) any insurance cover that the Contractor is required to obtain under this Deed;
 - (iii) any activity carried out by the Contractor as CRIA's agent within the scope of the Agency Principles; or
 - (iv) the Contractor's Intellectual Property,

but not to the extent it:

- (c) is legal advice obtained; or
- (d) is created for the dominant purpose of obtaining legal advice, relating to any liability that the Contractor may have to CRIA under this Deed.

Project Control Group or **PCG** has the meaning given to that term in clause 11.1.

Purposes has the meaning given to it in clause 16.1.

Qualifying Change means:

- (a) an enactment of a new Law or a modification to a Law; or
- (b) a change in the way an existing Law is applied,

that comes into effect after the date of this Deed and which affects the quantity or quality of the Services to be carried out by the Contractor, or increases the cost of carrying out of the Contractor's obligations under this Deed, but excludes any of the above:

- (c) in respect of income tax on taxable income (as that term is used in the *Income Tax Assessment Act 1936* (Cth)) or which is related to the calculation of taxable income;
- (d) which is a change in the principles of law established by decisions of courts but excluding a change in the interpretation of any Commonwealth, New South Wales or local government legislation; or
- (e) that comes into effect after the date of this Deed but:
 - (i) should reasonably have been known or anticipated by a prudent, experienced and competent operator and maintainer; or
 - (ii) was caused or contributed to by any Contractor Default.

For the purposes of this definition only, 'Law' includes any Standards and Codes.

Rail Infrastructure Manager means 'rail infrastructure manager' as that term is defined in section 4 of the Act.

Rail Safety Accreditation means all necessary accreditation as a Rail Transport Operator (Rail Infrastructure Manager) under Part 3 of the Act for the purposes of carrying out the Services.

Rail Safety Accreditation Exemption means CRIA's exemption under the Act from requirements to hold Rail Safety Accreditation in relation to the CRN.

Rail Safety Law Change has the meaning given to it in clause 24.3(b).

Rail Transport Operator or **RTO** means 'rail transport operator' as that term is defined in section 4 of the Act.

Records has the meaning given to it in clause 13.1(a).

Related Body Corporate has the same meaning as under the *Corporations Act 2001* (Cth).

Related Body Corporate Amounts means any amounts which the Parent Company or any Related Body Corporate of either the Parent Company or the Contractor have claimed or recovered from or charged or invoiced to the Contractor.

Relevant Documents means those documents set out in Schedule 3.

Remaining Work has the meaning given to it in clause 30.7.

Remediation means the investigation, clean-up, removal, abatement, disposal, control, containment, encapsulation and other treatment of any Contamination, and includes the monitoring and risk management of any Contamination.

Safety Management System or **SMS** means the 'safety management system' (as defined in the Act).

Schedule means schedule or exhibit to this Deed.

Scope of Work and Technical Criteria or **SWTC**, means the scope of work and criteria for the carrying out of the Services as set out in Exhibit A of this Deed.

Security has the meaning given to that term in clause 19.1.

Security of Payment Act means the *Building and Construction Industry Security of Payment Act 1999* (NSW).

Senior Leadership Team or **SLT** has the meaning given to that term in clause 12.1.

Services means all activities and work required to be carried out (including the Mobilisation Services), and all obligations to be carried out, by the Contractor under this Deed or the Early Works Agreement.

Signalling Failures has the meaning given to it in the 'Signalling Failures' section of the KPI Regime Annexure to Schedule 2.

Software means current versions of all software (including source code and object code) of, or used by, the Contractor (other than Commercially Available Third Party Software) in connection with the Services.

Standards and Codes means:

- (a) all relevant CRIA Standards;
- (b) all relevant standards, codes and specifications of Standards Australia (including those specified in this Deed); and
- (c) all other standards, codes and specifications specified in this Deed,

as updated and amended from time to time.

State Records means any document, report and any other information recorded or stored in any manner whatsoever in respect of the CRIA Assets which is a State record for the purposes of the State Records Act which has been provided by CRIA to the Contractor.

State Records Act means the *State Records Act 1998* (NSW).

State Records Authority means the authority constituted under section 63 of the State Records Act.

Step-in Costs has the meaning given to that term in clause 31.

Step-in Rights has the meaning given to that term in clause 31.

Strategic Asset Plan means CRIA's strategic asset management plan for the CRIA Assets (attached as Schedule 12 to this Deed), as amended and updated by CRIA from time to time.

Subsidiary of an entity means another entity which is a subsidiary of the first within the meaning of part 1.2 division 6 of the *Corporations Act 2001* (Cth).

Tax means any tax, levy, impost, deduction, charge, rate, duty, rental, compulsory loan or withholding which is levied or imposed by an Authority, including any withholding, income, stamp or transaction tax, duty or charge and any fee, charge or rental payable under or in connection with any Approval together with any additional tax, further additional tax, interest, penalty, charge, fee or like amount.

Term means the period commencing on the Mobilisation Date and expiring on the Termination Date.

Termination Date means the earlier of:

- (a) 30 June 2021 (immediately prior to midnight on that day); and
- (b) the termination of this Deed.

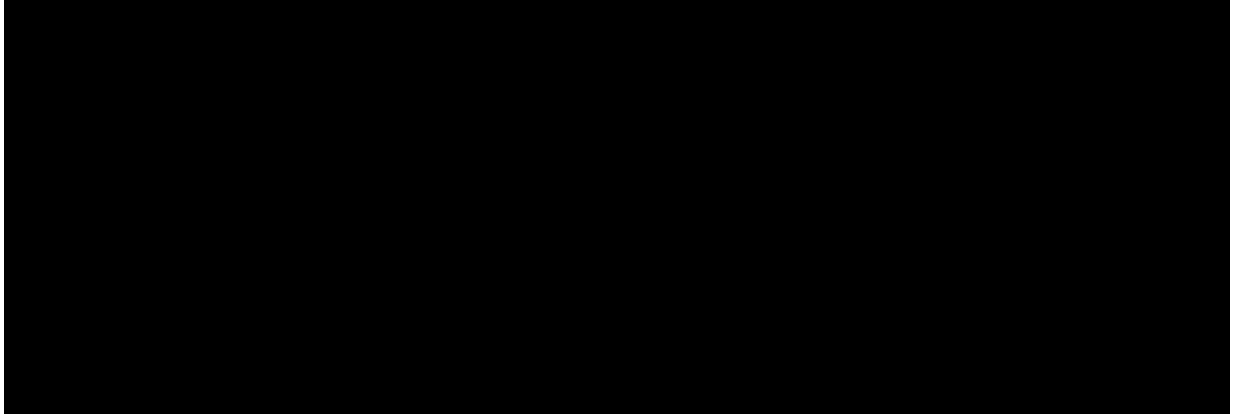
Third Party Claim means any liability or obligation owed to a third party by CRIA (including settlements of any claims or demands by a third party against CRIA, to the extent that CRIA has acted reasonably in reaching the settlement). A third party includes the crown and any entity or agency representing the crown other than CRIA.

Track Possession means an arrangement where rolling stock operations on a section of railway are suspended for a defined period of time, normally to allow work to be carried out.

Variation means any of the following:

- (a) any Direction given by CRIA under clause 18.1(a);
- (b) a change to a Relevant Document as a result of which the obligations imposed on the Contractor under that Relevant Document become more onerous or which causes the Contractor to incur additional costs; or
- (c) any other circumstance which this Deed expressly provides is to be a Variation.

Variation Protocols means the protocols, issued by CRIA's Representative from time to time acting reasonably, with which the Contractor must comply in respect of proposed Variations.



Wilful Default means, in respect of a party:

- (a) any fraud, fraudulent concealment or dishonesty;
- (b) any intentional, wanton or reckless act or omission of a party with reckless indifference to the possible harmful consequences arising from that act or omission; or
- (c) any illegal or malicious act or omission of a party.

1.2 Interpretation

In the interpretation of this Deed, unless the subject matter or context otherwise requires:

- (a) the symbol \$ or references to **dollars** means the lawful currency of Australia;
- (b) references to any particular Law shall be read as though the words 'or any existing or future statutory amendment, modification or re-enactment or any statutory provision substituted therefore' were added to that reference;
- (c) words denoting the singular include the plural and vice versa;
- (d) references to a person include a body corporate and vice versa;
- (e) references to a Recital, clause or Schedule are references to a recital, clause, or Schedule of or to this Deed;
- (f) references to any agreement, deed, instrument or other document (including, without limitation, references to this Deed) include the same as amended, novated, supplemented, varied or replaced from time to time;
- (g) references to a gender include each other gender;
- (h) references to a party include its successors and permitted assigns;
- (i) references to months mean calendar months;
- (j) where any word or phrase is given a defined meaning, any other grammatical form of that word or phrase has a corresponding meaning;
- (k) no rule of construction of documents applies to the disadvantage of one party on the basis that the party put forward this document;

- (l) rights and obligations of the parties capable of taking effect after the Term continue after it, including without limitation any warranties, indemnities or licences to use Intellectual Property given by the Contractor;
- (m) the rights of the parties under this Deed are cumulative and do not exclude or modify any other rights;
- (n) a reference to a thing is a reference to the whole or any one or more parts of the thing;
- (o) the expressions 'including', 'includes' and 'include' have the meaning as if followed by 'without limitation';
- (p) the table of contents and headings to clauses and Schedules are for the purpose of more convenient reference only and do not form part of this Deed or affect its construction or interpretation; and
- (q) terms used in this Deed that are defined in the SWTC shall be given the same meaning as in the SWTC.

1.3 Incorporation of Schedules

Each Schedule to this Deed is incorporated by reference in this Deed provided that if there is any inconsistency between any Schedule and any provision of this Deed, the provision of this Deed shall prevail to the extent of the inconsistency.

1.4 Incorporation of Standards and Codes

Where:

- (a) this Deed adopts by reference any Standards and Codes, it shall have the same force and effect as if the text of such Standards and Codes was incorporated into this Deed; and
- (b) any Standards and Codes referred to in this Deed make reference to other standards, those other standards shall govern the work, to the extent they are applicable.

1.5 Service of Notices

- (a) Subject to clause 1.6, a notice to be given under this Deed must be signed by the party giving the notice and:
 - (i) delivered or posted by pre-paid post to the address of the person stated in Schedule 1 or by facsimile to the number stated in Schedule 1 (or such last communicated address or number notified in writing pursuant to this clause); and
 - (ii) if sent by pre-paid post, shall be deemed to have been received by the addressee on the second Business Day after the date of posting and, if sent by facsimile shall be deemed to have been received at the local time which equates to the time at which the facsimile is sent as shown on the transmission report of the party giving the notice, but if a facsimile is

transmitted after 4.00 pm (at the place of receipt) on a Business Day it shall be deemed to have been received on the next Business Day.

- (b) CRIA, CRIA's Representative and the Contractor shall each notify the others promptly in writing of a change of address or other contact details.
- (c) Without limiting the generality of 'notice', it includes a Document.
- (d) Any notice given to the Contractor's Representative (identified in a notice to CRIA's Representative under clause 10.3) shall be deemed to have been given to the Contractor.

1.6 Service of Notices by Email

- (a) A notice given or made under this Deed (other than a notice under clauses 22.5, 30, 31, 32, or 33 or a payment claim under clause 21.2) may be sent by email if:
 - (i) the notice is signed by a person clearly authorised by the sender in a manner which complies with electronic signature guidelines agreed by the sender and the intended recipient, which, at the date of the Contract, are that the notice is sent from the sender's email account and includes the sender's official corporate signature (for the avoidance of doubt, scanned personal signatures are not required); and
 - (ii) the notice is sent to the recipient's email address set out in Schedule 1, or the email address last notified in writing by the recipient to the sender.
- (b) A notice sent by email in accordance with this clause 1.6 will be taken to be duly given or made on the first to occur of:
 - (i) receipt by the sender of an email acknowledgement from the recipient's information system showing that the notice has been delivered to the email address stated above;
 - (ii) the time that the notice enters an information system which is under the control of the recipient; and
 - (iii) the time that the notice is first opened or read by an employee or officer of the recipient,

but if the result is that a notice would be taken to be given or made on a day that is not a Business Day or is later than 4.00 pm (Sydney time) it will be taken to have been duly given or made at the start of business on the next Business Day.

1.7 Discrepancies

- (a) The several documents forming this Deed are to be taken as mutually explanatory of one another. If either party discovers any inconsistency, ambiguity, discrepancy or inadequacy (each a *discrepancy*) in or between any document forming part of this Deed or relevant to the Services, that party shall notify CRIA's Representative in writing of the discrepancy.
- (b) The parties agree that unless otherwise directed by CRIA's Representative:

- (i) where there is a discrepancy between any documents forming part of this Deed, the documents shall be given the following descending order of precedence:
 - (A) the terms and conditions of this Deed;
 - (B) the SWTC;
 - (C) the Schedules to this Deed (other than the SWTC); and
 - (D) other documents.
- (ii) if clause 1.7(b)(i) does not resolve the discrepancy, the Contractor shall request and comply with CRIA's Representative's Direction as to the interpretation and construction to be followed in respect of the discrepancy.
- (c) Despite any other provision of this Deed, the Contractor shall not have, and CRIA shall not be liable for, any Claim (other than a Claim for payment of Reimbursable Costs made in accordance with clause 21 of this Deed) arising from any discrepancy referred to in this clause 1.7 or any Direction under this clause 1.7.

2. Conditions Precedent

2.1 Conditions Precedent (Mobilisation)

- (a) The rights and obligations of the parties under this Deed (other than clauses 1,6, 16, 28, and 32 to 38 and this clause 2) are subject to the satisfaction or waiver of the Conditions Precedent (Mobilisation).
- (b) The parties agree that the Contractor is responsible for the satisfaction of the Conditions Precedent (Mobilisation) set out in the definition of Conditions Precedent (Mobilisation) on or before the Date for Start of Mobilisation.

2.2 Conditions Precedent (Commencement)

- (a) The parties agree that:
 - (i) the Contractor is responsible for the satisfaction of the Conditions Precedent (Commencement) set out at paragraphs (a) and (d);
 - (ii) CRIA is responsible for the satisfaction of the Conditions Precedent (Commencement) set out in paragraphs (b) and (c); and
 - (iii) both parties are responsible for satisfaction of the Conditions Precedent (Commencement) set out in paragraphs (e) and (f),of the definition of Conditions Precedent (Commencement) on or before the Date for Commencement.

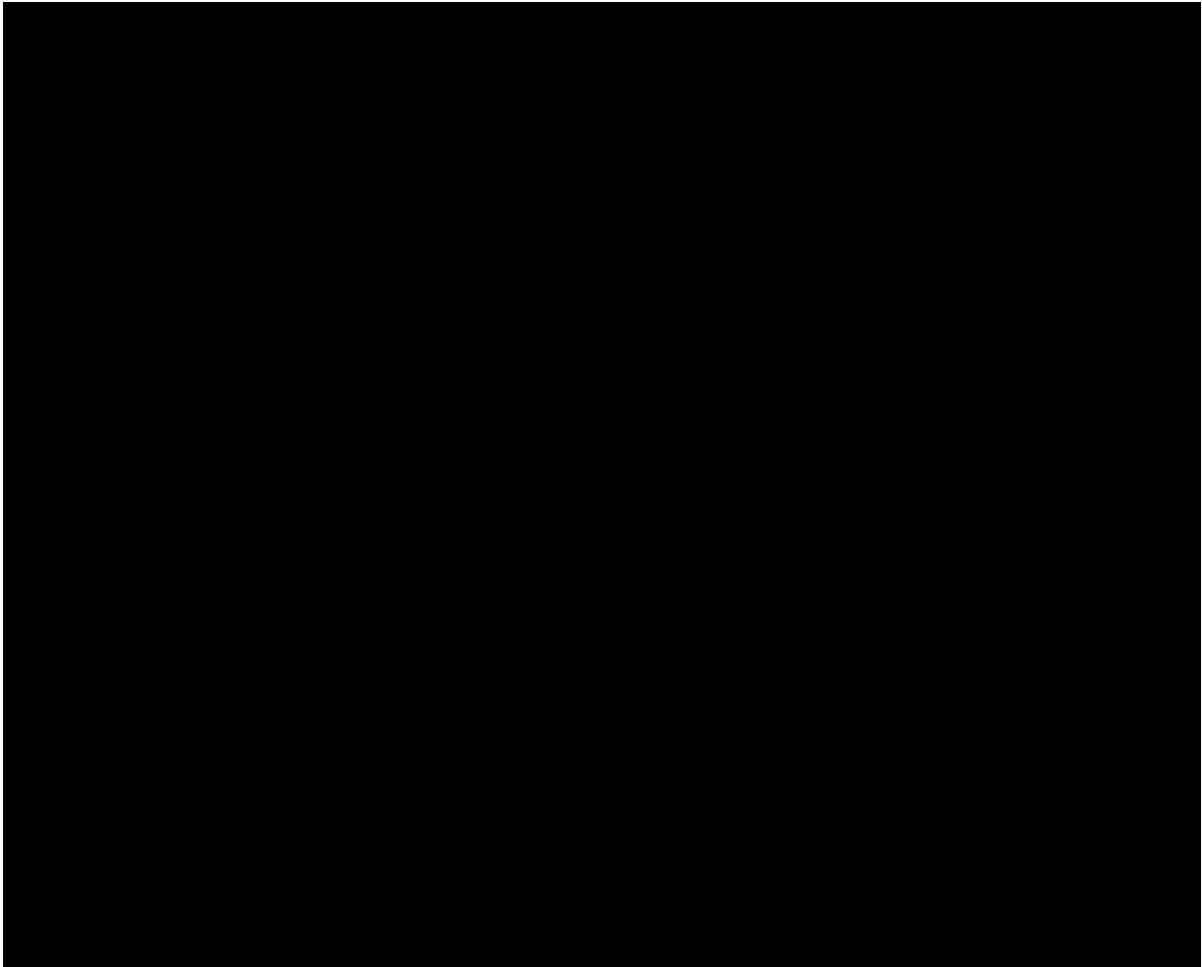
2.3 General

- (a) Each party must use its reasonable endeavours to:

- (i) satisfy the Conditions Precedent (Mobilisation) and Conditions Precedent (Commencement) for which it is responsible; and
 - (ii) assist the other party in satisfying the Conditions Precedent (Mobilisation) and Conditions Precedent (Commencement).
- (b) Each party must notify the other party in writing as and when a Condition Precedent (Mobilisation) or Condition Precedent (Commencement) has been satisfied.
- (c) CRIA may waive any or all of the Conditions Precedent (Mobilisation) and Conditions Precedent (Commencement) in its absolute discretion in writing.
- (d) Upon satisfaction or waiver of:
 - (i) all Conditions Precedent (Mobilisation), CRIA must notify the Contractor of the date upon which the Conditions Precedent (Mobilisation) were satisfied or waived; and
 - (ii) all Conditions Precedent (Commencement), CRIA must notify the Contractor of the date upon which the Conditions Precedent (Commencement) were satisfied or waived;
- (e) Without limiting any other right of CRIA under this Deed, should any of:
 - (i) the Conditions Precedent (Mobilisation) not be satisfied or waived by the Date for Start of Mobilisation (or other such period extended by agreement between the parties); or
 - (ii) the Conditions Precedent (Commencement) not be satisfied or waived by the Date for Commencement (or other such period extended by agreement between the parties),then either party may terminate this Deed by notice in writing to the other party.
- (f) If this Deed is terminated pursuant to paragraph 2.3(e)(i), then neither party will have any obligation to any other party (including, in the case of the Contractor, any Claim against CRIA) arising in or as a result of that termination or otherwise out of this Deed, except for breaches arising prior to such termination (including any breach by the Contractor of clause 2.1(b)).



2.4 Notification of Earlier Date for Commencement



3. Objectives and General Obligations

3.1 Objectives

The objectives of CRIA engaging the Contractor to carry out the Services are:

- (a) ensuring safe operations and maintenance of the CRIA Assets;
- (b) ensuring reliable and sustainable network performance;
- (c) promoting a stewardship culture throughout the operation and maintenance of the CRIA Assets which reliably and proactively represents CRIA's best interests to stakeholders, the community, and customers alike and where the Contractor manages the CRIA Assets with the commitment and vision as if it were the owner;
- (d) implementing robust asset management systems and plans for the CRIA Assets;
- (e) maintaining CRIA's role as an informed owner of the CRIA Assets;
- (f) establishment by the Contractor of a fully transparent 'open book' regime;

- (g) developing an incentive scheme that rewards long-term improvements in safety, efficiency and reliability;
- (h) achieving excellence in risk management, including the safe and efficient management of the many interfaces with the CRN; and
- (i) fostering a long-term relationship between CRIA as owner of the CRIA Assets, and the Contractor who will have effective management and control of the CRIA Assets.

3.2 Engagement

CRIA engages the Contractor to provide the Services in accordance with this Deed and agrees to pay the Contractor in accordance with the Commercial Framework. The Contractor accepts that appointment.

3.3 Term

The Contractor shall carry out the Services during the Term.

3.4 General Obligations

The Contractor shall carry out the Services:

- (a) in a competent, proper and workmanlike manner;
- (b) exercising a high standard of skill, diligence and care;
- (c) in accordance with Good Operating Practice;
- (d) in a manner which provides adequate protection to the CRIA Assets and which maintains (including by way of preventative maintenance) the CRIA Assets in good and substantial repair, order and condition;
- (e) using workmanship and materials of a high quality which are fit for their Intended Purposes; and if replacement of any worn, failed or defective parts is required in the carrying out of the Services, the replacement parts will be of equal quality to those required under this Deed and fit for their Intended Purposes;
- (f) in a manner that ensures that the Engineering Services provide adequate support for MPM and Enhancement Works;
- (g) so that the CRIA Assets shall be, and will remain at all relevant times, fit for the Intended Purposes;
- (h) such that the design life of the CRIA Assets and their composite parts is maintained in accordance with the design life standards specified in the SWTC;
- (i) so as to meet the objectives referred to in clause 3.1; and
- (j) in accordance with the requirements of this Deed and all Law.

3.5 Risk for the CRIA Assets

- (a) Subject to the terms of this Deed, the Contractor agrees:
 - (i) the CRIA Assets will be in the custody, control and care of the Contractor on and from the Commencement Date, including for the purposes of all Laws;

- (ii) the Contractor shall use the CRIA Assets at the Contractor's own risk;
 - (iii) the Contractor shall (on and from the Commencement Date until the end of the Term) be responsible for the care of, and bears the risk of loss or damage to the CRIA Assets;
 - (iv) the Contractor shall make good any loss or damage to the CRIA Assets; and
 - (v) the Contractor assumes the risk of all the CRIA Assets Conditions (whether or not they could have reasonably been anticipated at the date of this Deed or have occurred or arisen before, on or after the date of this Deed).
- (b) CRIA makes no representation and gives no warranty to the Contractor in respect of:
- (i) the CRIA Assets;
 - (ii) the CRIA Assets Conditions; or
 - (iii) the existence, location, condition or availability of any services in respect of the CRIA Assets.
- (c) The Contractor accepts the CRIA Assets, the CRIA Assets Conditions and all Defects, except any Excepted Risk or Excepted Contamination.
- (d) If any Excepted Risk requires the Contractor to:
- (i) carry out more work;
 - (ii) use more Plant and Equipment; or
 - (iii) incur more cost,
- than would otherwise have been required, the activities undertaken and reasonable costs incurred in so dealing with the Excepted Risk shall be a deemed Variation.

3.6 Risk of CRIA Supplied Assets

Without affecting the operation of clauses 3.5(c), 3.5(d) and 27, CRIA makes no representation and gives no warranty to the Contractor in respect of any CRIA Supplied Assets, and the Contractor agrees that its use of any CRIA Supplied Assets shall be based on the Contractor's own assessment of the quality, condition and suitability of the CRIA Supplied Assets.

3.7 Technical Requirements

The standards, tasks, obligations and other provisions contained or referred to in the SWTC represent the minimum requirements which the Contractor shall satisfy for the purposes of fulfilling the obligations specified in clause 3.4(j).

3.8 Advancements in Technology

The Contractor acknowledges and agrees that the Services extend to incorporating advancements in technology and maintenance practices as required by Good Operating Practice.

3.9 Other Acknowledgements

The Contractor acknowledges and agrees that:

- (a) subject to any express term of this Deed to the contrary, the Contractor shall provide all work and materials necessary for the Services, whether or not they are expressly mentioned in this Deed;
- (b) notwithstanding any other provision of this Deed to the contrary, to the maximum extent permitted by Law, it shall not have, and CRIA shall not be liable for, any Claim:
 - (i) based on, or arising out of or in connection with, quantum meruit, unjust enrichment or restitution (or similar Claims), whether arising out of or in connection with this Deed or any basis in law or equity;
 - (ii) for carrying out the Services except as expressly set out in this Deed; or
 - (iii) for any risk, matter or contingency arising out of or in connection with the Services (excluding in connection with any breach of contract) or the CRIA Assets (including all risks associated with the costs of operating, maintaining and repairing the CRIA Assets) for which the Contractor is not expressly entitled to a Claim under this Deed;
- (c) nothing in this Deed will in any way unlawfully restrict or otherwise unlawfully affect the discretion of CRIA to exercise any of its functions and powers pursuant to any Law;
- (d) there may be Authorities other than CRIA with jurisdiction over aspects of the CRIA Assets or the Services and such Authorities may from time to time exercise their statutory functions and powers in such a way as to disrupt, interfere with or otherwise affect the Services or the CRIA Assets; and
- (e) the Contractor bears the risk of occurrences of the kind referred to in clause 3.9(d) at its expense, except to the extent of any express entitlement to Claim under this Deed.

3.10 Access to Information

During the Mobilisation Stage and throughout the balance of the Term, CRIA will give the Contractor, to the extent it is reasonably able and legally entitled to do so, access to all information in the control of CRIA in relation to the CRIA Assets as the Contractor may reasonably require to carry out the Services.

3.11 Supply of Documents by CRIA

- (a) Documentation supplied by CRIA to the Contractor shall remain the property of CRIA and the Contractor shall return it to CRIA immediately upon demand in writing. The Contractor shall ensure Documentation is not, without the prior written approval of CRIA, used, copied or reproduced for any purpose other than the carrying out of the Services.
- (b) The Contractor acknowledges and agrees that:

- (i) any CRIA Supplied Information has been or will be provided only for the Contractor's convenience;
 - (ii) any CRIA Supplied Information (including the accuracy, adequacy, suitability or completeness of it) has not been in any way, and will not be, relied upon by the Contractor for any purpose (including entering into this Deed or carrying out the Services);
 - (iii) CRIA does not:
 - (A) assume any responsibility or duty of care in respect of; or
 - (B) warrant, guarantee or make any representation as to, CRIA Supplied Information (including its accuracy, suitability, completeness or adequacy for the purposes of this Deed);
 - (iv) the Contractor shall not have, and CRIA shall not be liable for, any Claim arising from or in connection with the inaccuracy, incompleteness or inadequacy of CRIA Supplied Information or the non-provision of any other information by CRIA;
 - (v) the Contractor shall not rely upon (or allow any other person to rely upon) CRIA Supplied Information for or in connection with the carrying out of the Services until it has satisfied itself as to the accuracy, suitability, completeness and adequacy of CRIA Supplied Information;
 - (vi) without prejudice to clause 3.11(b)(i), it has by its own independent enquiries satisfied itself as to and taken into account any matter or thing relevant to the carrying out of the Services disclosed by any CRIA Supplied Information.
- (c) The Contractor releases and indemnifies CRIA from and against:
- (i) any claim against CRIA by, or liability of CRIA to the Contractor or any person; or
 - (ii) without being limited by clause 3.11(c)(i) above, any loss suffered by CRIA, arising out of or in any way in connection with:
 - (iii) the provision of, or the purported reliance upon, or use of, CRIA Supplied Information by the Contractor or any other person to whom CRIA Supplied Information is disclosed by the Contractor;
 - (iv) any breach by the Contractor of this clause 3.11; or
 - (v) CRIA Supplied Information being relied upon or otherwise used by the Contractor or any other person to whom CRIA Supplied Information is disclosed by the Contractor in the preparation of any document, including any CRIA Supplied Information which is 'misleading or deceptive' or 'false and misleading' (within the meaning of those terms in sections 52 and 53 (respectively) of the *Trade Practices Act 1974* (Cth), or any equivalent provision of State or Territory legislation).

3.12 Limitation on Powers of the Contractor

- (a) Except as expressly set out to the contrary in this Deed (in particular clause 8), the Contractor shall not without CRIA's consent:
 - (i) do, purport to do or hold itself out as having any authority to do anything as agent for or on behalf of CRIA, including without limitation:
 - (A) waive, settle, compromise, exercise, enforce or otherwise deal with any right of CRIA; or
 - (B) create any obligation or liability on the part of CRIA; or
 - (ii) settle any insurance claim involving any act, matter or thing relating to, arising from or connected with:
 - (A) the CRIA Assets; or
 - (B) the carrying out of the Services.
- (b) Unless expressly stated otherwise in this Deed (in particular clause 8) or otherwise to the extent expressly agreed by the parties, in the fulfilment of its obligations under this Deed, the Contractor will act as CRIA's contractor and not as its agent.
- (c) In respect of any legal dispute arising between a third party and the Contractor that relates to the Contractor's role in acting as an agent for CRIA, the Contractor agrees that it shall:
 - (i) notify CRIA immediately of the dispute, and provide any further information or details required by CRIA;
 - (ii) take any action required by CRIA in respect of the dispute;
 - (iii) not act as CRIA's agent in respect of the dispute unless and only to the extent notified in writing by CRIA that it is required to do so.

3.13 Trust Account

If the Contractor:

- (a) receives any money in connection with any:
 - (i) Relevant Document; or
 - (ii) advertising rights or sale of any assets or equipment (including scrap metal); or
- (b) receives any other money that, but for the Contractor's role assumed as a result of carrying out of the Services, would have been paid to CRIA,

the Contractor receives that money and will hold that money on behalf of CRIA and as trustee for CRIA and shall:

- (c) open a dedicated account (with an institution that is an authorised deposit-taking institution (as defined in the *Banking Act 1959* (Cth)));
- (d) deposit that money immediately into the dedicated account;
- (e) hold all money in that account on trust for CRIA;

- (f) not mingle any other funds with the funds in that trust account;
- (g) not use those funds for any purpose;
- (h) provide online electronic access to the account to CRIA; and
- (i) provide CRIA with accounts of those funds and transfer those funds to an account nominated by CRIA on a weekly basis or as otherwise required by CRIA.

3.14 Personal Property Securities Act

- (a) If CRIA determines, acting reasonably, that this Deed (or any transfer or other transaction in connection with it) is or contains a security interest for the purposes of the PPSA (or any similar legislation), the Contractor agrees to do all reasonable things (such as obtaining consents, signing and producing documents, getting documents completed and signed and supplying information) which CRIA requests and considers necessary for the purposes of:
 - (i) ensuring that the security interest is enforceable, perfected and otherwise effective;
 - (ii) enabling CRIA to apply for any registration, or give any notification, in connection with the security interest so that the security interest has the priority required by CRIA; or
 - (iii) enabling CRIA to exercise rights in connection with the security interest, in each case at CRIA's cost and for the purposes of the PPSA.

3.15 CRIA Statement of Business Ethics and Fraud and Corruption Prevention Plan

- (a) The Contractor acknowledges that it has read and understood CRIA's Statement of Business Ethics (set out in schedule 8 to this Deed) and CRIA's Fraud and Corruption Prevention Plan (set out in Schedule 9 to this Deed).
- (b) The Contractor shall, in carrying out the Services (and any matters arising out of or in any way connected to the Services) comply with CRIA's Statement of Business Ethics and CRIA's Fraud and Corruption Prevention Plan. The Contractor agrees that, where it is provided with, or is given access to, an updated or amended version of CRIA's Statement of Business Ethics or CRIA's Fraud and Corruption Prevention Plan, the Contractor shall use its best endeavours to comply with those updates or amendments.
- (c) The Contractor shall ensure that its Agents are also bound to comply with CRIA's Statement of Business Ethics and CRIA's Fraud and Corruption Prevention Plan to the extent that any of those Agents are involved with the Services or matters arising out of or in connection with the Services.

4. Contractor's Scope of Work

4.1 Services to Comply

The Contractor shall provide the Services in accordance with:

- (a) all Laws;

- (b) this Deed (including the SWTC);
- (c) all Standards and Codes; and
- (d) all Management Plans.

4.2 Enhancement Works

If CRIA requires Enhancement Works to be undertaken, CRIA's Representative may notify the Contractor of the Enhancement Works CRIA wishes to have provided and the Contractor shall, in accordance with the provisions of Schedule 11, either:

- (a) provide the Enhancement Works; or
- (b) engage an alternative contractor to provide the Enhancement Works.

4.3 Minimise Disruption

The Contractor shall:

- (a) ensure that in carrying out the Services it does all things and takes all measures reasonably necessary to protect people and property;
- (b) avoid unnecessary interference with the passage of people and vehicles;
- (c) prevent nuisance and minimise noise and disturbance to those affected by the Services;
- (d) provide such security measures as are reasonably necessary for the protection and the security of the CRIA Assets against theft, vandalism, unauthorised entry and any other unlawful acts; and
- (e) coordinate the carrying out of the Services with, cooperate with and not interfere with any other Agents of CRIA on the CRIA Assets.

4.4 Management Plans and Reports

- (a) The Contractor shall prepare the Management Plans and all reports required under this Deed in accordance with all Law, this Deed (including Appendices 11, 13 and 15 of the SWTC), Good Operating Practice, and to the reasonable satisfaction of CRIA's Representative.
- (b) The Contractor warrants that each Management Plan and report will be fit for the Intended Purposes and compliance with the Management Plans will enable the Contractor to fulfil its obligations under this Deed.

4.5 Key Personnel

- (a) The Contractor:
 - (i) shall ensure the key personnel listed in Schedule 4 are engaged in the carrying out of the Services in their respective capacities set out in Schedule 4; and
 - (ii) shall only replace the key personnel:

- (A) in circumstances of death, serious illness or change of employment to another employer (that is not a member of the John Holland Group) or where otherwise directed or agreed by CRIA; and
 - (B) with others (having equivalent skill and experience) approved by CRIA's Representative acting reasonably.
- (b) CRIA may, at its absolute discretion, direct the Contractor to remove any key personnel. Where directed by CRIA to remove key personnel, the Contractor shall replace those key personnel as directed by CRIA and in accordance with clause 4.5(a)(ii)(B).

4.6 Early Works

The Contractor acknowledges that:

- (a) the Services carried out by the Contractor under or in connection with the Early Works Agreement shall be deemed for all purposes to be Services carried out by the Contractor under or in connection with this O&M Deed;
- (b) the Mobilisation Fee includes any amounts paid or payable to the Contractor pursuant to the Early Works Agreement, and any amounts so paid shall be deducted from the Mobilisation Fee payable to the Contractor.

4.7 Mobilisation

- (a) During the Mobilisation Stage, the Contractor shall carry out the Mobilisation Services (including comply with those clauses referred to in clause 2.1(a)).
- (b) The Contractor shall not:
 - (i) prior to the Commencement Date, carry out any Services other than those referred to in clause 4.7(a); or
 - (ii) have, and CRIA shall not be liable for, any Claim in connection with the carrying out of any Services prior to the Commencement Date other than payment of the Mobilisation Fee for each milestone completed in accordance with this Deed.
- (c) The Contractor shall complete the Mobilisation Services on or before the Date for Commencement.
- (d) Notwithstanding any other provision of this Deed, CRIA shall not, prior to the Commencement Date, be obliged to perform any obligation to the extent that it does not relate to the Mobilisation Services, other than its obligations under clause 2 and those clauses referred to in clause 2.1(a).
- (e) The Contractor shall, in negotiating:
 - (i) the lease required to be executed as part of milestone 2 of the Mobilisation Milestone Annexure; and
 - (ii) any:
 - (A) other leases required for the operation of the Network Control Centre; or

- (B) telecommunications agreements required for the operation of the Network Control Centre,
ensure that the leases and agreements:
 - (C) are in CRIA's name; or
 - (D) provide rights enforceable by CRIA or the Contractor (in which latter case the Contractor shall exercise that right on CRIA's direction) to require the lease or agreement to be novated from the Contractor to CRIA on or after the Termination Date, on terms approved in writing by CRIA.
- (f) To the extent that any arrangements referred to in clause 4.7(e) result in payments being made directly by CRIA to third party suppliers in respect of matters for which provision was made by the Contractor in the Program Overhead, the parties shall, in good faith, agree an adjustment to the Program Overhead to reflect these payments.

5. Use of CRIA Assets

5.1 Ownership of the CRIA Assets

The CRIA Assets shall, as between CRIA and the Contractor, remain the absolute property of CRIA.

5.2 Licence to Use the CRIA Assets

- (a) CRIA shall, from the Mobilisation Date, subject to CRIA's obligations under CRIA's Rail Safety Accreditation Exemption, any Law or Relevant Document, use reasonable endeavours to procure for the Contractor permission to use the CRIA Assets as the Contractor reasonably requires for the purposes of carrying out the Mobilisation Services.
- (b) CRIA grants to the Contractor from the Commencement Date a non-exclusive licence to use the CRIA Assets (including, subject to clause 5.4, reasonable and necessary access to the CRIA Assets) for the purposes of carrying out the Services. The Contractor shall be taken to have accepted the licence immediately the Contractor or any Contractor's Agent enters upon the CRIA Assets for the purposes of carrying out the Services.

