

CLAYTON UTZ

North West Rail Link

Operations, Trains and Systems Project Deed

Transport for NSW
TfNSW

NRT Pty Ltd
OpCo

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- Exhibit 5 — Planning Approvals**
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- Exhibit 7 — TfNSW's Insurances**
- Exhibit 8 — OpCo's Delivery Phase Insurances**
- Exhibit 9 — Sydney Trains ECRL Asset Maintenance Plan**

- Exhibit 10 — Land dealings**
- Exhibit 11 — TSC Project Deed**
- Exhibit 12 — SVC Project Deed**
- Exhibit 13 — Construction Leases**
- Exhibit 14 — WAD**
- Exhibit 15 — Council Interface Agreements**
- Exhibit 16 — ETS**
- Exhibit 17 — ECRL contracts, licences and leases**
- Exhibit 18 — Clause 12.1(hb) land dealings**
- Exhibit 19 — St Leonards Extension**

Operations, Trains and Systems Project Deed

Date: 15 September 2014

Parties

Transport for NSW (ABN 18 804 239 602) a New South Wales Government agency constituted by section 3C of the *Transport Administration Act 1988 (NSW)* of Level 7, 8-12 Castlereagh Street, Sydney New South Wales 2000 (TfNSW)

NRT Pty Ltd (ACN 166 610 313) of Level 29, 140 William Street, Melbourne VIC 3000, in its personal capacity and in its capacity as trustee of the NRT Unit Trust (OpCo)

Background

- A. The NWRL project is to be delivered in the following 3 major contract packages:
- (a) the tunnels and station civil package, which is being delivered by the TSC Contractor under the TSC Project Deed;
 - (b) the surface and viaduct civil package, which is being delivered by the SVC Contractor under the SVC Project Deed; and
 - (c) the operations, trains and systems package, otherwise known as the OTS PPP, which is to be delivered under this deed.
- B. In June 2014, following the completion of a public tender process, TfNSW selected OpCo as the successful proponent for the OTS PPP.
- C. Finance Co has agreed to securitise the Licence Payments and will do so by entry into the Securitisation Agreement and Payment Directions Deed with TfNSW and OpCo and by entry into the Debt Financing Documents with the Debt Financiers.
- D. TfNSW and OpCo now wish to enter into this deed to record the terms on which the OTS PPP will be carried out.

Operative Provisions

1. Definitions and interpretation

1.1 Definitions

In this deed:

Accreditation means accreditation (including provisional accreditation, conditions or restrictions in respect of accreditation or any variation to the accreditation) under Part 3 of the Rail Safety National Law (or an exemption from same).

Actual Consumption means the aggregate metered amount of electricity consumed through the Connection Points during a Forecast Period.

Actual Headway has the meaning given in Schedule 2.

Additional Maintained Asset means an asset identified in section 3 of SPR Appendix 3.

Additional Planned Service Disruption means a service disruption for the purpose of carrying out Asset Management Activities, other than a Planned Service Disruption, in respect

of which OpCo is entitled to claim a reduction in the Availability Deduction and Timeliness Deduction under clause 20.14(b).

Adjusted Indexed Availability Fee has the meaning given in Schedule 2.

Adjustment Note has the meaning given in the GST Act.

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

Agent means at any time, the person appointed as "Agent" under the Facility Agreement. At the date of this deed the Agent is National Australia Bank Limited ACN 004 044 937.

Alstom Guarantee means each of:

- (a) the deed titled "Significant Contractor (Trains and CBTC) Guarantee" dated on or about the date of this deed between MTR Corporation (Sydney) NRT Pty Limited, UGL Rail Services Pty Limited and Alstom Holdings; and
- (b) the deed titled "TLS Significant Contractor Guarantee" dated on or about the date of this deed between the O&M Contractor and Alstom Transport Holdings BV.

Alstom D&C Significant Contract means the contract titled "Significant Contract (Trains and CBTC)" dated on or about the date of this deed between MTR Corporation (Sydney) NRT Pty Limited, UGL Rail Services Pty Limited and the Alstom Significant Contractor.

Alstom D&C Significant Contract Side Deed means the deed titled "OTS D&C Significant Contract Side Deed" dated on or about the date of this deed between TfNSW, MTR Corporation (Sydney) NRT Pty Limited, UGL Rail Services Pty Limited and the Alstom Significant Contractor..

Alstom Direct Deed means the deed titled "North West Rail Link Augmentation Supply Direct Deed" between OpCo, TfNSW and the Alstom Significant Contractor dated on or about the date of this deed.

Alstom Significant Contractor means Alstom Transport Australia Pty Limited ABN 68 165 157 451 of Level 4, 16 Giffnock Avenue, North Ryde, NSW.

Alstom TLS Significant Contract means the contract titled "North West Rail Link - Through Life Support Deed (Trains and CBTC)" dated on or about the date of this deed between the O&M Contractor and the Alstom Significant Contractor.

Alstom TLS Significant Contract Side Deed means the deed titled "OTS TLS Significant Contract Side Deed" dated on or about the date of this deed between TfNSW, the O&M Contractor and the Alstom Significant Contractor.

Applicable Cure Period has the meaning given in clause 40.3(c)(i) and includes any extension granted under clause 40.3(g).

Appointed Principal Contractor means:

- (a) during the period prior to and including the Date of Completion, JHPL; and
- (b) during the period after the Date of Completion, the O&M Contractor or any of its contractors that have been appointed as the principal contractor by TfNSW under a

deed of appointment of principal contractor in accordance with the O&M Contract Side Deed.

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

- (a) must be obtained or satisfied (as the case may be):
 - (i) to perform OpCo's Activities;
 - (ii) in connection with NWRL Site and Extra Land;
 - (iii) for the use and occupation of:
 - A. the OTS Works; and
 - B. the NWRL; or
 - (iv) otherwise to comply with law; or
- (b) TfNSW, acting reasonably, notifies OpCo from time to time is necessary, or is consistent with good industry practice, to be held by TfNSW in respect of:
 - (i) TfNSW's ownership of the electrical infrastructure forming part of the NWRL; or
 - (ii) TfNSW's purchase of electricity in accordance with clause 9.17(a)(ii),

and for the avoidance of doubt includes:

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

but does not include:

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

Approved Civil Works Change means any Civil Works Change:

- (a) notified to OpCo under clause 14.3 and to which clause 14.3(e)(i)C does not apply; or
- (b) proposed by OpCo and implemented by TfNSW pursuant to clause 14.4.

Approved Cure Plan has the meaning given in clause 40.3(c).

Approved Prevention Plan has the meaning given in clause 40.4(c).

Approved Project Brief has the meaning given in clause 33.7(e)(ii).

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

Asset means:

- (a) all fixed assets located within the Licensed Maintenance Area other than the Excluded Assets;
- (b) the Moveable Assets;
- (c) the Existing ECRL Moveable Assets; and
- (d) the Additional Maintained Assets.

Asset Condition Assessment means the assessment of the condition of the Assets described in section 8.9 of the SPR.

Asset Information System means the system for the storage, processing, transmission and management of Asset information as described in SPR Appendix 47.

Asset Maintenance Standards means the standards developed by OpCo in accordance with section 8.6 of the SPR.

Asset Management Activities means all activities that OpCo performs, or is required to perform, to exercise its rights or comply with its obligations under clause 21 and the SPR, including maintaining and repairing the NWRL, performing renewals and maintaining Spares, whether or not the performance of such things or tasks is subcontracted by OpCo to another person.

Asset Management Failure has the meaning given in clause 21.7(b).

Asset Management Plan means the Project Plan of that name.

Asset Management Policy means the Project Plan of that name.

Asset Management Strategy means the Project Plan of that name.

Asset Management System means the Asset management arrangements described in section 8.2 of the SPR.

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

- (a) in the case of OpCo, includes OpCo's Contractors and their respective Associates to the extent that, and in the capacity in which, they are involved in OpCo's Activities (but does not include TfNSW or any of its Associates);
- (b) in the case of TfNSW, does not include OpCo or its Associates; and
- (c) in the case of both parties, does not include the OTS Independent Certifier, the TSC Independent Certifier, the SVC Independent Certifier, the Dispute Avoidance Board or the Environmental Representative.

Augmentation means a continuous extension to the rail infrastructure and/or systems of the NWRL to form a single, integrated, operational extended rapid transit rail line.

Augmentation Concept Design means the concept design developed by OpCo in accordance with the requirements of the Steering Committee.

Augmentation Objectives has the meaning given in clause 33.2(a).

Augmentation Proposal has the meaning given in clause 33.8(a).

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

Ausgrid Connection Point means the permanent point or points for bulk supply at which the NWRL's electrical infrastructure connects to Ausgrid's electricity distribution network (which, for the avoidance of doubt, includes Ausgrid's transmission assets). For the avoidance of doubt, it does not include (either prior to, or after, the Date of Completion) any temporary connection points established between the NWRL's electrical infrastructure and Ausgrid's electricity distribution network for the purposes of supplying construction power prior to the Date of Completion.

Authority means:

- (a) any governmental, semi-governmental or local government authority, administrative or judicial body or tribunal, department, commission, public authority, agency, minister, statutory corporation or instrumentality;
- (b) any other person having a right to impose a requirement, or whose consent is required, under law with respect to any part of OpCo's Activities; or
- (c) any other person having jurisdiction over, or ownership of, any Utility Services, the Utility Service Works, any Local Areas or the Local Area Works undertaken on Local Areas.

Availability Deduction has the meaning given in Schedule 2.

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

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

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

Base Case Financial Model means the financial model and assumptions prepared by or for OpCo and accepted by TfNSW pursuant to item 5 of Schedule 1, as updated from time to time in accordance with clause 25.3(e), 49.11 or 50.1.

Benchmarked Insurances means those insurances set out in clauses 38.3(a) (industrial special risks insurance), 38.3(c) (public and products liability insurance) and 38.3(d) (professional indemnity insurance).

Benchmarked Insurance Component means the insurance component of the Service Payment payable in respect of the relevant Benchmarked Insurances, being the amount specified as such in section 1.1 of Annexure A of Schedule 2.

Blacktown City Council Interface Agreement means the agreement titled "North West Rail Link – Operations, Trains and System (OTS) Interface Agreement" between TfNSW and Blacktown City Council dated 10 September 2014, a copy of which, as at date of this deed, is contained in Exhibit 15.

Blacktown City Council Proof Engineer has the meaning given to the term "Proof Engineer" in the Blacktown City Council Interface Agreement.

Bond means:

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

Business Day means any day in New South Wales other than a Saturday, Sunday or public holiday or 27, 28, 29, 30 or 31 December or any day on which banks are not open for business generally in New South Wales.

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

Car Park means any car park located within the Licensed Maintenance Area.

CCU or Construction Compliance Unit means the Construction Compliance Unit established within NSW Industrial Relations to undertake auditing and inspection of workplace agreements and practices.

Certificate of Completion means a certificate referred to in clause 19.10(a)(i) substantially in the form of Schedule 20.

Certificate of Final Completion means a certificate referred to in clause 19.12(d)(i) substantially in the form of Schedule 22.

Certificate of Readiness for First Passenger Service means a certificate referred to in clause 19.3(a)(i) substantially in the form of Schedule 16.

CDPD Amount means the lesser of:

- (a) 50% of Project Debt forecast in the Base Case Financial Model to be outstanding immediately prior to the scheduled amortisation payment which falls due on the CDPD Payment Date in the Base Case Financial Model; and
- (b) 50% of Project Debt actually outstanding immediately prior to the scheduled amortisation payment which falls due on the CDPD Payment Date.

CDPD Conditions means the conditions set out in clause 25.3(b).

CDPD Notice Date means the date of the notice issued by OpCo under clause 25.3(c)(ii).

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

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

CDPD Period means the period of time beginning on the 703rd day after the Date of Completion and ending on the 1433rd day after the Date of Completion.

CDPD Receivables has the meaning given to that term in the Securitisation Agreement.

CDPD Satisfaction Notice means the notice delivered pursuant to clause 25.3(c)(iv)A.

Change in Clean Energy Law means a Change in Law that introduces any tax or other binding scheme or arrangement for the purposes of reducing emissions of carbon dioxide or other pollutants and which imposes obligations or other financial incentives for the achievement of such reductions.

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

Change in Disability Law means a Change in Law the terms of which impose requirements relating to the ability of disabled persons to access and use rail facilities.

Change in Environmental Law means a Change in Law:

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

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

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

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

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

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

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

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

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

- (a) has been published or of which public notice has been given; or

- (b) a party experienced and competent in the delivery of works and/or services similar to the OTS Works, the Temporary Works or the Operations Activities would have reasonably foreseen or anticipated,

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

Change in Rail Safety Law means a Change in Law the terms of which impose requirements relating to rail safety.

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

Civil Works means the SVC Works and the TSC Works.

Civil Works Asset Management Information means any "Asset Management Information" (as defined in the SVC Project Deed and TSC Project Deed), including any draft "Asset Management Information" submitted to TfNSW by the SVC Contractor under the SVC Project Deed or the TSC Contractor under the TSC Project Deed.

Civil Works Change means a SVC Works Change or a TSC Works Change.

Civil Works Contractor means the SVC Contractor or the TSC Contractor.

Civil Works Contract means the SVC Project Deed or the TSC Project Deed.

Civil Works Defect means a SVC Defect or a TSC Defect.

Civil Works Design Documentation has the meaning given in clause 14.6(a).

Civil Works Minor Defect means a minor Civil Works Defect which does not prevent the Civil Works from being fit for its intended purpose and which can be corrected:

- (a) after the relevant part of the Construction Site has been handed over to OpCo; and
- (b) after OpCo has completed its construction activities under this deed within the relevant part of the Construction Site.

Civil Works O&M Manuals means the operation and maintenance manuals forming part of the Civil Works Asset Management Information certified by the:

- (a) the TSC Independent Certifier under the TSC Project Deed; or
- (b) the SVC Independent Certifier under the SVC Project Deed,

(as applicable).

Civil Works Portion means a TSC Portion or a SVC Portion.

Civil Works Tolerances means the permitted tolerances for certain aspects of the Civil Works, as set out in SPR Appendix 35.

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

- (a) under, arising out of, or in any way in connection with, this deed;

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

Clean Energy Legislation Repeal Package means the:

- (a) Clean Energy Legislation (Carbon Tax Repeal) Act 2014 (Cth);
- (b) Customs Tariff Amendment (Carbon Tax Repeal) Act 2014 (Cth);
- (c) Excise Tariff Amendment (Carbon Tax Repeal) Act 2014 (Cth);
- (d) Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Amendment (Carbon Tax Repeal) Act 2014 (Cth);
- (e) Ozone Protection and Synthetic Greenhouse Gas (Manufacture Levy) Amendment (Carbon Tax Repeal) Act 2014 (Cth);
- (f) True-up Shortfall Levy (Excise) (Carbon Tax Repeal) Act 2014 (Cth);
- (g) True-up Shortfall Levy (General) (Carbon Tax Repeal) Act 2014 (Cth); and
- (h) Ozone Protection and Synthetic Greenhouse Gas (Import Levy) (Transitional Provisions) Act 2014 (Cth).

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

Commercial Opportunities means the entry by OpCo into:

- (a) Retail Licences and advertising contracts approved by TfNSW pursuant to clause 23(a); and
- (b) such other revenue earning arrangements as TfNSW may agree that OpCo may enter into in relation to the Licensed Maintenance Area pursuant to clause 23(b).

Commercially Sensitive Information means the information identified in or of the type referred to in Schedule 33.

Community Liaison Implementation Plan means the Project Plan of that name.

Compensable Change in Law means:

- (a) a Project-Specific Change in Law (other than a Project-Specific Change in Law of the Commonwealth of Australia with respect to Tax);
- (b) a Change in Disability Law;
- (c) a Change in Environmental Law;

- (d) a Change in Rail Safety Law; or
- (e) a General Change in Law (other than with respect to Tax),

but excludes a Change in Clean Energy Law.

Compensation Event has the meaning given in clause 26.

Completion has the meaning given in clause 19.4.

Concept Design means the concept design prepared by OpCo and included in the SPR.

Condition Precedent means a condition precedent set out in Schedule 1.

Condition Precedent Deadline Date means, in respect of a Condition Precedent, the date specified next to that Condition Precedent in Schedule 1, or such other date as the parties may agree.

Connection Point means each of:

- (a) the Ausgrid Connection Point; and
- (b) the Endeavour Energy Connection Point.

Consequential or Indirect Loss has the meaning given in clause 37.3(a).

Construction Environmental Management Plan means the Project Plan of that name.

Construction Facility has the meaning given in the Debt Financing Documents.

Construction Facility Commitment means the total amount available under the Construction Facility.

Construction Leases means the leases entered into between TfNSW and various landowners in respect of parts of the Construction Site. The copy of the Construction Leases, as at the date of this deed, are contained in Exhibit 13.

Construction Management Plan means the Project Plan of that name.

Construction Payment A means, in respect of a month, the amount for that month specified in the Construction Payment A Schedule.

Construction Payment A Schedule means the Construction Payment A schedule shown in the Model Outputs Schedule.

Construction Payment B means each payment to be made in accordance with clause 25A.1 (Construction Payments B) by TfNSW to OpCo of an amount equal to the aggregate of the corresponding Receivables Purchase Price payable by Finance Co to TfNSW under the Securitisation Agreement.

Construction Payment B Date means each date on which Finance Co pays a Receivables Purchase Payment to TfNSW in accordance with the Securitisation Agreement and the Payments Direction Deed.

Construction Proceeds Account has the meaning given in the Facility Agreement.

Construction Site means the Project Site and the Temporary Areas.

Construction Site Licence means the licence granted under clause 12.1.

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

- (a) at a concentration above the concentration at which the substance, gas, chemical, liquid or other matter (whether occurring naturally or otherwise) is normally present in, on or under land or any other aspect of the Environment in the same locality, being a presence that presents a risk of harm to human health or any other aspect of the Environment; or
- (b) toxic, flammable or otherwise capable of causing harm to humans or damage to the Environment including asbestos, toluene, polychlorine biphenyls, lead based paints, glues, solvents, cleaning agents, paints, water treatment chemicals and stone containing silica.

Contract Service Level Requirements means the requirements set out in section 4 of SPR Appendix 45, as amended from time to time in accordance with clause 11 of Schedule 2.

Control has the meaning in the Corporations Act.

Core Contract means:

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

Core Contractor means:

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

Core Contractor Guarantor means:

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

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

Core Contractor Side Deed means:

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

Corporate Environmental Management System has the meaning given in the New South Wales Environmental Management Systems Guidelines (3rd Edition) (August 2013).

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

Council means Hills Shire Council, Blacktown City Council and Hornsby Shire Council.

Council Interface Agreements means the:

- (a) Hills Shire Council Interface Agreement;
- (b) Hornsby Shire Council Interface Agreement; and
- (c) Blacktown City Council Interface Agreement.

Council Interface Works has the meaning given to the term "Works" in the Council Interface Agreements.

Council Road Works has the meaning given to the term "Council Works" in the Council Interface Agreements.

Council Road Works Practical Completion has the meaning given to the term "Practical Completion" in the Council Interface Agreements.

Counterparty Details means, in respect of each person who is a party to a TfNSW Project Agreement (other than TfNSW, the OTS Independent Certifier, the Civil Works Contractors, the TSC Independent Certifier, the SVC Independent Certifier, the D&C OTS Independent Certifier (as defined in the D&C Contract), the Security Trustee, the Agent and the members of the DAB):

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

CPI means the "Weighted Average of Eight Capital Cities: All Groups Consumer Price Index" as maintained and published quarterly by the Australia Bureau of Statistics (ABS), or as otherwise determined in accordance with clause 1.11A.

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

CRERL means the rail link from Cudgegong Road to Epping (being the NWRL excluding the ECRL).

Customer means all users and potential users of:

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

D&C Consortium Deed means the deed so titled between MTR Corporation (Sydney) NRT Pty Limited, JHPL, Leighton Contractors Pty Limited and UGL Rail Services Pty Limited dated on or about the date of this deed.

D&C Contract means the contract titled "North West Rail Link - Operations, Trains and Systems D&C Contract" between OpCo and the D&C Contractor dated on or about the date of this deed.

D&C Contractor means:

- (a) MTR Corporation (Sydney) NRT Pty Limited (ABN 57 166 934 121);
- (b) JHPL;
- (c) Leighton Contractors Pty Limited (ABN 98 000 893 667); and
- (d) UGL Rail Services Pty Limited (ABN 58 000 003 136),

jointly and severally.

D&C Contract Side Deed means the contract titled "OTS D&C Contract Side Deed" between TfNSW, OpCo, the D&C Contractor, the D&C OTS Independent Certifier (as defined in the D&C Contract), the O&M Contractor and the D&C Guarantors dated on or about the date of this deed.

D&C Guarantee means, in respect of a D&C Guarantor, the deed titled "D&C Guarantee" dated on or about the date of this deed between OpCo and that D&C Guarantor.

D&C Guarantors means:

- (a) Leighton Holdings Limited (ABN 57 004 482 982);
- (b) UGL Limited (ABN 85 009 180 287); and
- (c) MTR Corporation Limited (ABN 34 784 495 535) (a company incorporated in Hong Kong).

DAB Agreement means the agreement titled "OTS DAB Agreement" dated on or about the date of this deed between TfNSW, OpCo and the members of the Dispute Avoidance Board.

Date for Completion means 1,662 days after Financial Close, as extended in accordance with this deed.

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

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

Day 1 Clause has the meaning given in clause 2.1.

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

Debt Financiers' Security means each Security Interest granted in favour of the Debt Financiers to secure the obligations of OpCo and Finance Co under the Debt Financing Facilities.

Debt Financing Documents means:

- (a) the Facility Agreement;
- (b) the Security Trust Deed;
- (c) the Debt Financiers' Securities;
- (d) the Consent Deeds (as defined in the Facility Agreement);
- (e) the Swap Agreements (as defined in the Facility Agreement);
- (f) the Establishment Fee Letter and the Agency and Security Trustee Fee Letter (in each case, as defined in the Facility Agreement);
- (g) any document entered into in relation to any Refinancing in accordance with clause 49; and
- (h) any other document that the parties agree is a Debt Financing Document for the purposes of this deed.

Debt Financing Facilities means the facilities, financial arrangements or accommodation provided, or to be provided, in accordance with the Debt Financing Documents, to OpCo for the purposes of carrying out the OTS PPP or to Finance Co for the purpose of financing the Receivables Purchase Price.

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

Deed of Assurance has the meaning given in Schedule 34.

Deeds of Disclaimer means each deed poll titled "Deed of Disclaimer" executed by:

- (a) MTR Corporation (Australia) Pty Limited (ACN 155 876 038) dated 7 January 2014;
- (b) John Holland Pty Limited (ABN 11 004 282 268) dated 10 January 2014;
- (c) UGL Rail Services Pty Ltd (ABN 58 000 003 136) dated 14 January 2014;
- (d) Plenary Group Pty Ltd (ACN 108 934 612) dated 8 January 2014; and
- (e) Leighton Contractors Pty Limited (ABN 98 000 893 667) dated 10 January 2014.

Default Notice has the meaning given in clause 40.2.

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

Defect means:

- (a) any defect, deficiency, fault, error or omission in the Temporary Works, the OTS Works or the NWRL; or

- (b) any:
- (i) cracking, shrinking, movement or subsidence in the Temporary Works, the OTS Works or the NWRL; or
 - (ii) other aspect of the Temporary Works, the OTS Works or the NWRL,
- which is not in accordance with the requirements of this deed.

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

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

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

including the activities described in section 2.1.2 of the SPR, whether or not the performance of such things or tasks is subcontracted by OpCo to another person.

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

Delivery Phase Progress Report means each progress report to be submitted by OpCo under clause 17.13.

Delivery Phase Sustainability Plan means the Project Plan of that name.

Delivery Program means the program of the Delivery Activities, as updated from time to time in accordance with clause 17.3. The initial Delivery Program is contained in Exhibit 4.

Demand Usage Strategy means the strategy for how OpCo draws electricity from the Ausgrid Connection Point and the Endeavour Energy Connection Point to minimise network demand charges (which may be called a capacity charge, demand charge or some other charge measured by kW or kVA) payable for this electricity, as agreed and amended by the parties in accordance with clause 9.17.

Design Documentation means all:

- (a) design documentation (including design standards, concrete mix designs, design reports, durability reports, specifications, models, samples, prototypes, calculations, drawings, shop drawings, digital records, business rules, system processes and all other relevant data) in electronic, computer readable and written or physical forms, or stored by any other means, which are required for the performance of OpCo's Activities, or which OpCo or any other person creates in performing OpCo's Activities (including the design of the Temporary Works); and
- (b) computer software (including both source code and object code versions) which is Developed Intellectual Property (as defined in Schedule 34).

Design Life means, in respect of an Asset that falls within a category referred to in section 3.9 of the SPR, the period specified for that Asset in section 3.9 of the SPR commencing on the Date of Completion and ending on the day after expiry of the period specified for that Asset in section 3.9 of the SPR.

Design Management Plan means the Project Plan of that name.

Design Review Panel means the architectural and urban design review panel established as an advisory body to TfNSW in relation to the NWRL in accordance with Project Planning Approval 2, which may be chaired by the NSW Government architect.

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

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

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

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

Designer means, in respect of an element of the OTS Works or the Temporary Works, the OpCo Contractor that is responsible for preparing the design for that element of the OTS Works or the Temporary Works, as specified in the Design Management Plan.

Destination Station has the meaning given in Schedule 2.

Developed Intellectual Property has the meaning given in Schedule 34.

Deviations within the Civil Works Tolerances means an aspect of the Civil Works that is not in accordance with the requirements of the relevant Civil Works Contract but that is within the Civil Works Tolerances.

Direction means any decision, demand, determination, direction, instruction, notice, order, rejection or requirement.

Dispute has the meaning given in clause 56.1.

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

Distribution means, whether in cash or in kind:

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

Draft Cure Plan has the meaning given in clause 40.3(a)(iv).

Draft ECRL Conversion Conditions of Approval means the draft conditions of approval from the ECRL conversion Review of Environmental Factors (REF) contained in Exhibit 5.

Draft Prevention Plan has the meaning given in clause 40.4(a).

Easements means the easements, restrictions on use, covenants, agreements (including building or strata management statements) or other similar arrangements together with any leases, sub-leases, licences and rights and privileges for any of the purposes set out at clause 3 or 4 of Schedule 9 to benefit or burden the Licensed Maintenance Area or provided for access to the Additional Maintained Assets and which may be created pursuant to Schedule 9.

ECRL means the existing rail link from Epping to Chatswood and associated infrastructure as described as such in SPR Appendix 3.

ECRL Conversion Planning Approval means approval to be obtained for the conversion of the ECRL in accordance with the EP&A Act.

ECRL Latent Conditions means any Site Conditions of the ECRL (excluding any System) which differs materially from what is disclosed in the Information Documents issued or made available by, or on behalf of, TfNSW before the date of this deed, except to the extent such difference should have been anticipated by a prudent, competent and experienced contractor if it had done those things required by clause 11.1(a).

EEO Act means the Energy Efficiency Opportunities Act 2006 (Cth).

Effective Date means, in respect of a Pre-Agreed Option, the date specified as the "Effective Date" for that Pre-Agreed Option in Schedule 30.

Election Date means, in respect of a Pre-Agreed Option, the relevant date specified as the "Election Date" in Schedule 30.

Electricity Connection Agreements has the meaning given in clause 9.16(b)(i).

Electricity Consumption Software Model has the meaning given in SPR Appendix 1.

Electricity Purchase Agreement has the meaning given in clause 9.17(a)(i).

Electricity Purchase Obligation has the meaning given in clause 9.17(a)(ii).

Emissions and Energy Data means:

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

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

Endeavour Energy Connection Point means the permanent point or points at which the NWRL's electrical infrastructure connects to Endeavour Energy's electricity distribution network for bulk supply. For the avoidance of doubt, it does not include (either prior to, or after, the Date of Completion) any temporary connection points established between the NWRL's electrical infrastructure and Endeavour Energy's electricity distribution network for the purposes of supplying construction power prior to the Date of Completion.

Energy Deduction has the meaning given in Schedule 2.

Engineering and Competency Management Plan means the Project Plan of that name.

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

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

Environmental Documents means the Planning Approvals and any documents listed as such in SPR Appendix 49.

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

Environmental Management Plans means:

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

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

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

Environmental Representative means George Kollias of Healthy Buildings International Pty Ltd (ABN 39 003 270 693) of 7/33 Ryde Road, Pymble NSW 2073 appointed by TfNSW under a separate contract and any person appointed by TfNSW as a replacement from time to time, as notified to OpCo.

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

EPBC Act Approval means the Minister for the Environment and Water Resources' approval under the Environment Protection and Biodiversity Conservation Act 1999 (Cth) (EPBC reference: 2012/6360) dated 11 April 2013, a copy of which (as at the date of this deed) appears in Exhibit 5, as modified from time to time.

Equity Documents means:

(a) the Deferred Equity Contribution Deed between the Initial Loan Note Subscribers, the Initial OpCo Equity Holders, OpCo HoldCo 2, OpCo HoldCo, OpCo, and the Agent dated on or about the date of this deed;

(b) ; and

(c)

Equity Interest means:

(a) each OpCo Equity Interest;

(b) ; and

(c)

Equity Investor means:

(a) an OpCo Equity Investor; and

(b)

Equity Purchase Deed means the deed so titled between TfNSW, OpCo and OpCo HoldCo dated on or about the date of this deed.

Escrow Deed means the contract titled "Escrow Agreement" between TfNSW, OpCo, Alstom Significant Contractor and the Escrow Agent (as defined in Schedule 34) dated on or about the date of this deed.

Escrow Material has the meaning given in Schedule 34.

ETS means the ticketing system for the NWRL, including the ETS Equipment, software, smartcards and all other aspects of the system, as modified or replaced from time to time.

ETS Contractors means:

(a) Cubic Transportation Systems (Australia) Pty Limited ABN 82 003 617 561 and any other contractors engaged by TfNSW in relation to the ETS; and

(b) any subcontractors and suppliers at any level of the entities referred to in paragraph (a).

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

(a) installed on the NWRL by TfNSW or the ETS Contractor; or

(b) provided by TfNSW or the ETS Contractor and intended to be used by OpCo, including portable readers,

excluding physical equipment forming part of the ETS at Epping and Chatswood stations and smartcards.

ETS IP has the meaning given in clause 1 of Schedule 34.

Excluded Assets means the assets referred to in section 8.10 of the SPR.

Excluded Presentation Areas means the following areas and structures, within the Licensed Maintenance Area:

- (a) the external surfaces of the viaduct structure;
- (b) underbridge and overbridge surfaces not facing the rail corridor;
- (c) noise wall surfaces not facing the rail corridor;
- (d) substations and ancillary sites where these are separate from the Station and immediate environs; and
- (e) fences, barriers and gates where these are separate from the Station and immediate environs.

Executive Negotiator means:

- (a) for OpCo, its chief executive officer; and
- (b) for TfNSW, the NWRL Project Director,
(or his or her delegate).

Existing ECRL Moveable Assets has the meaning given in clause 51.3(a).

Existing Land Arrangements means the dealings described in clause 2.1 of Schedule 9 and clause 12.4.

Expert means a person(s) appointed to determine a Dispute pursuant to clause 56.5.

Expiry Date means:

- (a) the Original Expiry Date; or
- (b) if TfNSW has exercised its option to extend the Term under clause 3.3, the date that is 2 years after the Original Expiry Date.

Extended Design Life means, in respect of an Asset that falls within a category referred to in section 3.9 of the SPR and is replaced or refurbished during the Term, the period commencing on the date that replacement or refurbishment has been completed and ending on the day which occurs after expiry of the period specified for the replaced or refurbished Asset in section 3.9 of the SPR.

Extension Period means 2 years from the Original Expiry Date.

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

Extension Proposal Request means a notice titled "Extension Proposal Request" issued by TfNSW under clause 3.3(a).

Extension Security Bond means the bond referred to in clause 22.1(a)(ii) and any replacement bond provided under clause 22.4.

Extra Land means the land referred to in clause 12.9(a).

Facility Agreement means the agreement titled "North West Rail Link Operations Trains and Systems (OTS) PPP Project - Syndicated Facility Agreement" dated on or about the date of this deed between, amongst others, the Debt Financiers, the Agent, OpCo, Finance Co and the Security Trustee .

Final Completion has the meaning given in clause 19.12(b).

Final Completion Payment means \$

Final Design Documentation means any Design Documentation which:

- (a) OpCo is entitled to use for construction in accordance with clause 13.10(a);
- (b) has been amended by a Modification directed or approved by TfNSW's Representative in accordance with clauses 29 or 30; or
- (c) has been amended in accordance with clause 20.25.

Final Frequent Breaches Notice means a notice issued under clause 40.6(c) which complies with the requirements of clause 40.6(d).

Final Impact Statement means an assessment of the anticipated impact that the Augmentation option is likely to have (both during construction and after completion) on the NWRL.

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

Final Operational Requirements means, for each Augmentation, the requirements (including functional, technical, performance, rail operations, rolling stock and maintenance requirements and standards) that OpCo considers need to be considered in developing the preferred option to meet the Augmentation Objectives for that Augmentation.

Final Performance Test has the meaning given in SPR Appendix 1.

Final Persistent Breach Notice means a notice issued under clause 40.5(c) which complies with the requirements of clause 40.5(d).

Final Procurement Strategy means a strategy developed by OpCo outlining those packages of an Augmentation that will be tendered.

Finance Co means NRT Finance Pty Ltd ABN 51 600 662 342.

Finance Co Group means Finance Co and any Related Body Corporate identified as a member of the Finance Co Group in Schedule 36.

Finance HoldCo means NRT Finance Holdings Pty Ltd ACN 601 035 358.

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

Financial Close Protocol means the protocol contained in Exhibit 3.

Financial Indebtedness means any indebtedness, present or future, actual or contingent, in respect of moneys borrowed or raised, or any financial accommodation whatsoever, including under the Debt Financing Documents, or under or in respect of any bill, acceptance, guarantee, discounting arrangement, redeemable share or stock, hedging/swap arrangements, finance or capital lease, hire purchase arrangement, the deferred purchase cost of any asset or service, or

any obligation to deliver goods or provide services paid for in advance by any financier or in respect of any financing transaction.

Financiers Tripartite Deed means the deed so titled dated on or about the date of this deed between TfNSW, OpCo, Finance Co, the Security Trustee, the Agent and the Account Bank.

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

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

Force Majeure Event has the meaning given in clause 28.1.

Forecast Aggregate Consumption means the volume of electricity which OpCo estimates it will consume through the Connection Points over a Forecast Period for the purposes of operating and maintaining the NWRL during the Operations Phase, as notified and updated to TfNSW in accordance with clause 9.17(b)(iv).

Forecast Demand Usage means the electricity demand (measured in KVA) which OpCo will utilise throughout each Forecast Period of the Operations Phase, broken down across:

- (a) the Ausgrid Connection Point; and
- (b) the Endeavour Connection Point,

as notified and updated to TfNSW in accordance with clause 9.17(b)(iv).

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

Frequent Breach has the meaning given in clause 40.6.

Frequent Breaches Notice means a notice issued under clause 40.6(a) which complies with the requirements of clause 40.6(b).

General Change in Law means a Change in Law which is not a Project-Specific Change in Law.

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

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

GST Return has the meaning given in the GST Act.

Greenfield Railway means the CRERL.

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

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

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

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

Handback Condition means the required condition of the NWRL as at the Expiry Date (or, if this deed is terminated early, at the end of the Term), as set out in section 8.11 of the SPR.

Handback Security Bond means the bond referred to in clause 22.1(a)(i) and any replacement bond provided under clause 22.4.

Handover has the meaning given in Schedule 3.

Help Point has the meaning given in SPR Appendix 1.

Hills Shire Council Interface Agreement means the agreement titled "North West Rail Link – Operations, Trains and System (OTS) Interface Agreement" between TfNSW and Hills Shire Council dated 3 September 2014, a copy of which, as at the date of this deed, is contained in Exhibit 15.

Hired Moveable Asset means any Moveable Asset set out in Schedule 45 to which OpCo will not acquire title.

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

Hornsby Shire Council Interface Agreement means the agreement titled "North West Rail Link – Operations, Trains and System (OTS) Interface Agreement" between TfNSW and Hornsby Shire Council dated 2 September 2014, a copy of which, as at the date of this deed, is contained in Exhibit 15.

Human Resources Plan means the Project Plan of that name.

IAMA means The Institute of Arbitrators and Mediators, Australia.

IC Design Review Period means:

- (a) in the case of Design Documents (as defined in the WAD) which include the installation, erection, alteration, operation or removal of traffic control lights on any road or road related area, 35 Business Days;
- (b) in the case of Design Documents (as defined in the WAD) which include the construction, erection, affixing, marking, repair, alteration or removal of a traffic control facility (as defined in Part 6 of the *Transport Administration Act 1988* (NSW)) or road work (as defined in the *Roads Act 1993* (NSW)), 25 Business Days; and
- (c) in any other case, 20 Business Days,

of the date on which any Design Documentation for any Design Stage is submitted in accordance with clause 13.4.

IJV Deed means the deed titled "Joint Venture Deed" between Leighton Contractors Pty Limited and JHPL for the NWRL OTS PPP infrastructure package, dated on or about the date of this deed.

Incident means an accident, event or occurrence which:

- (a) actually or potentially causes death, serious injury, significant passenger disruption; or

- (b) affects the operation of the Stations or the Trains on, or operational capacity or efficiency of, the NWRL; or
- (c) affects the operation of trains on the Sydney metropolitan rail network near Chatswood or Epping Stations.

Incident Management Plan means the Project Plan of that name.

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

Indexed Lifecycle Component has the meaning given in Schedule 2.

Indicative Timetable has the meaning given in SPR Appendix 1.

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

- (a) referred to in Exhibit 6;
- (b) issued or made available by, or on behalf of, TfNSW or the State to OpCo in connection with the Invitation for Expressions of Interest for the OTS PPP issued by TfNSW in December 2012, the RFP, the OTS Works, the NWRL or the ETS (including anything issued or made available through TfNSW's website) and which at the time of issue (or being made available) was expressly classified or stated to be an "Information Document";
- (c) issued or made available by, or on behalf of, TfNSW or the State to OpCo in connection with the Invitation for Expressions of Interest for the OTS PPP issued by TfNSW in December 2012, the RFP, the OTS Works, the NWRL or the ETS (including anything issued or made available through TfNSW's website), but which did not form part of the Invitation for Expressions of Interest or RFP (as applicable), regardless of whether or not it was expressly classified or stated to be an "Information Document"; or
- (d) referred to, or incorporated by reference, in an Information Document unless such information, data, document or material is otherwise expressly stated to form part of this deed,

whether issued or made available:

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

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

Initial Loan Note Subscribers means:

- (a) Marubeni NRT Investments Pty Ltd;
- (b) Partners Group NRT Access, L.P.;

- (c) Pinnacle Fund Services Limited as trustee for the Palisade's Australian Social Infrastructure Fund 1;
- (d) Commonwealth Superannuation Corporation as trustee for the Aria Investments Trust; and
- (e) MTR Northwest Rapid Transit (Sydney) Company Limited.

Initial OpCo Equity Investors means:

- (a) Marubeni NRT Investments Pty Ltd;
- (b) Partners Group NRT Access, L.P.;
- (c) PASIF NRT Holdings Pty Ltd ;
- (d) Commonwealth Superannuation Corporation as trustee for the Aria Investments Trust;
- (e) MTR Corporation (UK) NRT Limited;
- (f) Leighton Infrastructure Investments Pty Ltd; and
- (g) Plenary Group Pty Ltd as trustee for Plenary Group Unit Trust.

Initial Performance Tests means Initial Performance Test 1 and Initial Performance Test 2 set out in section 3.5.3 of SPR Appendix 56.

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

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

of OpCo's Activities or otherwise enforces its Security Interest in respect of any such property;

- (g) a person or any other person appoints an administrator to the person, or takes any step to do so;
- (h) a person:
 - (i) suspends payment of its debts (other than as the result of a failure to pay a debt or claim which is the subject of a good faith dispute);
 - (ii) ceases or threatens to cease to carry on all or a material part of its business (other than as a result of UGL Limited becoming a subsidiary of another company listed in a recognised stock exchange);
 - (iii) is or states that it is unable to pay its debts; or
 - (iv) is deemed insolvent by virtue of its failure to comply with a statutory demand, which is not withdrawn or set aside within 10 Business Days;
- (i) a person enters into a readjustment or rescheduling of its indebtedness or makes a general assignment for the benefit of or a composition with its creditors, without the prior consent of TfNSW, except for the purposes of a solvent reconstruction or amalgamation permitted by this deed; or
- (j) any act is done or event occurs which has an analogous or similar effect to any of the events in paragraphs (a) to (i).

Insurance Benchmark Date means the date:

- (a) of the First Passenger Service and each third, or multiple thereof, anniversary of that date;
- (b) falling three months after the date on which OpCo receives written notification from TfNSW's Representative in accordance with clause 38.5(a) that the insurance limits of indemnity required for the Benchmarked Insurances will be increased; and
- (c) falling three months after the date on which OpCo receives written notification from TfNSW's Representative in accordance with clause 38.6 that the minimum sums insured and/or maximum deductibles should be increased or decreased for a Benchmarked Insurance.

Insurance Proceeds has the meaning given in clause 38.15(a).

Insurance Proceeds Account means the account referred to in clause 38.15(b).

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

Interface Protocols has the meaning given in Schedule 3.

Intellectual Property has the meaning given in Schedule 34.

Interface Management Plan means the Project Plan of that name.

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

JHPL means John Holland Pty Limited (ABN 11 004 282 268).

KPI means a key performance indicator, as specified in Annexure B of Schedule 2.

Land Arrangements has the meaning given in Schedule 9.

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

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

Last Train has the meaning given in Schedule 2.

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

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

Licence Payment means each licence payment payable by OpCo to TfNSW under clause 25.2A identified in the Model Outputs Schedule, as adjusted (if at all) under this deed.

Licence Payment Date means the date for payment of a Licence Payment as set out in the Model Outputs Schedule.

Licensed Intellectual Property has the meaning given in Schedule 34.

Licensed Maintenance Area means the land (including subsurface land) and airspace more particularly described as the "Licensed Maintenance Area" in SPR Appendix 3 as amended in accordance with clause 12.3A.

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

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

the OTS Works or Temporary Works, including those sections of public spaces, parks, pedestrian ways, pedal cycle paths, local roads, state highways, regional roads and main roads,

including any associated road reserves, that are made redundant or become service roads as part of the road network.

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

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

Loss means:

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

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

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

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

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

Maximum Train Journey Time has the meaning given in Schedule 2.

Minimum Operating Standards has the meaning given in SPR Appendix 1.

Minor Defect means a Defect:

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

Missed Platform has the meaning given in Schedule 2.

Missed Train Service has the meaning given in Schedule 2.

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

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

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

including any addition, reduction, increase, decrease or omission to or from them.

Modification Approval means a notice titled "Modification Approval" issued by TfNSW under clause 30.2(a)(ii)A.

Modification Impact Proposal means a proposal issued by OpCo under clause 29.2 or as amended in accordance with clause 29.4(c).

Modification Impact Request means a notice titled "Modification Impact Request" issued by TfNSW under clause 29.1.

Modification Order means a notice titled "Modification Order" issued by TfNSW under clause 29.

Monthly Operations Performance Report means the monthly report prepared in accordance with, and containing the information required by, SPR Appendix 53.

Monthly Service Payment Report means the monthly report prepared in accordance with, and containing the information required by, SPR Appendix 53 and submitted in accordance with clause 25.13.

Moral Rights Consent has the meaning given in Schedule 34.

Moveable Assets means:

- (a) the Trains;
- (b) the Spares;
- (c) the Special Tools and Equipment and
- (d) all other chattels:
 - (i) forming part of the OTS Works;
 - (ii) used by OpCo or OpCo's Contractors for the purpose of carrying out the Operations Activities and permanently stored within the Licensed Maintenance Area; or

- (iii) which are vehicles with the primary function of transporting equipment to, from and within the Licensed Maintenance Area for the purpose of carrying out the Operations Activities,

but excluding any chattels used for Commercial Opportunities.

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

Network Charges means all charges payable to Ausgrid and Endeavour Energy:

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

but does not include any charges relating to augmentation of Ausgrid's or Endeavour Energy's electricity networks (which includes any consequential work required by Ausgrid or Endeavour Energy to their respective network) or connection to facilitate the Ausgrid Connection Point and the Endeavour Energy Connection Point being constructed or commissioned (which augmentation and connection charges are not to be factored into the ongoing charges payable on and from the Date of Completion).

Net Financial Impact means the net financial impact of an NFI Event calculated in accordance with Schedule 29.

NFI Event means has the meaning given in Schedule 29.

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

Non-Reviewable Temporary Works means Temporary Works (excluding any Temporary Works which are WAD Works) that:

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

North West Rail Link means the railway line from Chatswood to Cudgegong Road including the OTS Works (other than the Third Party Works and those parts of the OpCo ECRL Works that lie outside the Project Site and form part of the Sydney Trains Network), the SVC Works and the TSC Works as constructed, but excluding the ETS.

Notice of Proposed Augmentation means a notice under clause 33.2.

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

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

NSW Guidelines means the NSW Government's Implementation Guidelines to the New South Wales Code of Practice for Procurement: Building and Construction (as issued on 1 July 2013).

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

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

NWRL means the North West Rail Link.

NWRL Documentation means:

- (a) all drawings, plans, manuals, software designs, reports, computer records, specifications, calculations and any other documents (whether in hard copy or electronic form) prepared or required to be prepared by or on behalf of OpCo or OpCo's Contractors in performing OpCo's Activities; and
- (b) without limiting paragraph (a), the Design Documentation and the Project Plans.

NWRL Programming Protocol means the document titled "North West Rail Link Programming Protocol" referred to in SPR Appendix 57.

NWRL Site means:

- (a) during the Delivery Phase, the Construction Site; and
- (b) during the Operations Phase, the Licensed Maintenance Area.

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

O&M Contract means the contract titled "North West Rail Link Operations, Trains and Systems O&M Contract" between OpCo and the O&M Contractor dated on or about the date of this deed.

O&M Contractor means Metro Trains Sydney Pty Ltd (ACN 600 820 737).

O&M Contract Side Deed means the contract titled "OTS O&M Contract Side Deed" between TfNSW, OpCo, the O&M Contractor, the O&M Guarantors and the D&C Contractor dated on or about the date of this deed.

O&M Guarantee means, in respect of an O&M Guarantor, the deed titled "O&M Guarantee" dated on or about the date of this deed between OpCo and that O&M Guarantor.

O&M Guarantors means:

- (a) Leighton Holdings Limited (ABN 57 004 482 982);
- (b) UGL Limited (ABN 85 009 180 287); and
- (c) MTR Corporation Limited (ABN 34 784 495 535) (a company incorporated in Hong Kong).

O&M Shareholders Agreement means the contract titled "Shareholders Agreement" between MTR Corporation (UK) NRT Limited, UGL Rail Services Pty Ltd and John Holland Sydney NRT Pty Ltd dated on or about 18 July 2014.

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

OpCo Contractor means a contractor, sub-contractor, sub-sub-contractor and so on right down the contracting chain (including all suppliers, tradespersons and consultants) of OpCo involved in performing OpCo's Activities. The OTS Independent Certifier is not an OpCo Contractor.

OpCo ECRL Works has the meaning given in Schedule 3.

OpCo Entity means OpCo and Finance Co, or either of them, as the context requires.

OpCo Equity Interest means:

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

OpCo Equity Investor means a person who:

- (a) holds shares or units or other interests in the nature of equity in any member of OpCo Group; or
- (b) provides a shareholder loan (or other loan in the nature of equity funding) to or for the benefit of any member of OpCo Group (but excluding any funding referred to in paragraphs (b)-(c) of the definition of Equity Interest).

OpCo ETS Works has the meaning given in Schedule 4.

OpCo Event of Default means any event specified in clause 40.1.

OpCo Group means OpCo and any Related Body Corporate identified as a member of the OpCo Group in Schedule 36, and any Related Body Corporate which becomes a member of the OpCo Group pursuant to a consent given in accordance with clause 53.2.

OpCo HoldCo means NRT Holdings Pty Ltd ACN 166 608 091 in its personal capacity and in its capacity as trustee of the NRT Holdings Unit Trust.

OpCo HoldCo 2 means NRT Holdings 2 Pty Ltd ACN 600 974 258 in its personal capacity and in its capacity as trustee of the NRT Holdings 2 Unit Trust.

OpCo's Activities means all activities that OpCo performs, or is required to perform, to exercise its rights or comply with its obligations under this deed, whether or not the performance of such things or tasks is subcontracted by OpCo to another person, including the Delivery Activities and the Operations Activities.

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

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

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

OpCo's Privacy Plan means the plan of that name to be prepared by OpCo in accordance with clause 45.10(e).

OpCo's Representative means Patrick Lauren or any other person from time to time appointed by OpCo to replace that person in accordance with clause 9.15.

OpCo Termination Event means any event specified in clause 42.1.

Operating Hours has the meaning given in Schedule 2.

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

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

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

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

- (a) in connection with the operation or asset management of the NWRL or the ETS (whether such things are performed, or required to be performed, during the Delivery Phase or the Operations Phase); or
- (b) to exercise its rights or comply with its obligations under this deed during the Operations Phase,

whether or not the performance of such things or tasks is subcontracted by OpCo to another person, including:

- (c) the activities described in section 2.1.3 of the SPR; and
- (d) the maintenance of the Civil Works during the Delivery Phase in accordance with clause 14.10.

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

Operations and Maintenance Manuals has the meaning given in SPR Appendix 1.

Operations Control Centre has the meaning given in SPR Appendix 1.

Operations Phase means the period commencing on the date of the First Passenger Service and ending on the last day of the Term.

Operations Phase Environmental and Sustainability Plan means the Project Plan of that name.

Operations Plan means the Project Plan of that name.

Operative Provisions means the operative provisions of this deed, being clauses 1 - 62 and excluding all schedules and exhibits.

Original Date for Completion has the meaning given in Schedule 2.

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

Origin Station has the meaning given in Schedule 2.

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

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

OTS Independent Certifier means GHD Pty Limited ABN 39 008 488 373 and SYSTRA SA ABN 68 557 615 546 or such other person as may be agreed by TfNSW and OpCo.

OTS Independent Certifier Deed means the deed so titled dated on or about the date of this deed between TfNSW, OpCo and the OTS Independent Certifier.

OTS PPP means:

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

in accordance with this deed.

OTS Works means the physical works, assets, systems and deliverables that OpCo must design and construct under this deed including:

- (a) the OpCo ECRL Works, the OpCo ETS Works and the Third Party Works;
- (b) the Trains;
- (c) the Stations (other than Epping, Macquarie University, Macquarie Park, North Ryde and Chatswood stations), the Station Precincts and the Rapid Transit Rail Facility; and
- (d) to the extent relevant to such works, assets, systems and deliverables, any Modifications directed or approved in accordance with clauses 29 or 30,

but excluding the Temporary Works.

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

PAFA Act Guarantee means the guarantee made on or prior to the date of Financial Close pursuant to section 22B of the PAFA Act in respect of TfNSW's obligations under the TfNSW Project Agreements.

Parramatta Rail Link Planning Approval means the approval granted by the (former) Minister for Planning under the EP&A Act dated February 2002, a copy of which (as at the date of this deed) appears in Exhibit 5, as modified from time to time.

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

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

Permitted Change in Control means a Change in Control described in Part B of Schedule 37.

Permitted Change in Ownership means a Change in Ownership described in Part A of Schedule 37.

Permitted Security Interest means:

- (a) a Security Interest created under any Project Agreement;
- (b) a lien that arises by operation of law in the ordinary course of ordinary business, where the amount secured is not overdue or is being diligently contested in good faith;
- (c) each Debt Financiers Security;
- (d) any title retention arrangement which is entered into in the ordinary course of day-to-day trading on arm's length and customary terms, as long as the obligation it secures is discharged when due or is being diligently contested in good faith;
- (e) any other Security Interest that is expressly permitted under the TfNSW Project Agreements, the Financiers Tripartite Deed or the Debt Financing Documents; and
- (f) any other Security Interest to which TfNSW has given its prior written consent, but only to the extent it secures Financial Indebtedness in amounts to which TfNSW has given its consent.

Persistent Breach has the meaning given in clause 40.5(a).

Persistent Breach Notice means a notice issued under clause 40.5(a) which complies with the requirements of clause 40.5(b).

Personal Information means:

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

Planned Service Disruption means a service disruption for the purpose of carrying out Asset Management Activities specified in the Contract Service Level Requirements.

Planning Approvals means:

- (a) Project Planning Approval 1;
- (b) Project Planning Approval 2;

- (c) the EPBC Act Approval;
- (d) the ECRL Conversion Planning Approval;
- (e) the Rapid Transit Rail Facility Planning Approval;
- (f) the Parramatta Rail Link Planning Approval; and
- (g) any other consent, concurrence or approval, or determination of satisfaction with any matter, which is made, given or issued under the Planning Approvals from time to time and all conditions to any of them, and includes all documents incorporated by reference, as that consent, concurrence, approval or determination may be modified from time to time.

Platform has the meaning given in Schedule 2.

Platform Closure has the meaning given Schedule 2.

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

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

Pre-Agreed Option means any of the pre-agreed options specified in Schedule 30.

Pre-Agreed Option Construction Payment means, in respect of a month and a Pre-Agreed Option which TfNSW has directed pursuant to clause 31(a), the amount (if any) for that month for that Pre-Agreed Option specified in the "Pre-Agreed Option Construction Payment" schedule in the Model Outputs Schedule.

Preliminary Impact Statement means a preliminary draft of the Final Impact Statement.

Preliminary Operational Requirements means a preliminary draft of the Final Operational Requirements.

Preliminary Procurement Strategy means a preliminary draft of the Final Procurement Strategy.

Pre-Shutdown TfNSW ECRL Works has the meaning given in Schedule 3.

Primary Plaza has the meaning given in SPR Appendix 1.

Project Aboriginal Participation Plan means a plan that satisfies the requirements of the NSW Government Aboriginal Participation in Construction Guidelines for an "Aboriginal Participation Plan".

Project Agreements means:

- (a) this deed;
- (b) the OTS Independent Certifier Deed;
- (c) the SVC Independent Certifier Deed;
- (d) the TSC Independent Certifier Deed;
- (e) the SVC IC Deed of Accession;
- (f) the TSC IC Deed of Accession;

- (g) the SVC-OTS Cooperation and Integration Deed;
- (h) the TSC-OTS Cooperation and Integration Deed;
- (i) the SVC-OTS Cooperation Deed of Accession;
- (j) the TSC-OTS Cooperation Deed of Accession;
- (k) the D&C Contract;
- (l) the D&C Contract Side Deed;
- (m) the D&C Guarantees;
- (n) the O&M Contract;
- (o) the O&M Contract Side Deed;
- (p) the O&M Guarantees;
- (q) the Core Contractor Interface Deed;
- (r) the Alstom D&C Significant Contract Side Deed;
- (s) the Alstom TLS Significant Contract Side Deed;
- (t) the Alstom Direct Deed;
- (u) the Equity Purchase Deed;
- (v) the Debt Financing Documents;
- (w) the Equity Documents;
- (x) the Financiers Tripartite Deed;
- (y) the TfNSW Deed of Charge;
- (z) the PAFA Act Guarantee;
- (aa) any Deeds of Assurance;
- (bb) any Moral Rights Consents;
- (cc) the Escrow Deed;
- (dd) each Rail Safety Interface Agreement;
- (ee) the DAB Agreement;
- (ff) the Securitisation Agreement; and
- (gg) the Payment Directions Deed.

Project Brief means:

- (a) an initial Project Brief prepared pursuant to clause 33.6; or
- (b) a final Project Brief prepared pursuant to clause 33.7.

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

Project Management Plan means the Project Plan of that name.

Project Planning Approval 1:

- (a) means the approval granted by the Minister for Planning and Infrastructure under section 115ZB of the EP&A Act dated 25 September 2012 (SSI-5100), a copy of which (as at the date of this deed) appears in Exhibit 5; and
- (b) includes all:
 - (i) conditions to such approval; and
 - (ii) documents incorporated by reference,

as modified from time to time.

Project Planning Approval 2:

- (a) means the approval granted by the Minister for Planning and Infrastructure under section 115ZB of the EP&A Act dated 8 May 2013 and modified on 20 May 2014, a copy of which (as at the date of this deed) appears in Exhibit 5; and
- (b) includes all:
 - (i) conditions to such approval; and
 - (ii) documents incorporated by reference,

as modified from time to time.

Project Plans means the plans listed in SPR Appendix 54, including all subsidiary plans and supporting documents and information.

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

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

- (a) the NWRL, and not to other railways in Australia;
- (b) OpCo, and not to other persons;
- (c) the NWRL Site or any Unowned Parcels, and not to any other:
 - (i) similarly situated land or facilities; or
 - (ii) land or facilities where similar activities to OpCo's Activities are undertaken; or
- (d) projects procured or established under the:
 - (i) NSW Working with Government Guidelines for Privately Financed Projects or other policies of the State in respect of privately financed projects; or

- (ii) National Public Private Partnership Guidelines or other policies of the Commonwealth in respect of privately financed projects,

and not to other projects.

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

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

Proximate Work Activity means any activities that TfNSW wishes to carry out (or have carried out by an Other Contractor) within, adjacent to, over or under the NWRL Site), including the activities listed in clause 34.1, but excluding:

- (a) the TfNSW ETS Activities;
- (b) the construction of the TfNSW ECRL Works and the Civil Works;
- (c) the rectification of a Civil Works Defect by a Civil Works Contractor or an Other Contractor; and
- (d) for the avoidance of doubt, OpCo's Activities.

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

Quality Plan means the Project Plan of that name.

Quarter means each 3 month period ending 31 March, 30 June, 30 September or 31 December.

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

RailCorp means Rail Corporation New South Wales (ABN 59 325 778 353).

Rail Entity means RailCorp, Sydney Trains, NSW Trains and any other NSW Authority that owns or operates railway infrastructure.

Rail Infrastructure Manager has the meaning given in the Rail Safety National Law.

Rail Safety Interface Agreement means an interface agreement, as defined in the Rail Safety National Law, to which OpCo or one or more Core Contractors is, or is required to be, a party.

Rail Safety National Law means the *Rail Safety National Law (NSW)*.

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

Railway Operations has the meaning given in the Rail Safety National Law.

Rapid Transit Rail Facility means the stabling and maintenance facility (including the Operations Control Centre) to be designed and constructed by OpCo under this deed (including SPR Appendices 23 and 24).

Rapid Transit Rail Facility Planning Approval means any approval granted by the Minister for Planning and Infrastructure under section 115ZB of the EP&A Act or its equivalent in

respect of the Rapid Transit Rail Facility, a copy of which appears in Exhibit 5, and includes all:

- (a) conditions to such approval; and
- (b) documents incorporated by reference,

as the approval may be modified from time to time.

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

Receivables Purchase Payment has the meaning given to it in the Securitisation Agreement.

Receivables Purchase Price has the meaning given to it in the Securitisation Agreement.

Receivables Refund Payment has the meaning given to it in the Securitisation Agreement.

Reference Pictures has the meaning given in Schedule 2.

Refinancing means any of the following:

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

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

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

Refinancing Gain has the meaning given in clause 49.8.

Refinancing Loss has the meaning given in clause 49.8.

Related Body Corporate:

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

Relief Event has the meaning given in clause 27.1

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

Remediation Period has the meaning given in clause 21.7(d).

Replacement and Refurbishment has the meaning given in SPR Appendix 1.

Reputable Insurer means an insurance company having the Required Rating.

Required NWRL Employees means all:

- (a) OpCo employees;
- (b) O&M Contractor employees; and
- (c) Significant Contractor employees employed to manage the maintenance of the Trains.

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

Required Train Services means, at any time, the railway passenger services which OpCo is required to provide set out in Schedule 2, Annexure A, clause 5, that must as a minimum meet the requirements in section 4.4 of SPR Appendix 45.

Retail Licence has the meaning given in Schedule 9.

Risk Management Plan means the Project Plan of that name.

RFP means the document titled Operations, Trains and Systems PPP Request for Proposal dated June 2013.

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

Rouse Hill Precinct means the public areas outside the "ATF" fencing identified on the drawing titled "North West Rail Link, Rouse Hill Station, Staging - Temporary Fencing" number "NWRL-OTS-NRT-RHS-SKE-001 Rev B" which forms part of Exhibit 2.

Rouse Hill Precinct Works means the works specified in Schedule 25.

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

Safety Accreditation Plan means the Project Plan of that name.

Safety Management Plan means the Project Plan of that name.

Schedule of Rates means the schedules of rates in Schedule 27.

Securitisation Agreement means the agreement titled "Securitisation Agreement" dated on or about the date of this deed, between TfNSW, OpCo and Finance Co.

Securitised Licence Structure means the securitisation structure relating to the Licence Payments contained in the Securitisation Agreement, the Payment Directions Deed, the Licence Payment Schedule, clause 25.2A (Licence Payments) and clause 25A (Securitised licence structure) (other than clause 25A.3 (No Change in risk allocation)).

Securitised NFI Event Payment means an amount equal to the corresponding payment of the Receivables Purchase Price in respect of the Additional Receivables purchased by Finance Co from TfNSW under the Securitisation Agreement resulting from an NFI Event.

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

Security Management Plan means the Project Plan of that name.

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

Security Trustee means, at any time, the person appointed as security trustee under the Security Trust Deed. At the date of this deed the Security Trustee is National Australia Bank Limited ACN 004 044 937.

Senior Project Group means the group established under clause 5.5.

Service Change means an amendment to the Contract Service Level Requirements.

Service Change Limitations has the meaning given in Schedule 2.

Service Failure Points has the meaning given in Schedule 2.

Service Payment means, in respect of a month, the service payment for that month (if any) payable by TfNSW to OpCo, calculated in accordance with Schedule 2, as adjusted in accordance with this deed.

Service Payment Deduction means:

- (a) an Availability Deduction;
- (b) a Timeliness Deduction;
- (c) a Service Quality Deduction;
- (d) an Asset Functionality Deduction;
- (e) an Energy Deduction; or

(f) a negative Asset Management Adjustment,
all as defined in Schedule 2.

Service Payment Monitoring System means the system referred to in clause 25.13.

Service Quality Deduction has the meaning given in Schedule 2.

Service Quality KPI has the meaning given in Schedule 2.

Shareholders Agreement means the agreement so titled between MTR Corporation (UK) NRT Limited, Leighton Infrastructure Investments Pty Limited, Plenary Group Pty Limited as trustee of the Plenary Group Trust, Marubeni NRT Investments Pty Ltd, Commonwealth Superannuation Corporation as trustee for the Aria Investments Trust, PASIF NRT Holdings Pty Ltd, Partners Group NRT Access, L.P., NRT Holdings 2 Pty Ltd in its capacity as trustee of the NRT Holdings 2 Unit Trust, John Holland Pty Limited and UGL Rail Services Pty Limited dated on or about the date of this deed.

Significant Contracts means:

- (a) the Core Contracts;
- (b) the contracts listed in Schedule 38; and
- (c) any other contract that the parties agree from time to time is a Significant Contract.

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

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

Site Access Expiry Date means, in respect of a part of the Construction Site, the date specified as a "Site Access Expiry Date" for that part of the Construction Site in the Site Access Schedule, as may be extended in accordance with this deed.

Site Access Schedule means Exhibit 2.

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

- (a) Artefacts and any other natural and artificial conditions;
- (b) physical and structural conditions, including old footings, underground structures, buildings, improvements, partially completed structures and in-ground works;
- (c) all improvements, including any artificial things, foundations, retaining walls and other structures installed by or on behalf of TfNSW or others;
- (d) surface water, ground water, ground water hydrology and the effects of any dewatering;
- (e) any Contamination, hazardous substance or other spoil or waste;
- (f) topography of the NWRL Site and any Extra Land, ground surface conditions and geology, including rock and sub-surface conditions or other materials encountered at the NWRL Site or Extra Land;

- (g) geological, geotechnical and subsurface conditions or characteristics;
- (h) any underground strata;
- (i) all Utility Services, systems and facilities, above or below ground level and all facilities with which such Utility Services and systems are connected;
- (j) the Environment, water, weather or climatic conditions, or the effects of the Environment, water, weather or climatic conditions, including rain, surface water runoff and drainage, water seepage, wind-blown dust and sand, seasons and physical conditions that are a consequence of weather or climatic conditions; and
- (k) any latent conditions.

SJV Deed means the deed titled "SJV Agreement" between MTR Corporation (Sydney) NRT Pty Limited and UGL Rail Services Pty Limited dated on or about the date of this deed.

Spares has the meaning given in SPR Appendix 1.

Spares and Consumables Strategy means the plan developed as part of the Asset Management Plan.

Special Event means:

- (a) a special event specified in section 4.4.3 of the SPR Appendix 45; or
- (b) a special event in respect of which TfNSW directs a Service Change under clause 20.4.

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

SPR means the Scope and Performance Requirements contained in Exhibit 1.

SPR Appendix mean an appendix of the SPR.

Stakeholder and Community Involvement Plan means the Project Plan of that name.

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

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

St Leonards Extension has the meaning given in clause 29.18.

Strategic Business Plan means the Project Plan of that name.

Station means in respect of the railway stations at Cudgegong Road, Rouse Hill, Kellyville, Bella Vista, Norwest, Showground, Castle Hill, Cherrybrook, Macquarie University, Macquarie Park, North Ryde, Epping and Chatswood, the Licensed Maintenance Area within:

- (a) the station building; and
- (b) any service facilities associated with the station.

Station Precinct has the meaning given in SPR Appendix 1.

Steering Committee means the committee established under clause 33.3.

Step-in Event has the meaning given in clause 41.1.

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

Step-in Powers has the meaning given in clause 41.3.

Step-in Rights has the meaning given in clause 41.2(a).

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

Subdivision Documents has the same meaning as in the Council Interface Agreements.

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

SVC Construction Completion has the meaning given to the term "Construction Completion" in the SVC Project Deed.

SVC Contractor means Salini Impregilo S.p.A (ABN 83 159 573 896) and Salini Australia Pty Ltd (ABN 86 158 955 885).

SVC Date for Construction Completion means, in respect of a SVC Portion, the date on which the SVC Contractor is required to complete the SVC Portion in accordance with the SVC Project Deed.

SVC Date of Construction Completion means, in respect of a SVC Portion:

- (a) the date notified by the SVC Independent Certifier as the date SVC Construction Completion was achieved; or
- (b) where another date is determined in accordance with the dispute resolution procedures under the SVC Project Deed as the date upon which SVC Construction Completion was achieved, that date.

SVC Defect means:

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

which is not in accordance with the requirements of the SVC Project Deed,

but does not include any Deviations within the Civil Works Tolerances.

SVC IC Deed of Accession means the deed of accession executed by OpCo on or about the date of this deed, providing for OpCo to accede to the SVC Independent Certifier Deed.

SVC Independent Certifier means Hyder Consulting Pty Ltd (ABN 76 104 485 289) of Level 5, 141 Walker Street, North Sydney NSW 2060, or such other person(s) as may be engaged by TfNSW, the SVC Contractor, and OpCo in accordance with the SVC Independent Certifier Deed.

SVC Independent Certifier Deed means the deed so titled entered into between the SVC Contractor, TfNSW and the SVC Independent Certifier, to which OpCo acceded under the SVC IC Deed of Accession dated on or about the date of this deed.

SVC-OTS Cooperation and Integration Deed means the deed between TfNSW, OpCo and the SVC Contractor, to which OpCo acceded under the SVC Cooperation Deed of Accession dated on or about the date of this deed.

SVC-OTS Cooperation Deed of Accession means the deed of accession executed by OpCo on or about the date of this deed, providing for OpCo to accede to the SVC-OTS Cooperation and Integration Deed.

SVC Portion has the meaning given to the term "Portion" in the SVC Project Deed.

SVC Project Deed means the contract between TfNSW and the SVC Contractor dated 17 December 2013, an unpriced version of which is contained in Exhibit 12.

SVC Works means the physical works to be designed and constructed by the SVC Contractor under the SVC Project Deed, being the surface and viaduct civil works component of the NWRL including the earthworks, formation works, viaduct and bridges, road and Utility Service diversion between Bella Vista and the Rapid Transit Rail Facility, excluding the "Third Party Works" and "Temporary Works" (as those terms are defined in the SVC Project Deed).

SVC Works Change means any change or variation to the SVC Works following the date of this deed including any addition, reduction, increase, decrease, omission, deletion, demolition or removal to or from them (not including any change or variation that the SVC Contractor is entitled to make to the design of the SVC Works under the SVC Project Deed without TfNSW's consent where, following any such change or variation, the SVC Works will continue to comply with the requirements of the SVC Project Deed (in the form contained in Exhibit 12, as amended for any Approved Civil Works Change)).

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

Sydney Trains Design Documentation means all Design Documentation created or submitted by OpCo which is required for OpCo ECRL Works which will interface with or otherwise affect:

- (a) Sydney Trains' Facilities;
- (b) Sydney Trains' operations or activities; or
- (c) the operations of third party operators using Sydney Trains' Facilities.

Sydney Trains ECRL Asset Maintenance Plan has the meaning given in Schedule 3.

Sydney Trains' Facilities has the meaning given in Schedule 3.

Sydney Trains' Representative has the meaning given in clause 3.7(b) of Schedule 3.

System means the components that constitute the ECRL signalling system, control system, telephone communication system, radio communications system, data network system, HV electrical system, LV electrical system, electrical traction system, fire system, security and access control system, ventilation system, vertical transport system, HVAC system, tunnel drainage system, water treatment system, track system, noise attenuation system, the ECRL tunnel walkway and architectural elements including fixtures and fittings.

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

Tax Invoice has the meaning given in the GST Act.

Taxable Supply has the meaning given in the GST Act.

Temporary Areas means the land more particularly described as the "Temporary Areas" in SPR Appendix 2.

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

Term means the period:

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

Termination Payment means an amount payable by TfNSW to OpCo under clause 42.12, in each case calculated in accordance with Schedule 31 and clause 42.14 (if applicable).

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

Test means:

- (a) a test required by SPR Appendix 56 or the Testing and Commissioning Plan; and
- (b) an additional test which OpCo is directed to carry out under clause 18.8(a).

Testing means the carrying out of the Tests.

Testing and Commissioning Plan means the Project Plan of that name.

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

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

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

TfNSW Construction Payments Account means the account opened and operated in accordance with clause 10.4 of the Financiers Tripartite Deed.

TfNSW Deed of Charge means each of:

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

TfNSW ECRL Works has the meaning given in Schedule 3.

TfNSW ETS Activities has the meaning given in Schedule 4.

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

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

TfNSW Termination Event means any event specified in clause 42.5.

TfNSW's Representative means Stuart Suthern-Brunt or any other person from time to time appointed by TfNSW to replace that person in accordance with clause 5.1(a).

Third Party Agreement Design Documentation means:

- (a) each "Design Document" as that term is defined in the WAD; and
- (b) "Design Documentation" as that term is defined in the Council Interface Agreements.

Third Party Agreements means the agreements referred to in Schedule 8 entered into by TfNSW with the parties referred to in Schedule 8. Copies of the Third Party Agreements, as at the date of this deed, are contained in Exhibits 13, 14 and 15.

Third Party Works means the Local Area Works, Property Works and Utility Service Works.

Timeliness Deduction has the meaning given in Schedule 2.

Track Possession has the meaning given in Schedule 3.

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

Training Management Plan means the Project Plan of that name.

Trains means the trains which OpCo must supply, operate and maintain for the purpose of conveying Customers under this deed.

Train Services means the train services which OpCo actually provides (as distinct from the Required Train Services).

Transaction Party means OpCo, OpCo HoldCo, OpCo HoldCo 2, Finance Co and Finance HoldCo.

Transition Out Plan means the Project Plan of that name.

Transitional Handover Services has the meaning given in the TSC Project Deed or the SVC Project Deed (as applicable).

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

Transport Integration Plan means the Project Plan of that name.

Trust means the trust known as the NRT Unit Trust, constituted by the Trust Deed.

Trust Deed means the NRT Unit Trust Deed dated 4 September 2014 signed by OpCo.

Trust Property means all present and future undertakings, assets, property and rights comprising the trust fund of the Trust.

Trustee means OpCo in its capacity as trustee of the Trust.

Trustee's Indemnity means, in relation to a Trustee and a Trust, the present and future rights and interest of the Trustee in respect of:

- (a) the administration of the Trust;
- (b) the Trustee's right of indemnity from the Trust Property of the Trust or from any beneficiary of the Trust; and
- (c) any equitable lien or other Security Interest held by or granted to the Trustee securing the Trustee's Indemnity or any other present or future interest of it as Trustee in respect of the Trust Property, the Trust or any beneficiary of the Trust,

and all moneys paid or payable under or in respect of any such right or interest.

TSC Construction Completion has the meaning given to the term "Construction Completion" in the TSC Project Deed.

TSC Contractor means:

- (a) Thiess Pty Limited (ABN 87 010 221 486);
- (b) John Holland Pty Limited (ABN 11 004 282 268); and
- (c) Dragados Australia Pty Limited (ABN 20 151 632 665).

TSC Date for Construction Completion means, in respect of a TSC Portion, the date on which the TSC Contractor is required to complete the TSC Portion in accordance with the TSC Project Deed.

TSC Date of Construction Completion means, in respect of a TSC Portion:

- (a) the date notified by the TSC Independent Certifier as the date TSC Construction Completion was achieved; or
- (b) where another date is determined in accordance with the dispute resolution procedures under the TSC Project Deed as the date upon which TSC Construction Completion was achieved, that date.

TSC Defect means:

- (a) any defect, deficiency, fault, error or omission in the TSC Works; and
- (b) any:
 - (i) cracking, shrinkage, movement or subsidence in the TSC Works; or
 - (ii) other aspect of the TSC Works,which is not in accordance with the requirements of the TSC Project Deed,

but does not include any Deviations within the Civil Works Tolerances.

TSC IC Deed of Accession means the deed of accession executed by OpCo on or about the date of this deed, providing for OpCo to accede to the TSC Independent Certifier Deed.

TSC Independent Certifier means APP Corporation Pty Limited (ABN 29 003 764 770) of Level 7, 116 Miller Street, North Sydney NSW 2060 or such other person(s) as may be engaged by TfNSW, the TSC Contractor, and OpCo in accordance with the Independent Certifier Deed.

TSC Independent Certifier Deed means the deed so titled entered into between the TSC Contractor, TfNSW and the TSC Independent Certifier, to which OpCo acceded under the TSC IC Deed of Accession dated on or about the date of this deed.

TSC-OTS Cooperation and Integration Deed means the deed between TfNSW, OpCo and the TSC Contractor to which OpCo acceded under the TSC Cooperation Deed of Accession dated on or about the date of this deed.

TSC-OTS Cooperation Deed of Accession means the deed of accession executed by OpCo on or about the date of this deed, providing for OpCo to accede to the TSC-OTS Cooperation and Integration Deed.

TSC Portion has the meaning given to the term "Portion" in the TSC Project Deed.

TSC Project Deed means the contract between TfNSW and the TSC Contractor dated 24 June 2013, an unpriced version of which is contained in Exhibit 11.

TSC Works means the physical works to be designed and constructed by the TSC Contractor under the TSC Project Deed, being the tunnels and station civil component of the NWRL, excluding the "Third Party Works" and "Temporary Works" (as those terms are defined in the TSC Project Deed).

TSC Works Change means any change or variation:

- (a) to the TSC Works following the date of this deed including any addition, reduction, increase, decrease, omission, deletion, demolition or removal to or from them (not including any change or variation that the TSC Contractor is entitled to make to the design of the TSC Works under the TSC Project Deed without TfNSW's consent where, following any such change or variation, the TSC Works will continue to comply with the requirements of the TSC Project Deed (in the form contained in Exhibit 11, as amended for any Approved Civil Works Change)); or
- (b) to the following baseline earthworks drawings:
 - (i) Epping Service Facility refers drawing no NWRLTSC-THY-ESF-GN-DRG-311102 rev 05 (OTS Data Room ref: 01.01.07.03.0311)
 - (ii) Cheltenham Service Facility refers drawing no NWRLTSC-THY-CSF-GN-DRG-311202 rev 03 (OTS Data Room ref: 01.01.07.03.0345)
 - (iii) Cherrybrook Station refers drawing no NWRLTSC-THY-CHE-CW-DRG-311306 rev 03 (OTS Data Room ref: 01.01.07.03.0366)
 - (iv) Castle Hill Station refers drawing no NWRLTSC-THY-CSH-CW-DRG-311415 rev 03 (OTS Data Room ref: 01.01.07.03.0409)
 - (v) Showground Station refers drawing no NWRLTSC-THY-SHW-CW-DRG-311506 rev 03 (OTS Data Room ref: 01.01.07.03.0429)

- (vi) Norwest station refers drawing no NWRLTSC-THY-NRW-GN-DRG-311602 rev 02 (OTS Data Room ref: 01.01.07.03.0461)
- (vii) Bella Villa Station refer drawing nos NWRLTSC-THY-BLV-CW-DRG-311715 rev 01 (OTS Data Room ref: 1.01.07.03.0494) and NWRLTSC-THY-BLV-CW-DRG-311716 rev 01 (OTS Data Room ref: 01.01.07.03.0495).

Uninsurable Risk means a risk in respect of which:

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

at the time that the insurance is sought to be obtained or renewed.

Unowned Parcel means a parcel of land and property of which the State is not the registered proprietor, lessee or licensee and in relation to which, or upon which, Property Works are to be undertaken.

Utility Service means any service, facility or item of infrastructure, for the provision and (if necessary) measurement of water, electricity, gas, ethane, fuel, telephone, drainage, sewerage, industrial waste disposal and electronic communications service.

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

Vandalism means any malicious, reckless or deliberate damage to any part of an Asset, excluding Graffiti.

WAD means the Third Party Agreement titled "Works Authorisation Deed - North West Rail Link – Operations, Trains and System (OTS) Works" between TfNSW and RMS dated 11 September 2014. A copy of the WAD, as at the date of this deed, is contained in Exhibit 14.

WAD NWRL Works has the meaning given to the term "NWRL Works" in the WAD.

WAD Practical Completion has the meaning given to the term "Practical Completion" in the WAD.

WAD Proof Engineer has the meaning given the term "Proof Engineer" in the WAD.

WAD Road Works has the meaning given to the term "Road Works" in the WAD.

WAD Works has the meaning given to the term "Works" in the WAD.

WHS Legislation means:

- (a) the Work Health and Safety Act 2011 (NSW) and the Work Health and Safety Regulation 2011 (NSW); and

- (b) any legislation in other States and Territories of Australia addressing work health and safety which applies to the OTS Works.

Wilful Misconduct means an act or failure to act by the relevant party or its Associates that was intended to cause, or was in reckless disregard of or wanton indifference to, harmful consequences, excluding any innocent act, omission, mistake or error of judgement.

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

Working Group means each working group established pursuant to clause 5.6.

Workplace Relations Management Plan means the Project Plan of that name.

WPI means the "Wage Price Index: Total Hourly Rates of Pay Excluding Bonuses" as maintained and published quarterly by the Australian Bureau of Statistics, or as otherwise determined in accordance with clause 1.11A.

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

1.2 **SPR definitions**

The definitions and abbreviations in section 1.2 and 1.3 of SPR Appendix 1 apply in this deed unless the relevant term is defined differently in the Operative Provisions.

1.3 **Schedule definitions**

The definitions in the Schedules apply in this deed unless the relevant term is defined differently in the Operative Provisions.

1.4 **Interpretation**

In this deed:

- (a) headings and subheadings are for convenience only and do not affect interpretation; and the following rules apply in interpreting this deed unless the context makes it clear that a rule is not intended to apply:
- (b) **person** includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (c) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or an additional trustee;
- (d) a reference to a document (including this deed) is to that document as varied, novated, ratified or replaced from time to time;
- (e) a reference to any Authority, institute, association or body is:
- (i) if that Authority, institute, association or body is reconstituted, renamed or replaced or if the powers or functions of that Authority, institute, association or body are transferred to another organisation, deemed to

refer to the reconstituted, renamed or replaced organisation or the organisation to which the powers or functions are transferred, as the case may be; and

- (ii) if that Authority, institute, association or body ceases to exist, deemed to refer to the organisation which serves substantially the same purposes or object as that Authority, institute, association or body;
- (f) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or any section or provision of either of these includes:
- (i) all ordinances, by-laws, regulations of and other statutory instruments (however described) issued under the statute or delegated legislation; and
 - (ii) any consolidations, amendments, re-enactments and replacements;
- (g) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (h) a reference to:
- (i) a party, schedule, exhibit, attachment or annexure is a reference to a party, schedule, exhibit, attachment or annexure to or of this deed;
 - (ii) this deed includes all schedules, exhibits, attachments and annexures to it, including the SPR; and
 - (iii) the SPR includes all SPR Appendices;
- (i) a reference in:
- (i) the Operative Provisions to a clause is a reference to a clause of the Operative Provisions; and
 - (ii) a schedule, exhibit, attachment, annexure or appendix to a clause, paragraph or annexure, is a reference to a clause, paragraph or annexure of that schedule, exhibit, attachment, annexure or appendix;
- (j) any reference to:
- (i) the OTS Works or the Temporary Works;
 - (ii) the Operations Activities;
 - (iii) the Project Plans;
 - (iv) the SPR;
 - (v) the Design Documentation and the NWRL Documentation; or
 - (vi) any other document or thing,
- or any part of any of them:
- (vii) being or remaining fit for its purpose or for its intended purpose; or
 - (viii) as having an intended use,

(or any similar reference) will be read as referring to the purpose, intended purpose or intended use having regard to:

(ix) TfNSW's intention that the OTS Works will be used as an integral part of an operating rail system intended to provide frequent high speed mass transit services between Chatswood and Cudgegong Road and which may:

- A. be required to accommodate and utilise various rolling stock, railway track, rail systems and related equipment;
- B. be subject to continuous operation;
- C. be operated by either the State of New South Wales or by private operator(s) on its behalf;
- D. involve further development of rail stations, including station structures and fit out to the extent referred to in this deed;
- E. be upgraded, augmented, extended and expanded to the extent referred to in this deed;
- F. be connected to and/or integrated with other transport infrastructure to the extent referred to in this deed; and
- G. involve future construction and development of buildings and/or other infrastructure on, over, under or adjacent to railway stations and other parts of the NWRL to the extent referred to in this deed; and

(x) any purpose, intended purpose or intended use stated in, contemplated by or reasonably ascertainable from:

- A. this deed, including:
 - 1) the principles and drivers referred to in sections 1.1 and 1.2 of the SPR; and
 - 2) the requirement that the OTS Works, when completed, will be designed and constructed in compliance with all health and safety requirements of the WHS Legislation; or
- B. (to the extent relevant for determining the purpose, intended purpose or intended use in connection with a Modification) any document provided by TfNSW to OpCo specifically in connection with the Modification (excluding any Information Documents);

(k) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;

(l) **includes** in any form is not a word of limitation;

(m) a reference to **\$** or **dollar** is to Australian currency;

- (n) a reference to **construction** includes development, manufacture, supply, installation, integration, testing and commissioning;
- (o) any reference to **information** will be read as including information, representations, statements, data, samples, bore logs, calculations, assumptions, deductions, determinations, drawings, design, specifications, models, plans and other documents in all forms including the electronic form in which it was generated; and
- (p) any obligation of OpCo under this deed with respect to a **Project Plan**, will be read as an obligation with respect to the version of the relevant Project Plan last submitted by OpCo to TfNSW's Representative under clause 8 in respect of which:
 - (i) during the Delivery Phase, the OTS Independent Certifier has certified under clause 8.5(a)(ii)B.2); or
 - (ii) during the Operations Phase, TfNSW's Representative has not given a notice under clause 8.5(b)(ii)
 (as applicable).

1.5 Resolution of ambiguities

- (a) The following order of precedence applies in the event of any ambiguity, discrepancy or inconsistency in, or between, the documents comprising this deed:
 - (i) if the ambiguity, discrepancy or inconsistency is in or between the documents comprising this deed, the documents will be given precedence in accordance with the following:
 - A. this deed (excluding the SPR); and
 - B. the SPR;
 - (ii) to the extent clause 1.5(a)(i) does not apply to or resolve the ambiguity, discrepancy or inconsistency and the ambiguity, discrepancy or inconsistency is between different codes, standards, specifications or guidelines with which OpCo must comply, the order of precedence set out in section 1.1(f) of SPR Appendix 57 will apply;
 - (iii) to the extent clauses 1.5(a)(i) and 1.5(a)(ii) do not apply to or resolve the ambiguity, discrepancy or inconsistency and the ambiguity, discrepancy or inconsistency is between different requirements of the SPR, the order of precedence set out in section 1.3(d) of the SPR will apply;
 - (iv) to the extent clauses 1.5(a)(i) to 1.5(a)(iii) do not apply to or resolve the ambiguity, discrepancy or inconsistency and the ambiguity, discrepancy or inconsistency is between the SPR and the Environmental Documents, the document which prescribes or requires the highest standard of compliance consistent with complying with all Approvals will take precedence (unless TfNSW's Representative directs otherwise);
 - (v) to the extent clauses 1.5(a)(i) to 1.5(a)(iv) do not apply or resolve the ambiguity, discrepancy or inconsistency and the ambiguity, discrepancy or inconsistency is in or between the documents comprising the Environmental Documents, the order of precedence in paragraph 1 of Schedule 5 will apply;

- (vi) to the extent clauses 1.5(a)(i) to 1.5(a)(v) do not apply or resolve the ambiguity, discrepancy or inconsistency and the ambiguity, discrepancy or inconsistency relates to the required quality or standard of the OTS Works, the Temporary Works or OpCo's Activities, OpCo must comply with the highest quality or standard specified or perform the more onerous obligation;
 - (vii) to the extent clauses 1.5(a)(i) to 1.5(a)(vi) do not apply or resolve the ambiguity, discrepancy or inconsistency and the ambiguity, discrepancy, or inconsistency is between figured and scaled dimensions, figured will prevail over the scaled dimensions; and
 - (viii) to the extent there is any inconsistency between this deed and the Interface Protocols, this deed will prevail over the Interface Protocols.
- (b) The documents comprising this deed (including the SPR and the Environmental Documents) are to be regarded as mutually explanatory and anything contained in one but not the others will be equally binding as if contained in all of them.
 - (c) If an ambiguity, discrepancy or inconsistency is discovered by OpCo, OpCo must notify TfNSW within 5 Business Days of such discovery.
 - (d) TfNSW's Representative must, within 10 Business Days of receipt of a notice under clause 1.5(c), instruct OpCo as to the interpretation to be followed so as to resolve the ambiguity, discrepancy or inconsistency in accordance with the rules set out in this clause 1.5.

1.6 National Public Private Partnership Policy and Guidelines

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

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

1.7 No bias against drafter

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

1.8 Business Day

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

- (a) Shutdown (as defined in Schedule 3); and

(b) each Agreed Track Possession (as defined in Schedule 3),

which must occur on the day required by this deed irrespective of whether that day is not a Business Day.

1.9 Excluding liability

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

1.10 CPI Indexed

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

$$A \text{ (CPI Indexed)} = A \times \frac{CPI_{q-2}}{CPI_{Base}}$$

Where:

A is the monetary amount originally specified;

CPI_{Q-2} is the CPI published for the Quarter End ending three months prior to the start of Quarter q (where Quarter q is the Quarter during which the relevant calculation is being made); and

CPI_{Base} is the CPI published for the Quarter End ending March 2014, being the Quarter End preceding the Quarter most recently ended prior to Financial Close.

1.11 WPI Indexed

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

$$A \text{ (WPI Indexed)} = A \times \frac{WPI_{q-2}}{WPI_{Base}}$$

Where:

A is the monetary amount originally specified;

WPI_{Q-2} is the WPI published for the Quarter End ending three months prior to the start of Quarter q (where Quarter q is the Quarter during which the relevant calculation is being made); and

WPI_{Base} is the WPI published for the Quarter End ending March 2014, being the Quarter End preceding the Quarter most recently ended prior to Financial Close.

1.11A Changes to indexes

The following rules apply to all indexation under this deed unless otherwise specified in Schedule 2:

- (a) if there is a change in the coverage of the index from that applying at the date of this deed and the new index is linked to another index, the defined term is to be referable to the new index;
- (b) if the index is published and:
 - (i) there is a change in its coverage and it is not linked to another index; or
 - (ii) there is a change in its periodicity,the parties must request the President of the Institute of Actuaries (or the President's nominee) to determine:
 - (iii) whether the index remains appropriate as a general indicator of the rate of price change for the relevant goods and services; and
 - (iv) if it is not, what other index should be used as a substitute index for the purpose of the defined term's use in this deed,and that determination is final and binds the parties;
- (c) if there is a change in the reference base of the index from that applying at the date of this deed and the Australian Bureau of Statistics (or the Australian Information Industry Association, as relevant) provides a conversion factor, that conversion factor must be applied to calculate revised figures for the purposes of the defined term's use in this deed, in terms of the new reference base;
- (d) if there is a change in the reference base of the index from that applying at the date of this deed and the Australian Bureau of Statistics (or the Australian Information Industry Association, as relevant) does not provide a conversion factor, the parties must request the President of the Institute of Actuaries (or the President's nominee) to calculate a revised index for the purposes of the defined term's use in this deed, and that calculation is final and binds the parties;
- (e) if the index ceases to be published and the Australian Bureau of Statistics (or the Australian Information Industry Association, as relevant) publishes another index which is:
 - (i) a replacement of that index; and
 - (ii) linked to the index,the defined term must be re-calculated to the same reference base as the replacement index;
- (f) if the index ceases to be published and the Australian Bureau of Statistics (or the Australian Information Industry Association, as relevant) does not publish another index which is linked to the index, the parties must request the President of the Institute of Actuaries (or the President's nominee) to calculate a revised index for the purpose of the defined term's use in this deed, and that calculation is final and binds the parties;
- (g) if the index ceases to be published and the Australian Bureau of Statistics (or the Australian Information Industry Association, as relevant) does not publish another index in place of the index, the parties must request the President of the Institute of Actuaries (or the President's nominee) to determine an appropriate index which is a

general indicator of the rate of price change for the relevant goods and services, and that determination is final and binds the parties; and

- (h) if a Change in Law causes a material aberration in the index, the index will be adjusted to remove the impact of that material aberration in accordance with any such methodology published by a responsible Authority for adoption in business or, in the absence of such publication, within 6 months of the occurrence of the material aberration as agreed by the parties or, in the absence of agreement, as determined in accordance with clause 56.

1.12 Authorities

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

1.13 Reasonable endeavours

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

- (a) TfNSW will only be obliged to bring about the relevant outcome to the extent that it is reasonably able to do so, having regard to its resources and other responsibilities;
- (b) TfNSW cannot guarantee the relevant outcome; and
- (c) TfNSW, by undertaking to exercise reasonable endeavours, does not agree to:
 - (i) interfere with or influence the exercise by any person of a statutory power of discretion;

- (ii) exercise a power or discretion or otherwise act in a manner that promotes the objectives and expected outcomes of the Project Agreements if TfNSW regards that exercise as not in the public interest;
- (iii) develop policy or legislate by reference only or predominantly to the objectives and expected outcomes of the Project Agreements;
- (iv) procure legislation in the future in a manner that is only consistent with the objectives and expected outcomes of the Project Agreements; or
- (v) act in any other way that TfNSW regards as not in the public interest.

1.14 Standards

A reference to any standard, code, guideline, specification, rule, policy, procedure, directive, circular, code of practice or requirement relating to or affecting the execution of any part of the OTS Works or the provision of a service included in the Operations Activities, that does not constitute Legislation or NSW Government Policy, is a reference to the version stated in this deed or, if no version is stated, the version as at the date of this deed.

1.15 Capacity of OpCo

- (a) Insofar as OpCo enters into this document in its capacity as trustee of the Trust, it must remain trustee of the Trust, subject to clause 55.5(e), until the expiry or satisfaction of all of OpCo's obligations under this deed.
- (b) A liability of OpCo arising under or in connection with this deed (whether that liability arises under a specific provision of this deed, for breach of contract or otherwise), is a liability that can be enforced against OpCo both in its own right and in its capacity as trustee of the Trust, unless the liability relates only to an asset which OpCo holds in its personal capacity and not as trustee, in which case the liability can only be enforced against OpCo in its personal capacity.

2. Conditions Precedent

2.1 Conditions Precedent

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

- (a) clause 1 (Definitions and interpretation);
- (b) clause 2 (Conditions Precedent);
- (c) clause 11.1 (Physical conditions);
- (d) clause 11.2 (Information Documents)
- (e) clause 11.3 (Condition of the NWRL Site and structures);
- (f) clause 47 (Disclosure, confidentiality and publicity);
- (g) clause 49 (Financing and Refinancing);
- (h) clause 52 (Restrictions);
- (i) clause 53 (Change of Ownership / Control);

- (j) clause 54 (Subcontracting);
- (k) clause 55 (Representations and warranties);
- (l) clause 56 (Dispute resolution);
- (m) clause 57 (Notice of Claims);
- (n) clause 58 (Notices);
- (o) clause 60 (Proportionate liability);
- (p) clause 61 (Taxes); and
- (q) clause 62 (General),

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

2.2 Satisfaction of Conditions Precedent

- (a) TfNSW must:
 - (i) apply for the consents and approvals under section 20 of the PAFA Act; and
 - (ii) otherwise use all reasonable endeavours to satisfy each Condition Precedent which is expressed to be included for the benefit of OpCo (or OpCo and TfNSW),

by the relevant Condition Precedent Deadline Date.
- (b) OpCo must use all reasonable endeavours to satisfy each Condition Precedent which is expressed to be for the benefit of TfNSW (or TfNSW and OpCo) by the relevant Condition Precedent Deadline Date.
- (c) When a party is of the opinion that a Condition Precedent has been satisfied it must give the other party notice of its opinion.
- (d) The party receiving a notice given under clause 2.2(c) will notify the other party whether or not it agrees that the Condition Precedent has been satisfied, such agreement not to be unreasonably withheld.
- (e) If the party receiving a notice given under clause 2.2(c) fails to give the other party a notice under clause 2.2(d) within 5 Business Days, the Condition Precedent will be deemed to have been satisfied.
- (f) Upon the satisfaction (or waiver under clause 2.3) of all Conditions Precedent, the parties must promptly acknowledge in writing the fact that Financial Close has occurred.

2.3 Waiver of Conditions Precedent

A Condition Precedent is waived if, and only if:

- (a) where the Condition Precedent is included for the benefit of a particular party, that party gives notice of the waiver of the Condition Precedent to the other party; and

- (b) where the Condition Precedent is included for the benefit of both parties, both parties agree in writing to waive the Condition Precedent.

2.4 Condition Precedent Deadline Dates

- (a) If a Condition Precedent has not been satisfied (or waived under clause 2.3) by 11.59 pm on the relevant Condition Precedent Deadline Date, then the party listed as the "Benefiting Party" in Schedule 1 in respect of that Condition Precedent (or, if both parties are the "Benefiting Party" in respect of that Condition Precedent, either party) may give notice in writing to the other party that it is terminating this deed if the Condition Precedent in question is not satisfied (or waived under clause 2.3) within the period specified in its notice (which must not be less than 5 Business Days).
- (b) If a party gives notice under clause 2.4(a) and the Condition Precedent in question is not satisfied (or waived under clause 2.3) within the period specified in that notice (or such longer period as the parties may agree) then this deed will terminate upon the expiry of that period.
- (c) If this deed is terminated pursuant to this clause 2.4 then no party will have any Claim against any other party under or in respect of the TfNSW Project Agreements or in respect of any Loss suffered or incurred in connection with the OTS PPP, except for any Claim arising from or in relation to a breach of any Day 1 Clause.

3. Term

3.1 Commencement date

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

3.2 End of Term

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

3.3 Term extension

- (a) TfNSW's Representative may, at any time prior to the date that is 30 months before the Original Expiry Date, issue to OpCo an Extension Proposal Request.
- (b) Within 40 Business Days after receipt of the Extension Proposal Request, OpCo must provide TfNSW with a proposal to extend the Term for the Extension Period (**Extension Proposal**).
- (c) The Extension Proposal must set out detailed particulars of:
 - (i) the program of Asset Management Activities, including Replacements and Refurbishments, for the Extension Period;
 - (ii) the direct costs incurred by OpCo in carrying out OpCo's Activities in the current Operating Year;
 - (iii) the projected direct costs that OpCo reasonably expects to incur in carrying out OpCo's Activities in the Extension Period (including the costs of procuring the Extension Security Bond);
 - (iv) the:

- A. Adjusted Indexed Availability Fee; and
 - B. the Indexed Lifecycle Component,

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

will be amended as agreed in the Extension Proposal for the Extension Period;
 - (iii) the reference to "Expiry Date" in the definition of "Handback Condition" will be replaced by "Original Expiry Date and the Expiry Date";
 - (iv) the reference to "Expiry Date" in section 8.11(a) of the SPR will be replaced by "Original Expiry Date and the Expiry Date";
 - (v) from the Original Expiry Date, clauses 42.12(a) and 42.12(b) will be deleted; and
 - (vi) if this deed is terminated during the Extension Period, TfNSW must pay OpCo the Termination Payment determined in accordance with clause 7 of Schedule 31.

- (h) If TfNSW rejects the Extension Proposal in accordance with clause 3.3(f)(ii), TfNSW may require that OpCo consult in good faith and use its reasonable endeavours to reach agreement with TfNSW on a mutually acceptable resolution to the matters set out in the Extension Proposal which are not agreed.
- (i) If the parties reach agreement on the terms of the Extension Proposal by the date that is 24 months before the Original Expiry Date, clause 3.3(g) will apply as if TfNSW had accepted the Extension Proposal as varied by the agreement of the parties.
- (j) If:
 - (i) the parties are unable to reach agreement by the date that is 24 months before the Original Expiry Date; or
 - (ii) OpCo fails to provide the Extension Security Bond in accordance with clause 22.1(a)(ii),
 the Term will expire on the Original Expiry Date.
- (k) If OpCo prepares an Extension Proposal in accordance with this clause 3.3 then TfNSW must reimburse the reasonable third party costs incurred by OpCo in:
 - (i) preparing the Extension Proposal; and
 - (ii) performing its obligations under clause 3.3(h).

4. Objectives, primary obligations and risk allocation

4.1 Objectives for the NWRL

TfNSW's strategic objectives for the NWRL are to:

- (a) ensure Customer needs are met through provision of a safe, high quality, integrated and affordable transport service;
- (b) deliver a transport service that has been informed by engagement with communities and stakeholders and demonstrates evidence-based decision-making;
- (c) support the NSW Government's challenge to accommodate population growth in the north west by increasing the potential for a range of housing and employment opportunities;
- (d) deliver stage three (rapid transit system) of Sydney's Rail Future to improve transport network reliability by facilitating a shift from road to rail for trips to and from the north west, to reduce bus / road congestion and improve amenity in Sydney CBD;
- (e) link existing communities and new growth areas in north west Sydney with jobs and services in the global economic corridor (Macquarie Park – Chatswood – North Sydney – Sydney CBD); and
- (f) contribute to environmental, social and economic sustainability by improving liveability, minimising our impact on the environment and the community, and delivering value for money.

Each party will, subject to and in accordance with this deed, perform its obligations under this deed having regard to the achievement of these objectives.

4.2 Objectives for the OTS PPP

TfNSW's objectives for the OTS PPP are:

- (a) to deliver world class rapid transit services which will provide Customers with a safe, high quality, reliable, efficient and affordable public transport solution and meet the specified performance requirements on a whole of life basis;
- (b) to provide a Customer experience with:
 - (i) a fully-integrated transport solution via a 'door to door' journey with convenient and seamless connections between transport modes;
 - (ii) high quality Stations, Station Precincts and Trains which are safe, easy to use, and highly accessible;
 - (iii) high quality and reliable information, and intuitive and clear wayfinding and signage consistent with the TfNSW brand; and
 - (iv) retailing and services close to Stations, integration with adjacent land uses, environmentally friendly transport interchange facilities, and car parking;
- (c) to develop a long term, collaborative working relationship between TfNSW and OpCo and OpCo's Contractors;
- (d) to design, deliver, test and commission, and operate a safe rapid transit system, including the development of an effective safety culture;
- (e) to set new benchmarks for the future development and operation of Sydney's transport network;
- (f) to provide a whole of life approach to design, construction, operations and asset management;
- (g) that OpCo will engage with the community and implement proactive stakeholder and community liaison strategies to minimise disruption and develop community ownership of the NWRL;
- (h) that OpCo will deliver sustainable social and environmental outcomes by minimising energy use and maximising sustainability, minimising impacts on the environment, and promoting workforce development; and
- (i) that OpCo will deliver a sound financing strategy for the OTS PPP which provides value for money to the State, and a robust and financially sustainable business for the operation of the NWRL.

Each party will, subject to and in accordance with this deed, perform its obligations under this deed, having regard to the achievement of these objectives.

4.3 Customer is at the centre

- (a) OpCo acknowledges TfNSW's vision statement, namely that "The Customer is at the centre of everything we do in transport".

- (b) Each party will, subject to and in accordance with this deed, perform its obligations under this deed, having regard to this vision statement.

4.4 OpCo's primary obligations

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

- (a) finance, or procure the financing of the OTS PPP;
- (b) design and construct the OTS Works;
- (c) operate and maintain the NWRL and the ETS during the Operations Phase in order to provide a safe, secure, continuous, reliable, effective and efficient rapid transit rail service that from a customer perspective integrates with the rest of Sydney's public transport system; and
- (d) hand the NWRL and the ETS Equipment back to TfNSW at the end of the Term, subject to, and in accordance with, this deed.

4.5 TfNSW's primary obligations

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

- (a) grant OpCo the licences under clauses 12.1 and 12.3;
- (b) procure the design and construction of the Civil Works in accordance with the Civil Works Contracts (in the form contained in Exhibit 11 and Exhibit 12) as amended to reflect any Civil Works Change directed by TfNSW in accordance with clauses 14.3 or 14.4;
- (c) undertake the TfNSW ECRL Works in accordance with Schedule 3; and
- (d) pay OpCo in accordance with clause 25,

subject to, and in accordance with, this deed.

4.6 Project risks

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

4.7 TfNSW's rights don't affect risk allocation

- (a) TfNSW has various rights under this deed which are designed to give TfNSW the ability to monitor the performance of OpCo's obligations. Such rights include:
 - (i) the right to review Project Plans, Design Documentation, Delivery Programs, Delivery Phase Progress Reports, Monthly Operations Performance Reports, Test Procedures, Test Reports, Base Case Financial Models, Operational Financial Models and other documents which OpCo must submit to TfNSW (**OpCo Submissions**);
 - (ii) rights to inspect, monitor or audit OpCo's Activities; and
 - (iii) rights to attend Tests.

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

- A. relieve OpCo from, or alter or affect, OpCo's liabilities, obligations or responsibilities whether under this deed or otherwise according to law; or
 - B. prejudice or limit TfNSW's rights against OpCo whether under this deed or otherwise according to law.
- (d) This clause 4.7 does not affect OpCo's rights in respect of any breach of clause 44.1(b).

5. Governance

5.1 TfNSW's Representative

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

5.2 Appointees of TfNSW's Representatives

TfNSW's Representative may:

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

All references in this deed to TfNSW's Representative include a reference to an appointee under this clause 5.2.

5.3 OpCo's Representative

OpCo must ensure that OpCo's Representative is available at all reasonable times for communications with TfNSW's Representative.

5.4 OTS Independent Certifier

- (a) **(OTS Independent Certifier Deed):** The OTS Independent Certifier will be engaged on the terms of the OTS Independent Certifier Deed.
- (b) **(Role):** The OTS Independent Certifier's role is to, amongst other things:

- (i) independently certify in accordance with the OTS Independent Certifier Deed:
 - A. that the Project Plans comply with the requirements of this deed;
 - B. that the Design Documentation complies with the requirements of this deed;
 - C. whether or not Sydney Trains has complied with the Sydney Trains ECRL Asset Maintenance Plan;
 - D. that each of the Pre-Shutdown TfNSW ECRL Works and post-Shutdown TfNSW ECRL Works have achieved completion;
 - E. that the OpCo ETS Works have been completed, tested and commissioned in accordance with the SPR and the Delivery Program;
 - F. that the Tests required by the Testing and Commissioning Plan will, if satisfied, allow it to certify that Completion has been achieved;
 - G. the completion of Local Area Works;
 - H. that the requirements for First Passenger Service have been satisfied;
 - I. the achievement of Completion; and
 - J. the achievement of Final Completion;
- (ii) participate in meetings as specified in the Design Management Plan;
- (iii) attend Tests;
- (iv) make determinations on matters that this deed (including the SPR) expressly requires be determined by the OTS Independent Certifier; and
- (v) issue certificates as contemplated by this deed.
- (c) **(Independent):** The OTS Independent Certifier is obliged to act independently of TfNSW, OpCo and OpCo's Contractors.
- (d) **(Conduct does not affect obligations):** Without limiting clause 5.4(k), an act or omission (including negligence) of the OTS Independent Certifier will not:
 - (i) relieve a party from, or alter or affect, a party's liabilities, obligations or responsibilities to the other party whether under this deed or otherwise according to law; or
 - (ii) prejudice or limit a party's rights against the other party whether under this deed or otherwise according to law.
- (e) **(Provision of information):** TfNSW and OpCo must provide the OTS Independent Certifier with all information and documents and allow the OTS Independent Certifier:

- (i) to attend meetings (including any Senior Project Group meetings);
- (ii) access to all premises; and
- (iii) to insert Hold Points or Witness Points in the Project Plans and designate the authority to release the Hold Points,

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

- (f) **(Copy all information to other party):** All notices and documents provided by a party to the OTS Independent Certifier must be copied to the other party. If a party is required to provide a notice or document to the OTS Independent Certifier within a specified time period, that notice or document must be provided to the other party within the same time period.
- (g) **(TfNSW may provide comments):** TfNSW's Representative may provide comments to the OTS Independent Certifier in respect of OpCo's Activities.
- (h) **(Hold/Witness Points):** OpCo must comply with the Hold Point and Witness Point procedures required by this deed, including as set out in the SPR or inserted in the Project Plans by the OTS Independent Certifier pursuant to clause 5.4(e)(iii).
- (i) **(Effect of determinations):** Without limiting clauses 5.4(d) or 5.4(k), in the absence of manifest error on the face of the determination notice, the following determinations of the OTS Independent Certifier are final and binding on the parties:
 - (i) a determination under clause 8.5(a)(ii)B in relation to a Project Plan;
 - (ii) a determination under clauses 13.8(b)(iii) or 13.8(f)(ii) in relation to Design Stage 3 Design Documentation;
 - (iii) a determination under clause 18.2(c)(ii) in relation to Test Procedures;
 - (iv) a determination under clause 18.5(c)(i) in relation to a Test being passed or failed;
 - (v) a determination under clause 19.3(a) in relation to First Passenger Service;
 - (vi) a determination under clause 19.5(c) in relation to Local Area Works;
 - (vii) a determination under clause 19.10(a) in relation to Completion;
 - (viii) a determination under clause 19.12(d) in relation to Final Completion;
 - (ix) a determination under clause 7.3(b) of Schedule 3 in relation to the TfNSW ECRL Works;
 - (x) a determination under clause 12.1(b) of Schedule 3 in relation to Sydney Trains' compliance with the Sydney Trains ECRL Asset Maintenance Plan;
 - (xi) a determination under clause 12.2(b) of the WAD in relation to Design Stage 3 Design Documentation;

- (xii) a determination under clause 16.3(a) of the WAD in relation to WAD Practical Completion;
- (xiii) a determination under clause 17.1(a) of the WAD in relation to final completion of the WAD Road Works;
- (xiv) a determination under clause 5.3(b) of the Hills Shire Council Interface Agreement in relation to Design Stage 3 Design Documentation;
- (xv) a determination under clause 9.3(c) of the Hills Shire Council Interface Agreement in relation to Council Road Works Practical Completion;
- (xvi) a determination under clause 6.3(b) of the Blacktown City Council Interface Agreement in relation to Design Stage 3 Design Documentation;
- (xvii) a determination under clause 10.3(c) of the Blacktown City Council Interface Agreement in relation to Council Road Works Practical Completion;
- (xviii) a determination under clause 5.3(b) of the Hornsby Shire Council Interface Agreement in relation to Design Stage 3 Design Documentation; and
- (xix) a determination under clause 9.3(c) of the Hornsby Shire Council Interface Agreement in relation to Council Road Works Practical Completion.