5.3 Conditions of Use

The rights to use the CRIA Assets and the licence referred to in clause 5.2:

- (a) terminate immediately upon the Termination Date;
- (b) do not create in the Contractor any lease, tenancy or other proprietary interest in the CRIA Assets;
- (c) are subject to the rights of the parties to the Relevant Documents; and
- (d) may be revoked by CRIA in whole or in part to the extent that they are not necessary for the purposes of the Contractor carrying out the Services.

5.4 Additional CRIA Assets Obligations

- (a) The Contractor shall carry out the Services so as to ensure that the CRIA Assets are available and accessible for their Intended Purposes.
- (b) The Contractor and the Contractor's Agents shall not enter upon any place reasonably notified by CRIA or CRIA's Representative to the Contractor in writing as a place to which the Contractor is not to have access, without the prior written consent of CRIA.
- (c) The Contractor shall:
 - (i) obtain all necessary Approvals for any access to or over, underpinning or use of, or work relating to any adjoining site or property which may be required for the carrying out of the Services (not in the ownership or control of CRIA); and
 - (ii) comply with all conditions attaching to such Approvals.
- (d) The Contractor indemnifies CRIA against:
 - (i) any cost, expense, loss, damages, liability or claim in respect of personal injury or death or loss of, or damage to the CRIA Assets or any other property in respect of the Contractor's access to or over, underpinning or use of, or work relating to any adjoining site or property; and
 - (ii) any cost, expense, loss, damages, liability or claim arising in connection with a breach of any condition attaching to any Approval referred to in clause 5.4(c)(ii),other than any cost, expense, loss, damages, liability or claim caused by CRIA Prevention.

5.5 Prohibited Uses of the CRIA Assets

The Contractor shall not:

- (a) allow a person access to use or occupy any part of the CRIA Assets without a proper agreement, licence, lease or other appropriate arrangement in place, including (for example):
 - (i) in respect of access to the CRN for which an Access Agreement would normally be required, a person seeking access without an Access Agreement;
 - (ii) the occupation of any land comprising any part of the CRIA Assets without a lease, licence or other permission; or
 - (iii) the laying of utility pipes or lines under or over any rail lines on property comprising the CRIA Assets without appropriate arrangements being in place,except to the extent such access is allowed under any Law or otherwise approved in writing by CRIA;

- (b) use or allow any part of the CRIA Assets to be used for a purpose other than its Intended Purpose;
- (c) do or allow any illegal or offensive act or omission on the CRIA Assets;
- (d) do or allow any act or omission which causes a nuisance, disturbance or damage to any other person:
 - (i) using the CRIA Assets;
 - (ii) using or occupying land in the vicinity of the CRIA Assets;
- (e) do or allow any act or omission on the CRIA Assets which may result in:
 - (i) the breach by CRIA of any Law or any obligation of CRIA under a Relevant Document in respect of the CRIA Assets; or
 - (ii) CRIA incurring any liability or becoming bound by any obligation in respect of the CRIA Assets (except to the extent expressly required by this Deed or approved in writing by CRIA).

5.6 CRIA Assets not Fit for Purpose at Commencement Date

- (a) If, at the Commencement Date, a CRIA Asset is not fit for the Intended Purposes, the Contractor shall (subject to clause 5.6(b)) be relieved from performance of its obligations under this Deed to the extent that:
 - (i) those obligations cannot be performed as a result of the CRIA Asset not being fit for its Intended Purposes as at the Commencement Date;
 - (ii) the Contractor has notified CRIA, and it has been demonstrated to the satisfaction of CRIA, on or before the Commencement Date that the CRIA Asset is not fit for the Intended Purposes (and CRIA has been provided with details of the extent to which the relevant obligations cannot be performed); and
 - (iii) those obligations do not form any part of the Contractor's obligations in relation to safety.
- (b) The Contractor shall not be relieved of any obligations under clause 5.6(a) where a reasonably prudent contractor in the position of the Contractor:
 - (i) would have been aware that the CRIA Asset was not fit for its Intended Purposes as at the Commencement Date; and
 - (ii) would have rectified the CRIA Asset so that it was fit for its Intended Purposes by the time for performance of the relevant obligations.

5.7 Access for CRIA and Others

The Contractor shall at all times give CRIA, CRIA's Representative and CRIA's Agents access to the CRIA Assets, and any place where the Services are being carried out or materials are being prepared or stored, subject always to compliance by them with reasonable safety procedures established by the Contractor in relation to the CRIA Assets.

5.8 Release of CRIA

The Contractor releases, to the maximum extent permitted by Law, CRIA and CRIA's Agents from any liability to the Contractor which may arise in respect of any loss of or damage to any property or death of or injury to any person on or about the CRIA Assets, except to the extent that the liability is caused by CRIA Prevention.

6. Laws and Approvals

6.1 Compliance with Laws

The Contractor shall:

- (a) in carrying out the Services, comply with, carry out and fulfil all conditions and requirements of;
- (b) ensure that its Agents, in carrying out the Services, comply with; and
- (c) carry out the Services so as to ensure that the CRIA Assets comply with, all applicable Laws, Approvals (whether obtained by the Contractor or obtained and provided to the Contractor by CRIA) and Standards and Codes.

6.2 Contractor to Obtain

The Contractor shall expeditiously apply for, obtain and maintain, throughout the Term all Approvals required for the Services to be lawfully carried out, including any Approvals which are required to be held by or in the name of CRIA (*CRIA's Approvals*), which the Contractor shall obtain and maintain on CRIA's behalf, unless CRIA otherwise requires, but excluding any Approvals which relate to CRIA's ownership or right to occupation or use of the CRIA Assets, which by Law can only be obtained by CRIA as owner or lessee of the CRIA Assets (except those Approvals that can be applied for and obtained by the Contractor on behalf of CRIA).

6.3 Conditional Approvals

Where any Approval required for the Services to be lawfully provided:

- (a) is or is proposed to be issued subject to terms and conditions; or
- (b) is or is proposed to be varied in a manner which affects the rights or obligations of CRIA,

the Contractor shall:

- (c) keep CRIA and CRIA's Representative fully informed;
- (d) consult fully with CRIA and CRIA's Representative; and
- (e) comply with CRIA's and CRIA's Representative's reasonable Directions,

with respect to the Approval and the procedures relating to its issue or variation (including the lodgement of applications, objections or appeals to and negotiations with any relevant Authority).

6.4 Taxes, Duties and Charges

Subject to other provisions of this Deed, the Contractor shall:

- (a) pay all customs duties, stamp duties and other duties, charges, Taxes or imposts payable in connection with this Deed or the carrying out of the Services; and
- (b) effect all insurances, provide all security and execute any undertakings or agreements required by any relevant Authority in respect of any Approvals or otherwise to comply with any Law.

6.5 Changes in Law

- (a) If a Qualifying Change necessitates:
 - (i) a change to the Services; or
 - (ii) a change to the CRIA Assets; or
 - (iii) a change, being the provision or expansion of services of a municipal, public or statutory Authority in connection with the CRIA Assets; or
 - (iv) an increase or decrease in a fee or charge, or payment of a new fee or charge (including an obligation to surrender permits, allowances, certificates or the like under a Carbon Scheme),

then, to the extent that such change causes the Contractor to incur more or less cost than otherwise would have been incurred (in respect of costs directly referable to the Services), then:

- (v) the difference shall be a deemed Variation; and
- (vi) within 10 Business Days after the Qualifying Change arises, the Contractor shall provide to CRIA's Representative a statement in writing specifying:
 - (A) such information required under clauses 18.3 and 18.5 as if the Qualifying Change was the subject of a proposed Variation under clause 18.2; and
 - (B) other details reasonably required by CRIA's Representative.
- (b) The Contractor shall not have, and CRIA shall not be liable for, any Claim (whether under this clause 6.5 or otherwise) arising from or in connection with any reduction to or limitation of the hours which labour engaged in connection with the Services is to work at any time (whether under any Law, enterprise bargaining agreement or otherwise).
- (c) The Parties acknowledge that, at the time of signing of this Deed:
 - (i) they are aware that one or more Carbon Schemes or variations to existing Carbon Schemes are likely to be introduced during the Term; and
 - (ii) the Contractor does not know, and is not reasonably able to anticipate, the nature, scope and impact of any such new or varied Carbon Scheme.
- (d) The Parties agree that the introduction or variation of a Carbon Scheme during the Term will be a Qualifying Change and will trigger the process set out in clause

6.5(a) if it causes the Contractor (or any other member of the John Holland Group) to incur more or less cost than otherwise would have been incurred (in respect of costs directly referable to the Services).

7. Relevant Documents

- (a) The Contractor agrees that it has satisfied itself as to, and has read a copy of, the Relevant Documents and has taken account of the Relevant Documents in the carrying out of the Services.
- (b) The Contractor is aware of CRIA's obligations under the Relevant Documents and will carry out its obligations under this Deed in a manner that does not, by any act or omission, result in CRIA being in breach of its obligations under any of the Relevant Documents, to the extent that they are relevant to, or affect, the Contractor's obligations under this Deed, the Services or the CRIA Assets.
- (c) Without limiting CRIA's rights under this Deed, to the extent that any Contractor Default causes CRIA to breach any of the Relevant Documents, the Contractor shall do all things necessary to assist CRIA to remedy the default.
- (d) Without limiting the above, the Contractor agrees that:
 - (i) a number of obligations in, and reservations in favour of the counter-party under the Relevant Documents respectively will result in restrictions or limitations placed on the ability of the Contractor to carry out the Services; and
 - (ii) CRIA will not have failed to comply with its obligations to provide access to, or use of, the CRIA Assets under this Deed to the extent that:
 - (A) such access or use is required in relation to land to which CRIA is entitled to access, or use, under any one or more of the Relevant Documents; and
 - (B) CRIA has provided access to, or use of, such land for the purposes of the Relevant Documents.
- (e) Where any Relevant Documents are updated or amended, then, to the extent that:
 - (i) the Contractor has not been involved in preparing the updates or amendments; and
 - (ii) the relevant obligations imposed on the Contractor have, as a result of the updates or amendments, become more onerous,the Contractor will not be in breach of this section in respect of those affected obligations if it uses its best endeavours to comply with those obligations.
- (f) The Contractor acknowledges that:
 - (i) the list of Relevant Documents provided in Schedule 3 to this Deed may not be complete, and other Documents may be in existence at the time of executing this Deed that are Relevant Documents; and
 - (ii) further Relevant Documents will come into existence during the Term.

- (g) The Contractor agrees, with respect to the Documents referred to in clause 7(f), that where the Contractor has not had access to those Documents, or those Documents have not existed, at the time of executing this Deed:
- (i) those Documents will be Relevant Documents; and
 - (ii) the obligations of the Contractor in this clause 7 apply to those Relevant Documents,
- from the time the Contractor has first been provided with access to those Documents.
- (h) The Contractor indemnifies CRIA against any cost, expense, loss, damages, liability or claim which CRIA suffers or incurs (including claims by third parties or counter-parties to the Relevant Documents) as a result of the Contractor's breach of this clause 7.

8. Contractor as Agent

8.1 Scope of Agency

- (a) CRIA appoints the Contractor as its agent solely for the purposes, and to the extent, set out in clause 8.2.
- (b) The Contractor shall act within the provisions of the Agency Principles.
- (c) In negotiating and entering into, or administering any agreement, the Contractor does so as agent for CRIA, to the extent set out in the Agency Principles and not as principal, notwithstanding that the name of CRIA may not appear on that contract.

8.2 Agency Principles

The Contractor shall act as CRIA's agent:

- (a) in respect of the matters, and
- (b) in accordance with any protocols,

agreed by the Project Control Group from time to time (the *Agency Principles*).

8.3 Indemnities

- (a) CRIA indemnifies the Contractor against any cost, expense, loss, damages, liability or claim which it incurs solely as a result of the Contractor acting properly as CRIA's agent in accordance with clause 8.1.
- (b) The Contractor indemnifies CRIA against any cost, expense, loss, damages, liability or claim which CRIA incurs as a result of the Contractor breaching clause 8 or otherwise acting outside the scope of its agency.

9. Interface Agreements

- (a) The Contractor shall enter into the Interface Agreements in accordance with the requirements of the Act.

- (b) If requested by CRIA, or as otherwise necessary to carry out its obligations under this Deed, it is necessary during the Term to enter into further Interface Agreements, the Contractor, acting reasonably, will:
 - (i) develop and negotiate in good faith with the relevant third parties the necessary terms and conditions, having regard to the terms and conditions of the Interface Agreements referred to in clause 9(a); and
 - (ii) enter into the Interface Agreements with the relevant third parties.

10. Parties Representatives

10.1 CRIA's Representative's Functions

- (a) CRIA shall ensure that at all times there is a CRIA's Representative.
- (b) CRIA's Representative shall carry out its functions under this Deed:
 - (i) in respect of those functions referred to in clauses 18.8, 21.3 and 33.6 acting reasonably,
 - (ii) in respect of all other functions:
 - (A) as agent and representative of CRIA; and
 - (B) in accordance with instructions, if any, given to it by CRIA (acting in its absolute discretion unless this Deed expressly requires otherwise) and in a manner consistent with the interests of CRIA.
- (c) If pursuant to a provision of this Deed enabling CRIA's Representative to give Directions, CRIA's Representative gives a Direction (whether oral or in writing) the Contractor shall comply with the Direction.
- (d) Except where this Deed otherwise provides, a Direction may be given orally but CRIA's Representative shall as soon as practicable confirm it in writing.
- (e) CRIA's Representative may:
 - (i) by written notice to the Contractor appoint persons to exercise any of CRIA's Representatives functions under this Deed;
 - (ii) not appoint more than one person to exercise the same function under this Deed; and
 - (iii) revoke any appointment under this clause 10.1 by notice in writing to the Contractor.
- (f) CRIA's Representative may continue to exercise a function under this Deed despite appointing another person to exercise the function under clause 10.1(e).
- (g) CRIA may authorise CRIA's Representative to exercise any right CRIA has under this Deed.

10.2 CRIA's and CRIA's Representative's Discretions

The Contractor agrees that, except to the extent expressly provided in this Deed:

- (a) CRIA and CRIA's Representative may exercise those discretions, rights and functions given to them under this Deed in whatever manner CRIA or CRIA's Representative decide in their absolute discretion; and
- (b) CRIA or CRIA's Representative may grant, refuse or grant subject to conditions any consent required from CRIA or CRIA's Representative in their absolute discretion.

10.3 Appointment of Contractor's Representative

The Contractor shall throughout the Term ensure that it has appointed and notified CRIA of the identity of an individual representative of the Contractor (called the *Contractor's Representative*) who shall be:

- (a) the only representative of the Contractor during the period of the Contractor's Representative's appointment;
- (b) authorised by the Contractor to receive and accept on the Contractor's behalf any notices, Directions, instructions or other communications given by CRIA or CRIA's Representative under or in connection with this Deed and give or exercise, on the Contractor's behalf, any notices, communications or rights under or in connection with this Deed; and
- (c) reasonably acceptable to CRIA.

11. Project Control Group

11.1 Establishment

- (a) Within 60 Business Days after the date of this Deed, the parties will establish a group (the *Project Control Group*) consisting of:
 - (i) CRIA's Representative;
 - (ii) two other representatives appointed by CRIA from time to time;
 - (iii) the Contractor's Representative; and
 - (iv) two other representatives appointed by the Contractor and approved by CRIA from time to time acting reasonably.
- (b) Members of the Project Control Group may invite, on prior notice to all members, such advisers and consultants as they require from time to time to attend meetings and provide briefings to the Project Control Group.
- (c) CRIA's Representative will be the chairperson of the Project Control Group.
- (d) A member of the Project Control Group (including CRIA's Representative and the Contractor's Representative) may appoint an alternate (on a temporary basis) to attend and vote at a Project Control Group meeting in place of that member.

11.2 Function and Role

- (a) The Project Control Group shall assist the parties by promoting cooperative and effective communication with respect to matters related to the Services.

- (b) The Project Control Group shall be responsible for receiving, discussing and reviewing any matter referred to it by a party.
- (c) The Project Control Group shall be responsible for performing those functions set out in Schedule 5.

11.3 Term of the Project Control Group

Unless otherwise agreed, the Project Control Group will operate during the Term.

11.4 Replacement of Project Control Group Members

CRIA shall be entitled to replace any of its representatives on the Project Control Group by written notice to the Contractor's Representative. The Contractor may replace any of its representatives on the Project Control Group with the prior written consent of CRIA's Representative (such consent not to be unreasonably withheld).

11.5 Procedures and Practices

- (a) The members of the Project Control Group may:
 - (i) adopt such procedures and practices for the conduct of the activities of the Project Control Group as they consider appropriate from time to time;
 - (ii) invite to any meeting of the Project Control Group such other persons as the members of the Project Control Group may agree;
 - (iii) exclude from any meeting of the Project Control Group such persons (other than members of the Project Control Group) as the members of the Project Control Group may agree; and
 - (iv) receive and review reports from any person or organisation agreed to by the members of the Project Control Group. If the Project Control Group requires a report from the Contractor or any of the Contractor's Agents the Contractor shall, and will procure that the relevant Contractor's Agent shall, provide that report within the time stipulated by the Project Control Group.
- (b) Once established, the Project Control Group shall meet:
 - (i) fortnightly up to the end of the Initial Stage; and
 - (ii) otherwise, once each month during the remainder of the Term,unless otherwise agreed by the members of the Project Control Group or the parties.
- (c) Either CRIA's Representative or the Contractor's Representative may convene a special meeting of the Project Control Group at any time, with a notice sent to all members of the Project Control Group at least 5 Business Days prior to the special meeting. The notice shall identify the agenda items to be discussed at the special meeting. In an Emergency, a meeting may be called at any time on such notice as may be reasonable in the circumstances.

- (d) Meetings of the Project Control Group may be held by any means that permits all persons participating in the meeting to communicate with each other simultaneously and instantaneously. A person participating in a meeting by such means will be deemed to be present at such meeting.
- (e) 2 representatives of CRIA (1 of whom shall be CRIA's Representative) and 2 representatives of the Contractor (1 of whom shall be the Contractor's Representative) shall constitute a quorum at any meeting of the Project Control Group. A quorum of members may exercise all the powers of the Project Control Group. The members shall not transact business at a meeting of the Project Control Group unless a quorum is present.
- (f) All decisions of the Project Control Group shall be by majority decision.
- (g) Minutes of all meetings, recommendations and decisions of the Project Control Group shall be recorded and maintained by CRIA's Representative. CRIA's Representative will circulate copies of the minutes within 10 Business Days of the holding of the meeting or the making of the recommendation or decision. Unless the Contractor's Representative notifies CRIA's Representative within 5 Business Days of receipt of the minutes that the Contractor's Representative disagrees with the contents of the minutes, the parties will be deemed to have approved the minutes.
- (h) Where the Project Control Group considers:
 - (i) any proposed amendments to this Deed; or
 - (ii) any proposed Variation that the Project Control Group considers to be a significant Variation,the Project Control Group must refer the matter, together with any recommendations of the Project Control Group, to the Senior Leadership Team.
- (i) While the Project Control Group may provide recommendations on a number of issues:
 - (i) the Project Control Group will not have power to impose any obligation on CRIA, CRIA's Representative or the Contractor and will not have any power to require CRIA, CRIA's Representative or the Contractor to act or refrain from acting in any way; and
 - (ii) the Project Control Group does not in any way bind CRIA, CRIA's Representative or the Contractor and cannot amend this Deed or waive any rights or create any liabilities,

other than in respect of amendments to the Agency Principles.

12. Senior Leadership Team

12.1 Establishment

- (a) Within 60 Business Days after the date of this Deed, the parties will establish a group (the *Senior Leadership Team*) consisting of:

- (i) the Chief Executive of CRIA or such other person nominated, from time to time, by CRIA in a written notice from CRIA to the Contractor (*CRIA's Leader*); and
 - (ii) the Chief Executive Officer or other appropriate senior executive of the Contractor or such other person nominated, from time to time, by the Contractor in a written notice from the Contractor to CRIA and accepted by CRIA's Leader (*Contractor's Leader*).
- (b) CRIA's Leader will be the chairperson of the Senior Leadership Team.
- (c) A member of the Senior Leadership Team may appoint an alternate (on a temporary basis) to attend and vote at a Senior Leadership Team meeting in place of that member.

12.2 Function and Role

The Senior Leadership Team shall be responsible for receiving and reviewing all matters sent to it by the Project Control Group, including:

- (a) proposed Variations to the Services;
- (b) proposed amendments to this Deed;
- (c) unresolved decisions; and
- (d) disputes.

12.3 Term of the Senior Leadership Team

The Senior Leadership Team will operate until 12 months after the Termination Date.

12.4 Procedures and Practices

- (a) The members of the Senior Leadership Team may:
 - (i) adopt such procedures and practices for the conduct of the activities of the Senior Leadership Team as they consider appropriate from time to time;
 - (ii) invite to any meeting of the Senior Leadership Team such other persons as the members of the Senior Leadership Team may agree;
 - (iii) exclude from any meeting of the Senior Leadership Team such persons (other than members of the Senior Leadership Team) as the members of the Senior Leadership Team may agree; and
 - (iv) receive and review reports from any person or organisation agreed to by the members of the Senior Leadership Team. If the Senior Leadership Team requires a report from the Contractor or any of the Contractor's Agents the Contractor shall, and will procure that the relevant Contractor's Agent shall, provide that report within the time stipulated by the Senior Leadership Team.
- (b) Once established the Senior Leadership Team shall meet:
 - (i) fortnightly from the commencement of the Mobilisation Stage through to the date 6 months following the Commencement Date; and

- (ii) otherwise, once each month during the remainder of the Term, unless otherwise agreed by the members of the Senior Leadership Team or the parties.
- (c) Either CRIA's Leader or the Contractor's Leader may convene a special meeting of the Senior Leadership Team at any time, with a notice sent to all members of the Senior Leadership Team at least 5 Business Days prior to the special meeting. The notice shall identify the agenda items to be discussed at the special meeting. In an Emergency, a meeting may be called at any time on such notice as may be reasonable in the circumstances.
- (d) Meetings of the Senior Leadership Team may be held by any means that permits all persons participating in the meeting to communicate with each other simultaneously and instantaneously. A person participating in a meeting by such means will be deemed to be present at such meeting.
- (e) CRIA's Leader and the Contractor's Leader shall constitute a quorum at any meeting of the Senior Leadership Team. A quorum of members may exercise all the powers of the Senior Leadership Team. The members shall not transact business at a meeting of the Senior Leadership Team unless a quorum is present.
- (f) All decisions of the Senior Leadership Team shall be unanimous.
- (g) Minutes of all meetings, recommendations and decisions of the Senior Leadership Team shall be recorded and maintained by CRIA's Leader (or such person appointed by CRIA's Leader to attend the meeting for this purpose). CRIA's Leader will circulate copies of the minutes within 10 Business Days of the holding of the meeting or the making of the recommendation or decision. Unless the Contractor's Leader notifies CRIA's Leader within 5 Business Days of receipt of the minutes that the Contractor's Leader disagrees with the contents of the minutes, the parties will be deemed to have approved the minutes.
- (h) The Senior Leadership Team will have power to:
 - (i) make recommendations to CRIA's Representative to vary the Services or issue a Variation;
 - (ii) discuss proposed amendments to this Deed and make recommendations to the parties;
 - (iii) negotiate the resolution of any dispute referred to it in accordance with clause 32.2.
- (i) While the Senior Leadership Team may provide recommendations on a number of issues, other than the Senior Leadership Team's power to negotiate the resolution of disputes referred to it in accordance with clause 32.2:
 - (i) the Senior Leadership Team will not have power to impose any obligation on CRIA, CRIA's Representative or the Contractor and will not have any power to require CRIA, CRIA's Representative or the Contractor to act or refrain from acting in any way; and

- (ii) the Senior Leadership Team does not in any way bind CRIA, CRIA's Representative or the Contractor and cannot amend this Deed or waive any rights or create any liabilities.

13. Records and Audits

13.1 Keeping of Records

- (a) The Contractor shall prepare and maintain in Newcastle or any other location or locations approved by CRIA's Representative, up-to-date, comprehensive, true and accurate Documentation relating to the Services and Documentation forming the basis of the Information Management Systems (together the *Records*).
- (b) The Records shall include:
 - (i) any records provided to the Contractor by CRIA;
 - (ii) copies of all primary source documents, including invoices and timesheets; and
 - (iii) copies of all documents or other material in which the Intellectual Property referred to in clause 16.2 subsists.

13.2 Further Obligations Relating to Records

- (a) The Contractor shall provide CRIA access to all Records (other than Records that are Escrow Documents or Privileged Documents) in the format and at the times required by the SWTC, and otherwise upon giving the Contractor reasonable notice. To the extent required by the SWTC and otherwise where the Contractor is reasonably able to do so, copies of these Records shall be:
 - (i) made available to CRIA electronically; and
 - (ii) kept in hard copy in a dedicated area accessible to CRIA.
- (b) CRIA's Representative may from time to time approve protocols for the management of Records.
- (c) Where the Records (other than Records that are Escrow Documents or Privileged Documents) referred to in this clause belong to or are within the control of a Related Body Corporate of the Contractor, the Contractor shall procure that the Related Body Corporate maintains those Records and provides access to them for the purposes of this clause and for any audit or inspection right under this Deed.

13.3 Audit and Inspection by CRIA

- (a) Without limiting the rights of CRIA under the SWTC, CRIA may at any time during the Term and up to 3 years after the end of the Term at all reasonable times and upon giving reasonable notice to the Contractor, inspect the Records, or conduct an audit of the Records (whether in relation to financial, engineering or other matters), other than Records that are Escrow Documents or Privileged Documents.
- (b) The Contractor shall, in respect of Records (other than Records that are Escrow Documents or Privileged Documents):

- (i) provide CRIA, CRIA's Representative, or others nominated in writing by CRIA with access to those Records as is:
 - (A) required by this Deed or the SWTC; or
 - (B) required at any reasonable time for the purposes of investigating, auditing, copying, reconciling, verifying or otherwise satisfying itself as to those Records (including their accuracy and completeness) and any matters relating to the Services, including:
 - (1) work done or costs and expenses incurred, or amounts claimed, by the Contractor in respect of the Services (including the Reimbursable Costs); and
 - (2) the Contractor's compliance with its obligations in respect of the Services (including, without limitation, matters relating to quality and safety);
- (ii) allow CRIA, CRIA's Representative and others nominated in writing by CRIA at any reasonable time to investigate, audit, copy, reconcile, verify or otherwise satisfy itself as to the matters referred to in clause 13.3(b)(i);
- (iii) that are stored on a medium other than in writing, make available on reasonable request such facilities as may be necessary to enable a legible reproduction to be created; and
- (iv) provide CRIA, CRIA's Representative and others nominated in writing by CRIA with all assistance, working accommodation, facilities and personnel required for the purposes of this clause 13 (including the interpretation and analysis of the Records).

13.4 Cost of Audit

Any audit or inspection under clause 13.3 will be at CRIA's cost unless the audit or inspection reveals:

- (a) a difference between the reported expenditure and the actual expenditure of greater than 0.5% or \$10,000 Indexed by CPI (whichever is less);
- (b) that the amount claimed by the Contractor exceeds the amount to which the Contractor is entitled by more than 0.5% or \$10,000 Indexed by CPI (whichever is less); or
- (c) a non-compliance by the Contractor with its obligations under this Deed that is not minor or trivial in nature,

in which case the Contractor will pay the cost of the audit or inspection.

13.5 Ownership of Design Documentation

All Documentation supplied by or on behalf of the Contractor shall be CRIA's property.

13.6 State Records

In addition to the Contractor's other obligations in this clause 13, from the Mobilisation Date and thereafter throughout the Term the Contractor shall:

- (a) make arrangements for the safe keeping and proper preservation of the State Records;
- (b) establish and maintain and implement a records management program for the State Records;
- (c) provide CRIA with any State Record it requires for the purposes of the State Records Act upon reasonable notice to CRIA and at CRIA's cost;
- (d) ensure that all State Records are in a format reasonably accessible to, and able to be read and interpreted by CRIA provided that the Contractor may at its discretion either provide:
 - (i) the State Records;
 - (ii) copies of the State Records; or
 - (iii) other access to those State Records;
- (e) cooperate with and assist CRIA, including by providing access to the State Records Authority, in respect of any request received by CRIA from the State Records Authority pursuant to the State Records Act, provided that CRIA pays the costs of the Contractor incurred in relation to providing such assistance and cooperation;
- (f) comply with all reasonable requests and Directions made by CRIA to enable it to comply with its obligations pursuant to the State Records Act;
- (g) comply with any guidelines for administrative practice issued by the State Records Authority; and
- (h) at the expiry of the Term, deliver all State Records to CRIA other than any State Records that CRIA has given the Contractor approval in writing to dispose of.

13.7 Back-up

To the extent required by CRIA, the Contractor shall, on and from the date three months after the Commencement Date, ensure that a copy of:

- (a) all electronic Documentation or data emanating from the information and document management systems required to be maintained in connection with the Services; and
- (b) any updates or amendments to any software or to the configuration of any software carried out, or undertaken by or on behalf of the Contractor, in connection with the Services, where:
 - (i) that software is software specified in the column titled 'Backup of updates to be provided to CRIA' of Table 2 of Appendix 13 to the SWTC as software in respect of which a back-up of updates to the software is to be provided;
 - or

- (ii) that software is software in respect of which it is reasonably practicable to provide a back-up of such updates,

is backed up (at intervals nominated by CRIA) to a computer server or other computer or electronic system, or other media approved by CRIA, in a format that CRIA can access.

14. Escrow

14.1 Escrow Deed

- (a) The Contractor shall, if required by CRIA:
 - (i) procure that an escrow agent approved by CRIA enters into the Escrow Deed at Schedule 7.3; and
 - (ii) lodge a copy of all Escrow Documents with the escrow agent.
- (b) Unless otherwise directed by CRIA's Representative, any Escrow Documents must be lodged in escrow as soon as is reasonably practicable.
- (c) The Contractor is not obliged to provide an Escrow Document to CRIA unless that Escrow Document has been released from escrow in accordance with the provisions of the Escrow Deed.

14.2 Release from Escrow

- (a) CRIA shall be entitled to have access to, and to require the release of, the Escrow Documents upon the exercise of its Step-in Rights and on the Termination Date.
- (b) If the Escrow Documents are released under clause 14.2(a) and CRIA later ceases to exercise the Step-in Rights, then CRIA shall promptly return the Escrow Documents to the escrow agent to hold on escrow on the same terms as before the Escrow Documents were released. Upon return of the Escrow Documents to the escrow agent, CRIA shall delete and shall ensure that CRIA's Agents delete all copies of the Escrow Documents that are in their possession or control.

15. Emergencies and Incidents

15.1 Investigation by CRIA

- (a) The Contractor acknowledges that the occurrence of any Incident may have consequences for CRIA.
- (b) Without limiting CRIA's rights to receive any reports to be provided by, or the results of any investigations carried out by, the Contractor, CRIA may carry out its own investigation of any Incidents.
- (c) With respect to any investigation by or on behalf of CRIA referred to in clause 15.1(b):
 - (i) CRIA may engage any assistance it requires from any third parties;
 - (ii) the Contractor shall:

- (A) provide access to any part of the CRIA Assets and Records (and any findings by any investigation carried out by or on behalf of the Contractor) required by CRIA;
- (B) cooperate fully with all requests made by CRIA for the purpose of CRIA's investigation; and
- (C) not hinder the investigation.

15.2 No Disposal of Equipment

Subject to any contrary requirement at Law, the Contractor shall:

- (a) take steps to preserve any property or thing which may be required as evidence as to the cause of any Incident and will, on reasonable notice, give access to CRIA to such property or thing for the purposes of inspecting, photographing or testing such property or thing; and
- (b) not engage in conduct which would prejudice an investigation into an Incident, including the disposal of any equipment involved in such an Incident (but only to the extent that such non-disposal is necessary to such investigation).

15.3 Indemnity by Contractor

The Contractor indemnifies CRIA against any cost, expense, loss, damages, liability or claim which CRIA incurs as a result of an Incident, irrespective of whether the Contractor:

- (a) was responsible for causing (directly or indirectly) the Incident; or
- (b) was in breach of this Deed at the time of the Incident.

This indemnity does not apply to the extent that an Incident is caused or contributed to by an Excepted Risk or by any Wilful Default of CRIA.

16. Intellectual Property

16.1 Third Party Intellectual Property

Subject to clause 16.7, to the extent that the carrying out of the Services from time to time involves the use of any Intellectual Property of any person (other than CRIA and the Contractor) including Intellectual Property in any Documentation prepared or provided by that person in relation to the Services, the Contractor shall ensure that such persons grant a non-exclusive, perpetual and irrevocable licence to CRIA to use for all time (and despite any termination of this Deed for any reason) the Intellectual Property for all purposes associated with the CRIA Assets (including the purposes of completing the carrying out of the Services, completing the construction of, using, maintaining, operating, repairing, modifying, extending, upgrading, altering or otherwise dealing with the CRIA Assets or any purpose associated with further development or improvements of the CRIA Assets) (collectively the *Purposes*) which:

- (a) is fully paid up and is granted from the date it is used in connection with the Services; and

- (b) may be assigned or be sub-licensed (in whole or in part) to any other person requiring it for the Purposes.

16.2 Contractor's Intellectual Property

Subject to clauses 16.5 and 16.7, to the extent that the carrying out of the Services from time to time involves the use of any Intellectual Property of the Contractor (including Intellectual Property in any Documentation prepared by or provided by the Contractor in relation to the Services), the Contractor grants to CRIA for all time (and despite any termination of this Deed for any reason) a non-exclusive, perpetual and irrevocable licence to use the Intellectual Property for the Purposes which:

- (a) is fully paid up and granted from the date it is used in connection with the Services; and
- (b) may be assigned or sub-licensed (in whole or in part) to any other person requiring it for the Purposes.

16.3 CRIA's Intellectual Property

To the extent that the carrying out of the Services from time to time involves the use of any Intellectual Property of CRIA, CRIA grants to the Contractor a non-exclusive licence to use the Intellectual Property for the purposes of carrying out the Services in accordance with this Deed which:

- (a) is fully paid up;
- (b) may be sub-licensed by the Contractor (in whole or in part) to any Contractor's Agent for the purposes of carrying out the Services in accordance with this Deed; and
- (c) terminates immediately upon the termination of this Deed for any reason.

16.4 Software Provided to CRIA During Term

Notwithstanding anything to the contrary in this Deed, with respect to any software described in the column titled 'Software system' of Table 2 of Appendix 13 to the SWTC:

- (a) that is to be owned by CRIA, the Contractor shall ensure that all Intellectual Property vests on its creation in CRIA; and
- (b) that is to be licensed in CRIA's name, the Contractor shall ensure that the licence acquired to that software is in CRIA's name,

and, in either case, the Contractor must ensure that CRIA is provided with a copy of such software (and all updates to such software from time to time).

16.5 Upon Termination

- (a) Subject to clauses 16.5(b) and 16.7, with effect from the Termination Date, the Contractor grants to CRIA a perpetual, non-exclusive, transferable, royalty-free licence to use (and sub-license others to use), reproduce, modify, adapt, develop, and otherwise exploit (but not commercially) all the Contractor's Intellectual Property, including any Contractor's New Intellectual Property and any

Contractor's IP Enhancements, use of which is required by CRIA for railway operations (as defined in the Act) from the Termination Date.

- (b) Subject to clause 16.7, the licence granted to CRIA by the Contractor under clause 16.5 shall:

- (i) to the extent to which it is comprised of any Intellectual Property in Software owned by the Contractor as part of its enterprise management system, continue for a period of 12 months from the Termination Date; and
- (ii) otherwise, continue for all time.

- (c) Access to Systems

In addition to any other right CRIA has under this Deed, with effect from the Termination Date, where CRIA requires access to any system, Software or other Documentation (in respect of which CRIA has Intellectual Property rights under this Deed):

- (i) that has been used by the Contractor in carrying out the Services; and
- (ii) that is hosted on a computer server or other computer system owned or controlled by the Contractor,

the Contractor shall provide CRIA with all reasonable:

- (iii) access to that system, Software or other Documentation; and
- (iv) assistance in transferring that system, Software or other Documentation from that computer server or other computer system, to a computer server or other computer system selected by CRIA,

for a period of 12 months following the Termination Date.

- (d) Power of Attorney

For the purpose of performing the Contractor's obligations under this clause 16.5, the Contractor hereby irrevocably appoints CRIA's Representative to be the Contractor's attorney with authority to execute such documents and do such things as are necessary to give effect to the matters set out in this clause and to bind the Contractor accordingly.

16.6 Contractor's Warranty and Indemnity

The Contractor:

- (a) warrants that it has title to and owns the Intellectual Property in or a right to use all of the Documentation prepared in connection with the Services and any other Documentation provided or used by or on behalf of the Contractor;
- (b) subject to clause 16.7, warrants that there is no breach of any person's Intellectual Property in such Documentation or the use of it pursuant to the licences contained in this clause 16; and
- (c) subject to clause 16.7, indemnifies CRIA against any cost, expense, loss, damages, liability or claim in connection with any Documentation prepared in connection

with the Services or any other Documentation provided by or on behalf of the Contractor infringing any Intellectual Property, other than any cost, expense, loss, damages, liability or claim caused by CRIA Prevention.

16.7 Commercially Available Third Party Software

- (a) Clauses 16.1, 16.2, 16.5(a) and 16.5(b), 16.5(d), 16.6(b) and 16.6(c), do not apply to Commercially Available Third Party Software.
- (b) To the extent that the carrying out of the Services from time to time involves the use of any Commercially Available Third Party Software, the Contractor shall use its best endeavours to ensure that CRIA is granted a licence in respect of the Commercially Available Third Party Software, on and from the Termination Date, on the best available commercial terms.