(j) **(Dispute of determination):** If either party:

- (i) believes that there is a manifest error on the face of the determination notice from the OTS Independent Certifier referred to in clause 5.4(i) and wishes to dispute the determination on that basis; or
- (ii) wishes to dispute any other determination by the OTS Independent Certifier not referred to in clause 5.4(i),

it must do so in accordance with clause 56. Determinations of the OTS Independent Certifier referred to in this clause 5.4(j) will be immediately binding on the parties, who must give effect to such determinations unless and until they are revised pursuant to the dispute resolution process in clause 56.

(k) **(Not approval or evidence):**

- (i) A certification or determination by the OTS Independent Certifier will not:
 - A. constitute an approval by TfNSW of OpCo's performance of its obligations under this deed;
 - B. constitute an approval by OpCo of TfNSW's performance of its obligations under this deed;
 - C. be taken as an admission or evidence that the OTS Works, the TfNSW ECRL Works or any other matters certified or determined by the OTS Independent Certifier comply with this deed (including in relation to whether or not any direction

by TfNSW's Representative under clause 13.8(c) involves or constitutes a Modification); or

D. prejudice any rights or powers of TfNSW or OpCo under this deed or otherwise according to law, including any rights which TfNSW may have in respect of Defects.

(ii) No act or omission of the OTS Independent Certifier, including any certification or determination by the OTS Independent Certifier, whether or not such certification or determination:

A. is final and binding;

B. contains a manifest error; or

C. is overturned in subsequent dispute resolution proceedings,
will:

D. be deemed to be an act or omission by TfNSW or OpCo (including a breach of contract) under or in connection with the TfNSW Project Agreements; or

E. entitle OpCo to make any Claim against TfNSW.

(l) **(OTS Independent Certifier's costs):** If TfNSW becomes liable to the OTS Independent Certifier for any additional costs pursuant to paragraph 3(c) or 3(e) of Schedule 2 of the OTS Independent Certifier Deed and the fact, matter or thing which gave rise to the liability pursuant to paragraph 3(c) or 3(e) of Schedule 2 of the OTS Independent Certifier Deed arose out of an act or omission of OpCo, such costs will be a debt due and payable by OpCo to TfNSW.

5.5 Senior Project Group

(a) **(Delivery Phase Composition):** During the Delivery Phase, a Senior Project Group must be established consisting of:

(i) TfNSW's Representative;

(ii) OpCo's Representative;

(iii) 2 persons from each party holding positions more senior than the persons referred to in clauses 5.5(a)(i) and 5.5(a)(ii) (as applicable to the relevant party); and

(iv) such other persons as the parties agree.

(b) **(Operations Phase Composition):** During the Operations Phase, a Senior Project Group must be established consisting of:

(i) TfNSW's Representative;

(ii) OpCo's Representative;

(iii) the TfNSW Deputy Director General Transport Services or his nominee;

(iv) the Chief Executive Officer of OpCo (if different to OpCo's Representative);

- (v) the Chief Executive Officer of the O&M Contractor; and
 - (vi) such other persons as the parties agree.
- (c) **(Delegates):** The persons referred to in clause 5.5(a) may appoint delegates (of an equivalent level of seniority or experience) to attend Senior Project Group meetings in their absence. The persons referred to in clause 5.5(b) may appoint delegates to attend in their absence if the parties agree.
- (d) **(Objectives):** The objectives of the Senior Project Group are to:
- (i) facilitate the development of a long term, collaborative working relationship between the parties;
 - (ii) monitor the overall progress of the OTS PPP;
 - (iii) assist with the resolution of any matters referred to the Senior Project Group by a party, including issues arising out of the subject of the Third Party Agreements;
 - (iv) review each Delivery Phase Progress Report provided by OpCo during the Delivery Phase;
 - (v) review each Monthly Operations Performance Report provided by OpCo during the Operations Phase; and
 - (vi) review and consider such other matters relating to the OTS PPP as are agreed between the parties from time to time.
- (e) **(Frequency of meetings):** The Senior Project Group will meet monthly during the Delivery Phase and quarterly thereafter, unless the parties agree otherwise.
- (f) **(Administration):** TfNSW's Representative will convene the meetings of the Senior Project Group. The meetings will be chaired by the most senior TfNSW attendee.
- (g) **(TfNSW may require certain representatives to attend):** At TfNSW's request, OpCo must procure the attendance of representatives of any Significant Contractor (which will include, where the Significant Contractor is not a Core Contractor, the Core Contractor of whom such Significant Contractor is a subcontractor (of any level)) and/or the Debt Financiers at meetings of the Senior Project Group. TfNSW is also entitled to have representatives of the State or any Authority attend meetings.
- (h) **(OpCo may bring certain representatives):** OpCo may, with TfNSW's consent, have a representative of each Core Contractor attend any meeting of the Senior Project Group.

5.6 Working Groups

- (a) **(Disciplines):** Working Groups will be established in relation to particular aspects of OpCo's Activities and, in particular, in accordance with the Design Management Plan. This will include an ECRL Working Group.
- (b) **(Composition):** The composition of each Working Group will include a nominated representative of TfNSW, OpCo, the D&C Contractor, the O&M Contractor and the OTS Independent Certifier, and representatives nominated in accordance with the Design Management Plan as relevant. Attendance by others will be agreed by the

Senior Project Group, or in the absence of agreement as directed by TfNSW having regard to the particular solutions being discussed. If TfNSW requests, OpCo must procure the attendance of representatives of any Significant Contractor at a Working Group meeting.

- (c) **(Purpose):** The purpose of each Working Group meeting is to provide a non-binding forum for OpCo to present its proposed solutions, for TfNSW and the OTS Independent Certifier to understand those solutions and for the parties to discuss the solutions.
- (d) **(Frequency of meetings):** Each Working Group will meet monthly unless otherwise agreed by the Senior Project Group.
- (e) **(Administration):** OpCo must convene and chair meetings of each Working Group other than the ECRL Working Group which will be chaired by OpCo and TfNSW on an alternating basis.
- (f) **(Agenda and program):** OpCo must prepare and issue a three month rolling program of meetings.
- (g) **(Information only):** Documentation prepared for Working Group meetings, documentation developed in Working Group meetings and information discussed in Working Group meetings are Information Documents and cannot be relied upon by either party.

5.7 Dispute Avoidance Board

The members of the Dispute Avoidance Board may, by invitation of either party, attend any meeting of the Senior Project Group or any Working Group.

5.8 No legal effect

The Senior Project Group and each Working Group are consultative and advisory only and nothing which occurs during a meeting of any such group will:

- (a) affect the rights or obligations of either party under the Project Agreements;
- (b) entitle a party to make any Claim against the other;
- (c) relieve a party from, or alter or affect, a party's liabilities or responsibilities whether under this deed or otherwise according to law;
- (d) prejudice a party's rights against the other whether under this deed or otherwise according to law; or
- (e) be construed as a direction by a party to do or not do anything.

5.9 Annual relationship review

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

- (ii) identify opportunities to improve the working relationship between the parties during the forthcoming year.

5.10 Call-in

- (a) If, in the Operations Phase:
 - (i) TfNSW is dissatisfied with OpCo's performance;
 - (ii) OpCo is in breach of an obligation under this deed or, in TfNSW's reasonable view, OpCo will be in breach of an obligation if its current performance continues unchanged; and
 - (iii) in TfNSW's reasonable view, its concerns are not being addressed in the various governance mechanisms referred to in this clause 5,TfNSW may issue a notice to OpCo outlining the nature of TfNSW's dissatisfaction.
- (b) If required by TfNSW in the notice under clause 5.10(a), OpCo must:
 - (i) provide information;
 - (ii) attend meetings with TfNSW; and
 - (iii) prepare and implement remedial plans to improve performance in the areas identified by TfNSW.

6. Law and Approvals

6.1 Compliance with laws

- (a) OpCo must:
 - (i) in performing OpCo's Activities, comply with all applicable laws;
 - (ii) ensure that OpCo's Contractors, in performing OpCo's Activities, comply with all applicable laws;
 - (iii) ensure that the OTS Works, Temporary Works and, after the Date of Completion, the NWRL comply with all applicable laws;
 - (iv) give TfNSW's Representative copies of:
 - A. all material documents given to OpCo or a Significant Contractor by an Authority (including Approvals and other notices) as soon as possible; and
 - B. all material documents (other than documents required to be prepared pursuant to a Planning Approval) given by OpCo or a Significant Contractor to an Authority at the time that those documents are given to the Authority; and
 - C. details of any other material communications between OpCo or a Significant Contractor and an Authority,in connection with OpCo's Activities;

- (v) in relation to any document required to be prepared pursuant to a Planning Approval, which is also required to be submitted to an Authority:
 - A. provide TfNSW's Representative with copies of any such documents;
 - B. provide TfNSW with an opportunity to comment on any such documents;
 - C. consider any comments made by TfNSW in relation to any such documents; and
 - D. deliver a final version of any such documents in order to enable TfNSW to submit the relevant document to any Authority; and
 - (vi) provide TfNSW with such assistance as may be reasonably required by TfNSW to enable TfNSW to comply with all applicable laws.
- (b) TfNSW must comply with all laws applicable to its obligations in respect of the OTS PPP.

6.2 Approvals

- (a) TfNSW has obtained and provided, or must obtain and provide, to OpCo the Planning Approvals.
- (b) OpCo must:
 - (i) obtain and maintain, and ensure that OpCo's Contractors obtain and maintain, all Approvals required to perform OpCo's Activities (other than those Approvals which this deed expressly states that TfNSW has obtained or requires TfNSW to obtain or maintain);
 - (ii) subject to clause 6.10, except to the extent otherwise expressly specified in Schedule 5:
 - A. comply with, carry out and fulfil, and ensure that OpCo's Contractors comply with, carry out and fulfil; and
 - B. ensure that the OTS Works, the Temporary Works and, after the Date of Completion, the NWRL, comply with,

the conditions and requirements of all Approvals (including those which TfNSW is expressly or impliedly under the terms of the Approval required to comply with, carry out or fulfil);
 - (iii) except to the extent prohibited by law, indemnify TfNSW against any Loss suffered by TfNSW arising out of or in any way in connection with a failure by OpCo to comply with its obligations under clauses 6.2(b)(i) and 6.2(b)(ii);
 - (iv) except to the extent otherwise expressly specified in clause 38.1(a) and Schedule 5, pay all fees, effect all insurances, provide any bonds and execute any undertakings or agreements or any other document required by any relevant Authority in respect of any Approval which OpCo must

obtain or comply with (and ensure that OpCo's Contractors do likewise in relation to any Approvals which they must maintain or comply with in connection with OpCo's Activities); and

- (v) without limiting clause 6.2(b)(ii), provide TfNSW with such assistance as may reasonably be required by TfNSW to enable it to obtain or satisfy or fulfil the conditions and requirements in respect of any:
 - A. Approvals which are obtained by TfNSW after the date of this deed; or
 - B. conditions and requirements of Approvals which are required to be satisfied or fulfilled by TfNSW pursuant to Schedule 5.

6.3 Modifications to Planning Approvals

Notwithstanding clause 35, if, arising out of or in connection with a Modification requested by OpCo (other than a request made in response to a Compensable Change in Law) or any failure by OpCo to comply with its obligations under this deed or any other Project Agreement:

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

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

6.4 Legal challenge to Planning Approvals

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

6.5 Compensation Event

A Compensation Event will occur if:

- (a) there is a legal challenge brought about by way of commencement of court proceedings in relation to a Planning Approval; or
- (b) a Planning Approval is modified, withdrawn, revoked, replaced, invalidated or suspended,

except to the extent that the legal challenge, modification, withdrawal, revocation, replacement, invalidation or suspension relates to or arises out of or in connection with (or, in the case of a legal challenge, is upheld due to):

- (c) any event the subject of clause 6.3 which is at OpCo's cost and risk; or
- (d) a failure by OpCo to comply with its obligations under this deed.

6.6 Environment Protection Licence

- (a) Subject to clause 6.6(b), OpCo must ensure that OpCo or the Core Contractors:
 - (i) obtain an Environment Protection Licence:
 - A. in respect of OpCo's Activities; and
 - B. which includes all parts of the Construction Site in respect of which the Construction Site Licence has commenced,
from the first date on which OpCo undertakes:
 - C. construction activities;
 - D. "railway systems activities" within the meaning of the Protection of the Environment Operations Act 1997 (NSW);
or
 - E. any other activity which triggers an obligation for an Environment Protection Licence to be obtained,
 - on any part of the Construction Site; and
 - (ii) ensure that, from each date after the date referred to in clause 6.6(a)(i) on which the Construction Site Licence commences in accordance with clause 12.1(b) in respect of a part or parts of the Construction Site, OpCo's Environment Protection Licence is varied so as to include each such part of the Construction Site to which OpCo has been given access; and
 - (iii) hold an Environment Protection Licence in respect of OpCo's Activities until the end of the Term.
- (b) OpCo must ensure that any application for an Environment Protection Licence which is required in respect of the development which is the subject of:
 - (i) Project Planning Approval 1;
 - (ii) Project Planning Approval 2;
 - (iii) Parramatta Rail Link Planning Approval;
 - (iv) ECRL Conversion Planning Approval; or
 - (v) Rapid Transit Rail Facility Planning Approval,is substantially consistent with that approval.

- (c) In the event that an Environment Protection Licence is not substantially consistent with any such approval, OpCo must use its best endeavours to procure that the Environment Protection Licence be amended to achieve substantial consistency.
- (d) To the extent that OpCo's Activities are such that they are controlled by an Environment Protection Licence held by a person other than OpCo, OpCo must comply with the terms of that Environment Protection Licence.

6.7 Crown Building Work

- (a) OpCo must, in relation to any part of the OTS Works or Temporary Works that is Crown Building Work (as defined in section 109R of the EP&A Act), certify (on behalf of TfNSW) as required by section 109R of the EP&A Act.
- (b) Any certification under clause 6.7(a) will not lessen or otherwise affect:
 - (i) OpCo's other liabilities or responsibilities under this deed or otherwise according to law; or
 - (ii) TfNSW's rights against OpCo, whether under this deed or otherwise according to law.

6.8 Environmental Representative

- (a) TfNSW must engage the Environmental Representative as required by the Planning Approvals.
 - (b) OpCo acknowledges that the Environmental Representative:
 - (i) is independent of the parties;
 - (ii) is required to discharge certain functions as identified in the Planning Approvals;
 - (iii) is required to oversee the implementation of all environmental management plans and monitoring programs required under the Planning Approvals and shall advise TfNSW upon achievement of the outcomes contemplated in the Planning Approvals; and
 - (iv) is required to advise TfNSW and TfNSW's Representative on OpCo's compliance with the Planning Approvals.
 - (c) OpCo must co-operate with the Environmental Representative and provide the Environmental Representative with:
 - (i) all information and documents (including licences and approvals relating to environmental performance and environmental impacts); and
 - (ii) allow the Environmental Representative:
 - A. to attend meetings; and
 - B. access to such premises,
- all as may be:

- (iii) necessary or reasonably required by the Environmental Representative or TfNSW's Representative to allow the Environmental Representative to perform its functions in connection with this deed; or
 - (iv) lawfully requested by the Environmental Representative or directed by TfNSW's Representative.
- (d) OpCo must:
- (i) comply with the lawful requirements of the Environmental Representative, including so as to allow the Environmental Representative to discharge any functions of the Environmental Representative provided for in the Planning Approvals; and
 - (ii) not interfere with or improperly influence the Environmental Representative in the performance of any of its functions in connection with this deed.
- (e) Nothing that the Environmental Representative does or fails to do pursuant to the purported exercise of its functions in connection with this deed will entitle OpCo to make any Claim against TfNSW.

6.9 Long service leave levy

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

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

6.10 ECRL Conversion Planning Approval

- (a) OpCo and TfNSW acknowledge and agree that:
 - (i) the ECRL Conversion Planning Approval has not been obtained at the date of this deed;
 - (ii) the Draft ECRL Conversion Conditions of Approval is contained in Exhibit 5;
 - (iii) as at the date of this deed, it is anticipated that the conditions of the ECRL Conversion Planning Approval will be substantially the same as the conditions of the Draft ECRL Conversion Conditions of Approval;
 - (iv) the allocation of responsibility for compliance with the conditions of the ECRL Conversion Planning Approval set out in clause 3.6 of Schedule 5 are based on the conditions of the Draft ECRL Conversion Conditions of Approval; and
 - (v) OpCo is not required to comply with the allocation of responsibility for compliance with the conditions of the ECRL Conversion Planning Approval set out in clause 3.6 of Schedule 5 until such time as the ECRL Conversion Planning Approval is granted to TfNSW.

- (b) TfNSW must ensure that the ECRL Conversion Planning Approval is granted on or before 2 April 2015.
- (c) TfNSW must provide OpCo with a copy of the ECRL Conversion Planning Approval promptly after it is granted by TfNSW.
- (d) A Compensation Event will occur only to the extent that the conditions of the ECRL Conversion Planning Approval are not substantially the same as the conditions of the Draft ECRL Conversion Conditions of Approval (including as a result of the ECRL Conversion Planning Approval containing additional conditions).

7. Rail Safety

7.1 TfNSW's Accreditation

OpCo acknowledges that:

- (a) the Civil Works are being carried out by the Civil Works Contractors for and on behalf of TfNSW under TfNSW's Accreditation;
- (b) TfNSW will cease to be the Rail Infrastructure Manager for each Civil Works Portion from the date on which the licence commences pursuant to clause 12.1(b)(i) for the part of the Construction Site containing that Civil Works Portion; and
- (c) no part of OpCo's Activities will be carried out under TfNSW's Accreditation.

7.2 OpCo to assist

OpCo must, to the extent relevant to the OTS PPP, provide all reasonable assistance requested by TfNSW in relation to TfNSW's Accreditation or its obligations under the Rail Safety National Law.

7.3 OpCo's rail safety obligations

- (a) **(OpCo or Core Contractor to hold Accreditation):** Without limiting clause 6.2 (Approvals), OpCo must ensure that OpCo or one or more of its Core Contractors:
 - (i) holds the necessary Accreditation for OpCo or OpCo's Contractors to carry out any Railway Operations that form part of OpCo's Activities; and
 - (ii) complies with all conditions of such Accreditation and all obligations of accredited persons under the Rail Safety National Law and Rail Safety Regulations.
- (b) **(Rail transport operator):** OpCo must ensure that OpCo or one or more of its Core Contractors, in relation to the carrying out of OpCo's Activities, act as and complies with applicable obligations of a rail transport operator under the Rail Safety National Law and Rail Safety Regulations.
- (c) **(OpCo's Contractors):** OpCo must ensure that OpCo's Contractors engaged in or in connection with OpCo's Activities comply with their obligations under the Rail Safety National Law.
- (d) **(Utilising Accreditation):** OpCo must ensure that it is able to comply at all times with clause 7.3(a) if an OpCo Contractor is engaged in or in connection with

OpCo's Activities in circumstances where subsection 62(1)(b) of the Rail Safety National Law applies.

- (e) **(Copy of RSNL Safety Management System):** OpCo must provide TfNSW with:
 - (i) the then current version of the RSNL Safety Management System for OpCo's Activities promptly upon request by TfNSW; and
 - (ii) an updated version of such RSNL Safety Management System within 5 Business Days of any update.
- (f) **(Notices):** OpCo must provide TfNSW with a copy of any notice, report or other correspondence given or received by OpCo or its Associates under or in connection with:
 - (i) the Rail Safety National Law;
 - (ii) the Rail Safety Regulations; or
 - (iii) any Accreditation held by OpCo or its Associates,

which may adversely affect the ability of OpCo or its Associates to perform OpCo's Activities (or which relates to any category A notifiable occurrence listed in section 57 of the Rail Safety Regulations in connection with OpCo's Activities), promptly after it is given or received. The notice, report or other correspondence must be provided, as soon as possible, but in any event no later than 5 Business Days after it is given or received by OpCo or its Associates.

7.4 Staff

Without limiting clauses 6.1 and 6.2, OpCo must ensure that all Staff:

- (a) are competent to carry out the work for which they are engaged for the purposes of section 117 of the Rail Safety National Law; and
- (b) comply with their obligations under the Rail Safety National Law.

7.5 TfNSW to provide information

If requested by OpCo to do so, TfNSW must provide OpCo with any information then held by TfNSW or Sydney Trains that:

- (a) OpCo or one or more of its Core Contractors reasonably requires to obtain any Accreditation, or a variation to its Accreditation, or to fulfil its obligations under the Rail Safety National Law, in connection with OpCo's Activities; and
- (b) OpCo or the relevant Core Contractor cannot obtain from another source.

8. Project Plans

8.1 Purpose

The intended purposes of the Project Plans include:

- (a) to demonstrate to TfNSW that OpCo has the understanding, capacity and capability at all times to perform OpCo's Activities safely and in accordance with the requirements of this deed;

- (b) to ensure that the NWRL and, to the extent applicable, the ETS Equipment comply with the requirements of this deed;
- (c) to define responsibilities, resources and processes for planning, performing and verifying that OpCo's Activities satisfy the requirements of this deed; and
- (d) to allow TfNSW to understand how OpCo will achieve the performance outcomes specified in this deed, the objectives set out in clauses 4.1 and 4.2 and otherwise fulfil its obligations under this deed.

8.2 Initial Project Plans

- (a) Initial versions of certain Project Plans are included in SPR Appendices 63-95.
- (b) OpCo must submit initial versions of the remaining Project Plans at the times required by the SPR.

8.3 Updated Project Plans

OpCo may update its Project Plans. OpCo must:

- (a) review and, if necessary, update each Project Plan to take account of events or circumstances which will, or may, affect OpCo's Activities relevant to the Project Plan, including:
 - (i) Modifications;
 - (ii) Service Changes;
 - (iii) Additional Planned Service Disruptions;
 - (iv) changes in law;
 - (v) the commencement of new phases or stages of design, construction, testing, commissioning or operations; and
 - (vi) any breach or potential breach of the warranty in clause 8.4;
- (b) without limiting clause 8.3(a), update each Project Plan at the times required by SPR Appendix 54;
- (c) promptly submit each updated Project Plan to TfNSW's Representative (and, during the Delivery Phase, to the OTS Independent Certifier);
- (d) not update any Project Plan in a manner which makes TfNSW's obligations under the TfNSW Project Agreements more onerous or increases any liability or potential liability, or reduces any right, of TfNSW in connection with the OTS Works or the NWRL or the ETS; and
- (e) ensure that any updated Project Plans:
 - (i) impose standards, levels of service, scope and requirements that are equal to, greater than or higher than those imposed by; and
 - (ii) provide an equal or greater level of detail than,

the initial versions of the Project Plans contained in the SPR (where applicable) and any version of the Project Plan which has been either:

- (iii) certified by the OTS Independent Certifier under clause 8.5(a)(ii)B.2); or
- (iv) submitted to TfNSW's Representative and the time specified in clause 8.5(b) has expired without TfNSW's Representative having issued a notice under that clause during that time,

(as applicable).

8.4 Fitness for purpose

OpCo warrants that each Project Plan will at all times be fit for its purposes.

8.5 Review of Project Plans

(a) During the Delivery Phase:

(i) TfNSW's Representative may (but is not obliged to):

- A. review any Project Plan submitted under this clause 8; and
- B. notify the OTS Independent Certifier in writing (with a copy to OpCo) of any comments which TfNSW has in respect of the Project Plan,

within 15 Business Days following submission of the Project Plan to the OTS Independent Certifier;

(ii) the OTS Independent Certifier must:

- A. review each Project Plan and, in doing so, must consider any comments received from TfNSW under clause 8.5(a)(i); and
- B. determine whether such Project Plan complies with the requirements of this deed and either:
 - 1) if the OTS Independent Certifier considers that the Project Plan does not comply with the requirements of this deed (minor errors and omissions excepted), notify OpCo and TfNSW of the non-compliances (with detailed reasons); or
 - 2) certify the Project Plan by providing to OpCo and TfNSW's Representative a certificate in the form of Schedule 10,

within 20 Business Days following submission of the Project Plan to the OTS Independent Certifier; and

(iii) the OTS Independent Certifier must, within 5 Business Days of:

- A. giving a notice under clause 8.5(a)(ii)B.1), to the extent that the OTS Independent Certifier did not include in its notice to OpCo any comments received from TfNSW under clause 8.5(a)(i) regarding non-compliances in OpCo's Project Plan, provide TfNSW with detailed written reasons of why it did not include such comments; and

B. certifying a Project Plan under clause 8.5(a)(ii)B.2), to the extent that the OTS Independent Certifier received comments from TfNSW under clause 8.5(a)(i) regarding non-compliances in OpCo's Project Plan, provide TfNSW with detailed written reasons of why it certified the Project Plan despite TfNSW's comments.

(b) During the Operations Phase, TfNSW's Representative may (but is not obliged to):

- (i) review any Project Plan submitted under this clause 8; and
- (ii) notify OpCo if, in the opinion of TfNSW's Representative, the Project Plan does not comply with the requirements of this deed (with detailed reasons),

within 20 Business Days following submission of the Project Plan to TfNSW's Representative.

(c) If OpCo receives a notice in accordance with clauses 8.5(a)(ii)B.1 or 8.5(b)(ii) OpCo must, within 20 Business Days, submit a revised Project Plan (or, where a Project Plan is comprised of a head-plan and one or more sub-plans the non-compliance relates only to (i) the head-plan, (ii) one or more sub-plans, or (iii) the head-plan and one or more sub-plans (in each case the "**affected plans**"), submit a revised version of the affected plans) to TfNSW's Representative (and, during the Delivery Phase, the OTS Independent Certifier) whereupon the provisions of this clause 8.5 will reapply to the revised Project Plan or affected plans (as applicable).

(d) If the certificate provided by the OTS Independent Certifier pursuant to clause 8.5(a)(ii)B.2) lists any minor errors or omissions:

- (i) the OTS Independent Certifier may, in the certificate, recommend the action that could be taken by OpCo to address the minor error or omission; and
- (ii) OpCo must complete the recommended action, or take any other action OpCo deems reasonable in the circumstances to correct the minor error or omission to the extent required for the Project Plan to comply with this deed, within the time frame (if any) specified by the OTS Independent Certifier.

8.6 TfNSW may request updates

If:

- (a) any Project Plan does not comply with the requirements of this deed; or
- (b) OpCo has not updated any Project Plan in accordance with the requirements of clause 8.3(a),

TfNSW's Representative may by written notice request that OpCo amend or update the Project Plan specifying:

- (c) the reasons why such updating is required (or why the Project Plan does not comply with this deed); and
- (d) the time within which such updating must occur (which must be reasonable, having regard to the amount of work required),

and OpCo must:

- (e) amend or update the Project Plan as requested by TfNSW to comply with the requirements of this deed; and
- (f) submit the amended or updated Project Plan to TfNSW within the time specified under clause 8.6(d).

8.7 Implementation and compliance

- (a) OpCo must implement and comply with each Project Plan which has been:
 - (i) during the Delivery Phase, certified by the OTS Independent Certifier under clause 8.5(a)(ii)B.2); or
 - (ii) during the Operations Phase, submitted to TfNSW's Representative and the time specified in clause 8.5(b) has expired without TfNSW's Representative having issued a notice under that clause during that time, (as applicable).
- (b) During the Delivery Phase, if the OTS Independent Certifier does not, in respect of a Project Plan referred to in clause 15.1(b)(i), either certify or reject the Project Plan within the 20 Business Day period referred to in clause 8.5(a)(ii), OpCo may use the Project Plan at OpCo's own risk.

9. OpCo's general obligations

9.1 All work included

Except as stated in this deed, OpCo has allowed for the provision of all work and materials necessary for OpCo's Activities, whether or not expressly mentioned in this deed. All such work and materials:

- (a) must be undertaken and provided by OpCo at its own cost;
- (b) form part of OpCo's Activities and will not constitute a Modification; and
- (c) will not entitle OpCo to make a Claim except as provided for in this deed.

9.2 Principal contractor

- (a) **(Definitions):** In this clause 9.2 and in clause 9.4 the terms "principal contractor", "workplace" and "construction work" have the same meanings assigned to those terms in the WHS Legislation. For the purposes of the WHS Legislation and this deed:

- (i) OpCo's Activities; and
- (ii) any construction work carried out on the NWRL Site by TfNSW, Sydney Trains, a Civil Works Contractor, the ETS Contractor or an Other Contractor during any period in which the Appointed Principal Contractor has been engaged as principal contractor in respect of the Construction Site or the Licensed Maintenance Area (**NWRL Site Interface Work**),

is taken to be part of the same "construction project".

- (b) **(Engagement as principal contractor):** Without limiting OpCo's obligations under any other provision of this deed, the parties acknowledge and agree that under the Core Contractor Side Deeds, from the date on which OpCo is given access to a part of the Construction Site or the Licensed Maintenance Area in accordance with this deed, except where the Site Access Schedule provides that OpCo will not have control of that part of the Construction Site:
- (i) to the extent that OpCo's Activities or any NWRL Site Interface Work includes construction work, TfNSW:
 - A. engages the Appointed Principal Contractor as the principal contractor in respect of OpCo's Activities and the NWRL Site Interface Work; and
 - B. authorises the Appointed Principal Contractor to have management and control of each workplace at which OpCo's Activities and the NWRL Site Interface Work is to be carried out and to discharge the duties of a principal contractor under the WHS Legislation;
 - C. must give the Appointed Principal Contractor prior notice of any Other Contractor, ETS Contractor or Sydney Trains contractor undertaking NWRL Site Interface Work before such NWRL Site Interface Work commences; and
 - D. must provide the Appointed Principal Contractor with executed deed polls in favour of the Appointed Principal Contractor in the form set out in Schedule 6 from each Other Contractor undertaking NWRL Site Interface Work, the ETS Contractor and each Sydney Trains contractor;
 - (ii) until, and including, the Date of Completion, JHPL accepts the engagement as principal contractor and agrees to discharge the duties imposed on a principal contractor by the WHS Legislation;
 - (iii) from the Date of Completion, the O&M Contractor accepts the engagement as principal contractor and agrees to discharge the duties imposed on a principal contractor by the WHS Legislation; and
 - (iv) if TfNSW agrees to appoint one of the O&M Contractor's contractors as principal contractor pursuant to clause 9 of the O&M Contract Side Deed, then:
 - A. TfNSW will appoint the relevant O&M Contractor's contractor as principal contractor under a deed of appointment executed in accordance with the O&M Contract Side Deed;
 - B. the relevant O&M Contractor's contractor will accept, under a deed of appointment executed in accordance with the O&M Contract Side Deed, the engagement as principal contractor and agree to discharge the duties imposed on a principal contractor by the WHS Legislation; and
 - C. once the O&M Contractor's contractor's engagement as principal contractor is effective, the O&M Contractor will be released from its obligations under clause 9 of the O&M

Contract Side Deed to the extent that the O&M Contractor's contractor has been appointed as principal contractor.

- (c) **(Period of engagement - JHPL):** JHPL's engagement and authorisation as a principal contractor will continue until:
- (i) in respect of each discrete part of the Third Party Works, the point in time when the relevant discrete part of the Third Party Works has been completed in accordance with clauses 19.5, 19.6 or 19.7 (as applicable); and
 - (ii) in respect of the balance of the OTS Works, the earlier of:
 - A. the termination of this deed; and
 - B. the Date of Completion.
- (d) **(Period of engagement - O&M Contractor or O&M Contractor's contractor):** the O&M Contractor's (or its contractor's) engagement and authorisation as a principal contractor will continue until the earlier of:
- (i) the termination of this deed; and
 - (ii) the Expiry Date.
- (e) **(Authorisations and licences):** OpCo must:
- (i) ensure that if any law, including in the State or Territory in which the OTS Works are situated or OpCo's Activities are carried out (as the case may be) requires that:
 - A. a person:
 - 1) be authorised or licensed (in accordance with the WHS Legislation) to carry out any work at that workplace, that person is so authorised or licensed and complies with any conditions of such authorisation or licence; and/or
 - 2) has prescribed qualifications or experience or, if not, is to be supervised by a person who has prescribed qualifications or experience (as defined in the WHS Legislation), that person has the required qualifications or experience or is so supervised; or
 - B. a workplace, plant or substance (or design) or work (or class of work) be authorised or licensed, that workplace, plant or substance, or work is so authorised or licensed;
 - (ii) not direct or allow a person to carry out work or use plant or substance at a workplace unless the requirements of clause 9.2(e)(i) are met (including any requirement to be authorised, licensed, qualified or supervised); and
 - (iii) if requested by TfNSW or required by the WHS Legislation, produce evidence of any approvals, certificates, authorisations, licences,

prescribed qualifications or experience or any other information relevant to work health and safety (as the case may be) to the reasonable satisfaction of TfNSW before OpCo or an OpCo's Contractor (as the case may be) commences such work.

- (f) **(If engagement not effective):** If the engagement of an Appointed Principal Contractor as principal contractor under this clause 9.2 is not effective for any reason, OpCo agrees that it will ensure that the Appointed Principal Contractor exercises and fulfils the functions and obligations of the principal contractor under the WHS Legislation as if the Appointed Principal Contractor had been validly engaged and authorised as principal contractor as contemplated by clause 9.2(b).
- (g) **(Other Principal Contractors):** At any time when the Site Access Schedule provides that OpCo will not have control of a part of the Construction Site, or during a Track Possession at the ECRL or on the North Shore line for which TfNSW has notified the Appointed Principal Contractor (with a copy to OpCo) that another entity will be, or has been, appointed as the principal contractor, OpCo:
 - (i) acknowledges that the Other Contractor or Civil Works Contractor who is specified in the Site Access Schedule or notice from TfNSW as being in control of the part of the Construction Site, ECRL or North Shore line (**Other Principal Contractor**) is the principal contractor in respect of all construction work carried out by or on behalf of TfNSW on the part of the Construction Site, ECRL or North Shore line during the period in which that Other Principal Contractor is in control of the part of the Construction Site, ECRL or North Shore line; and
 - (ii) must comply with any exercise by the Other Principal Contractor referred to in clause 9.2(g)(i) of such authority as is necessary to enable that Other Principal Contractor to discharge the responsibilities imposed on a principal contractor by the WHS Legislation.

9.3 Protection of persons and property

OpCo must carry out OpCo's Activities:

- (a) safely and in a manner that, insofar as is reasonably practicable, does not put health and safety of persons at risk; and
- (b) in a manner that protects property.

9.4 Work health and safety

OpCo must:

- (a) **(WHS Legislation):** ensure that in carrying out OpCo's Activities under this deed:
 - (i) it complies with all laws and other requirements of this deed for work health, safety and rehabilitation management;
 - (ii) all OpCo's Contractors comply with their respective obligations under the WHS Legislation; and
 - (iii) it complies with its obligation under the WHS Legislation to consult, cooperate and coordinate activities with all other persons who have a work health and safety duty in relation to the same matter;

- (b) **(Corporate work health and safety management system)**: have a corporate work health and safety management system which complies with the law and is otherwise in accordance with the New South Wales Government Work Health and Safety Management Systems and Auditing Guidelines (5th Edition) (March 2014);
- (c) **(Notify)**: notify the TfNSW's Representative immediately (and in any event, within 24 hours) after becoming aware of a 'notifiable incident' (as defined in the WHS Legislation) arising out of, or in any way in connection with, OpCo's Activities;
- (d) **(Assurances from Significant Contractors)**: institute systems to obtain regular written assurances from all Significant Contractors about their ongoing compliance with WHS Legislation including the due diligence obligations contained therein;
- (e) **(Assurances to TfNSW)**: provide TfNSW's Representative with the written assurances referred to in clause 9.4(d), together with written assurances from OpCo about OpCo's ongoing compliance with the WHS Legislation;
- (f) **(Report)**: provide TfNSW's Representative with a written report of all work health, safety and rehabilitation matters in connection with OpCo's Activities as TfNSW's Representative may require from time to time;
- (g) **(Cooperate)**: cooperate with the Civil Works Contractors and TfNSW to ensure that all parties are able to comply with their respective obligations under the WHS Legislation;
- (h) **(Duty of good faith)**: exercise a duty of the utmost good faith to TfNSW in carrying out OpCo's duties under the WHS Legislation to enable TfNSW to discharge its duties under the WHS Legislation;
- (i) **(Ensure TfNSW does not breach WHS Legislation)**: ensure that it does not do anything or fail to do anything that would cause TfNSW to be in breach of the WHS Legislation; and
- (j) **(Significant Contracts)**: ensure that each Significant Contract includes provisions equivalent to clauses 9.2(e), 9.3 and this clause 9.4.

To the extent not prohibited by law, OpCo must indemnify TfNSW from and against any claims against TfNSW, or Loss suffered or incurred by TfNSW, arising out of or in any way in connection with the failure of an Appointed Principal Contractor to exercise or fulfil the functions and responsibilities of the principal contractor under the WHS Legislation or if OpCo otherwise fails to comply with clauses 9.2, 9.3 and this clause 9.4.

9.5 Safety Management Plan

- (a) OpCo acknowledges that preparation of the Safety Management Plan in accordance with clause 8 is a condition precedent to TfNSW's obligations under clause 12.1.
- (b) Without limiting any requirement of the WHS Legislation or this deed, the Safety Management Plan must:
 - (i) set out in adequate detail the procedures OpCo will implement to manage OpCo's Activities from a work health and safety perspective;
 - (ii) describe how OpCo proposes to ensure that OpCo's Activities are performed consistently with the WHS Legislation and any other applicable law;

- (iii) address the matters specified in the WHS Legislation;
 - (iv) comply with the requirements applicable to a "Project OHS Management Plan" set out in the New South Wales Government Occupational Health & Safety Management Systems Guidelines; and
 - (v) comply with the requirements applicable to a "Work Health Safety Management Plan" or "Site Specific Safety Management Plan" set out in section 9 of the NSW Guidelines.
- (c) Without limiting clause 8, OpCo must:
- (i) continue to correct any defects in or omissions from the Safety Management Plan (whether identified by TfNSW's Representative or OpCo); and
 - (ii) regularly review and, as necessary, revise the Safety Management Plan in accordance with the WHS Legislation,

and submit an amended draft of its Safety Management Plan (or, where the non-compliance relates only to (i) the head-plan, (ii) one or more sub-plans, or (iii) the head-plan and one or more sub-plans (in each case the "**affected plans**"), submit a revised version of the affected plans) to TfNSW's Representative, after which clauses 8.3, 8.5 and 8.7 will reapply to the revised Safety Management Plan or affected plans (as applicable).

- (d) OpCo must document and maintain detailed records of inspections or audits undertaken as part of the Safety Management Plan.
- (e) OpCo must carry out OpCo's Activities in accordance with, and otherwise implement, the latest Safety Management Plan.

9.6 Prevention of nuisance and interference

In performing OpCo's Activities, OpCo must:

- (a) prevent nuisance (except to the extent arising solely as a result of the existence or location of the NWRL) and unreasonable noise, dust, vibration and disturbances; and
- (b) not interfere with the passage of people and vehicles, access to any premises, car parks, roads or pedestrian ways or the operations or activities carried out on or adjacent to the NWRL Site, except to the extent that such interference is required for purposes of public health or safety or is not reasonably avoidable or is permitted by Legislation.

9.7 Control of traffic

OpCo:

- (a) is responsible for the control, direction and protection of all road and pedestrian traffic, in any way affected by the carrying out of OpCo's Activities;
- (b) must manage all such traffic to ensure:
 - (i) its continuous, safe and efficient movement;

- (ii) the traffic carrying capacity of Local Areas is maintained; and
- (iii) that any delays and disruptions to road traffic and the movement of road traffic are kept to an absolute minimum;
- (c) must at all times comply with the Construction Environmental Management Plan, Transport Integration Plan and the requirements of the SPR and any Third Party Agreement in respect of road traffic management and safety; and
- (d) must comply with the directions of any relevant Authority and TfNSW's Representative with respect to such management.

9.8 Industrial relations

OpCo must, in performing OpCo's Activities:

- (a) assume sole responsibility for and manage all aspects of industrial relations;
- (b) develop a greenfield industrial relations agreement for the Operations Phase in line with then contemporary Australian industrial relations legislation;
- (c) comply with its Human Resources Plan;
- (d) comply with its Workplace Relations Management Plan;
- (e) comply with the NSW Code and NSW Guidelines in respect of industrial relations;
- (f) keep TfNSW fully and promptly informed of all industrial relations problems or issues which materially affect or are likely to materially affect the carrying out of OpCo's Activities or the activities of Sydney Trains or other public transport operators; and
- (g) use its best endeavours to minimize potential redundancy and termination costs by, without limitation, formulating and administering terms and conditions of employment which minimize potential termination and redundancy costs.

9.9 Training Management Guidelines

OpCo must satisfy its obligations as a contractor under the Training Management Guidelines, including by:

- (a) ensuring that it has an Enterprise Training Management Plan (as referred to in the Training Management Guidelines) that complies with the requirements of the Training Management Guidelines;
- (b) preparing a Training Management Plan in accordance with the Training Management Guidelines and submitting the Training Management Plan to TfNSW;
- (c) complying with the Training Management Plan OpCo is permitted to use in accordance with clause 8.7;
- (d) co-operating with and assisting TfNSW with any reviews undertaken by TfNSW of OpCo's compliance with the Training Management Guidelines;
- (e) maintaining records evidencing OpCo's compliance with the Training Management Guidelines; and
- (f) making all such records available to TfNSW.

9.10 Community relations

OpCo:

- (a) acknowledges that the areas where OpCo's Activities are being carried out are of great importance to many people, including local residents and businesses; and
- (b) must manage and participate in all community relations and involvement programs and activities as:
 - (i) required by the SPR;
 - (ii) required by any Approvals;
 - (iii) contained in the Stakeholder and Community Involvement Plan;
 - (iv) contained in the Community Liaison Implementation Plan; and
 - (v) reasonably required by TfNSW from time to time.

9.11 Cooperation and coordination with Other Contractors

(a) OpCo:

- (i) acknowledges that:
 - A. TfNSW may engage Other Contractors to carry out Other Contractors' Activities upon or in the vicinity of the NWRL Site at the same time as OpCo;
 - B. OpCo's Activities may interface with the Other Contractors' Activities;
 - C. Other Contractors may be executing work on parts of the NWRL Site, or adjacent to the NWRL Site, at the same time as OpCo is performing OpCo's Activities; and
 - D. Other Contractors may require OpCo to provide information to them to coordinate the Other Contractors' Activities with OpCo's Activities, and this must be provided in a timely manner by OpCo subject to the relevant Other Contractors providing such confidentiality undertakings as OpCo may reasonably require;
- (ii) must at all times:
 - A. permit Other Contractors to carry out the Other Contractors' Activities on the applicable parts of the NWRL Site or any adjacent property to the NWRL Site;
 - 1) at the same time as OpCo is performing OpCo's Activities; and
 - 2) at the times agreed with the Other Contractor, or failing agreement at times determined by TfNSW's Representative,

and for this purpose ensure they have safe, clean and clear access to those parts of the NWRL Site, or property adjacent to the NWRL Site (to the extent that OpCo has access to that property and for the period of such access), required by them for the purpose of carrying out their work, subject to:

- 3) the Other Contractor complying with OpCo's reasonable site access and work health and safety procedures; and
 - 4) where the relevant Other Contractor is carrying out NWRL Site Interface Work, the Other Contractor executing a deed poll in favour of OpCo and the Appointed Principal Contractor in the form set out in Schedule 6;
- B. take all reasonably necessary precautions to ensure that the OTS Works, the Temporary Works, any part of the Civil Works during the period in which OpCo is responsible for the Civil Works in accordance with clause 14.10, the NWRL Site or the NWRL is protected from accidental damage by the Other Contractor;
- C. not damage the work performed by the Other Contractor or its plant and equipment except to the minimum extent necessary to perform OpCo's Activities;
- D. fully co-operate with Other Contractors, and do everything reasonably necessary to:
- 1) facilitate the Other Contractors' Activities, including providing Other Contractors with such assistance as may be directed by TfNSW's Representative; and
 - 2) ensure the effective coordination of OpCo's Activities with the Other Contractors' Activities;
- E. carefully coordinate and interface OpCo's Activities with the Other Contractors' Activities;
- F. perform OpCo's Activities so as to minimise any interference with or disruption or delay to the Other Contractors' Activities;
- G. be responsible for coordinating OpCo's Activities, including work sequencing, construction methods, safety and industrial relations matters with those affecting, and influenced by, Other Contractors' Activities; and
- H. attend coordination meetings chaired by TfNSW's Representative with Other Contractors and others at such times as may be reasonably required by TfNSW's Representative, to review current and future issues; and
- (iii) must promptly advise TfNSW's Representative if OpCo becomes aware of any matter arising out of the Other Contractors' Activities that may

have an adverse effect upon OpCo's Activities or the safety of Customers or any other persons.

(b) TfNSW must ensure that Other Contractors' Activities are carried out to minimise any disruption, interference or adverse impact (including OpCo incurring Loss) on or to, and without unreasonably disrupting or interfering with, or adversely impacting on, OpCo's Activities.

(c) To the extent that OpCo is required to:

- (i) carry out safety or site inductions for Other Contractors in order to comply with its obligations under clause 9.11(a); or
- (ii) provide personnel to accompany Other Contractors in order to comply with its obligations under clause 9.11(a),

TfNSW must pay OpCo for the provision of such services:

(iii) on or before the Date of Completion, at the following rates:

Activity	Rate (excluding GST)
Carrying out safety or site inductions for Other Contractors in order to comply with OpCo's obligations under clause 9.11(a)	\$ per induction (WPI Indexed)
Providing personnel to accompany Other Contractors in order to comply with OpCo's obligations under clause 9.11(a)	\$ per hour (WPI Indexed)

(iv) after the Date of Completion, in accordance with the Schedule of Rates.

(ca) To the extent that OpCo is required to:

- (i) create information that did not previously exist for the purposes of clause 9.11(a)(i)D;
- (ii) provide safe, clean and clear access to areas of the NWRL Site to which there is no previously existing safe, clean or clear access for the purposes of clause 9.11(a)(ii)A; or
- (iii) comply with a direction by TfNSW's Representative given pursuant to clause 9.11(a)(ii)D.1),

TfNSW must compensate OpCo for the Net Financial Impact of providing such services which will be calculated and paid in accordance with Schedule 29.

(d) TfNSW must ensure that Other Contractors:

- (i) cooperate with OpCo and the Core Contractors in relation to OpCo's (or any Core Contractor's) compliance with its Accreditation obligations under the Rail Safety National Law and Rail Safety Regulations;

- (ii) do not put OpCo (or any Core Contractor) in breach of its obligations as a Rail Infrastructure Manager or Rolling Stock Operator under the Rail Safety National Law and Rail Safety Regulations;
- (iii) comply with all reasonable requirements of OpCo (or any Core Contractor) in relation to compliance with the Accreditation of OpCo (or any Core Contractor); and
- (iv) do not do anything (or fail to do anything) which jeopardises the Accreditation of OpCo (or any Core Contractor) or an application for Accreditation by OpCo (or any Core Contractor), including anything that may be grounds for the ONRSR to refuse an application for Accreditation by OpCo (or any Core Contractor), or to suspend or revoke (in whole or in part) or impose or vary conditions or restrictions on the Accreditation of OpCo (or any Core Contractor).

9.12 Compensation Event

- (a) A Compensation Event will occur if:
 - (i) TfNSW fails to comply with its obligations under clauses 9.11(b) or 9.11(d); or
 - (ii) the OTS Works, the Temporary Works, any part of the Civil Works during any period in which OpCo is responsible for the Civil Works in accordance with clause 14.10, the NWRL or the NWRL Site are damaged by an Other Contractor.
- (b) OpCo's entitlement to compensation in relation to a Compensation Event listed in clause 9.12(a) will be reduced to the extent that OpCo's non-compliance with the Interface Management Plan or its obligations under this deed in connection with Other Contractors increased the length of any delay caused by the Compensation Event or increased the costs payable, or loss of revenue suffered, by OpCo as a result of the Compensation Event.
- (c) Subject to clauses 9.11(c) and 9.12(a), TfNSW will not be liable upon any Claim by OpCo arising out of or in any way in connection with any Other Contractors' Activities.

9.13 ETS

- (a) OpCo and TfNSW acknowledge and agree that:
 - (i) TfNSW will be responsible for providing the ETS for the NWRL;
 - (ii) the ETS will be the only ticketing or fare system for the NWRL; and
 - (iii) TfNSW will be responsible for setting fares and establishing fare policies.
- (b) OpCo must:
 - (i) carry out all tasks and activities required to facilitate the provision of the ETS by TfNSW;

- (ii) provide resources and attend meetings as required for the purposes of the delivery, operation, maintenance and replacement of the ETS in relation to the NWRL;
 - (iii) integrate the ETS with the NWRL and the Operations Activities in accordance with the SPR;
 - (iv) provide TfNSW with any information TfNSW may require in relation to the NWRL for the purposes of the delivery, operation, maintenance and replacement of the ETS;
 - (v) not damage the ETS Equipment, the work performed by the ETS Contractor or the ETS Contractor's plant and equipment;
 - (vi) comply with its obligations in Schedule 4; and
 - (vii) comply with its obligations under the SPR regarding the ETS.
- (c) TfNSW will ensure that the ETS Contractor does not damage the OTS Works, the Temporary Works, any parts of the Civil Works during the period in which OpCo is responsible for the Civil Works in accordance with clause 14.10, the NWRL Site or the NWRL, except to the minimum extent necessary to install, operate, maintain and replace the ETS.
- (d) Notwithstanding the foregoing, a Compensation Event will occur if:
- (i) damage is caused to the OTS Works, the Temporary Works, any part of the Civil Works during the period in which OpCo is responsible for the Civil Works in accordance with clause 14.10, the NWRL Site or the NWRL by the ETS Contractor, whether or not that damage is necessary to install, operate, maintain or replace the ETS; and
 - (ii) it is necessary to reinstate that damage to ensure that OpCo can comply with all of its obligations under this deed (including if the damage results in any Service Payment Deduction).

9.14 ECRL and Sydney Trains

- (a) OpCo and TfNSW acknowledge and agree that there is a physical and operational interface between the ECRL and the Sydney metropolitan rail network operated by Sydney Trains.
- (b) OpCo and TfNSW must comply with their respective obligations in relation to the ECRL and Sydney Trains:
 - (i) as specified in Schedule 3; and
 - (ii) otherwise as required by this deed (including the SPR).

9.15 Personnel

- (a) OpCo must provide experienced and skilled personnel to perform its obligations under this deed.
- (b) OpCo must notify TfNSW, within 4 months of Financial Close, of the names and experience of the personnel to be employed by OpCo and the Alstom Significant

Contractor in the positions set out in Part A of Schedule 7 for TfNSW's approval (which must not be unreasonably withheld).

- (c) OpCo must:
 - (i) employ, and ensure that the Alstom Significant Contractor employs, those personnel approved by TfNSW (as applicable) under clause 9.15(b) in the positions for which they are approved;
 - (ii) ensure that the Core Contractors employ those personnel specified in Part A of Schedule 7 in the positions specified in that Schedule;
 - (iii) if any of the personnel referred to in clauses 9.15(c)(i) or 9.15(c)(ii):
 - A. die;
 - B. become seriously ill;
 - C. resign from the employment of OpCo or a Core Contractor (as applicable); or
 - D. become the subject of a direction under clause 9.15(g),
replace them with personnel of at least equivalent experience, ability and expertise.
- (d) The personnel referred to in clause 9.15(c) must:
 - (i) carry out the functions and be given the authorities and responsibilities specified for them in this deed; and
 - (ii) otherwise be available for consultation with TfNSW's Representative when TfNSW's Representative reasonably requires.
- (e) OpCo must notify TfNSW 9 months prior to the Date for Completion of the names and experience of the personnel to fill the roles set out in Part B of Schedule 7 for TfNSW's approval (which must not be unreasonably withheld).
- (f) Following TfNSW's approval of the personnel under clause 9.15(e):
 - (i) OpCo must:
 - A. employ those personnel approved by TfNSW under clause 9.15(e); and
 - B. ensure that the Core Contractors employ those personnel approved by TfNSW under clause 9.15(e); and
 - (ii) clause 9.15(c)(iii) will apply to such personnel.
- (g) TfNSW's Representative may, acting reasonably, direct OpCo to remove any person from the performance of OpCo's Activities.
- (h) OpCo must ensure that any person the subject of a direction under clause 9.15(g) is not again involved in the performance of OpCo's Activities.

9.16 Utility Services

- (a) OpCo:
- (i) must obtain, pay for, contract for the provision of, acquire or otherwise procure or provide any Utility Services (subject to clause 9.17(a)(ii)) and all connections for all Utility Services (including, subject to clause 9.16(b), electricity) it requires to perform OpCo's Activities;
 - (ii) must make:
 - A. all Utility Services available subject to Schedule 3, to any tenants at the Stations with which OpCo enters into any sub-lease or licence arrangements, which services are not to be charged for separately but instead are to be incorporated into sub-lease or licence fees;
 - B. all Utility Services available to the tenants under the leases, licences or agreements in or around the ECRL described in clause 13.4(a) of Schedule 3 where:
 - 1) the relevant lease, licence or agreement relates to an area within the Construction Site (in respect of the period from Handover until the Date of Completion) or the Licensed Maintenance Area (in respect of the period from the Date of Completion until the end of the Operations Phase) (as relevant); and
 - 2) TfNSW or the Rail Entity which is the counterparty to the relevant lease, licence or agreement provides, or facilitates the provision of, those services to the relevant tenant immediately prior to Handover,which services are to be provided by OpCo at no charge; and
 - C. electricity available to Sydney Trains as contemplated by clause 6.4 of Schedule 3 and the OpCo Shared Asset Activities (as defined in Schedule 3) which services are to be provided by OpCo at no charge to Sydney Trains.
 - (iii) must investigate, protect, relocate, modify and provide for all Utility Services necessary for it to comply with its obligations under the Project Agreements;
 - (iv) must not, without TfNSW's Representative's prior written consent, obtain any Utility Services or connect any Utility Services to the OTS Works, the NWRL or the ETS Equipment that are not necessary to allow OpCo to carry out OpCo's Activities;
 - (v) must obtain TfNSW's Representative's prior written consent (such consent not to be unreasonably withheld or delayed) in respect of any new connections for Utility Services or changes or modifications to existing connections for Utility Services;

- (vi) must consult with and keep TfNSW fully informed as to OpCo's dealings with the Authorities providing Utility Services;
- (vii) must ensure there are no unplanned disruptions to the Utility Services in carrying out OpCo's Activities and that planned disruptions to the Utility Services are minimised and that otherwise no Utility Services are damaged, destroyed, disconnected, disrupted, interfered with or interrupted by reason of the performance of OpCo's Activities;
- (viii) must ensure that maintenance points for Utility Services are located within the Project Site and only with the prior written consent of TfNSW's Representative (such consent not to be unreasonably withheld or delayed);
- (ix) subject to clauses 17.10 and 27, assumes the risk of the existence, location, condition and availability of Utility Services (in so far as they affect OpCo's Activities); and
- (x) must, to the extent not prohibited by law, indemnify TfNSW from and against any claims against TfNSW, or Loss suffered by TfNSW arising out of or in connection with:
 - A. any damage to, disconnection or destruction of, disruption to or interference with or interruption to, any Utility Service arising out of or in connection with:
 - 1) a failure by OpCo to comply with any obligations under this deed; or
 - 2) any act or omission of OpCo or its Associates; or
 - B. a failure by OpCo to comply with any obligations under this deed with respect to the Utility Services or the Utility Service Works.
- (aa) TfNSW must reimburse OpCo for the cost of electricity made available by OpCo to, and consumed by Sydney Trains, as contemplated by clause 9.16(a)(ii)C prior to the Date of Completion. The parties acknowledge and agree that, in accordance with clause 9.17(a), TfNSW is responsible for purchasing, and making available to OpCo at no charge, any electricity made available by OpCo to, and consumed by, Sydney Trains as contemplated by this clause after the Date of Completion.
- (ab) To the extent that an Authority requires OpCo to undertake Utility Service Works for the purposes of any site located outside the Licensed Maintenance Area, and such Utility Service Works exceeds the scope of Utility Service Works that would otherwise be required by the Authority in respect of the OTS Works (disregarding Utility Service Works), Temporary Works or the NWRL, a Compensation Event will occur.
- (b) OpCo:
 - (i) acknowledges that both TfNSW and OpCo will be counterparties to the electricity connection agreements with Ausgrid and Endeavour Energy respectively pursuant to which the NWRL is connected to their networks through the Ausgrid Connection Point and the Endeavour Energy Connection Point (including any connection and augmentation works required for this purpose) (**Electricity Connection Agreements**);

- (ii) must ensure, with such assistance as is reasonably requested from TfNSW, that the Electricity Connection Agreements are executed by the parties and have commenced operation in sufficient time for the Ausgrid Connection Point and Endeavour Energy Connection Point to be operational for commencement of the Tests;
 - (iii) acknowledges that TfNSW's obligations and liabilities under the Electricity Connection Agreements are to be limited to payment of any ongoing Network Charges and the reversion of control of the electricity infrastructure forming part of the NWRL from OpCo to TfNSW at the end of the Operations Phase;
 - (iv) must negotiate all aspects of the Electricity Connection Agreements with Ausgrid and Endeavour Energy, other than any ongoing Network Charges in respect of the period after the Date of Completion, provisions relating to the reversion of control of the electricity infrastructure forming part of the NWRL from OpCo to TfNSW at the end of the Operations Phase or liability provisions affecting TfNSW;
 - (v) must not enter into the Electricity Connection Agreements unless and until TfNSW has advised in writing that it is comfortable with the content of these agreements (such advice not to be unreasonably withheld or delayed); and
 - (vi) is responsible for paying all charges relating to augmentation of Ausgrid's network or Endeavour Energy's network and any other connection costs to facilitate the Ausgrid Connection Point and the Endeavour Energy Connection Point being constructed or commissioned provided for in the Electricity Connection Agreements, and all other payments under those agreements other than ongoing Network Charges (which ongoing Network Charges will be borne by OpCo up until the Date of Completion and by TfNSW immediately after the Date of Completion).
- (c) Subject to Schedule 2 and clause 9.17, TfNSW will not be liable under this deed or otherwise in relation to any Utility Services required or used for the OTS PPP.
 - (d) Subject to clauses 17.10 and 27, OpCo is responsible for, and assumes the risk of all additional work, increased costs and any other Loss, delay or disruption (including any delay in achieving Completion) it suffers or incurs arising out of or in any way in connection with the existence, location, condition and availability of all Utility Services required for the execution of OpCo's Activities.
 - (e) OpCo must obtain the prior consent of TfNSW (such consent not to be unreasonably withheld or delayed) in relation to:
 - (i) any proposal to construct any infrastructure in connection with the Utility Services outside the Project Site; and
 - (ii) the exact location of any infrastructure in connection with the Utility Services within or outside of the Project Site.
 - (f) Each of TfNSW and OpCo must comply with their respective obligations under the Electricity Connection Agreements.
 - (g) If TfNSW breaches any of its obligations under an Electricity Connection Agreement, OpCo agrees that its sole remedy will be under this deed in relation to

the breach of clause 9.16(f) and that it will not bring a claim for damages against TfNSW under the relevant Electricity Connection Agreement.

9.17 Electricity

(a) **(Purchase of electricity):**

- (i) OpCo must purchase all electricity required to perform its obligations under this deed (including for testing and commissioning) prior to the Date of Completion.
- (ii) TfNSW must:
 - A. at all times between the Date of Completion and the end of the Operations Phase have in place an agreement with a retailer of electricity (which may be a different agreement for each Connection Point) to purchase all electricity required to be consumed through the Connection Points (**Electricity Purchase Agreement**) by OpCo; and
 - B. allow OpCo to use at no charge all electricity purchased pursuant to the Electricity Purchase Agreement,

to operate and maintain the NWRL and the ETS Equipment from immediately after the Date of Completion until the end of the Operations Phase. TfNSW's obligations under this clause are fully discharged by TfNSW having the Electricity Purchase Agreement in place and not being in breach of that agreement (**Electricity Purchase Obligation**). Provided TfNSW discharges the Electricity Purchase Obligation, TfNSW is not liable under this deed if electricity is for any reason unavailable to be consumed by OpCo through the Connection Points.

(iii) TfNSW must:

- A. comply with its obligations under the Electricity Purchase Agreement; and
- B. provide any consents reasonably requested by OpCo which are needed for electricity to be sold and supplied through the Connection Points.

(b) **(Demand Usage):**

- (i) TfNSW and OpCo must agree:
 - A. not later than 6 months prior to commencement of the Operations Phase, on a Demand Usage Strategy; and
 - B. on changes to the Demand Usage Strategy within 1 month following a request by a party during the Operations Phase, including as a result of changes to the Network Charges of Ausgrid and/or Endeavour Energy.

The Demand Usage Strategy and any changes to the Demand Usage Strategy agreed under this clause 9.17(b)(i) or notified by TfNSW under clause 9.17(b)(ii) must not adversely impact on OpCo's ability to comply

with this deed or its obligations to make electricity available to any tenants at the Stations.

- (ii) Failing agreement by the dates specified under clause 9.17(b)(i)A or 9.17(b)(i)B, the Demand Usage Strategy (or amendments to that strategy) will be as notified by TfNSW to OpCo subject to the electricity infrastructure forming part of the NWRL being physically able to deliver the strategy, or amended strategy, notified by TfNSW. For the avoidance of doubt, OpCo must ensure that the electricity infrastructure forming part of the NWRL is able:
 - A. to draw electricity from each of the Ausgrid and Endeavour Energy Connection Points and to switch consumption between these Connection Points;
 - B. to power the NWRL entirely from electricity drawn from only Ausgrid's electricity distribution network or Endeavour Energy's electricity distribution network if needed.

- (iii) OpCo must, from the Date of Completion, consume electricity through the Connection Points in accordance with the Demand Usage Strategy and any Direction received from time to time from TfNSW in relation to how electricity should be drawn from these Connection Points. OpCo is not required to consume electricity in accordance with any Direction:
 - A. with which the electricity infrastructure forming part of the NWRL is physically unable to perform; or
 - B. if doing so would adversely impact on OpCo's ability to comply with this deed or its obligations to make electricity available to any tenants at the Stations.

- (iv) No later than 6 months prior to commencement of the Operations Phase OpCo must use reasonable endeavours to provide to TfNSW a reasonably accurate forecast of the Forecast Aggregate Consumption and Forecast Demand Usage (calculated in accordance with the Demand Usage Strategy) through the Connection Points for each Forecast Period during the Operations Phase. OpCo must use reasonable endeavours to provide to TfNSW a reasonably accurate revised forecast of the Forecast Aggregate Consumption and Forecast Demand Usage (calculated in accordance with the Demand Usage Strategy) by no later than 1 April each year for each Forecast Period during the following Operating Year (taking into account any Directions it has received from TfNSW prior to that date). The forecasts must be:
 - A. updated by the first Business Day of each Forecast Period for that Forecast Period and all remaining Forecast Periods during that Operating Year;
 - B. if requested by TfNSW, broken down across such peak, shoulder and off-peak periods as TfNSW has notified to OpCo (being the relevant periods used by the electricity tariffs of the electricity retailer from which TfNSW will be purchasing electricity for NWRL); and

- C. in relation to the Forecast Aggregate Consumption, prepared by the Electricity Consumption Software Model.
- (v) OpCo must (except in circumstances which are outside OpCo's control) comply with:
 - A. the Demand Usage Strategy (except to the extent that the Demand Usage Strategy is contradicted by a Direction from TfNSW); or
 - B. a Direction by TfNSW,
 - during a Forecast Period.
- (vi) If OpCo fails to comply with clause 9.17(b)(v), there will be an adjustment (known as the Energy Deduction) to the Service Payment(s) payable for that Forecast Period in accordance with Schedule 2.
- (c) **(Data and audits):** OpCo must promptly provide to TfNSW such electricity demand and consumption data as is requested by TfNSW from time to time, and must participate at no cost in any audit undertaken by or on behalf of TfNSW of OpCo's electricity consumption (in addition to any electricity audits which OpCo is itself required to conduct). TfNSW may make available to the public the results of any such audit.
- (d) **(No customer connection services):** TfNSW does not, and OpCo acknowledges that TfNSW does not, provide any customer connection services in respect of the NWRL or the ETS Equipment. TfNSW is not, and OpCo acknowledges that TfNSW is not, responsible for:
 - (i) the connection of the NWRL to the electricity supply network;
 - (ii) the maintenance of that connection;
 - (iii) the supply of electricity from the electricity supply network to the NWRL or the ETS Equipment; and
 - (iv) the quality and other characteristics of electricity supplied.
- (e) **(OpCo's customer connection contracts):** OpCo acknowledges that in respect of the NWRL OpCo will have the Electricity Connection Agreements with Ausgrid and Endeavour Energy for the provision of customer connection services to the NWRL under which Ausgrid and Endeavour Energy are responsible for:
 - (i) the connection of the NWRL to the electricity supply network;
 - (ii) the maintenance of that connection;
 - (iii) the supply of electricity from the electricity supply network to the NWRL; and
 - (iv) the quality and other characteristics of electricity supplied.
- (f) **(TfNSW not liable):** While TfNSW is responsible for performing the Electricity Purchase Obligations, as TfNSW is not responsible for the connection or supply of electricity to the NWRL:

- (i) TfNSW does not undertake to provide or maintain any particular quality, voltage, frequency, waveform or system of supply;
 - (ii) all warranties, terms and conditions (implied by statute or otherwise) in relation to the supply of electricity are, to the extent permitted by law, excluded;
 - (iii) TfNSW is not liable for any loss suffered by OpCo as a consequence of any supply or lack of supply of electricity to the NWRL (other than as a result of a breach of the Electricity Purchase Obligation);
 - (iv) TfNSW is not liable for any damage to OpCo's equipment, or any loss suffered by OpCo as a result of the equipment being unsuitable for connection to the supply network; and
 - (v) TfNSW is not responsible for any act, omission or default of Ausgrid or Endeavour Energy or any other person (including a generation entity or a transmission entity) in relation to the connection and supply of electricity to the NWRL;
 - (vi) OpCo must satisfy itself that the electrical capacity of the connection for the NWRL is adequate for OpCo's purposes, with TfNSW having no responsibility or liability in this respect; and
 - (vii) OpCo must ensure that the electrical capacity of the connection for the ETS Equipment is adequate to enable operation of the ETS Equipment in the manner contemplated by this deed.
- (g) **(No implied warranties):** To the extent that a warranty, term or condition is implied by the *Competition and Consumer Act 2010* (Cth) or any other statute the exclusion of which would contravene any such statute or cause any part of clause 9.17(f) to be void, TfNSW's liability for breach of such warranty, term or condition is limited, at TfNSW's option, to refunding the price of the goods or services in respect of which the breach occurred or to providing, replacing or repairing those goods or providing those services again (except for goods or services of a kind ordinarily acquired for personal, domestic or household use or consumption, in respect of which TfNSW's liability is not limited under this deed).
- (h) **(Interruption to customer connection services):** OpCo acknowledges that the provision of customer connection services to the NWRL and the ETS Equipment may be interrupted or limited in certain circumstances in accordance with laws or in accordance with the conditions of any applicable network tariff and that, in circumstances set out in the customer connection contract, Ausgrid and/or Endeavour Energy may disconnect the NWRL and the ETS Equipment.
- (i) **(Approvals and obligations under law):**
- (i) Without limiting clause 6.1, if TfNSW, as owner of the NWRL and the ETS Equipment, has obligations under any law relating to electricity, OpCo will, until the end of the Operations Phase, perform all obligations and carry out all tasks and activities required for TfNSW to comply with the relevant law insofar as it is relevant to the NWRL and the ETS Equipment. TfNSW must provide such assistance and cooperation as OpCo may reasonably require in order for OpCo to ensure that TfNSW is in compliance with relevant law. For the avoidance of doubt, it is OpCo's responsibility to identify all relevant laws.

- (ii) Without limiting OpCo's obligations under clause 9.17(i)(i) and clause 6.2, OpCo must:
- A. if a network management plan in relation to the electricity infrastructure forming part of the NWRL is required by the Director General of the NSW Department of Industry and Investment, develop, implement, maintain and submit to TfNSW and, subject to clause 9.17(i)(v), the Director General of the NSW Department of Industry and Investment, a network management plan;
 - B. perform any obligations imposed on TfNSW or OpCo in connection with the electrical infrastructure of the NWRL if either or both entities is characterised as a "distribution network service provider" for the purposes of the Electricity Supply Act 1995 (NSW) (including if the Act is amended to specifically identify TfNSW or the owner and/or operator of TfNSW's rail network electricity system as a "distribution network service provider" for the purposes of the Act);
 - C. prior to carrying out Testing, prepare an application for, and obtain, an exemption from the requirement to register as a distribution network service provider under the National Electricity Law (which forms a Schedule to the National Electricity (South Australia) Act 1996 (SA) and which applies in the state of New South Wales under the National Electricity (NSW) Act 1997) for the benefit of both TfNSW and OpCo; and
 - D. assist TfNSW to prepare an application for, and obtain (if needed), an exemption from the requirement to hold a retailer authorisation under the National Energy Retail Law (which forms a Schedule to the National Energy Retail Law (South Australia) Act 2011 (SA) and which applies in the state of New South Wales under the National Energy Retail Law (Adoption) Act 2012 (NSW) for the benefit of TfNSW.
- (iii) OpCo must provide TfNSW with:
- A. any documents (including any applications for Approvals or changes to Approvals) prepared for the purpose of satisfying OpCo's obligations under clause 9.17(i)(ii), including the then current version of the network management plan or exemption application (as the case may be) promptly upon request by TfNSW; and
 - B. an updated version of the network management plan or exemption application within 5 Business Days of any update.
- (iv) In relation to electricity, OpCo must:
- A. liaise and cooperate with TfNSW and any relevant Authority;
 - B. provide any reasonable assistance and information required by TfNSW or any relevant Authority within any reasonable timeframe required by TfNSW (if so specified); and

- C. if required by TfNSW or any relevant Authority, procure the attendance of representatives of OpCo at the meetings of any Authority in relation to electricity matters.
- (v) TfNSW may, but is not obliged to, comment on any documents submitted by OpCo to TfNSW under this clause 9.17. OpCo:
- A. must allow and notify TfNSW that it has a period of 20 Business Days or such shorter period as is reasonable in the circumstances having regard to OpCo's obligations under Legislation, after the date of submission of documents to TfNSW (**Review Period**) to review and comment on drafts of the documents;
 - B. if TfNSW makes any comments on the drafts of the documents within the Review Period, must address TfNSW's comments on the documents and promptly resubmit the draft relevant documents to TfNSW, whereupon the provisions of this clause 9.17(i)(v) will reapply to such resubmitted documents; and
 - C. must not submit the relevant documents to any Authority unless the Review Period has expired without TfNSW:
 - 1) making any comments on the documents or, if TfNSW does provide comments, after OpCo has complied with clause 9.17(i)(v)B; and
 - 2) advising that TfNSW (rather than OpCo) will submit the relevant documents to the relevant Authority.
- (vi) TfNSW appoints OpCo to act as TfNSW's agent and agrees that OpCo may appoint one or more Core Contractors as its sub-agent to the extent:
- A. necessary for OpCo to comply with its obligations under this clause 9.17; and
 - B. that OpCo is not entitled by law to comply with such obligations in its own capacity (including in its capacity as a contractor to TfNSW).

9.18 NWRL Documentation

OpCo warrants that the NWRL Documentation:

- (a) will sufficiently, adequately and accurately document the NWRL, the operation of the NWRL and any interfaces with the NWRL during the Operations Phase and will be capable of sufficiently, adequately and accurately documenting the NWRL, the operation of the NWRL and any interfaces with the NWRL after the Operations Phase;
- (b) will be sufficient, adequate and accurate so as to enable TfNSW or a third party to operate and maintain the NWRL and otherwise carry out OpCo's Activities during the Operations Phase and will be capable of being sufficient, adequate and accurate so as to enable TfNSW or a third party to operate and maintain the NWRL after the Operations Phase; and

- (c) will be fit for its purposes.

For the purposes of this clause 9.18, the NWRL Documentation does not include any documentation prepared by or on behalf of any Other Contractor, the ETS Contractor or a Civil Works Contractor.

9.19 AEO status

- (a) The parties acknowledge that TfNSW grants AEO status to OpCo's Core Contractors to carry out OpCo's Activities, on the basis of the procedures of, and undertakings given by, OpCo as set out in the Project Plans referred to in clause 9.19(c), effective as at the date of this deed.
- (b) OpCo must ensure that it or one or more of its Core Contractors maintain AEO status during the Term in accordance with SPR Appendix 59 and clause 9.19(c):
- (c) OpCo acknowledges that:
 - (i) in order for the Core Contractors to maintain AEO status, OpCo is required to prepare and comply with a number of Project Plans in accordance with SPR Appendix 59;
 - (ii) it has prepared initial versions of those Project Plans;
 - (iii) it must develop, update, amend and implement those Project Plans in accordance with clause 8; and
 - (iv) it must otherwise comply with the requirements of SPR Appendix 54 in relation to those Project Plans.
- (d) Without limiting any other provision of this deed, OpCo must comply with, and ensure that OpCo's Contractors comply with, the Project Plans referred to in clause 9.19(c).
- (e) OpCo must immediately notify TfNSW's Representative in writing of any circumstances that arise which may materially impact the ability of OpCo or OpCo's Contractor's to comply with the Project Plans referred to in clause 9.19(c).

9.20 Third Party Agreements

- (a) OpCo:
 - (i) acknowledges that it has reviewed and carefully considered the Third Party Agreements (in the forms contained in Exhibits 13, 14 and 15); and
 - (ii) must comply with its obligations in Schedule 8; and
 - (iii) must:
 - A. within 5 Business Days of the date of this deed, provide TfNSW's Representative with an executed deed poll in favour of RMS in the form provided in Annexure E to the WAD;
 - B. following the appointment of the WAD Proof Engineer, provide TfNSW with an executed deed poll in favour of TfNSW and RMS in the form provided in Schedule 8 of the WAD; and

C. following the appointment of the Blacktown City Council Proof Engineer, provide TfNSW with an executed deed poll in favour of TfNSW and Blacktown City Council in the form provided in Schedule 8 of the Blacktown City Council Interface Agreement.

(b) TfNSW must:

- (i) comply with the obligations set out in the tables in clauses 2, 3, 8, 9, 10, 11, 12, 13, 14 and 15 of Schedule 8; and
- (ii) ensure that each party (other than TfNSW) to a Third Party Agreement complies with its obligations under that Third Party Agreement.

(c) TfNSW must not:

- (i) make or permit an amendment to, replacement of or waiver of a provision of;
- (ii) terminate, surrender, rescind or accept repudiation of;
- (iii) except as permitted under the relevant Third Party Agreement, permit the novation, assignment or substitution of any counterparty's right, obligation or interest in; or
- (iv) enter into any agreement or arrangement which affects the operation of,

any Third Party Agreement where it may impact the rights or obligations of OpCo or the ability of OpCo or TfNSW to satisfy their obligations under this deed, without OpCo's prior written consent (which consent will not be unreasonably withheld or delayed).

9.21 Sustainability

- (a) OpCo must comply with the sustainability requirements set out in the SPR, including those in SPR Appendix 50.
- (b) Without limiting clause 9.21(a), OpCo must achieve from the Infrastructure Sustainability Council Australia (ISCA):
 - (i) a "Design" rating score of at least 65 for the design of the OTS Works as a precondition to Final Completion; and
 - (ii) an "As Built" rating score of at least 65 for the construction of the OTS Works no later than 18 months after Final Completion.
- (c) OpCo will not be liable for a breach of clause 9.21(b) to the extent that it loses the points specified below because TfNSW fails to achieve those points in the relevant category specified below:

category	points
Man-1	1.07
Cli-1	1.67
Lan-1	1.67

Eco-3	2.00
Eco-4	2.00
Her-1	1.02
Urb-1	1.00

where Man-1, Cli-1, Lan-1, Eco-3, Eco-4, Her-1 and Urb-1 correspond to categories in the ISCA rating tool.

- (d) In order to achieve the ratings referred to in clause 9.21(b), but without limiting that clause, OpCo must:
- (i) register with the ISCA for the purposes of obtaining a rating;
 - (ii) cooperate and liaise with the ISCA and TfNSW as required; and
 - (iii) provide any documentation required by the ISCA and TfNSW.

9.22 Aboriginal participation in construction

- (a) OpCo must comply with the NSW Government Aboriginal Participation in Construction Guidelines as amended from time to time (as at the date of signing of this deed, the edition of the Guidelines applying to projects commencing after 1 January 2007).
- (b) OpCo must:
- (i) prior to commencing OpCo's Activities on the Construction Site, submit to TfNSW a "Statement of Opportunities for Aboriginal Participation" (as defined in the Guidelines) and document and submit a Project Aboriginal Participation Plan; and
 - (ii) implement the Project Aboriginal Participation Plan.
- (c) OpCo must systematically manage its Aboriginal participation processes in accordance with the Project Aboriginal Participation Plan.
- (d) OpCo must demonstrate to TfNSW, whenever requested, that it has met and is meeting at all times its obligations under clauses 9.22(a) to 9.22(c) inclusive.
- (e) OpCo acknowledges that TfNSW's Representative may review the Project Aboriginal Participation Plan:
- (i) prior to the commencement of OpCo's Activities on the Construction Site; and
 - (ii) periodically during the course of the carrying out of OpCo's Activities, including by conducting an on-site verification that the Project Aboriginal Participation Plan is being correctly implemented, that performance targets are being met and that the stated outcomes are being achieved.

10. NSW Code and NSW Guidelines

10.1 NSW Code and NSW Guidelines

In addition to terms defined in this deed, terms used in this clause 10 have the same meaning as is attributed to them in the NSW Guidelines. The NSW Code and NSW Guidelines are available at www.industrialrelations.nsw.gov.au.

10.2 Primary obligation

- (a) In carrying out OpCo's Activities, OpCo must at all times comply with, and meet any obligations imposed by, the NSW Code and the NSW Guidelines, as if the invitation for expressions of interest for the OTS PPP had been issued on or after 1 July 2013.
- (b) Nothing in clause 10.2(a) requires OpCo to:
 - (i) comply with the NSW Guidelines when undertaking privately funded building and construction work for which expressions of interest or tenders were called for prior to 1 July 2013; or
 - (ii) ensure that its related entities (as defined in the NSW Guidelines) comply with the NSW Guidelines when carrying out public building and construction work for which expressions of interest or tenders were called for prior to 1 July 2013.
- (c) OpCo must notify the Construction Compliance Unit (CCU) and TfNSW of any possible non-compliance with the NSW Code and NSW Guidelines and of remedial action taken, within 24 hours of becoming aware of the possible non-compliance.
- (d) Where OpCo engages a subcontractor or consultant, OpCo must ensure that the contract with the subcontractor or consultant imposes on the subcontractor or consultant equivalent obligations to those in this clause 10, including that the subcontractor or consultant must at all times comply with, and meet any obligations imposed by, the NSW Code and the NSW Guidelines.
- (e) OpCo must not appoint or engage another party in relation to OpCo's Activities where that appointment or engagement would breach a sanction imposed on the other party in relation to the NSW Code or NSW Guidelines.

10.3 Access and information

- (a) OpCo must maintain adequate records of compliance with the NSW Code and NSW Guidelines by it and its subcontractors and consultants.
- (b) OpCo must allow, and take reasonable steps to facilitate, authorised personnel (including personnel of the CCU) to:
 - (i) enter and have access to sites and premises controlled by OpCo, including the Construction Site;
 - (ii) inspect any work, material, machinery, appliance, article or facility;
 - (iii) access information and documents;
 - (iv) inspect and copy any record relevant to the project;

- (v) have access to personnel; and
- (vi) interview any person,

as is necessary for the authorised personnel to monitor and investigate compliance with the NSW Code and NSW Guidelines by OpCo and its subcontractors and consultants.

- (c) OpCo must agree to, and comply with, any request from authorised personnel (including personnel of the CCU) for the production of specified documents by a certain date, whether in person, by post or electronic means.

10.4 Sanctions

- (a) OpCo warrants that, at the time of entering into this deed, neither it, nor any of its Related Bodies Corporate, are subject to a sanction in connection with the NSW Code or NSW Guidelines that would have precluded it from responding to a procurement process for work to which the NSW Code and NSW Guidelines apply.
- (b) If OpCo does not comply with, or fails to meet any obligation imposed by, the NSW Code or NSW Guidelines, a sanction may be imposed against it in connection with the NSW Code or NSW Guidelines.
- (c) Where a sanction is imposed:
 - (i) it is without prejudice to any rights that would otherwise accrue to the parties; and
 - (ii) the State (through its agencies, Ministers and the CCU) is entitled to:
 - A. record and disclose details of non-compliance with the NSW Code or NSW Guidelines and the sanction; and
 - B. take them into account in the evaluation of future procurement processes and responses that may be submitted by OpCo, or its related entities, in respect of work to which the NSW Code and NSW Guidelines apply.

10.5 Compliance

- (a) OpCo bears the cost of ensuring its compliance with the NSW Code and NSW Guidelines, including in respect of any positive steps it is obliged to take to meet its obligations under the NSW Guidelines. OpCo is not entitled to make, and TfNSW and the State will not be liable upon, any Claim against TfNSW or the State arising out of or in any way in connection with OpCo's compliance with the NSW Code and the NSW Guidelines.
- (b) Compliance with the NSW Code and NSW Guidelines does not relieve OpCo from responsibility to perform OpCo's Activities or any other obligation under this deed, or from liability for any Defect in the OTS Works, the Temporary Works or the NWRL or from any other legal liability, whether or not arising from its compliance with the NSW Code and NSW Guidelines.
- (c) Where a Modification is proposed that may be likely to affect compliance with the NSW Code and NSW Guidelines, OpCo must immediately notify TfNSW of:

- (i) the extent to which compliance with the NSW Code and NSW Guidelines will be, or is likely to be, affected by the Modification; and
- (ii) the steps (if any) OpCo proposes to take to mitigate any adverse impact of the Modification (including any amendments it proposes to the Workplace Relations Management Plan).

11. Information Documents and environmental issues

11.1 Physical conditions

- (a) **(Examination and investigation):** Subject to clause 11.1(aa), OpCo warrants and for all purposes it will be deemed to be the case that, prior to the date of this deed, OpCo:
 - (i) examined this deed (including the SPR), the NWRL Site and its surroundings and any other information that was made available in writing by TfNSW or any other person on TfNSW's behalf, to OpCo or its Associates for the purpose of submitting its Proposal;
 - (ii) examined, and relied solely upon its own assessment, skill, expertise and enquiries in respect of, all information relevant to the risks, contingencies and other circumstances having an effect on its Proposal and its obligations under this deed;
 - (iii) satisfied itself as to the correctness and sufficiency of its Proposal and that it has made adequate allowance for the costs of complying with all of its obligations under this deed and of all matters and things necessary for the due and proper performance and completion of OpCo's Activities;
 - (iv) informed itself of all matters relevant to the employment of labour and all industrial matters on the NWRL Site;
 - (v) was given the opportunity prior to submitting its Proposal to itself undertake, and to request others to undertake, tests, enquiries and investigations:
 - A. relating to the subject matter of the Information Documents; and
 - B. for design purposes and otherwise;
 - (vi) had a sufficient opportunity to obtain and obtained all necessary legal, geotechnical and other technical advice in relation to the terms of this deed, each Deed of Disclaimer, the Information Documents, the Site Conditions, as well as the risks, contingencies and other circumstances having an effect on its Proposal, the performance of its obligations and its potential liabilities under this deed; and
 - (vii) had sufficient access to the NWRL Site, undertook sufficient tests, enquiries and investigations, had sufficient information and obtained a sufficient understanding of the risks involved to enable it to make an informed decision about whether or not to enter into this deed and assume the obligations and potential risks and liabilities which it imposes on OpCo.

- (aa) **(ECRL tunnel, and station structures and service building structures):** TfNSW acknowledges that OpCo was not permitted to carry out the investigations and tests on the ECRL tunnel, and station structures and service building structure as described in Schedule 21.
- (ab) **(ECRL stray current):** TfNSW must address any stray current that arises within the ECRL between the date of this deed and Handover such that there is no stray current within the ECRL at Handover which would adversely affect OpCo (except to the extent caused by OpCo or OpCo's Activities).
- (b) **(Site Conditions):** Subject to clauses 14.11, 17.10, 26, 27 and 28, OpCo is responsible for, and assumes the risk of:
 - (i) all Loss or delay it suffers or incurs; and
 - (ii) any adverse effect on the OTS Works,
 arising out of, or in any way in connection with the Site Conditions encountered in performing OpCo's Activities.

11.2 Information Documents

- (a) **(Deeds of Disclaimer):** Prior to the date of this deed, the Deeds of Disclaimer were signed and provided to TfNSW in respect of Information Documents provided by TfNSW to OpCo.
- (b) **(No warranty):** Without limiting clause 11.2(c) or the warranties or acknowledgements in any Deed of Disclaimer:
 - (i) TfNSW does not warrant, guarantee, assume any duty of care or other responsibility for or make any representation about the accuracy, adequacy, suitability or completeness of the Information Documents;
 - (ii) OpCo acknowledges that:
 - A. whether or not an Information Document or any part thereof forms an exhibit to this deed, the Information Document or part thereof does not form part of this deed and clause 11.2(c) applies to the Information Document or part thereof; and
 - B. where an Information Document or any part thereof forms an exhibit to this deed, it does so only for the purposes of identification of that document or part thereof;
 - (iii) TfNSW will not be liable upon any Claim by OpCo arising out of or in any way in connection with:
 - A. the provision of, or the purported reliance upon, or use of the Information Documents to or by OpCo or any other person to whom the Information Documents are disclosed; or
 - B. a failure by TfNSW to provide any information to OpCo.
- (c) **(No reliance):** OpCo:
 - (i) warrants that it did not in any way rely upon:

- A. any Information Document or any other information, data, representation, statement or document made, or provided to OpCo, by TfNSW or anyone on behalf of TfNSW or any other information, data, representation, statement or document for which TfNSW is responsible or may be responsible whether or not obtained from TfNSW or anyone on behalf of TfNSW; or
- B. the accuracy, adequacy, suitability or completeness of such Information Document or other information, data, representation, statement or document,

for the purposes of entering into this deed or carrying out OpCo's Activities but nothing in this subparagraph will limit or otherwise affect OpCo's obligations under this deed;

- (ii) warrants that it enters into this deed based on its own investigations, interpretations, deductions, information and determinations; and
- (iii) acknowledges that it is aware that TfNSW has entered into this deed relying upon:
 - A. the warranties, acknowledgements and agreements in clauses 11.2(c)(i) and 11.2(c)(ii); and
 - B. the warranties and acknowledgements in the Deeds of Disclaimer and the Proposal.
- (d) **(Release and indemnity):** OpCo releases and indemnifies TfNSW from and against:
 - (i) any Claim against TfNSW by, or liability of TfNSW to, any person; or
 - (ii) (without being limited by clause 11.2(d)(i)) any Loss incurred by TfNSW, arising out of or in any way in connection with:
 - (iii) the provision of, or the purported reliance upon, or use of, the Information Documents to or by OpCo or any other person to whom the Information Documents are disclosed by OpCo or a failure by TfNSW to provide any information to OpCo;
 - (iv) any breach by OpCo of clause 11.1 or this clause 11.2; or
 - (v) the Information Documents being relied upon or otherwise used by OpCo, or by any other person to whom the Information Documents are disclosed by OpCo, in the preparation of any information or document, including any Information Document which is "misleading or deceptive" or "false and misleading" (within the meaning of those terms in sections 18 and 29 (respectively) of the *Australian Consumer Law* in Schedule 2 to the *Competition and Consumer Act 2010* (Cth) or any equivalent provision of State or Territory legislation).

11.3 Condition of the NWRL Site and structures

- (a) TfNSW makes no representations and gives no warranty to OpCo in respect of:

- (i) the Site Conditions likely to be encountered during the execution of OpCo's Activities or otherwise in respect of the condition of:
 - A. the NWRL Site, Extra Land or their surroundings; or
 - B. any structure or other thing on, under, above or adjacent to the NWRL Site or Extra Land;
 - (ii) the adequacy or suitability of the NWRL Site for the OTS PPP;
 - (iii) the existence, location, condition or availability of Utility Services on, under, above, adjacent to or related to the NWRL Site or Extra Land; or
 - (iv) the feasibility or fitness for purpose of the Concept Design including in respect of the constructability of the Concept Design having regard to the physical conditions and characteristics of the NWRL Site.
- (b) Subject to clauses 14.11, 17.10, 26, 27 and 28, OpCo accepts:

- (i) the NWRL Site and any Extra Land; and
- (ii) any structures or other things on, above or adjacent to, or under the surface of, the NWRL Site and any Extra Land,

in their present condition subject to all defects and Site Conditions and agrees that it is responsible for, and assumes the risk of:

- (iii) all Loss, delay or disruption it suffers or incurs; and
- (iv) any adverse effect on the OTS Works, the Temporary Works, any part of the Civil Works during the period in which OpCo is responsible for them in accordance with clause 14.10 or the NWRL,

arising out of, or in any way in connection with any defects or Site Conditions encountered in performing OpCo's Activities.

- (c) OpCo must investigate, design and construct the OTS Works and Temporary Works in accordance with this deed and will not be relieved of its obligations under this deed, irrespective of:

- (i) the Site Conditions encountered in performing OpCo's Activities;
- (ii) whatever may be the condition or characteristics (including all sub-surface conditions) of:
 - A. the NWRL Site or any Extra Land, the Environment or their surroundings; or
 - B. any structure or other thing on, above or adjacent to, or under the surface of, the NWRL Site or any Extra Land, the Environment or their surroundings; and
- (iii) any assumptions, projections, estimates, contingencies or otherwise that OpCo may have made in relation to the Site Conditions or the conditions or the characteristics of any of the matters referred to in clause 11.3(c)(ii).

11.4 Contamination

In addition to the requirements of the Environmental Documents and without limiting clause 11.3, OpCo is responsible for all Contamination on, in, over, under or about the NWRL Site or any Extra Land which:

- (a) is disturbed by or interfered with in the carrying out of OpCo's Activities;
- (b) migrates to or from the NWRL Site or any Extra Land as a result of OpCo's Activities; or
- (c) otherwise arises out of or in connection with OpCo's Activities,

and OpCo must:

- (d) dispose of, or otherwise deal with, such Contamination in accordance with law and the Environmental Documents;
- (e) remediate, to the standard required by law, the NWRL Site and any Extra Land (and any other land to which any Contamination has migrated as contemplated by clause 11.4(b)) to the extent to which:
 - (i) it is in any way degraded by such Contamination; and
 - (ii) such Contamination is of such a nature that an Authority could issue a statutory notice requiring it to be remediated; and
- (f) except to the extent prohibited by law, indemnify TfNSW against any Loss incurred by TfNSW arising out of or in any way in connection with such Contamination for which OpCo is responsible under clause 11.4(a), (b) or (c) or any failure by OpCo to comply with any obligation under this deed in connection with such Contamination.

11.5 Environmental compliance

OpCo must:

- (a) **(no improper use of NWRL Site or Extra Land):** not use the NWRL Site or Extra Land, or allow OpCo's Contractors to use the NWRL Site or Extra Land, so that:
 - (i) any hazardous substance is abandoned or dumped on the NWRL Site or Extra Land;
 - (ii) any hazardous substance is handled in a manner which is likely to cause an Environmental Hazard; or
 - (iii) any other substance is released from, deposited to, or emanates from, the NWRL Site or Extra Land such that a state of Contamination occurs;
- (b) **(be environmentally responsible):** at all times carry out, and ensure that OpCo's Contractors carry out, OpCo's Activities in an environmentally responsible manner, in accordance with Good Industry Practice, and so as to protect the Environment and keep the NWRL Site in a good and safe condition;
- (c) **(comply with Environmental laws):** without limiting clause 6 (Law and Approvals):

- (i) comply with, and ensure that OpCo's Contractors in performing OpCo's Activities comply with:
 - A. all laws relating to the Environment;
 - B. the Planning Approvals; and
 - C. all Environmental Notices; and
- (ii) obtain and comply with all requirements of, and ensure that OpCo's Contractors in performing OpCo's Activities obtain and comply with all requirements of, any Approvals required in order to release or emit anything from the NWRL Site into the air or water or onto the ground or otherwise into the Environment or to emit any substantial noise or vibrations;
- (d) **(Corporate Environmental Management System)**: have a Corporate Environmental Management System which complies with the law and is otherwise in accordance with the New South Wales Government Environmental Management System Guidelines (3rd Edition) (August 2013);
- (e) **(notification)**: immediately notify TfNSW in writing as soon as OpCo:
 - (i) becomes aware of any non-compliance with the requirements of any law or Approval regarding the Environment, or any Environmental Document, in the performing of OpCo's Activities;
 - (ii) becomes aware of any information, fact or circumstance where, if TfNSW were to be aware of such information, fact or circumstance, TfNSW would be required to notify any Authority of that information, fact or circumstance pursuant to any law relating to the Environment (without limiting any other obligation of OpCo in relation to the information, fact or circumstances); or
 - (iii) notifies any Authority of any matter pursuant to any law relating to the Environment, in which case OpCo must provide to TfNSW a copy of such notification and of any subsequent correspondence with the Authority in relation to the subject of the notification; and
- (f) **(indemnity)**: indemnify TfNSW against any Loss incurred by TfNSW arising out of or in any way in connection with an Environmental Notice received by TfNSW to the extent that it arises out of or in connection with any Contamination:
 - (i) for which OpCo is responsible under this deed; or
 - (ii) that occurs as a result of a breach by OpCo of this deed.

11.6 Compensation Event

A Compensation Event will occur if OpCo, or an OpCo Contractor, is required to comply with an Environmental Notice to the extent that it does not arise out of or in connection with any Contamination:

- (a) for which OpCo is responsible under clause 11.4; or
- (b) that occurs as a result of a breach by OpCo of this deed.

11.7 Environmental Management Plans

OpCo:

- (a) must prepare the Environmental Management Plans in accordance with the requirements applicable to an "Environmental Management Plan" set out in the New South Wales Government Environmental Management System Guidelines (3rd Edition) (August 2013);
- (b) must comply with, and ensure that OpCo's Contractors in performing OpCo's Activities comply with, the Environmental Management Plans; and
- (c) will not be relieved from compliance with any of its obligations under this deed or from any of its liabilities whether under this deed or otherwise according to law as a result of:
 - (i) compliance with the Environmental Management Plans;
 - (ii) any audits or other monitoring by TfNSW's Representative of OpCo's compliance with the Environmental Management Plans; or
 - (iii) any failure by TfNSW's Representative, or anyone else acting on behalf of TfNSW, to detect any non-compliance including where any failure arises from any negligence on the part of TfNSW's Representative or other person.

11.8 Liability under the NGER Legislation and EEO Act

- (a) OpCo acknowledges and agrees that if:
 - (i) OpCo's Activities constitute a "facility" within the meaning of the NGER Legislation, then for the purposes of the NGER Legislation, it has operational control of that facility or facilities and will comply with any obligations arising in respect of OpCo's Activities under the NGER Legislation; and/or
 - (ii) OpCo is part of a group (as defined in the NGER Legislation and/or the EEO Act), the controlling corporation (as defined in the NGER Legislation and/or the EEO Act) of which is registered under the NGER Legislation and/or the EEO Act, OpCo will use its reasonable endeavours to procure that the relevant controlling corporation complies with the NGER Legislation and/or the EEO Act in relation to OpCo's Activities.
- (b) If, despite the operation of clause 11.8(a), TfNSW incurs, or but for this clause would incur, a liability under or in connection with the NGER Legislation or the EEO Act as a result of or in connection with OpCo's Activities, and the NGER Legislation or the EEO Act (as relevant) provides that such liability can be transferred by TfNSW to OpCo, OpCo must, upon the written request of TfNSW, do all things reasonably necessary to transfer the liability to OpCo.
- (c) If OpCo is not part of a group (as defined in the EEO Act) the controlling corporation (as defined in the EEO Act) of which is registered under the EEO Act in relation to OpCo's Activities:
 - (i) OpCo must use its reasonable endeavours to register voluntarily under, and comply with, the EEO Act in relation to OpCo's Activities; and

- (ii) if OpCo is not able to register voluntarily under the EEO Act, OpCo must comply with the requirements of Schedule 28.
- (d) If the EEO Act is repealed, OpCo must comply with the requirements of Schedule 28 from the date of that repeal.

11.9 Provision of Emissions and Energy Data to TfNSW

- (a) OpCo must provide OpCo's Emissions and Energy Data to TfNSW's Representative:
 - (i) at such times as may be agreed by TfNSW and OpCo, or, if no such agreement is reached within 10 Business Days of receiving written notice from TfNSW indicating that it requires OpCo's Emissions and Energy Data to be provided; and
 - (ii) on each occasion that OpCo is required to provide OpCo's Emissions and Energy Data to an Authority under the NGER Legislation or any other applicable law.
- (b) TfNSW may use OpCo's Emissions and Energy Data for any purpose as it sees fit.

11.10 Reporting Emissions and Energy Data

- (a) This clause 11.10 applies if despite the operation of clause 11.8, TfNSW incurs a liability under or in connection with the NGER Legislation as a result of or in connection with OpCo's Activities.
- (b) OpCo must assist TfNSW to comply with the NGER Legislation in relation to any aspect of OpCo's Activities.
- (c) Without limiting clause 11.10(b), if TfNSW notifies OpCo in writing that OpCo is required to provide OpCo's Emissions and Energy Data to TfNSW, then OpCo must:
 - (i) provide OpCo's Emissions and Energy Data to TfNSW in the same manner, form and level of detail, based on the same methods and at the same times:
 - A. as if OpCo were obliged under the NGER Legislation or any other applicable law to provide Emissions and Energy Data to an Authority and TfNSW was that Authority;
 - B. in accordance with the requirements or approvals of any Authority and any directions given by TfNSW; and
 - C. without limiting clauses 11.10(c)(i)A or 11.10(c)(i)B, as may be required to enable TfNSW:
 - 1) to discharge, as and when they fall due, any obligations that it may have to provide OpCo's Emissions and Energy Data to any Authority; and
 - 2) to provide to any Authority any OpCo's Emissions and Energy Data concerning any greenhouse gas project;

- (ii) keep all such OpCo's Emissions and Energy Data as may be required to enable it to discharge its obligations under clause 11.10(c)(i);
 - (iii) retain records of its activities that are the basis of OpCo's Emissions and Energy Data for any financial year, for a period of not less than 7 years from the end of the year in which the relevant activities take place; and
 - (iv) permit OpCo's Emissions and Energy Data to be examined, monitored, measured, copied, audited and verified by any persons appointed or authorised for that purpose by TfNSW or any Authority, and co-operate with and provide all reasonable assistance to any such persons, including giving access to premises, plant and equipment, producing and giving access to documents (including any records kept and retained under clauses 11.10(c)(ii) and 11.10(c)(iii)) and answering questions.
- (d) OpCo acknowledges and agrees that:
- (i) OpCo's Emissions and Energy Data is provided to TfNSW:
 - A. to discharge any obligations that TfNSW may have to provide such Emissions and Energy Data to an Authority; and
 - B. so that TfNSW may provide to any Authority any OpCo's Emissions and Energy Data concerning any greenhouse gas project;
 - (ii) TfNSW may provide or otherwise disclose OpCo's Emissions and Energy Data to any Authority; and
 - (iii) nothing in this clause 11.10 is to be taken as meaning that TfNSW has agreed to perform on behalf of OpCo, any obligation that OpCo itself may have under any legislative requirement regarding the provision of Emissions and Energy Data to any Authority (including any obligation under the NGER Legislation).

12. Land

12.1 Construction Site Licence

- (a) TfNSW grants to OpCo a non-exclusive licence to use and occupy, and to permit OpCo's Contractors to use and occupy, the Construction Site for the purpose of performing OpCo's Activities in accordance with this deed.
- (b) This licence:
 - (i) commences in respect of each part of the Construction Site on:
 - A. the later of:
 - 1) the Site Access Date for that part of the Construction Site; or
 - 2) if a Civil Works Portion is located on that part of the Construction Site, the SVC Date of Construction Completion or TSC Date of Construction Completion (as applicable) of the Civil Works Portion; or

- 3) the date as may be agreed between the parties in accordance with clause 12.1(e) for that part of the Construction Site;
- (ii) subject to clause 12.1(b)(iii), terminates in respect of each part of the Construction Site:
 - A. where a Site Access Expiry Date is specified for that part of the Construction Site, on the later of:
 - 1) the Site Access Expiry Date for that part of the Construction Site; and
 - 2) the date on which OpCo vacates that part of the Construction Site in accordance with clause 12.1(ea); or
 - B. where a Site Access Expiry Date is not specified for that part of the Construction Site, the Date of Completion;
 - (iii) terminates on the termination of this deed; and
 - (iv) is subject to restrictions upon the access, possession and use of the Construction Site (including the terms of any Construction Leases as required by Schedule 8) referred to in the Site Access Schedule.
- (c) TfNSW's Representative must give OpCo:
- (i) 6 months;
 - (ii) 3 months;
 - (iii) 1 month; and
 - (iv) 1 week,
- prior notice of each estimated SVC Date of Construction Completion and TSC Date of Construction Completion.
- (d) If the SVC Date of Construction Completion or TSC Date of Construction Completion (as applicable) of a Civil Works Portion is earlier than the Site Access Date for the part of the Construction Site on which the Civil Works Portion is located, TfNSW's Representative may (but is not obliged to) give written notice offering OpCo access to the relevant part of the Construction Site from a specified date prior to the Site Access Date.
- (e) OpCo must, within 10 Business Days of receiving a notice under clause 12.1(d):
- (i) accept the offer of early access by written notice, in which case the licence under clause 12.1(a) will commence with respect to the relevant part of the Construction Site from the date specified in TfNSW's Representative's notice or such other date as may be agreed by the parties; or
 - (ii) decline the offer of early access by written notice, in which case the licence under clause 12.1(a) will commence from the Site Access Date for the relevant part of the Construction Site (or such later date on which

OpCo is given access to that part of the Construction Site pursuant to clause 12.1(a)),

and if OpCo fails to respond to the notice, OpCo is deemed to have declined the offer of early access and clause 12.1(e)(ii) applies.

- (ea) If, prior to the termination of the Construction Site Licence for part of the Construction Site, OpCo requires access to that part of the Construction Site to continue after the Site Access Expiry Date in order to carry out the Delivery Activities, OpCo must:
- (i) use its reasonable endeavours to notify TfNSW:
 - A. as soon as practicable; and
 - B. in any event no less than 40 Business Days,
prior to the Site Access Expiry Date:
 - C. that OpCo requires access to that part of the Construction Site after the Site Access Expiry Date; and
 - D. of the date on which OpCo will vacate that part of Construction Site;
 - (ii) continue to use its reasonable endeavours to notify TfNSW every 20 Business Days of the date on which OpCo will vacate that part of the Construction Site until OpCo vacates that part of the Construction Site; and
 - (iii) use its best endeavours to vacate that part of the Construction Site as soon as practicable after the Site Access Expiry Date.
- (f) OpCo is responsible for gaining access to and from the Construction Site and, except as expressly provided in this deed, will not be entitled to make any Claim against TfNSW in connection with access, or failure to gain or delay in gaining access, to and from the Construction Site.
- (g) OpCo:
- (i) must access the Construction Site only at the points of entry and exit and via the routes set out in the Environmental Documents; and
 - (ii) bears the risk of coordinating its access to the Construction Site with any other person that uses the access ways to the Construction Site.
- (h) OpCo must comply with the Easements and the terms of any easements, restrictions on use, covenants, agreements, leases, licences or other similar arrangements burdening or benefiting the land contained in the Construction Site that are identified in Exhibit 10.
- (ha) Before the draft second schedule instruments that are referred to in Exhibit 10 as "intended to be created" are executed and registered and by no later than the relevant Site Access Date, TfNSW will vary the instruments in the manner described in the third column of the table in Exhibit 10 (if applicable).