16.8 Moral Rights Consent of Authors

The Contractor warrants that CRIA, or any person authorised by CRIA, may do any act, or refrain from doing any act, arising from or connected with the exercise by CRIA of its rights of ownership or use of any materials, in which copyright subsists, provided to CRIA by the Contractor in the course of performing the Services without infringing the Moral Rights of any third party.

16.9 Contractor Indemnity

The Contractor shall indemnify CRIA against any cost, expense, loss, damages, liability or claim or other amounts whatsoever arising from or in connection with any breach of the warranties or obligations of the Contractor under this clause 16, other than any cost, expense, loss, damages, liability or claim caused by CRIA Prevention.

16.10 Exclusion of Claims

The Contractor shall not have, and CRIA shall not be liable for, any Claim arising from or in connection with:

- (a) the existence of any Moral Rights; or
- (b) the Contractor's obligations under clause 16.

17. Priority for Passengers

The Contractor shall comply with the requirements of the *Transport Administration Act* 1988 (NSW) in relation to priority of passenger services.

18. Variations

18.1 Variations to the Services Under this Deed

- (a) CRIA's Representative may direct the Contractor to do any one or more of the following:
 - (i) increase or decrease, modify or omit any part of the Services;
 - (ii) change the character or quality of any material or work or of anything described in this Deed;

- (iii) change the timing of the carrying out of the Services;
 - (iv) change any Management Plan.
- (b) The Contractor shall not vary the Services except as directed by CRIA's Representative or approved in writing by CRIA's Representative pursuant to this clause 18.
- (c) The Contractor agrees that, despite any other provision of this Deed to the contrary, no Variation shall invalidate, or amount to a repudiation of, this Deed. CRIA may carry out itself or engage others to carry out the whole or any part of any Services which are omitted in accordance with this clause 18, provided that in doing so CRIA shall:
 - (i) not do or allow others to do anything that may adversely affect the Contractor's Rail Safety Accreditation; and
 - (ii) not do or allow others to do anything that may adversely affect the Contractor's ability to provide the remaining Services in accordance with this Deed.

18.2 Proposed Variations

CRIA's Representative may, at any time, give the Contractor written notice of a proposed Variation under this clause which shall not constitute a direction or approval to vary the Services under clause 18.1.

18.3 Notification of Variations

If at any time CRIA's Representative gives the Contractor:

- (a) a proposed Variation under clause 18.2; or
- (b) any Direction or approval (written or otherwise) which constitutes or involves a Variation,

the Contractor shall (unless otherwise provided under the Variation Protocols, or unless expressly notified otherwise in writing by CRIA's Representative):

- (c) within five Business Days after receipt by the Contractor of the Direction or approval under clause 18.3(b), notify CRIA's Representative in writing of the fact that the Direction or approval constitutes or involves a Variation to the Services. Unless CRIA's Representative requires otherwise, the Contractor shall not give effect to the Direction or approval within 48 hours after the Contractor has provided notification under this clause 18.3(c); and
- (d) comply with the Variation Protocols,

failing which the Contractor shall not have, and CRIA shall not be liable for, any Claim as a result of the Variation constituted by or involved in CRIA's Representative's Direction or approval.

18.4 No Variation

Despite any other provision of this Deed, the Contractor shall not have, and CRIA shall not be liable for, any Claim if a Variation results from:

- (a) a Defect in the Services;
- (b) the Contractor failing to carry out the Services in accordance with this Deed or an Annual Works Plan;
- (c) a request by the Contractor for a Variation for its own convenience or to enable the Contractor to comply with its obligations under this Deed, other than in accordance with clause 18.7;
- (d) any work or activity required as a result of interference with the Services as a result of the Contractor not having Track Possession;
- (e) adverse weather conditions; or
- (f) any Contractor Default.

18.5 Further Details of Variation

Where CRIA proposes a Variation under clause 18.2 the Contractor shall also give to CRIA's Representative a written statement as to whether or not the proposed Variation:

- (a) will adversely affect the functional integrity of any of the elements of the CRIA Assets and the Performance Requirements required by this Deed and, if so, providing detailed reasons;
- (b) will adversely affect the quality standards required under this Deed and, if so, providing detailed reasons;
- (c) would involve amendment of any Approval required to be obtained by CRIA; or
- (d) results in a breach of any Law.

18.6 Effect of Variations on Performance

The Contractor agrees:

- (a) if any Direction to vary the Services will:
 - (i) adversely affect the functional integrity of any of the elements of the CRIA Assets;
 - (ii) adversely affect the Performance Requirements required under this Deed;
 - (iii) involve amendment of any Approval; or
 - (iv) result in a breach of any Law,unless CRIA's Representative expressly requires otherwise in the Direction to vary the Services, the Contractor shall not give effect to the Direction until:
 - (v) the Contractor has notified CRIA's Representative of:
 - (A) the matters referred to in clauses 18.6(a)(i) to 18.6(a)(iv);

- (B) the proposed changes that are required to the Performance Requirements or otherwise to remove, overcome or otherwise deal with these matters so as to continue to enable the Contractor to comply with this Deed; and
- (vi) CRIA's Representative has confirmed its Direction to give effect to the Variation after receiving the Contractor's notice under clause 18.6(a)(v);
- (b) the Contractor shall update or amend the Performance Requirements before the Contractor gives effect to any Direction to vary the Services and deliver the updated or amended Performance Requirements to CRIA's Representative for approval;
- (c) for the purposes of this Deed (including the warranties given by the Contractor), references to the Performance Requirements shall mean the Performance Requirements as updated or amended in accordance with this clause 18.6 and approved by CRIA's Representative from time to time; and
- (d) if the Contractor fails to comply with clause 18.6(a) and clause 18.6(b) before giving effect to the Direction to vary the Services, then:
 - (i) the Contractor shall be deemed to have warranted to CRIA that the Variation does not give rise to any of the matters referred to in clause 18.6(a); and
 - (ii) the Direction shall not be taken to limit, restrict or affect in any way the obligations, warranties and liabilities of the Contractor under or in connection with this Deed.

18.7 Variations for the Convenience of the Contractor

- (a) If the Contractor requests CRIA's Representative to approve a Variation for the convenience of the Contractor, CRIA's Representative may do so in writing if it decides to do so in its absolute discretion. The approval may be conditional.
- (b) With any requests for a Variation pursuant to this clause 18.7, the Contractor shall provide CRIA's Representative with details of the following:
 - (i) the proposed Variation;
 - (ii) the reason for the proposed Variation;
 - (iii) the anticipated effect of the proposed Variation on other elements of the Services, including the time for completing any of the Services;
 - (iv) the estimated cost effect of the proposed Variation, including proposals for any cost savings arising from the Variation and any detailed financial or pricing models reasonably required by CRIA's Representative in order to verify the cost effect or any cost savings, and the Contractor shall also provide, with that request, a written statement stating that the proposed Variation will not give rise to any of the matters referred to in clause 18.6(a).

- (c) The Contractor shall also provide CRIA's Representative with any other information and supporting Documentation required by CRIA's Representative in support of the written statement referred to above.
- (d) Other than a Claim for payment made in respect of an approved Variation, the Contractor shall not have, and CRIA shall not be liable for, any Claim in respect of the Variation or anything arising out of the Variation which would not have arisen had the Variation not been approved.
- (e) CRIA's Representative shall not be obliged to approve a Variation for the convenience of the Contractor.

18.8 Valuation

Subject to clause 18.9, Variations shall be valued in accordance with any prior agreement between the parties, and if there is no such prior agreement, then in the following order:

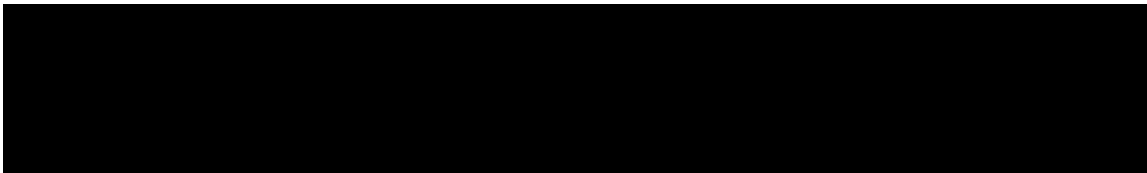
- (a) if this Deed or the Annual Works Plan Budget prescribes specific amounts (including rates or prices) for items of work or inputs relevant to the Variation, those amounts shall be used;
- (b) to the extent that clause 18.8(a) does not apply, a reasonable estimate of the cost of the items of work or inputs relevant to the Variation shall be used,

and the value of the Variation shall be added to or deducted from the Annual Works Plan Budget (including, where relevant, the TOC, the Program Overhead or the Cost Plus Activity estimate) in accordance with the Commercial Framework, without any allowance for profit or overhead (on the basis that the profit and overhead will be applied through the applicable margin).

18.9 Other methods of valuation

Except where this Deed specifically provides for a different method of valuation, each Variation shall be valued in accordance with clause 18.8.

18.10 Changes to the CRIA Assets

- 
- (b) As a result of:
 - (i) the change to the CRIA Assets as a result of the exercise of the option referred to in clause 18.10(a); or
 - (ii) any of the events referred to in clause 35.5:
the Contractor acknowledges that the CRIA Assets will change, and:
 - (iii) CRIA may, as applicable, remove the property from or add the property to the CRIA Assets and such will be a deemed Variation and an adjustment will be made to the Services Fee payable to the Contractor in accordance with this clause 18; and

- (iv) the Contractor shall comply with the Directions of CRIA in connection with the handover of any property removed from the CRIA Assets.

19. Security for Performance

19.1 Provision of Security

- (a) The Contractor shall provide to CRIA, in accordance with clause 2, an unconditional and irrevocable bank undertaking, payable on demand, in favour of CRIA for [REDACTED] (the *Security*). The Security is for the purpose of ensuring the due and proper performance of this Deed and CRIA may have recourse to it for this purpose at any time and from time to time.
- (b) The Security shall:
 - (i) be in the form set out in Schedule 7.1 or such other form approved by CRIA (in its absolute discretion);
 - (ii) be at all times from an issuer satisfactory to CRIA, that maintains a minimum Standard & Poor's credit rating of 'A' (the *Required Rating*);
 - (iii) be transferable to transferees or successors of CRIA;
 - (iv) have no restriction on the ability of CRIA to deal with the Security, including that it shall be able to be charged;
 - (v) have an expiry date no earlier than 6 months after the date referred to in paragraph (a) of the definition of Termination Date;
 - (vi) be payable at an office of the issuer in Sydney (or such other place as CRIA may approve).

19.2 Replacement of Security

If the issuer of the Security ceases to have the Required Rating, then the Contractor shall:

- (a) promptly notify CRIA of that circumstance; and
- (b) within 10 Business Days of being requested to do so, procure the issue to CRIA of a replacement bank undertaking which satisfies the requirements of clause 19.1, in return for the Security originally provided (which replacement undertaking will be the Security for the purposes of this Deed).

19.3 Use and Intention of Security

Despite any other provision of this Deed:

- (a) CRIA may have recourse to the Security to recover:
 - (i) any debt or an amount due and payable, whether under this Deed or pursuant to a judgment, arbitral award or otherwise in connection with this Deed; or
 - (ii) any other amount bona fide claimed by CRIA under or in connection with this Deed which the Contractor has failed to pay within the specified

period for payment or, if no period is specified, within 10 Business Days of demand;

- (b) a party holding Security may continue to hold Security where this Deed may otherwise require it to be released or after termination of this Deed for any reason, to the extent of any bona fide claim by the party under or in connection with this Deed;
- (c) if CRIA converts or has recourse to the Security pursuant to this Deed, then the Contractor shall, at its own cost, provide CRIA with a replacement bank undertaking which satisfies the requirements of clause 19.1 (and such that the total value of the Security held by CRIA does not fall below that required under clause 19.1) in exchange for the existing Security or provide CRIA with an additional unconditional bank undertaking which satisfies the requirements of clause 19.1 (other than the amount, which shall be equal to the amount which CRIA has converted or had recourse to). Each such replacement or additional security shall form part of the Security for the purposes of this Deed.

19.4 No Interest

CRIA is not obliged to pay the Contractor interest on any Security or the proceeds of any Security.

19.5 No Trust

If CRIA makes a demand under any Security, it does not hold the proceeds on trust.

19.6 Release of Security

Subject to the rights of CRIA to hold or have recourse to the Security, CRIA shall release the Security:

- (a) if this Deed is terminated by the Contractor under clause 30.8 or clause 30.9, within 5 Business Days after the Termination Date;
- (b) otherwise, within 6 months after the Termination Date.

19.7 Parent Company Guarantee

The Contractor shall, in accordance with clause 2, give CRIA a guarantee duly executed by each Parent Company in favour of CRIA in the form of Schedule 7.2 and which is, where required by Law, duly stamped.

19.8 No Payment

Notwithstanding any other provision of this Deed to the contrary, CRIA may refuse to make any payment otherwise due under this Deed until the Contractor has fully complied with its obligations to provide an unconditional undertaking and Parent Company guarantee under clause 19.

20. Insurance

20.1 Contractor Insurances

During the Term, the Contractor shall effect and maintain the following insurances:

- (a) a public and products liability policy of insurance:
 - (i) in the joint names of CRIA and the Contractor;
 - (ii) which covers CRIA, the Contractor, and any Agents of either of them employed from time to time in relation to the Services for their respective rights and interests and covers their liabilities to third parties;
 - (iii) which shall also cover the Contractor's liability to CRIA and CRIA's liability to the Contractor for loss of or damage to property and the death of or injury to any person (other than liability which is required by law to be insured under a workers compensation policy of insurance or under a statutory motor vehicle third party liability policy of insurance);
 - (iv) which shall be for an amount in respect of any one occurrence or series of occurrences arising out of the same source or original cause of not less than [REDACTED] and unlimited in the aggregate as to the number of occurrences for any one period of insurance except in respect of product liability for which the sum insured shall be [REDACTED] for any one occurrence or series of occurrences arising out of the same source or original cause and in the aggregate for any one period of insurance;
- (b) a professional indemnity insurance:
 - (i) which shall cover any breach of a duty owed in a professional capacity by the Contractor or its Agents in relation to the Services; and
 - (ii) with a limit of liability per claim and in aggregate annually of not less than [REDACTED]
- (c) employers' liability and workers compensation insurance against liability of the Contractor for death of, or injury to, persons employed by the Contractor in carrying out the Services, whether under statute or at common law;
- (d) motor vehicle third party insurance:
 - (i) in the name of the Contractor;
 - (ii) which covers the Contractor in respect of all motor vehicles belonging to or under the physical or legal care, custody or control of the Contractor or any of the Contractor's employees or officers and used in the course of providing the Services;
 - (iii) which shall be for an amount not less than \$20 million in respect of each and every loss and unlimited in the aggregate in respect of all losses occurring during the period of insurance;

- (e) plant and equipment insurance:
 - (i) in the joint names of CRIA and the Contractor;
 - (ii) which covers the mobile equipment, constructional plant and equipment, tools, tackle, employees' effects, temporary accommodation and their contents, scaffolding and the like and all other property of the Contractor or for which the Contractor is responsible (including Plant and Equipment owned, rented or leased by the Contractor, any CRIA Supplied Assets or any other Plant or Equipment over which CRIA may be entitled to take possession in accordance with this Deed or otherwise) used in relation to the Services;
 - (iii) which shall be for an amount not less than its full replacement value; and
- (f) any other insurances agreed as part of Enhancement Works.

20.2 Agent's Insurances

During the Term, the Contractor shall use its best endeavours to procure that each of its Agents effect and maintain motor vehicle third party insurance in the name of the relevant Agent:

- (a) which covers the Agent in respect of all motor vehicles belonging to or under the physical or legal care, custody or control of the Agent or any of the Agent's employees or officers and used in the course of providing the Services;
- (b) which shall be for an amount not less than \$20 million in respect of each and every loss and unlimited in the aggregate in respect of all losses occurring during the period of insurance.

20.3 Periods of Insurance

The Contractor shall maintain those insurances referred to in clause 20.1 until the Termination Date, and in the case of the insurance referred to in clause 20.1(b), 6 years thereafter.

20.4 General Insurance Requirements

All insurances to be effected by the Contractor:

- (a) shall be on the terms and conditions required by this clause 20 and (other than insurances required under clauses 20.1(b) and 20.1(c)) otherwise as approved in writing by CRIA (which approval will not be unreasonably withheld); and
- (b) shall not contain any unusual or project specific exclusion, endorsement or alteration, unless it is first approved in writing by CRIA.

20.5 Evidence of Insurance

The Contractor shall give CRIA:

- (a) certified copies of all:
 - (i) policies (other than for insurances to be effected under clause 20.1(b) or 20.1(c));

- (ii) renewal certificates;
- (iii) certificates of currency; and
- (iv) endorsement slips,

required to be effected by it under this clause 20 as soon as possible after it receives them from the insurer;

- (b) evidence satisfactory to CRIA that the insurances have been effected and maintained, whenever reasonably requested by CRIA; and
- (c) access to copies of insurances to be effected under clause 20.1(b) by making such copies available for review at the premises of the Contractor's insurance broker.

20.6 Failure to Produce Evidence of Insurance

If the Contractor fails to provide evidence satisfactory to CRIA within 10 days of a request under clause 20.5(b), CRIA may effect and maintain the relevant insurances and pay the premiums or other amounts payable to the insurer in respect of such insurance. The costs incurred by CRIA in connection with taking such action will be a debt due and payable from the Contractor to CRIA.

20.7 Contractor's Obligations Not Limited

The effecting of Insurances does not limit the liabilities or obligations of the Contractor under this Deed.

20.8 Assistance

The parties shall render each other all reasonable assistance in respect of any claim under an insurance policy.

20.9 Notices

The Contractor shall immediately notify CRIA of any cancellation or other material notice concerning any insurance policy relevant to the Services.

20.10 Notices of Potential Claims

- (a) Subject to clause 20.10(b) below, the Contractor shall, as soon as practicable upon becoming so aware, inform CRIA in writing of any occurrence in relation to this Deed that may give rise to a claim under a policy of insurance required by this clause 20 and shall keep CRIA informed of subsequent developments concerning the claim. The Contractor shall ensure that subcontractors in respect of their operations similarly inform CRIA.
- (b) The obligation to provide notice in clause 20.10(a) shall not apply in respect of the insurance referred to in clauses 20.1(b) and 20.1(c) except in circumstances of a significant claim or where multiple claims arise out of a single event.

20.11 Cross Liability

Any insurance required to be effected in accordance with this Deed by the Contractor in joint names shall include a cross liability clause, in which the insurer agrees to waive all

rights of subrogation or action that it may have or acquire against all or any of the persons comprising the insured, and for the purpose of which, the insurer accepts the term 'insured' as applying to each of the persons comprising the insured as if a separate policy of insurance had been issued to each of them (subject always to the overall sum insured not being increased thereby).

20.12 Miscellaneous Insurance Provisions

The Contractor shall:

- (a) pay all excesses and deductibles under a policy of insurance effected by CRIA or the Contractor under this Deed, unless:
 - (i) the claim includes only loss, damage or claims for which the Contractor is not responsible under this Deed, in which case CRIA shall pay the relevant excesses and deductibles; or
 - (ii) the claim includes only loss, damage or claims for which the Contractor and CRIA jointly contributed to matters giving rise to the claim, in which case the Contractor and CRIA shall each pay a share of the excesses and deductibles in proportion to their responsibility for the relevant claim;
- (b) effect and maintain any other insurances required by any Law in force applicable to the work under this Deed which the Contractor considers necessary in connection with the work under this Deed or the Services;
- (c) punctually pay all premiums and other costs incurred in connection with insurances which it is obliged to effect under this Deed;
- (d) ensure that it:
 - (i) satisfies itself as to; and
 - (ii) complies strictly with,the terms of any policy of insurance effected by the Contractor under this Deed;
- (e) to the extent directed by CRIA's Representative, allow CRIA to make, negotiate and settle any insurance claim to the extent of CRIA's interest in it;
- (f) ensure that all insurances which it is obliged to effect under this Deed (other than in accordance with clause 20.1(c)) are effected with insurers approved by CRIA (acting reasonably); and
- (g) ensure that all insurances which it is obliged to effect under this Deed (other than in accordance with clause 20.1(c)) are endorsed to the effect that any act, error, omission, neglect, fraud, misrepresentation, non-disclosure or breach by an individual insured party shall not prejudice or invalidate the rights of other parties comprising the insured who are themselves not guilty of any such act.

21. Payment

21.1 Payment of Services Fee

In consideration of the Contractor providing the Services in accordance with this Deed, CRIA agrees to pay the Contractor the Services Fee during the Term in accordance with this clause 21 and the Commercial Framework.

21.2 Payment Claims

The Contractor shall deliver to CRIA's Representative within 5 Business Days after the end of each month during the Term a written claim for payment (*Payment Claim*) which:

- (a) states the amount of the Services Fee for the month broken down into each of the amounts referred to in section 11 of the Commercial Framework;
- (b) is in a form approved by CRIA's Representative acting reasonably;
- (c) includes or encloses:
 - (i) evidence reasonably acceptable to CRIA's Representative verifying or substantiating amounts used for the purposes of calculating the amounts referred to in clause (a) of this clause 21.2; and
 - (ii) details of the Contractor's calculations of the stated amounts.

21.3 Payment Response

- (a) CRIA's Representative shall deliver to CRIA and the Contractor within 10 Business Days after CRIA's Representative's receipt of a Payment Claim a written statement (*Payment Response*) which:

- (i) states the amount of the Services Fee for the month;
- (ii) includes or encloses:
 - (A) details of CRIA's Representative's calculations of the stated amounts; and
 - (B) to the extent that CRIA's Representative's statement of amounts payable by CRIA to the Contractor differs from the amounts stated by the Contractor in the Payment Claim, a statement of the amount of that difference, together with the reasons for that difference.
- (b) CRIA's Representative may, in its absolute discretion, at any time issue a Payment Response (with details of calculations and reasonable particulars, including for the purposes of correcting any error in a Payment Response) whether or not at a time otherwise provided for the issuing of a Payment Response under this Deed.

21.4 Payments

CRIA shall pay amounts stated as payable by CRIA to the Contractor in a Payment Response within 10 Business Days after receipt of the Payment Response.

If any Payment Response shows an amount that is payable by the Contractor to CRIA, then the Contractor shall pay that balance to CRIA within 10 Business Days of receiving written notice thereof.

21.5 Set Offs by CRIA

In addition to CRIA's other rights and despite any Payment Response issued by CRIA's Representative under clause 21.3, CRIA may deduct from moneys due to the Contractor any moneys due from the Contractor to CRIA under or in connection with this Deed and if those moneys are insufficient, CRIA may have recourse to the Security under this Deed.

21.6 Payment Adjustments

The parties agree that confirmation or payment by CRIA of any amount relating to the Services Fee shall not prevent either party from requiring a further adjustment to the amount confirmed or paid, to ensure that actual amounts finally paid to the Contractor are the amounts required to be paid by the provisions of this Deed, taking into account any relevant actual information not available at the time that the calculation or payment of amounts was made.

21.7 Further Conditions for Payments Claims, Certificates, Calculations and Time for Payment

In addition to the other provisions of this clause 21:

- (a) the Contractor shall not be entitled to submit Payment Claims more frequently or at any time earlier than at the times specified in this Deed, subject to clause 21.8;
- (b) it shall be a precondition to the Contractor's entitlement to submit any claim for payment under this Deed, and CRIA's obligation to make any payment under this Deed, that the Contractor has provided to CRIA's Representative a Monthly

Progress Report containing the information required by section 8.1 of the Commercial Framework; and

- (c) where this Deed requires certain material or information to be provided prior to a Payment Claim, then compliance with that obligation is a precondition to the Contractor's entitlement to claim for or to receive payment under this Deed.

21.8 Dates for Payment Claims

- (a) The Contractor shall only be entitled to make a claim for payment from each date stated in or worked out under this Deed (including clause 21.8(b)).
- (b) Despite any other provision of this Deed, where this Deed provides that payment may not be claimed until the satisfaction of any condition or occurrence of any event (***Claim Precondition***), then the only date on which the Contractor shall be entitled to make that claim for payment shall be the later of:
 - (i) the date of satisfaction of the last Claim Precondition to be satisfied; and
 - (ii) the date on which that payment can otherwise be claimed.

21.9 Calculation of Payments

- (a) Despite any other provision of this Deed, the amount of any Payment Response to which the Contractor is entitled in relation to this Deed and the amount to be allowed by CRIA's Representative in any Payment Response issued under this Deed, as the amount payable to the Contractor arising out of or in connection with this Deed, shall:
 - (i) not include:
 - (A) any amount which this Deed provides cannot be claimed or is not payable because of the failure by the Contractor to take any action (including to give any notice to CRIA or CRIA's Representative);
 - (B) any amount which represents unliquidated damages claimed against CRIA (whether for breach of contract, in tort or otherwise);
 - (C) any amount which this Deed provides is not payable until certain events have occurred or conditions have been satisfied, to the extent those events have not occurred or those conditions have not been satisfied;
 - (D) any amount in respect of which the obligation of CRIA to make payment has been suspended under this Deed; or
 - (ii) deduct:
 - (A) any amounts which:
 - (1) have become due from the Contractor to CRIA under this Deed; or
 - (2) CRIA is entitled under this Deed to set off against the payment; or

(B) any amounts which CRIA is entitled under this Deed to withhold, deduct or retain from the payment.

(b) In determining amounts to be excluded or deducted under clauses 21.9(a)(i) and 21.9(a)(ii), regard shall be had to matters or circumstances occurring at any time before the date that the determination is being made.

21.10 Interest on Overdue Payments

If any moneys due to either party remain unpaid after their due date, then interest shall be payable on the amount due but unpaid from the day after the due date to and including the date on which the moneys are paid. The rate of interest shall be 2% above the 'BBSY' 30-day swap rate published by Reuters Monitor System at 10.00 am on the due date for payment. Interest shall be compounded at 6 monthly intervals.

21.11 Recourse for Unpaid Moneys

Where, within the time provided by this Deed, the Contractor fails to pay CRIA an amount due and payable under this Deed, CRIA may have recourse to the Security and any deficiency remaining may be recovered by CRIA as a debt due and immediately payable.

21.12 Ownership of Materials

The Contractor:

- (a) agrees that on payment to the Contractor of any amount for any materials, they shall be the property of CRIA free of any lien or charge;
- (b) warrants and agrees that ownership of and property in (but not risk in) any materials shall pass to CRIA upon payment being made to the Contractor in respect of those materials; and
- (c) shall provide such evidence as CRIA's Representative requires to establish that ownership of such materials shall pass to CRIA before the Contractor is entitled to claim any payment in respect of such materials.

21.13 Payment of Subcontractors

With each claim for payment under clause 21.2, and before CRIA is obliged to make any payment to the Contractor in respect of each Payment Claim, the Contractor (or, where the Contractor is a corporation, a representative of the Contractor who is in a position to know the facts declared) shall give to CRIA's Representative a statutory declaration (in a form approved by CRIA's Representative):

- (a) stating that, to the best of the Contractor's knowledge, all the Contractor's employees' wages, allowances and statutory levies, including workers compensation insurance premiums, superannuation, payroll tax and employees' remunerations and other amounts payable for work undertaken in connection with the performance of its obligations under this Deed, up to the date of the Payment Claim, have been paid;
- (b) to the extent the following legislation is applicable to the Contractor, that includes a written statement for the purposes of and which complies with s175B of the

Workers Compensation Act 1987 (NSW), Part 5 of Schedule 2 of the *Payroll Tax Act 2007* (NSW) and s127 of the *Industrial Relations Act 1996* (NSW) in connection with the performance of its obligations under this Deed up to the date of the Payment Claim;

- (c) stating that, to the best of the Contractor's knowledge, all subcontractors have been paid according to their various agreements and, if such is not the case, which subcontractors are unpaid, by how much and the reasons why;
- (d) which includes, to the extent the following legislation is applicable to the Contractor, in particular, a statement as to whether the Contractor is also a principal contractor, as defined under the *Workers Compensation Act 1987* (NSW), the *Payroll Tax Act 2007* (NSW) and the *Industrial Relations Act 1996* (NSW), in connection with the work; and if the Contractor is also a principal contractor, a statement as to whether it has been given written statements from all subcontractors under s175B of the *Workers Compensation Act 1987* (NSW), Part 5 of Schedule 2 of the *Payroll Tax Act 2007* (NSW) and s127 of the *Industrial Relations Act 1996* (NSW), in its capacity of principal contractor;
- (e) which includes a statement that the Contractor is registered as an employer, or is not required to be registered, under the *Payroll Tax Act 2007* (NSW); and
- (f) which complies with all other requirements of the *Workers Compensation Act 1987* (NSW), the *Payroll Tax Act 2007* (NSW) and the *Industrial Relations Act 1996* (NSW) as applicable to the Contractor.

21.14 Withholding of Payment

If the Contractor fails to comply with clause 21.13, then notwithstanding the provisions of this clause 21, the Contractor shall not be entitled to claim any payment of, and CRIA shall not be obliged to pay any moneys until the statutory declaration or documentary evidence, as the case may be, is received by CRIA's Representative.

22. Force Majeure

22.1 Force Majeure

- (a) If either party is prevented in whole or in part from carrying out its obligations under this Deed as a result of Force Majeure it shall give the other party written notice as soon as practicable.
- (b) The notice shall:
 - (i) specify the obligations of the party, the performance of which is prevented or delayed;
 - (ii) fully particularise the event of Force Majeure, including its nature and likely duration;
 - (iii) specify the nature and extent of the effects of the event of Force Majeure on the specified obligations; and

- (iv) specify the measures proposed to be adopted to remedy or abate the Force Majeure.
- (c) Subject to the notice being provided under this clause 22.1, and to the extent that the Force Majeure continues, the obligations of the party affected by the event of Force Majeure are suspended, to the extent that they are affected by the event of Force Majeure from the date the notice is provided under this clause 22.1 until the cessation of the event of Force Majeure.
- (d) The parties shall meet within 3 Business Days of service of a notice under this clause 22.1 to determine the estimated length of time for which the event of Force Majeure will endure.

22.2 Mitigation

The party that is prevented from carrying out its obligations under this Deed as a result of Force Majeure notified under clause 22.1 shall:

- (a) take all action reasonably practicable to mitigate any loss suffered by a party or a third party as a result of its failure to carry out its obligations under this Deed;
- (b) use its best endeavours to remove the effect of the Force Majeure affecting the performance of its obligations; and
- (c) report to the other party and CRIA's Representative (on a periodic basis) of the reasonable steps taken by it to:
 - (i) mitigate any loss suffered by other parties; and
 - (ii) remove the effect of the Force Majeure affecting the performance of its obligations.

22.3 Cessation of Force Majeure

- (a) The party that is prevented from carrying out its obligations under this Deed as a result of Force Majeure notified under clause 22.1 shall as soon as the Force Majeure ceases:
 - (i) immediately give notice to the other party of the cessation of the event of Force Majeure; and
 - (ii) resume performance of the relevant obligations suspended as a result of the event.
- (b) Where the Contractor is affected by Force Majeure which has resulted in the content of any Management Plans becoming obsolete, the Contractor shall revise any Management Plans and provide such revised Management Plans to CRIA's Representative for approval and shall reschedule the Services to minimise the effects of any delay.

22.4 No Relief from Liability

An event of Force Majeure does not relieve a party from liability for an obligation which arose before the occurrence of such event, nor does it affect the obligation to pay money in a timely manner.

22.5 Termination

If an event of Force Majeure notified under clause 22.1 affects either party's performance of its material obligations for no less than 12 consecutive months, this Deed may be immediately terminated by either party by written notice and clause 30.14 shall apply as if this Deed was terminated by frustration and neither party shall have any claim (including, in respect of the Contractor, any Claim) arising out of the termination.

23. Safety

23.1 CRIA's SMS

CRIA must from time to time provide to the Contractor a copy of CRIA's SMS together with any modifications or updates to that SMS.

23.2 Contractor's SMS

The Contractor shall prepare and submit to CRIA the Contractor's SMS which shall:

- (a) be consistent with, and take account of, CRIA's SMS (and be updated to reflect any changes in CRIA's SMS);
- (b) comply with all Law, including any particular requirements of ITSR or otherwise as specified in the Act.

23.3 Contractor's Compliance

In carrying out the Services and its obligations under this Deed, the Contractor shall conduct itself in a manner:

- (a) that is consistent with the Contractor's SMS;
- (b) that does not, by any act or omission, result in CRIA being in breach of its obligations or procedures under CRIA's SMS.

23.4 CRIA's Activities

The Contractor will provide all reasonable assistance to CRIA for the purpose of enabling CRIA to comply with CRIA's SMS.

23.5 Occupational Health and Safety

- (a) Subject to clause 23.5(b), on and from the Commencement Date, to the extent to which CRIA is the owner (as that term is defined in the *Occupational Health & Safety Regulation 2001* (NSW)) of any part of the CRIA Assets on which construction work (as that term is defined in the *Occupational Health & Safety Regulation 2001* (NSW)), is being undertaken, CRIA appoints the Contractor to be the principal contractor for the construction work and the Contractor accepts that appointment. CRIA authorises the Contractor to exercise such authority as is necessary to enable the Contractor to discharge its responsibilities as a principal contractor imposed by, and in conformity with, the *Occupational Health & Safety Act 2000* (NSW) and the *Occupational Health & Safety Regulation 2001* (NSW).

- (b) The Contractor shall, to the extent it is not inconsistent to do so in respect of its obligations under Commonwealth occupational health and safety laws to which it is subject (including the *Occupational Health & Safety Act 1991* (Cth) and any associated regulations), discharge its responsibilities as the principal contractor for the construction work pursuant to its appointment under clause 23.5(a). However, nothing in clause 23.5(a), including the appointment of the Contractor as the principal contractor for the construction work, shall oblige the Contractor to do anything that would be inconsistent with or result in a breach of its obligations under such Commonwealth occupational health and safety laws.

24. Rail Safety Act Accreditation

24.1 Rail Safety Accreditation

The Contractor warrants and agrees that:

- (a) on and from the Commencement Date and for the duration of the Term, it is Accredited under the Act and will be the Accredited RTO for the CRN under the Act;
- (b) it will discharge its responsibilities as Accredited RTO imposed by and in conformity with the Act;
- (c) at all times from the Commencement Date until the Termination Date, it will continuously hold Rail Safety Accreditation, or, in the case that the Act is amended or repealed, an equivalent accreditation requirement for the CRN, to the extent required by Law.
- (d) it will comply with all ITSR Rules for the purposes of meeting its obligations under this Deed.

24.2 CRIA's Rail Safety Accreditation Exemption

- (a) The Contractor acknowledges that CRIA's Rail Safety Accreditation Exemption is dependent upon, amongst other things, the Contractor meeting its Rail Safety Accreditation obligations under the Act. The Contractor shall not do anything, or omit to do anything, which would result in CRIA's exemption referred to in this clause 24.2 ceasing to apply.
- (b) The Contractor further acknowledges that, in the event that the status of CRIA's Rail Safety Accreditation or CRIA's Rail Safety Accreditation Exemption changes, the Contractor shall not do anything, or omit to do anything, that would result in CRIA being in breach of its obligations under the Act.

24.3 Changes to Applicable Rail Safety Law

- (a) Subject to clause 6.5, the Contractor acknowledges that this Deed has been executed in the context of CRIA's obligations under the Act in relation to Rail Safety Accreditation, CRIA's Rail Safety Accreditation Exemption and CRIA's obligations under Law in relation to rail safety generally.

- (b) Subject to clause 6.5, if the Act is amended or repealed, or the rail safety regime under the Act is amended by regulation or by any other legislative instrument (including being replaced by an alternative state or Commonwealth regime) or in any other way (a ***Rail Safety Law Change***), then to the maximum extent possible:
- (i) this Deed, and the parties obligations under it, shall remain on foot, and any references in this Deed to:
- (A) the Act shall be taken to mean the Act as amended or the relevant legislation or other instrument giving effect to any replacement rail safety regime;
- (B) Rail Safety Accreditation shall be taken to mean the equivalent requirement or requirements (if any) to Rail Safety Accreditation under the Act as at the date of execution of this Deed, imposed on the owner of, and on any contractor exercising control over, rail networks under the Act as amended or the new or varied rail safety regime; and
- (C) CRIA's Rail Safety Accreditation Exemption shall be taken to mean the equivalent, if any, to CRIA's Safety Accreditation Exemption as in force at the date of execution of this Deed, including any exemption to obligations under any rail safety Law to which CRIA may be entitled on the basis that CRIA does not exercise effective management or control of the CRN.
- (ii) the Contractor shall take all steps necessary to ensure that:
- (A) the Contractor continues to have Rail Safety Accreditation in respect of the CRN; and
- (B) CRIA continues to be entitled to CRIA's Rail Safety Accreditation Exemption.
- (c) If a Rail Safety Law Change occurs and CRIA believes, in its reasonable opinion, that the objectives of this Deed can no longer be achieved in the manner contemplated by CRIA (or that CRIA's exposure to liability as a result of the Rail Safety Law Change is unacceptable), CRIA may terminate this Deed by notice in writing. Any such termination shall take effect from the date specified in that notice, but shall otherwise be treated as though it had been effected under clause 30.2(a), and the provisions of that clause will otherwise apply to the termination.

25. Environment

25.1 Environmental Protection

Subject to this clause 25, the Contractor shall in conducting the Services:

- (a) take all action reasonably necessary to protect and preserve the Environment (including flora and fauna) from harm or damage arising from or in connection

with the carrying out of the Services, unless that harm or damage is authorised under Environmental Law;

- (b) not, in the carrying out of the Services, cause any Contamination;
- (c) comply with all Laws relating to:
 - (i) Contamination (including reporting, notifying, disposal, remediation or otherwise dealing with Contamination or its effects); and
 - (ii) the protection or preservation of the environment (including flora and fauna); and
- (d) advise CRIA as soon as reasonably practicable of any pollution incident occurring on the CRIA Assets or of any suspected ground or water Contamination.

25.2 Contamination

- (a) Without limiting clause 25.1, if CRIA reasonably considers that any Contamination is occurring, or has occurred on the CRIA Assets caused by the Contractor or its Agents, then CRIA may:
 - (i) obtain a contamination assessment and/or an environmental audit on that CRIA Asset by a third party consultant; and
 - (ii) recover the cost of that contamination assessment and / or environmental audit from the Contractor to the extent that the Contamination on the CRIA Asset is found to be caused by the Contractor or its Agents.
- (b) Without limiting clause 25.1, if CRIA reasonably considers that any Contamination is occurring, or has occurred, caused by the Contractor or its Agents, and where the Contractor has not within a reasonable time taken all reasonable steps notified to the Contractor in writing by CRIA, or requested by the relevant Authority to discontinue the cause of the Contamination or to Remediate the Contamination to a standard reasonably required and approved by CRIA or the relevant Authority consistent with the ongoing use of the CRIA Assets, then CRIA may:
 - (i) perform or have others perform the Remediation of the Contamination on the relevant CRIA Asset to a standard consistent with the ongoing use of the CRIA Assets or required by the relevant Authority; and
 - (ii) recover the reasonable cost of that Remediation from the Contractor but only to the extent that:
 - (A) the Remediation was required by the relevant Authority; or
 - (B) the Contamination was presenting an unacceptable risk of harm to human health or the environment, was otherwise in breach of Environmental Law or is reasonably likely to cause a diminution in value of the CRIA Asset.
- (c) This clause 25.2 does not apply to Excepted Contamination.

25.3 Clean-Up Notice

If either party receives a Clean-Up Notice in connection with a CRIA Asset or the Services, then the party who received the Clean-Up Notice shall provide to the other party as soon as reasonably possible:

- (a) a copy of the Clean-Up Notice; and
- (b) any documents which may reasonably assist the parties to determine whether to challenge the validity or the merits of the Clean-Up Notice.

25.4 Compliance with Clean-Up Notice

- (a) If either party is served with a Clean-Up Notice in connection with a CRIA Asset or the Services, CRIA may require the Contractor to carry out any Remediation required by, or otherwise comply with the requirements of, that Clean-Up Notice, and the Contractor shall comply with any such requirement.
- (b) Each party shall do all things necessary to prevent a breach of any Clean-Up Notice in connection with a CRIA Asset or the Services, or any Law relating to a Clean-Up Notice.

25.5 Notification of Excepted Contamination

- (a) If during the carrying out of the Services, the Contractor becomes aware of an Excepted Contamination, the Contractor shall promptly (and within 10 Business Days) and where possible before the Excepted Contamination is disturbed, give written notice thereof to CRIA's Representative and expressly specify that the Contractor proposes to make a Claim.
- (b) Within 20 Business Days after the notice under clause 25.5(a), the Contractor shall provide to CRIA's Representative a statement in writing specifying:
 - (i) the Excepted Contamination encountered;
 - (ii) the additional work and additional resources which the Contractor estimates to be necessary to deal with the Excepted Contamination;
 - (iii) the time the Contractor anticipates will be required to deal with the Excepted Contamination and its expected impact on the Services;
 - (iv) the Contractor's estimate of the cost of the measures necessary to deal with the Excepted Contamination and how such estimate has been calculated;
 - (v) such information required under clause 18 as if the work notified in clause 25.5(b)(ii) was the subject of a proposed Variation under clause 18.2; and
 - (vi) other details reasonably required by CRIA's Representative.
- (c) The Contractor shall promptly provide to CRIA's Representative in writing any other details regarding an Excepted Contamination reasonably requested by CRIA's Representative.

25.6 Consultation and Direction

- (a) Within 5 Business Days after CRIA's Representative receives the Contractor's written statement under clause 25.5, CRIA's Representative and the Contractor's Representative shall meet to confer on the matters the subject of the statement.
- (b) Notwithstanding any other provision of this Deed to the contrary, the Contractor is not required to carry out any additional work to deal with any Excepted Contamination unless and to the extent:
 - (i) required by Law;
 - (ii) directed by any Authority (which Direction shall be immediately notified to CRIA's Representative); or
 - (iii) agreed or directed in writing by CRIA's Representative.

25.7 Deemed Variation for Excepted Contamination

If:

- (a) any Excepted Contamination requires the Contractor to:
 - (i) carry out more work;
 - (ii) use more Plant and Equipment; or
 - (iii) incur more cost,than a prudent, experienced and competent operator and maintainer could reasonably have anticipated at the date of this Deed (including any costs in carrying out any Remediation in relation to Excepted Contamination); and
- (b) in respect of that Excepted Contamination, the Contractor has complied with clause 25.5,

the activities undertaken and reasonable costs incurred in so dealing with the Excepted Contamination shall be a deemed Variation.

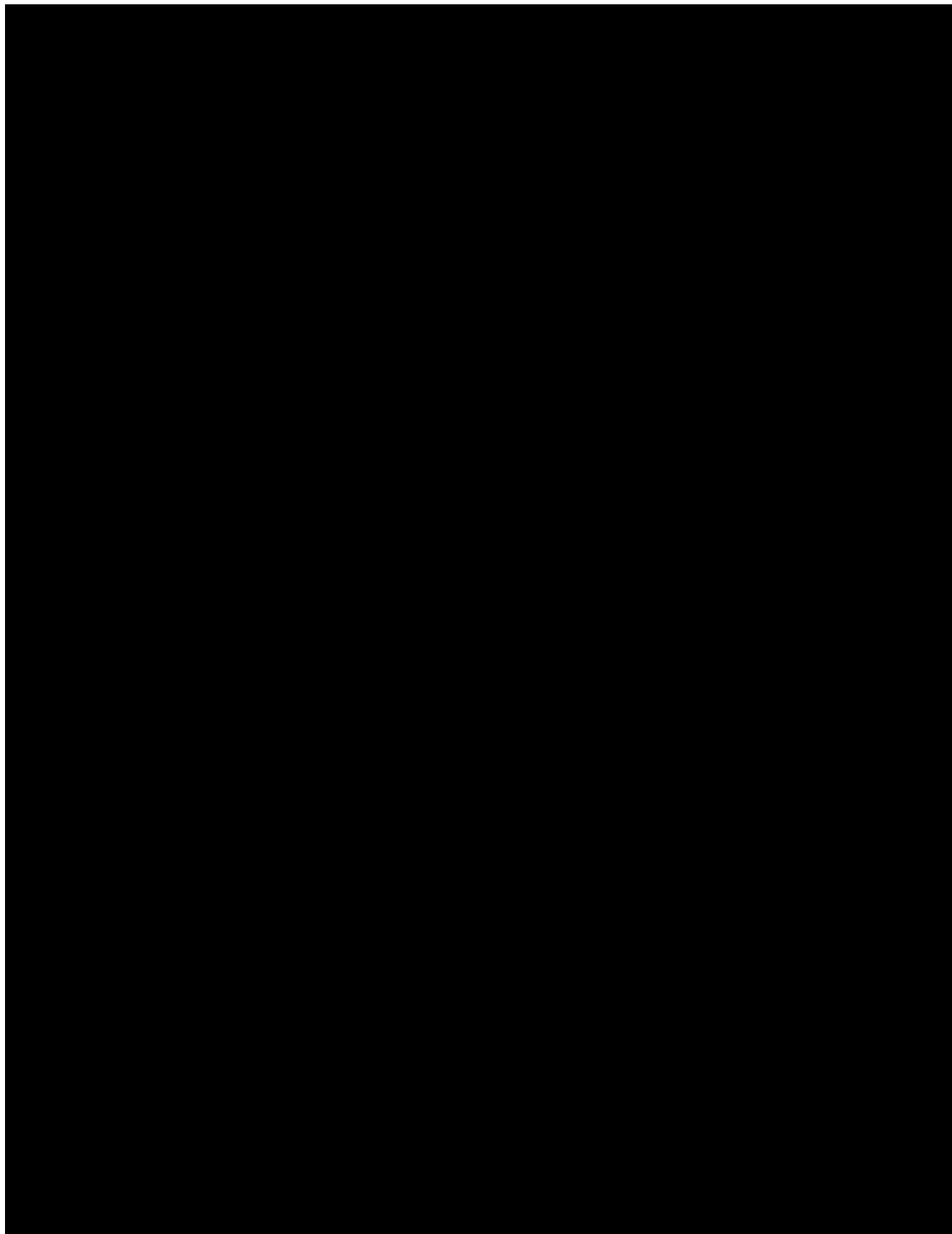
26. Indemnity

26.1 Acknowledgment

The Contractor acknowledges that the CRIA Assets:

- (a) are comprised of significant property and infrastructure;
- (b) have a large number of users;
- (c) have the potential, if not managed by the Contractor properly, to cause significant injury or loss, including:
 - (i) injury to persons;
 - (ii) damage to assets or infrastructure (including those comprising the CRIA Assets); and
 - (iii) pollution or other damage to the environment,

and accordingly offers the indemnities to CRIA set out in this clause 26 and elsewhere in this Deed.



27. Defects Correction

If CRIA's Representative discovers or becomes aware of a Defect, CRIA's Representative may, without prejudice to any other rights under this Deed or otherwise according to Law, give the Contractor a Direction specifying the Defect, requiring the Contractor to correct the Defect and specifying a reasonable time within which this must occur. The Contractor must rectify the Defect in accordance with the Direction.

28. Corporate Representations and Warranties

28.1 Contractor's General Representations and Warranties

The Contractor represents and warrants to CRIA that each of the following statements is true and correct:

- (a) it is a corporation duly incorporated and validly existing under the laws of the place of its incorporation specified in this Deed;
- (b) it has the power to enter into and perform its obligations under this Deed, to carry out the transactions contemplated by this Deed and to carry on its business as now conducted or contemplated;
- (c) it has taken all necessary corporate action to authorise the entry into and performance of this Deed and to carry out the transactions contemplated by this Deed;
- (d) this Deed creates valid and binding obligations and is enforceable in accordance with its terms, subject to any necessary stamping and registration;

- (e) the execution and performance by the Contractor of this Deed and each transaction contemplated under this Deed did not and will not violate in any respect a provision of:
 - (i) a Law or treaty or a judgment, ruling, order or decree of an Authority binding on it;
 - (ii) its memorandum or articles of association or other constituent documents; or
 - (iii) any other document or agreement that is binding on it or its assets;
- (f) no suit, cause of action, proceeding, application, claim or investigation is current, pending, threatened or in prospect against it which would materially affect its ability to comply with its obligations under this Deed;
- (g) no resolution has been passed for its winding up;
- (h) no resolution has been passed for the appointment of an administrator to it;
- (i) there are no facts, matters or circumstances that give any person the right to apply to wind it up or to appoint a controller within the meaning of section 9 of the *Corporations Act 2001* (Cth) or an administrator or an inspector under the *Corporations Act 2001* (Cth) in respect of it or any part of its undertaking or assets or income; and
- (j) no Insolvency Event has occurred and is continuing.

28.2 Survival of Representations and Warranties

All representations and warranties in this Deed survive the execution and delivery of this Deed and the completion of transactions contemplated by it.

28.3 Notification of Change

The Contractor shall immediately notify CRIA upon becoming aware that a representation or warranty given under this clause 28 has become untrue.

29. GST

29.1 Definitions

Unless the context requires otherwise, words used in this clause that have a specific meaning in the GST law (as defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth)) shall have the same meaning in this clause.

29.2 General

Subject to clause 29.3, the parties agree that:

- (a) All payments of consideration for a supply made under this Deed shall be subject to the prior receipt of a tax invoice.
- (b) If GST is payable, or notionally payable, on a supply made under or in connection with this Deed, the party providing the consideration for that supply shall pay as additional consideration an amount equal to the amount of GST payable, or

notionally payable, on that supply (the *GST Amount*). Subject to the prior receipt of a tax invoice, the GST Amount is payable at the same time that the other consideration for the supply is provided. This clause does not apply to the extent that the consideration for the supply is expressly stated to be GST inclusive or the supply is subject to reverse charge.

- (c) Where any indemnity, reimbursement or similar payment under this Deed is based on any cost, expense or other liability, it shall be reduced by any input tax credit entitlement, or notional input tax credit entitlement, in relation to the relevant cost, expense or other liability. For the purposes of calculating the relevant reduction and unless the relevant party demonstrates otherwise before the payment is made, it shall be assumed that a full input tax credit is available.
- (d) If an adjustment event occurs in relation to a supply under or in connection with this Deed, the GST Amount will be recalculated to reflect that adjustment and an appropriate payment will be made between the parties.
- (e) Any reference in this Deed to a cost, expense or other similar amount (Cost) is a reference to that Cost exclusive of GST.
- (f) This clause will continue to apply after expiration or termination of this Deed.

29.3 GST Intermediary

Further to the requirements of and for the purposes of sub-division 153-B of the GST law, the parties agree that:

- (a) Both CRIA and the Contractor are registered for GST.
- (b) The Contractor will, on CRIA's behalf:
 - (i) make supplies to third parties;
 - (ii) facilitate supplies to third parties (including by issuing invoices relating to, or receiving consideration for, such supplies);
 - (iii) make acquisitions from third parties; or
 - (iv) facilitate acquisitions from third parties (including by providing consideration for such acquisitions).
- (c) The kind of supplies or acquisitions to which this sub-division 153-B agreement applies are all supplies and acquisitions made or facilitated by the Contractor pursuant to the Agency Principles.
- (d) For the purposes of the GST law:
 - (i) the Contractor will be treated as making the above supplies to the third parties, or the above acquisitions from the third parties, or both; and
 - (ii) CRIA will be treated as making corresponding supplies to the Contractor, or corresponding acquisitions from the Contractor, or both.
- (e) In the case of supplies made (or treated as being made) by the Contractor to third parties:

- (i) the Contractor will issue to the third parties, in the Contractor's own name, all the tax invoices and adjustment notes relating to those supplies; and
 - (ii) CRIA will not issue to the third parties any tax invoices and adjustment notes relating to those supplies.
- (f) In the case of supplies made (or treated as being made) by CRIA to the Contractor, CRIA will issue to the Contractor, displaying CRIA's name and ABN, all tax invoices and adjustment notes relating to the deemed supply of the above supplies to the Contractor.
- (g) In the case of supplies made (or treated as being made) by the Contractor to CRIA, the Contractor will issue to CRIA, displaying the Contractor's name and ABN, all tax invoices and adjustment notes relating to the deemed supply of the above supplies to CRIA.
- (h) Either party will inform the other party immediately if they cease to be registered for GST, and this arrangement ceases to have effect from the date that CRIA or the Contractor or both cease to be registered for GST.

30. Default and Termination

30.1 Preservation of Other Rights

- (a) This clause 30 shall operate exclusively to regulate the entitlement of the parties to exercise any right of termination of this Deed (including acceptance of repudiation) for breach or repudiation by the other party.
- (b) If a party breaches (including repudiates) this Deed, nothing in this clause 30 shall prejudice the right of the other party to recover damages or exercise any other right or remedy (other than a right of termination, including acceptance of repudiation).

30.2 CRIA's Right to Terminate by Notice

- (a) CRIA may terminate this Deed at any time, and without cause, by giving to the Contractor not less than 6 months' notice of termination in writing.
- (b) CRIA is not liable to the Contractor for any termination under this clause 30.2, other than the payment of the following (*Disengagement Costs*):
 - (i) the following specific amounts:
 - (A) the direct costs incurred by the Contractor for demobilising its own employees and equipment;
 - (B) any demobilisation or other costs payable to any subcontractor as a result of the termination, provided that those demobilisation or other costs are pursuant to terms and conditions which have been approved by CRIA in accordance with clause 34.1; and
 - (C) the costs of the Contractor complying with the Disengagement Plan referred to in clause 30.11; and

- (ii) the amounts that would have become due and payable in accordance with the Commercial Framework for Services performed or services or materials procured at the Termination Date had this Deed not been terminated, provided that, in each case, the Contractor has undertaken all reasonable steps to minimise those costs.
- (c) Apart from the payment of the Disengagement Costs, CRIA will have no further liability to the Contractor for any termination by CRIA pursuant to this clause 30.2.

30.3 The Contractor's Breach of Contract – Default Notice

- (a) If the Contractor commits a substantial breach of contract, CRIA may give the Contractor a default notice (*Default Notice*).
- (b) Substantial breaches of contract by the Contractor are:
 - (i) failing to prepare, update or submit Management Plans in accordance with clause 4.4;
 - (ii) failing to update the CRN Asset Management Plan that meets the requirements of the Strategic Asset Plan as it exists from time to time;
 - (iii) failing to prepare an Annual Works Plan that meets the requirements of the CRN Asset Management Plan, the Strategic Asset Plan and the SWTC;
 - (iv) materially failing to complete the Services in accordance with an Annual Works Plan;
 - (v) refusing to provide representatives for the Project Control Group within 20 Business Days of a written notice from CRIA to do so;
 - (vi) persistently and materially failing to maintain records in accordance with clause 13;
 - (vii) failing to effect and maintain any insurance in accordance with clause 20;
 - (viii) persistently or materially failing to use the materials or standards of workmanship, or to exercise the degree of skill, care and diligence, required by this Deed;
 - (ix) persistently or materially failing to provide the Services in accordance with this Deed;
 - (x) failing to make a payment due under this Deed within 28 days of a written notice from CRIA to do so;
 - (xi) a breach of clause 35.1; and
 - (xii) failing to maintain or replace key personnel in accordance with clause 4.5.
- (c) A Default Notice shall state:
 - (i) that it is a notice given under clause 30.3;
 - (ii) that the Contractor has committed a substantial breach of contract and specify the breach; and
 - (iii) that the Contractor is required to remedy the breach.

30.4 Rights of the Contractor to Remedy

If CRIA gives a Default Notice to the Contractor, the Contractor may remedy a breach notified in the Default Notice:

- (a) in the case of a breach being the non-payment of moneys, by payment of those moneys together with any interest payable under this Deed within 10 Business Days of receipt of the Default Notice by the Contractor;
- (b) in the case of any other breach which is remediable:
 - (i) within 10 Business Days of receipt of the Default Notice by the Contractor:
 - (A) undertaking in writing to CRIA to remedy the breach;
 - (B) providing to CRIA a program for remedying the breach which provides for the breach to be remedied within a time (which shall not exceed 6 months in aggregate from the date of the relevant breach) within which it could be remedied by an experienced, prudent and skilled contractor using Good Operating Practice and which is acceptable to CRIA acting reasonably; and
 - (C) commencing the remedying of the breach; and
 - (ii) diligently complying with the program referred to above and diligently remedying the breach; or
- (c) in the case of any other breach which is not remediable, paying to CRIA within 10 Business Days of receipt of the Default Notice by the Contractor an amount of compensation which is acceptable to CRIA in its absolute discretion.

30.5 Step-in or Termination for Breach

- (a) If:
 - (i) an Event of Default has occurred; or
 - (ii) a breach, the subject of a Default Notice, is not remedied in accordance with clause 30.4,then CRIA may, by written notice to the Contractor:
 - (iii) exercise its Step-in Rights in accordance with clause 31; or
 - (iv) terminate this Deed from the date stated in the notice.
- (b) The Contractor agrees that CRIA may determine in its absolute discretion how to exercise its rights under this clause 30.5.

30.6 Termination for Insolvency

If an Insolvency Event occurs in relation to the Contractor, CRIA may terminate this Deed at any time immediately by giving notice in writing.

30.7 CRIA's Entitlements after Termination

- (a) If CRIA exercises its right under clause 30.5(a)(iv) or 30.6, CRIA may, without payment of compensation to the Contractor:

- (i) take possession of, and use (and permit others to use), the Plant and Equipment, materials, spares and other things on or in the vicinity of the CRIA Assets as were used by the Contractor;
- (ii) contract with such of the Subcontractors;
- (iii) take possession of, and use (and permit others to use), the Documentation and other information in the possession of the Contractor; and
- (iv) require the Contractor to comply with all or any of its obligations under the Disengagement Plan,

as reasonably required by CRIA to facilitate completion of the Services remaining to be completed under this Deed as at the Termination Date and facilitate any transfer of the Contractor's role to an alternative contractor (**Remaining Work**), and

- (v) may engage third parties to carry out and complete the whole or any part of the Remaining Work;
 - (vi) may exclude from the CRIA Assets the Contractor and any other person concerned with the carrying out and completion of the Services (as the case may be);
 - (vii) is not obliged to make any further payments to the Contractor, including any money the subject of a claim under clause 21.2 or a Payment Response under clause 21.3, provided that any such amounts (which, otherwise than as a result of this clause, would be properly due) shall be credited to the Contractor and (subject to CRIA's rights of set off) CRIA shall pay to the Contractor any amount by which the amounts so credited exceed the amounts that CRIA is entitled to recover from the Contractor in accordance with clause 30.7(a)(ix);
 - (viii) is entitled to have recourse to any Security for any amounts CRIA is entitled to recover from the Contractor in accordance with clause 30.7(a)(ix); and
 - (ix) is entitled to recover from the Contractor any loss suffered or incurred by CRIA arising out of or in any way in connection with the breach, Insolvency Event, termination of this Deed and completing the Remaining Work.
- (b) If CRIA takes possession of Plant and Equipment, CRIA shall maintain them in good working order and, subject to clause 30.7(c), on completion of the Remaining Work, CRIA shall return the Plant and Equipment that is not owned by CRIA.
- (c) If the Contractor is indebted to CRIA, CRIA may retain Plant and Equipment or other things taken under clause 30.7(a) not owned by CRIA until the debt is satisfied. If after reasonable notice, the Contractor fails to pay the debt, then CRIA may sell the Plant and Equipment or other things and apply the proceeds to the satisfaction of the debt and the costs of sale. Any excess proceeds from such sale shall be paid to the Contractor.

- (d) The Contractor shall do all things (including executing all documents) reasonably required by CRIA to enable CRIA to lawfully register any charge or other interest (including any interest under the PPSA) in the Plant and Equipment or other things taken under clause 30.7(a) so as to ensure CRIA's rights under this clause 30.7 are not adversely affected.

30.8 CRIA's Breach of Contract

- (a) If CRIA commits a substantial breach of contract, the Contractor may give CRIA a notice to show cause.
- (b) A substantial breach of contract by CRIA is limited to:
 - (i) failing to make a payment due under this Deed within 28 days of a written request from the Contractor to do so;
 - (ii) failure to give access to the CRIA Assets in accordance with clause 5; and
 - (iii) a breach by CRIA of clause 35.1.
- (c) If within 28 days after receipt of a notice to show cause, CRIA has not shown cause why the Contractor may not terminate this Deed, and the breach has not been remedied, the Contractor may terminate this Deed by issuing a further notice in writing.

30.9 CRIA Insolvency

If an Insolvency Event occurs in relation to CRIA, the Contractor may terminate this Deed which termination takes effect immediately by notice in writing.

30.10 Termination Rights

The parties' only rights to terminate this Deed are as set out in this clause 30 and each party waives all other rights it may have to terminate this Deed, including rights at common law.

30.11 Disengagement Plan

Upon termination or expiry of this Deed for any reason the Contractor and CRIA shall comply with the Disengagement Plan.

30.12 Transfer of Project Assets

- (a) The Contractor must prepare and maintain an inventory of all CRIA Supplied Assets, and any other buildings, Plant and Equipment, or material (including all buildings, Plant and Equipment and materials comprising the Network Control Centre) to which clauses 30.12(b), 30.12(c) or 30.12(d) apply or could apply.
- (b) On the Termination Date:
 - (i) all CRIA Supplied Assets;
 - (ii) all buildings, Plant and Equipment, and materials comprising the Network Control Centre;

- (iii) any other Plant and Equipment, or materials, in respect of which the costs of acquisition have been claimed by the Contractor as Reimbursable Costs; and
- (iv) any other property of CRIA (including without limitation all Documentation belonging to CRIA),

in the possession or control of the Contractor (other than CRIA Supplied Assets which CRIA has identified in writing as not to be transferred) shall be transferred to CRIA (or at its direction) at no cost, free from all encumbrances effected by the Contractor unless otherwise approved by CRIA.

- (c) In respect of any building, Plant and Equipment, or materials (other than those referred to in clause 30.12(b)):
 - (i) the acquisition cost of which was subject to the Amortised Cost Principal detailed in the Cost Categories Annexure to the Commercial Framework; or
 - (ii) in respect to which only part of the costs of acquisition have been claimed by the Contractor as Reimbursable Costs,

in the possession or control of the Contractor (other than CRIA Supplied Assets which CRIA has identified in writing as not to be transferred), CRIA has the option to purchase any or all such buildings, Plant and Equipment or materials, exercisable at any time within 20 Business Days after the Termination Date, at a price that:

- (iii) in the case of buildings or Plant and Equipment referred to in clause 30.12(c)(i), is equal to the remaining amortisation payments; and
- (iv) in the case of buildings, Plant and Equipment or materials referred to in clause 30.12(c)(ii), is equal to its current market value reduced by amounts already paid by CRIA.

If CRIA exercises this option, the Contractor must transfer title in and deliver the relevant building, Plant and Equipment or material to CRIA within a further 10 Business Days. If this Deed has been terminated by the Contractor under clause 30.8, then CRIA must exercise the option under this clause to purchase all materials referred to in clause 30.12(c)(ii).

- (d) Subject to clause 30.12, the Contractor shall, where requested to do so by CRIA at any time within 25 Business Days after the Termination Date, hire to CRIA on and from the date referred to in the notice, such items of the Contractor's Plant and Equipment as are used wholly or partly in connection with the CRIA Assets on or before the Termination Date:
 - (i) for use by CRIA proportionally to the extent those items were wholly or partly used by the Contractor in connection with the CRIA Assets on or before the Termination Date;
 - (ii) at market rates unless different rates are agreed in writing; and
 - (iii) for a period as required by CRIA not exceeding 12 months.

- (e) If during the Term the Contractor proposes to replace, dispose of or alter any of the CRIA Supplied Assets, the Contractor shall first obtain approval from CRIA to the proposal (which approval shall not be unreasonably withheld or delayed).

30.13 Rights of the Parties on Termination

Subject to clause 26.5, if this Deed is terminated pursuant to clauses 30.5, 30.6, 30.8 or 30.9, the rights and liabilities of the parties shall be the same as they would have been at common law had the defaulting party repudiated this Deed and the other party elected to treat this Deed as at an end and recover damages, which election the other party is deemed to have made.

30.14 Termination for Frustration

If under the law governing this Deed, this Deed is frustrated, CRIA shall pay the Contractor:

- (a) for Services carried out prior to the date of frustration, the amount which would have been payable if this Deed had not been frustrated and the Contractor had been entitled to and had made a Payment Claim on the date of frustration;
- (b) the Disengagement Costs referred to in clause 30.2(b).

30.15 Provisions to Continue After Termination

Unless the context otherwise requires, rights and obligations (including warranties and indemnities) of the parties capable of taking effect after the expiration or termination of this Deed shall do so.

30.16 Network Control Centre Lease

The Contractor shall, where requested to do so by CRIA at any time within 25 Business Days after the Termination Date, novate the leases and agreements referred to in clause 4.7(e) to CRIA.

31. Step-in

31.1 Exercise of Right

- (a) CRIA may exercise its rights under this clause 31 at any time:
 - (i) when it becomes entitled to do so under clause 30.5(a)(iii); or
 - (ii) by notice in writing to the Contractor in the case of, or to prevent, an Incident, which in CRIA's opinion the Contractor is unable to overcome, which materially adversely affects the CRIA Assets or the safety of people, property or the Environment (or could affect the CRIA Assets or the safety of people, property or the Environment); or
 - (iii) by notice in writing to the Contractor if there is an event or circumstance (including an Insolvency Event) which renders the Contractor, in CRIA's reasonable opinion, unable to carry out the Services in accordance with this Deed and that event or circumstance will materially adversely affect the operation of the CRIA Assets.

- (b) If CRIA exercises its right under clause 31.1(a), then CRIA shall be entitled to undertake any or all of the Services and otherwise exercise any of the Contractor's rights or obligations under this Deed and take such actions as are necessary to address the event giving rise to the step-in (the *Step-in Rights*).

31.2 Actions Following Step-in

- (a) For the purposes of exercising the Step-in Rights:
- (i) CRIA is not obliged to make any further payments to the Contractor for the Services in respect of which CRIA has exercised the Step-in Rights, including any money the subject of a Payment Claim under clause 21.2 or a Payment Response under clause 21.3, except:
 - (A) that the Contractor shall be entitled to recover Reimbursable Costs in respect of Services provided by the Contractor or its Agents to or at the direction of CRIA during the period it is exercising the Step-in Rights; or
 - (B) pursuant to clause 31.4(b);
 - (ii) CRIA may exclude from the CRIA Assets the Contractor and any other person concerned with the carrying out of the Services;
 - (iii) CRIA may engage third parties to carry out and complete the whole or any part of the Services the subject of the Step-in Rights;
 - (iv) CRIA will be entitled to act as the Contractor's agent under all contracts entered into by the Contractor that are necessary for CRIA to exercise the Step-in Rights;
 - (v) CRIA may, in its sole discretion, carry out the obligations of the Contractor under any contracts entered into by the Contractor in connection with the Services if necessary to address the relevant event; and
 - (vi) CRIA may:
 - (A) take possession of, and use (and permit others to use), such of the Plant and Equipment, materials, spares and other things on or in the vicinity of the CRIA Assets as were used by the Contractor;
 - (B) give reasonable instructions to any employees of the Contractor (and the Contractor must ensure that such requests are complied with);
 - (C) contract with such of the subcontractors engaged by the Contractor; and
 - (D) take possession of, and use (and permit others to use), such of the Documentation in the possession of the Contractor,as are reasonably required by CRIA to exercise the Step-in Rights.
- (b) The Contractor shall provide CRIA with any and all assistance, copies of all Documentation, and access to the CRIA Assets and the non-exclusive use of all

rights and information available to any member of the John Holland Group reasonably required to enable CRIA or its nominees to exercise the Step-in Rights and to manage the performance of the obligations of the Contractor under this Deed.

31.3 Access

- (a) To the extent required and permitted by Law, the Contractor shall provide CRIA access to (or a right to use) any licence, authorisation or Approval (including the Rail Safety Accreditation) necessary to exercise its Step-in Rights.
- (b) If CRIA takes possession of any Plant and Equipment, CRIA shall maintain them in good working order and, subject to clauses 31.2(a) and 31.4, on completion of the Step-in Rights, CRIA shall return the Plant and Equipment that are surplus.

31.4 Conclusion of Step-in

- (a) CRIA may cease to exercise its Step-in Rights at any time and, in any event, will cease to exercise its Step-in Rights as soon as practicable after:
 - (i) the event the subject of the notice under clause 30.5 or to which 31.1(a) relates has been remedied or has ceased, whether by CRIA or otherwise; and
 - (ii) CRIA (acting reasonably) is satisfied that the Contractor is in a position to perform all its obligations under this Deed.
- (b) The parties agree that:
 - (i) when CRIA has ceased to exercise the Step-in Rights, CRIA's Representative shall:
 - (A) assess the costs reasonably incurred and the losses reasonably suffered by CRIA in and for the purpose of exercising its Step-in Rights; and
 - (B) certify as moneys due and immediately payable accordingly the difference between the costs and losses assessed pursuant to clause 31.4(b)(i)(A) (showing the necessary calculations) and the amount which would otherwise have been paid to the Contractor if the Services the subject of the Step-in Rights had been completed by the Contractor (*Step-in Costs*);
 - (ii) CRIA may set-off the amounts referred to in clause 31.4(b)(i) against any amount due by CRIA to the Contractor under this Deed (or which may in the future be due under this Deed);
 - (iii) if the Contractor is indebted to CRIA, CRIA may retain Plant and Equipment or other things taken under clause 31.2(a) until the debt is satisfied. If after reasonable notice, the Contractor fails to pay the debt, then CRIA may sell the Plant and Equipment or other things and apply the proceeds to the satisfaction of the debt and the costs of sale. Any excess proceeds from such sale shall be paid to the Contractor; and

- (iv) the Contractor shall do all things (including executing all documents) reasonably required by CRIA to enable CRIA to lawfully register any charge or other interest in the Plant and Equipment or other things taken under clause 31.2(a) so as to ensure CRIA's rights under this clause 31 are not adversely affected.

31.5 Not Liable

The exercise of the Step-in Rights by CRIA will not render CRIA liable:

- (a) for payment of damages or compensation; or
- (b) to remedy the Contractor's default or other event giving rise to the exercise of Step-in Rights and CRIA will have no liability whatsoever if it fails to cure the relevant default or relevant event,

but nothing in this clause 31 shall relieve CRIA of liability to the Contractor or third parties for loss, damage or liability caused by Wilful Default of CRIA or CRIA's Agents during the exercise of the Step-in Rights.

31.6 Other Rights

- (a) In exercising its Step-in Rights, CRIA will:
 - (i) act at all times as a reasonable and prudent operator having regard to the circumstances;
 - (ii) minimise the Step-in Costs; and
 - (iii) at all times keep the Contractor advised of CRIA's activities in exercising its Step-in Rights.
- (b) Recovery of CRIA's Step-in Costs does not affect in any way CRIA's ability to claim damages in accordance with this Deed.
- (c) Nothing in this clause 31 shall prejudice the right of CRIA to recover damages or exercise any other rights or remedy (including the rights to terminate).
- (d) CRIA may appoint a nominee for the purpose of exercising all or any of CRIA's rights under this clause 31.

32. Dispute Resolution

32.1 Notice of Dispute

- (a) If a dispute or difference (hereafter called a *dispute*) between the Contractor and CRIA arises in connection with this Deed then either party shall deliver by hand or send by certified mail to the other party and to CRIA's Representative a notice of dispute in writing adequately identifying and providing details of the dispute.
- (b) Notwithstanding the existence of a dispute, CRIA and the Contractor shall continue to perform this Deed and, subject to clauses 30 and 31, the Contractor shall continue with the Services and CRIA and the Contractor shall continue to comply with clause 21.

32.2 Further Steps Required Before Proceedings

Within 5 Business Days of service of a notice of dispute, CRIA's Representative and the Contractor's Representative shall confer, in good faith, at least once to attempt to resolve the dispute or to agree on methods of resolving the dispute by other means. If they are unable to settle the dispute within that period, then either party may, by notice in writing delivered by hand or sent by certified mail to the other party, refer such dispute to the Senior Leadership Team for negotiation in accordance with clause 32.3 of this Deed.

32.3 Senior Leadership Team

The members of the Senior Leadership Team shall negotiate in good faith with a view to resolving the dispute or on methods of resolving the dispute by other means within 20 Business Days of the dispute being referred to them.

32.4 Expert Determination

- (a) If a dispute which has been referred to the Senior Leadership Team for negotiation pursuant to clause 32.2 remains unresolved (in whole or in part) after the expiration of the period for negotiation referred to in clause 32.3 then any party may by giving notice to the other party in accordance with clause 32.4(b) require that those parts of the dispute which remain unresolved be referred to an expert for determination in accordance with clauses 32.5 to 32.9 (inclusive).
- (b) A notice under clause 32.4(a) shall:
 - (i) be given no earlier than 10 Business Days and no later than 60 Business Days after the expiry of the period for negotiation referred to in clause 32.3;
 - (ii) state that it is a notice under this clause 32.4; and
 - (iii) include or be accompanied by reasonable particulars of those parts of the dispute which remain unresolved.

32.5 Selection of Expert

- (a) Within 7 Business Days after the date of the notice under clause 32.4(a), CRIA and the Contractor shall exchange written lists of 3 persons who, if appointed, would satisfy the requirements of clause 32.5(d), from whom the expert is to be chosen in order of preference.
- (b) Any person that appears on both lists under clause 32.5(a) will be appointed as the expert to determine a dispute and if more than one person appears on both lists the person given the highest order of priority by the party that gave the notice under clause 32.4(b) will be appointed.
- (c) If no person appears on both lists, the party which gave the notice under clause 32.5(a) shall procure the Secretary-General of the Australian Centre for International Commercial Arbitration to nominate a person to act as the expert.

- (d) It is the intention of the parties that the expert appointed to determine a dispute will be a person with appropriate skills having regard to the nature of the matters in dispute.
- (e) Neither party will be entitled to challenge the appointment of an expert under this clause 32.5 on the basis that the expert does not satisfy the requirements of clause 32.5(d).
- (f) Any agreement for expert determination under this Deed will not constitute an arbitration agreement for the purposes of the *Commercial Arbitration Act 2010* (NSW).
- (g) CRIA and the Contractor shall enter into an agreement with the expert on the terms of Schedule 6 of this Deed or such other reasonable terms as the expert may require.

32.6 Rules of Expert Determination

The expert determination process will be administered, and the expert will be required to act in accordance with the terms of the agreement in Schedule 6 of this Deed.