- (hb) TfNSW will procure that each dealing listed in Exhibit 18 will be removed from the title of the relevant land affected by those dealings before the relevant dealing adversely affects OpCo's Activities.
- (hc) The existence, creation or variation of any Easement, restriction on use, covenant, agreement, lease, licence or other similar arrangement burdening or benefiting the land contained in the Construction Site that is not identified in Exhibits 10 or 18 that has an adverse effect on OpCo's Activities will be a Compensation Event.
- (i) OpCo must not use the Construction Site, or permit it to be used, for any purpose other than OpCo's Activities, without TfNSW's prior consent.
- (j) Notwithstanding clause 12.1(b)(i), if TfNSW fails to give OpCo access to a part of the Construction Site on the Site Access Date for that part of the Construction Site (or such earlier date as may be agreed between the parties in accordance with clause 12.1(e)) a Compensation Event will occur.

12.2 Property Works on Unowned Parcels

This clause 12.2 applies during the period prior to the Date of Final Completion.

- (a) Where any Property Works are required to be carried out on an Unowned Parcel, OpCo must give a written notice to the owner or owners of the property (with a copy to TfNSW's Representative) which:
 - (i) describes the Property Works to be carried out;
 - (ii) requests access for the purpose of carrying out the Property Works; and
 - (iii) specifies the intended date for commencement of the Property Works, not less than 10 Business Days prior to the day which OpCo intends to commence the Property Works.
- (b) If the owner or owners of a property do not provide OpCo with sufficient access to carry out the Property Works from either:
 - (i) the date notified in the notice under clause 12.2(a); or
 - (ii) such other date as may be agreed between OpCo and the owner or owners,

OpCo:

 - (iii) must:
 - A. give TfNSW's Representative a notice stating this; and
 - B. not carry out the Property Works until TfNSW's Representative gives OpCo a notice specifying that the owner or owners of the property have agreed to give access, in which event clause 12.2(a) will reapply; and
 - (iv) will be liable for the consequences of, and will have no Claim against TfNSW arising out of or in any way in connection with, any delay in accessing an Unowned Parcel to carry out the Property Works.

- (c) Upon being given access to any property for the purpose of carrying out any Property Works, OpCo must promptly carry out those Property Works in a manner which minimises inconvenience and disruption to the owners, occupiers and users of the Unowned Parcel.
- (d) OpCo must:
 - (i) rehabilitate any part of an Unowned Parcel to the state agreed between OpCo (or a Core Contractor) and the owner of such Unowned Parcel prior to commencing the work or, if no such agreement is reached, the state it was in immediately prior to OpCo obtaining access; and
 - (ii) otherwise repair any damage or degradation to such a part arising out of or in any way in connection with the performance of its obligations under this clause 12.2.

12.3 Licence to use Licensed Maintenance Area and to access Additional Maintained Assets

- (a) TfNSW grants to OpCo a non-exclusive licence to use and occupy, and to permit OpCo's Contractors to use and occupy, the Licensed Maintenance Area for the purpose of performing OpCo's Activities and, if agreed by TfNSW pursuant to Schedule 9, to grant Retail Licences.
- (b) TfNSW grants to OpCo a non-exclusive licence to access, and to permit OpCo's Contractors to access, the Additional Maintained Assets for the purpose of performing Operations Activities in relation to Additional Maintained Assets:
 - (i) only to the extent TfNSW and its authorised persons are permitted to do so under; and
 - (ii) subject to and in accordance with the terms of,
 - any Existing Land Arrangements, Easements or Land Arrangements concerning, benefiting or burdening any Additional Maintained Assets.
- (c) These licences:
 - (i) commence on the Date of Completion; and
 - (ii) terminate on the earlier of:
 - A. the Expiry Date; and
 - B. the termination of this deed.
- (d) The rights conferred by these licences are personal rights in contract only and do not create any tenancy or any estate or interest in the Licensed Maintenance Area or any land on which any Additional Maintained Assets are located.

12.3A Licensed Maintenance Area

- (a) TfNSW and OpCo acknowledge that:
 - (i) the Licensed Maintenance Area shown in Appendix 3 to the SPR at the date of this deed is based on the Concept Design;

- (ii) the Design Documentation will be developed and finalised in accordance with clause 13;
 - (iii) the OTS Works will be constructed in accordance with the Design Documentation that OpCo is entitled to use for construction purposes under clause 13.10(a) and otherwise in accordance with this deed; and
 - (iv) the location of the NWRL and the Assets when constructed may differ from the Concept Design and changes may be required to the Licensed Maintenance Area as a result.
- (b) Prior to the Date of Completion, TfNSW and OpCo will review the Licensed Maintenance Area shown in Appendix 3 to the SPR and either party may propose changes to the Licensed Maintenance Area by notice in writing to the other party.
- (c) TfNSW must consent to a change proposed by OpCo to add land to the Licensed Maintenance Area if:
- (i) the additional land is necessary for the maintenance and operation of the NWRL or the ability of OpCo to undertake the OTS PPP in accordance with the Project Agreements;
 - (ii) TfNSW is the owner of the estate in fee simple of the additional land; and
 - (iii) there are no inconsistent interests in the additional land.
- (d) OpCo must consent to a change to the Licensed Maintenance Area proposed by TfNSW unless that change would have a material and adverse effect on the maintenance or operation of the NWRL or the ability of OpCo to undertake the OTS PPP in accordance with the Project Agreements.
- (e) Any change to the Licensed Maintenance Area made pursuant to clause 12.3A(d) will be a Compensation Event.

12.4 Existing Land Arrangements, Easements, Land Arrangements, Retail Licences and advertising

Provisions regarding Existing Land Arrangements, Easements, Land Arrangements, Retail Licences and advertising in respect of the Licensed Maintenance Area and the Additional Maintained Assets are set out in Schedule 9.

12.5 Building management statement and strata management statement

- (a) OpCo must:
- (i) refrain from breaching;
 - (ii) to the extent an obligation is imposed on an occupier of the Construction Site or the Licensed Maintenance Area or on an occupier of land who accesses any Additional Maintained Assets, comply with any obligation under; and
 - (iii) not do, or allow anything to be done, which would cause TfNSW or any Related Body Corporate of TfNSW to be in breach of any of its obligations under,

any building management statement or strata management statement to which TfNSW or any Related Body Corporate of TfNSW is a member as at the date of this deed.

- (ab) TfNSW must promptly provide OpCo with any new, or changes to any such existing, building management statements or strata management statements.
- (b) If:
 - (i) any building management statement or strata management statement to which TfNSW or any Related Body Corporate of TfNSW is (or becomes) a member provides for the registration of one or more stratum or strata plans in respect of any building the subject of (or contemplated by) that building management statement or strata management statement; and
 - (ii) otherwise if requested by TfNSW,OpCo will do everything necessary to sign any stratum or strata plan or strata management statement (or related documents) contemplated by that building management statement or strata management statement (as may be varied or replaced from time to time).
- (c) OpCo will, if required by TfNSW, procure the consent of any of OpCo's mortgagees and licensees to any of the documents referred to in clause 12.5(b) without unreasonable delay.

12.6 Native Title Claims

- (a) If there is a Native Title Claim with respect to the NWRL Site or any part of the NWRL Site, OpCo must:
 - (i) continue to perform OpCo's Activities, except to the extent otherwise:
 - A. directed by TfNSW's Representative;
 - B. ordered by a court or tribunal; or
 - C. required by law;
 - (ii) at the request of TfNSW, or if required to do so under any law or by order of a court or tribunal, provide all reasonable assistance in connection with dealing with the Native Title Claim (including giving TfNSW and any other persons authorised by TfNSW access to the NWRL Site or that part of the NWRL Site which is the subject of the Native Title Claim when reasonably required by TfNSW for that purpose).
- (b) For the purposes of clause 12.6(a)(i)A, TfNSW may by written notice direct OpCo to suspend performance of any or all of OpCo's Activities until such time as TfNSW gives OpCo further notice.
- (c) If OpCo is directed, ordered or required to cease to perform any of OpCo's Activities (or to change the way it does so), or to provide reasonable assistance in connection with dealing with a Native Title Claim, as contemplated by this clause, a Compensation Event will occur.

12.7 Artefacts

- (a) All Artefacts found on or under the surface of the NWRL Site will, as between the parties, be the absolute property of TfNSW.
- (b) Where such an Artefact is found, OpCo must:
 - (i) immediately notify TfNSW's Representative;
 - (ii) ensure that the Artefact is protected and not disturbed further;
 - (iii) comply with all requirements of Authorities and any Directions of TfNSW's Representative in relation to the Artefact; and
 - (iv) continue to perform OpCo's Activities, except to the extent otherwise:
 - A. directed by TfNSW's Representative;
 - B. ordered by a court or tribunal; or
 - C. required by law.
- (c) If OpCo is directed, ordered or required to cease to perform any of OpCo's Activities (or to change the way it does so) as contemplated by this clause causing OpCo to incur additional costs exceeding \$ (in aggregate over the Term), a Compensation Event will occur.

12.8 Working hours

Unless otherwise agreed between OpCo and TfNSW's Representative, the hours of work applicable to OpCo's Activities to be carried out on the NWRL Site are those permitted by relevant law and relevant Authorities.

12.9 Extra Land

- (a) OpCo must procure for itself and at its own cost the occupation or use of or relevant rights over any land or buildings in addition to the NWRL Site which is necessary or which it requires for the execution of OpCo's Activities.
- (b) As a condition precedent to Final Completion, OpCo must:
 - (i) rehabilitate any Extra Land in accordance with the requirements of all relevant Authorities and any owner, occupier and any other relevant persons having an interest in the land; and
 - (ii) provide to TfNSW's Representative:
 - A. a properly executed release, on terms satisfactory to TfNSW's Representative, from all Claims from the owner or occupier of, and from any other persons having an interest in, such Extra Land; or
 - B. if OpCo is unable to obtain such a release, despite using best endeavours to do so, a statement signed by OpCo to the effect that, such owner or occupier or other person having an interest in Extra Land, has failed or refused to execute such a release within 15 Business Days of it being provided by

OpCo to the owner, occupier or other person following completion of the work on the Extra Land.

- (c) OpCo must indemnify TfNSW against any Loss incurred by TfNSW in connection with a claim by the owner or occupier of any part of the Extra Land where:
 - (i) the owner or occupier has not executed such a release; or
 - (ii) the claim arises out of or in connection with OpCo's Activities.
- (d) OpCo acknowledges that:
 - (i) integration of the requirements for access to Extra Land is at the sole risk of OpCo; and
 - (ii) TfNSW will not be liable upon any Claim by OpCo arising out of or in any way in connection with:
 - A. identifying and obtaining access to Extra Land; or
 - B. any delay, additional costs or other effects on OpCo's Activities related to the ability of OpCo or OpCo's Contractors to obtain access to Extra Land or integrate such Extra Land with the NWRL Site.

12.10 Permitted use

OpCo must not:

- (a) undertake the OTS Works (other than the Third Party Works and those parts of the OpCo ECRL Works that lie outside the Project Site) such that the final location of such works is outside the Project Site;
- (b) undertake the Temporary Works outside the Construction Site; or
- (c) undertake the Local Area Works outside the Construction Site and the Local Areas.

12.11 Temporary Areas

OpCo must, as a condition precedent to Final Completion, reinstate the Temporary Areas to a condition at least equivalent to the condition existing before that occupation or use.

13. Design

13.1 Design obligations

OpCo must design the OTS Works, the Temporary Works and any works carried out as part of the Operations Activities in accordance with:

- (a) the SPR;
- (b) any Modification:
 - (i) directed by TfNSW by a Modification Order; or
 - (ii) approved by TfNSW by a Modification Approval; and

- (c) the other requirements of this deed.

13.2 Concept Design

- (a) OpCo acknowledges that prior to the date of this deed it prepared the Concept Design. OpCo agrees that it bears absolutely all risks howsoever they may arise as a result of the use by OpCo of, or the reliance by OpCo upon, the Concept Design in performing OpCo's Activities and that such use and reliance will not limit any of its obligations under this deed.

- (b) OpCo is responsible for, and assumes the risk of, any Loss it suffers or incurs arising out of or in connection with:

- (i) the design and construction of the OTS Works and the Temporary Works in accordance with the Concept Design costing more or taking longer than anticipated; and

- (ii) any differences between the Concept Design and the OTS Works and the Temporary Works which OpCo is required to design and construct (ignoring for this purpose any differences which are the subject of a Modification Order) to satisfy the requirements of this deed including:

- A. differences necessitated by any Site Conditions encountered; and

- B. differences required to ensure that the OTS Works and the Temporary Works will be and remain fit for their intended purposes and satisfy the requirements of this deed,

and irrespective of any assumptions, projections, estimates, contingencies or otherwise that OpCo may have made in relation to the Concept Design.

- (c) OpCo warrants that:

- (i) the Concept Design has been prepared by OpCo;

- (ii) if the OTS Works and the Temporary Works are designed and constructed in accordance with the Concept Design, the OTS Works and the Temporary Works will satisfy the requirements of this deed (but nothing in this clause 13.2(c)(ii) affects or limits clauses 13.2(a) or 13.2(b), which will prevail to the extent of any inconsistency);

- (iii) it will carry out and complete OpCo's Activities in accordance with the Concept Design (but nothing in this clause 13.2(c)(iii) affects or limits clauses 13.2(a) or 13.2(b), which will prevail to the extent of any inconsistency);

- (iv) it will not depart from the Concept Design in a manner that is prohibited by section 3.8(b) of the SPR; and

- (v) it remains responsible for ensuring that the OTS Works and the Temporary Works will satisfy the requirements of this deed despite the Concept Design.

13.3 Design warranties

- (a) OpCo warrants that:

- (i) it has checked, examined, analysed and carefully considered the SPR and Environmental Documents and that:
 - A. it has satisfied itself as to the completeness, correctness, accuracy, appropriateness, suitability and adequacy of the SPR;
 - B. it has satisfied itself that there are no omissions, ambiguities, discrepancies or inconsistencies in or between the SPR and Environmental Documents;
 - C. the SPR is proper, adequate and fit for the purpose of enabling OpCo to carry out OpCo's Activities in accordance with, and to ensure that the OTS Works and the Temporary Works comply with, this deed;
 - D. it will be fully and exclusively responsible and liable for all risks howsoever they may arise as a result of the use by OpCo of, or reliance upon, the SPR; and
 - E. the use of, or reliance upon, the SPR does not affect any of its obligations under this deed or entitle OpCo to make any Claim against TfNSW arising out of or in any way in connection with the SPR; and
- (ii) the Design Documentation will:
 - A. satisfy the applicable requirements of the SPR and the other requirements of this deed; and
 - B. be fit for its intended purpose.

- (b) The warranties given in clauses 13.2(c) and 13.3(a) will not be affected by:
 - (i) any design work carried out by others prior to the date of this deed and incorporated in this deed; or
 - (ii) the termination (for any reason) of this deed.

13.4 Preparation and submission of Design Documentation

During the period prior to the Date of Final Completion, OpCo must:

- (a) prepare the Design Documentation in the following three Design Stages:
 - (i) Design Stage 1;
 - (ii) Design Stage 2; and
 - (iii) Design Stage 3,
 or as otherwise contemplated by the Design Management Plan;
- (b) submit all Design Documentation (not including any Design Documentation to the extent that it relates solely to Non-Reviewable Temporary Works) to the OTS Independent Certifier and the TfNSW Representative:
 - (i) in accordance with the Design Management Plan;

- (ii) in a manner and at a rate which, having regard to the quantum of Design Documentation submitted, will give the OTS Independent Certifier a reasonable opportunity to review the submitted Design Documentation; and
- (iii) in accordance with the requirements of the SPR;
- (ba) at the same time that OpCo submits any Sydney Trains Design Documentation to the OTS Independent Certifier, submit that Sydney Trains Design Documentation to Sydney Trains' Representative;
- (c) within 5 Business Days of a request by the OTS Independent Certifier, provide the OTS Independent Certifier with any Design Documentation to the extent that it relates solely to Non-Reviewable Temporary Works; and
- (d) ensure the Design Stage 3 Design Documentation submitted is of a level of detail which is sufficient to permit the OTS Independent Certifier to determine whether:
 - (i) the Design Documentation complies with this deed; and
 - (ii) the OTS Works or Temporary Works which will be constructed in accordance with the Design Documentation will comply with this deed.

13.5 Third Party Works

- (a) Design Documentation that relates to WAD Works must:
 - (i) comply with the requirements of the WAD; and
 - (ii) where required by the WAD, be accompanied by a certificate from the WAD Proof Engineer in the form contained in Schedule 9 of the WAD.
- (b) Design Documentation that relates to Council Interface Works must:
 - (i) comply with the requirements of the relevant Council Interface Agreements; and
 - (ii) where required by the Blacktown City Council Interface Agreement, be accompanied by a certificate from the Blacktown City Council Proof Engineer in the form contained in Schedule 9 of the Blacktown City Council Interface Agreement.

13.6 Certification of Design Documentation

- (a) All Design Documentation submitted pursuant to clause 13.4 for Design Stage 1 and Design Stage 2 must be accompanied by a certificate in the form of Schedule 11:
 - (i) from OpCo certifying that the Design Documentation complies with all requirements of this deed including the SPR; and
 - (ii) from the O&M Contractor certifying that the Design Documentation is acceptable to the O&M Contractor.
- (b) All Design Documentation submitted pursuant to clause 13.4 for Design Stage 3 must be accompanied by a certificate in the form of Schedule 12:

- (i) from OpCo certifying that the Design Documentation:
 - A. complies with all requirements of this deed including the SPR; and
 - B. is suitable for construction;
- (ii) from each relevant Designer certifying that the Design Documentation complies with all requirements of this deed including the SPR, to the extent those requirements are relevant to the Designer's scope of work; and
- (iii) from the O&M Contractor certifying that the Design Documentation is acceptable to the O&M Contractor.

13.7 Explanation of Design Documentation

OpCo must, whenever it submits Design Documentation for Design Stage 1, Design Stage 2 or Design Stage 3 pursuant to clause 13.4:

- (a) deliver a design presentation workshop within 5 Business Days of its submission; and
- (b) if required by TfNSW or the OTS Independent Certifier, make available the appropriate design personnel to:
 - (i) explain the Design Documentation; and
 - (ii) provide such information regarding the Design Documentation as TfNSW or the OTS Independent Certifier reasonably requests.

13.8 Review of Design Documentation

This clause 13.8 applies during the period prior to the Date of Final Completion.

- (a) **(TfNSW's Representative review):** TfNSW's Representative may (but is not obliged to), within 15 Business Days of the date on which any Design Documentation for any Design Stage is submitted to it in accordance with clause 13.4, review the Design Documentation and notify the OTS Independent Certifier in writing (with a copy to OpCo) of any comments which TfNSW has in respect of the Design Documentation.
- (b) **(OTS Independent Certifier review):** The OTS Independent Certifier must, within the IC Design Review Period:
 - (i) review the Design Documentation and, in so doing, must consider any comments received from TfNSW under clause 13.8(a) or from any Authorities;
 - (ii) in respect of Design Stage 1 or Design Stage 2, notify OpCo of any actual non-compliance with the requirements of this deed (with detailed reasons). The OTS Independent Certifier may also notify OpCo of any potential non-compliance with the requirements of this deed (with detailed reasons) or any other observation or comment which the OTS Independent Certifier has on the Design Documentation; and

- (iii) in respect of Design Stage 3, determine whether or not the Design Documentation complies with the requirements of this deed and either:
- A. reject the Design Documentation (with detailed reasons) if the OTS Independent Certifier considers that the Design Documentation:
 - 1) does not comply with the requirements of this deed (minor errors and omissions excepted); or
 - 2) is not sufficiently complete to enable the OTS Independent Certifier to form a view on whether it is compliant; or
 - B. if the OTS Independent Certifier considers that the Design Documentation complies with the requirements of this deed, certify the Design Documentation by:
 - 1) including a notation on each document forming part of the Design Documentation;
 - 2) providing to TfNSW's Representative and OpCo a certificate in the form of Schedule 13;
 - 3) where the Design Documentation relates to WAD NWRL Works or WAD Road Works, providing to TfNSW's Representative and OpCo a certificate in the form of Part 1 or Part 2 of Schedule 3 of the WAD (as applicable); and
 - 4) where the Design Documentation relates to Council Interface Works, providing to TfNSW's Representative and OpCo a certificate in the form of Schedule 3 of the relevant Council Interface Agreement.
- (c) **(TfNSW Direction):** TfNSW's Representative may at any time (including after the OTS Independent Certifier has certified the Design Documentation pursuant to clause 13.8(b)(iii)B or 13.8(f)(ii)A) direct OpCo to make amendments to the Design Documentation which TfNSW considers to be required to ensure the Design Documentation complies with this deed and clause 13.8(g) shall apply.
- (d) **(Non-compliance in Stage 1 or Stage 2 Design Documentation):** If the OTS Independent Certifier notifies OpCo under clause 13.8(b)(ii) that any Design Stage 1 or Design Stage 2 Design Documentation contains an actual non-compliance with the requirements of this deed, OpCo:
- (i) must, at the same time or within 20 Business Days of receiving such notice, give the OTS Independent Certifier a written response which explains how OpCo will address the non-compliance in sufficient detail to satisfy the OTS Independent Certifier that compliance will be achieved in the Design Stage 3 Design Documentation;
 - (ii) must, prior to submitting Design Stage 3 Design Documentation that relates to a Design Stage 2 Design Documentation actual non-compliance, give the OTS Independent Certifier a written statement which explains how the non-compliance has been addressed; and

(iii) is not obliged to respond to any comments received from the OTS Independent Certifier regarding any potential non-compliance with the requirements of this deed or any other observation or comment which the OTS Independent Certifier has on the Design Documentation which does not concern an actual non-compliance.

(e) **(Rejection of Design Documentation):** If any Design Stage 3 Design Documentation is rejected by the OTS Independent Certifier under clause 13.8(b)(iii)A, OpCo must either:

(i) promptly amend the relevant non-compliant element of the Design Documentation and re-submit it in accordance with clause 13.4, in which case the process in this clause 13.8 will be reapplied to the amended element of the Design Documentation;

(ii) provide TfNSW with a notice requesting a Modification of the requirements of this deed with which the OTS Independent Certifier has stated that the Design Documentation is non-compliant, setting out any applicable details required by clause 30.1 (and such notice will be deemed to be a notice given under clause 30.1); or

(iii) provide TfNSW and the OTS Independent Certifier with a notice setting out any matters in relation to which it disagrees with the OTS Independent Certifier's opinion, together with its reasons for doing so,

but OpCo may commence or continue construction of those elements of the Design Documentation that the OTS Independent Certifier has not identified as being non-compliant with this deed.

(f) **(Response by TfNSW or OTS Independent Certifier):** If OpCo gives a notice under:

(i) clause 13.8(e)(ii), TfNSW may approve or reject the request in accordance with clause 30.2 and:

A. if TfNSW issues a Modification Approval under clause 30.2(a)(ii)A, the process in clause 13.8(b) will reapply as if the relevant non-compliant element of the Design Documentation had been resubmitted to the OTS Independent Certifier; or

B. if TfNSW rejects the request, clause 13.8(g)(i) will apply; or

(ii) clause 13.8(e)(iii), the OTS Independent Certifier must, within 10 Business Days of receipt of the notice determine, and notify the parties as to, whether or not the notice satisfactorily addresses the OTS Independent Certifier's concerns together with its reasons for forming that opinion and:

A. if the OTS Independent Certifier considers that OpCo's notice satisfactorily addresses the OTS Independent Certifier's concerns, the OTS Independent Certifier must provide the certification under clause 13.8(b)(iii)B as part of its notice; or

B. if the OTS Independent Certifier considers that the notice does not satisfactorily address the OTS Independent Certifier's concerns, clause 13.8(g)(ii) will apply.

- (g) **(Resubmission of Design Documentation):** If:
- (i) TfNSW rejects OpCo's request under clause 13.8(e)(ii);
 - (ii) the OTS Independent Certifier notifies the parties under clause 13.8(f)(ii)B that it does not consider that OpCo's notice satisfactorily addresses the OTS Independent Certifier's concerns; or
 - (iii) any Design Documentation is the subject of a direction by TfNSW's Representative under clause 13.8(c),
- then:
- (iv) OpCo must promptly amend the relevant non-compliant element of the Design Documentation and re-submit the relevant element in accordance with clause 13.4; and
 - (v) the process in this clause 13.8 will be reapplied to the amended element of the Design Documentation.
- (h) **(Modifications):** If OpCo considers that any Design Documentation which is the subject of a direction by TfNSW's Representative under clause 13.8(c) constitutes or involves a Modification, OpCo must if it wishes to make a Claim in relation to the matter give a notice and submit a claim in accordance with, and otherwise comply with, clause 57.1.
- (i) **(Minor errors or omissions):** If the certificate provided by the OTS Independent Certifier pursuant to clause 13.8(b)(iii)B.2) lists any minor errors or omissions:
- (i) the OTS Independent Certifier may, in the certificate, recommend the action that could be taken by OpCo to address the minor error or omission; and
 - (ii) OpCo must complete the recommended action, or take any other action OpCo deems reasonable in the circumstances to correct the minor error or omission to the extent required for the Design Documentation to comply with this deed, within the timeframe (if any) specified by the OTS Independent Certifier and, in any event, as a pre-condition to commencing the Tests specified in section 3.5 of SPR Appendix 56.
- (j) **(OTS Independent Certifier response to TfNSW):** The OTS Independent Certifier must, within 5 Business Days of:
- (i) providing a notice to OpCo under clause 13.8(b)(ii) in respect of Design Stage 1 or Design Stage 2 Design Documentation, to the extent that the OTS Independent Certifier did not include in its notice to OpCo any comments received from TfNSW under clause 13.8(a), provide TfNSW with detailed written reasons of why it did not include such comments;
 - (ii) rejecting Design Stage 3 Design Documentation under clause 13.8(b)(iii)A, to the extent that the OTS Independent Certifier did not include in its notice to OpCo any comments received from TfNSW under clause 13.8(a) regarding non-compliances in OpCo's Design Stage 3 Design Documentation (excluding minor errors and omissions), provide TfNSW with detailed written reasons of why it did not include such comments; and

- (iii) certifying Design Stage 3 Design Documentation under clause 13.8(b)(iii)B, to the extent that the OTS Independent Certifier received comments from TfNSW under clause 13.8(a) regarding non-compliances in OpCo's Design Stage 3 Design Documentation (excluding minor errors and omissions), provide TfNSW with detailed written reasons of why it certified the Design Stage 3 Design Documentation despite TfNSW's comments.

13.9 Design Review Panel

This clause 13.9 applies during the period prior to the Date of Final Completion.

- (a) TfNSW may, in respect of any Design Documentation submitted by OpCo:
 - (i) provide copies of any such Design Documentation received from OpCo to; and
 - (ii) seek comments from and take into account the views of, the Design Review Panel.
- (b) Without limiting any other provision of this deed:
 - (i) the Design Review Panel does not represent TfNSW for the purposes of this deed;
 - (ii) nothing which occurs during any workshop or meeting at which members of the Design Review Panel are present will:
 - A. relieve OpCo of its obligations, or constitute a waiver of any of TfNSW's rights, under this deed; or
 - B. be construed as a direction or notice by TfNSW to do or not to do anything and the parties confirm that all discussions on any matters raised at any workshop or meeting at which members of the Design Review Panel are present, or any comments made by the Design Review Panel, will not give rise to any obligation on the part of OpCo to comply with anything which the members of the Design Review Panel say or do during such workshops or meetings;
 - (iii) OpCo must not comply with any directions given or purported to be given by the Design Review Panel or a member of the Design Review Panel unless TfNSW's Representative has given OpCo a written Direction to the same effect; and
 - (iv) if OpCo considers that any direction by TfNSW's Representative under clause 13.9(b)(iii) constitutes or involves a Modification, OpCo must if it wishes to make a Claim in relation to the matter give a notice and submit a claim in accordance with, and otherwise comply with, clause 57.1.

13.10 Design Documentation for construction

This clause 13.10 applies during the period prior to the Date of Final Completion.

- (a) Subject to clauses 13.8(e), 13.10(c) and 13.10(d), unless otherwise approved in writing by TfNSW's Representative, OpCo must not use for construction purposes

any Design Documentation (not including any Design Documentation to the extent it relates solely to Non-Reviewable Temporary Works, unless requested by the OTS Independent Certifier under clause 13.4(c)), unless:

- (i) it has been:
 - A. certified by OpCo, the Designer who prepared it and by the O&M Contractor under clause 13.6(b);
 - B. submitted to TfNSW's Representative and the OTS Independent Certifier under clause 13.4; and
 - C. certified by the OTS Independent Certifier under clause 13.8(b)(iii)B or 13.8(f)(ii)A; or
- (ii) in the case of OpCo ECRL Works described in sections 3.3, 3.4.1 and 3.4.2 of SPR Appendix 25, it has been provided to OpCo by TfNSW under clause 6.1(d)(v) of Schedule 3,

save that the parties acknowledge that this clause 13.10(a) does not in any way restrict OpCo from carrying out procurement.

- (b) OpCo must give TfNSW's Representative four hard copy sets, and one electronic copy, of:
 - (i) all Design Documentation which it is entitled pursuant to clause 13.10(a) to use for construction purposes in accordance with the requirements of the SPR; and
 - (ii) surveys and work as executed Design Documentation in accordance with the requirements of the SPR.
- (c) If the OTS Independent Certifier does not, in respect of Design Stage 3 Design Documentation that is not Third Party Agreement Design Documentation or Sydney Trains Design Documentation, either certify or reject the Design Documentation within the IC Design Review Period referred to in clause 13.8(b), OpCo may use the Design Documentation for construction purposes at OpCo's own risk.
- (d) If OpCo exercises its right under clause 13.10(c) and the OTS Independent Certifier subsequently rejects the Design Documentation, then (unless otherwise approved in writing by TfNSW):
 - (i) OpCo must immediately cease any construction being carried out in accordance with the relevant non-compliant element of the Design Documentation, but OpCo may commence or continue construction in accordance with any element of the Design Documentation that the OTS Independent Certifier has not identified as being non-compliant with this deed; and
 - (ii) clauses 13.8(e) to 13.8(g) will apply in relation to the non-compliant element of the Design Documentation.

13.11 Amendments to Final Design Documentation

- (a) Subject to clause 29 (TfNSW initiated Modifications) and clause 30 (OpCo initiated Modifications), if OpCo wishes to amend Final Design Documentation prior to the Date of Final Completion:

- (i) OpCo must submit the amended Design Documentation to TfNSW's Representative and the OTS Independent Certifier together with:
 - A. the certifications referred to in clause 13.10(a); and
 - B. an explanation as to why it is seeking to amend the Final Design Documentation;
 - (ii) clause 13.8 will apply as if the Design Documentation is Design Stage 3 Design Documentation; and
- (b) OpCo may, at its own risk, use the amended Final Design Documentation (that is not Third Party Design Documentation or Sydney Trains Design Documentation) submitted in accordance with clause 13.11(a) for construction purposes prior to certification by the OTS Independent Certifier under clause 13.8(b)(iii)B if, and only if, the amendment to the Final Design Documentation:
- (i) is minor;
 - (ii) does not adversely impact the OTS Works; and
 - (iii) is necessary to overcome an issue which:
 - A. prevents or adversely affects OpCo proceeding with construction; and
 - B. has arisen or become evident since the Final Design Documentation was submitted to the OTS Independent Certifier.
- (c) If OpCo exercises its right under clause 13.11(b) and the OTS Independent Certifier subsequently rejects the amended Final Design Documentation in accordance with clause 13.8(b)(iii)A, then (unless otherwise approved in writing by TfNSW's Representative):
- (i) OpCo must immediately cease any construction being carried out in accordance with the relevant non-compliant element of the amended Final Design Documentation, but OpCo may commence or continue construction in accordance with any element of the amended Final Design Documentation that the OTS Independent Certifier has not identified as being non-compliant with this deed; and
 - (ii) clause 13.8(e) to 13.8(g) will reapply in relation to the non-compliant element of the amended Final Design Documentation.
- (d) OpCo must submit any Sydney Trains Design Documentation to Sydney Trains' Representative at the same time as that Sydney Trains Design Documentation is submitted to the OTS Independent Certifier under clause 13.11(a)(i).

13.12 Design Life

- (a) OpCo represents and warrants that:
 - (i) each Asset that falls within a category referred to in section 3.9 of the SPR will:

- A. be designed and constructed so that, at Completion and Final Completion, it is fit for its intended purpose;
 - B. be maintained during the Term so that it is fit for its intended purpose at all times during the Term; and
 - C. be capable of remaining fit for its intended purpose at all times during its Design Life provided it is maintained in accordance with the Asset Management System;
- (ii) where an Asset that falls within a category referred to in section 3.9 of the SPR is replaced or refurbished during the Term, the replacement or refurbished Asset will:
- A. be designed and constructed so that, at the time of its replacement or refurbishment, it is fit for its intended purpose;
 - B. be maintained during the Term so that it is fit for its intended purpose at all times during the Term; and
 - C. be capable of remaining fit for its intended purpose at all times during its Extended Design Life provided it is maintained in accordance with the Asset Management System.
- (b) The representations and warranties made by OpCo under clause 13.12(a) are made, and will be deemed to have been made, in respect of each Asset that falls within a category referred to in section 3.9 of the SPR:
- (i) in the case of the representations and warranties made under clause 13.12(a)(i), on:
- A. the date of this deed; and
 - B.
 - 1)
 - 2)
- (ii) in the case of the representations and warranties made under clause 13.12(a)(ii), on:
- A. the date that replacement or refurbishment of the relevant Asset has been completed; and
 - B.
- (c) Clauses 13.12(b) and 13.12(g) will survive the rescission, termination or expiration of this deed.

- (d) OpCo:
 - (i) waives any right to; and
 - (ii) must not,

assert, make or rely on a plea, defence, claim or argument in any forum whatsoever that a cause of action that TfNSW has or may have against OpCo arising out of or in connection with any false representation, or breach of warranty, under this clause 13.12 in respect of an Asset is statute-barred, before:

 - (iii) in the case of clauses 13.12(a)(i)A and 13.12(a)(i)B (to the extent clause 13.12(a)(i)B applies to the period before the Date of Completion), the Expiry Date; or
 - (iv) in the case of clause 13.12(a)(i)B (to the extent clause 13.12(a)(i)B applies to the period after the Date of Completion), clause 13.12(a)(i)C and clause 13.12(a)(ii), the date falling 3 years after the Expiry Date.
- (e) OpCo must not enforce any judgment or award obtained on the basis of a plea, defence, claim or argument asserted, made or relied on by OpCo in breach of clause 13.12(d).
- (f) OpCo must indemnify TfNSW against any Loss suffered by TfNSW as a result of:
 - (i) any action by OpCo in breach of clause 13.12(d); and
 - (ii) the enforcement of any judgment or award by OpCo in breach of clause 13.12(e).
- (g) TfNSW releases OpCo from and against any Claim that TfNSW may have against OpCo under this clause 13.12, clause 15.2(d) (to the extent it relates to Design Life or Extended Design Life), clause 21.1(f) or under any indemnity in clause 37.1 (to the extent it relates to Design Life or Extended Design Life), to the extent that the Claim has not been made by TfNSW before:
 - (i)
 - (ii)

13.13 TfNSW design documentation

The parties acknowledge that TfNSW is required to prepare design documentation under clause 6.1(d) of Schedule 3 and such documentation will not be subject to certification by the OTS Independent Certifier under this deed. TfNSW bears all risk and responsibility in respect of the preparation, suitability, compliance with the SPR and fitness for purpose of that design documentation, including in relation to clauses 13.1, 13.3(a)(ii) and 13.3(b).

14. Integration with Civil Works Contractors

14.1 Cooperation and Integration Deeds

TfNSW and OpCo acknowledge that they have entered into, and are bound by the terms of:

- (a) the SVC-OTS Cooperation and Integration Deed; and
- (b) the TSC-OTS Cooperation and Integration Deed.

14.2 Civil Works are fit for OpCo's purposes

- (a) OpCo warrants that it has reviewed and carefully considered the Civil Works Contracts (in the form contained in Exhibit 11 and Exhibit 12).
- (b) Subject to clauses 14.11, 14.12 and 14.15, OpCo will not be entitled to:
 - (i) make (nor will TfNSW be liable upon) any Claim arising out of or in any way in connection with the Civil Works, including in relation to the Civil Works not being fit for the purposes of enabling OpCo to comply with its obligations under this deed; or
 - (ii) any relief from any obligation under this deed,
if:
 - (iii) the SVC Works achieve SVC Construction Completion and, except for any Civil Works Minor Defects or any Deviations within the Civil Works Tolerances, comply with the requirements of the SVC Project Deed (in the form contained in Exhibit 12) as amended for any Approved Civil Works Change; and
 - (iv) the TSC Works achieve TSC Construction Completion and, except for any Civil Works Minor Defects or any Deviations within the Civil Works Tolerances, comply with the requirements of the TSC Project Deed (in the form contained in Exhibit 11) as amended for any Approved Civil Works Change.

14.3 TfNSW initiated Civil Works Change

- (a) TfNSW's Representative may at any time issue to OpCo written notice of a proposed Civil Works Change.
- (b) Within 10 Business Days (or such longer period as TfNSW's Representative reasonably agrees, having regard to the size and complexity of the proposed Civil Works Change) of receipt of a notice under clause 14.3(a), OpCo must provide TfNSW's Representative with a written notice including:
 - (i) subject to clause 14.3(c), confirmation that the Civil Works will remain fit for the purpose of enabling OpCo to comply with its obligations under this deed if the Civil Works Change is implemented;
 - (ii) details of any Net Financial Impact that the Civil Works Change would have if implemented and how such Net Financial Impact has been calculated; and

- (iii) details of any extension of time required to the Date for Completion as a result of the Civil Works Change.
- (c) OpCo's confirmation under clause 14.3(b)(i) can only be withheld if the proposed Civil Works Change will prevent OpCo from complying with its obligations under this deed.
- (d) If OpCo declines to give the confirmation pursuant to clause 14.3(b)(i):
 - (i) OpCo must provide:
 - A. detailed written reasons explaining why the proposed Civil Works Change will prevent OpCo from complying with its obligations under this deed; and
 - B. details of any modification it requires to the proposed Civil Works Change in order to give the confirmation; and
 - (ii) TfNSW may either:
 - A. refer the determination of whether the proposed Civil Works Change will prevent OpCo from complying with its obligations under this deed to be decided in accordance with clause 56;
 - B. notify OpCo of any changes to the proposed Civil Works Change, in which case this clause 14.3 will reapply;
 - C. withdraw the proposed Civil Works Change; or
 - D. notify OpCo that it agrees that the proposed Civil Works Change will prevent OpCo from complying with its obligations under this deed.
- (e) If it is determined under clause 56 or the parties agree that:
 - (i) the proposed Civil Works Change will prevent OpCo from complying with its obligations under this deed, TfNSW may:
 - A. withdraw the proposed Civil Works Change;
 - B. modify the proposed Civil Works Change, in which case this clause 14.3 will reapply;
 - C. proceed with the proposed Civil Works Change on the basis that:
 - 1) clause 14.2(b) will not apply in relation to the Civil Works Change to the extent determined under clause 56 or agreed by the parties; and
 - 2) in addition to any claim under clauses 14.15 and 26, OpCo will be entitled, under clauses 17 and 27, to claim relief from its obligations that are affected by the Civil Works Change; or

- D. issue a Modification Impact Request or instruct OpCo to implement a Modification to accommodate the Civil Works Change; or
- (ii) the proposed Civil Works Change will not prevent OpCo from complying with its obligations under this deed:
 - A. OpCo will be deemed to agree that clause 14.2(b) will continue to apply with respect to the modified Civil Works if the Civil Works Change is implemented; and
 - B. OpCo will not be entitled to claim any relief from any obligations under this deed (but this will not prejudice any entitlement which OpCo may have to make a claim under clause 17.8 or clause 26).
- (f) TfNSW must reimburse OpCo for all costs reasonably incurred by OpCo in assessing each Civil Works Change pursuant to this clause 14.3.

14.4 OpCo initiated Civil Works Change

- (a) If OpCo wishes to request TfNSW to procure a Civil Works Change, it must give TfNSW a written notice with full details of:
 - (i) the proposed Civil Works Change; and
 - (ii) the reason for the proposed Civil Works Change.
- (b) Upon receipt of a notice under clause 14.4(a), subject to clause 14.4(c), TfNSW must not unreasonably refuse to procure the relevant Civil Works Contractor to carry out the Civil Works Change, provided that OpCo agrees to pay all additional costs incurred by TfNSW in connection with the Civil Works Change or its assessment, including all amounts payable to the relevant Civil Works Contractor in connection with the Civil Work Change or its assessment.
- (c) TfNSW's refusal to procure the Civil Works Change will be deemed to be reasonable if the implementation of the Civil Works Change would:
 - (i) not promote the objectives and expected outcomes of the Project Agreements;
 - (ii) not, in TfNSW's opinion, be in the public interest;
 - (iii) result in a delay to the Date of Completion; or
 - (iv) have any other effect which TfNSW considers to be unreasonable in the circumstances of the OTS PPP.
- (d) If required by TfNSW, OpCo must attend any meetings with the relevant Civil Works Contractor regarding the Civil Works Change and provide such further information regarding the Civil Works Change as may be required by TfNSW or the relevant Civil Works Contractor.
- (e) TfNSW must notify OpCo within 25 Business Days (or such longer period as TfNSW reasonably requires, having regard to the size and complexity of the proposed Civil Works Change) after receiving a notice from OpCo under clause 14.4(a):

- (i) that it will direct the relevant Civil Works Contractor to carry out the Civil Works Change; or
 - (ii) that it will not direct the relevant Civil Works Contractor to carry out the Civil Works Change.
- (f) OpCo must pay any additional costs referred to in clause 14.4(b) within 20 Business Days of being requested to do so by TfNSW.
- (g) Subject to clauses 14.11 and 14.12, OpCo:
- (i) will not be entitled to make any Claim against TfNSW arising out of or in connection with:
 - A. any Civil Works Change implemented by TfNSW and a Civil Works Contractor pursuant to this clause 14.4; or
 - B. a permitted refusal by TfNSW under this clause 14.4 to direct a Civil Works Contractor to carry out the Civil Works Change; and
 - (ii) agrees that the refusal by TfNSW to direct a Civil Works Change requested by OpCo will not affect the operation of clause 14.2(b).
- (h) OpCo warrants that if a Civil Works Change requested by OpCo is implemented the Civil Works will, if designed and constructed in accordance with the Civil Works Contracts (amended to incorporate the Civil Works Change), be fit for the purposes of enabling OpCo to comply with its obligations under this deed.
- (i) The parties acknowledge that they are bound by the certifications given by:
- (i) the SVC Independent Certifier in accordance with, and subject to, clause 2.3 of the SVC - OTS Cooperation and Integration Deed; and
 - (ii) the TSC Independent Certifier in accordance with, and subject to, clause 2.3 of the TSC - OTS Cooperation and Integration Deed.

14.5 Civil Works design team meetings

TfNSW must:

- (a) notify OpCo of, and provide OpCo with a reasonable opportunity to attend, meetings of the Civil Works Contractors' design teams; and
- (b) give OpCo:
 - (i) the agenda for each meeting within a reasonable time prior to each meeting; and
 - (ii) the minutes of each meeting within a reasonable time after each meeting;
 if such documents are submitted by the Civil Works Contractors to TfNSW.

14.6 Civil Works Design Documentation

- (a) TfNSW must provide OpCo with a copy of all design documentation for the Civil Works (**Civil Works Design Documentation**) submitted by the Civil Works Contractors to TfNSW, promptly following receipt by TfNSW.

- (b) OpCo may:
 - (i) review the Civil Works Design Documentation provided to it pursuant to clause 14.6(a); and
 - (ii) to the extent that the Civil Works Design Documentation does not comply with the requirements of the relevant Civil Works Contract, provide written comments to:
 - A. the SVC Independent Certifier, with a copy to TfNSW and the SVC Contractor, within 15 Business Days; or
 - B. the TSC Independent Certifier, with a copy to TfNSW and the TSC Contractor, within 10 Business Days,of the date on which OpCo received the Civil Works Design Documentation (as applicable) pursuant to clause 14.6(a).
- (c) TfNSW must provide OpCo with a copy of any comments TfNSW receives from the SVC Independent Certifier or the TSC Independent Certifier (as applicable) in response to any comments made by OpCo under clause 14.6(b) promptly and in any event no later than 10 Business Days after receipt.

14.7 Civil Works Asset Management Information

- (a) TfNSW must provide OpCo with a copy of any Civil Works Asset Management Information submitted by the Civil Works Contractors to TfNSW, promptly following receipt by TfNSW.
- (b) OpCo may, or if requested by TfNSW must:
 - (i) review the Civil Works Asset Management Information provided to it pursuant to clause 14.7(a); and
 - (ii) provide comments to the SVC Independent Certifier or the TSC Independent Certifier (as applicable), with a copy to TfNSW and the relevant Civil Works Contractor, within 5 Business Days of the date on which OpCo received the Civil Works Asset Management Information pursuant to clause 14.7(a).

14.8 Inspection of Civil Works

- (a) If OpCo wishes to inspect the Civil Works, OpCo must submit a written request to TfNSW's Representative a minimum of 10 Business Days in advance of the date it wishes to carry out the inspection (or such other period of time as TfNSW's Representative may agree).
- (b) OpCo may only inspect:
 - (i) the TSC Works when accompanied by TfNSW's Representative (or its nominee); and
 - (ii) the SVC Works when accompanied by TfNSW's Representative (or its nominee).
- (c) TfNSW's Representative must:

- (i) facilitate all reasonable requests by OpCo to inspect the Civil Works; and
- (ii) notify OpCo of, and provide OpCo with a reasonable opportunity to attend, all joint inspections of:
 - A. the TSC Works carried out in accordance with clause 11.11 of the TSC Project Deed; and
 - B. the SVC Works carried out in accordance with clause 11.11 of the SVC Project Deed.
- (d) To the extent that the Civil Works do not comply with the requirements of the relevant Civil Works Contract, OpCo may provide written comments to the SVC Independent Certifier or the TSC Independent Certifier (as applicable), with a copy to TfNSW and the relevant Civil Works Contractor:
 - (i) in the case of an inspection carried out in accordance with clause 11.11(b) of the TSC Project Deed or clause 11.11(b) of the SVC Project Deed, within 1 Business Day of the date of the relevant inspection;
 - (ii) in the case of an inspection carried out in accordance with clause 11.11(d) of the TSC Project Deed or clause 11.11(d) of the SVC Project Deed, within 2 Business Days of the date of the relevant inspection; and
 - (iii) in the case of any other inspection under this clause 14.8, within 5 Business Days of the date of the relevant inspection.
- (e) TfNSW must provide OpCo with a copy of any comments TfNSW receives from the SVC Independent Certifier or the TSC Independent Certifier (as applicable) in response to any comments made by OpCo under clause 14.8(d) promptly and in any event no later than 10 Business Days after receipt.

14.9 Civil Works documentation

If requested by OpCo, TfNSW must:

- (a) make available to OpCo through its project data and collaboration system (or by such other method notified by TfNSW's Representative to OpCo); or
- (b) otherwise provide OpCo with,

copies of:

 - (c) all documents or other information in respect of the design, construction, occupation, use and maintenance of the Civil Works which:
 - (i) the Civil Works Contractors must provide to TfNSW as a condition precedent to SVC Construction Completion or TSC Construction Completion (as applicable) of each Civil Works Portion; or
 - (ii) must necessarily be provided to TfNSW before each Civil Works Portion can be used for its intended purpose;
 - (d) any correspondence with, or certificates issued by, the SVC Independent Certifier or the TSC Independent Certifier in relation to the Civil Works (excluding any confidential commercial information regarding the Civil Works Contractors);

- (e) any notices of Civil Works Defects notified to TfNSW by the Civil Works Contractors, or by TfNSW to the Civil Works Contractors, after the Date of Completion of the relevant Civil Works Portion;
- (f) any warranties provided by the Civil Works Contractors to TfNSW from any subcontractors to the Civil Works Contractors; and
- (g) any documents TfNSW is entitled to, and actually, receives from the Civil Works Contractors in relation to the quality of the Civil Works,

to the extent that any documentation is not provided directly to OpCo by a Civil Works Contractor, the SVC Independent Certifier or the TSC Independent Certifier.

OpCo warrants that it does not require any further documents in relation to the Civil Works Contracts or the Civil Works to enable OpCo to carry out its obligations under this deed.

14.10 Care and maintenance of Civil Works

- (a) OpCo is responsible for the care and maintenance of any parts of the Civil Works located within each part of the Construction Site, in accordance with the Civil Works O&M Manuals, for the period of the Construction Site Licence for that part of the Construction Site.
- (b) If:
 - (i) OpCo fails to occupy a part of the Construction Site on and from commencement of the Construction Site Licence for that part of the Construction Site (**Relevant Date**); and
 - (ii) TfNSW incurs a liability to a Civil Works Contractor in relation to Transitional Handover Services carried out by the Civil Works Contractor on that part of the Construction Site on or after the Relevant Date,

OpCo must indemnify TfNSW from and against such liability.

14.11 Civil Works Defects

- (a) OpCo must promptly give written notice to TfNSW upon becoming aware of any matter it considers to be a Civil Works Defect.
- (b) If OpCo gives TfNSW a notice under clause 14.11(a) in respect of a Civil Works Defect located within a part of the NWRL Site which OpCo has, at that time, a licence to use pursuant to clauses 12.1 or 12.3, TfNSW's Representative must, within 10 Business Days or such longer period as the parties may agree (acting reasonably), issue a notice to OpCo that contains one of the following:
 - (i) an undertaking by TfNSW to procure the rectification of the Civil Works Defect by the relevant Civil Works Contractor or an Other Contractor;
 - (ii) a direction to OpCo to carry out a Modification pursuant to clause 29 to:
 - A. rectify the Civil Works Defect; or
 - B. modify the OTS Works or OpCo's Activities to accommodate the impact (if any) of the Civil Works Defect on the OTS PPP; or

- (iii) a notification to OpCo that TfNSW does not consider the alleged defect to be a Civil Works Defect.
- (c) OpCo must provide TfNSW's Representative with any information reasonably requested in relation to the Civil Works Defect.
- (d) If there is any dispute between:
 - (i) OpCo, TfNSW and the relevant Civil Works Contractor as to whether an alleged defect in the Civil Works referred to in clause 14.11(b) constitutes a Civil Works Defect, the dispute resolution process in the SVC - OTS Cooperation and Integration Deed or the TSC - OTS Cooperation and Integration Deed (as applicable) will apply; and
 - (ii) OpCo and TfNSW as to whether an alleged defect in the Civil Works referred to in clause 14.11(b) constitutes a Civil Works Defect, which is not covered by clause 14.11(d)(i), the dispute resolution process in clause 56 will apply.
- (e) If clause 14.11(d) applies and it is determined that an alleged defect in the Civil Works referred to in clause 14.11(b) constitutes a Civil Works Defect, TfNSW must, within 5 Business Days of such determination, issue a notice pursuant to clauses 14.11(b)(i) or 14.11(b)(ii).

14.12 Temporary Repairs

- (a) If an alleged Civil Works Defect the subject of a notice by OpCo under clause 14.11(a) will have an adverse effect on:
 - (i) the safe and secure performance of OpCo's Activities; or
 - (ii) OpCo's ability to perform the OpCo Activities in a manner that does not result in any Availability Deduction or Timeliness Deduction,

OpCo may carry out any temporary repairs or other works it considers necessary (acting reasonably) to overcome the adverse effect (**Temporary Repairs**).
- (b) Before carrying out any Temporary Repairs, OpCo must provide TfNSW with:
 - (i) at least 24 hours prior written notice (or such shorter period of notice as TfNSW may agree);
 - (ii) the opportunity to inspect the alleged Civil Works Defect; and
 - (iii) a detailed report of the alleged Civil Works Defect (including photographs).
- (c) Within 3 Business Days of completing the Temporary Repairs (but no later than 10 Business Days of commencing the Temporary Repairs), OpCo must provide TfNSW with a detailed report of the Temporary Repairs undertaken.
- (d) OpCo must only carry out any Temporary Repairs that are strictly necessary to overcome the adverse effect referred to in clause 14.12(a).

14.13 Access by Civil Works Contractors

OpCo must provide each Civil Works Contractor (and any person authorised by a Civil Works Contractor) with such access to the NWRL Site as may be required by the Civil Works Contractor in order to meet its obligations under:

- (a) in the case of the SVC Contractor:
 - (i) the SVC Project Deed; and
 - (ii) the SVC - OTS Cooperation and Integration Deed; and
- (b) in the case of the TSC Contractor:
 - (i) the TSC Project Deed; and
 - (ii) the TSC - OTS Cooperation and Integration Deed,

including the rectification of any Civil Works Defects pursuant to clause 14.11(b), subject to each Civil Works Contractor complying with OpCo's site access and work, health and safety procedures in accordance with the SVC - OTS Cooperation and Integration Deed or the TSC - OTS Cooperation and Integration Deed (as applicable).