32.7 Expert Finding

- (a) Subject to clauses 32.7(b) and 32.7(c), the determination of the expert shall be in writing and will be final and binding on CRIA and the Contractor.
- (b) Upon submission by any party, the expert may amend the determination to correct:
 - (i) a clerical mistake;
 - (ii) an error from an accidental slip or omission;
 - (iii) a material miscalculation of figures or a material mistake in the description of any person, thing or manner; or
 - (iv) a defect in form.
- (c) Except where the total amount claimed in connection with a dispute is less than \$2 million Indexed by CPI (calculated at the date of the determination), either party may object to the determination by issuing a notice to the other party within 20 Business Days of the date of the determination. Where a notice of objection is issued under this clause, the objecting party may commence court action to resolve the dispute that was the subject of the determination and the determination will cease to have any force or effect from the date of issue of the notice of objection.

32.8 Liability of Expert

The parties agree that the expert will not be liable in respect of the expert determination, except in the case of fraud on the part of the expert. CRIA and the Contractor agree to indemnify the expert from and against all claims, except in the case of fraud on the part of the expert, which may be made against him or her by any person in respect of the expert's appointment to determine the dispute.

32.9 Costs

CRIA and the Contractor shall bear their own costs in connection with the expert determination proceedings and shall pay an equal portion of the cost of the expert.

32.10 Continuation of Rights and Obligations

Unless expressly stated in this Deed otherwise, despite the existence of a dispute or difference, each party shall continue to perform this Deed.

32.11 Summary Relief

Nothing herein shall prejudice the right of a party to seek injunctive or urgent declaratory relief in respect of a dispute of the kind referred to in this clause 32.

32.12 Exchange of Information or Documents

- (a) The parties acknowledge that the purpose of any exchange of information or Documents or the making of any offer of settlement pursuant to this clause 32 is to attempt to resolve the dispute between the parties.
- (b) No party may use any discussions, information or Documents obtained through the above dispute resolution procedures for any purpose other than an attempt to resolve a dispute under this Deed except to the extent required by any Law.

33. Notification of Claims

33.1 Communication of Claims by CRIA

As soon as practicable after CRIA could reasonably have been aware of any claim in connection with this Deed or the subject matter thereof, CRIA shall give to the Contractor and to CRIA's Representative the prescribed notice under clause 33.5 or a notice of dispute under clause 32.1.

33.2 Communication of Claims by Contractor

- (a) Subject to clause 33.2(b), as soon as practicable after the first occurrence of the Direction, act, omission, fact, matter or thing giving rise to any Claim, the Contractor shall give to CRIA and to CRIA's Representative the prescribed notice under clause 33.5.
- (b) None of clauses 33.2, 33.4, 33.5, 33.6 or 33.7 shall apply to any Claim:
 - (i) for payment of the Services Fee in accordance with this Deed, other than a claim referred to in section 11.3 of the Commercial Framework;
 - (ii) for a Variation either to which clause 18.2 applies or which CRIA's Representative has expressly acknowledged in writing constitutes or involves a Variation.
- (c) Subject to clause 33.2(b), a Claim by the Contractor shall include any Claim in respect of which:

- (i) the Contractor is otherwise given an express entitlement under this Deed (whether subject to assessment, certification, determination or valuation by CRIA's Representative or otherwise); or
- (ii) this Deed expressly provides that costs or other amounts are to be paid to the Contractor.

33.3 Liability of CRIA for Failure to Communicate

The failure of CRIA to comply with the provisions of clause 33.1 or to communicate a claim in accordance with the relevant provision of this Deed, shall, inter alia, entitle the Contractor to damages for breach of contract, but shall not be grounds for invalidating the claim.

33.4 Liability of Contractor for Failure to Communicate

If the Contractor does not give to CRIA and CRIA's Representative:

- (a) a prescribed notice of a Claim to which clause 33.2 applies within 15 Business Days after the date on which the Contractor first becomes aware, or ought to have become aware, of the first occurrence of the Direction, act, omission, fact, matter or thing on which the Claim is based; or
- (b) an annual payment claim referred to in section 11.3 of the Commercial Framework, within 15 Business Days after the time frame specified in that section,

the Contractor shall not be entitled to the Claim and CRIA shall be released for all time from the Claim.

33.5 The Prescribed Notice

The prescribed notice is a notice in writing which shall include:

- (a) an outline of the legal basis of the claim or Claim (in respect of the Contractor) or proposed claim or Claim (in respect of the Contractor);
- (b) reasonable details of the quantum or likely quantum of the claim or Claim (in respect of the Contractor) or proposed claim or Claim (in respect of the Contractor) (including a detailed breakdown of the quantum of the claim or Claim (in respect of the Contractor)) and how such quantum or likely quantum has been calculated; and
- (c) the particulars concerning the Direction, act, omission, fact, matter or thing relied upon in support of each aspect of the claim or Claim (in respect of the Contractor).

33.6 CRIA's Representative's Decision

Within 40 Business Days of receipt of the prescribed notice, CRIA's Representative shall assess the claim or Claim (in respect of the Contractor) and shall promptly notify the parties in writing of the decision. Unless a party within a further 20 Business Days of such notification serves a notice of dispute under clause 32.1, which includes such claim or Claim (in respect of the Contractor), CRIA's Representative shall include the amount of that assessment in the next Payment Response issued pursuant to clause 21.3.

33.7 Time for Disputing CRIA's Representative's Direction

If CRIA's Representative has given a Direction (including any decision or certification) pursuant to this Deed, the Direction shall not be disputed by the Contractor unless a notice of dispute in accordance with clause 32.1 is given by the Contractor to CRIA and to CRIA's Representative within 20 Business Days of the date of CRIA's Representative's Direction.

34. Subcontractors**34.1 Subcontracting**

- (a) The Contractor acknowledges that it has been engaged to carry out the Services on the basis that it is capable of carrying out most of the work anticipated as making up the Services.
- (b) The Contractor shall not subcontract:
 - (i) the whole of the Services; or
 - (ii) without the prior written consent of CRIA any part of the Services:
 - (A) that relates to routine maintenance, inspections, signalling, MPM, welding work, train control, re-sleepering, re-surfacing, continuous welded rail work or rail adjustment; or
 - (B) which in aggregate with all other Services that the subcontractor is subcontracted to carry out, is of a value more than \$1,000,000, Indexed by CPI.
- (c) The Contractor shall use reasonable endeavours to ensure that:
 - (i) any subcontract it enters into allows the Contractor to terminate for convenience in the event that CRIA terminates this Deed under clause 30.2, without payment (or with payment of disengagement costs on terms equivalent to clause 30.2(b) of this Deed only).
 - (ii) its subcontracts contain an obligation on the subcontractor to act in accordance with CRIA's Statement of Business Ethics (set out in Schedule 8) and to comply with the processes identified in CRIA's Fraud and Corruption Prevention Plan (set out in Schedule 9).
- (d) The Contractor agrees that, where CRIA's consent to subcontracting is required:
 - (i) within 10 Business Days of a request by the Contractor for consent to subcontract, and compliance by the Contractor with its obligations under this clause 34.1, CRIA's Representative shall notify the Contractor of consent or the reasons why consent is not given;
 - (ii) CRIA's Representative's consent to subcontract may be conditional upon the subcontractor executing a deed in terms satisfactory to CRIA, under which CRIA may require the novation of the subcontract to CRIA (or to a nominee of CRIA) in certain circumstances, including:
 - (A) upon termination of this Deed; and

- (B) upon the subcontractor becoming entitled to terminate the subcontract as a result of the Contractor's breach of that subcontract.
- (e) Neither CRIA's consent to subcontract, nor the Contractor entering into any subcontract shall relieve the Contractor from any liability or obligation under this Deed.
- (f) Despite all of the above, CRIA's prior written approval will be required for any subcontract which requires a termination payment, or payment of disengagement costs.

34.2 Collusive Dealing

The Contractor shall:

- (a) not engage in any collusive dealing with any subcontractor or prospective subcontractor; and
- (b) disclose to CRIA where a subcontractor or prospective subcontractor is a related entity of the Contractor, and the nature of that relationship (and only deal with that subcontractor at arm's length and on reasonable commercial terms).

35. General

35.1 Assignment and Change in Control

- (a) The Contractor shall not assign, novate, mortgage, charge, encumber or otherwise deal with this Deed or any of its interests, rights and obligations under or in connection with this Deed without the prior written consent of CRIA (which consent may be withheld or given (unconditionally or subject to conditions) in CRIA's absolute discretion).
- (b) CRIA:
 - (i) subject to clause 35.1(b)(ii), may assign, novate, mortgage, charge, encumber or otherwise deal with this Deed or any of its interests, rights and obligations under or in connection with this Deed at any time with the prior written consent from the Contractor (such consent not to be unreasonably withheld or delayed and not to be withheld if CRIA will continue to have (or the party taking the benefit of the assignment, novation or other dealing has) the financial capacity to perform CRIA's remaining obligations);
 - (ii) may, in its absolute discretion and without any consent from the Contractor, assign, novate, mortgage, charge, encumber or otherwise deal with this Deed, any security or any of its interests, rights and obligations under or in connection with this Deed at any time to any party or parties that the New South Wales Government nominates to assume some or all of CRIA's functions, rights or obligations (including as set out in clause 35.5).

- (c) The Contractor shall, if requested by CRIA, execute a deed on terms reasonably required by CRIA giving effect to the assignment, novation, charge, mortgage, encumbrance or other dealing.
- (d) The Contractor shall not be the subject of a Change in Control without CRIA's prior written consent, which shall not be unreasonably withheld, if the Contractor can demonstrate that the Change in Control:
 - (i) does not adversely affect the financial capacity or technical capability of the Contractor to perform the obligations under this Deed; and
 - (ii) does not adversely affect the financial standing or capacity of any entity providing a Parent Company Guarantee or the validity of the Parent Company Guarantee.

35.2 Contractor Responsible for Agents

The Contractor agrees that:

- (a) any act or omission of the Contractor's Agents shall be taken to be an act or omission of the Contractor, including any:
 - (i) act or omission which constitutes a breach of this Deed; or
 - (ii) negligent act or omission; and
- (b) the Contractor shall remain fully bound by and responsible for the obligations imposed on the Contractor by this Deed, despite:
 - (i) any consent given by CRIA to the engagement or appointment of any Contractor's Agent; or
 - (ii) the engagement or appointment of any Contractor's Agent.

35.3 Joint and Several Responsibility

- (a) If the Contractor is made up of more than one party, this clause 35.3 will apply to the Contractor and each of those parties.
- (b) The parties comprising the Contractor are jointly and severally responsible for the obligations and performance of this Deed and are jointly and severally liable for any liabilities, damages, penalties or recourse under this Deed.
- (c) Any reference in this Deed to the Contractor is to be read as a reference to each person comprising the Contractor. For example, a Change in Control or Insolvency Event affecting one person comprising the Contractor is to be read as a 'Change in Control' or 'Insolvency Event' affecting the Contractor.

35.4 Non-derogation

Nothing in this Deed in any way limits, derogates from or affects any right, power, privilege or immunity in whatever form that CRIA or any Authority or any other person has or may have under or by virtue of any Law and no action for breach of this Deed will lie against CRIA for the exercise of any such right, power, privilege or immunity.

35.5 Transfer of Functions or Assets

The Contractor acknowledges that:

- (a) CRIA may be reconstituted, renamed, dissolved, replaced or restructured and that some or all of the powers, functions, assets, liabilities or responsibilities of CRIA may be transferred to or vested in another entity;
- (b) CRIA may, or may be required to (including as a result of changes to New South Wales Government policy or directions) add to, or dispose of, any property or assets forming part of the CRIA Assets at its absolute discretion;
- (c) any such change to the CRIA Assets may involve amendment to the Contractor's rights and obligations under this Deed, including (but not limited to):
 - (i) updating Management Plans; or
 - (ii) revising any Annual Works Plan or Annual Works Plan Budget,and will otherwise be treated as a Variation; and
- (d) apart from the rights to a Variation referred to in clause 35.5(c), the Contractor shall not have, and CRIA shall not be liable for, any Claim as a result of the changes to the CRIA Assets referred to in this clause 35.5.

35.6 Severability

To the extent any provision of this Deed is (or would be, but for the operation of this clause 35.6) found to be void, voidable or unenforceable under any Law (including under the Security of Payment Act), the provision shall be construed or severed from this Deed in a manner which:

- (a) avoids the provision or any other provision of this Deed being void, voidable or unenforceable; and
- (b) subject to clause 35.6(a), preserves to the maximum possible extent:
 - (i) the enforceability of the provision and the other provisions of this Deed; and
 - (ii) the original effect and intent of this Deed.

35.7 No Waiver

- (a) Except as provided at Law or in equity or elsewhere in this Deed, none of the terms of this Deed shall be varied, waived, discharged or released (in whole or in part), except with the express prior written consent by CRIA in each instance.
- (b) No variation, waiver, discharge or release by CRIA of any term will operate as a variation, waiver, discharge or release of any other term of this Deed or any subsequent breach of the relevant term.
- (c) Failure by CRIA, or by CRIA's Representative, acting on behalf of CRIA, at any time, or from time to time, to enforce or require strict compliance with, or performance of, any terms or conditions of this Deed will not constitute a waiver of, or affect, or impair such terms or conditions in any way, nor shall such failure affect the right of

CRIA to avail itself at any time of such remedies it may have for any subsequent breach of the terms and conditions by the Contractor.

35.8 Governing Law

This Deed is governed by and will be construed according to the laws of New South Wales and each party irrevocably submits to the jurisdiction of the courts of New South Wales.

35.9 No Merger

The rights and obligations of the parties will not merge on the completion of any transaction contemplated by this Deed. They will survive the execution and delivery of any assignment or other document entered into for the purpose of implementing a transaction.

35.10 Counterparts

This Deed may be executed in any number of counterparts. All counterparts together will be taken to constitute one instrument.

36. Media Releases, Confidentiality and Privacy

36.1 Confidential Information

- (a) This Deed and any other Documentation and information supplied by either the Contractor or CRIA of a confidential nature (***Confidential Information***) shall be kept confidential and not disclosed to a third party except with the prior agreement of the other party to this Deed or as permitted pursuant to this clause 36.1.
- (b) Each party shall ensure that each of its Agents complies with the terms of this clause 36.1.
- (c) Without limiting its other obligations under this clause 36.1, neither party may:
 - (i) disclose to any person; or
 - (ii) in the case of the Contractor, use for any purpose other than the carrying out of the Services,the Confidential Information referred to in clause 36.1(a) unless:
 - (iii) the other party has given its prior consent in writing; or
 - (iv) it is permitted to do so pursuant to this clause 36.1.
- (d) A party (the ***Disclosing Party***) may disclose Confidential Information:
 - (i) which is in the public domain through no default of the Disclosing Party;
 - (ii) if the disclosure is:
 - (A) required by Law;
 - (B) given with the written consent of the other party;

- (C) given to a court in the course of proceedings for which the Disclosing Party is a party or to an expert or mediator agreed or nominated under this Deed; or
 - (D) to any of its financial, technical, legal or other advisers who agree to keep the Confidential Information confidential in accordance with this clause 36.1; or
 - (iii) if:
 - (A) the Disclosing Party has obtained a confidentiality deed relating to the Confidential Information from the party whom it intends to disclose in favour of the other party to this Deed; and
 - (B) the information is for the purposes of assigning or transferring the Disclosing Party's rights, interests and obligations under this Deed.
- (e) CRIA may also disclose Confidential Information:
 - (i) to the Director General, CRIA's shareholding or responsible Ministers and the New South Wales Government; and
 - (ii) where CRIA is engaging, or is seeking to engage, a new contractor to perform or carry out services similar to the Services (in whole or in part):
 - (A) for the purpose of any data room or equivalent; and
 - (B) to any party CRIA proposes to seek an offer, tender or proposal from, or negotiate with or enter into a contract with for those services (whether or not any contract is entered into),provided that CRIA may not in these circumstances disclose any Confidential Information about the composition of any amounts payable by CRIA to the Contractor under this Deed (including information revealing the amount or composition of the Corporate Overhead, the Project Overhead, any profit margin earned by the Contractor under this Deed or any rates or prices provided by the Contractor to CRIA) or any personal information about any of the Contractor's staff and, in the case of other Confidential Information, provided CRIA has in place reasonable confidentiality arrangements with those parties.
- (f) Subject to clause 36.1(b), each party may disclose Confidential Information to its Agents to the extent necessary to enable the party to perform its obligations under this Deed.

36.2 Media Releases

The Contractor shall not issue any information, publication, document or article for publication concerning the CRIA Assets or the Services in any media without prior express written approval of CRIA, which approval shall not be unreasonably withheld. The Contractor shall refer to CRIA any enquiries concerning the CRIA Assets or the Services from any media.

36.3 Privacy

- (a) In relation to any personal information (as defined in the *Privacy Act 1988* (Cth) (*Privacy Act*)) (*Personal Information*) provided or to be provided by the Contractor in connection with the Services (whether as part of its tender or otherwise), the Contractor warrants to CRIA that:
- (i) the Contractor has obtained or will obtain the consent of each individual about which any sensitive information (as defined in the *Privacy Act*) is provided; and
 - (ii) the Contractor has or will within the time required by the *Privacy Act* ensure that each individual about whom any Personal Information is provided has received or will receive a written statement setting out all of the matters required by National Privacy Principle 1.3:
 - (A) in relation to disclosure of the Personal Information to CRIA, CRIA's Representative or any Related Body Corporate (as that term is defined in the *Corporations Act 2001* (Cth)) of CRIA requiring the information for the purposes set out in clause 36.3(a)(ii)(B); and
 - (B) disclosing that the entities referred to in clause 36.3(a)(ii)(A) shall use the Personal Information for the purposes of reviewing and assessing matters relevant to the Services from time to time.
- (b) The Contractor will comply with the provisions of the *Privacy Act* in relation to any Personal Information provided to the Contractor by CRIA, CRIA's Representative and any Related Body Corporate of CRIA.

37. Security of Payment Act

37.1 Notices Under the Security of Payment Act and Contractors Debts Act

- (a) The Contractor shall:
- (i) as soon as practicable give CRIA a copy of any notice the Contractor:
 - (A) receives from a subcontractor under section 15, 16 or 24 of the *Security of Payment Act*; or
 - (B) has been required to supply to a subcontractor under section 15(1) of the *Contractors Debts Act 1997* (NSW);
 - (ii) promptly notify CRIA if it becomes aware that a subcontractor intends to exercise a statutory lien, under section 11(3) of the *Security of Payment Act*, over unfixed plant and materials supplied by the subcontractor for use in carrying out work forming part of the Services or any trade contract.
- (b) The Contractor indemnifies CRIA against any cost, expense, loss, damages, liability or claim of any nature, including financial loss and lawyers' fees and expenses on an indemnity basis, suffered or incurred by CRIA arising out of:

- (i) a suspension by a subcontractor of work, which forms part of the Services, under section 27 of the Security of Payment Act;
- (ii) a notice of claim being served on CRIA (in respect of the Services) under Part 2 of the *Contractors Debts Act 1997* (NSW);
- (iii) a subcontractor intending to exercise (or exercising) a statutory lien, under section 11(3) of the Security of Payment Act, over unfixed plant and materials supplied by the subcontractor for use in carrying out the Services; or
- (iv) a failure by the Contractor to comply with this clause 37,

provided that the Contractor shall not be required to indemnify CRIA to the extent the relevant cost, expense, loss, damage, liability or claim arose out of the Contractor complying with an instruction, requirement, order or other notice from CRIA given under this Deed.

37.2 Suspension of Works Under the Security of Payment Act

If the Contractor suspends the whole or part of the Services under the Contract pursuant to the Security of Payment Act:

- (a) CRIA shall not be liable for any costs, expenses, damages, losses or other liability whatsoever suffered or incurred by the Contractor as a result of the suspension. This clause 37.2(a) shall not apply to any such costs, expenses, damages, losses or other liability incurred by the Contractor as a result of the removal by CRIA from the Contract of any part of the suspended Services; and
- (b) CRIA may direct the Contractor to omit the whole or part of the suspended Services and thereafter CRIA may engage others to carry out the suspended Services.

37.3 Adjudicator's Determination

Where an adjudication occurs under the Security of Payment Act and CRIA has paid the adjudicated amount to the Contractor, if the adjudicator's determination is quashed, overturned or declared to be void, the adjudicated amount shall become a debt due and payable by the Contractor to CRIA.

38. Civil Liability Act

- (a) It is agreed that, to the maximum extent permitted by law, the operation of Part 4 of the *Civil Liability Act 2002* (NSW) is excluded in relation to all and any obligations and liabilities of the Contractor under or in connection with this Deed whether such obligations or liabilities are sought to be enforced as a breach of contract or claim in tort (including negligence), in equity, under statute or otherwise at law.
- (b) The Contractor further agrees that in each contract into which it enters for the carrying out and completion of the whole or any part of the Services, such contracts will include provisions that, to the extent permitted by law, effectively exclude the operation of Part 4 of the *Civil Liability Act 2002* (NSW) in relation to

all obligations or liabilities of the other party under or in connection with each contract whether such obligations or liabilities are sought to be enforced as a breach of contract or in tort (including negligence), in equity, under statute or otherwise at law.

Schedule 1

Contract Details

Address details for the parties:
(clause 1.5)

CRIA: Address: Level 3, 237 Wharf Road, Newcastle, 2300

Fax: 

Email: 

The Contractor: Address: Level 3, 65 Pirrama Road, Pyrmont NSW,
2008

Fax: 

Email: 

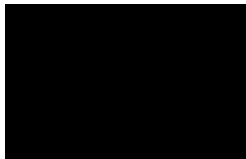
Date for Start of Mobilisation: The date that is 28 days after the date of this Deed.
(clause 1)

Date for Commencement: 15 January 2012
(clause 1)

Initial Stage ends on: 30 June 2012
(clause 1)

Parent Company: Leighton Holdings Limited (ACN 004 482 982)
(clauses 1 and 19.7)

CRIA's Representative:
(clause 10.1)



Contractor's Representative:
(clause 10.3)

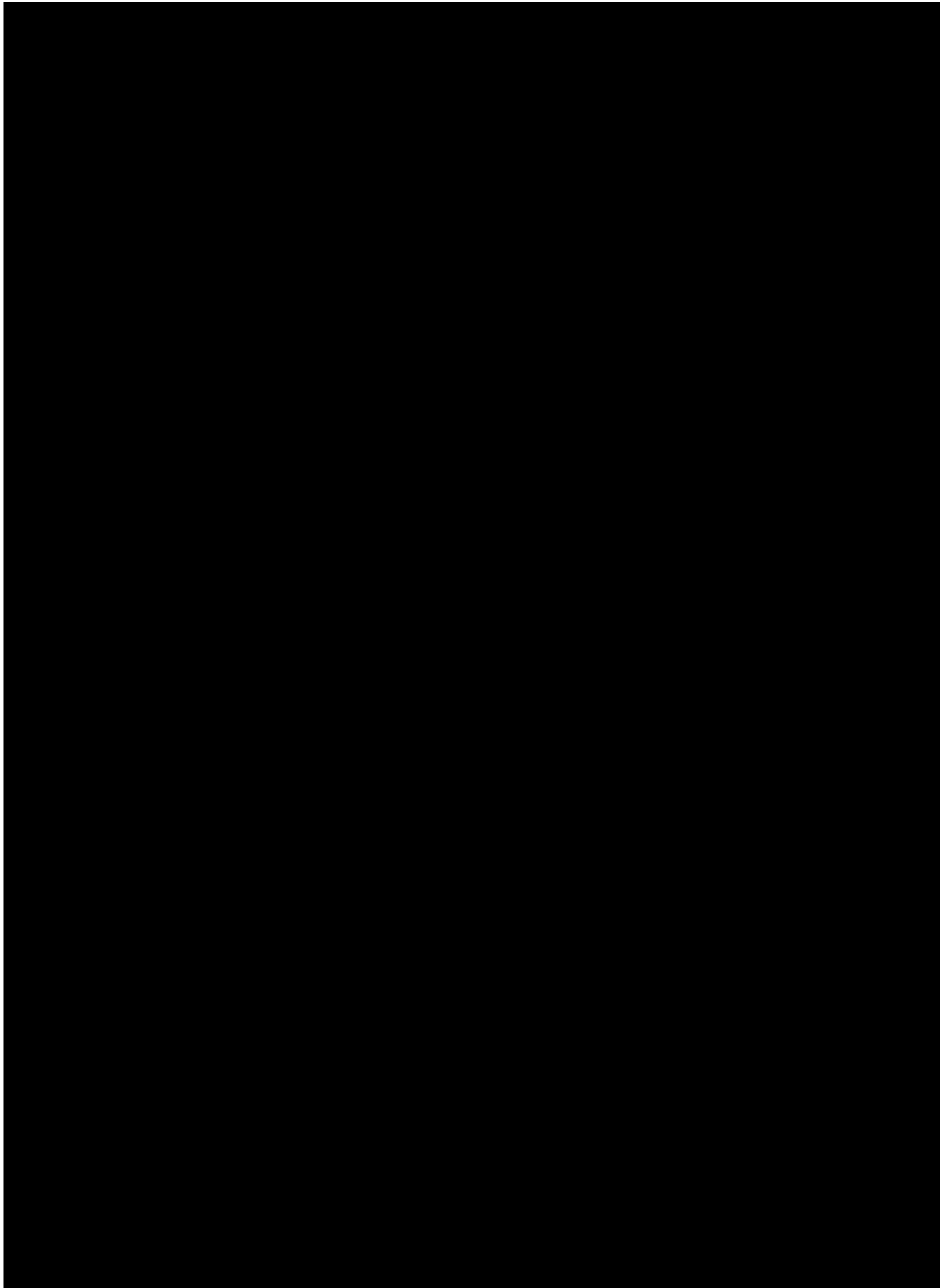
Schedule 3

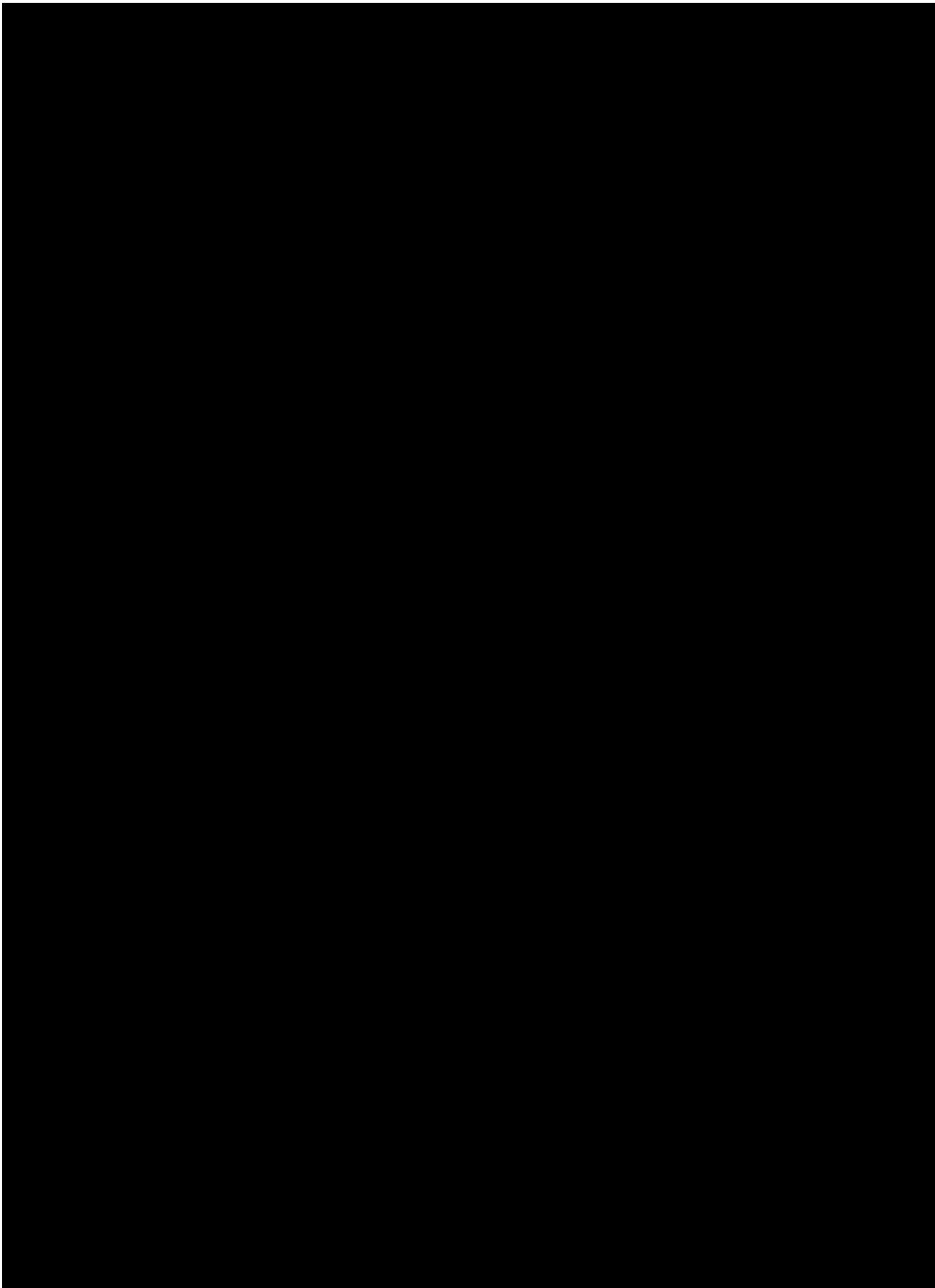
Relevant Documents

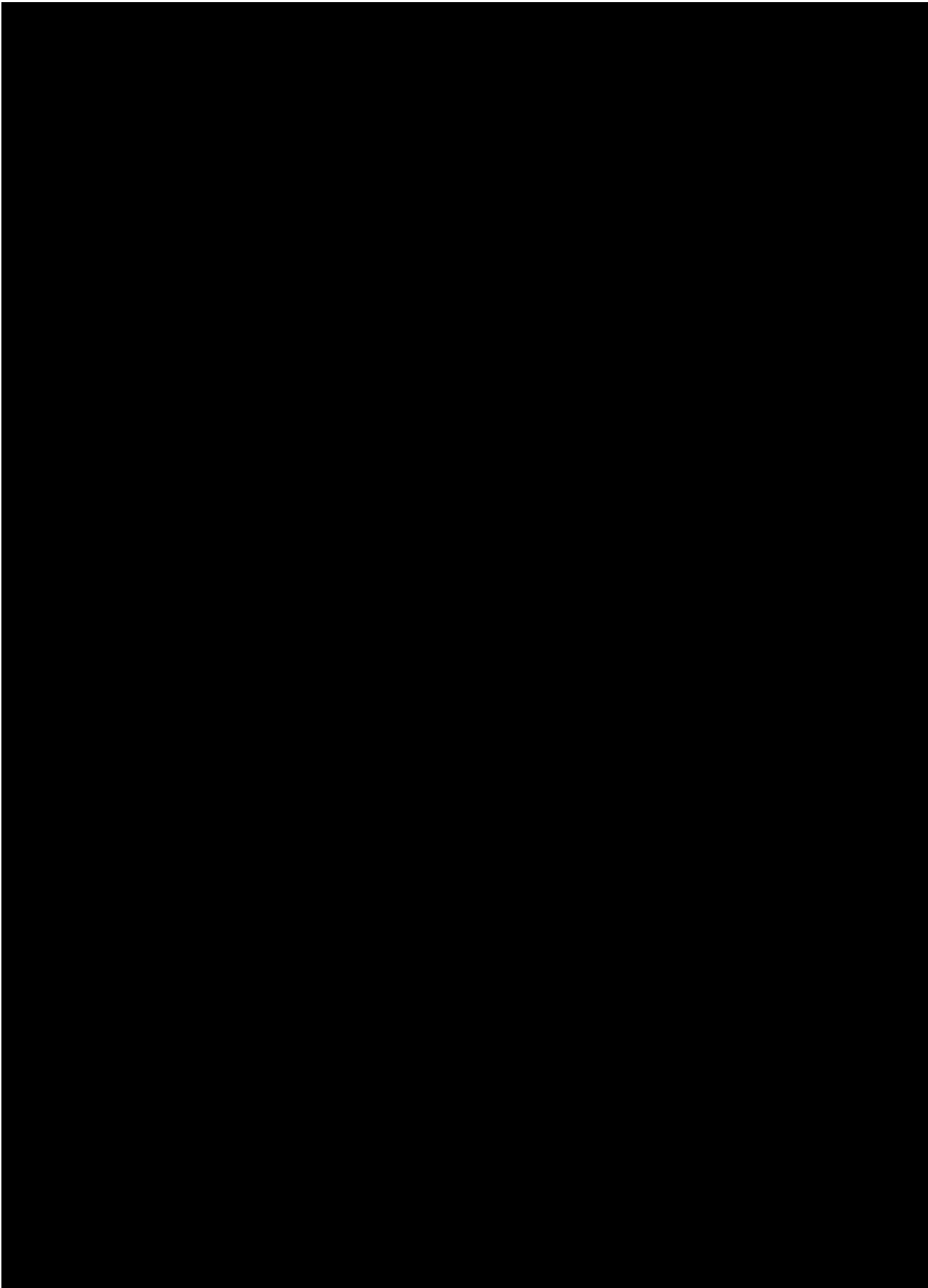
(clause 7)

The Relevant Documents are Documents which give rise to (or record) rights or obligations of CRIA with respect to third parties or Authorities, either in existence as at the date of this Deed or created during the Term. The Relevant Documents as at the date of this Deed include the following:

Document	Version / Date
CRIA's NSW Rail Access Undertaking	





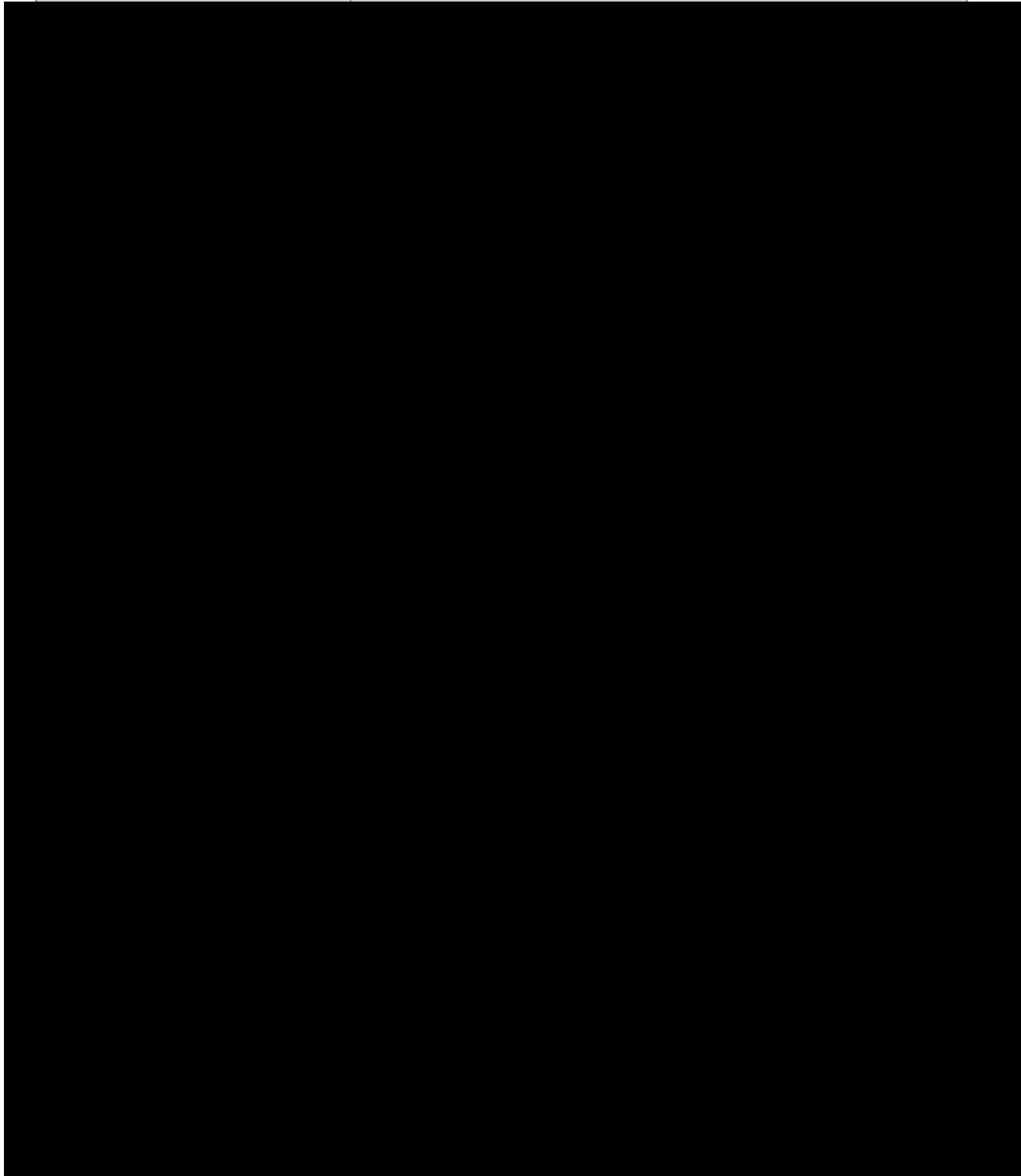


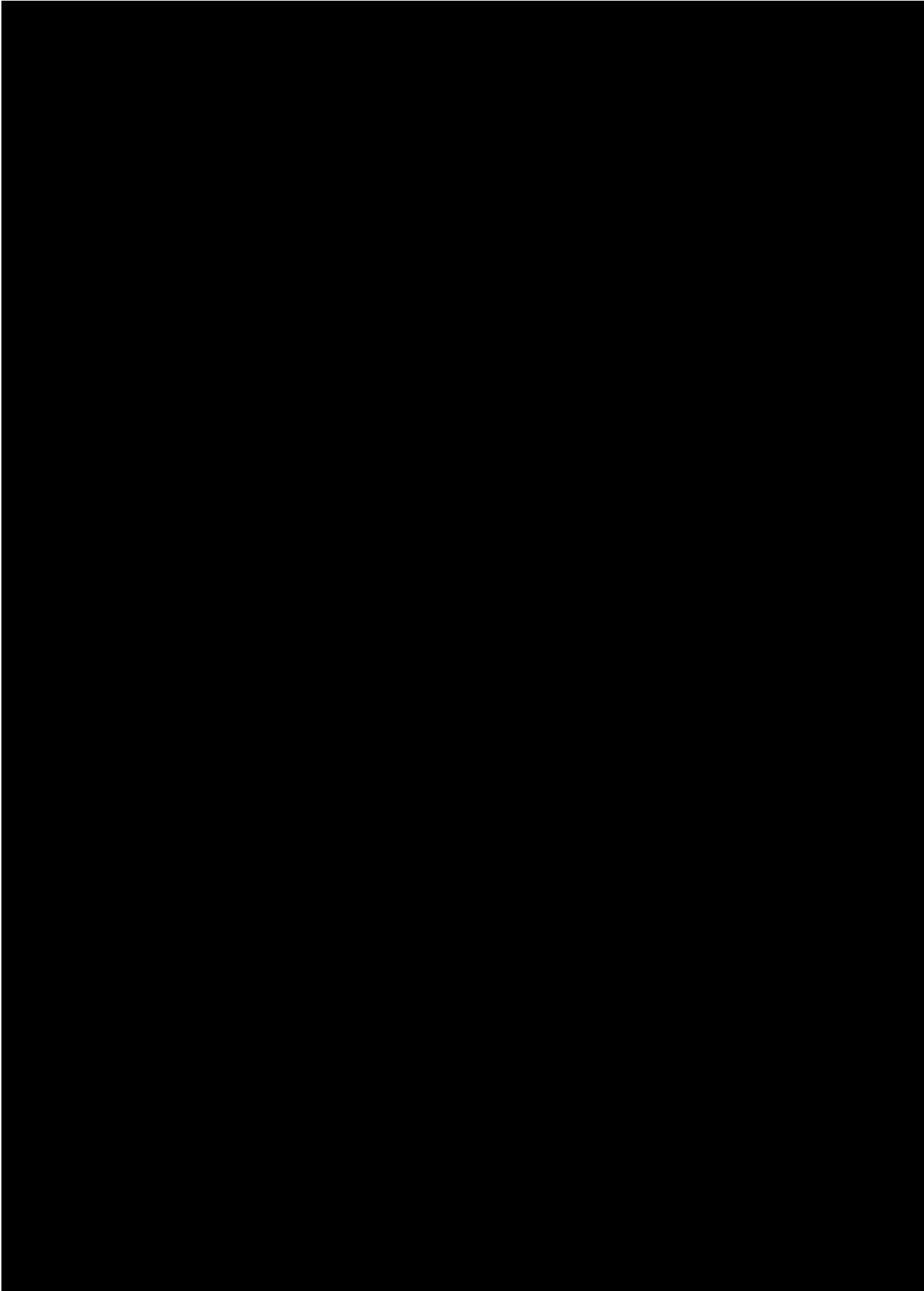
Schedule 4

Key Personnel

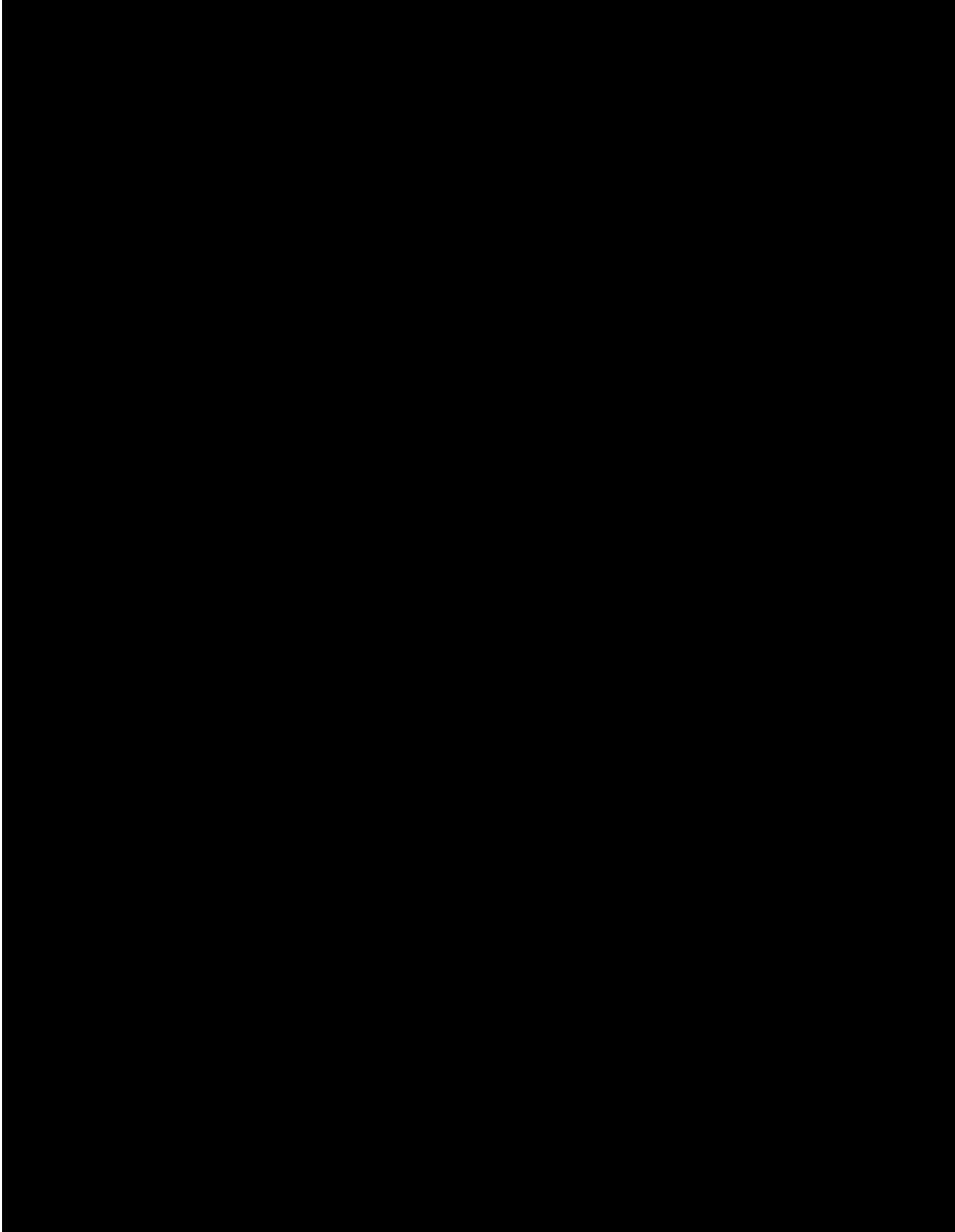
(clause 4.5)

Key Person	Capacity/Role
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Schedule 5



Schedule 6

Expert Determination Agreement

Date	[insert date]
Parties	
1.	Country Rail Infrastructure Authority (ABN 21 298 300 693) of Level 3, 237 Wharf Rd, Newcastle, NSW 2300 (CRIA).
2.	John Holland Rail Pty Ltd (ABN 61 009 252 653) registered in Western Australia of 70 Trenerry Crescent, Abbotsford, Victoria 3067 (Contractor).
3.	[insert name of Expert as agreed between the parties or appointed pursuant to clause 32.5] [(ABN [*]) [registered in [*]] incorporated in [*]] of [*] (Expert).
Recitals	
A	CRIA and the Contractor (together the Parties and each a Party) are parties to a deed (the O&M Deed) under which the Contractor has agreed to manage and maintain the NSW Country Regional Network.
B	By written notice dated [to be inserted], [insert CRIA or the Contractor as applicable] has required that the matter described in Annexure 1, being a matter that the O&M Deed requires or permits to be referred to an Expert for determination, be determined by an Expert appointed under clause 32.5 of the O&M Deed (the Matter).
C	Pursuant to clause 32 of the O&M Deed, the Expert has been appointed to determine the Matter in accordance with the process set out in this Deed.

It is agreed as follows.

1. Appointment of Expert

- (a) The Parties appoint the Expert to determine the Matter in the manner and within the times set out in this Deed and the Expert accepts the appointment on the basis set out in this Deed.
- (b) The Parties agree that:
 - (i) the Expert will act as an expert and not as an arbitrator;

- (ii) neither the determination of the Matter, nor the process required by this Deed is an arbitration and any conference conducted during the determination is not a hearing conducted under any legislation or rules relating to any form of arbitration;
 - (iii) the rules of evidence do not apply to the determination; and
 - (iv) the Expert shall conduct the determination of the Matter in accordance with the Rules for Expert Determination Process set out in Annexure 2 to this Deed.
- (c) If, at any time during the determination, the Expert becomes aware of circumstances that might reasonably be considered to adversely affect the Expert's capacity to act independently or impartially, the Expert shall inform the Parties immediately and, unless the Parties agree otherwise, terminate this Deed.

2. Confidentiality

- (a) All proceedings and submissions relating to the determination (including the fact that any step in the determination is occurring), and all documents prepared for the purposes of the determination (including the Expert's determination), shall be kept confidential between the Parties and the Expert. No such proceedings, submissions or documents, nor any other information relating to or arising out of the determination, may be divulged to any other person, except with the prior written consent of both Parties or as may be required by law or to the extent necessary to give effect to or enforce the Expert's determination.
- (b) The Parties agree that, despite clause 2(a) above, CRIA may disclose any information or material relevant to the dispute to:
 - (i) any financial, legal or technical advisers providing assistance in relation to the expert determination process; or
 - (ii) any New South Wales Government entity.

3. Costs and fees

- (a) As between the Parties and the Expert, CRIA and the Contractor are jointly and severally liable for the payment of the Expert's fees and disbursements, calculated in accordance with the Schedule of Fees and Disbursements set out in Annexure 3 to this Deed. The Parties agree to comply with any Direction from the Expert as to the provision of security deposits in respect of his or her fees and disbursements.
- (b) The Parties agree as between themselves that:
 - (i) they will each pay one half of the Expert's fees and disbursements, calculated in accordance with the Schedule of Fees and Disbursements set out in Annexure 3 to this Deed; and
 - (ii) they will each bear their own costs of and incidental to the preparation of this Deed and their participation in the determination.

4. Exclusion of liability and indemnity

Except in the case of fraud, the Expert will not be liable to either Party for any act or omission by the Expert in the performance or purported performance of this Deed. CRIA and the Contractor jointly and severally indemnify the Expert against all claims arising out of or in any way referable to any act or omission by the Expert (except fraud) in the performance or purported performance by the Expert of the terms of this Deed.

5. Cooperation of the Parties

Each Party agrees to take part in the determination in good faith and to comply with the reasonable requests and Directions of the Expert in relation to the conduct of the determination.

6. Governing Law

This Deed is governed by and is to be construed in accordance with the laws in force in New South Wales.

7. Jurisdiction

- (a) The Parties and the Expert irrevocably submit to the non-exclusive jurisdiction of the courts of New South Wales and the courts to which the appeals from those courts may be made.
- (b) The Parties and the Expert irrevocably waive any objection they may now or in the future have to the venue of any proceedings, and any claim they may now or in the future have that any proceeding has been brought in an inconvenient forum, where that venue falls within clause 7(a).

Country Regional Network Operations and Maintenance

Executed as a Deed in [Insert Location] on [insert date]

The Seal of Country Rail Infrastructure

Authority (ABN 21 298 300 693) was affixed, and the sealing attested by:

Signature of Acting Chief Executive

Name of Acting Chief Executive

Signed, sealed and delivered in accordance with s127 of the Corporations Act by **John Holland Rail Pty Ltd** (ABN 61 009 252 653) in the presence of:

Director Signature

Director/Secretary Signature

Print Name

Print Name

Signed by [**Expert**] in the presence of:

Witness Signature

Signature

Print Name

Annexure 1

The Matter

[To be inserted when it comes time for expert determination]

Annexure 2

Rules for Expert Determination Process

1. Commencement

The expert determination process begins when the Expert accepts an appointment to determine the Matter in accordance with these Rules.

2. Written Submissions

2.1 Within 7 days after the date this process begins, Party A (i.e. the Party who gave notice under clause 32.4 of the O&M Deed) shall, in addition to any particulars provided by Party A under clause 32.4 of the O&M Deed, give the other Party and the Expert a written statement of the Matter referred for Expert determination, any agreed statement of facts and a written submission on the Matter in support of Party A's contentions.

2.2 Within 7 days after the statement in rule 2.1 is served, the other Party shall give Party A and the Expert a written response to Party A's submissions.

2.3 If the Expert considers it appropriate, Party A may reply in writing to the other Party's response in rule 2.2 within the time allowed by the Expert.

2.4 If the Expert decides further information or documentation is required for the determination of the Matter, the Expert may direct one or more Parties to provide such further submissions, information or documents as the Expert may require.

2.5 The Expert shall disclose to both Parties all information and documents received.

2.6 If a Party fails to make a written submission, the Expert may continue with the process.

3. Conference

3.1 The Expert may, if he or she thinks appropriate, call a conference of the Parties. Unless the Parties agree otherwise, the conference will be held in Newcastle.

3.2 At least 5 days before the conference, the Expert shall inform the Parties of the date, venue and agenda for the conference.

3.3 The Parties shall appear at the conference and may make submissions on the subject matter of the conference. If a Party fails to appear at a conference of which that Party had been notified under rule 3.2, the Expert and the other Party may nevertheless proceed with the conference and the absence of that Party will not terminate or discontinue the Expert determination process.

3.4 The Parties:

- (a) may be accompanied at a conference by legal or other advisers; and
- (b) will be bound by any procedural Directions as may be given by the Expert in relation to the conference both before and during the course of the conference.

3.5 The conference shall be held in private.

3.6 If required by any Party, transcripts of the conference proceedings shall be taken and made available to the Expert and the Parties.

4. General

- 4.1 In making a determination or calling or holding a conference, the Expert shall proceed in accordance with the O&M Deed.
- 4.2 Subject to rule 3.3, meetings and discussions with the Expert shall only take place in the presence of both Parties.
- 4.3 The Expert shall:
- (a) inform the Parties of:
 - (i) any relationship or interest with the Parties or their respective officers, employees, consultants or agents;
 - (ii) any interest the Expert has in the matters in dispute; and
 - (iii) any circumstance which might reasonably be considered to adversely affect the expert's capacity to act independently or impartially, immediately upon becoming aware of any such circumstances; and
 - (b) upon making any disclosure under this rule 4.3, unless and until the Parties agree otherwise, terminate the proceedings.

5. The Determination

- 5.1 As soon as possible after receipt of the submissions or after any conference and, in any event not later than 60 days after the Expert's acceptance of appointment, the Expert shall:
- (a) determine the Matter between the Parties; and
 - (b) notify the Parties of that determination.
- 5.2 The determination of the Expert shall:
- (a) be in writing stating the Expert's determination and giving reason;
 - (b) be made on the basis of the submissions (if any) of the parties, the conference (if any) and the Expert's own expertise; and
 - (c) meet the requirements of the O&M Deed.
- 5.3 Subject to rule 5.4 and clause 32.7(c) of the O&M Deed, to the extent permitted by law, the Expert's determination will be final and binding on the Parties.
- 5.4 If the Expert's determination contains a clerical mistake, an error arising from an accidental slip or omission, a material miscalculation of figures, a mistake in the description of any person, matter or thing, or a defect of form, then the Expert shall correct the determination.

6. Costs

Security for costs shall be deposited by both Parties at the commencement of the Expert determination process in accordance with any Direction of the Expert.

7. Modification

These rules may be modified only by agreement of the Parties and, if the Expert has been appointed, the Expert.

Appendix to Rules for Expert Determination Process - Code of Conduct for an Expert

1. The function of the Expert is to make a determination of the Matter in accordance with the O&M Deed and the Expert Determination Agreement, including the Rules and this Code of Conduct.
2. The Expert shall receive the written submissions and responses of the Parties in accordance with the procedures specified in the Rules and may require further information or documentation from the Parties which is reasonably necessary to determine the Matter.
3. The Expert shall decide whether a conference is necessary to receive further information. The Expert shall inform the Parties of the subject matter of any conference and may hear representations only on those matters during any such conference.
4. The Expert shall disclose to both Parties all information and documents received.
5. If a Party fails to make a written submission, the Expert may continue with the process.
6. Subject to rule 3 of the Rules in relation to conferences, meetings and discussions with the Expert shall only take place in the presence of both Parties.

Annexure 3

The Expert's Fees and Disbursements

[To be inserted when it comes time for expert determination]

Schedule 7

Agreed Forms

- 7.1 Approved Form of Unconditional Undertaking
- 7.2 Parent Company Deed of Guarantee
- 7.3 Escrow Deed

Schedule 7.3

Escrow Deed

Date	[insert date]
Parties	<ol style="list-style-type: none">1. Country Rail Infrastructure Authority (ABN 21 298 300 693) of Level 3, 237 Wharf Rd, Newcastle, NSW 2300 (<i>CRIA</i>).2. John Holland Rail Pty Ltd (ABN 61 009 252 653) registered in Western Australia of 70 Trenerry Crescent, Abbotsford, Victoria 3067 (<i>Contractor</i>).3. [DRAFTING NOTE INSERT NAME OF ESCROW AGENT] Limited [DRAFTING NOTE INSERT (ACN / ABN) OF ESCROW AGENT] [registered in [*] incorporated in [*]]of [DRAFTING NOTE INSERT ADDRESS OF ESCROW AGENT] (the <i>Escrow Agent</i>).
Recitals	<p>A The Contractor is required to provide the Escrow Documents to an escrow agent in accordance with the O&M Deed.</p> <p>B The Escrow Agent has agreed to act as the escrow agent for the Escrow Documents.</p> <p>C Each of the Escrow Documents will be provided by the Contractor to the Escrow Agent and held in escrow until released in accordance with this Deed.</p>

It is agreed as follows.

1. Definitions and Interpretation

1.1 Definitions

The following definitions apply unless the context requires otherwise.

Annual Fee means the annual fees set out in Section 1 of the Schedule.

Escrow Document means any document required to be provided by the Contractor to an escrow agent in accordance with the O&M Deed.

Establishment Fee means the establishment fee set out in Section 1 of the Schedule.

Expiry Date means [insert date] (or any later date which the Parties may agree in writing and notify to the Escrow Agent).

GST means the tax imposed by the GST Act and the related imposition Acts or the Commonwealth.

GST Act means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth), as amended from time to time.

Insurance means the insurance (if any) specified in the Special Conditions.

Intellectual Property Rights has the meaning given to that term in the Deed.

O&M Deed means the deed dated [insert date] executed by CRIA and the Contractor in respect of the NSW Country Regional Network.

Party means CRIA or the Contractor.

Tax Invoice has the same meaning as in the GST Act.

Taxable Supply has the same meaning as in the GST Act.

Taxes means taxes (excluding GST), levies, imposts, deductions, charges, withholdings and duties imposed by any Government Agency (including, without limitation, stamp and transaction duties and goods and/or services taxes), (together with any related interest, penalties, fines and expenses in connection with them) whenever such taxes, levies, imposts, deductions, charges, withholdings and duties arise.

Verification means the performance by the Escrow Agent or its nominee approved by CRIA of an agreed series of tests sufficient to satisfy CRIA as to the quality, accuracy, functionality and completeness of the Escrow Documents.

1.2 Interpretation

Headings are for convenience only and do not affect interpretation. The following rules apply unless the context requires otherwise.

- (a) The singular includes the plural and conversely.
- (b) A gender includes all genders.
- (c) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (d) A reference to a person includes a corporation, trust, partnership, unincorporated body or other entity, whether or not it comprises a separate legal entity.
- (e) A reference to a clause or schedule is a reference to a clause of, or a schedule to, this Deed.
- (f) A reference to an agreement or document (including a reference to this Deed) is to that agreement or document as amended, supplemented, novated, varied or replaced from time to time, except to the extent prohibited by this Deed or that other agreement or document.

- (g) A reference to a party to this Deed or another agreement or document includes the party's successors, permitted substitutes and permitted assigns (and, where applicable, the party's legal personal representatives).
- (h) A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
- (i) A reference to *dollars* or \$ is to Australian currency.
- (j) A reference to *writing* includes a facsimile transmission and any means of reproducing words in a tangible and permanently visible form.
- (k) A reference to *conduct* includes an omission, statement or undertaking, whether or not in writing.
- (l) A reference to an *agreement* includes any undertaking, deed, agreement and legally enforceable arrangement, whether or not in writing, and a reference to it includes an agreement (as so defined) in writing and any certificate, notice, instrument or document of any kind.
- (m) Mentioning anything after *includes, including, for example*, or similar expressions, does not limit what else might be included.
- (n) Nothing in this Deed is to be interpreted against a party solely on the ground that the party put forward this Deed or a relevant part of it.

2. Appointment

- (a) Each of the Parties appoints the Escrow Agent as its agent for the purposes of this Deed.
- (b) The Escrow Agent accepts the appointments referred to in clause 2(a).

3. Escrow

3.1 Deposit

- (a) The Contractor shall deliver to the Escrow Agent:
 - (i) one copy of the Escrow Documents within 5 Business Days of the date of this Deed;
 - (ii) updates to the Escrow Documents within 5 business days of the date of any Escrow Documents being updated or at other times agreed by CRIA;
 - (iii) a register of the Escrow Documents, which allows the materials to readily be identified and which provides details of all updates made to the Escrow Documents.
- (c) The Contractor shall deliver the Escrow Documents in a form:
 - (i) that allows them to be readily identified by the Escrow Agent or CRIA;

- (ii) that is unencrypted and which may be read and understood by the Escrow Agent or CRIA, and used by CRIA for any purpose intended under the O&M Deed.

3.2 Custody and Storage

- (a) The Escrow Agent shall retain custody of each Escrow Document delivered to it under this clause 3 until it is released under clause 6 or returned to the Contractor under clause 7 or until the Parties otherwise agree in writing.
- (b) The Escrow Agent shall store the Escrow Documents in a safe and secure manner.
- (c) The Escrow Agent shall carry out any Verification requested by CRIA.

4. Access to Escrow Documents

The Escrow Agent shall not grant access to the Escrow Documents to any person except in accordance with this Deed or as required by law or as agreed in writing by the Parties.

5. Software

5.1 CRIA May Test Software

In respect of Escrow Documents that are software (*Escrow Software*), CRIA may, after providing the Contractor with at least 5 business days notice, conduct tests on the Escrow Software to determine whether the Contractor has met its obligations to provide the Escrow Documents.

5.2 Escrow Agent to Provide Access

The Escrow Agent will provide CRIA with access to the Escrow Software to enable testing under clause 5.1 to be carried out and will, in the presence and with the oversight of the Contractor, allow CRIA to:

- (a) remove the Escrow Software from the custody of the Escrow Agent;
- (b) install, download or copy the Escrow Software onto such standalone computer system or hardware as CRIA may reasonably specify; and
- (c) analyse and conduct reasonable tests in relation to the Escrow Software as provided for under clause 5.1.

Following the testing, CRIA will (in the presence of and with the oversight of the Contractor) ensure that all copies of the Escrow Software are deleted from the computer system or hardware referred to in clause 5.2(b), and the material referred to in clause 5.2(a) is promptly returned to the Escrow Agent.

5.3 Support to Provide Assistance with Testing

The Contractor must, at CRIA's request and at no charge, give CRIA all reasonable assistance to enable CRIA to carry out the tests referred to in clause 5.1.

5.4 Failure to Deposit Correct Version in Escrow

If testing by CRIA reveals that the Escrow Software is not, or does not contain, the correct version of the software, the Contractor shall, at no charge, deliver a copy of the correct version of the Escrow Software to the Escrow Agent within 2 business days of the completion of testing.

6. Release of Escrow Documents to CRIA

6.1 CRIA May Request Release

If CRIA becomes entitled to require the release of the Escrow Documents in accordance with the O&M Deed, CRIA may notify the Escrow Agent and the Contractor of this, and request that the Escrow Agent release the Escrow Documents to CRIA (*CRIA Notice*).

6.2 Contractor May Dispute Release

If the Contractor disputes the CRIA Notice, then it may notify the Escrow Agent and CRIA that it objects to the release of the Escrow Documents on the basis that the entitlement relied on by CRIA does not exist and the Contractor shall provide substantial evidence to support its objection (*Contractor Objection*).

6.3 Release of Escrow Documents to CRIA

Unless otherwise ordered by a court, the Escrow Agent shall release the Escrow Documents to CRIA:

- (a) if no Contractor Objection is received, within 5 business days after the Escrow Agent receives a CRIA Notice; or
- (b) if a Contractor Objection is received, within 5 business days after the Contractor Objection is received.

7. Release to Contractor

7.1 Release of Escrow Documents to Contractor

If CRIA has given the Escrow Agent written notice of its consent to the release of the Escrow Documents to the Contractor, then the Contractor may request that the Escrow Agent release the Escrow Documents to the Contractor, and the Escrow Agent shall immediately release the Escrow Documents to the Contractor.

7.2 No Other Release to Contractor is Permitted

Other than as provided for in clause 7.1 and clause 8, the Escrow Agent shall not release any Escrow Documents to the Contractor.

8. Release by Agreement or by Court Order

8.1 Release by Agreement

Within 5 business days after receipt of a joint notice from the Contractor and CRIA requesting release of the Escrow Documents, the Escrow Agent shall release the Escrow Documents in accordance with that notice.

8.2 Release by Court Order

Each Party acknowledges that the Escrow Agent shall release the Escrow Documents in accordance with any court order requiring the Escrow Agent to do so.

8.3 Notice to CRIA

The Escrow Agent shall immediately notify CRIA if it receives a court order (or any document that refers to a court order being sought) in relation to the Escrow Documents.

9. Fees and charges

9.1 Payment of Fees

The Contractor shall pay the Establishment Fee and Annual Fee (as set out in Schedule 1) to the Escrow Agent within 20 business days of the Contractor's receipt of the invoices referred to in clause 9.3.

9.2 Annual Fee Subject to Change

The Escrow Agent may increase the Annual Fee for any year by giving 20 business days notice to the Contractor. An increase shall not exceed the increase in the Consumer Price Index (all groups – weighted average of 8 capital cities) published by the Australian Bureau of Statistics.

9.3 Invoices

The Escrow Agent may issue invoices as follows:

- (a) for the Establishment Fee, on or after the date of this Deed, to the Contractor;
- (b) for the Annual Fee, on or after each anniversary of the date of this Deed, to the Contractor; and
- (c) for reasonable delivery costs incurred by the Escrow Agent in relation to testing or carrying out Verification or releasing the Escrow Documents, to the Party that requested the release, testing or Verification.

All invoices issued by the Escrow Agent shall state the basis on which fees are charged and, in respect of amounts invoiced pursuant to sub-clause (c) above, shall attach evidence justifying the amounts claimed.

9.4 GST Inclusive Prices

Unless otherwise stated, the fees include GST, but exclude Taxes.

9.5 Taxes

The Contractor is responsible for the payment of all Taxes arising from or relating to this Deed, regardless of whom they are imposed on, and indemnifies CRIA and the Escrow Agent against any costs or expenses that CRIA or the Escrow Agent incur as a result of the Contractor failing to meet this obligation.

10. GST

10.1 GST Gross Up

Subject to clauses 10.2, 10.3 and 10.4, if GST is imposed on any Taxable Supply made by a party under this Deed (*Supplying Party*), then the party receiving the Taxable Supply (*Receiving Party*) shall pay, in addition to any consideration payable or to be provided under this Deed for the supply, an additional amount calculated by multiplying the prevailing GST rate by the consideration for the relevant Taxable Supply payable, or to be provided, by the Receiving Party under any other clause in this Deed.

10.2 Tax Invoice

Payment for Taxable Supplies is conditional upon the issue of a Tax Invoice. Each Tax Invoice shall provide full details of the Taxable Supply, the subject of the Tax Invoice, including any details the payer of the fee may specifically require and such other details required to ensure that it is a Tax Invoice.

10.3 Adjustment

If the amount of GST recovered by the Supplying Party from the Receiving Party differs from the amount of GST payable at law by the Supplying Party (or an entity grouped with the Supplying Party for GST purposes) in respect of the supply, the amount payable by the Receiving Party to the Supplying Party will be adjusted accordingly.

10.4 Reimbursements

Where one party (*Payer*) is liable to reimburse another party (*Payee*) for any expenditure incurred by the Payer (*Expenditure*), the amount reimbursed by the Payer shall be the GST exclusive Expenditure plus any GST payable to the Payee by the Payer pursuant to clause 10.1.

11. Ownership, Risk and Insurance

11.1 Acknowledgements

Each Party acknowledges that:

- (a) nothing in this Deed assigns any Intellectual Property Rights in the Escrow Documents;
- (b) title in the physical media on which the Escrow Documents is stored passes from the Contractor to CRIA on release of the Escrow Documents to CRIA;

- (c) if this Deed requires the Escrow Agent to take out Insurance to cover loss of, or damage to, the Escrow Documents or associated media, then the Escrow Agent will bear the risk of that loss or damage;
- (d) if this Deed does not require the Escrow Agent to take out Insurance to cover loss of, or damage to, the Escrow Documents or associated media, then risk of that loss or damage remains with the Contractor and does not pass to the Escrow Agent; and
- (e) unless specified in the Special Conditions, the Escrow Agent will not take out any insurance policies to cover loss of or damage to the Escrow Documents or associated media.

11.2 Loss or Damage to Escrow Documents

Without limiting any rights or remedies that any of the parties may have, if any of the Escrow Documents or associated media is lost, damaged or destroyed while in the Escrow Agent's control:

- (a) the Escrow Agent shall promptly notify each Party; and
- (b) the Contractor shall provide the Escrow Agent with replacement Escrow Documents within 2 Business Days of receiving such notice from the Escrow Agent.

11.3 Act or Omission of Escrow Agent

Notwithstanding any other provision of this Deed, if any of the Escrow Documents or associated media is lost, damaged or destroyed while in the Escrow Agent's control, and that loss damage or destruction is caused by:

- (a) the Escrow Agent's breach of this Deed; or
- (b) the negligent, wilful or unlawful act or omission of the Escrow Agent,

then the Escrow Agent shall, at its own expense, reimburse the Contractor for the reasonable cost of replacing the relevant part or parts of the Escrow Documents.

12. Exclusions and Limitations

12.1 Scope of Exclusions and Limitations

Nothing in this Deed excludes or limits the application of any provision of any statute (including the *Trade Practices Act 1974* (Cth)) where to do so would:

- (a) contravene that statute; or
- (b) cause any part of this clause to be void.

12.2 Exclusion of Implied Warranties

The Escrow Agent excludes all implied conditions and implied warranties (except any implied condition or implied warranty the exclusion of which would contravene any statute or cause this clause to be void) (*Implied Condition*).

12.3 Cap on Liability

Subject to clause 12.4, the Escrow Agent's liability to each Party for breach of any express provision of this Deed, for any Implied Condition or for any other cause of action (including, but not limited to, negligence) is limited to refunding the unexpired portion of the Annual Fee applicable to the calendar year in which the breach occurred.

12.4 Exception

The cap on the Escrow Agent's liability in clause 12.3 does not apply to:

- (a) any breach of clause 6.3 by the Escrow Agent;
- (b) any liability of the Escrow Agent under clause 11.3; or
- (c) any claims covered by Insurance.

13. Termination

13.1 Upon Release of Escrow Documents

This Deed terminates immediately if the Escrow Documents are released to CRIA or the Contractor under this Deed.

13.2 Upon Provision of Notice

This Deed may be terminated by:

- (a) the Escrow Agent giving 90 days written notice to the Contractor and CRIA;
- (b) CRIA giving 90 days written notice to the Contractor and the Escrow Agent; or
- (c) the Contractor giving 90 days written notice to the Escrow Agent and CRIA.

A notice by CRIA under clause 13.2(b) shall state that CRIA no longer requires the Escrow Documents to be held by the Escrow Agent, if that is the case.

13.3 By CRIA or Contractor

Either the Contractor or CRIA may, by giving notice to the Escrow Agent (with a copy to CRIA or the Contractor, as applicable), terminate this Deed with immediate effect if:

- (a) the Escrow Agent has become subject to any form of insolvency administration; or
- (b) the Escrow Agent commits a material breach of this Deed, and the breach is not remedied within 10 business days of the Escrow Agent receiving a notice detailing the breach and requiring that it be rectified.

13.4 Consequences of an Escrow Agent Termination

- (a) Within 10 business days after the termination of this Deed under clause 13.2(a) or 13.2(b) or 13.3, the Contractor shall, if CRIA so directs, enter into another agreement between the Contractor, CRIA and a new escrow service provider in a form substantially similar to this Deed.
- (b) If CRIA notifies the Contractor that it does not intend to direct the Contractor to enter into a new escrow agreement then, within 5 business days of the effective

date of such notice, CRIA shall, if the Contractor so directs, enter into another agreement between the Contractor, CRIA and a new escrow service provider in a form substantially similar to this Deed.

- (c) If CRIA does not direct the Contractor to enter into a new agreement under clause 13.4(a) within 10 business days of termination of this Deed, then it will be deemed to have given notice to the Contractor under clause 13.4(b).

13.5 Return of Escrow Documents on Termination

- (a) Subject to clause 13.5(b), if this Deed terminates for any reason other than under clause 13.1, then, unless a new escrow agreement is entered into within the period allowed in accordance with clause 13.4, the Escrow Agent shall, within a further 5 business days, deliver the Escrow Documents to CRIA.
- (b) If CRIA notifies the Contractor that it does not intend to direct the Contractor to enter into a new escrow agreement under clause 13.4(b) and CRIA notifies the Contractor (or has notified the Contractor) under clause 13.2(b), that it no longer requires the Escrow Documents to be held by the Escrow Agent, then the Escrow Documents shall be returned to the Contractor within 5 business days after request by the Contractor.

14. Escrow Agent

14.1 Duties of Escrow Agent

The Escrow Agent has no duties or responsibilities except those expressly contained in this Deed. The Escrow Agent will not be taken to be a trustee or fiduciary acting for the benefit of any of the Parties.

14.2 Not Obligated to Consult

The Escrow Agent is only subject to, and obliged to recognise, Directions or notices given in accordance with this Deed and is entitled to rely on any notice which it in good faith believes to be genuine.

14.3 Delegation

The Escrow Agent may authorise any of its employees to perform any of its obligations under this Deed.

14.4 Liability of Escrow Agent

Neither the Escrow Agent nor any of its officers, agents or employees, is responsible to the Parties for, or will be liable in respect of:

- (a) any failure by any Party to perform its obligations; or
- (b) any action taken or omitted to be taken by it or them under this Deed, except in the case of its or their own gross negligence or wilful misconduct.

14.5 Indemnity

- (a) The Parties indemnify the Escrow Agent against any claim, loss, damage, liability, cost and expense that may be sustained or incurred by the Escrow Agent duly exercising its rights or performing its duties in relation to this Deed except to the extent any such claim, loss, damage, liability, cost or expense arises from the Escrow Agent's negligent or unlawful acts or omissions.
- (b) This indemnity is a continuing obligation. It survives release of the Escrow Documents and the Expiry Date.

15. Confidentiality

- (a) Subject to clause 15(b), the Escrow Agent shall ensure that the Escrow Documents, the contents of the Escrow Documents and the Escrow Agent's appointment under this Deed are kept confidential and are not disclosed or published other than in accordance with this Deed.
- (b) The Escrow Agent may disclose the Escrow Documents, the contents of the Escrow Documents or the Escrow Agent's appointment under this Deed:
 - (i) if it is required to do so by any applicable law or order of any court, government, semi-government, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity acting within its powers, but only to the extent required to comply with the applicable law or order; or
 - (ii) in the case of the Escrow Agent's appointment, if it is in the public domain other than as a result of a breach of this Deed, but only to the extent they are already in the public domain.

16. Further Assurances

Each Party shall do anything (including executing agreements and documents) necessary or desirable to give full effect to this Deed and the actions and transactions contemplated by it.

17. Notices

Any notice, demand, consent or other communication (a *Notice*) given or made under this Deed:

- (a) shall be in writing and signed by a person duly authorised by the sender;
- (b) shall be delivered to the intended recipient at the address or fax number below or the address or fax number last notified by the intended recipient to the sender after the date of this Deed:
 - (i) to CRIA [insert address]
Attention: [insert name]
Fax No: [insert Fax number]
 - (ii) to Contractor [insert address]
Attention: [insert name]
Fax No: [insert Fax number]
 - (iii) to Escrow Agent [insert address]
Attention: [insert name]
Fax No: [insert Fax number]
- (c) will be taken to be duly given or made when delivered, received or left at the above fax number or address. If delivery or receipt occurs on a day that is not a business day in the place to which the Notice is sent or is later than 4.00 pm (local time) at that place, it will be taken to have been duly given or made at the commencement of business on the next business day in that place.