14.14 Civil Works Contractor to minimise disruption

TfNSW must ensure that each Civil Works Contractor carries out its activities on any part of the NWRL Site which OpCo is occupying pursuant to clauses 12.1 or 12.3 so as to minimise any disruption, interference or adverse impact (including OpCo incurring Loss) on or to, and without unreasonably disrupting or interfering with, or adversely impacting on, OpCo's Activities.

14.15 Compensation Events

- (a) Each of the following is a Compensation Event:
 - (i) TfNSW fails to comply with its obligation under clause 14.14;
 - (ii) the OTS Works, the Temporary Works, any part of the Civil Works during any period in which OpCo is responsible for the Civil Works in accordance with clause 14.10, the NWRL or the NWRL Site are damaged by a Civil Works Contractor;
 - (iii) the discovery of a Civil Works Defect in respect of which TfNSW has not directed a Modification as referred to in clause 14.11(b)(ii); and
 - (iv) a Civil Works Change, other than a Civil Works Change requested by OpCo pursuant to clause 14.4.
- (b) OpCo's entitlement to compensation in relation to a Compensation Event listed in clause 14.15(a) will be reduced to the extent that OpCo's non-compliance with:
 - (i) the Interface Management Plan;
 - (ii) the TSC-OTS Cooperation and Integration Deed;
 - (iii) the SVC-OTS Cooperation and Integration Deed; or

- (iv) its obligations under this deed in connection with the Civil Works Contractors, the Civil Works and any Civil Works Defects,

increased the length of any delay caused by the Compensation Event or increased the costs payable, or loss of revenue suffered, by OpCo as a result of the Compensation Event.

- (c) Subject to clauses 14.3, 14.11, 14.12, 14.15(a), 17, 26 and 27:
 - (i) TfNSW will not be liable upon any Claim by OpCo arising out of or in any way in connection with:
 - A. the Civil Works Contractors carrying out the Civil Works; or
 - B. any act or omission of a Civil Works Contractor; and
 - (ii) OpCo warrants that the Base Case Financial Model and the Delivery Program contain sufficient allowances for the assumption by OpCo of the obligations and risks under this clause 14, including the cost of all the design iterations required to accommodate the Civil Works.

14.16 TSC and SVC Equipment

TfNSW must:

- (a) procure that ownership of (or the right to use or other relevant property interest in) equipment listed in Exhibit A - Appendix 5 (including Appendix 5.1) of the SVC Project Deed and the TSC Project Deed (as such list may be amended for any Approved Civil Works Changes) (other than the equipment referred to in section 17 of SPR Appendix 6) is transferred to OpCo; and
 - (b) comply with its obligations under section 17 of SPR Appendix 6,
- at no cost to OpCo, on or before the relevant Site Access Date.

15. Construction

15.1 Construction obligations

- (a) OpCo must construct the OTS Works and the Temporary Works in accordance with:
 - (i) the SPR;
 - (ii) any Design Documentation which OpCo is entitled to use for construction purposes under clause 13.10(a);
 - (iii) any Modification Order or Modification Approval issued by TfNSW; and
 - (iv) the other requirements of this deed.
- (b) Subject to clause 8.7, OpCo must not commence any work upon the Construction Site:
 - (i) until each of the following Project Plans has been certified by the OTS Independent Certifier under clause 8.5:

- A. Project Management Plan;
- B. Quality Plan;
- C. Risk Management Plan;
- D. Safety Management Plan;
- E. Delivery Phase Sustainability Plan;
- F. Safety Accreditation Plan;
- G. Construction Management Plan;
- H. Incident Management Plan covering the Delivery Phase;
- I. Human Resources Plan; and
- J. Security Management Plan covering the Delivery Phase; and

(ii) until all Hold Points required to be released prior to commencement of work upon the Construction Site have been released in accordance with the requirements of this deed, including the Quality Plan.

- (c) OpCo must not commence construction of the WAD Works until the relevant preconditions to commencement of the WAD Works in the WAD have been satisfied.
- (d) OpCo must not commence construction of the Council Interface Works until the relevant preconditions to commencement of the Council Interface Works in the relevant Council Interface Agreement have been met.
- (e) OpCo accepts full responsibility for all construction means, methods and techniques used in the performance of the Delivery Activities.

15.2 Construction warranties

OpCo warrants that:

- (a) construction will be carried out in accordance with the Design Documentation which OpCo is entitled to use for construction purposes in accordance with clause 13.10(a);
- (b) construction carried out in accordance with the Design Documentation which OpCo is entitled to use in accordance with clause 13.10(a) will satisfy the requirements of this deed (except to the extent that TfNSW's design provided to OpCo by TfNSW under clause 6.1(d)(v) of Schedule 3 is not fit for purpose or not compliant with SPR Appendix 5);
- (c) the OTS Works and the Temporary Works will be completed in accordance with, and satisfy the requirements of, this deed (except to the extent that TfNSW's design provided to OpCo by TfNSW under clause 6.1(d)(v) of Schedule 3 is not fit for purpose or not compliant with SPR Appendix 5); and
- (d) the OTS Works will, upon Completion, from Completion to Final Completion, upon Final Completion, and thereafter at all relevant times during the Term, be safe and fit for their intended purposes (except to the extent that TfNSW's design provided to OpCo by TfNSW under clause 6.1(d)(v) of Schedule 3 is not fit for purpose or not compliant with SPR Appendix 5).

16. Quality

OpCo must, in performing OpCo's Activities:

- (a) use workmanship:
 - (i) of:
 - A. the standard set out in the SPR; or
 - B. to the extent it is not so set out, a standard consistent with Good Industry Practice for work of a similar nature to the applicable OpCo Activities; and
 - (ii) which is fit for its intended purpose; and
- (b) use Materials:
 - (i) which:
 - A. comply with the requirements of the SPR; or
 - B. if not fully described in the SPR, are consistent with the Good Industry Practice for work of a similar nature to the applicable OpCo Activities; and
 - (ii) which:
 - A. are free from defects and other imperfections; and
 - B. are safe and fit for their intended purpose.

17. Time

17.1 Commencement

OpCo must promptly commence performance of the Delivery Activities following Financial Close.

17.2 Dates for Completion

- (a) OpCo must:
 - (i) use its best endeavours to:
 - A. achieve Completion by the Date for Completion; and
 - B. achieve Final Completion as soon as practicable after the Date of Completion; and
 - C. without limiting clauses 17.2(a)(i)A or 17.2(a)(i)B, achieve Final Completion by the day that is 185 calendar days after the Date of Completion; and
 - (ii) consistent with its obligations under clause 17.2(a)(i), expeditiously and diligently progress the Delivery Activities.
- (b) Subject to clause 17.2(c), OpCo must not achieve Completion earlier than the Original Date for Completion unless TfNSW agrees otherwise.

- (c) OpCo may achieve Completion earlier than the Original Date for Completion if the Date of Completion falls within the same financial year as the Original Date for Completion.

17.3 Delivery Program

- (a) The initial Delivery Program is contained in Exhibit 4.
- (b) OpCo must:
 - (i) prepare the Delivery Program in accordance with the NWRL Programming Protocol, which must:
 - A. be based upon the Initial Delivery Program; and
 - B. contain details required by the NWRL Programming Protocol;
 - (ii) update the Delivery Program periodically at intervals no less than monthly to take account of:
 - A. changes to the program;
 - B. delays which have occurred; and
 - C. any corrective action plan submitted by OpCo under clause 17.5 for which TfNSW does not issue any comments under clause 17.6(b);
 - (iii) ensure that each update of the Delivery Program contains the details required by the SPR and any other details which TfNSW's Representative reasonably directs;
 - (iv) explain any changes to the critical path in the Delivery Program;
 - (v) ensure that each update of the Delivery Program makes allowance for the Project Plans and Design Documentation to be submitted to the OTS Independent Certifier in a manner and at a rate which will give the OTS Independent Certifier a reasonable opportunity to review the submitted Project Plans or Design Documentation within the 20 Business Day period referred to in clause 8.5 or the periods referred to in clause 13 (as the case may be); and
 - (vi) give the OTS Independent Certifier copies of each update of the Delivery Program for its review.
- (c) Nothing in the Delivery Program will bind TfNSW or otherwise affect the time for the performance of TfNSW's obligations under this deed.

17.4 Acceleration by OpCo

If OpCo chooses to accelerate progress of the Delivery Activities then:

- (a) TfNSW may assist OpCo but will not be obliged to take any action to assist or enable OpCo to achieve Completion before the Date for Completion;
- (b) the time for the performance of TfNSW's or TfNSW's Representative's obligations will not be affected; and

- (c) OpCo will not be entitled to make any Claim against TfNSW in relation to such acceleration (or any failure or inability by OpCo or TfNSW to accelerate).

17.5 Delays

- (a) Without limiting OpCo's obligations under clause 17.8, if OpCo becomes aware of any matter which will, or is likely to, give rise to a delay in providing the First Passenger Service (other than a Relief Event or a Modification), OpCo must give TfNSW:
 - (i) a notice setting out detailed particulars of the delay; and
 - (ii) a detailed corrective action plan in accordance with clause 17.6,in each case as soon as reasonably practicable.
- (b) If TfNSW reasonably believes that OpCo will be delayed in providing the First Passenger Service, other than as a result of a Relief Event or a Modification, TfNSW may give notice to that effect to OpCo, and OpCo must then give TfNSW a detailed corrective action plan in accordance with clause 17.6.
- (c) OpCo must take all reasonable steps to:
 - (i) prevent the cause of any delay to the Delivery Activities; and
 - (ii) avoid or minimise the consequences or duration of any delay,including any delay arising from a Relief Event or a Modification, provided OpCo is not required to incur any additional expense or apply any additional resources in order to comply with its obligations under this clause 17.5(c).

17.6 Corrective action plan

- (a) Each corrective action plan which OpCo must provide pursuant to clause 17.5 must show how OpCo proposes to avoid, mitigate or minimise the consequences of the delay consistent with its obligations under clause 17.2 and be provided together with a proposed updated Delivery Program.
- (b) TfNSW may, within 20 Business Days of receipt of a corrective action plan reject the corrective action plan (with detailed reasons) if the corrective action plan does not comply with the requirements of clause 17.6(a).
- (c) If TfNSW rejects the corrective action plan under clause 17.6(b), OpCo must amend and resubmit the corrective action plan to TfNSW, after which clause 17.6(b) and this clause 17.6(c) will re-apply.
- (d) OpCo must comply with any corrective action plan which is not rejected under clause 17.6(b).
- (e) OpCo will not be relieved of any liability or responsibility under this deed or otherwise at law arising out of or in connection with:
 - (i) any notice given by TfNSW under clause 17.6(b); or
 - (ii) the implementation of any corrective action plan.

- (f) OpCo will not be entitled to make any Claim against TfNSW arising out of or in connection with any notice by TfNSW under clause 17.6(b) or any Loss suffered or incurred by OpCo in preparing, or complying with, a corrective action plan.

17.7 Delays entitling claim

If a Relief Event delays or will delay OpCo in achieving Completion, OpCo may make a Claim under clause 17.8.

17.8 Claim for extension of time

If OpCo wishes to make a Claim under this clause it must:

- (a) within 20 Business Days after the date OpCo first became aware of a Relief Event which delays or will delay OpCo in achieving Completion, submit a written claim for an extension to the Date for Completion to TfNSW's Representative which:
 - (i) contains detailed particulars of the Relief Event causing the delay and the parts of the Delivery Activities that have been delayed;
 - (ii) contains detailed particulars of the delay caused by the Relief Event;
 - (iii) states the number of days extension of time to the Date for Completion claimed, together with the basis of calculating the total number of days claimed, including evidence that it will be delayed in achieving Completion; and
 - (iv) where the claim is for an extension of time to the Date for Completion and the Relief Event is a Compensation Event, contains details of the Net Financial Impact arising from the Compensation Event to which it believes it will be entitled, including any additional Net Financial Impact which may be payable if TfNSW exercises its discretion under clause 17.10(e); and
- (b) if the effects of the delay continue beyond the period of 20 Business Days after the commencement of the Relief Event causing the delay and OpCo wishes to claim an extension of time to the Date for Completion in respect of the further delay, submit a further written claim to TfNSW's Representative:
 - (i) every 20 Business Days after the first written claim until 10 Business Days after the Relief Event ceases to cause the delay; and
 - (ii) containing the information required by clause 17.8(a).

TfNSW's Representative may, within 10 Business Days of receiving OpCo's claim or further claim for an extension of time to the Date for Completion, by written notice to OpCo, request additional information in relation to the claim or further claim. OpCo must, within 10 Business Days of receiving such request, provide TfNSW's Representative with the information requested.

17.9 Conditions precedent to extension

It is a condition precedent to OpCo's entitlement to an extension of time to the Date for Completion that:

- (a) OpCo has submitted the written claim or claims required by clause 17.8;

- (b) the cause of the delay was beyond the reasonable control of OpCo and OpCo's Contractors;
- (c) OpCo has been, or will be, delayed in achieving Completion by the Relief Event described in the claim.

17.10 Grant of extension of time

- (a) Subject to clauses 17.10(c) and 17.10(e), if the conditions precedent in clause 17.9 have been satisfied, the Date for Completion will be extended by a reasonable period determined by TfNSW's Representative and notified to OpCo within 20 Business Days after the latter of:
 - (i) receipt of the last written claim under clause 17.8; or
 - (ii) provision by OpCo of any additional information requested by TfNSW's Representative under clause 17.8.

If there is an extension of time to the Date for Completion under this clause 17.10(a), there will be a corresponding extension to the Site Access Expiry Date for any affected part of the Construction Site.

- (b) In determining any extension of time, TfNSW's Representative will not be bound by the Delivery Program or any Delivery Phase Progress Report.
- (c) TfNSW's Representative will reduce any extension to the Date for Completion that it would have otherwise granted to OpCo under clause 17.10(a) to the extent that OpCo contributed to the delay or has not taken all proper and reasonable steps to prevent the cause of the delay and to avoid or minimise the consequences or duration of the delay in accordance with clause 17.5(c).
- (d) If the Date for Completion is extended pursuant to clause 17.10(a) and the relevant Relief Event for which the extension was granted is a Compensation Event, OpCo may make a claim for compensation in accordance with clause 26 in respect of the Net Financial Impact of the period of time for which the extension of time was granted.
- (e) TfNSW may, in its absolute discretion, by notice to OpCo, in lieu of granting an extension of time to the Date for Completion under clause 17.10(a), elect to compensate OpCo in accordance with Schedule 29 for the negative Net Financial Impact which will be incurred by OpCo arising from not granting OpCo an extension of time to the Date for Completion for the period of time for which the Date for Completion was otherwise to be extended.
- (f) If TfNSW exercises its discretion under clause 17.10(e) not to grant an extension of time to the Date for Completion, the Longstop Date and, where applicable, the Site Access Expiry Date for any affected part of the Construction Site will nonetheless be extended by the period of time for which the Date for Completion was otherwise to be extended.

17.10A Extension to Site Access Expiry Date

- (a) If a Relief Event:
 - (i) causes or will cause OpCo to require access to part of the Construction Site after the Site Access Expiry Date for that part of the Construction Site; and

- (ii) will not delay OpCo in achieving Completion,
OpCo may make a claim under this clause 17.10A.
- (b) If OpCo wishes to make a Claim under this clause 17.10A, it must:
 - (i) within 20 Business Days after the date OpCo first became aware of a Relief Event which causes or will cause OpCo to require access to part of the Construction Site after the Site Access Expiry Date for that part of the Construction Site, submit a written claim for an extension to the Site Access Expiry Date, which:
 - A. contains detailed particulars of the Relief Event, the delay and the Delivery Activities that have been delayed; and
 - B. states the number of days extension of time to the Site Access Expiry Date, together with a basis for calculating the total number of days claimed; and
 - (ii) if the effects of the delay continue beyond the period of 20 Business Days after the Relief Event and OpCo wishes to claim an extension to the Site Access Expiry Date in respect of the further delay, submit an updated Claim to TfNSW containing the information required by clause 17.10A(b)(i) promptly.
- (c) If OpCo satisfies the requirements of this clause 17.10A, the relevant Site Access Expiry Date will be extended by a reasonable period determined by TfNSW's Representative and notified to OpCo within 20 Business Days of receipt of the last written claim under clause 17.10A(b).
- (d) TfNSW will reduce any extension to the relevant Site Access Expiry Date that it would otherwise have granted to OpCo under clause 17.10A(c) to the extent that OpCo contributed to the delay or has not taken all proper and reasonable steps to prevent the cause of the delay and to avoid or minimise the consequences or duration of the delay in accordance with clause 17.5(c).

17.11 Unilateral extension

Where OpCo has been delayed in achieving Completion by a breach of contract by TfNSW, TfNSW's Representative may, whether or not OpCo has made a claim under clause 17.8, in its absolute discretion at any time, from time to time, unilaterally issue a notice under clause 17.10(a) to OpCo extending the Date for Completion by the period specified in the notice to OpCo.

17.12 Concurrent delays

OpCo is not entitled to make a Claim under clause 17.8 for an extension of time in respect of a delay to Completion caused by a Relief Event to the extent that the delay is contemporaneous with a delay to Completion caused by an event which is not a Relief Event.

17.13 Delivery Phase Progress Reports

In addition to OpCo's obligations under clauses 17.5 and 17.6, OpCo must give TfNSW a Delivery Phase Progress Report containing the details required by the SPR each month during the Delivery Phase.

18. Testing and Commissioning

18.1 Testing and Commissioning Plan

OpCo must carry out the Tests in accordance with the Testing and Commissioning Plan.

18.2 Test Procedures

- (a) For each Test, OpCo must:
- (i) prepare a Test Procedure which complies with clause 2.3 of SPR Appendix 56; and
 - (ii) submit the Test Procedure to the OTS Independent Certifier and TfNSW's Representative at least 60 Business Days prior to the date on which OpCo proposes to conduct the Test.
- (b) TfNSW's Representative may (but is not obliged to):
- (i) review any Test Procedure submitted under this clause 18.2; and
 - (ii) notify the OTS Independent Certifier in writing (with a copy to OpCo) of any comments which TfNSW has in respect of the Test Procedure,
- within the 15 Business Days of the date on which it is submitted to TfNSW's Representative.
- (c) The OTS Independent Certifier must, within 20 Business Days of the date on which it receives the Test Procedure under this clause 18.2:
- (i) review each Test Procedure and, in doing so, must consider any comments received from TfNSW's Representative under clause 18.2(b)(ii); and
 - (ii) determine whether such Test Procedure complies with the requirements of this deed and either:
 - A. if the OTS Independent Certifier considers that the Test Procedure does not comply with the requirements of this deed (minor errors and omissions excepted), notify OpCo and TfNSW of the non-compliances (with detailed reasons); or
 - B. certify the Test Procedure by providing to OpCo and TfNSW's Representative a certificate in the form of Schedule 14.
- (d) If OpCo receives a notice in accordance with clause 18.2(c)(ii)A OpCo must submit a revised Test Procedure to the OTS Independent Certifier whereupon the provisions of this clause 18.2 (other than clause 18.2(a)(ii)) will reapply to the revised Test Procedure.
- (e) OpCo may not conduct a Test until the Test Procedure for that Test has been certified by the OTS Independent Certifier.
- (f) OpCo may update any Test Procedure whereupon this clause 18.2 (other than clause 18.2(a)(ii)) will reapply.

- (g) The OTS Independent Certifier must, within 5 Business Days of:
 - (i) giving a notice under clause 18.2(c)(ii)A, to the extent that the OTS Independent Certifier did not include in its notice to OpCo any comments received from TfNSW under clause 18.2(b)(ii) regarding non-compliances in OpCo's Test Procedure, provide TfNSW with detailed written reasons of why it did not include such comments; and
 - (ii) certifying a Test Procedure under clause 18.2(c)(ii)B, to the extent that the OTS Independent Certifier received comments from TfNSW under clause 18.2(b)(ii) regarding non-compliances in OpCo's Test Procedure, provide TfNSW with detailed written reasons of why it certified the Test Procedure despite TfNSW's comments.
- (h) If the certificate provided by the OTS Independent Certifier pursuant to clause 18.2(c)(ii)B lists any minor errors or omissions:
 - (i) the OTS Independent Certifier may, in the certificate, recommend the action that could be taken by OpCo to address the minor error or omission; and
 - (ii) OpCo must complete the recommended action, or take any other action OpCo deems reasonable in the circumstances to correct the minor error or omission to the extent required for the Test Procedure to comply with this deed, within the time frame (if any) specified by the OTS Independent Certifier.

18.3 Notice of Tests

- (a) OpCo must give the OTS Independent Certifier and TfNSW at least 20 Business Days' notice of the date, time and place of each Test.
- (b) OpCo may postpone a Test in respect of which it has given the OTS Independent Certifier notice in accordance with clause 18.3(a).
- (c) If OpCo postpones a Test in accordance with clause 18.3(b), OpCo must give TfNSW and the OTS Independent Certifier at least 5 Business Days' notice of the rescheduled date, time and place of that Test.
- (d) OpCo must give the OTS Independent Certifier and TfNSW:
 - (i) a Test Program that specifies the date, time and place of each Test to be conducted for the following 25 Business Day period (**Test Program**); and
 - (ii) an updated Test Program each week during the period that OpCo is carrying out Tests.
- (e) Unless otherwise agreed by TfNSW's Representative, OpCo will be deemed to have failed a Test if it fails to give the OTS Independent Certifier and TfNSW the required notice of when the Test will be conducted.

18.4 Conduct of Tests

- (a) OpCo must conduct all Tests in accordance with:

- (i) the relevant Test Procedure, as certified by the OTS Independent Certifier in accordance with clause 18.2; and
 - (ii) the other requirements of this deed (including section 6.6 of the SPR).
- (b) TfNSW and the OTS Independent Certifier may (but are not obliged to) attend and witness the conduct of all Tests.

18.5 Test Reports

- (a) OpCo must, within 10 Business Days of carrying out a Test, submit a Test Report to the OTS Independent Certifier and TfNSW for that Test, irrespective of the result of the Test.
- (b) Each Test Report must comply with and be submitted in accordance with the requirements of SPR Appendix 56.
- (c) The OTS Independent Certifier must, within 10 Business Days of the date on which it receives the Test Report, determine whether or not the Test has been passed or failed and either :
 - (i) certify that the Test has been passed in accordance with the Test Procedure by issuing a certificate in the form of Schedule 15; or
 - (ii) notify OpCo and TfNSW that:
 - A. the Test has been failed; and/or
 - B. the Test Report does not comply with the requirements of this deed,

(minor errors and omission excepted).
- (d) If the certificate provided by the OTS Independent Certifier pursuant to clause 18.5(c)(i) lists any minor errors or omissions:
 - (i) the OTS Independent Certifier may, in the certificate, recommend the action that could be taken by OpCo to address the minor error or omission; and
 - (ii) OpCo must complete the recommended action, or take any other action OpCo deems reasonable in the circumstances to correct the minor error or omission to the extent required for the Test Report to comply with this deed, within the time frame (if any) specified by the OTS Independent Certifier.

18.6 Failure of Test

If the OTS Independent Certifier notifies OpCo that a Test has been failed (or that a Test has been failed and the Test Report is non-compliant), OpCo must:

- (a) carry out all necessary rectification work; and
- (b) when it believes it has completed all necessary rectification work, give a further notice in accordance with clause 18.3(a) whereupon clauses 18.4 and 18.5 will re-apply.

18.7 Non-compliant Test Report

If the OTS Independent Certifier notifies OpCo that a Test Report is non-compliant (minor errors and omission excepted), OpCo must amend and re-submit the Test Report whereupon clause 18.5 will re-apply.

18.8 Additional testing by TfNSW

- (a) TfNSW's Representative may carry out, or direct OpCo to carry out, additional tests in respect of the OTS Works and the NWRL. TfNSW's Representative must give OpCo and the OTS Independent Certifier reasonable prior notice of these tests (being at least 24 hours). OpCo must provide all reasonable assistance required by TfNSW's Representative and the OTS Independent Certifier in relation to these tests.
- (b) TfNSW's Representative may, in relation to these tests, direct that any part of the OTS Works not be covered up or made inaccessible for a period of not more than 5 Business Days without TfNSW's Representative's prior written approval.
- (c) If TfNSW carries out, or directs OpCo to carry out, tests pursuant to this clause 18.8, a Compensation Event will occur unless:
 - (i) the results of the test show:
 - A. the work is not in accordance with this deed (other than a Minor Defect); or
 - B. that there is a Defect in respect of the work tested (other than a Civil Works Defect in respect of which TfNSW has not directed a Modification as referred to in clause 14.11(b)(ii) or a Minor Defect);
 - (ii) the test is in respect of work covered up or made inaccessible without the prior written approval of TfNSW's Representative where such was required; or
 - (iii) the test is upon work undertaken to correct or overcome a Defect (other than a Civil Works Defect in respect of which TfNSW has not directed a Modification as referred to in clause 14.11(b)(ii) or a Minor Defect),

in which event a Compensation Event will not occur and any reasonable costs incurred by TfNSW in connection with these tests will be a debt due and payable from OpCo to TfNSW.
- (d) Results of tests carried out by OpCo under this clause 18.8 must be submitted to TfNSW in accordance with clause 18.5.

19. First Passenger Service, Completion and Final Completion

19.1 Requirements for First Passenger Service

The following requirements must be satisfied before OpCo provides the First Passenger Service:

- (a) **(Works are complete):** the OTS Works are complete and comply with the requirements of this deed, except for Minor Defects;

- (b) **(Third Party Works):** OpCo has:
- (i) completed all Third Party Works in accordance with clauses 19.5, 19.6 and 19.7, except for Minor Defects; and
 - (ii) provided TfNSW's Representative with the written notices, statements or certificates (as the case may be) referred to in clauses 19.5(d), 19.6(a) and 19.7(a),
- and the OTS Independent Certifier has provided TfNSW's Representative with the certificates referred to in clause 19.5(d)(i).
- (c) **(Conditions of Planning Approvals):** OpCo has:
- (i) fulfilled all conditions of the Planning Approvals and implemented all mitigation measures which OpCo must fulfil or implement prior to commencement of operations; and
 - (ii) complied with all obligations imposed on OpCo under Schedule 5 in respect of any conditions of the Planning Approvals and mitigation measures which must be fulfilled or implemented prior to commencement of operations;
- (d) **(Approvals):** OpCo has provided the OTS Independent Certifier and TfNSW's Representative with copies of all Approvals which this deed requires OpCo to obtain (or contemplates OpCo will obtain) prior to First Passenger Service (including any variation required to OpCo's or a Core Contractor's Accreditation);
- (e) **(Certifications):** OpCo has provided the OTS Independent Certifier and TfNSW's Representative with a certificate in the form of Schedule 17:
- (i) from each Designer certifying that the OTS Works (other than the OpCo ECRL Works described in sections 3.3, 3.4.1 and 3.4.2 of SPR Appendix 25) have been constructed in accordance with the Design Documentation which OpCo is entitled to use for construction purposes under clause 13.10(a), except for Minor Defects;
 - (ii) from OpCo certifying that the OTS Works comply with all the requirements of this deed (including the SPR), except for Minor Defects; and
 - (iii) from the O&M Contractor certifying that the OTS Works are acceptable;
- (f) **(Tests):** the OTS Independent Certifier has certified that the OTS Works have passed the Tests referred to in sections 3.8.2 (System Performance Test) of SPR Appendix 56;
- (g) **(Service Payment Monitoring System):** the Service Payment Monitoring System is operational;
- (h) **(Asset Management System):** OpCo has developed and implemented an Asset Management System that complies with the requirements of section 8.2 of the SPR;
- (i) **(SPR):** the conditions precedent to First Passenger Service set out in section 6.8 of the SPR have been satisfied; and

- (j) **(Everything else):** OpCo has done everything else which this deed requires it to have done as a condition precedent or precondition to the First Passenger Service.

19.2 Notice of First Passenger Service

OpCo must give the OTS Independent Certifier:

- (a) at least 5 Business Days' notice of the date on which it expects to satisfy the requirements for the First Passenger Service referred to in clause 19.1; and
- (b) a written request for a Certificate of Readiness for First Passenger Service when it believes it has satisfied the requirements for the First Passenger Service referred to in clause 19.1 (which request must not be given earlier than 5 Business Days after the date on which OpCo gives notice under clause 19.2(a)).

19.3 Certification of Readiness for First Passenger Service

- (a) Within 5 Business Days of receipt of the request under clause 19.2(b), the OTS Independent Certifier must determine whether or not the requirements for the First Passenger Service referred to in clause 19.1 have been satisfied and either:
 - (i) if the requirements for the First Passenger Service referred to in clause 19.1 have been satisfied, issue a Certificate of Readiness for First Passenger Service to OpCo and TfNSW; or
 - (ii) if the requirements for the First Passenger Service have not been satisfied, issue a notice to OpCo and TfNSW which:
 - A. lists the items which remain to be completed to satisfy the requirements for the First Passenger Service; or
 - B. states that OpCo is so far from satisfying the requirements for the First Passenger Service that it is not practicable to provide the list referred to in clause 19.3(a)(ii)A.
- (b) If the OTS Independent Certifier issues a notice under clause 19.3(a)(ii), OpCo must continue with the Delivery Activities to satisfy the requirements for the First Passenger Service and clause 19.2 and this clause 19.3 will reapply.

19.4 Requirements for Completion

Completion will be achieved when:

- (a) **(First Passenger Service):** The OTS Independent Certifier has issued a Certificate of Readiness for First Passenger Service to OpCo and TfNSW;
- (b) **(Certifications):** OpCo has provided the OTS Independent Certifier and TfNSW's Representative with a certificate in the form of Schedule 17A:
 - (i) from each Designer re-certifying that the OTS Works (other than the OpCo ECRL Works described in sections 3.3, 3.4.1 and 3.4.2 of SPR Appendix 25) have been constructed in accordance with the Design Documentation which OpCo is entitled to use for construction purposes under clause 13.10(a), except for Minor Defects;

- (ii) from OpCo re-certifying that the OTS Works comply with all the requirements of this deed (including the SPR), except for Minor Defects; and
- (iii) from the O&M Contractor re-certifying that the OTS Works are acceptable;
- (c) **(Transfer of Moveable Assets)** OpCo has ensured that ownership of Moveable Assets (other than the Hired Moveable Assets) has transferred to TfNSW in accordance with clause 51.2; and
- (d) **(Everything else):** OpCo has done everything else which this deed requires it to have done as a condition precedent or precondition to Completion.

19.5 Local Area Works

- (a) **(Area by area assessment):** The completion of the Local Area Works will be assessed on an area by area basis.
- (b) **(Notice and joint inspection):** When OpCo considers that a discrete part of the Local Area Works is complete, it must:
 - (i) subject to clauses 19.5(b)(ii) and 19.5(b)(iii), notify the OTS Independent Certifier in writing and TfNSW's Representative, the OTS Independent Certifier and the representative of any relevant Authority must jointly inspect the relevant Local Area Works at a mutually convenient time within 5 Business Days of such notice;
 - (ii) to the extent that the discrete part of the Local Area Works constitutes WAD Road Works, follow the procedures in the WAD in relation to WAD Practical Completion of the WAD Road Works; and
 - (iii) to the extent that the discrete part of the Local Area Works constitutes Council Road Works, follow the procedures in the relevant Council Interface Agreement in relation to Council Road Works Practical Completion.
- (c) **(OTS Independent Certifier to determine completion):** Following the joint inspection under clause 19.5(b) and subject to clause 19.5(d), the OTS Independent Certifier must determine whether the discrete part of the Local Area Works has been completed in accordance with this deed and the WAD (if applicable) or the relevant Council Interface Agreement (if applicable) and must, within 5 Business Days of the date of the inspection either:
 - (i) if the discrete part is complete, execute and provide a certificate in the form of Schedule 18 to TfNSW's Representative and OpCo stating the date on which OpCo has completed the discrete part of the Local Area Works in accordance with this deed, which, subject to clause 19.5(f), will be the relevant date for the purposes of clause 19.5(g)(i); or
 - (ii) if the discrete part is not complete, notify OpCo and TfNSW in writing of the items which remain to be completed (after which the procedure in clauses 19.5(b) and 19.5(c) will reapply).
- (d) **(Preconditions to completion):** Each discrete part of the Local Area Works will not be regarded as complete unless:

- (i) the OTS Independent Certifier has executed and provided to TfNSW's Representative a certificate in the form of Schedule 18 with respect to the discrete part of the Local Area Works;
- (ii) OpCo has provided to TfNSW's Representative:
 - A. a written notice from each Authority with jurisdiction over the discrete part stating that the Authority is satisfied that the discrete part is complete; or
 - B. if OpCo is unable to obtain a notice required under clause 19.5(d)(ii)A despite having used its best endeavours to do so, a statement from OpCo to the effect that:
 - 1) the discrete part of the Local Area Works is complete and OpCo has notified the relevant Authority of this matter; and
 - 2) the relevant Authority has failed or refused to provide the written notice required under clause 19.5(d)(ii)A despite being given 15 Business Days to provide the notice requested by OpCo;
- (iii) to the extent that the discrete part of the Local Area Works constitutes WAD Road Works, the Local Area Works have achieved WAD Practical Completion and the OTS Independent Certifier has executed and provided to TfNSW's Representative and RMS a certificate in the form of Schedule 4 of the WAD with respect to the discrete part of the Local Area Works; and
- (iv) to the extent that the discrete part of the Local Area Works constitutes Council Road Works, the Local Area Works have achieved Council Road Works Practical Completion and the OTS Independent Certifier has executed and provided to TfNSW's Representative and the relevant Council a certificate in the form of Schedule 3 of the relevant Council Interface Agreement with respect to the discrete part of the Local Area Works.
- (e) **(Precondition to First Passenger Service):** It is a condition precedent to First Passenger Service that the certificates, written notices and/or statements required under clause 19.5(d) have been provided to TfNSW's Representative for each discrete part of the Local Area Works.
- (f) **(No approval):** The acceptance by TfNSW's Representative of a certificate, notice and/ or statement provided by OpCo under clause 19.5(d) is not approval by TfNSW of OpCo's performance of its obligations with respect to the discrete part of the Local Area Works.
- (g) **(Defects Correction Period):** Each discrete part of the Local Area Works has:
 - (i) a Defects Correction Period of 12 months, which begins when the relevant works are complete (being the date notified under clause 19.5(c)(i)); and
 - (ii) a further Defects Correction Period of 12 months in respect of any work the subject of a direction under clause 19.5(h) (relating to the discrete

part of the Local Area Works) during the Defects Correction Period, which begins on the date of the correction of the Defect (or part of it) or completion of the Modification,

provided that the aggregate of the initial Defects Correction Period and any further Defects Correction Period for each discrete part of the Local Area Works, will in no circumstances exceed 24 months.

- (h) **(Correction of Defects):** If, during the relevant Defects Correction Period, TfNSW considers (or is notified by the relevant Authority) that there is a Defect (other than a Civil Works Defect in respect of which TfNSW has not directed a Modification as referred to in clause 14.11(b)(ii)) in respect of any Local Area Works, TfNSW may give OpCo a direction (with a copy to the relevant Authority) identifying the Defect and doing one or more of the following:
- (i) requiring OpCo to correct the Defect or a part of it, specifying the reasonable time within which this must occur;
 - (ii) to the extent that the Defect or a part of it cannot be corrected, requiring OpCo to carry out a Modification to overcome the Defect or that part of it, at OpCo's cost, specifying the reasonable time within which this must be carried out; or
 - (iii) advising OpCo that TfNSW will accept the work or part of it despite the Defect.

19.6 Utility Service Works

- (a) **(Preconditions to completion):** Each discrete part of the Utility Services Works will not be regarded as complete unless OpCo has provided to TfNSW's Representative:
- (i) a written notice from the Authority which has jurisdiction over the discrete part stating that the Authority is satisfied that the discrete part is complete; or
 - (ii) if OpCo is unable to obtain a notice required under clause 19.6(a)(i) despite having used its best endeavours to do so, a statement from OpCo to the effect that:
 - A. the discrete part of the Utility Services Works is complete and OpCo has notified the relevant Authority of this matter; and
 - B. the relevant Authority has failed or refused to provide the written notice required under clause 19.6(a)(i) despite being given 15 Business Days to provide the notice requested by OpCo.
- (b) **(Precondition to First Passenger Service):** It is a condition precedent to First Passenger Service that the written notice or statement required under clause 19.6(a) has been provided to TfNSW's Representative for each discrete part of the Utility Service Works.
- (c) **(No approval):** The acceptance by TfNSW's Representative of a notice or statement provided by OpCo under clause 19.6(a) is not approval by TfNSW of

OpCo's performance of its obligations with respect to the discrete part of the Utility Services Works.

- (d) **(Defects Correction Period):** Each discrete part of the Utility Service Works has:
- (i) a Defects Correction Period of 12 months, which begins when the written notice or statement required under clause 19.6(a) has been provided to TfNSW's Representative for that discrete part; and
 - (ii) a further Defects Correction Period of 12 months in respect of any work the subject of a direction under clause 19.6(e) (relating to the discrete part of the Utility Service Works) during the Defects Correction Period, which begins:
 - A. when the relevant Utility Service Authority gives written notice that the Defect (or the part of it) has been corrected and TfNSW's Representative has been provided with a copy of the notice; or
 - B. if the relevant Utility Service Authority fails or refuses to give the notice required under clause 19.6(d)(ii)A, when TfNSW's Representative determines that the Defect (or the part of it) has been corrected or the Modification completed,provided that the aggregate of the initial Defects Correction Period and any further Defects Correction Period for each discrete part of the Utility Service Works, will in no circumstances exceed 24 months.
- (e) **(Correction of Defects):** If, during the relevant Defects Correction Period, TfNSW considers (or is notified by the relevant Utility Service Authority) that there is a Defect (other than a Civil Works Defect in respect of which TfNSW has not directed a Modification as referred to in clause 14.11(b)(ii)) in respect of any Utility Service Work, TfNSW may give OpCo a direction (with a copy to the relevant Utility Service Authority) identifying the Defect and doing one or more of the following:
- (i) requiring OpCo to correct the Defect or a part of it, specifying the reasonable time within which this must occur;
 - (ii) to the extent that the Defect or a part of it cannot be corrected, requiring OpCo to carry out a Modification to overcome the Defect or that part of it, at OpCo's cost, specifying the reasonable time within which this must be carried out; or
 - (iii) advising OpCo that TfNSW will accept the work or part of it despite the Defect.

19.7 Property Works

- (a) **(Preconditions to completion):** Each discrete part of the Property Works will not be regarded as complete unless OpCo has provided to TfNSW's Representative:
- (i) a certificate in the form of Schedule 19, duly executed by the owner or owners of any part of the Unowned Parcel; or
 - (ii) a statement signed by OpCo to the effect that such owner or owners have failed or refused to sign a certificate in the form of Schedule 19 within

15 Business Days of it being provided by OpCo to the owner or owners following completion of the Property Works including the work described in clause 12.2(d).

- (b) **(Precondition to First Passenger Service):** It is a condition precedent to First Passenger Service that the certificate or statement required under clause 19.7(a) has been provided to TfNSW's Representative for each discrete part of the Property Works.
- (c) **(Indemnity):** OpCo must indemnify TfNSW against any Loss suffered by TfNSW arising out of or in any way in connection with a claim by the owner or owners of any part of an Unowned Parcel where:
 - (i) such owner or owners have not duly signed a certificate in the form of Schedule 19; and
 - (ii) the claim arises out of or in any way in connection with the carrying out of the Property Works.
- (d) **(No approval):** The acceptance by TfNSW's Representative of a certificate or statement provided by OpCo under clause 19.7(a) is not approval by TfNSW of OpCo's performance of its obligations with respect to the discrete part of the Property Works.
- (e) **(Defects Correction Period):** Each discrete part of the Property Works has:
 - (i) a Defects Correction Period of 12 months, which begins when the certificate or statement required under clause 19.7(a) has been provided to TfNSW's Representative for that discrete part; and
 - (ii) a further Defects Correction Period of 12 months in respect of any work the subject of a direction under clause 19.7(f) (relating to the discrete part of the Property Works) during the Defects Correction Period, which begins on the date of correction of the Defect (or the part of it) or completion of the Modification,provided that the aggregate of the initial Defects Correction Period and any further Defects Correction Period for each discrete part of the Property Works, will in no circumstances exceed 24 months.
- (f) **(Correction of Defects):** If, during the relevant Defects Correction Period, TfNSW considers (or is notified by the relevant property owner) that there is a Defect (other than a Civil Works Defect in respect of which TfNSW has not directed a Modification as referred to in clause 14.11(b)(ii)) in respect of any Property Works, TfNSW may give OpCo a direction (with a copy to the relevant Authority) identifying the Defect and doing one or more of the following:
 - (i) requiring OpCo to correct the Defect or a part of it, specifying the reasonable time within which this must occur;
 - (ii) to the extent that the Defect or a part of it cannot be corrected, requiring OpCo to carry out a Modification to overcome the Defect or that part of it, at OpCo's cost, specifying the reasonable time within which this must be carried out; or
 - (iii) advising OpCo that TfNSW will accept the work or part of it despite the Defect.

19.8 Not used

19.9 Notice of Completion

OpCo must give the OTS Independent Certifier:

- (a) at least 5 Business Days' notice of the date on which it expects to achieve Completion; and
- (b) a written request for a Certificate of Completion when it believes Completion has been achieved (which request must not be given earlier than 5 Business Days after the date on which OpCo gives notice under clause 19.9(a)).

19.10 Certification of Completion

- (a) Within 1 Business Day of receipt of the request under clause 19.9(b), the OTS Independent Certifier must determine whether Completion has been achieved and either:
 - (i) if Completion has been achieved, issue a Certificate of Completion to OpCo and TfNSW:
 - A. stating as the Date of Completion, the date on which Completion was achieved; and
 - B. specifying any Minor Defects; or
 - (ii) if Completion has not been achieved, issue a notice to OpCo and TfNSW which:
 - A. lists the items which remain to be completed before Completion; or
 - B. states that the OTS Works are so far from achieving Completion that it is not practicable to provide the list referred to in clause 19.10(a)(ii)A.
- (b) If the OTS Independent Certifier issues a notice under clause 19.10(a)(ii), OpCo must continue with the Delivery Activities to achieve Completion and clause 19.9 and 19.10 will reapply.

19.11 Not used

19.12 Final Completion

- (a) **(OpCo to achieve Final Completion):** Immediately after the Date of Completion, OpCo must expeditiously and diligently progress the Delivery Activities required to achieve Final Completion.
- (b) **(Requirements for Final Completion):** Final Completion will be achieved when:
 - (i) **(Minor Defects):** the Minor Defects specified in the Certificate of Completion have been corrected;
 - (ii) **(Extra Land):** OpCo has rehabilitated any Extra Land, and provided TfNSW's Representative with a document in relation to the Extra Land as required by clause 12.9(b);

- (iii) **(Temporary Areas):** OpCo has reinstated all Temporary Areas in accordance with clause 12.11;
 - (iv) **(Documentation):** OpCo has provided TfNSW with all documentation required by section 6.5.9 of the SPR;
 - (v) **(ISCA "As Built" rating):** OpCo has provided the OTS Independent Certifier with evidence that it has taken steps to procure the ISCA "As Built" rating referred to in clause 9.21(b)(ii);
 - (vi) **(Intellectual Property report):** OpCo has provided TfNSW with a detailed Intellectual Property report:
 - A. listing all separate items of Intellectual Property that have been developed or licensed by OpCo in carrying out OpCo's Activities up to Completion or in preparation for OpCo's Activities to be carried out after Completion;
 - B. for each item, specifying whether it is Developed Intellectual Property or Licensed Intellectual Property and:
 - 1) if it is Developed Intellectual Property, by whom it has been developed and the steps taken by OpCo to procure that the intellectual property is assigned to, and vests in, TfNSW; and
 - 2) if it is Licensed Intellectual Property:
 - a) from whom it has been licensed;
 - b) the basis upon which the licensor has licensed it (i.e. as owner or as a sub-licensor);
 - c) if applicable, the ultimate owner of the Intellectual Property;
 - d) the steps taken to procure a sub-licence for TfNSW; and
 - e) whether a Deed of Assurance is in place with the ultimate owner of the intellectual property;
 - (vii) **(Everything else):** OpCo has done everything else which this deed requires OpCo to have done as a condition precedent or precondition to Final Completion;
 - (viii) **(Capacity Performance Test):** the OTS Independent Certifier has certified that the OTS Works have passed the Test referred to in section 3.8.3 (Capacity Performance Test) of SPR Appendix 56;
 - (ix) **(Final Performance Test):** the OTS Independent Certifier has certified that the OTS Works have passed the Final Performance Test; and
 - (x) **(Remaining Site Tests):** the OTS Independent Certifier has certified that the OTS Works have passed the Site Tests referred in section 3.5.2 of SPR Appendix 56.
- (c) **(Request for Final Completion):** When OpCo considers that Final Completion has been achieved, OpCo must:
- (i) notify the OTS Independent Certifier of its opinion; and
 - (ii) request the OTS Independent Certifier to issue a Certificate of Final Completion.

- (d) **(Certification of Final Completion):** Within 15 Business Days of OpCo's request under clause 19.12(c), the OTS Independent Certifier must determine whether Final Completion has been achieved and either:
 - (i) if Final Completion has been achieved, issue to TfNSW and OpCo a Certificate of Final Completion stating as the Date of Final Completion the date on which Final Completion was achieved; or
 - (ii) if Final Completion has not been achieved, issue a notice to TfNSW and OpCo listing the work remaining to be performed to achieve Final Completion.
- (e) **(If Final Completion not achieved):** If the OTS Independent Certifier issues a notice under clause 19.12(d)(ii) OpCo must continue with the Delivery Activities to achieve Final Completion and clauses 19.12(c) and 19.12(d) will reapply.
- (f) **(No restriction):** The OTS Independent Certifier, in making a determination as to whether Final Completion has been achieved:
 - (i) will not be restricted by any:
 - A. certification, notice, list or opinion already provided under this deed; or
 - B. obligation of OpCo under this deed to correct any Defects which may be discovered after Final Completion; and
 - (ii) will be entitled to raise any items of work as a ground for determining that Final Completion has not been achieved.

19.13 Early opening of Rouse Hill Precinct

OpCo must use its best endeavours to:

- (a) complete the Rouse Hill Precinct Works; and
- (b) open the Rouse Hill Precinct for public use,

on or before 1,366 days after Financial Close and following completion must:

- (c) use its best endeavours to keep the Rouse Hill Precinct open for public use at all times; and
- (d) maintain the Rouse Hill Precinct in accordance with section 6.5.16 of the SPR.

20. Operations

20.1 Operations Activities

OpCo must:

- (a) perform the Operations Activities in accordance with the SPR and the other requirements of this deed;
- (b) perform the Operations Activities:
 - (i) in a professional, timely, safe and environmentally responsible manner;

- (ii) in accordance with Good Industry Practice; and
- (iii) so that the NWRL:
 - A. remains fit for its purposes during the Operations Phase; and
 - B. is capable of remaining fit for its purpose after the Operations Phase, provided the NWRL is operated and maintained in accordance with the Operations and Maintenance Manuals; and
- (c) report on the Operations Activities in accordance with clause 45.3(b).

20.2 Required Train Services

From the date of First Passenger Service, OpCo must:

- (a) provide the Required Train Services without any Missed Platforms; and
- (b) to the extent reasonably possible (having regard to all relevant factors including safety, ride comfort and energy efficiency), minimise the journey time in the Indicative Timetable for each Required Train Service measured from the time that the doors are closed and locked at the Origin Station to the time that the doors are enabled at the Destination Station.

20.3 Operations Activities Review

- (a) Either party may request that the other party participates in a review of the Operations Activities at any time (**Operations Activities Review**).
- (b) OpCo and TfNSW must cooperate with each other in any Operations Activities Review.
- (c) Factors that may be addressed in an Operations Activities Review include:
 - (i) data generated from Customer feedback records;
 - (ii) measures to improve the reliability of the Train Services;
 - (iii) measures to reflect patronage demand;
 - (iv) measures to improve modal coordination;
 - (v) measures to address seasonality issues particular to the provision of the Train Services;
 - (vi) trends or changes in the demographics, land use and infrastructure that impacts on the Train Services;
 - (vii) measures to overcome any identified inefficiencies
 - (viii) requests for:
 - A. Additional Planned Service Disruptions;
 - B. changes to Planned Service Disruptions;
 - C. additional Special Events;

- D. changes to existing Special Events;
 - E. changes to the Indicative Timetable;
 - F. changes to the Minimum Operating Standards; and
 - G. changes to staffing levels; and
- (ix) any other factors that TfNSW or OpCo consider relevant.
- (d) Following any Operations Activities Review, TfNSW may:
- (i) approve or reject a request by OpCo for an Additional Planned Service Disruption under clause 20.14;
 - (ii) direct a Service Change in accordance with clause 11 of Schedule 2; or
 - (iii) direct a Modification to change the Contract Service Level Requirements in accordance with clause 29.
- (e) Following an approval or direction contemplated by clause 20.3(d), OpCo must update the Operations Plan in accordance with clause 8.3.

20.4 Service Changes required by TfNSW

- (a) TfNSW may direct a Service Change in accordance with clause 11 of Schedule 2 (whether or not the Service Change has been discussed during an Operations Activities Review).
- (b) If TfNSW directs a Service Change in accordance with clause 11 of Schedule 2 the Service Payment will be adjusted for the associated Service Level Adjustment Amount in accordance with Schedule 2.
- (c) This clause does not limit TfNSW's right to direct a Modification under clause 29.

20.5 Service Changes proposed by OpCo

- (a) OpCo may propose a Service Change at any time during the Operations Phase (whether or not the Service Change has been discussed during an Operations Activities Review).
- (b) TfNSW may approve or reject, in its absolute discretion, a Service Change proposed by OpCo.
- (c) If TfNSW approved the Service Change, TfNSW's Representative will issue a "Service Change Notice" in accordance with clause 11.2 of Schedule 2.
- (d) This clause does not limit OpCo's right to propose a Modification under clause 30.

20.6 Not used

20.7 Provision of real-time information

- (a) OpCo must provide real time information to TfNSW, in accordance with SPR Appendix 32. TfNSW may make this information available to Customers through such channels and via such means as TfNSW may deem appropriate.
- (b) OpCo must:

- (i) actively participate in the governance processes for NSWTI through the monthly project liaison group or as otherwise reasonably required by TfNSW's Representative;
 - (ii) promote NSWTI as the primary Customer interface for service information, trip planning and Customer feedback, particularly on published information such as website, promotional material and other literature at Stations and within Trains in a format reasonably required by TfNSW; and
 - (iii) not compete with or duplicate NSWTI services or Customer information channels.
- (c) TfNSW may use data provided by OpCo for any purpose whatsoever, including planning and marketing purposes, and purposes required by TfNSW's Associates.

20.8 Publication and display of information

- (a) OpCo must ensure that current, accurate, up to date and relevant information relating to:
- (i) Train Services and the NWRL; and
 - (ii) to the extent that relevant information is provided to OpCo by TfNSW or other public transport providers, the interface of Train Services and the NWRL with other public transport services (including as to disruptions),
- is provided to Customers in accordance with the requirements of the SPR.
- (b) OpCo must facilitate the delivery of that information to Customers at locations including on the Trains, at the Stations and Station Precincts via systems and technologies:
- (i) specified in the SPR, including SPR Appendix 18; or
 - (ii) as may be determined and directed from time to time by TfNSW's Representative as a Modification.
- (c) Any initiative by OpCo to enhance passenger information must be developed in consultation with TfNSW.

20.9 Cooperation with other transport providers

- (a) OpCo must cooperate, coordinate and share information with other public transport providers in accordance with the procedures and requirements of the SPR, including section 3 of SPR Appendix 46.
- (b) This clause does not limit OpCo's obligations under Schedule 3.

20.10 Customer feedback

- (a) OpCo must comply with the procedures and requirements of the SPR (including SPR Appendix 46) with respect to Customer feedback.
- (b) OpCo must advise TfNSW the category of feedback received and action taken by OpCo to resolve the matter in the Monthly Operations Performance Report.

20.11 Ticketing, fare collection and revenue protection

- (a) Subject to the terms of this deed, TfNSW will be responsible for the collection and protection of fare revenue.
- (b) Without limiting clause 20.11(a), OpCo must:
 - (i) provide Customers with ticketing and fare information and directions;
 - (ii) operate fare gates;
 - (iii) work collaboratively with TfNSW to minimise fare evasion to TfNSW;
 - (iv) give Transport Officers and NSW Police access to the NWRL; and
 - (v) report any faults with the ETS and ETS Equipment to the ETS Contractor,

in accordance with the SPR, including SPR Appendix 46.

20.12 Customer security

OpCo must:

- (a) operate and maintain:
 - (i) a CCTV system;
 - (ii) Help Points;
 - (iii) passenger emergency alarms;
 - (iv) an access control system; and
 - (v) lighting of the Trains, Stations and Station Precincts; and
- (b) provide CCTV surveillance of Help Points,

in accordance with the requirements of the SPR (including SPR Appendices 32 and 46).

20.13 NSW Police

OpCo must:

- (a) report incidents to, provide intelligence to, cooperate with and interface with the NSW Police regarding operational security and crime prevention interfaces; and
- (b) provide the NSW Police with all assistance, information, access, accommodation, data, equipment, resources and/or materials as the NSW Police may reasonably require.