18. Non-derogation

Nothing in this Deed in any way limits, derogates from or affects any right, power, privilege or immunity in whatever form that CRIA or any governmental agency or any other person has or may have under or by virtue of any Law and no action for breach of this Deed will lie against CRIA for the exercise of any such right, power, privilege or immunity.

19. Transfer of Functions or Assets

The Contractor and the Escrow Agent acknowledge that CRIA may be reconstituted, renamed, dissolved, replaced or restructured and that some or all of the powers, functions, assets, liabilities or responsibilities of CRIA may be transferred to or vested in another entity.

20. Assignment and Change in Control

- (a) Neither the Contractor nor the Escrow Agent may assign, novate, mortgage, charge, encumber or otherwise deal with this Deed or any of its interests, rights and obligations under or in connection with this Deed without the prior written

consent of CRIA (which consent may be withheld or given (unconditionally or subject to conditions) in CRIA's absolute discretion).

- (b) CRIA:
 - (i) subject to clause 20(b)(ii), may assign, novate, mortgage, charge, encumber or otherwise deal with this Deed or any of its interests, rights and obligations under or in connection with this Deed at any time with the prior written consent from the Contractor (such consent not to be unreasonably withheld or delayed and not to be withheld if CRIA will continue to have (or the party taking the benefit of the assignment, novation or other dealing has) the financial capacity to perform CRIA's remaining obligations;
 - (ii) may, in its absolute discretion and without any consent from the Contractor, assign, novate, mortgage, charge, encumber or otherwise deal with this Deed, any security or any of its interests, rights and obligations under or in connection with this Deed at any time to any party or parties that the New South Wales Government nominates to assume some or all of CRIA's functions, rights or obligations.
- (c) The Contractor and the Escrow Agent shall, if requested by CRIA, execute a deed on terms reasonably required by CRIA giving effect to the assignment, novation, charge, mortgage, encumbrance or other dealing.

21. General

21.1 Amendments

A provision of this Deed or a right created under it, may not be varied or waived except in writing, signed by the party or parties to be bound.

21.2 Discretion in Exercising Rights

A party may exercise a right or remedy or give or refuse its consent in any way it considers appropriate (including by imposing conditions), unless this Deed expressly states otherwise.

21.3 Partial Exercise of Rights

If a party does not exercise a right or remedy at a given time, the party may still exercise it later.

21.4 Approvals and Consents

By giving its approval or consent, a party does not make or give any warranty or representation as to any circumstance relating to the subject matter of the consent or approval.

21.5 Remedies Cumulative

The rights and remedies provided in this Deed are in addition to other rights and remedies given by law independently of this Deed.

21.6 Operation of Law

Rights given to the parties under this Deed and the parties' liabilities under it are not affected by anything which might otherwise affect them by law.

21.7 Indemnities

The indemnities in this Deed are continuing obligations, independent from the other obligations of the parties under this Deed and continue after this Deed ends. It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity under this Deed.

21.8 Relationships

Nothing contained or implied in this Deed constitutes a party the partner, agent, or legal representative of another party for any purpose or creates any partnership, agency or trust, and no party has any authority to bind another party in any way.

21.9 Entire Agreement

This Deed constitutes the entire agreement between the parties relating to its subject matter and supersedes all prior understandings, agreements and arrangements in connection with that subject matter.

21.10 Survival

Clauses 1, 9.4, 9.5, 10, 12, 13.4, 13.5, 14.4, 14.5, 15, 18, 19, 20, 21 and 22 survive the termination (for any reason) of this Deed.

22. Governing Law and Jurisdiction

This Deed is governed by the laws of New South Wales. In relation to it and related non-contractual matters, each party irrevocably submits to the non-exclusive jurisdiction of courts with jurisdiction there, and waives any right to object to the venue on any ground.

23. Counterparts

This Deed may be executed in any number of counterparts, each of which shall be deemed an original. All counterparts together will be taken to constitute one instrument.

Executed as a Deed in [Sydney] on [insert date]

The Seal of Country Rail Infrastructure Authority (ABN 21 298 300 693) was affixed, and the sealing attested by:

Signature of Acting Chief Executive

Name of Acting Chief Executive

Signed, sealed and delivered in accordance with s127 of the Corporations Act by **John Holland Rail Pty Ltd** (ABN 61 009 252 653) in the presence of:

Director Signature

Print Name

Director/Secretary Signature

Print Name

Signed, sealed and delivered in accordance with s127 of the Corporations Act by **[Insert Name of Escrow Agent]** in the presence of:

Director Signature

Print Name

Director/Secretary Signature

Print Name

Schedule 8

CRIA's Statement of Business Ethics



Statement of Business Ethics

Purpose and scope

This Statement explains the expected standards of conduct for Country Rail Infrastructure Authority's business dealings. The ethical standards described are not an added extra, they are integral to sound business practice.

This Statement is designed to ensure that business relationships between CRIA and service providers/contractors are fair and productive for all.

The likely reward for maintaining ethical business dealings is public confidence and repeat business.

Responsibility

CRIA expects its employees to behave ethically and comply with its Code of Conduct.

All individuals or organisations that deal with CRIA must apply the standards of ethical behaviours described in this Statement. These standards comply with NSW Government guidelines for procurement, contracting and market testing.

Why is compliance important

By complying with this Statement you will be able to advance your business objectives in a fair and ethical manner. All suppliers of goods and services to CRIA are required to comply with this Statement so compliance will not disadvantage you in any way.

Our key business principles

The principle of best value for money is at the core of all CRIA's business relationships with suppliers of goods and services.

Best value for money does not automatically mean the lowest price.

CRIA will balance all relevant factors including initial costs, whole of life costs, quality, reliability and timeliness to determine actual value for money.

Part of obtaining best value for money also involves ensuring all our business relationships are ethical, fair and consistent.

What you can expect from CRIA

We will:

- Comply with CRIA and Government policies and procedures;
- Show fairness in our treatment of all individuals or organisations that supply goods or services to CRIA;
- Encourage fair and open competition while seeking value for money;
- Try to minimise costs to suppliers participating in the procurement process;
- Protect commercial-in-confidence information;
- Deal honestly with suppliers and pay accounts on time;

- Always be accountable and act in the public interest;
- Avoid situations where private interests conflict with public duty;
- Not solicit or accept financial or other benefits from a supplier for performing official duties; and
- Respond to reasonable requests for advice and information without delay

What CRIA asks of you

We require all private sector providers of goods and services to:

- Respect the conditions and requirements stated in documents supplied by CRIA;
- Comply with any codes and practises that apply;
- Respect the obligation of CRIA staff to comply with government procurement policies;
- Not act fraudulently or secretly;

- Prevent the unauthorised release of privileged or confidential information such as commercial-in-confidence information;
- Not discuss CRIA dealings with the media without first obtaining CRIA approval;
- Respond to reasonable requests for advice and information; and
- Not offer CRIA employees or contract staff any financial or other inducements.

Some practical guidelines

Entertainment

Suppliers should not pay for any form of entertainment for CRIA employees. Likewise, CRIA employees are generally not entitled to use Government funds to pay for entertainment.

Lunches etc

CRIA employees are expected to pay for all their own meals.

CRIA discourages external parties from providing CRIA employees with benefits such as social lunches.

Employee participation is permitted only if a clear

underlying business purpose exists and the value and frequency of such functions is not excessive.

Gifts

CRIA discourages external parties from offering or giving gifts to CRIA staff and there should be no expectation that any gifts will be provided.

Travel and accommodation

CRIA meets all business travel and accommodation costs for its employees.

Confidentiality

Information which is marked confidential, or which a reasonable person would expect to be confidential, should be treated as such. The information could be in various formats such as hardcopy documents or electronically stored.

Contractors should not assume they have a claim to intellectual property unless their contract has specifically negotiated to address the issue.

Communications between parties

All communications should be clear and direct with decisions explained if required and where appropriate.

Contractors and Subcontractors

All contracted and subcontracted employees are expected to comply with this statement. If you employ subcontractors in your work for CRIA you must make them aware of this Statement and ensure they comply with it.

Use of CRIA equipment and resources

Where suppliers to CRIA are required and authorised to use CRIA equipment or resources, such use must only be to conduct CRIA work. Such work must be carried out in an efficient, effective and economical manner.

Contracting former CRIA employees

Former public sector employees who have taken voluntary redundancy are generally required to refund some or all of their severance payment if it covers a period for which they are engaged as a contractor to CRIA, whether directly or through a company.

Any organisation intending to use a current or former CRIA employee for contract work with CRIA should first discuss this with CRIA.

This Statement protects CRIA, individuals and your organisation from any potential accusations of impropriety, using influence or conflict of interest.

For more information

☎ 0249 626425

☎ 0249 626449

✉ contact@countryrail.nsw.gov.au

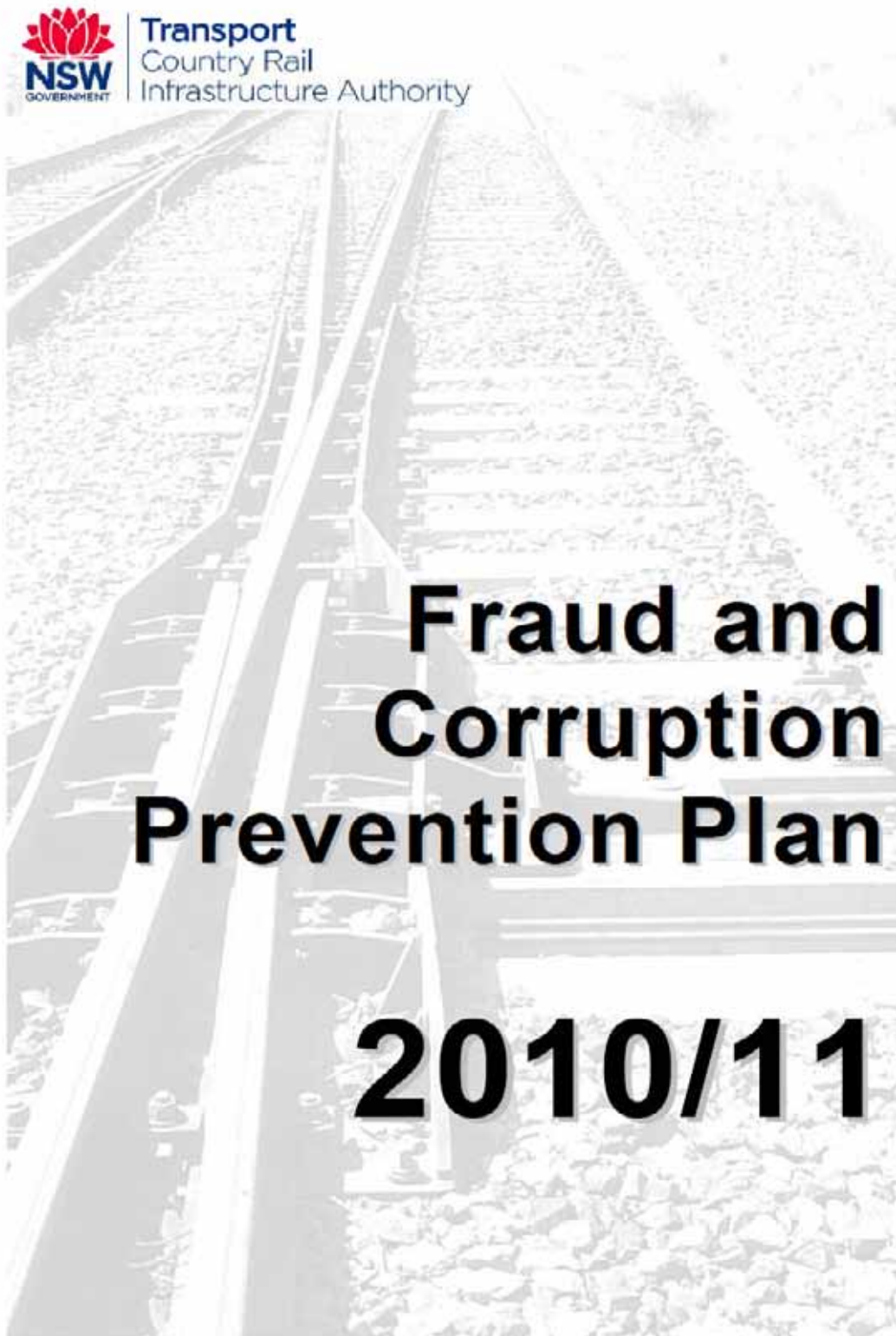
🌐 www.countryrail.nsw.gov.au



Transport
Country Rail
Infrastructure Authority

Schedule 9

CRIA's Fraud and Corruption Prevention Plan



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1. INTRODUCTION

In the conduct of all of its business activities the Country Rail Infrastructure Authority (CRIA) is committed to preventing maladministration, fraud and corruption. CRIA promotes an organisation that behaves ethically and professionally to ensure community confidence and trust in CRIA.

The framework and risk management approach described in this plan supports CRIA's commitment to the values described in the Fraud and Corruption Prevention Policy.

This plan has been developed to clearly document the arrangements that CRIA has in place for the investigation and prevention of fraud and corruption. As such it is a reference document that details policies, standards, procedures and other key systems and documents.

1.1 Definition of Fraud and Corruption

AS 8001 – 2008 describes fraud as:

"Dishonest activity causing actual or potential financial loss to any persons or entity including theft of moneys or other property by employees or persons external to the entity and whether or not deception is used at the time, immediately before or immediately following the activity. This also includes the deliberate falsification, concealment, destruction or use of falsified documentation used or intended for use for a normal business purpose or for improper use of information or position."

AS 8001 – 2008 describes corruption as:

"Dishonest activity in which a director, executive, manager, employee or contractor of an agency acts contrary to the interests of the agency and abuses his/her position of trust in order to achieve some personal gain or advantage for him or herself or for another person or entity."

1.2 Code of Conduct

CRIA's Code of Conduct describes the fundamentals of CRIA's organisational culture and sets out the standard of behaviour required from CRIA employees and contractors.

1.3 Relationship with Other Plans

This plan relates to CRIA's Safety and Risk Plan in that the risks associated with fraud and corruption are also managed within the framework of CRIA's Risk Management Policy (POL 001) and Risk Management Standard (GEN STD 001)

which are underpinned by AS/NZS 4360, Risk Management. As a specialist risk area fraud and corruption risks are managed under a separate discrete plan.

For major procurement projects separate probity plans may be developed to control fraud and corruption risks in accordance with CRIA's procurement procedures and Statement of Business Ethics.

1.4 Responsibilities for Fraud and Corruption Control

Fraud and corruption control is the responsibility of everyone in the organisation.

More specifically the CRIA CE, Audit and Risk Committees and senior management should be aware of their responsibilities and the circumstances that may indicate the possibility of fraud and corruption.

FRAUD AND CORRUPTION PREVENTION		
ROLES	RESPONSIBILITIES	DOCUMENTATION
CRIA's Fraud and Corruption control is first set by its Chief Executive. The CE also provides organisation leadership on fraud and corruption control	Setting the Strategic Direction, Ensuring effective Risk Management processes are in place; Determining the policy to govern CRIA; Ensuring compliance with Law; and Establishing values and standards. Creating a culture based on prevention & reporting; Promoting compliance with Policy and Code of Conduct standards; and Ensuring procedures in place and known organisation wide	<ul style="list-style-type: none"> ➤ Approve the Code of Conduct ➤ Approve the Fraud and Corruption Prevention Policy ➤ Approve the Fraud and Corruption Prevention Plan ➤ Approve Statement of Business Ethics
CRIA's Managers are at the front-line of preventing Fraud and Corruption	Making decisions ethically; Managing CRIA's resources efficiently; and Complying with CRIA's Code of Conduct & Statement of Business Ethics	<ul style="list-style-type: none"> ➤ Understands and complies with the Code of Conduct
All employees of CRIA have a role in preventing Fraud and Corruption	Being aware of CRIA's Codes of Conduct; Carrying out work in an ethical manner, and Reporting any incident of F&C or serious misconduct.	<ul style="list-style-type: none"> ➤ Understands and complies with the Code of Conduct
Contractors to CRIA must comply with CRIA's processes to prevent Fraud and Corruption.	Carrying out their work in accordance with CRIA's values.	<ul style="list-style-type: none"> ➤ Understands and complies with the Statement of Business Ethics
CRIA's General Manager Risk and Compliance provides advice and support to identify	Ensuring risk controls are in place; and Coordinating risk management	<ul style="list-style-type: none"> ➤ Maintain Risk Register ➤ Review Fraud

and mitigate risks of Fraud and Corruption		and Corruption Prevention Plan
CRIA's General Manager Commercial holds an important role to establish and maintain financial protocol and business standards which include financial Fraud and Corruption controls.	Ensuring Financial controls are in place.	<ul style="list-style-type: none"> ➤ Approve Finance Procedures
CRIA's Corporate Counsel ensures legal compliance and provides for confidential reporting and investigation of fraud and corruption	Ensuring Legal controls are in place; and Ensuring employee's privacy is protected should they report Fraud and Corruption under Protected Disclosure. Ensuring allegations of misconduct are investigated, including any incident of fraud & corruption	<ul style="list-style-type: none"> ➤ Approve Protected Disclosure Procedure ➤ Produce investigation reports
CRIA's Support Services Coordinator plays an important role in developing the code of conduct, educating staff in correct behavior and advising on discipline procedures.	Providing support to managers in managing disciplinary procedures; Inducting employees on the code of conduct, and Ensuring HR controls are in place.	<ul style="list-style-type: none"> ➤ Approve Discipline Procedure ➤ Review Code of Conduct ➤ Compliance records ➤ Training Needs Analysis and Plan
CRIA's Audit and Risk Committee oversees and monitors Fraud and Corruption controls.	Determining whether appropriate systems and processes are in place to prevent and effectively investigate any incident of Fraud and Corruption.	<ul style="list-style-type: none"> ➤ Review Fraud and Corruption Plan ➤ Review and oversee recommendation from internal and external audits
Chief Audit Executive / Internal Auditors independently manage the internal audit function in accordance with the NSW Treasury Policy & Guidelines Paper TPP09-5 'Internal Audit and Risk Management Policy for the NSW Public Sector'.	Develops, manages and implements Internal Audit Plan.	<ul style="list-style-type: none"> ➤ Develops Annual Financial Audit Plan ➤ Provides audit reports to the Audit and Risk Committee and CE
CRIA's Executive Safety and Risk Committee review performance of the management of Fraud and Corruption Prevention.	Monitoring incidents and investigation results.	<ul style="list-style-type: none"> ➤ Review CRIA's Risk Register including Fraud and Control risks

2. PLANNING AND RESOURCING

2.1 Program for Fraud Control Planning and Review

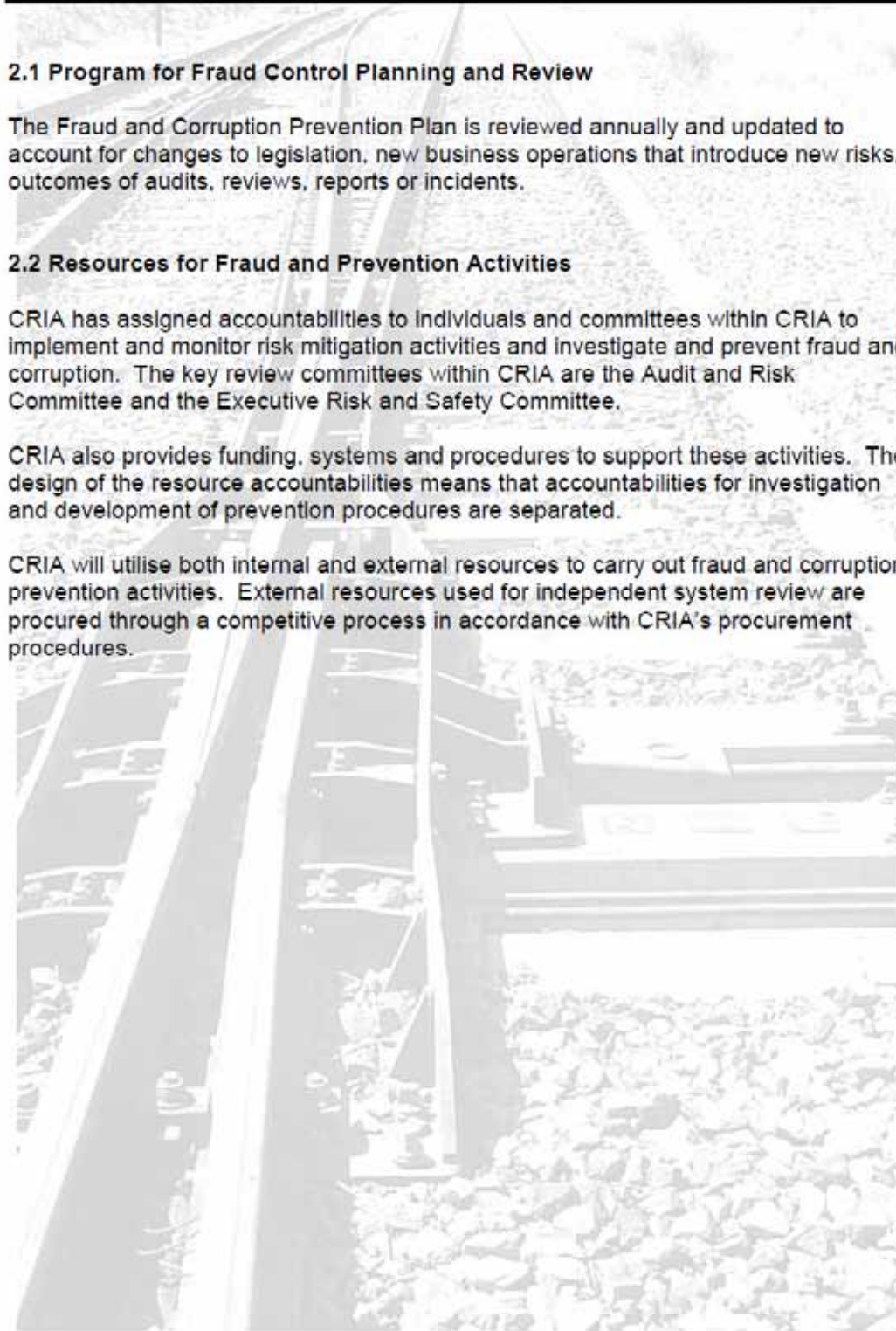
The Fraud and Corruption Prevention Plan is reviewed annually and updated to account for changes to legislation, new business operations that introduce new risks, outcomes of audits, reviews, reports or incidents.

2.2 Resources for Fraud and Prevention Activities

CRIA has assigned accountabilities to individuals and committees within CRIA to implement and monitor risk mitigation activities and investigate and prevent fraud and corruption. The key review committees within CRIA are the Audit and Risk Committee and the Executive Risk and Safety Committee.

CRIA also provides funding, systems and procedures to support these activities. The design of the resource accountabilities means that accountabilities for investigation and development of prevention procedures are separated.

CRIA will utilise both internal and external resources to carry out fraud and corruption prevention activities. External resources used for independent system review are procured through a competitive process in accordance with CRIA's procurement procedures.



3. FRAUD AND CORRUPTION PREVENTION

3.1 Implementing and Maintaining the Integrity Framework

CRIA maintains a governance, management, and enterprise wide risk management framework that contains risk controls designed to prevent, detect and deal with fraud and corruption risks.

The Governance and Management Framework for managing fraud and corruption is shown in Diagram 1.

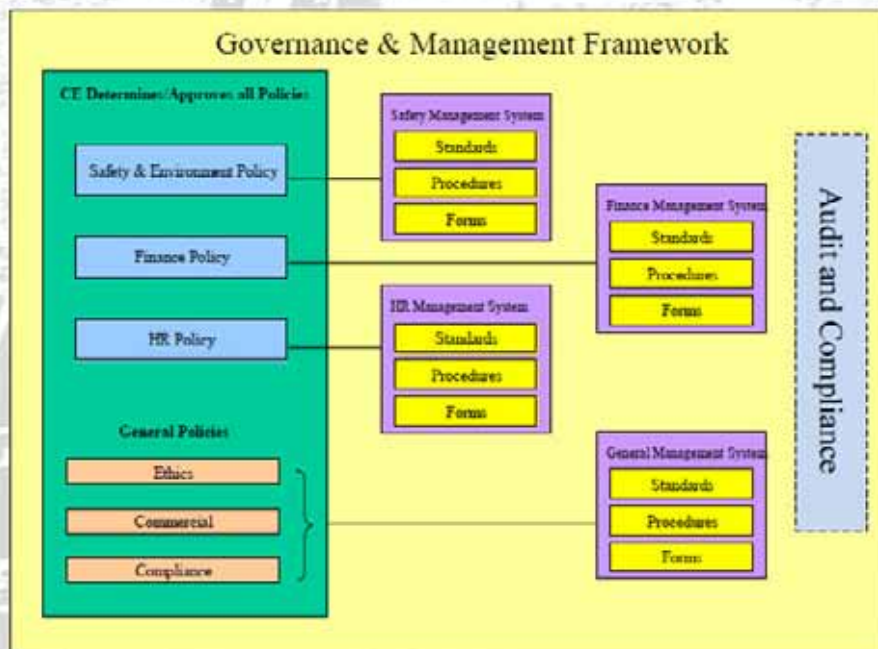


Diagram 1

3.2 Senior Management Commitment

CRIA recognises that fraud and corruption are inherently wrong and against CRIA's values. CRIA's Management Team works actively to foster an organisational culture which will ensure that the effective prevention of fraud and corruption is an integral part of our operating activities.

All our employees are accountable for, and have a role to play in, fraud and corruption control. CRIA encourages a positive culture within its staff to disclose actual or suspected fraudulent or corrupt behaviour.

3.3 Maintaining a Strong Internal Control System

The risk controls that CRIA utilises to prevent, detect, investigate and monitor fraud and corruption are as follows:

Policy

- Risk Management Policy POL001
- Fraud and Corruption Prevention Policy POL008

Planning

- Fraud and Corruption Prevention Plan

Governance and Management Framework

- Risk Management Standard GEN STD 001
- Fraud and Corruption Procedures (Finance / Commercial)
 - Accounts Payable procedure
 - Accounts Receivable Procedure
 - Financial Control Procedure
 - Purchasing procedure
 - Procurement card Procedure
 - Probity Procedures
- Fraud and Corruption procedures (HR)
 - Code of Conduct
 - Discipline Procedure
 - Protected Disclosure Procedure
 - Recruitment Procedure
 - Promotions Procedure
 - Leave and Payroll procedures
 - Investigating Allegations of Fraud and Corruption Procedure

- Fraud and Corruption Forms
 - Incident Report
 - Action Request Form

Framework Tools

- Corporate Governance Charter 2010
- Organisation Chart / Position Descriptions
- Delegations Authority
- Principle Risk Register
- Statement of Business Ethics

Fraud and Corruption Monitoring Committees

- CRIA Audit and Risk Committee
- CRIA Executive Risk and Safety Committee

Audit / Review

- Annual Internal Audit Plan
 - Systems / Compliance Audit
 - E.g. External Auditor - NSW Audit Office
 - E.g. Internal Auditor - Contracted to Forsythes
 - Fraud Health Check RISQ
- Annual Risk Assurance Plan

Training

- Annual Fraud and Corruption Awareness Training
- Fraud and Corruption Procedures Refresher Training
- New Employee Induction

Project Risk Plans

- E.g. Contestability Probity Plan

3.4 Fraud and Corruption Risk Assessment

In accordance with CRIA's Risk Management Standard the review of fraud and corruption risks is an ongoing process. A formal review of fraud and corruption risks, which are assigned in CRIA's Principal Risk Register under Business Risks, will be undertaken on a six monthly basis. The *allocated risk owner* as described in the CRIA Principal Risk Register will determine risk values and monitor the effectiveness and status of controls.

The fraud and corruption risks relevant to CRIA as described in the CRIA Principal Risk Register are a combination of reactive (historical) and predictive data.

The risk tolerability framework and supporting risk tables contained in GEN STD 001 Risk Management assist in the evaluation, ranking and treatment of risk as well as determining the level of risk reporting and escalation of hazards within the organisation.

The Risk Management Framework is shown in the diagram 2.

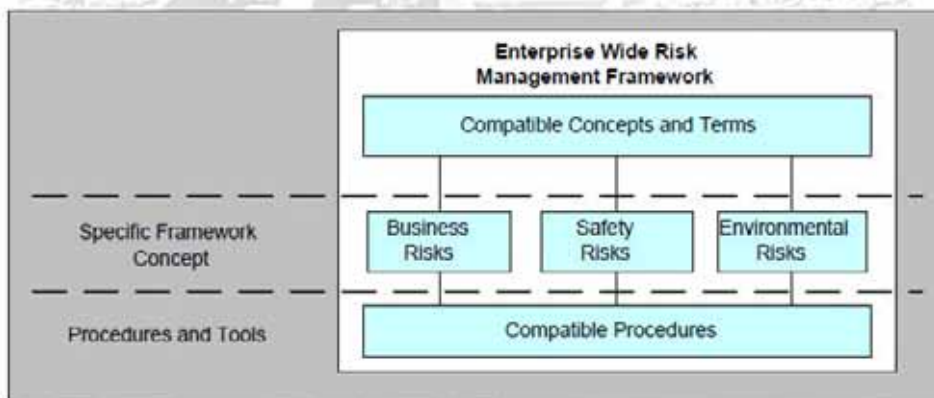


Diagram 2

For the management of specific fraud and corruption risks CRIA's Audit and Risk Committees utilise the framework shown in Diagram 3 as a high level frame of reference.

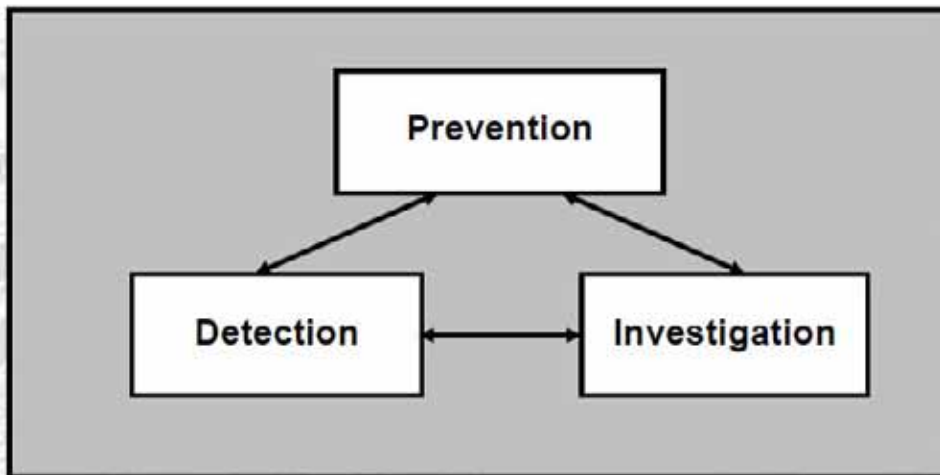


Diagram 3

3.5 Communication and Awareness of Fraud and Corruption

CRIA has a number of strategies to ensure staff are aware of fraud and corruption and associated risk controls.

These include:

- All employees receive a briefing on CRIA's Code of Conduct as part of their employee induction.
- All employees receive regular fraud and corruption awareness training appropriate to their level of responsibility.
- Updates to fraud related policies, procedures and the code of conduct are communicated to all staff.
- Staff are made aware of the Protected Disclosure procedures and alternative ways in which they can report allegations or concerns regarding fraud or unethical conduct.
- Encouraging staff to report and suspected incidence of fraud.
- Promote fraud and corruption awareness and standards of conduct through regular team meetings, audit and review meetings, and ongoing commitment demonstrated by senior management in all aspects of their relationships.
- CRIA informs service providers and contractors of CRIA's obligations and expectations relating to ethical conduct by means of the Statement of Business Ethics.

4. FRAUD AND CORRUPTION DETECTION

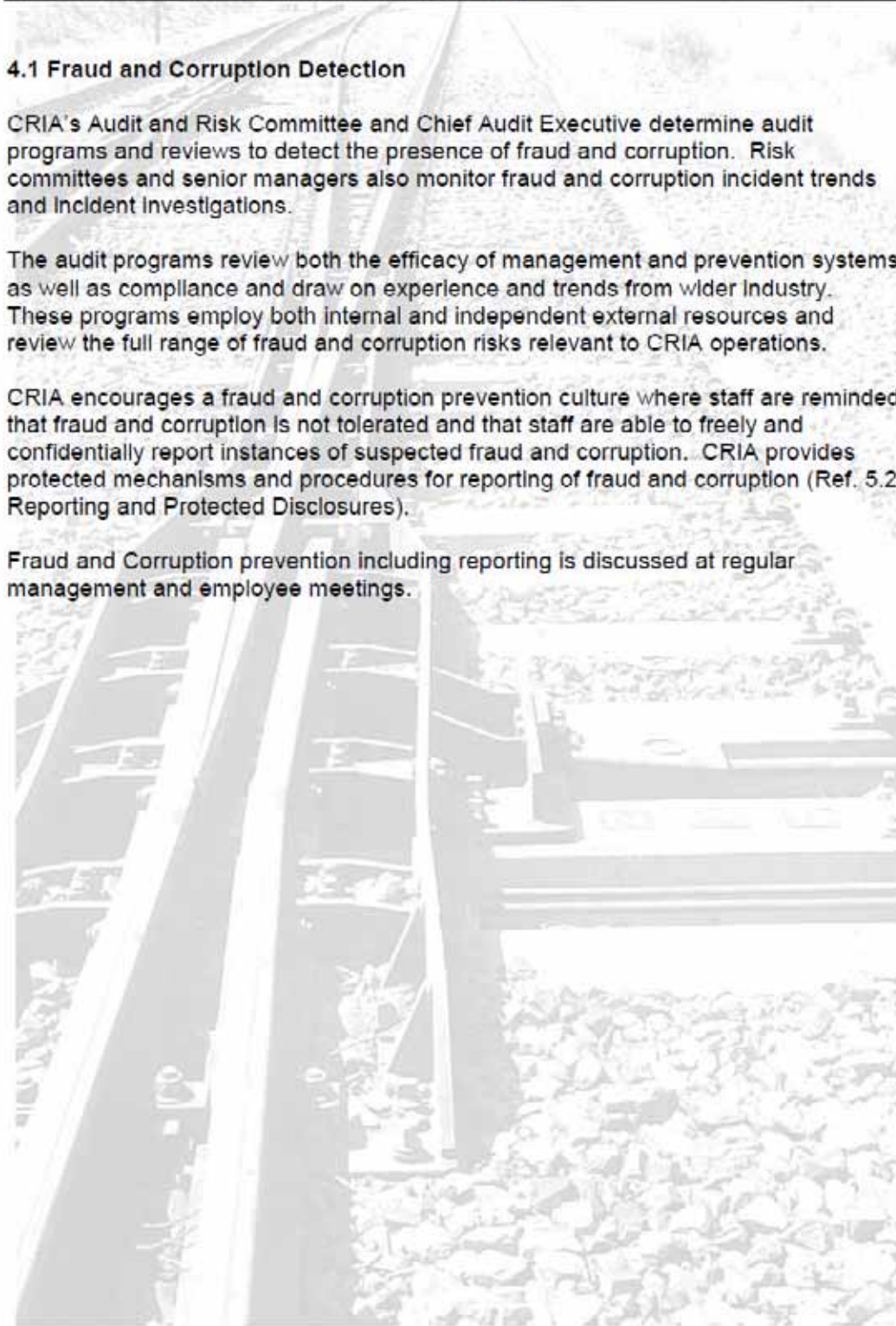
4.1 Fraud and Corruption Detection

CRIA's Audit and Risk Committee and Chief Audit Executive determine audit programs and reviews to detect the presence of fraud and corruption. Risk committees and senior managers also monitor fraud and corruption incident trends and Incident Investigations.

The audit programs review both the efficacy of management and prevention systems as well as compliance and draw on experience and trends from wider industry. These programs employ both internal and independent external resources and review the full range of fraud and corruption risks relevant to CRIA operations.

CRIA encourages a fraud and corruption prevention culture where staff are reminded that fraud and corruption is not tolerated and that staff are able to freely and confidentially report instances of suspected fraud and corruption. CRIA provides protected mechanisms and procedures for reporting of fraud and corruption (Ref. 5.2 Reporting and Protected Disclosures).

Fraud and Corruption prevention including reporting is discussed at regular management and employee meetings.



5. RESPONDING TO DETECTED INCIDENTS

5.1 Procedures for the Investigation of Incidents

In the event that fraud or corruption is detected, reported or suspected an investigation will be conducted by appropriately skilled and experienced personnel who are independent of the section in which the alleged fraud or instance of corruption has occurred.

This independent party may include:

- An external law enforcement agency
- A manager or other senior person
- An external consultant operating under the direction of an independent senior person within the organisation.

The investigation should comply with all relevant legislation. Adequate records must be made of all investigations. These records are to be kept in accordance with legal, best practice and privacy management guidelines.

In conducting the investigation into allegations of fraud and corruption CRIA will ensure that information arising from or relevant to, the investigation is not disseminated to any person not required by their position to receive the information. CRIA procedure *Investigating Allegations of Fraud and Corruption* gives detailed guidance in conducting an investigation.

5.2 Reporting and Protected Disclosures

CRIA provides mechanisms and procedures for reporting instances of Fraud and Corruption by employees, service providers and contractors. Reports can be made internally or externally and can be made as a protected disclosure under the Protected Disclosure Act 1994 and in accordance with CRIA's Protected Disclosures procedure.