20.14 Additional Planned Service Disruptions

- (a) Where OpCo requires a service disruption in addition to the Planned Service Disruptions to carry out Asset Management Activities, OpCo may make a request for an Additional Planned Service Disruption during an Operations Activities Review.

- (b) TfNSW may approve or reject OpCo's request for an Additional Planned Service Disruption in its absolute discretion.
- (c) If TfNSW approves OpCo's request for an Additional Planned Service Disruption, OpCo will be entitled to claim a reduction in the Availability Deduction and Timeliness Deduction in accordance with clause 15(b) of Schedule 2.

20.15 Management of Incidents, emergencies and unplanned service disruptions

OpCo must manage Incidents, emergencies and unplanned service disruptions in accordance with the requirements of the SPR, including section 7 and SPR Appendix 46.

20.16 Station Precincts

OpCo must operate and maintain the Station Precincts:

- (a) so that they are safe, clean and in a good state of repair; and
- (b) so that they comply with the requirements of the SPR, including SPR Appendix 46.

20.17 Car Parks

OpCo must operate and maintain the Car Parks:

- (a) so that they are safe, clean and efficient environments for Customers to park their cars and transition to the NWRL; and
- (b) so that they comply with the requirements of the SPR, including section 4.1 of SPR Appendix 46.

20.18 Cleaning and presentation

OpCo must ensure that the Trains, Stations, ETS Equipment, Station Precincts and any other Licensed Maintenance Area (other than the Excluded Presentation Areas) meet the cleanliness and presentation standards set out in the SPR at all times.

20.19 Graffiti removal and Vandalism

- (a) OpCo must:
 - (i) operate the NWRL so as to minimise the occurrence of Graffiti and Vandalism;
 - (ii) maintain the Trains, Stations, ETS Equipment, Station Precincts and any other Licensed Maintenance Area (other than the Excluded Presentation Areas) so that:
 - A. Graffiti is removed; and
 - B. Vandalism is rectified,in accordance with the SPR;
 - (iii) monitor the Excluded Presentation Areas for the presence of Graffiti and Vandalism, and report to TfNSW's Representative any observed

incidents of Graffiti and Vandalism, in accordance with the Minimum Operating Standards; and

- (iv) otherwise comply with the Security Management Plan and the requirements of section 7.7 of the SPR.
- (b) Promptly after receipt of a request from TfNSW's Representative, OpCo must submit to TfNSW's Representative a proposal for the removal of Graffiti or rectification of Vandalism on the Excluded Presentation Areas which specifies:
 - (i) the timeframe within which the work will be completed; and
 - (ii) the amount which OpCo will charge for the work.
- (c) Within 20 Business Days of receiving a proposal from OpCo under clause 20.19(b), TfNSW may accept the proposal by giving written notice to OpCo, in which case:
 - (i) OpCo must remove the Graffiti or rectify the Vandalism within the timeframe set out in the proposal; and
 - (ii) TfNSW must pay OpCo the amount set out in the proposal in accordance with clause 25.

20.20 ETS

OpCo must operate and maintain the ETS in accordance with the SPR, including SPR Appendix 46.

20.21 Customer service assistants

OpCo must:

- (a) ensure that:
 - (i) each Station is staffed as required by the SPR; and
 - (ii) Customer service assistants are trained and, where appropriate, accredited or certified in the areas specified in the SPR; and
- (b) otherwise comply with the requirements of the SPR, including SPR Appendix 46.

20.22 Customer-facing Staff

OpCo must ensure that all Customer facing Staff:

- (a) are properly qualified, accredited, trained and experienced to discharge their duties;
- (b) are attired in a clean, well maintained and appropriate uniform that complies with work health and safety laws;
- (c) possess a thorough knowledge of ticketing, including ticketing and fares related to the wider TfNSW transport network;
- (d) are provided with a formal induction and staff handbook, which must include appropriate policies dealing with equal employment, discrimination, harassment and work health and safety issues; and

- (e) are provided with passenger service training on at least annual intervals and, in particular, training with regard to:
 - (i) service requirements of passengers with disabilities or from culturally or linguistically diverse backgrounds;
 - (ii) the management of confrontation, difficult passengers and personal safety; and
 - (iii) work health and safety issues.

20.23 SVC Works and TSC Works

- (a) OpCo:
 - (i) acknowledges that under the terms of each Civil Works Contract, the Civil Works Contractor warrants that the Civil Works will be capable of remaining at all relevant times fit for their intended purpose, subject to OpCo operating and maintaining the Civil Works in accordance with the Civil Works O&M Manuals; and
 - (ii) must operate and maintain the Civil Works in accordance with Civil Works O&M Manuals.
- (b) TfNSW and OpCo acknowledge that the Civil Works O&M Manuals will be:
 - (i) prepared by the Civil Works Contractors; and
 - (ii) provided to OpCo,
 after the date of this deed.
- (c) TfNSW may provide OpCo with draft submissions of the Civil Works O&M Manuals submitted by the Civil Works Contractors to TfNSW in accordance with the Civil Works Contracts prior to TSC Construction Completion or SVC Construction Completion (as applicable).
- (d) OpCo must, within 20 Business Days of receipt of a draft Civil Works O&M Manual from TfNSW, notify TfNSW if the draft Civil Works O&M Manual contains any material departures from the assumptions for the Civil Works O&M Manuals set out in Schedule 39.
- (e) TfNSW must provide OpCo with each final Civil Works O&M Manual promptly following their certification by:
 - (i) the TSC Independent Certifier under the TSC Project Deed; or
 - (ii) the SVC Independent Certifier under the SVC Project Deed,
 (as applicable).
- (f) If the final Civil Works O&M Manuals contain any material departure from the assumptions for the Civil Works O&M Manuals set out in Schedule 39:
 - (i) TfNSW must compensate OpCo for any negative Net Financial Impact of that departure; and

- (ii) OpCo must compensate TfNSW for any positive Net Financial Impact of that departure,

which will be calculated and paid in accordance with Schedule 29.

20.24 Operations Phase construction warranties

OpCo warrants that:

- (a) the construction of any works carried out as part of the Operations Activities will satisfy the requirements of this deed; and
- (b) the works carried out as part of the Operations Activities will, when complete and thereafter at all relevant times during the Term, be safe and fit for their purposes.

20.25 Post Final Completion design changes

- (a) Subject to clauses 29 and 30, OpCo may only amend Final Design Documentation after the Date of Final Completion if:
 - (i) OpCo submits the amended Design Documentation to TfNSW's Representative together with:
 - A. certifications equivalent to those referred to in clause 13.10(a)(i)A; and
 - B. an explanation as to why it is seeking to amend the Final Design Documentation;
 - (ii) a period of 20 Business Days after submission of the amended Design Documentation has expired; and
 - (iii) TfNSW's Representative has not notified OpCo that, in TfNSW's Representative's opinion, the amended Design Documentation does not comply with the requirements of this deed (with reasons).
- (b) The exercise (or failure to exercise) by TfNSW's Representative of any of its rights under this clause 20.25 will not preclude TfNSW from subsequently asserting that the Design Documentation does not comply with the requirements of this deed.

20.26 Terms and conditions - Customer

OpCo must not impose or attempt to impose any terms and conditions between it and Customers for the Train Services without TfNSW's prior written consent.

21. Asset management

21.1 OpCo's asset management obligations

OpCo must perform the Asset Management Activities in accordance with:

- (a) the Asset Management System;
- (b) the SPR; and
- (c) the other requirements of this deed,

so that:

- (d) the Assets and the Licensed Maintenance Area comply with the requirements of this deed;
- (e) the NWRL remains fit for purpose during the Term; and
- (f) provided each Asset is operated and maintained after the end of the Term in accordance with the Asset Management System, each Asset is capable of remaining fit for its intended purpose throughout:
 - (i) the Design Life of that Asset; or
 - (ii) in the case of a replacement or refurbished Asset, the Extended Design Life of that Asset.

21.2 Asset Management System

- (a) OpCo must develop the Asset Management System in accordance with the SPR.
- (b) The Asset Management System will include the:
 - (i) Asset Management Policy;
 - (ii) Asset Management Strategy;
 - (iii) Asset Management Plan;
 - (iv) Operations and Maintenance Manuals;
 - (v) Asset Maintenance Standards; and
 - (vi) Spares and Consumables Strategy.

21.3 Spares

OpCo must maintain the minimum specified stock of Spares in accordance with:

- (a) the Spares and Consumables Strategy; and
- (b) the SPR.

21.4 Asset Management Plan

- (a) OpCo must prepare and update the Asset Management Plan in accordance with clause 8.
- (b) The Asset Management Plan must:
 - (i) cover all Assets;
 - (ii) otherwise comply with the requirements of the SPR; and
 - (iii) include the Maintenance Works Program, which must:
 - A. describe the Asset Management Activities for the following 2 year period; and

- B. be of sufficient detail to facilitate effective monitoring of Asset Management Activities.

21.5 Rectification of Defects

Subject to clauses 14.11, 14.12, 14.15 and 20.19, after the Date of Completion, OpCo must rectify all Defects (fair wear and tear excepted) within a reasonable time.

21.6 Asset Information System

- (a) OpCo must provide and maintain the Asset Information System in accordance with the SPR, including SPR Appendix 47.
- (b) The Asset Information System must:
 - (i) cover all Assets;
 - (ii) record OpCo's compliance with the Asset Management Plan including:
 - A. the condition of Assets;
 - B. changes to the condition of Assets; and
 - C. remaining life of Assets;
 - (iii) be capable of producing periodic reports that allow OpCo and TfNSW to monitor Asset condition and OpCo's compliance with its obligations under this deed; and
 - (iv) at all times accurately represent the true status and condition of all Assets and all Asset Management Activities.
- (c) TfNSW:
 - (i) is the owner of all information held within the Asset Information System; and
 - (ii) may access the Asset Information System at any time in accordance with the SPR.

21.7 Asset Management Failures

- (a) The parties will meet annually within 3 months of the end of each Operating Year to review OpCo's compliance with the Maintenance Works Program during the previous Operating Year.
- (b) An **Asset Management Failure** will occur if:
 - (i) OpCo failed to comply with the Maintenance Works Program; and
 - (ii) in TfNSW's reasonable opinion, OpCo's failure to comply with the Maintenance Works Program constitutes a material non-compliance with the Asset Management Plan.
- (c) If an Asset Management Failure occurs TfNSW may give OpCo a notice stating the nature of the Asset Management Failure.
- (d) OpCo must remedy the Asset Management Failure within:

- (i) 3 months of the date on which the notice referred to in clause 21.7(c) is issued; or
 - (ii) such other period agreed between the parties (acting reasonably),
(the **Remediation Period**).
- (e) If OpCo fails to remedy the Asset Management Failure within the Remediation Period, TfNSW may withhold \$ _____ from the Service Payment each month from the expiry of the Remediation Period until OpCo remedies the Asset Management Failure.
- (f) If OpCo remedies the Asset Management Failure after the Remediation Period, TfNSW:
- (i) must reimburse OpCo; and
 - (ii) will retain any interest accrued on,
- all amounts retained pursuant to clause 21.7(e).

21.8 Asset Condition Assessment

OpCo must conduct Asset Condition Assessments, and report to TfNSW on the results of those Asset Condition Assessments, in accordance with section 8.9 of the SPR.

21.9 Reporting

During the Operations Phase, OpCo must provide to TfNSW's Representative, monthly, quarterly and annual reports on the Asset Management Activities in accordance with, and including the information specified in, section 3 of SPR Appendix 53.

21.10 Handback Audit

- (a) Without limiting clause 44:
- (i) no earlier than 18 months; and
 - (ii) no later than 6 months,
- prior to the Original Expiry Date, TfNSW's Representative may procure the carrying out of an audit of the NWRL (**Handback Audit**) by an independent expert (**Handback Auditor**):
- (iii) appointed by agreement between the parties; or
 - (iv) failing agreement within 10 Business Days of a request made in writing by TfNSW, nominated by the President of Engineers Australia.
- (b) TfNSW's Representative must:
- (i) notify OpCo at least 10 Business Days in advance of the date it wishes to procure the carrying out of a Handback Audit and specify the Assets that will be the subject of the Handback Audit (**Handback Audit Assets**); and

- (ii) consider in good faith any reasonable request by OpCo for the Handback Audit to be carried out on a different date.
- (c) The Handback Auditor will inspect and assess the Handback Audit Assets and notify TfNSW and OpCo in writing of:
 - (i) whether the Handback Audit Assets have been and are being maintained by OpCo in accordance with this deed; and
 - (ii) any rectification, maintenance and remediation works required to be carried out by OpCo to bring the condition of the Handback Audit Assets to the condition it would have been in had OpCo complied with its obligations under this deed.
- (d) OpCo must, at its cost, co-operate with the Handback Auditor and provide the Handback Auditor with any reasonable assistance required by the Handback Auditor.
- (e) TfNSW's Representative must use its reasonable endeavours to procure that the Handback Auditor minimises any disruption caused to OpCo's Activities by the Handback Audit.
- (f) The cost of the Handback Audit will be borne by TfNSW.

21.11 Rectification work

OpCo must carry out any required rectification, maintenance and remediation work notified pursuant to clause 21.10(c)(ii):

- (a) to the satisfaction of the Handback Auditor;
- (b) in accordance with all applicable laws; and
- (c) so as to satisfy the standards and other requirements applicable to the NWRL under this deed,

prior to the Original Expiry Date and any costs it incurs in carrying out such rectification, maintenance or remediation work will be at its own expense.

21.12 Handback obligations

At the end of the Term, OpCo must:

- (a) surrender and return to TfNSW or TfNSW's nominee the NWRL and, to the extent it has been installed, the ETS Equipment;
- (b) transfer all of OpCo's rights, title and interest (if any) in the Assets to TfNSW or TfNSW's nominee free from any Security Interests;
- (c) ensure that the Assets are in a state and condition which complies with the requirements of this deed including, if Completion has occurred, the Handback Condition (fair wear and tear excepted);
- (d) if Completion has occurred, have completed all works scheduled to be carried out under the current Maintenance Works Program;
- (e) if the First Passenger Service has been provided, ensure that:

- (i) all Trains meet the "Level 3" requirements on the "Car Exterior Assessment Scale" and the "Car Interior Assessment Scale" as set out in Schedule 2 Annexure B Part A: KPI Tables KPI No. 1;
 - (ii) all Stations meet the "Level 3" requirements on the "Station Views Assessment Scale" as set out in Schedule 2 Annexure B Part A: KPI Tables KPI No. 2;
 - (iii) all Station Precincts (excluding the Stations), Car Parks and Additional Maintained Assets meet the "Level 3" requirements on the "Public Area Assessment Scale" as set out in Schedule 2 Annexure B Part A: KPI Tables KPI No. 3; and
 - (iv) the rail corridor (excluding the Excluded Presentation Areas) meets the "Level 3" requirements on the "Corridor Assessment Scale" as set out in Schedule 2 Annexure B Part A: KPI Tables KPI No. 3;
- (f) if the First Passenger Service has been provided, have completed the transfer of the Asset Information System database to TfNSW or TfNSW's nominee such that:
- (i) all data has the capability of being processed, evaluated and viewed using standard commercially available systems;
 - (ii) it remains fully functional and retains interface capabilities;
 - (iii) all data entry is fully up to date;
 - (iv) all data archives are included; and
 - (v) all supporting documentation is included;
- (g) deliver to TfNSW or TfNSW's nominee (or both, if required) all and any documents and information concerning OpCo's Activities which is required for the efficient transfer of responsibility for their performance, including:
- (i) the NWRL Documentation;
 - (ii) all Data (as defined in Schedule 34);
 - (iii) any documentation or programs required to be provided under Schedule 34; and
 - (iv) any other documentation specified in the SPR;
- (h) transfer all of OpCo's rights, title and interest (if any) in any Extra Land held by OpCo at the end of the Term;
- (i) in relation to:
- (i) Hired Moveable Assets owned by any Related Body Corporate of OpCo or a Core Contractor, procure the novation to TfNSW of any lease or hire arrangement relating to any such Hired Moveable Asset nominated by TfNSW; and
 - (ii) any other Hired Moveable Assets, use its best endeavours to procure the novation to TfNSW of any lease or hire arrangement relating to any such Hired Moveable Asset nominated by TfNSW; and

- (j) procure the novation to TfNSW or its nominee of, or execute any document required to effect OpCo ceasing to be a party to, any Significant Contract, and use its best endeavours to procure the novation to TfNSW or its nominee of, or execute any document required to effect OpCo ceasing to be a party to, any other Subcontract, in each case relating to OpCo's Activities which TfNSW may nominate (in its absolute discretion), with effect from the end of the Term or such other date as TfNSW may agree.

21.13 Power of attorney

OpCo irrevocably appoints, with effect from the end of the Term, TfNSW and such persons as are from time to time nominated by TfNSW, jointly and severally, as its attorney with full power and authority to execute any agreement or novation contemplated by clause 21.12.

21.14 Final Inspection

- (a) As soon as practicable following the end of the Term, an independent expert (**Final Inspection Auditor**):
 - (i) appointed by agreement between the parties; or
 - (ii) failing agreement within 10 Business Days of a request made in writing by TfNSW, nominated by the President of Engineers Australia,

will inspect and assess the NWRL and notify TfNSW and OpCo in writing of the estimated cost (without double counting) of making good or rectifying any failure by OpCo to carry out:
 - (iii) if the Term is not extended in accordance with clause 3.3:
 - A. the work (if any) required under clause 21.10(c)(ii); and
 - B. its obligations under clause 21.12; or
 - (iv) if the Term is extended in accordance with clause 3.3, its obligations under clause 21.12(e).
- (b) In assessing OpCo's compliance with clause 21.12(e), the Final Inspection Auditor will have regard to:
 - (i) the instructions for the use of the relevant assessment scale described in Schedule 2 Annexure B Part A: KPI Tables; and
 - (ii) the Reference Pictures.
- (c) The amount notified by the Final Inspection Auditor under clause 21.14(a) will be a debt due and payable from OpCo to TfNSW.
- (d) TfNSW may deduct or set off any amount payable by OpCo under clause 21.14(c) against any amount otherwise payable by TfNSW to OpCo, or may take other enforcement action available to it including under:
 - (i) if the Term is not extended in accordance with clause 3.3, the Handback Security Bond or any security provided under clause 22.1(b); or
 - (ii) if the Term is extended in accordance with clause 3.3, the Extension Security Bond.

21.15 Interim inspection

- (a) Without limiting OpCo's obligations under clause 21.12, if the Term is extended in accordance with clause 3.3:
- (i) at the Original Expiry Date OpCo must:
- A. ensure that the Assets are in a state and condition which complies with the requirements of this deed including the Handback Condition;
 - B. have completed all works scheduled to be carried out under the current Maintenance Works Program; and
 - C. ensure that:
 - 1) all Trains meet the "Level 3" requirements on the "Car Exterior Assessment Scale" and the "Car Interior Assessment Scale" as set out in Schedule 2 Annexure B Part A: KPI Tables KPI No. 1;
 - 2) all Stations meet the "Level 3" requirements on the "Station Views Assessment Scale" as set out in Schedule 2 Annexure B Part A: KPI Tables KPI No. 2;
 - 3) all Station Precincts (excluding the Stations) meet the "Level 3" requirements on the "Station Precincts Assessment Scale" as set out in Schedule 2 Annexure B Part A: KPI Tables KPI No. 3; and
 - 4) the rail corridor (excluding the Excluded Presentation Areas) meets the "Level 3" requirements on the "Corridor Assessment Scale" as set out in Schedule 2 Annexure B Part A: KPI Tables KPI No. 3; and
- (ii) as soon as practicable following the Original Expiry Date, an independent expert (**Interim Inspection Auditor**):
- A. appointed by agreement between the parties; or
 - B. failing agreement within 10 Business Days of a request made in writing by TfNSW, nominated by the President of Engineers Australia,
- will inspect and assess the NWRL and notify TfNSW and OpCo in writing of the estimated cost (without double counting) of making good or rectifying any failure by OpCo to carry out:
- C. the work (if any) required under clause 21.10(c)(ii); and
 - D. its obligations under clause 21.15(a)(i).
- (b) In assessing OpCo's compliance with clause 21.15(a)(i)C, the Interim Inspection Auditor will have regard to:

- (i) the instructions for the use of the relevant assessment scale described in Schedule 2 Annexure B Part A: KPI Tables; and
 - (ii) the Reference Pictures.
- (c) To the extent any failures relating to the amount notified by the Interim Inspection Auditor under clause 21.15(a)(ii) have not been rectified by the date falling 3 months after the date of that notice, the applicable amount will be a debt due and payable from OpCo to TfNSW.
- (d) Subject to clause 22.6(b), TfNSW may deduct or set off any amount payable by OpCo under clause 21.15(c) against any amount otherwise payable by TfNSW to OpCo, or may take other enforcement action available to it including under the Handback Security Bond or any security provided under clause 22.1(b).

22. Security

22.1 Provision of security

- (a) OpCo must provide TfNSW with:
- (i) a bond (**Handback Security Bond**) for \$ _____ at least 18 months prior to the Original Expiry Date; and
 - (ii) if the Term is extended in accordance with clause 3.3, a bond (**Extension Security Bond**) for \$ _____ by the later of:
 - A. the date falling 2 years prior to the Original Expiry Date; and
 - B. the date falling 10 Business Days after:
 - 1) TfNSW accepting the Extension Proposal under clause 3.3(f)(i); or
 - 2) if TfNSW rejects the Extension Proposal under clause 3.3(f)(ii), the parties reaching agreement on the terms of the Extension Proposal.
- (b) If OpCo fails to provide a Handback Security Bond in accordance with clause 22.1(a)(i), then OpCo will not be in breach of this deed but TfNSW may withhold \$ _____ from each payment of the Service Payment each month for a period of 10 months.
- (c) If OpCo fails to provide an Extension Security Bond in accordance with clause 22.1(a)(ii), then OpCo will not be in breach of this deed and the Term will expire on the Original Expiry Date.

22.1A Reduction of Handback Security Bond

- (a) If there is a debt due and owing from OpCo to TfNSW under clause 21.15(c), then OpCo will be entitled to replace the original Handback Security Bond with a bond that:
- (i) is for an amount equal to \$ _____ of such debt; and
 - (ii) satisfies clause 22.3.

- (b) If OpCo exercises its rights under clause 22.1A(a):
 - (i) TfNSW must surrender the original Handback Security Bond to OpCo in exchange for the issue of the replacement Handback Security Bond; and
 - (ii) the replacement bond will then be deemed to be the Handback Security Bond.

22.2 Return of security

Subject to TfNSW's right to have recourse to the Bonds, TfNSW must release:

- (a) the Handback Security Bond or any alternative security provided under clause 22.1(b):
 - (i) if the Term is not extended in accordance with clause 3.3, as soon as practicable after TfNSW has received the Final Inspection Auditor's notice under clause 21.14(a); or
 - (ii) if the Term is extended in accordance with clause 3.3, as soon as practicable after TfNSW has received the Interim Inspection Auditor's notice under clause 21.15(a)(ii); and
- (b) the Extension Security Bond as soon as practicable after TfNSW has received the Final Inspection Auditor's notice under clause 21.14(a).

22.3 Requirements of Bond

Each Bond must be:

- (a) in the form of Schedule 23 or such other form as TfNSW may approve;
- (b) in favour of TfNSW;
- (c) provided by a bank or insurance company that at all times maintains the Required Rating and is regulated by the Australian Prudential Regulation Authority; and
- (d) payable at an office of the issuer in Sydney (or such other place as TfNSW may approve).

22.4 Issuer ceases to have Required Rating

- (a) If the issuer of any Bond ceases to have the Required Rating and, at that time, another bank or insurance company acceptable to TfNSW maintains the Required Rating and is regulated by the Australian Prudential Regulation Authority, then OpCo must:
 - (i) promptly notify TfNSW of that circumstance; and
 - (ii) within 20 Business Days of being requested to do so, procure the issue to TfNSW of a replacement bond which must have a face value equal to that of the Bond being replaced and must satisfy the requirements of clause 22.3,

and TfNSW must surrender the original Bond to OpCo in exchange for the issue of the replacement Bond.

- (b) If the issuer of any Bond ceases to have the Required Rating and, at that time, no Major Australian Bank has the Required Rating, then:
 - (i) if the current issuer of the Bond has a rating of less than the second highest rated Major Australian Bank, OpCo must procure the issue to TfNSW of a replacement bond from an issuer which has a rating equal to or higher than the second highest rated Major Australian Bank which otherwise satisfies the requirements of clause 22.3;
 - (ii) OpCo must monitor the credit rating of the issuer of the replacement Bond and the credit rating of the Major Australian Banks and procure a replacement Bond from an issuer which has the Required Rating within 15 Business Days after any Major Australian Bank regains a rating equal to or greater than the Required Rating; and
 - (iii) TfNSW must promptly surrender the original Bond to OpCo following the issue of the replacement Bond.

22.5 No injunction

TfNSW may make a demand under any Bond at any time. OpCo must not take any steps to injunct or otherwise restrain:

- (a) the issuer of a Bond from paying TfNSW pursuant to the Bond;
- (b) TfNSW from making a demand under a Bond or receiving payment under a Bond; or
- (c) TfNSW from using the proceeds of a Bond in accordance with clause 22.6.

22.6 Proceeds of security

- (a) TfNSW may only apply the proceeds of:
 - (i) the Handback Security Bond or any security provided under clause 22.1(b) towards:
 - A. if the Term is not extended in accordance with clause 3.3, payment of any amount due and payable by OpCo to TfNSW under clause 21.14(c); or
 - B. if the Term is extended in accordance with clause 3.3, payment of any amount due and payable by OpCo to TfNSW under clause 21.15(c); and
 - (ii) the Extension Security Bond to reimburse it for any Loss for which OpCo is liable after the Original Expiry Date, and in payment of any other moneys owing by OpCo to TfNSW (including moneys owing under any indemnity) after the Original Expiry Date, to the extent such Loss or other moneys owing arise in relation to OpCo's obligations during the Extension Period.
- (b) If:
 - (i) there is a debt due and owing from OpCo to TfNSW under clause 21.15(c); and

- (ii) TfNSW makes a deduction or set off under clause 21.15(d) or makes any claim under the Handback Security Bond in relation to such debt (**Claimed Amount**); and
- (iii) before the end of the Term, OpCo rectifies all of the relevant failures to which such deduction, set off or claim relates,

then TfNSW must pay to OpCo an amount equal to the Claimed Amount in accordance with clause 25.4(a)(ii).

22.7 No interest

TfNSW is not obliged to pay OpCo interest on a Bond or the proceeds of a Bond.

22.8 No trust

If TfNSW makes a demand under a Bond, it does not hold the proceeds on trust for OpCo.

23. Commercial Opportunities

(a) OpCo must not:

- (i) grant any Retail Licence; or
- (ii) enter into any advertising contract in connection with the Licensed Maintenance Area,

without TfNSW's approval in accordance with clause 6 of Schedule 9.

(b) If OpCo wishes to:

- (i) undertake a development on the NWRL Site (other than the OTS Works or the Temporary Works); or
- (ii) derive revenue from activities other than as permitted by clause 52.6,

OpCo may propose a Modification in accordance with clause 30, or otherwise seek TfNSW's agreement to do so.

24. Naming and branding

24.1 Name

The NWRL will be called North West Rail Link (or such other name as is notified by TfNSW to OpCo).

24.2 Government logo and corporate image

- (a) OpCo must display the NSW Government Transport, TfNSW, and/or NSW NOW logo and corporate image and the name North West Rail Link (or such other name as is notified by TfNSW to OpCo) on the NWRL in the locations and manner designated in the SPR.
- (b) TfNSW may at any time direct OpCo to display the NSW Government Transport, TfNSW and/or NSW NOW logo and corporate image and the name of the NWRL on the NWRL in areas not designated by the SPR.

- (c) The State and/or TfNSW may change the NSW Government Transport, TfNSW and/or NSW NOW name/corporate image and may direct OpCo to display the new NSW Government Transport, TfNSW and/or NSW NOW logo/corporate image on the NWRL in those areas designated in the SPR or as directed by TfNSW under clause 24.2(b).
- (d) TfNSW must compensate OpCo for all reasonable costs incurred in compliance with clauses 24.2(b) or 24.2(c).

24.3 OpCo name/corporate image

- (a) OpCo must display its livery, name/corporate image on the NWRL in the manner designated by the SPR.
- (b) OpCo must not change its livery, name/corporate image without the prior written consent of TfNSW.

24.4 Station names

- (a) The Stations will be named as set out in SPR Appendix 18.
- (b) TfNSW may at any time direct OpCo to carry out a Modification pursuant to clause 29 to change any Station name.
- (c) TfNSW will be entitled to retain all revenue received from any person in connection with any Station name.
- (d) OpCo:
 - (i) may use the Station names only for activities and purposes directly related to the OTS PPP and this deed; and
 - (ii) may not use for public purposes any name for the Stations other than the Station names described in clauses 24.4(a) and 24.4(b).

24.5 Wayfinding

OpCo must comply with:

- (a) the TfNSW Brand Strategy and TfNSW Wayfinding Strategy referred to in SPR Appendix 57; and
- (b) the requirements of SPR Appendix 18 and all the other requirements of the SPR in respect of wayfinding.

24.6 Other signage and displays

Without limiting clauses 24.1 to 24.5, OpCo must display wayfinding, signage and other information, public art and branding at all times during the Term (including on hoardings, OTS Works, Trains, Stations and Station Precincts) as required in accordance with the SPR.

25. Payment provisions

25.1 TfNSW's payment obligation

Subject to this clause 25, TfNSW must pay OpCo:

- (a) each Construction Payment A;
- (b) the Final Completion Payment;
- (c) the Service Payments;
- (d) any Pre-Agreed Option Construction Payment; and
- (e) any other amounts which are payable by TfNSW to OpCo under this deed.

25.2 Construction Payment A

- (a) OpCo may give TfNSW a claim for payment of a Construction Payment A :
 - (i) no later than 3 Business Days before each drawdown date for that month set out in the Construction Payment A Schedule;
 - (ii) in the form of a valid Tax Invoice; and
 - (iii) attaching:
 - A. a copy of the Drawdown Notice (as defined in the Facility Agreement) given to the Agent in respect of the corresponding drawdown under the Construction Facility scheduled for that drawdown date; and
 - B. confirmation from the Agent addressed to TfNSW that:
 - 1) it is not aware of any reason why the corresponding drawdown under the Construction Facility scheduled for that drawdown date would not be made available; and
 - 2) it has received confirmation from OpCo that all amounts withdrawn from the TfNSW Construction Payments Account have been applied towards payments due and payable to the D&C Contractor under the D&C Contract.
- (b) Subject to clause 25.2(c) TfNSW must, by the later of 3 Business Days after receiving a payment claim under clause 25.2(a) and the relevant drawdown date, pay into the TfNSW Construction Payments Account the amount claimed.
- (c) TfNSW will only be obliged to deposit a Construction Payment A into the TfNSW Construction Payments Account if:
 - (i) the aggregate drawings under the Construction Facility that have been, and are due to be, deposited into the Construction Proceeds Account on the same date are not less than the aggregate drawings of the Construction Facility set out in the Construction Payment A Schedule as at the same date;
 - (ii) all amounts withdrawn from the TfNSW Construction Payments Account have been applied towards payments due and payable to the D&C Contractor under the D&C Contract;

- (iii) no breach by the Agent, the Security Trustee or OpCo of clause 10 (Construction Payments) of the Financiers Tripartite Deed is subsisting; and
- (iv) the Security Trustee has not applied any Insurance Proceeds to the payment or repayment of the Project Debt.
- (d) OpCo may only request or make withdrawals from the TfNSW Construction Payments Account in accordance with clause 10.5 of the Financiers Tripartite Deed.
- (e) TfNSW must not set off any amount due and payable under a TfNSW Project Agreement against a Construction Payment A.

25.2A Licence Payments

- (a) **(Licence Payment):** In consideration of the rights to enter on, occupy and access (as applicable) the Licensed Maintenance Area pursuant to the licence granted under clause 12.3 (Licence to use Licensed Maintenance Area), OpCo agrees to pay each Licence Payment on its corresponding Licence Payment Date until the last day of the Term without any abatement, deduction or right of set off.
- (b) **(Adjustments to Licence Payments):** The parties agree that the Licence Payments will be adjusted to account for:
 - (i) any adjustment to the corresponding Construction Payment B and Receivables Purchase Payment under clause 25A.1(c) and the Securitisation Agreement; and
 - (ii) any Securitised NFI Event Payment.
- (c) **(Calculation of Adjustments):** Any adjustment to the Licence Payment shall be made in a manner which reflects the principles for calculation of the Licence Payments under the Base Case Financial Model as at Financial Close and, where applicable, in accordance with Schedule 26.

25.3 Conditional Debt Pay Down

- (a) **(CDPD Payment):** Subject to this clause 25.3, TfNSW must, in accordance with the Securitisation Agreement and the Payments Direction Deed, pay the CDPD Amount on the CDPD Payment Date to Finance Co to repurchase the CDPD Receivables.
- (b) **(CDPD Conditions):** TfNSW's obligation to pay the CDPD Amount is subject to the following conditions precedent (**CDPD Conditions**):
 - (i) the CDPD Period has commenced and not expired;
 - (ii) there is no subsisting OpCo Event of Default or OpCo Termination Event;
 - (iii) no OpCo Event of Default (other than an OpCo Event of Default occurring under clause 40.1(o)) has occurred in the 6 month period immediately prior to the CDPD Notice Date;
 - (iv) not more than one OpCo Event of Default (other than an OpCo Event of Default occurring under clause 40.1(o)) has occurred in the 18 month period immediately prior to the CDPD Notice Date;

- (v) no OpCo Termination Event has occurred in the 12 month period immediately prior to the CDPD Notice Date;
 - (vi) the costs of rectification of any single subsisting Defect (other than a Civil Works Defect in respect of which TfNSW has not directed a Modification as referred to in clause 14.11(b)(ii)) will not exceed \$5,000,000;
 - (vii) the aggregate cost of rectification of all subsisting Defects (other than Civil Works Defects in respect of which TfNSW has not directed a Modification as referred to in clause 14.11(b)(ii)) will not exceed \$30,000,000; and
 - (viii) no amounts have been retained from the Service Payment pursuant to clause 21.7(e) and not subsequently released (other than any interest retained under clause 21.7(f)(ii)).
- (c) **(Satisfaction of CDPD Conditions):**
- (i) OpCo must use its best endeavours to procure the satisfaction of the CDPD Conditions prior to expiry of the CDPD Period.
 - (ii) When OpCo considers that a CDPD Condition has been satisfied, OpCo must promptly and in any event within 10 Business Days give TfNSW's Representative:
 - A. a written notice stating that it considers that the CDPD Condition has been satisfied; and
 - B. reasonable evidence that the CDPD Condition has been satisfied.
 - (iii) When OpCo considers that all of the CDPD Conditions have been satisfied (or waived by TfNSW), OpCo must give TfNSW's Representative:
 - A. a written notice stating that it considers that all of the CDPD Conditions have been satisfied (or waived by TfNSW); and
 - B. an updated Base Case Financial Model which is adjusted only for inputting, in accordance with Schedule 26, the timing for payment and amount of the CDPD Amount and any other matters agreed with TfNSW.
 - (iv) Within 10 Business Days after receiving a notice under clause 25.3(c)(iii)A, TfNSW's Representative will give OpCo:
 - A. written notice that TfNSW's Representative agrees that all of the CDPD Conditions have been satisfied (or waived by TfNSW) (**CDPD Satisfaction Notice**); or
 - B. written notice that TfNSW's Representative does not agree that all of the CDPD Conditions have been satisfied (or waived by TfNSW) and the reasons for TfNSW's Representative's determination.

- (v) If TfNSW's Representative gives a notice under clause 25.3(c)(iv)B, OpCo must continue to use its best endeavours to procure the satisfaction of the outstanding CDPD Conditions and this clause 25.3(c) will re-apply.
- (vi) A breach of clause 25.3(c)(i) by OpCo will not, of itself, be an OpCo Event of Default or an OpCo Termination Event.
- (d) **(Waiver of CDPD Conditions):**
 - (i) TfNSW may waive one or more of the CDPD Conditions in its absolute discretion by giving written notice to OpCo.
 - (ii) Any waiver by TfNSW of a CDPD Condition does not constitute a waiver by TfNSW of any of its rights, powers or discretions in respect of any subsisting breach of this deed, OpCo Event of Default, OpCo Termination Event or Defect (as may be relevant).
 - (iii) TfNSW may specify the CDPD Payment Date in the notice under clause 25.3(d)(i).
- (e) **(Adjustments to the Base Case Financial Model):** On the CDPD Payment Date, OpCo will provide to TfNSW an updated Base Case Financial Model which is adjusted only by inputting, in accordance with Schedule 26, the amount and timing for payment of the CDPD Amount and any other matters agreed with TfNSW.

25.4 Payment claims for Service Payments and other amounts

OpCo must give TfNSW's Representative claims for payment of the Final Completion Payment, the Service Payments, any Pre-Agreed Option Construction Payment and any other amounts payable by TfNSW to OpCo (other than the Construction Payments A or the CDPD Amount):

- (a) in the case of a claim for payment of:
 - (i) the Final Completion Payment, on or after the Date of Final Completion; and
 - (ii) a Service Payment, any Pre-Agreed Option Construction Payment or any other amounts payable by TfNSW, within 5 Business Days after the end of each month;
- (b) in the case of a claim for a Service Payment, in the format set out in Annexure C of Schedule 2 or such other format as TfNSW's Representative reasonably requires;
- (c) which are valid Tax Invoices for any Taxable Supplies to which the payment relates;
- (d) which include:
 - (i) in the case of a claim for payment of a Service Payment, the Monthly Service Payment Report required under clause 25.13(a)(iv); and
 - (ii) any other evidence of the amounts claimed reasonably required by TfNSW's Representative; and
- (e) which are based on the Schedule of Rates, to the extent relevant.

OpCo cannot include in any payment claim under this clause 25.4, a Claim which is barred by clause 57.5.

25.5 Payment schedule

- (a) Within 6 Business Days of receiving a payment claim which complies with requirements of clause 25.4, TfNSW must issue a payment schedule which sets out TfNSW's determination as to the amount then payable to OpCo, together with detailed reasons for any difference in the amount so determined from the amount in OpCo's payment claim.
- (b) If the amount set out in the payment schedule as then payable to OpCo is different to the amount in OpCo's payment claim, OpCo must issue a revised Tax Invoice or Adjustment Note (as the case may be) to reflect the amount in the payment schedule.
- (c) The issue of a payment schedule by TfNSW does not constitute approval of any work or services nor will it be taken as an admission or evidence that the work or services covered by the payment schedule have been satisfactorily carried out in accordance with this deed.

25.6 Payment

- (a) Subject to clauses 25.11 and 25.12, TfNSW must within 14 Business Days of receiving a payment claim which complies with requirements of clause 25.4, pay OpCo the amount as set out as then payable in the payment schedule, less any amounts disclosed as unpaid under clauses 25.12(a) or 25.12(b).
- (b) TfNSW is not obliged to pay any amounts disclosed as unpaid under clause 25.12(a) or 25.12(b) until OpCo produces evidence that the amounts have been paid to the relevant persons.

25.7 Net amount due from OpCo to TfNSW

Where a payment schedule states that a net amount is due from OpCo to TfNSW, OpCo must (at TfNSW's election):

- (a) pay that amount to TfNSW within 20 Business Days of being requested by TfNSW's Representative to do so; or
- (b) otherwise carry forward the amount and set it off against the next payment claim.

25.8 Payment on account

Any payment of moneys by TfNSW to OpCo is not:

- (a) evidence of the value of work or services, or that any work or services have been satisfactorily carried out in accordance with this deed;
- (b) an admission of liability; or
- (c) approval by TfNSW of OpCo's performance or compliance with this deed,

but is only taken to be payment on account.

25.9 Correction of payment schedules

TfNSW may, in any payment schedule correct any error in any previous payment schedule issued by TfNSW.

25.10 Interest

Any late payment of amounts that are properly due and payable by either TfNSW or OpCo to the other under any Project Agreement (including a previously disputed amount or an amount which is not paid due to the application of set-off by TfNSW under clause 25.11(a) where the amount set-off is determined to be incorrect) will incur simple interest at the Default Rate from the day after the date on which the payment was due to (and including) the date of payment.

25.11 Set off

(a) Other than amounts referred to in clauses 25.2(e), 25A.2(d) and 25A.3(c) TfNSW will be entitled to set-off or deduct from any amount due from TfNSW to OpCo under a TfNSW Project Agreement:

- (i) any debt or other monies due from OpCo to TfNSW; and
- (ii) any claim to money which TfNSW makes in good faith against OpCo whether for damages or otherwise and whether or not the amount is disputed,

whether under a Project Agreement or otherwise at law relating to the OTS PPP.

(b) OpCo must make all payments due to TfNSW under the TfNSW Project Agreements without set-off or counterclaim, and without any deduction to the extent permitted by law.

(c) Nothing in this clause 25.11 affects TfNSW's right to recover from OpCo the whole of the debt or any balance that remains owing after any set-off.

25.12 Payment of employees and subcontractors

OpCo is not entitled to give TfNSW a payment claim under clause 25.4 unless OpCo has provided TfNSW's Representative with:

(a) a statutory declaration substantially in the form set out in Schedule 40, together with any supporting evidence which may be reasonably required by TfNSW's Representative, duly signed by OpCo's Representative, that, except to the extent disclosed in the statutory declaration (such disclosure to specify all relevant amounts, employees and subcontractors):

- (i) all employees of OpCo have at the date of the payment claim been paid all moneys due and payable to them; and
- (ii) all Core Contractors have been paid all moneys due and payable to them in respect of OpCo's Activities;

(b) a statutory declaration from each Core Contractor which satisfies the requirements of clause 25.12(a) in relation to the employees of the Core Contractor and subcontractors of the Core Contractor that are Significant Contractors;

(c) a written statement for the purposes of, and which complies with, section 127 of the *Industrial Relations Act 1996* (NSW), section 175B of the *Workers Compensation*

Act 1987 (NSW) and schedule 2 part 5 of the Pay-Roll Tax Act 2007 (NSW), which is substantially in the form set out in Schedule 41, covering the period covered by the relevant payment claim; and

- (d) copies of all relevant certificates of currency in respect of workers compensation insurance which OpCo has in place in connection with OpCo's Activities.

Clauses 25.12(c) and 25.12(d) will only apply in respect of those parts of OpCo's Activities carried out in New South Wales.

25.13 Service Payment Monitoring System

- (a) OpCo must:
 - (i) establish a system for the monitoring of its performance of the Operations Activities which are relevant to the calculation of the Service Payment (**Service Payment Monitoring System**);
 - (ii) monitor the performance of those Operations Activities in accordance with the Service Payment Monitoring System and the SPR;
 - (iii) enable TfNSW's Representative to monitor and review the Operations Activities including by way of real time and read-only access to OpCo's Service Payment Monitoring System; and
 - (iv) with each payment claim under clause 25.4, provide the Monthly Service Payment Report to TfNSW's Representative.
- (b) OpCo warrants that the performance data which results from the Service Payment Monitoring System will, at all times, be accurate, complete and correct.
- (c) Each Monthly Service Payment Report provided to TfNSW's Representative must:
 - (i) include sufficient information to enable TfNSW's Representative to confirm the calculation of the Service Payment for the preceding month; and
 - (ii) be accompanied by a statutory declaration from OpCo's Representative warranting that, to the best of his or her knowledge and belief, the Monthly Service Payment Report is accurate.

25A. Securitised Licence Structure

25A.1 Construction Payment B

- (a) Subject to this clause 25A, in consideration of the execution of the OTS Works and the Temporary Works and the performance of the other Delivery Activities by OpCo, TfNSW agrees to pay to OpCo (or as OpCo directs) the Construction Payment B in accordance with this clause 25A on each Construction Payment B Date.
- (b) TfNSW has no obligation to pay a Construction Payment B unless TfNSW receives the corresponding Receivables Purchase Payment from Finance Co under the Securitisation Agreement and in accordance with the Payment Directions Deed.
- (c) The amount of a Construction Payment B and the corresponding Receivables Purchase Payment will be adjusted:

- (i) to reflect the Net Financial Impact of an NFI Event, where the Net Financial Impact is agreed or determined to apply before the Date of Completion and TfNSW requests that OpCo (or Finance Co), and OpCo (or Finance Co) agrees to, finance all or part of the relevant Net Financial Impact in accordance with this deed; or
- (ii) otherwise by agreement in writing between the parties prior to the Date of Completion,

provided that no adjustment to a Construction Payment B or the corresponding Receivables Purchase Payment will affect the limitation referred to in clause 25A.1(b).

- (d) Notwithstanding any other clause of any Project Agreement, TfNSW may not set off any amount due and payable by OpCo or Finance Co to TfNSW under the Project Agreements against any Construction Payment B.
- (e) If a Construction Payment B and the corresponding Receivables Purchase Payment are adjusted in accordance with clause 25A.2(c), TfNSW and OpCo agree that the Licence Payments payable under this deed will also be adjusted in accordance with clause 25.2A(b).
- (f) Subject to clause 25A.4, TfNSW acknowledges that, if a Receivables Purchase Payment is not received in full or at all (or only part of that Receivables Purchase Payment is received) in each case from Finance Co under the Securitisation Agreement, TfNSW's only right or remedy in respect of such non-payment or part payment is the relief from payment of the corresponding whole or part of that Construction Payment B under clause 25A.2(b) until such time as the relevant payment is received in accordance with the Payment Directions Deed.

25A.2 Securitised NFI Payment

- (a) Subject to clause 25A.2(b), if an NFI Event occurs where the Net Financial Impact is agreed or determined to apply after the Date of Completion and TfNSW requests that OpCo (or Finance Co), and OpCo (or Finance Co) agrees to, finance all or part of the relevant Net Financial Impact in accordance with this deed, TfNSW must pay the Securitised NFI Event Payment to OpCo (or as OpCo directs) on the Additional Purchase Date.
- (b) TfNSW has no obligation to pay the Securitised NFI Event Payment unless it receives the corresponding payment of the Receivables Purchase Price from Finance Co under the Securitisation Agreement and in accordance with the Payment Directions Deed in relation to that NFI Event.
- (c) TfNSW may not set off any amount due and payable by OpCo or Finance Co to TfNSW under the Project Agreements against any Securitised NFI Event Payment.
- (d) If a Securitised NFI Event Payment is required to be paid under clause 25A.2(a), TfNSW and OpCo agree that the Licence Payments payable under this deed will be adjusted in accordance with clause 25.2A(c).
- (e) To the extent it has not already passed, all right, title and interest of OpCo in the works to which the Securitised NFI Event Payment applies passes to TfNSW on payment by TfNSW in accordance with clause 25A.2(a).
- (f) TfNSW acknowledges that, if the Receivables Purchase Price in respect of Additional Receivables is not received in full or at all under the Securitisation

Agreement, TfNSW's only right or remedy in respect of such non-payment or part payment is the relief from payment of the corresponding whole or part of the Securitised NFI Event Payment under clause 25A.1(b) until such time as the relevant payment is received.

25A.3 No change in risk allocation

- (a) The parties acknowledge and agree that the Securitised Licence Structure is not intended to result in an Increased TfNSW Risk Allocation.
- (b) OpCo undertakes not to make any Claim inconsistent with the acknowledgement in clause 25A.3(a) and must procure that neither Finance Co nor any Related Body Corporate of Finance Co or OpCo will make any such Claim.
- (c) If TfNSW reasonably believes that the Securitised Licence Structure results or is likely to result in an Increased TfNSW Risk Allocation, then it may give OpCo a notice stating that the Securitised Licence Structure is to be modified to the extent reasonably necessary to ensure there is no Increased TfNSW Risk Allocation.
- (d) OpCo agrees to do anything reasonably requested by TfNSW in a notice given by TfNSW under clause 25A.3(b) or otherwise reasonably necessary to modify the Securitised Licence Structure to ensure there is no Increased TfNSW Risk Allocation.
- (e) OpCo acknowledges and agrees that:
 - (ii) damages may not be an adequate remedy for TfNSW for any failure by OpCo to comply with the undertakings in clause 25A.3(a) or 25A.3(b); and
 - (ii) if there is a breach or purported breach by OpCo of its obligations in clause 25A.3(a) or 25A.3(b), TfNSW may seek and is entitled to injunctive or declaratory relief.
- (f) OpCo indemnifies TfNSW against:
 - (i) any Loss incurred by TfNSW in connection with any Increased TfNSW Risk Allocation to the extent that it is not removed or remedied by changes to the Securitised Licence Structure made in accordance with clause 25A.3(d); and
 - (ii) any Claim brought against TfNSW by Finance Co, OpCo or any of their respective Related Bodies Corporate which is inconsistent with the acknowledgment in clause 25A.3(a).

25A.4 GST on Construction Payment B and Securitised NFI Event Payment

Notwithstanding any other provision of clause 61.2:

- (a) TfNSW is not obliged to make a payment to OpCo in respect of GST on a Construction Payment B or a Securitised NFI Event Payment until TfNSW has received the benefit of an input tax credit for such GST (either by the input tax credit being offset against a GST or other tax liability, credited to TfNSW's account (running balance account) or being refunded to TfNSW in the relevant period);
- (b) TfNSW must use reasonable endeavours to ensure it (or the government entity which is treated as making the supplies and acquisitions under the Project

Agreements for GST purposes) receives the benefit of the input tax credit from the Australian Taxation Office as quickly as possible, including by reporting the relevant acquisition in the first GST Return in which it can properly be reported, lodging the GST Return in which the acquisition is reported no later than the due date for that GST Return and promptly informing OpCo of any delays or other related issues in respect of the input tax credit; and

- (c) if at any time this deed is terminated and TfNSW has paid a Construction Payment B or a Securitised NFI Event Payment in respect of which it has not paid to OpCo an amount in respect of GST on that payment, TfNSW is obliged to continue to use reasonable endeavours to obtain the benefit of the input tax credit and to pay to OpCo an amount equal to the relevant GST payment when it receives the benefit of an input tax credit in respect of the Construction Payment B or Securitised NFI Event Payment (as relevant).

26. Compensation Events

26.1 Compensation Events

Each of the following events is a Compensation Event:

- (a) a breach by TfNSW of its obligations under this deed or any other Project Agreement;
- (b) the occurrence of an event or circumstance expressly designated as a Compensation Event in this deed, including those referred to in clauses 6.5 (Planning Approval), 6.10(d) (ECRL Conversion Planning Approval), 9.12 (Other Contractors), 9.13 (ETS Contractor), 9.16(ab) (Utility Service Works), 11.6 (Environmental Notice), 12.1(hc) (Easements), 12.1(j) (access to Construction Site), 12.3A(d) (change in Licensed Maintenance Area), 12.6(c) (Native Title Claim), 12.7(c) (Artefacts), 14.15 (Civil Works), 18.8(c) (additional tests), 34.4 (Proximate Work Activities) or 35.4(b) (Change in Clean Energy Law), or the occurrence of a 'Compensation Event' referred to in Schedule 3 (ECRL works and Sydney Trains interface) or clause 3.1 of Schedule 9 (Easements);
- (c) the discovery of Contamination on the NWRL Site that was caused or disturbed by a Civil Works Contractor or an Other Contractor and, in the case of the Civil Works Contractor, that was not disposed of or otherwise dealt with by the Civil Works Contractor in accordance with the relevant Civil Works Contract;
- (d) the occurrence of a Compensable Change in Law;
- (e) the occurrence of a Change in NSW Government Policy;
- (f) the discovery of an ECRL Latent Condition;
- (g) a Step-in Party exercises all or any of the Step-in Powers in respect of a Step-in Event, except to the extent that the Step-in Event was an OpCo Termination Event or was caused by any wrongful act or omission of OpCo or any breach of this deed by OpCo;
- (h) rectification work on concrete in the Lane Cove cut and cover tunnel is required for reasons of structural integrity and/or impacts to passenger services;
- (i) water ingress exceeds the design capacity of a localised water sump within the ECRL;

- (j) a cavern panel or other attachment falls from the ceiling or walls of the ECRL tunnel or an ECRL Station due to failure of one or more fixings, (and where such a failure occurs during the Operations Phase, it could not have been predicted or avoided through the normal inspection and replacement regime);
- (k) during the Delivery Phase only, more than 200 metres (in aggregate) or more than 10 separate sections (in aggregate) of rail (being single rail) within the ECRL requires replacement under Sydney Trains' standard (Engineering Manual TMC 203 Track Inspection);
- (l) during the Delivery Phase only, more than 250 rail fixation fasteners (in aggregate) (being the assembly connecting the track to the concrete or any part thereof including fixings) within the ECRL require replacement; and
- (m) during the Delivery Phase only, more than 50 dampers (in aggregate) within the ECRL require replacement.

26.2 Entitlement to claim compensation

- (a) If a Compensation Event causes OpCo to incur Loss, OpCo may claim compensation in accordance with this clause 26.
- (b) To the extent that any Claim for compensation under this clause 26 includes a Claim by OpCo for any Loss that it has incurred and which arises out of or in connection with any delay to the Delivery Activities, OpCo is only entitled to compensation for such Loss:
 - (i) if, and only in respect of the period of time for which, it has been granted an extension of time to the Date for Completion pursuant to:
 - A. clause 17.10(a) due to a Compensation Event; or
 - B. clause 17.11; or
 - (ii) if TfNSW has elected to exercise its discretion under clause 17.10(e) not to grant an extension of time to the Date for Completion, in respect of the period of time for which it would otherwise have been granted an extension of time.