CRIA's Code of Conduct allows an employee to report actual or suspected fraud, corrupt conduct, maladministration or serious or substantial waste to:

Internally

- Employees supervisor or manager
- Relevant General Manager
- Corporate Counsel
- Chief Executive

And externally to

- Independent Commission Against Corruption
- NSW Ombudsman (maladministration)

5.3 Discipline Procedures

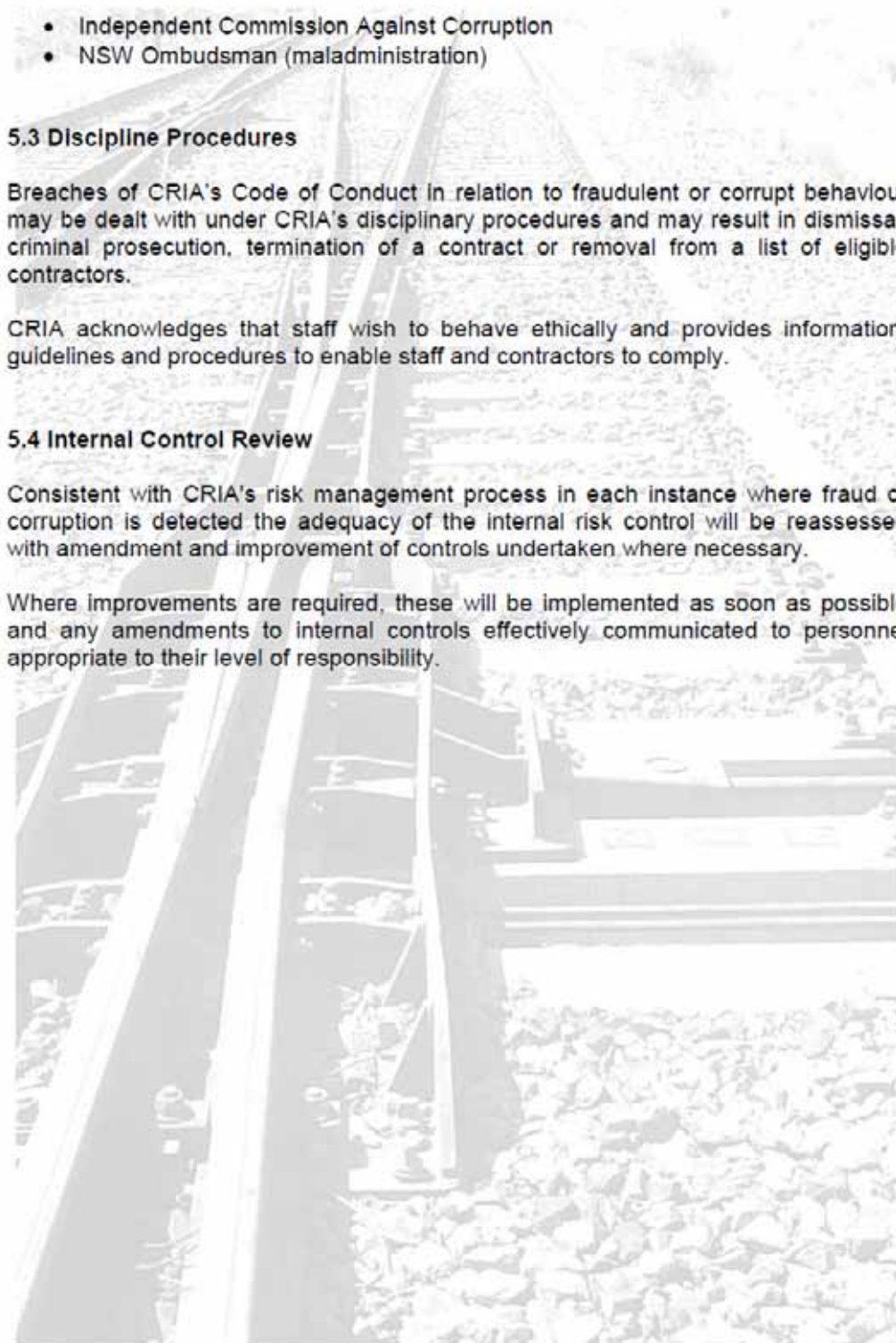
Breaches of CRIA's Code of Conduct in relation to fraudulent or corrupt behaviour may be dealt with under CRIA's disciplinary procedures and may result in dismissal, criminal prosecution, termination of a contract or removal from a list of eligible contractors.

CRIA acknowledges that staff wish to behave ethically and provides information, guidelines and procedures to enable staff and contractors to comply.

5.4 Internal Control Review

Consistent with CRIA's risk management process in each instance where fraud or corruption is detected the adequacy of the internal risk control will be reassessed with amendment and improvement of controls undertaken where necessary.

Where improvements are required, these will be implemented as soon as possible and any amendments to internal controls effectively communicated to personnel appropriate to their level of responsibility.



6. REFERENCES

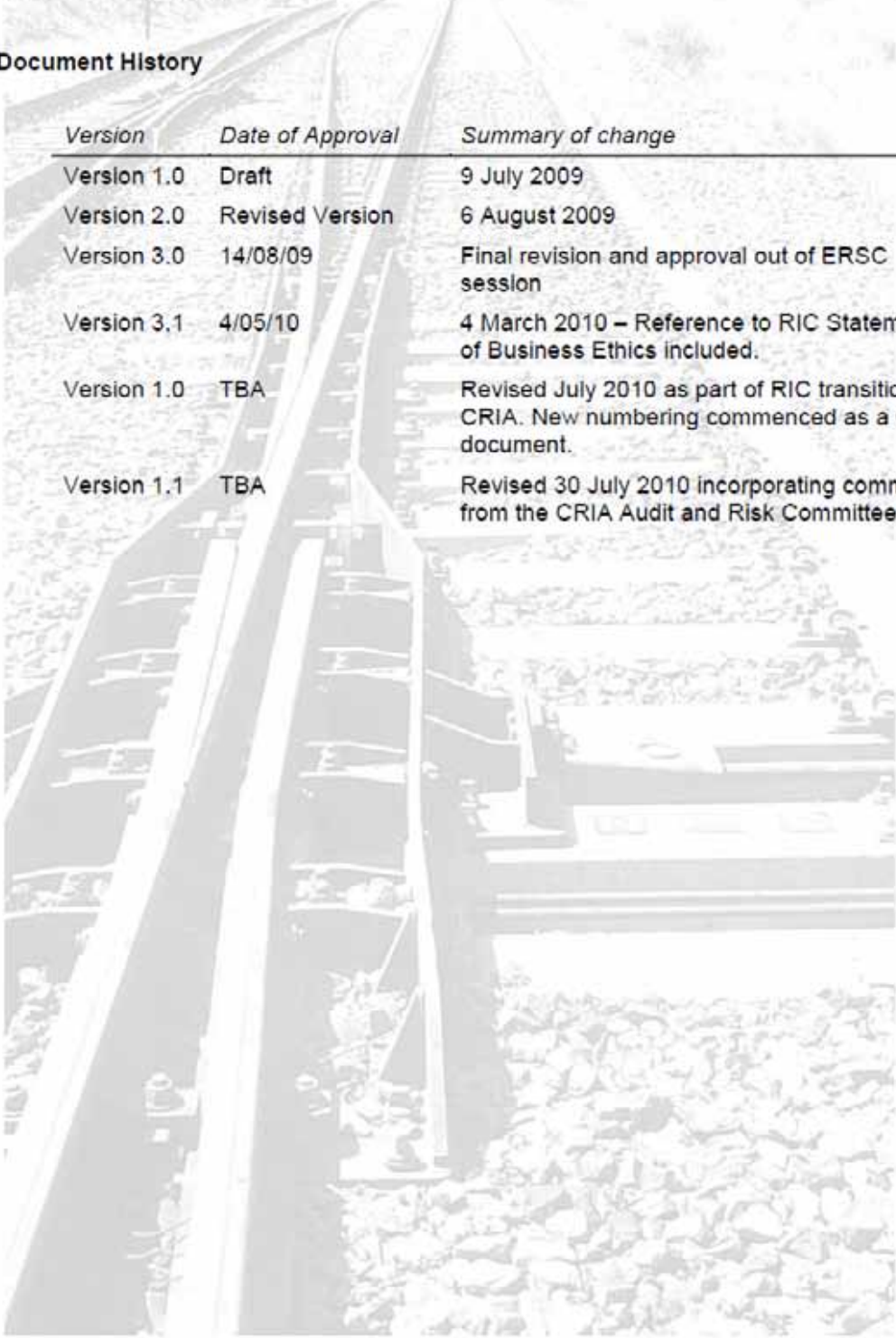
A number of related documents and references were considered in the preparation of this plan.

These include:

- Australian Standard AS8001 - 2008 Fraud and Corruption Control
- Australian Standard AS8000 – Good Governance Principles
- Australian Standard AS/NZ4360 - 2004, Risk Management
- Independent Commission Against Corruption Act 1988
- NSW Protected Disclosures Act 1994
- Australian Standard AS8004 – 2003 on Whistleblower Protection Programs for Entities
- The Audit Office of New South Wales, Fraud Control: Current Progress and Future Directions, February 2005
- NSW Audit Office's Guides to Better Practice
- CRIA Statement of Business Ethics
- CRIA Code of Conduct
- CRIA Risk Management Policy POL 001
- CRIA Risk Management Standard GEN STD 001

7. DOCUMENT HISTORY

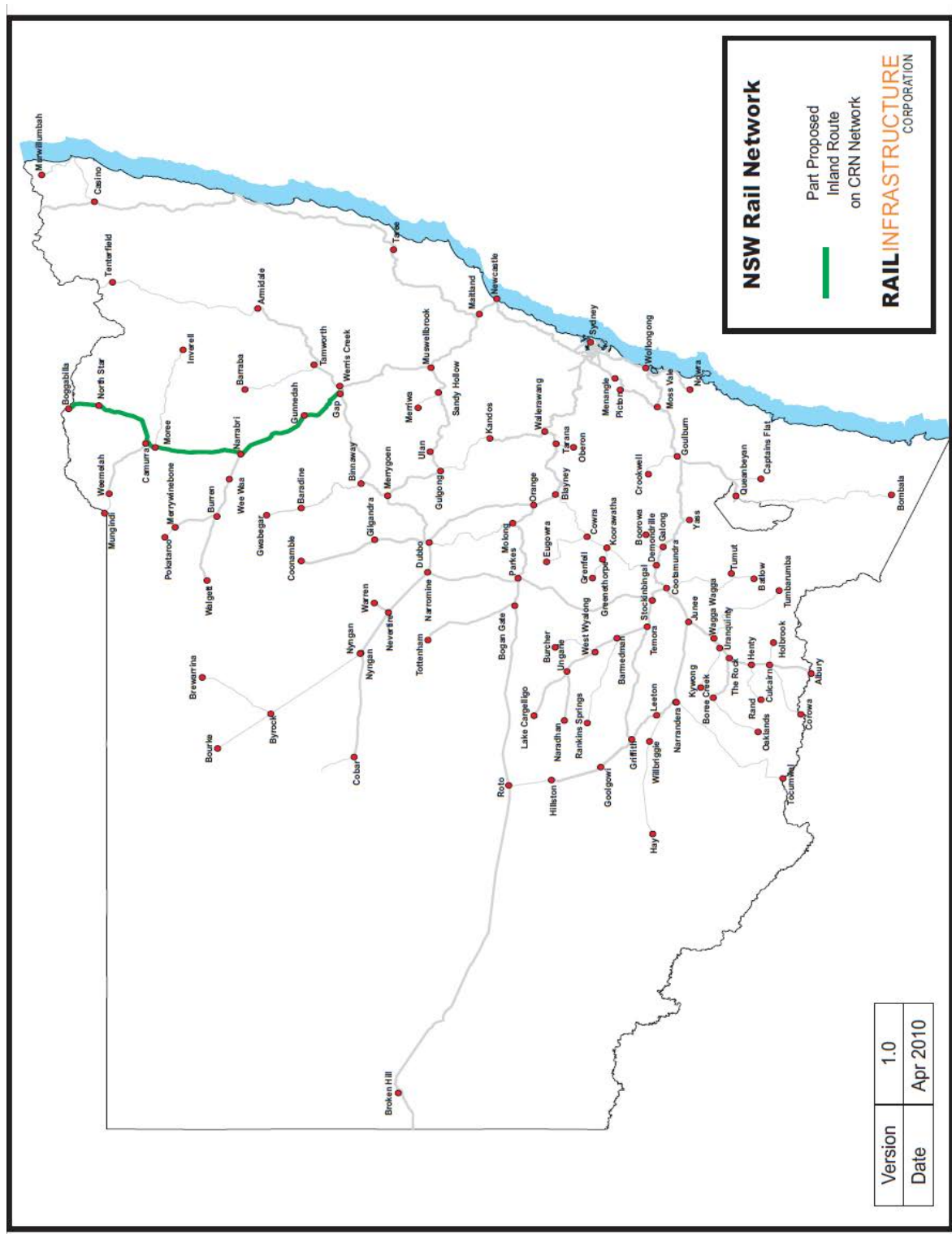
Document History



<i>Version</i>	<i>Date of Approval</i>	<i>Summary of change</i>
Version 1.0	Draft	9 July 2009
Version 2.0	Revised Version	6 August 2009
Version 3.0	14/08/09	Final revision and approval out of ERSC session
Version 3.1	4/05/10	4 March 2010 – Reference to RIC Statement of Business Ethics included.
Version 1.0	TBA	Revised July 2010 as part of RIC transition to CRIA. New numbering commenced as a CRIA document.
Version 1.1	TBA	Revised 30 July 2010 incorporating comments from the CRIA Audit and Risk Committee.

Schedule 10

Inland Route



The interfaces of the Inland Route are further described below.

Location	Interface To	Defined Point
Gap	Goobang Junction – Werris Creek Line	416.25km adjacent to No.5 Signal on the Narrabri Line, the definition to be determined by agreement between CRIA and ARTC.
Narrabri Junction	Walgett Branch Line	Derail at Frame 'D' on the north west main line and south triangle, the definition to be determined by agreement between CRIA and ARTC.
Moree	Inverell Branch Line	Derail at Frame 'A' on the north west main line and west triangle, the definition to be determined by agreement between CRIA and ARTC.
Camurra	Weemelah/Mungundi Branch Line	Point 2A on Frame 'A' adjacent to the staff hut at Camurra, the definition to be determined by agreement between CRIA and ARTC.

Schedule 12

Strategic Asset Plan



Country Regional Network

Strategic Asset Plan



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1 Introduction

This CRN Strategic Asset Plan defines the philosophy behind Country Rail Infrastructure Authority's (CRIA) Asset management strategies to deliver sustainable rail services across the CRN.

This plan identifies CRIA's asset base together with the enhancement, maintenance and disposal plans to manage those assets.

CRIA provides network capacity and train paths to performance levels set out in the relevant operating conditions and engineering standards. The network is categorised into two broad areas with similar operating requirements.

- Core Network:
 - Existing CountryLink passenger services continue on the current routes and frequencies.
 - Freight services continue to be provided as set out in the standard working timetable and other agreements with operators.

- Grain Network
 - All lines will continue to be maintained to sustain current operating standards (generally low speed 19 tonne axle load).

CRIA's asset management strategies are formulated to provide existing services on all operational core and grain lines in a safe, reliable and sustainable way.

The results which CRIA seeks to achieve through the Strategic Asset Plan are to have its train paths delivered safely, reliably, and sustainably, at minimum life cycle cost:

- Safety is a mandatory requirement. However, different rail lines have different risk consequence profiles which can affect maintenance activity e.g. passenger lines and grain lines.
- Reliability refers to meeting specified train path characteristics, particularly timetabled running times (on-time running).
- Sustainability refers to the continuing ability to offer train paths as specified.

2 Asset Portfolio

Due to CRIA's geographic situation service levels are largely dependent on the configuration and condition of the CRN. Assets have been located across the network through gradual historic requirements, with generally excess capacity across the network to meet fluctuations in demand for train paths.

As a basis for determining maintenance needs and allocating limited resources, CRIA has divided its operating railway lines into two (2) primary asset groupings, namely Core and Grain lines. Core lines were subsequently grouped into Passenger and Freight lines. Other stand alone asset classes which are utilised by CRIA include Disused Lines, Property, Road Over Rail Bridges (overbridges) and Other.

2.1 Core Passenger Lines

These lines service the Countrylink passenger routes, as well as freight traffic, and are typically the most heavily used, and the highest speed routes (up to 160 km/h for XPT). The total length of core passenger lines on the CRN is 1,204km.

2.2 Core Freight Lines

These lines are the more heavily used freight only lines carrying minerals from Cobar, coal and cement from Kandos, and mixed freight from Griffith. The total length of core freight lines on the CRN is 523km.

2.3 Grain Lines

These lines exist almost exclusively to service grain movements and are typically the lightest configuration, carry the least tonnages and are the slowest speed lines. The total length of grain lines on the CRN is 1,093km.

2.4 Disused Lines

In total 36 railway lines have had services withdrawn and are not maintained. However, CRIA remains responsible for fire hazard management, noxious weed and animal control, and public safety (particularly road over rail, or rail over road bridges). The total length of disused lines on the CRN is 3,174km.

The Network Diagram on page 4 identifies the Core and Grain Lines as well as the Australian Rail Track Corporation (ARTC) Leased Network and the RailCorp Network. The following additional asset groupings are also CRIA's responsibility:

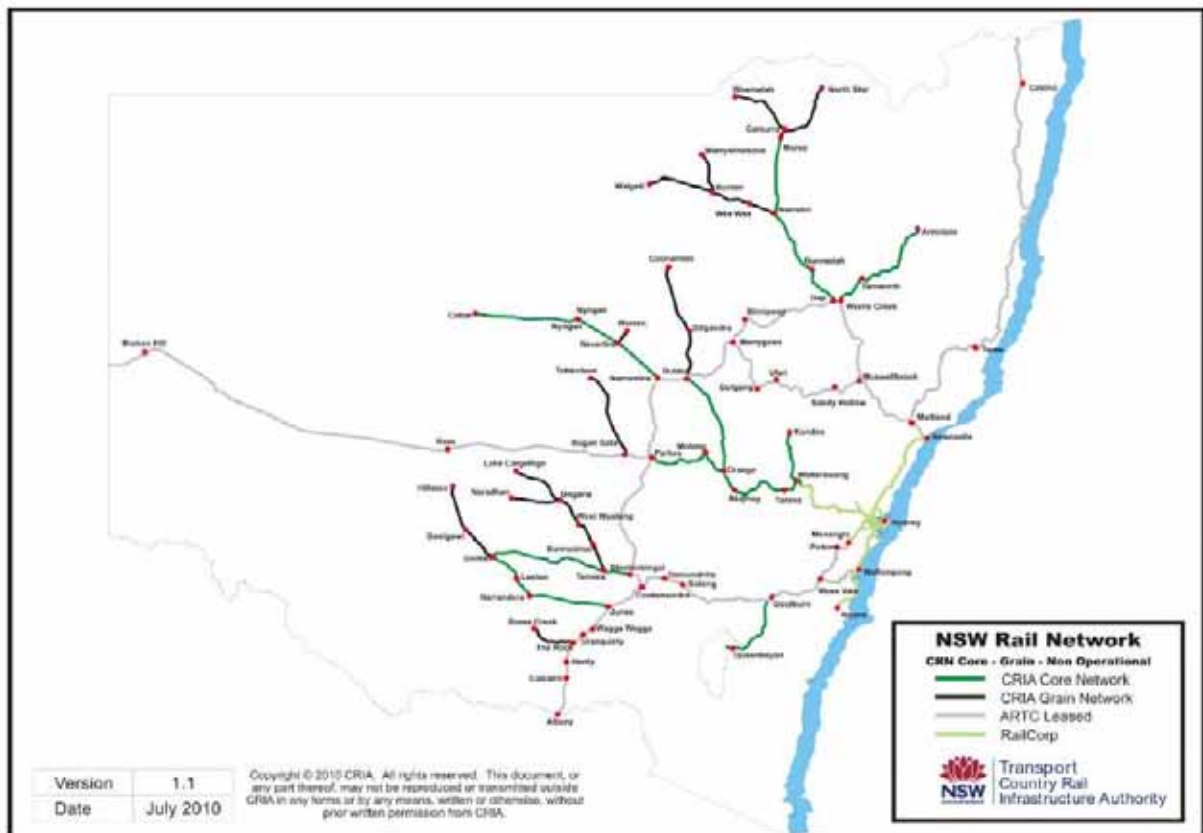
2.5 Property

The rail corridor lands for the CRN and other leased properties have been vested from the previous State Rail Authority (SRA) to CRIA. In total, CRIA owns approximately 11,000 hectares of corridor land under the operational lines, 13,100

hectares under the disused lines and 4,800 hectares of station land and isolated lots. CRIA is also responsible for managing approximately 1,000 leases.

2.6 Road Over Rail Bridges (overbridges)

CRIA owns 379 road bridges which do not contribute to the delivery of CRIA services but were constructed as accommodation crossings when the rail lines were first opened. Road bridge crossings for private landowners on the ARTC Leased Network were included in the ARTC lease, however, public road bridge crossings were not and CRIA continues to maintain and replace those bridges. On the CRN there are 123 public overbridges and 22 private overbridges, on the Leased Network there are a further 234 public overbridges.



3 Asset Strategies

The overall asset management strategy is to safely and reliably deliver specified services and achieve target results at the lowest cost of asset ownership. This strategy requires the optimisation of the trade-offs between Routine Maintenance (RM), Major Periodic Maintenance (MPM) and Enhancement Works within available resource constraints e.g. deferring MPM will result in additional RM costs.

The following sections detail the strategy for management CRIA's assets.

3.1 Enhancement Investment Strategic Plan

The strategy for Enhancement Investment is to invest in new infrastructure when service enhancements are in demand and can be funded by increased access revenues or by specific parties benefiting from the works.

Enhancement works can include the construction of new infrastructure with the intention of enhancing service capability or the replacement of infrastructure with the intention of increasing service capability.

Replacement of an asset or procurement of a new asset to enhance service capability is less common on the CRN, however, enhancement projects have been completed and are proposed on the Gap to Narrabri section to meet the demand for coal transport. Centralised Train Control from Werris Creek to Narrabri has also been implemented to manage the additional train numbers and gross tonnage being generated by rapidly expanding coal production in this area. These projects are justified on the basis of the funding arrangements agreed with miners in the North West and the increased access revenue generated from the expanded capability.

Replacement of an existing asset without enhancing service capability is the norm on the CRN where typically timber assets are replaced by modern types e.g. timber bridges with concrete and timber sleepers with steel or prestressed concrete. The justification for this investment is based on economic appraisal concluding that it is cheaper to replace an item than to continue to maintain it. In the case of timber sleepers, these components reach a stage where maintenance is not possible and they must be replaced.

Over the past 15 years some of the grain lines have been rerailed and resleepered together with ballast depth improvements to provide higher axle loads and operational speeds.

Three areas of the network which may require enhancement works in the future are:

1. Gulgong Wallerawang: restoring services from Gulgong to Kandos;
2. Gulgong Wallerawang: upgrading Kandos to Wallerawang to support increased coal supply to power generating plants; and
3. Gap Narrabri: further capacity improvements to match coal demand.

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3.2 Routine Maintenance Strategic Plan

Routine maintenance (RM) refers to the day to day activities needed to ensure that the railway is fit for its intended function. These activities include:

- scheduled surveillance (inspection), servicing and condition monitoring;
- defect identification, correction or protection; and
- emergency response.

The scheduled surveillance regime is developed from a combination of historical time or tonnage based programs and schedules developed from a Failure Modes, Effects and Criticality Analysis (FMECA). This FMECA approach is applied primarily in the signalling area whenever potential opportunities for improvement arise.

Defects are identified during the surveillance activities or from reports by other parties e.g. train drivers. The defects are logged into a computerised management system, prioritised and programmed for repair. If a defect threatens the safe movement of trains, the location is protected, usually by use of a temporary speed restriction or interim repair, until more permanent repairs can be scheduled.

When an incident affecting services occurs and is either caused by the rail infrastructure or threatens the rail infrastructure, emergency response procedures are enacted and trained staff attend to the incident and determine what, if any, infrastructure repairs are required to restore services.

The level of RM activity is made up of a base level of inspection and surveillance work and corrective work. This is, in turn, a function of the existing asset condition, the level of MPM work, asset renewal works and above rail activity on the line. If MPM works are deferred beyond their optimum time, then RM will increase until that MPM activity is completed. Where scheduled MPM work is further deferred, the condition of the infrastructure will reach a stage where withdrawal of services may be required to ensure that safety is maintained.

RM activities include:

- scheduled inspection, condition monitoring, and servicing;
- defect correction; and
- emergency response.

The CRIA strategy for RM includes:

- review of the scheduled inspection, monitoring and servicing frequencies and tasks to ensure they appropriately mitigate the asset risks;
- minimising the cost of RM by timely investment in MPM and enhancement works; and
- minimising disruption to services by timely repair of defects and response to network incidents.

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3.3 Major Periodic Maintenance Strategic Plan

Major periodic maintenance (MPM) refers to maintenance activities that are cyclic in nature with a cycle typically greater than one (1) year. As most track maintenance activity is expensive if performed manually, it is more economic and safer to use specialist equipment brought in periodically.

The timing of MPM activity is determined from the RM condition monitoring records and threshold levels of acceptable condition. The cycle of MPM activities is a function of asset configuration, condition, and usage (or time for some of the timber components). The table on page 8 identifies the main MPM activities and the typical cycle times.

The Annual Maintenance Budget is dominated by two asset populations, timber sleepers and timber bridges. The typical life expectancy of timber sleepers is 20 to 25 years. In total 59% of sleepers are timber and 73% of those are over 20 years old.

Investment in MPM and asset renewal will be ongoing as assets reach the end of their economic life and are still required to support service delivery. The primary objective is to replace timber components (20 year life) on operational lines with economically superior steel or concrete components (50+ year life). As conversion of whole lines reaches completion, recurrent expenditure on MPM will reduce significantly.

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The categories and description of these types of investment are as follows:

MPM activities and the typical cycle times

MPM Activity	Description	Typical cycle
Timber sleeper renewal	Typical life 15 to 25 years depending on location and tonnage	25% of population at 5 to 7 years
Turnout timber renewal	Typical life 15 to 25 years depending on location and tonnage	25% of population at 5 to 7 years
Timber bridge transom renewal	Typical life 15 to 25 years depending on location and tonnage	25% of population at 5 to 7 years
Track resurfacing	Pack ballast under sleepers to restore track geometry	In conjunction with resleeper cycle plus every 2-5 years depending on condition and tonnage
Turnout resurfacing	Pack ballast under sleepers to restore track geometry	2-5 years depending on condition and tonnage
Turnout renewal	Replace complete turnouts when more economic than part renewal	On condition
Level crossing renewal	Replace timber track panel (with steel or conc.) and road surface	25% of population at 5 to 7 years
Ballast top up	With resleeper and resurfacing or to restore ballast profile	25% of population at 5 to 7 years
Ballast cleaning/sledding	Remove, clean, replace suitable, discard and renew unsuitable	250 MGT
Track reconditioning	To remove fouled ballast and correct formation surface	On condition
Rail grinding	To reduce friction, wear, noise, and extend other MPM cycles	In conjunction with rerailing or every 30 to 50 MGT
Dipped weld correction	To correct rail geometry and prolong rail life	On condition
Fencing	Replace when life expired	30 years depending on location
Bridge walkways	Install walkways to meet OH&S requirements.	On risk assessment
Vegetation control	Fire hazard reduction, noxious weeds, drainage, sighting	Seasonal
Drainage/earthworks	Clean drains, restore cuttings and embankments	On condition
Signalling renewal	Component replacement when life expired	On condition

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Replacement of life expired timber sleepers with superior steel sleepers.

Timber sleepers typically last about 20 years but good quality new hardwood timber sleepers are becoming increasingly rare and expensive.

Steel sleepers provide at least a 50 year (and potentially much longer) life and are cheaper over the sleeper lifecycle.

The CRIA strategy for timber sleeper renewal is to replace all timber sleepers on the Core Network with steel sleepers (or in special cases concrete sleepers) within a ten year period i.e. by June 2020. The timber sleeper replacement rate on the Grain Network will need to be front loaded due to the current condition of existing timber and the maintenance back log. Some new timber sleepers will continue to be installed under joints on grain lines where steel or concrete are not suitable. The tabulated grain line strategy for timber sleeper replacement and other asset classes assumes all current operational grain lines remain in service.

Replacement of life expired timber sleepers with concrete sleepers in areas of heavy axle load, high annual gross tonnage or sharp curvature.

In these circumstances concrete is a more economical solution than steel sleepers and would generally be installed on a face rather than in a pattern of one in four or one in two.

Replacement of timber under bridges with steel and/or concrete bridges.

As with sleepers, quality timber bridge components are difficult to source and the artisan skills needed for this work are becoming increasingly difficult to find. It is generally more economic to replace timber bridges with steel or concrete bridges. Many shallow bridges can be replaced by precast pipes or culverts.

As with timber sleepers the CRIA strategy for timber underbridge renewal is to replace all timber underbridges on the core network with steel and/or concrete bridges within a 10 year period. A similar replacement rate will be needed on the grain network.

Replacement of wrought iron bridges with steel and/or concrete bridges

There are two (2) wrought iron truss bridges in the operating network at Tamworth and Woolbrook. However these bridges have been relatively lightly used over their lifetime and would be replaced in 8 to 10 years. The condition of the remaining wrought iron bridges continues to be regularly monitored.

Replacement of rail joints with welds

Over many years rail joints in the core passenger and core freight lines (typically every 110 metres) have been progressively removed and replaced with Continuous Welded Rail (CWR) which is cheaper to maintain. In addition to improved life cycle costs, reliability and safety, CWR offers improvements for rolling stock operators in fuel economy. Some sections of

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jointed track on the CRN remain and the program of joint replacement with welds continues.

Replacement of life expired rail

Rail life is determined by wear (rail head reduced to condemning dimensions) or the rate of rail defects, and replacements are made to mitigate the safety risk associated with broken rails.

Consideration has been given to strategies to increase the capacity of Class 5 and Class 3 grain lines including rerailing.

Rerailing would allow operation of 120t coal wagons between Werris Creek and Narrabri, and Lithgow and Kandos. These rerailing works may become a necessity within the next 15 years to facilitate the coal transport requirements.

Level crossing protection

CRIA has identified its highest operational risk on the CRN as a truck striking a passenger train. As a result, CRIA commissioned a comprehensive review of all level crossings on the network. A program of works has been developed to upgrade all level crossings to the current Australian Standard with priority allocated on a risk basis.

CRIA applies funding from the Level Crossing Strategy Council, CRIA's own resources and Federal funding to progressively upgrade priority level crossings.

Timber turnout bearer renewal

Hardwood timber will be used for partial renewal of timber turnout bearers as they become life expired. Where full sets of bearers are required, steel or concrete bearers become more cost effective and will be used.

Timber underbridge transom renewal

Open deck bridges (timber or steel) have timber transoms under the rails. There is currently no cost effective alternative to timber for replacement of timber bridge transoms. The CRIA strategy is to continue to replace timber transoms as they life expire with new hardwood timber.

Track resurfacing

The strategy is to resurface behind cyclic sleeper renewal activity and other severe track disturbance such as ballast cleaning or reconditioning. In general, MPM works are planned to minimise the frequency of resurfacing due to the cost, degradation of ballast and damage to components. Out of cycle resurfacing will be required where track geometry falls below the acceptable level.

Once steel and concrete resleepering is completed, resurfacing on a frequency of two (2) to five (5) years can be expected, depending on formation condition, ballast depth and tonnage.

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Turnout resurfacing

The strategy is to resurface in conjunction with other major MPM works or renewals and minimise out of cycle resurfacing due to the cost, degradation of ballast and damage to components. Out of cycle resurfacing will be required where turnout geometry falls below the acceptable level.

Turnout renewal

Typically on the CRN the turnout rails have longer lives than the bearers or ballast and the different components are replaced at different times. In some instances it is more economical to replace the whole turnout.

Level crossing renewal

Existing timber sleeper track panels in level crossings deteriorate over time and with road and rail use. As it requires a road closure to replace a track panel in a level crossing, the CRIA strategy is to replace complete track panels using steel or concrete sleepers when the timber panels become unmaintainable. The road surface is also replaced and drainage improvements implemented at the same time if required.

Ballast top up

Ballast deteriorates with weathering, track use and from track maintenance. Ballast needs to be topped up from time to time to retain ballast profile, track support and stability. The CRIA strategy is to perform this top up in conjunction with sleeper renewal, resurfacing or ballast cleaning activity.

Ballast cleaning/sledding

Areas of unclean (foul) ballast will lose their drainage and mechanical properties as voids fill with fines and soil. This will result in poor track geometry and higher maintenance costs. Sometimes it is cost effective to use a ballast cleaning machine to remove the fines from the ballast, however, this activity is rare on the lightly used CRN lines. A cheaper more cost effective alternative is sledding where there are no track height constraints. These activities are performed where economically justified.

Track reconditioning

Where track ballast is significantly fouled and/or the formation has failed, track reconditioning removes the full track structure and repairs it from the ground up. The strategy is to recondition track when it is cheaper than maintaining the different track components.

Rail grinding

The CRIA strategy is to grind rails when installed and where there is a positive economic return from savings in rail, sleeper, ballast and geometry maintenance and renewal. This typically occurs in the more heavily trafficked areas. By restoring an optimal rail profile, rail life is extended and above rail operators receive economic benefits.

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Dipped weld correction

The steel around rail welds is altered by the heat generated by the welding process and becomes softer than the original steel, leading to dips in the rail. Like rail grinding the straightening of rails to remove the dips can have a positive economic return from savings in rail, sleeper, ballast and geometry maintenance and renewal.

Fencing renewal

Fencing materials including posts, mesh, wires and strainers deteriorate over time and need to be replaced on average at about 30 year intervals. CRIA's strategy is to replace fencing only where it has a statutory obligation to maintain a stock proof fence, or where a fence is required to mitigate rail safety risk or public safety risk.

Bridge walkways

Under OH&S legislation a walkway or other restraining device may need to be provided across railway bridges. Length and height of the bridge together with traffic density contribute to the risk profile.

Vegetation control

The CRIA strategy is to meet statutory requirements to manage noxious weeds and bush fire fuel hazards. In addition, vegetation control to maintain safe distances for the sighting of signals and signs by level crossing road users and train drivers will be carried out.

Drainage/earthworks

Low life cycle cost track requires good drainage. CRIA's strategy is to clean out drains and restore cutting and embankment faces where there is a positive economic return from savings in rail, sleeper, ballast and geometry maintenance and renewal.

Signalling renewal

Much of the existing obsolete signalling equipment remaining in the CRN will be renewed with the completion of the Train Order Working project in 2010/11. With signalling systems that have been in operation for some time, it is usually more economical to replace equipment rather than maintain it or replace components. The CRIA strategy is to replace signalling equipment where economically justified including the avoidance of service interruptions and safety risks.

Signalling assets include level crossing protection including the installation of Cerebus remote monitoring, control hut replacement, LED lamps, and swing gates for pedestrian crossings. These assets will continue to require repair and component renewal.

Country Regional Network

3.4 Property Strategic Management Plan

The property assets owned by CRIA were vested from SRA in 2007. CRIA is currently developing a strategy for managing CRIA property assets.

3.5 Overbridge Strategic Management Plan

CRIA is the owner of 379 road over rail bridges (overbridges) in NSW which do not contribute to the services delivered to rail customers. CRIA maintains these bridges in a safe condition for the road users. In some cases bridges are replaced completely where economic analysis supports renewal over maintenance.

With a total of 80 public timber overbridges in country NSW (ARTC leased and CRN networks) in various stages of deterioration, the CRIA strategy is to replace on average four (4) per year over a 20 year period. In addition, overbridge components (particularly timber) are repaired or replaced when they approach a condition which would require load and/or speed restrictions to be applied. CRIA's strategy is, where possible, to restore the original design capabilities of the bridges.

3.6 Asset Disposal Strategic Plan

The maintenance and renewal works undertaken each year generate waste materials. In all cases the disposal of these assets is in accordance with environmental licences and to maximise the financial return to CRIA. Components that are disposed of include timber sleepers, timber bridge components, fouled ballast, steel fastenings and track plates, and earthworks spoil.

In terms of value, the major asset disposal issue for CRIA relates to the future of the 3,174 km of non-operational lines in NSW. Most of these lines have been out of service for in excess of 20 years, for them to be reused for rail transport the infrastructure would need total reconstruction. For these non-operational lines CRIA continues to meet its statutory requirements relating to:

- fire hazard management;
- noxious weed control;
- noxious animal control; and
- public safety, particularly with respect to bridges including road over rail bridges.

CRIA's strategy is to pursue alternative arrangements for the management of non-operational lines. CRIA is currently investigating options that include alternative uses and owners for surplus infrastructure assets of heritage significance.

Executed as a Deed in Sydney on 16 December 2010

The Seal of Country Rail Infrastructure

Authority (ABN 21 298 300 693) was affixed, and the sealing attested by:

Signature of Acting Chief Executive

Name of Acting Chief Executive

Signed, sealed and delivered in accordance with s127 of the Corporations Act by **John Holland Rail Pty Ltd** (ABN 61 009 252 653) in the presence of:

Director Signature

Director/Secretary Signature

Print Name

Print Name