26.3 Claim for compensation

To claim compensation in respect of a Compensation Event, OpCo must:

- (a) within 40 Business Days after the earlier of when OpCo becomes aware, or ought reasonably to have become aware, that the Compensation Event is likely to cause OpCo to incur Loss (or if OpCo becomes so aware, or ought reasonably to have become so aware, in the period between the date of this deed and Financial Close, within 40 Business Days after Financial Close), give to TfNSW's Representative a written notice, expressly stating:
 - (i) that OpCo proposes to make a Claim; and
 - (ii) the Compensation Event upon which the Claim will be based; and
- (b) within 25 Business Days of giving the notice under clause 26.3(a), give TfNSW's Representative a written Claim which must include (to the extent practicable):

- (i) detailed particulars concerning the Compensation Event upon which the Claim is based;
- (ii) details of the obligations which have been affected by the Compensation Event;
- (iii) details of any Net Financial Impact of the Compensation Event and how it has been calculated;
- (iv) if pursuant to clause 26.2(b) OpCo is entitled to include in its claim a delay component, detailed particulars of how the delay for which it has been granted an extension of time, or for which it would have been granted an extension of time but for TfNSW electing to exercise its discretion under clause 17.10(e), has caused a Net Financial Impact; and
- (v) details of the steps which OpCo has taken to mitigate the effects of the relevant Compensation Event.

26.4 Continuing Compensation Events

If the Compensation Event (or its effects) are continuing, OpCo must:

- (a) continue to give the information required by clause 26.3(b) every 40 Business Days after the notice under clause 26.3(b) was provided to TfNSW's Representative until after the Compensation Event (or its effects) have ceased; and
- (b) provide a final written Claim within 25 Business Days after the Compensation Event (or its effects) have ceased.

26.5 Condition precedent to compensation

- (a) It is a condition precedent to OpCo's entitlement to compensation that:
 - (i) a Compensation Event has occurred which has caused OpCo to incur a Loss;
 - (ii) OpCo has complied with the requirements of clauses 26.3 and 26.4; and
 - (iii) to the extent that OpCo wishes to claim any Loss that it has incurred and which arises out of or in connection with any delay to Completion, it has been granted an extension of time to the Date for Completion under clause 17.10(a) or 17.11 or TfNSW has elected to exercise its discretion under clause 17.10(e) to not grant an extension of time.
- (b) If OpCo fails to comply with the requirements of clauses 26.3 and, if applicable, 26.4 within the periods required by those clauses:
 - (i) TfNSW will not be liable (in so far as it is possible to exclude such liability) upon any Claim by OpCo; and
 - (ii) OpCo will be absolutely barred from making any Claim against TfNSW, arising out of or in connection with the relevant Compensation Event.

26.6 Compensation for Net Financial Impact

If the condition precedent in clause 26.5(a) has been satisfied, TfNSW must compensate OpCo for the Net Financial Impact of the Compensation Event.

26.7 Calculation and payment of Net Financial Impact

The Net Financial Impact of a Compensation Event will be calculated and paid in accordance with Schedule 29.

26.8 Mitigation

- (a) OpCo must use all reasonable endeavours to mitigate the effects of any Compensation Event (including by putting in place temporary measures reasonably acceptable to TfNSW's Representative).
- (b) Without limiting clause 26.8(a), OpCo must use all reasonable endeavours to:
 - (i) avoid or minimise the duration and consequences of any delay caused by a Compensation Event;
 - (ii) minimise any incremental costs or loss of revenue incurred or suffered as a result of a Compensation Event; and
 - (iii) maximise any cost savings or additional revenue derived as a result of a Compensation Event.
- (c) OpCo's entitlement to compensation will be reduced to the extent that OpCo fails to comply with its obligations under this clause 26.8.

26.9 Non-compliance

OpCo's entitlement to compensation will be reduced to:

- (a) exclude any incremental costs or loss of revenue which would not have been incurred or suffered; and
- (b) include any cost savings or additional revenue which would have been derived, had OpCo complied with its obligations under the Project Agreements.

26.10 OpCo conduct

OpCo's entitlement to compensation will be reduced to:

- (a) exclude any incremental costs or loss of revenue which would not have been incurred or suffered; and
- (b) include any cost savings or additional revenue which would have been derived,

to the extent that the Compensation Event occurs or arises as a result of any act or omission of OpCo or OpCo's Contractor.

26.11 Limitation of liability

- (a) Except as provided for in clause 17 and this clause 26, TfNSW will not be liable upon any Claim by OpCo arising out of or in connection with a Compensation Event, including in respect of any breach of this deed by TfNSW.

- (b) The parties agree that OpCo's entitlements under clause 17 and this clause 26 are a limitation on TfNSW's liability to OpCo for any breach of this deed by TfNSW and that OpCo will not be entitled to make, nor will TfNSW be liable upon, any Claim in these circumstances other than in respect of the matters for which TfNSW may be liable under clause 17 and this clause 26.
- (c) Nothing in this clause 26.11 shall affect or limit OpCo's rights or entitlements under clause 27 or OpCo's right to terminate this deed.

27. Relief Events

27.1 Relief Events

Each of the following events is a Relief Event:

- (a) a Compensation Event;
- (b) fire, explosion, flood, storm, tempest, lightning, cyclone, hurricane, mudslide, landslide, earthquake and drought (where such drought is declared as a state of emergency);
- (c) a Terrorist Act;
- (d) war (declared or undeclared), armed conflict, riot or civil commotion;
- (e) chemical or biological contamination, ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel (excluding Contamination for which OpCo is responsible under clause 11.4);
- (f) failure by any Authority, or a provider of gas, water, sewerage, electricity or telecommunications utilities, to carry out works or provide services to the NWRL Site which it is obliged by law (including by contract) to carry out or provide, or any interruption permitted by law (including by contract) to the carrying out or provision of those works or services;
- (g) any event which causes loss or damage to the OTS Works, the Temporary Works or the NWRL;
- (h) any blockade or embargo, other than a blockade or embargo which only affects OpCo and/or one or more OpCo Contractor;
- (i) any industrial action, other than industrial action which only affects OpCo and/or one or more OpCo Contractors;
- (j) any event or occurrence which deprives OpCo of any access to the NWRL Site that it is entitled to under this deed;
- (k) an act or omission by TfNSW or Sydney Trains not being an act or omission:
 - (i) expressly permitted or allowed by the Project Agreements;
 - (ii) which is within a timeframe expressly permitted or allowed by the Project Agreements;
 - (iii) which is a breach by TfNSW of its obligations under this deed or any other Project Agreement (without prejudice to clause 27.1(a)); or

- (iv) which is caused or contributed to by a breach of OpCo of the Project Agreements or any negligent or other wrongful act or omission of OpCo or its Associates;
- (l) TfNSW directs an amendment to the ETS Program in accordance with clause 3.1(bb) of Schedule 4; and
- (m) a direction by the Minister under Part 2 of the *Public Health Act* 1991 (NSW) to the extent that OpCo cannot, in compliance with law, comply with a material part of its obligations under this deed,

except where:

- (n) the event (or its effects) was within the reasonable control of OpCo or OpCo's Contractors; or
- (o) the event occurs or arises as a result of any act or omission of OpCo or OpCo's Contractors.

27.2 Notification

If a Relief Event occurs, OpCo must:

- (a) within 20 Business Days after it becomes aware that a Relief Event is likely to affect the ability of OpCo to comply with its obligations under this deed (or if OpCo becomes so aware in the period between the date of this deed and Financial Close, within 20 Business Days after Financial Close), give to TfNSW's Representative a written notice stating that a Relief Event has occurred; and
- (b) within 10 Business Days of giving the notice under clause 27.2(a), give TfNSW's Representative full particulars of the Relief Event including (to the extent practicable):
 - (i) details of the obligations which have been affected by the Relief Event;
 - (ii) details of the steps which OpCo has taken to mitigate the effects of the relevant Relief Event; and
 - (iii) whether OpCo considers that the Relief Event may also reasonably be expected to give rise to a Force Majeure Event.

27.3 Continuing Relief Event

If the Relief Event (or its effects) is continuing, OpCo must continue to give the information required by clause 27.2(b) every 40 Business Days after the notice under clause 27.2(b) was provided to TfNSW's Representative until after the Relief Event (or its effects) have ceased. If a Relief Event (or its effects) continues for such a period or in such a manner that a Force Majeure Event occurs, OpCo must, within the earlier of 20 Business Days after the occurrence of the Force Majeure Event or the date of the next notice given by OpCo under this clause 27.3 after the occurrence of the Force Majeure Event, notify TfNSW of the occurrence of the Force Majeure Event.

27.4 Condition precedent to relief

- (a) It is a condition precedent to OpCo's entitlement to relief from its obligations under clause 27.5 that OpCo has complied with the requirements of clauses 27.2 and 27.3 within the periods required by those clauses.

- (b) If OpCo fails to comply with the requirements of clauses 27.2 and 27.3:
 - (i) TfNSW will not be liable (in so far as it is possible to exclude such liability) upon any Claim by OpCo; and
 - (ii) OpCo will be absolutely barred from making any Claim under this clause 27 against TfNSW,

arising out of or in connection with the relevant Relief Event.

27.5 Relief from obligations

If:

- (a) a Relief Event occurs; and
- (b) the condition precedent in clause 27.4(a) has been satisfied,

OpCo will not be in breach of any of its obligations under this deed which are affected by the Relief Event (other than payment obligations), but only to the extent and for so long as the Relief Event prevents OpCo from performing those obligations.

27.6 Mitigation

OpCo must use all reasonable endeavours to mitigate the effects of any Relief Event (including by putting in place temporary measures reasonably acceptable to TfNSW's Representative).

27.7 Payment regime not affected

Nothing in this clause 27 will affect the operation of Schedule 2 and the Service Payment will be calculated as if obligations affected by a Relief Event subsisted during the period in which the Relief Event is subsisting.

28. Force Majeure

28.1 Force Majeure Event

A Force Majeure Event is a Relief Event (other than a Compensation Event) which prevents, or can reasonably be expected to prevent, OpCo from complying with a material part of its obligations under this deed for a continuous period exceeding 180 days.

28.2 Meeting

As soon as practicable after notice of the occurrence of a Force Majeure Event is given under clauses 27.2 or 27.3 the parties must meet and consult with each other in good faith and use all reasonable endeavours to determine whether a Force Majeure Event has occurred.

28.3 Termination for Force Majeure Event

- (a) Subject to clause 28.3(b), if:
 - (i) the parties are unable to agree on appropriate measures to mitigate the effects of the Force Majeure Event and facilitate the continued performance of this deed on or before the date falling 20 Business Days after the date of the commencement of the relevant Force Majeure Event (or the date on which the relevant Relief Event became a Force Majeure Event); and

- (ii) the Force Majeure Event is continuing or its consequence remain such that the affected party has been or is unable to comply with a material part of its obligations under this deed during that 20 Business Day period,

then, subject to clause 28.4:

- (iii) in the case of a Force Majeure Event corresponding to the Relief Event referred to in clause 27.1(k), OpCo may terminate this deed by giving 20 Business Days' written notice to TfNSW; or
- (iv) in all other cases, either party may terminate this deed by giving 20 Business Days' written notice to the other party.

(b) OpCo may only terminate this deed in accordance with clause 28.3(a):

- (i) if OpCo is entitled to recover (or would have been entitled to recover if OpCo had fully complied with its insurance obligations under this deed and made a proper claim) under the advance consequential loss insurance policy during the Delivery Phase or under the business interruption insurance policy during the Operations Phase, once the maximum indemnity period stated in the relevant insurance policy has been exceeded; or
- (ii) if OpCo is not entitled to recover under the advance consequential loss insurance policy during the Delivery Phase or under the business interruption insurance policy during the Operations Phase (other than because OpCo has not complied with its insurance obligations under this deed or made a proper claim), at the end of the 20 Business Day period referred to in clause 28.3(a).

28.4 Suspension of OpCo's right to terminate

(a) If OpCo gives a termination notice under clause 28.3(a), TfNSW may suspend OpCo's right to terminate by giving a suspension notice within 20 Business Days of receipt of OpCo's termination notice.

(b) If TfNSW gives OpCo a suspension notice under clause 28.4(a):

(i) TfNSW must:

- A. if the right to terminate is suspended after the Date of Completion, during the period in which OpCo's right to terminate is suspended; or
- B. if the right to terminate is suspended before the Date of Completion, from the date on which OpCo would have achieved Completion but for the Force Majeure Event,

pay OpCo:

C. the Service Payment which would have been payable if OpCo's Activities then required to be carried out under this deed were being performed in full (based on:

- 1) the average performance of OpCo for the 6 months (or lesser period if the Force Majeure Event

occurred less than 6 months after the Date of Completion) immediately prior to the Force Majeure Event first occurring, or

- 2) the forecast performance of OpCo, if the Force Majeure Event occurred before the Date of Completion),

less the aggregate of (without double counting):

- 3) the costs not incurred by OpCo as a result of the non-performance of OpCo's Activities; and
- 4) the amount of the proceeds OpCo receives from any business interruption or advance business interruption insurances; and

D. if the Force Majeure Event occurred before the Date of Final Completion, any reasonable costs that are incurred by OpCo or OpCo Contractors as a result of the need to demobilise, remobilise or maintain the availability of any personnel, equipment or any other thing required to perform the Delivery Activities less the amount of the proceeds OpCo receives from any business interruption or advance business interruption insurances; and

(ii) this deed will not terminate until expiry of written notice (of at least 30 Business Days) from TfNSW to OpCo that it is ending the suspension of OpCo's right to terminate, provided that OpCo's right to terminate may only be suspended for a maximum period of six months, following which OpCo may exercise its right to terminate this deed under clause 28.3 and TfNSW may not suspend that right under this clause 28.4.

(c) If OpCo becomes able to recommence performing the relevant obligations after TfNSW gives OpCo a suspension notice:

- (i) OpCo must recommence performance of those obligations; and
- (ii) OpCo's termination notice under clause 28.3(a) will cease to have any effect.

29. TfNSW initiated Modifications

29.1 Modification Impact Request

- (a) TfNSW's Representative may at any time issue to OpCo a Modification Impact Request setting out the details of a proposed Modification which TfNSW is considering.
- (b) If the Modification Impact Request requests that OpCo provide an estimate of the third party costs that OpCo will incur in preparing a Modification Impact Proposal, OpCo must provide that estimate within 5 Business Days of receipt of the Modification Impact Request.
- (c) TfNSW will not be obliged to proceed with any Modification proposed in a Modification Impact Request.

29.2 Modification impact Proposal

- (a) As soon as practicable after:
- (i) receipt of a Modification Impact Request; or
 - (ii) if the Modification Impact Request requests that OpCo provide an estimate of the third party costs that OpCo will incur in preparing a Modification Impact Proposal, TfNSW advising OpCo that the fee estimate is acceptable,
- OpCo must provide TfNSW with a proposal (**Modification Impact Proposal**).
- (b) The Modification Impact Proposal must set out detailed particulars of OpCo's view on:
- (i) the Net Financial Impact of the proposed Modification;
 - (ii) the basis (if any) on which OpCo is able to fund the Modification and difference to the Net Financial Impact, if OpCo, rather than TfNSW, funds the Modification;
 - (iii) if the Modification is proposed to be carried out during the Delivery Phase, the effect which the proposed Modification will have on the Delivery Program (including any extension of time required to the Date for Completion);
 - (iv) if the Modification is proposed to be carried out during the Operations Phase, the time within which the proposed Modification will be implemented;
 - (v) any Approvals required to implement the proposed Modification, and the effect of the proposed Modification on any existing Approvals;
 - (vi) the effects which the proposed Modification will have on:
 - A. OpCo's ability to satisfy its obligations under this deed (including any warranties given by OpCo under this deed); and
 - B. OpCo's performance against any performance indicator or requirement which could result in a Service Payment Deduction;
 - (vii) any relief which is required from OpCo's obligations under this deed to ensure that it is left in a no better and no worse position than it would be in if the Modification were not implemented; and
 - (viii) any other information requested by TfNSW in the Modification Impact Request.

29.3 Cost of preparing Modification Impact Proposal

If:

- (a) OpCo prepares a Modification Impact Proposal in accordance with clause 29.2; and

- (b) TfNSW does not issue a Modification Order in respect of the proposed Modification,

then TfNSW must reimburse the reasonable third party costs incurred by OpCo in:

- (c) preparing the Modification Impact Proposal; and
- (d) performing its obligations under clauses 29.4 or 29.7,

capped at the amount of any estimate provided by OpCo for the Modification Impact Proposal under clause 29.1(b) (or such higher amount as TfNSW may approve).

29.4 Tender for works

- (a) During the Operation Phase, TfNSW may require that OpCo conduct a tender process for all or part of the works which would be required to effect the Modification.
- (b) If TfNSW elects to require the tender process, the tender process must be carried out promptly, in accordance with TfNSW's reasonable requirements.
- (c) Following completion of the tender process, OpCo must prepare a Modification Impact Proposal, having regard to the outcome of the tender process (including the tendered prices) in the Modification Impact Proposal (or, if a Modification Impact Proposal has been submitted before the completion of the tender process, promptly submit an appropriately amended Modification Impact Proposal).

29.5 Election by TfNSW

Within 20 Business Days (or such longer period as TfNSW reasonably requires, having regard to the size and complexity of the proposed Modification) after receiving a Modification Impact Proposal, TfNSW's Representative may:

- (a) accept the Modification Impact Proposal;
- (b) reject the Modification Impact Proposal; or
- (c) inform OpCo that it does not wish to proceed with the proposed Modification,

by written notice to OpCo (which in the case of paragraph (a) must be a Modification Order).

29.6 TfNSW accepts Modification Impact Proposal

If TfNSW accepts the Modification Impact Proposal in accordance with clause 29.5(a):

- (a) OpCo must implement the Modification on the basis of the Modification Impact Proposal (as accepted by TfNSW);
- (b) OpCo will be relieved of its obligations under this deed to the extent specified in the Modification Impact Proposal (as accepted by TfNSW); and
- (c) the Date for Completion will be extended as specified in the Modification Impact Proposal.

29.7 TfNSW rejects Modification Impact Proposal

If TfNSW rejects the Modification Impact Proposal in accordance with clause 29.5(b), TfNSW may require that:

- (a) the parties consult in good faith and use their reasonable endeavours to agree on a mutually acceptable resolution to the matters set out in the Modification Impact Proposal which are in dispute; and/or
- (b) if this occurs during the Operations Phase, OpCo conduct a tender process (to the extent it has not already done so) under clause 29.4.

29.8 Parties reach agreement

If the parties reach agreement on the disputed matters in the Modification Impact Proposal and TfNSW directs OpCo to implement the Modification by issuing a Modification Order:

- (a) OpCo must implement the Modification on the basis of the Modification Impact Proposal (as varied by the parties' agreement);
- (b) OpCo will be relieved of its obligations under this deed to the extent specified in the Modification Impact Proposal (as varied by the parties' agreement); and
- (c) the Date for Completion will be extended as specified in the Modification Impact Proposal (as varied by the parties' agreement).

29.9 If parties fail to reach agreement

If the parties are unable to reach agreement within 20 Business Days after TfNSW receives the Modification Impact Proposal, TfNSW may refer the matter for dispute resolution in accordance with clause 56.

29.10 TfNSW may direct that Modification proceed

If TfNSW refers the matter for dispute resolution under clause 29.9, TfNSW may also direct OpCo to implement the Modification by issuing a Modification Order whether or not any matters in dispute have been agreed in accordance with clause 56.

If TfNSW issues such a Modification Order:

- (a) any disputed matters will, until TfNSW and OpCo otherwise agree or a determination is made in accordance with clause 56, be reasonably determined by TfNSW's Representative. In making his or her determination, TfNSW's Representative will:
 - (i) assume that funding for the Modification will be provided by TfNSW, unless the parties otherwise agree; and
 - (ii) determine all matters required to enable the Modification to be implemented;
- (b) OpCo must proceed to implement the Modification on the basis determined by TfNSW's Representative (notwithstanding that any matters in dispute have not been agreed or determined in accordance with clause 56);
- (c) OpCo will be relieved of its obligations under this deed to the extent specified in the Modification Order;
- (d) the Date for Completion will be extended as specified in the Modification Order; and

- (e) any necessary adjustments will be made following the determination of a dispute under clause 56 (where applicable).

29.11 TfNSW options following determination

Following determination of the dispute referred to in clause 29.9 in accordance with clause 56, TfNSW may, only if it has not already exercised its right under clause 29.10, elect to do either of the following:

- (a) require OpCo to implement the Modification in accordance with the Modification Impact Proposal as varied by the determination; or
- (b) withdraw the proposed Modification,

by written notice to OpCo (which in the case of paragraph (a) must be a Modification Order).

29.12 OpCo to implement Modification

If TfNSW gives a Modification Order pursuant to clause 29.11:

- (a) OpCo must carry out the Modification described in the Modification Order on the basis of the Modification Impact Proposal (as varied by the determination, once made);
- (b) OpCo will be relieved of its obligations under this deed to the extent specified in the Modification Impact Proposal (as varied by the determination, once made); and
- (c) the Date for Completion will be extended as specified in the Modification Impact Proposal (as varied by the determination, once made).

29.13 Instruction to proceed

- (a) Whether or not TfNSW has issued a Modification Impact Request under clause 29.1 and whether or not OpCo has issued a Modification Impact Proposal under clause 29.2 in response to a Modification Impact Request, TfNSW's Representative may at any time instruct OpCo to implement a Modification by issuing a Modification Order. In these circumstances, the matters set out in clauses 29.2(b)(i), 29.2(b)(iii) and 29.2(b)(vii) will, until TfNSW and OpCo agree otherwise or a determination is made in accordance with clause 56 (Dispute resolution), be reasonably determined by TfNSW's Representative.
- (b) In making his or her determination, TfNSW's Representative will:
 - (i) assume that funding for the Modification will be provided by TfNSW, unless the parties otherwise agree; and
 - (ii) determine all matters required to enable the Modification to be implemented.
- (c) If OpCo disagrees with a matter determined by TfNSW's Representative:
 - (i) OpCo may refer the matter for dispute resolution in accordance with clause 56;
 - (ii) OpCo must proceed to implement the Modification on the basis determined by TfNSW's Representative notwithstanding that the matters

in dispute have not been agreed or determined in accordance with clause 56;

- (iii) OpCo will be relieved of its obligations under this deed to the extent specified in the Modification Order; and
- (iv) any necessary adjustments will be made following any agreement or determination under clause 56.

29.14 Omissions

- (a) If a Modification omits any part of the OTS Works or OpCo's Activities, TfNSW may carry out those omitted OTS Works or OpCo's Activities itself or by engaging an Other Contractor, the ETS Contractor or Civil Works Contractor, provided that TfNSW may not propose a Modification that:
 - (i) omits all or substantially all of the OTS Works or all of OpCo's Activities; or
 - (ii) omits OTS Works or OpCo's Activities, where such omission would or may:
 - A. put OpCo (or any Core Contractor) in breach of its obligations as a Rail Infrastructure Manager or Rolling Stock Operator under the Rail Safety National Law and Rail Safety Regulations; or
 - B. jeopardise the Accreditation of OpCo (or any Core Contractor), or an application for Accreditation by OpCo (or any Core Contractor), including anything that may be grounds for the ONRSR to refuse an application for Accreditation by OpCo (or any Core Contractor), or to suspend or revoke (in whole or in part) or impose or vary conditions or restrictions on the Accreditation of OpCo (or any Core Contractor).
- (b) TfNSW must ensure that it and any Other Contractor, ETS Contractor or Civil Works Contractor it engages to carry out those omitted OTS Works or OpCo Activities:
 - (i) cooperates with OpCo and the Core Contractors in relation to OpCo's (or any Core Contractor's) compliance with its Accreditation obligations under the Rail Safety National Law and Rail Safety Regulations;
 - (ii) does not put OpCo (or any Core Contractor) in breach of its obligations as a Rail Infrastructure Manager or Rolling Stock Operator under the Rail Safety National Law and Rail Safety Regulations;
 - (iii) complies with all reasonable requirements of OpCo (or any Core Contractor) in relation to compliance with the Accreditation of OpCo (or any Core Contractor); and
 - (iv) does not do anything (or fail to do anything) which jeopardises the Accreditation of OpCo (or any Core Contractor) or an application for Accreditation by OpCo (or any Core Contractor), including anything that may be grounds for the ONRSR to refuse an application for Accreditation by OpCo (or any Core Contractor), or to suspend or

revoke (in whole or in part) or impose or vary conditions or restrictions on the Accreditation of OpCo (or any Core Contractor).

29.15 Calculation and payment of Net Financial Impact

The Net Financial Impact of a Modification directed by TfNSW under this clause 29 will be calculated and paid in accordance with Schedule 29.

29.16 No liability unless Modification Order

OpCo will not be entitled to make any Claim against TfNSW arising out of, or in any way in connection with, any Modification, except where OpCo is directed to implement a Modification pursuant to a Modification Order issued by TfNSW under this clause 29 or where clauses 29.3 or 57.1 apply.

29.17 Template

Schedule 24 contains a template which the parties may use to document a TfNSW initiated Modification. The parties are not obliged to use this template.

29.18 St Leonards Extension

The parties acknowledge that TfNSW is considering the implementation of a Modification for the design, construction, operation and maintenance of an extension of the NWRL to St Leonards station (**St Leonards Extension**). The parties acknowledge that Exhibit 19 contains a draft technical proposal that was submitted to TfNSW by OpCo prior to the date of this deed in relation to a St Leonards Extension. The parties agree that Exhibit 19 is not binding on OpCo or TfNSW but that the parties will take it into account if TfNSW proposes a Modification to implement the St Leonards Extension.

29.19 25kV AC traction power supply Modification

- (a) TfNSW and OpCo acknowledge that, prior to the date of this deed:
 - (i) TfNSW issued to OpCo a Modification Impact Request setting out the details of a proposed Modification relating to the 25kV AC traction power supply;
 - (ii) subject to clause 29.19(b), the terms of this clause 29 will apply to the proposed Modification as if the Modification Impact Request had been issued to OpCo after the date of this deed.
- (b) For the purposes of clause 29.1(b), OpCo estimates that the third party costs it will incur in preparing a Modification Impact Proposal will be \$..

29.20 Introductory service

TfNSW anticipates that there may be benefits for OpCo, the State and the NWRL in providing an introductory service on the NWRL, being a passenger shuttle between the Cudgegong Road and Bella Vista Stations or between the Cudgegong Road and Castle Hill Stations, during the conversion of the ECRL. TfNSW may at any time initiate discussions with OpCo, or issue to OpCo a Modification Impact Request, in respect of such introductory service.

29.21 Early Access to Construction Site and Initial Performance Tests

TfNSW anticipates that there may be benefits for TfNSW and OpCo in:

- (a) bringing forward the Site Access Date for various parts of the Construction Site; and
- (b) OpCo carrying out both Initial Performance Tests prior to Shutdown (as defined in Schedule 3).

TfNSW may at any time initiate discussions with OpCo, or issue a Modification Impact Request, in respect of a proposal of this nature.

29.22 Contract Service Level Requirements

The parties acknowledge that TfNSW is considering the implementation of a Modification to amend the Contract Service Level Requirements outside the Service Change Limitations in accordance with the parameters set out in Schedule 44. TfNSW may at any time initiate discussions with OpCo, or issue a Modification Impact Request, in respect of a proposal of this nature.

30. OpCo initiated Modifications

30.1 OpCo may propose a Modification

OpCo may propose a Modification by giving a written notice with details of:

- (a) the proposed Modification;
- (b) the reason for the proposed Modification;
- (c) the time within, and the manner in which, OpCo proposes to implement the proposed Modification;
- (d) the effect the proposed Modification will have on the Delivery Program (including any extension of time required to the Date for Completion);
- (e) any Approvals required to implement the proposed Modification, and the effect of the proposed Modification on any existing Approvals;
- (f) the effects which the proposed Modification will have on OpCo's ability to satisfy its obligations under this deed (including any warranties given by OpCo under this deed); and
- (g) the value for money for TfNSW arising from the Modification, including the proposed cost savings to be paid to TfNSW.

30.2 TfNSW may approve or reject

- (a) If OpCo gives a notice under clause 30.1, TfNSW:
 - (i) will consider OpCo's proposed Modification in good faith; and
 - (ii) subject to clause 30.3, may:
 - A. approve (with or without conditions) the proposed Modification in its absolute discretion by issuing a Modification Approval to OpCo; or
 - B. reject the proposed Modification in its absolute discretion; and

- (iii) will be under no obligation to approve the proposed Modification for the convenience of or to assist OpCo.
- (b) If TfNSW issues a Modification Approval under clause 30.2(a)(ii)A without conditions:
 - (i) OpCo must proceed to implement the Modification on the basis set out in the Modification Approval; and
 - (ii) OpCo will be relieved of its obligations under this deed to the extent specified in the Modification Approval.
- (c) If TfNSW issues a Modification Approval under clause 30.2(a)(ii)A with conditions:
 - (i) OpCo may proceed to implement the Modification on the basis set out in the Modification Approval, in which case OpCo will be relieved of its obligations under this deed to the extent specified in the Modification Approval; or
 - (ii) OpCo may withdraw the proposed Modification if OpCo, acting reasonably, does not accept any of the conditions attached to the Modification Approval.

30.3 Modification required as a result of a Change in Law or Change in NSW Government Policy

- (a) To the extent that any Modification requested by OpCo is required to ensure that the OTS Works, Temporary Works and the NWRL comply with a Change in Law or a Change in NSW Government Policy, TfNSW must, in its discretion, either:
 - (i) approve the Modification proposed by OpCo by issuing a Modification Approval;
 - (ii) direct OpCo to carry out a Modification in accordance with clause 29 to ensure that the OTS Works, the Temporary Works and the NWRL comply with the Change in Law or Change in NSW Government Policy; or
 - (iii) take such other action as TfNSW considers necessary to ensure the OTS Works, the Temporary Works and the NWRL comply with the Change in Law or Change in NSW Government Policy.
- (b) If TfNSW approves or directs a Modification in accordance with clause 30.3(a)(i) or clause 30.3(a)(ii):
 - (i) OpCo must proceed to implement the Modification on the basis of OpCo's notice under clause 30.1 or in accordance with clause 29; and
 - (ii) if the Modification is required to ensure that the OTS Works, the Temporary Works or the NWRL comply with a Compensable Change in Law or a Change in NSW Government Policy, clauses 17.10 and 26 will apply.

30.4 OpCo to bear risks and costs

Unless otherwise agreed in writing by TfNSW and subject to clause 30.3(b)(ii), OpCo will:

- (a) bear all risks and costs associated with a Modification proposed by OpCo; and
- (b) not be entitled to make any Claim against TfNSW arising out of, or in any way in connection with, a Modification proposed by OpCo,

including where TfNSW issues a Modification Approval in relation to such Modification.

31. Pre-Agreed Options

- (a) TfNSW may at any time prior to the relevant Election Date, in its absolute discretion and without being under any obligation to do so, direct OpCo to implement any Pre-Agreed Option by giving notice to OpCo.
- (b) If a notice is given pursuant to clause 31(a) in respect of a Pre-Agreed Option by the relevant Election Date, this deed will be deemed to be amended in accordance with the relevant amendments set out in Schedule 30 with effect from the relevant Effective Date.
- (c) TfNSW will not:
 - (i) issue a Modification Impact Request or direct a Modification under clause 29; or
 - (ii) issue a Notice of Augmentation Objectives under clause 33,that involves the same change to the Delivery Activities, OTS Works, the NWRL or the Operations Activities as a Pre-Agreed Option, before the Election Date for the relevant Pre-Agreed Option.
- (d) Subject to clause 31(c), nothing in this clause 31 prevents TfNSW from:
 - (i) issuing a Modification Impact Request or directing a Modification under clause 29;
 - (ii) issuing a Notice of Augmentation Objectives under clause 33;
 - (iii) carrying out Proximate Work Activities under clause 34; or
 - (iv) engaging an Other Contractor or the ETS Contractor to carry out any works,that involves the same (or similar) changes to the Delivery Activities, OTS Works, the NWRL or the Operations Activities as a Pre-Agreed Option, whether before or after the relevant Election Date.

32. Transport planning

- (a) OpCo acknowledges that the State or any Authority may make policy decisions in relation to the development and implementation of transport planning in New South Wales as it sees fit. Nothing in the Project Agreements restricts this.
- (b) OpCo must participate as reasonably required by TfNSW in the development and implementation of transport planning. This participation may involve:
 - (i) attending meetings, consultation forums and other similar events;

- (ii) reviewing and contributing to the development of proposals and strategies put forward by the State or other transport operators and stakeholders;
 - (iii) providing comments on the impact of proposal and strategies on the NWRL; and
 - (iv) cooperating in good faith in the implementation of TfNSW's public transport policy objectives, as notified to OpCo.
- (c) OpCo will have no entitlement to make any Claim against TfNSW or the State with respect to any consequence of the State, TfNSW or any Authority exercising, or not exercising, any right or power in relation to the development and implementation of transport planning in New South Wales, except as expressly provided in this deed.

33. Augmentations

33.1 Flexible process

This clause 33 sets out a process by which Augmentations can be discussed and, potentially, agreed. The parties may agree alternative arrangements for discussing and reaching agreement upon a proposed Augmentation.

33.2 Notice of Augmentation Objectives

- (a) TfNSW may at any time issue to OpCo a Notice of Proposed Augmentation setting out the detail of a proposed Augmentation. These details may include:
- (i) TfNSW's objectives for a proposed Augmentation;
 - (ii) desired timeframes for the delivery of the proposed Augmentation;
 - (iii) desired funding arrangements for the proposed Augmentation;
 - (iv) the proposed contractual structure for the delivery of the proposed Augmentation; and
 - (v) any other information considered relevant by TfNSW,
- (together the **Augmentation Objectives**).
- (b) If the Notice of Proposed Augmentation requests that OpCo provide an estimate of the third party costs that OpCo will incur in complying with its obligations under clause 33.4, OpCo must promptly provide that estimate.

33.3 Steering Committee

- (a) A Steering Committee must be established within 5 Business Days of the Notice of Proposed Augmentation consisting of:
- (i) TfNSW's Representative;
 - (ii) OpCo's Representative;
 - (iii) 2 other persons from each party;
 - (iv) such other persons as the parties agree on.

- (b) The persons referred to in clause 33.3(a) may appoint delegates (of an equivalent level of seniority or experience) to attend Steering Committee meetings in their absence.
- (c) The Steering Committee may invite other persons to attend its meetings as observers.
- (d) TfNSW's Representative will convene and chair meetings of the Steering Committee.
- (e) The role of the Steering Committee with respect to each Augmentation is to oversee the negotiations and implementation of the Augmentation, including:
 - (i) selection of the preferred option pursuant to clause 33.5(b)(i);
 - (ii) approval of the final Project Brief; and
 - (iii) negotiation of the Augmentation Proposal and amendments to the Project Agreements.
- (f) Decisions of the Steering Committee will only be effective if they are made unanimously.

33.4 Identification of options

- (a) As soon as practicable after:
 - (i) receipt of a Notice of Proposed Augmentation; or
 - (ii) if the Notice of Proposed Augmentation requests that OpCo provide an estimate of the third party costs that OpCo will incur in complying with its obligations under this clause 33.4, TfNSW advising OpCo that the fee estimate is acceptable,

OpCo must provide TfNSW with one or more options to meet the Augmentation Objectives. Each option must be accompanied by:

 - (iii) Preliminary Operational Requirements;
 - (iv) a Preliminary Procurement Strategy; and
 - (v) a Preliminary Impact Statement.
- (b) TfNSW must:
 - (i) review each option and the Preliminary Operational Requirements, Preliminary Procurement Strategy and Preliminary Impact Statement for that option, provided under clause 33.4(a); and
 - (ii) provide OpCo with written comments within 10 Business Days of receiving the information under clause 33.4(a).
- (c) TfNSW may suggest alternative options or modifications to the proposed options, provided that the options or modifications suggested by TfNSW are consistent with the Augmentation Objectives.
- (d) OpCo must submit to TfNSW amended or additional options, which address the comments provided by TfNSW under clauses 33.4(b)(ii) and 33.4(c).

33.5 Selection of preferred option

- (a) TfNSW will provide the Steering Committee with:
 - (i) the Augmentation Objectives;
 - (ii) particulars of the options to meet the Augmentation Objectives;
 - (iii) the Preliminary Operational Requirements, Preliminary Procurement Strategy and Preliminary Impact Statement for each option; and
 - (iv) a recommendation as to the preferred option for the Augmentation.
- (b) The Steering Committee will:
 - (i) select the preferred option for the Augmentation, having regard to the information provided under clause 33.5(a); and
 - (ii) specify the required contents of the Augmentation Concept Design.
- (c) If the Steering Committee fails to select a preferred option for the Augmentation, TfNSW must reimburse OpCo the reasonable third party costs incurred by OpCo in performing its obligations under clause 33.4, capped at the amount of any estimate provided by OpCo under clause 33.2(b) (or such higher amount as TfNSW may approve).
- (d) If TfNSW requests that OpCo provide TfNSW with an estimate of the third party costs which OpCo will incur in preparing a Project Brief for the Augmentation, OpCo must promptly provide the estimate.

33.6 Initial Project Brief

- (a) As soon as practicable after:
 - (i) the selection of a preferred option pursuant to clause 33.5(b)(i); or
 - (ii) if TfNSW requests that OpCo provide an estimate of the third party costs that OpCo will incur in preparing a Project Brief, TfNSW advising OpCo that the fee estimate is acceptable,

OpCo must provide TfNSW with an initial Project Brief for the Augmentation, based on the preferred option, which must include:

 - (iii) a draft Augmentation Concept Design;
 - (iv) the draft Final Operational Requirements and:
 - A. if the draft Final Operational Requirements differs from the Preliminary Operational Requirements, an explanation for any such difference; and
 - B. confirmation that the draft Augmentation Concept Design meets the draft Final Operational Requirements;
 - (v) the draft Final Procurement Strategy and, if the draft Final Procurement Strategy differs from the Preliminary Procurement Strategy, an explanation for any such difference; and

- (vi) the draft Final Impact Statement and, if the draft Final Impact Statement differs from the Preliminary Impact Statement, an explanation for any such difference.
- (b) TfNSW must:
 - (i) review the initial Project Brief; and
 - (ii) provide OpCo with written comments within 10 Business Days of receiving the initial Project Brief.

33.7 Final Project Brief

- (a) OpCo must submit to TfNSW a final Project Brief, which addresses the comments provided by TfNSW under clause 33.6(b)(ii).
- (b) The contents of the final Project Brief will be determined by the Steering Committee and notified to the parties and may include:
 - (i) the Augmentation Objectives;
 - (ii) the Augmentation Concept Design;
 - (iii) the Final Operational Requirements;
 - (iv) the Final Procurement Strategy;
 - (v) the Final Impact Statement; and
 - (vi) the overall scope, costs, program and risk associated with the implementation of the Augmentation.
- (c) TfNSW must:
 - (i) review the final Project Brief; and
 - (ii) provide OpCo with written comments within 10 Business Days of receiving the final Project Brief.
- (d) OpCo must:
 - (i) further develop the final Project Brief to address the comments provided by TfNSW under clause 33.7(c)(ii);
 - (ii) finalise the final Project Brief; and
 - (iii) submit a copy of the final Project Brief to the Steering Committee.
- (e) The Steering Committee must:
 - (i) review the final Project Brief; and
 - (ii) if the Steering Committee is satisfied that the final Project Brief will achieve the Augmentation Objectives, approve the final Project Brief (**Approved Project Brief**).
- (f) If:

(i) OpCo prepares an initial or final Project Brief in accordance with this clause 33.7; and

(ii) TfNSW does not proceed to implement the Augmentation,

then TfNSW must reimburse OpCo the reasonable third party costs incurred by OpCo in preparing the Project Brief, capped at the amount of any estimate provided by OpCo under clause 33.5(d) (or such higher amount as TfNSW may, acting reasonably, approve).

33.8 Augmentation Proposal

(a) TfNSW may request that OpCo provide TfNSW with a written proposal to deliver the Augmentation in accordance with the Approved Project Brief (**Augmentation Proposal**). If TfNSW's request also requests that OpCo provide TfNSW with an estimate of the third party costs which OpCo will incur in preparing the Augmentation Proposal, OpCo must promptly provide the estimate.

(b) As soon as practicable after:

(i) receiving a request under clause 33.8(a); or

(ii) if TfNSW requests that OpCo provide an estimate of the third party costs that OpCo will incur in preparing the Augmentation Proposal, TfNSW advising OpCo that the fee estimate is acceptable,

OpCo must submit an Augmentation Proposal which must include:

(iii) the proposed procurement delivery strategy;

(iv) the proposed program;

(v) a detailed cost estimate, including a cost breakdown and the proposed margin for OpCo;

(vi) the proposed financing arrangements;

(vii) the proposed changes to Project Agreements, including amendments to the payment regime and any new Project Agreements; and

(viii) such other information requested by TfNSW.

(c) As soon as reasonably practicable after OpCo submits the Augmentation Proposal, OpCo must negotiate in good faith with TfNSW with a view to reaching agreement on all aspects of the Augmentation Proposal.

(d) The Augmentation Proposal will not proceed unless the parties reach agreement on all aspects of the Augmentation Proposal.

(e) If:

(i) OpCo prepares an Augmentation Proposal in accordance with clause 33.8; and

(ii) the Augmentation Proposal does not proceed,

then TfNSW must reimburse the reasonable third party costs incurred by OpCo in:

- (iii) preparing the Project Brief, capped at the amount of any estimate provided by OpCo under clause 33.5(d) (or such higher amount as TfNSW may, acting reasonably, approve); and
- (iv) preparing the Augmentation Proposal, capped at the amount of any estimate provided by OpCo for the relevant Augmentation Proposal (or such higher amount as TfNSW may, acting reasonably, approve).

33.9 Termination in connection with an Augmentation

TfNSW may terminate this deed pursuant to clause 42.7 if the parties or the Steering Committee are unable to reach agreement on any matters that are the subject of this clause 33. This clause does not in any way limit TfNSW's right to terminate this deed at any time pursuant to clause 42.7.

33.10 No limitation

This clause 33 does not limit any of TfNSW's other rights under this deed.

33.11 Major Augmentation

TfNSW is currently considering the possible extension of the NWRL from Chatswood involving a second harbour crossing and proposes the alternative process set out in Schedule 46 by which that Augmentation can be discussed and potentially agreed by the parties.

34. Proximate Work Activities

34.1 Right to carry out Proximate Work Activities

Subject to this clause 34, TfNSW (or its nominees) may carry out Proximate Work Activities, including:

- (a) build and connect an Augmentation;
- (b) fit out or alter any Station;
- (c) build an additional connection between the NWRL and its local environment, including by developing an additional exit and entrance to a Station;
- (d) build, operate and maintain a retail, commercial or residential development and associated infrastructure above, below or adjacent to the NWRL;
- (e) close off areas, including to prevent public access;
- (f) open up any areas that are closed off;
- (g) install, operate and maintain equipment;
- (h) install Utility Services and connect to existing Utility Services (including those under the control of OpCo);
- (i) build, connect, operate and maintain any other infrastructure or improvement above, below or adjacent to the NWRL; and
- (j) carry out any associated work.

34.2 Proposed Proximate Work Activity

If TfNSW (or its nominees) proposes to undertake a Proximate Work Activity:

- (a) TfNSW must give OpCo reasonable written notice of its intention to do so; and
- (b) OpCo must co-operate with TfNSW (and its nominees) to enable TfNSW to plan the undertaking of the Proximate Work Activity.

34.3 Carrying out Proximate Work Activities

If TfNSW (or its nominees) carries out any Proximate Work Activity:

- (a) OpCo must:
 - (i) comply with its obligations under clause 9.11 (Cooperation and coordination with Other Contractors);
 - (ii) assist TfNSW in ensuring that any works constructed as part of the Proximate Work Activity are compatible with the NWRL and the ETS;
 - (iii) subject to and in accordance with clause 29, allow TfNSW to adjust the OTS Works, the Temporary Works or the NWRL to interface with any works constructed as part of the Proximate Work Activity;
 - (iv) co-operate with TfNSW and its nominees to facilitate the undertaking of the Proximate Work Activity, including permitting reasonable temporary closure of parts of the NWRL Site, managing passengers and others in areas affected by the Proximate Work Activity and rescheduling or otherwise adjusting OpCo's Activities; and
 - (v) do anything which TfNSW reasonably requires in order to give full effect to this clause 34.3(a) (including executing any document or entering into an agreement with a third party on terms which TfNSW's Representative considers to be commercially reasonable);
- (b) TfNSW must, and must procure that its nominees:
 - (i) cooperate with OpCo to facilitate the carrying out of OpCo's Activities;
 - (ii) liaise with OpCo and use reasonable efforts to schedule the Proximate Work Activities at a time and in a way that minimises the impact on OpCo's Activities; and
 - (iii) observe all reasonable safety and security constraints notified by OpCo; and
- (c) TfNSW must ensure that TfNSW and its nominees:
 - (i) cooperate with OpCo and the Core Contractors in relation to OpCo's (or any Core Contractor's) compliance with its Accreditation obligations under the Rail Safety National Law and Rail Safety Regulations;
 - (ii) do not put OpCo (or any Core Contractor) in breach of its obligations as a Rail Infrastructure Manager or Rolling Stock Operator under the Rail Safety National Law and Rail Safety Regulations;

- (iii) comply with all reasonable requirements of OpCo (or any Core Contractor) in relation to compliance with the Accreditation of OpCo (or any Core Contractor); and
- (iv) do not do anything (or fail to do anything) which jeopardises the Accreditation of OpCo (or any Core Contractor) or an application for Accreditation by OpCo (or any Core Contractor), including anything that may be grounds for the ONRSR to refuse an application for Accreditation by OpCo (or any Core Contractor), or to suspend or revoke (in whole or in part) or impose or vary conditions or restrictions on the Accreditation of OpCo (or any Core Contractor).

34.4 Compensation Event

- (a) A Compensation Event will occur if the OTS Works, the Temporary Works, the Civil Works, the NWRL, the NWRL Site or OpCo's Activities are damaged or adversely affected (including by OpCo incurring Loss or delay) by any Proximate Work Activity.
- (b) OpCo's entitlement to compensation will be reduced to the extent that OpCo has not complied with the Interface Management Plan and its obligations under this clause 34.
- (c) Subject to clause 34.4(a), TfNSW will not be liable upon any Claim by OpCo arising out of or in any way in connection with any Proximate Work Activities.

34.5 No limitation

This clause 34 does not limit TfNSW's other rights under this deed.

35. Change in Law

35.1 Non-compensable changes in law

Subject to clause 35.2, OpCo will be liable for the consequences of, and will have no Claim against TfNSW arising out of or in any way in connection with, a change in law.

35.2 Compensable Change in Law

Subject to clauses 17 and 26 and Schedule 29, OpCo will be entitled to compensation for a Compensable Change in Law.

35.3 Beneficial Change in Law

Where there is a Change in Law which results in a positive Net Financial Impact, OpCo must pay . of the amount of the Net Financial Impact to TfNSW.

35.4 Change in Clean Energy Law

- (a) The parties acknowledge that:
 - (i) Clean Energy Legislation Repeal Package received the Royal Assent after the submission of the Proposal and prior to the date of this deed; and
 - (ii) the price of the Proposal was not reduced to take into account the Clean Energy Legislation Repeal Package.

- (b) If there is a Change in Clean Energy Law, a Compensation Event will occur but only to the extent that the Change in Clean Energy Law is not substantially the same as the legislation repealed by the Clean Energy Legislation Repeal Package.

35.5 Implementation of Change in Law

To the extent it is able to do so, on reasonable request, TfNSW must use reasonable endeavours (without having to incur additional cost) to avail OpCo of any relief, implementation arrangements or programs which are extended to TfNSW in respect of compliance with any Change in Law other than a Compensable Change in Law.

35A NSW Government Policy

35A.1 OpCo to comply with NSW Government Policy

OpCo must comply with all NSW Government Policies, as published from time to time, which apply to OpCo's Activities (unless TfNSW directs otherwise).

35A.2 Compensation for Change in NSW Government Policy

Subject to clauses 17 and 26 and Schedule 29, OpCo will be entitled to compensation for a Change in NSW Government Policy.

35A.3 Beneficial Change in NSW Government Policy

Where there is a Change in NSW Government Policy which results in a positive Net Financial Impact, OpCo must pay of the amount of the Net Financial Impact to TfNSW.

36. Reinstatement of loss or damage

36.1 Reinstatement

- (a) If any part of:
- (i) the OTS Works (other than the OpCo ECRL Works described in sections 3.3, 3.4.1 and 3.4.2 of SPR Appendix 25), the Temporary Works and the Construction Site;
 - (ii) a portion of the Civil Works for which OpCo is responsible in accordance with clause 14.10;
 - (iii) the ECRL, after Handover;
 - (iv) the NWRL and the Licensed Maintenance Area; or
 - (v) unfixed goods and materials (whether on or off the NWRL Site), including anything brought on to the NWRL Site by an OpCo Contractor, used or to be used in carrying out OpCo's Activities,
- is lost, damaged or destroyed (other than as a result of Graffiti or Vandalism), OpCo must:
- (vi) promptly provide TfNSW's Representative with written notice of any such loss, damage or destruction and any required reinstatement or repair (if such loss, damage or destruction is material);

- (vii) if paragraph (vi) applies, consult with TfNSW's Representative as to the programming of the works needed to effect the relevant reinstatement or repair;
 - (viii) promptly reinstate or otherwise make good the loss, or repair the damage, so that OpCo continues to comply with its obligations under the Project Agreements to the greatest extent possible, provided that where clause 39.3(b) applies, OpCo will be obliged to reinstate or otherwise make good the loss, or repair the damage only if TfNSW elects to pay OpCo under clause 39.3(b)(i); and
 - (ix) if paragraph (vi) applies, keep TfNSW's Representative fully informed of the progress of the reinstatement and repair activities.
- (b) To the extent that the loss, damage or destruction arises from any of the following events:
- (i) war (declared or undeclared), armed conflict, riot, civil commotion;
 - (ii) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel not caused by OpCo or its Associates;
 - (iii) a breach of any TfNSW Project Agreement by TfNSW;
 - (iv) any fraudulent, negligent or other wrongful act or omission or Wilful Misconduct of the State or TfNSW or their Associates;
 - (v) a Civil Works Defect in respect of which TfNSW has not directed a Modification as referred to in clause 14.11(b)(ii); or
 - (vi) an ECRL Latent Condition,

then TfNSW must pay OpCo the reasonable cost of carrying out the reinstatement or repair work (to the extent the Insurance Proceeds, if any, are insufficient).

36.2 Damage to Trains from a Terrorist Act

To the extent that loss, damage or destruction to a Train arises from a Declared Terrorist Incident during the Delivery Phase or a Terrorist Act during the Operations Phase, TfNSW must:

- (a) pay OpCo the reasonable cost of carrying out the reinstatement or repair work (to the extent the Insurance Proceeds, if any, are insufficient); and
- (b) indemnify OpCo for any loss or delay of revenue which OpCo incurs (net of any cost savings or business interruption insurance) as a result of the loss, damage or destruction to the Train during the period from the date the Train is lost, damaged or destroyed until the earlier of:
 - (i) the date on which the Train is reinstated or repaired; and
 - (ii) the date by which the Train should have been reinstated or repaired having regard to OpCo's obligation under clause 36.1(a)(viii).

36.3 Direction by TfNSW to reinstate to different specifications

TfNSW may require OpCo to reinstate or repair the OTS Works or the NWRL on the basis of different specifications by directing a Modification pursuant to clause 29. The reinstatement or repair work will only constitute a Modification to the extent that it differs from what would have otherwise been required under this deed. The available Insurance Proceeds will be taken into account in calculating the Net Financial Impact of the Modification.

36.4 Damage to third party property

- (a) Without limiting clause 37, but subject to clause 38.13(a), where any damage to or loss or destruction of real or personal property of a third party occurs which arises out of a breach by OpCo of this deed or a wrongful act or omission of OpCo, OpCo must do one of the following (at the option of the relevant third party):
 - (i) promptly repair, replace or reinstate the damage, loss or destruction; or
 - (ii) reasonably compensate the third party.
- (b) If OpCo fails to carry out the repair, replacement or reinstatement work or pay reasonable compensation within a reasonable time, TfNSW may carry out the repair, replacement or reinstatement work or pay reasonable compensation and any Loss incurred by TfNSW will be a debt due and payable from OpCo to TfNSW.

37. Indemnity and liability exclusions

37.1 Indemnity from OpCo

OpCo must indemnify TfNSW, the State and each Rail Entity (each a **State Indemnified Party**) from and against:

- (a) any Loss incurred by a State Indemnified Party in respect of:
 - (i) damage to, loss or destruction of, or loss of use of (whether total or partial), any real or personal property belonging to a State Indemnified Party; or
 - (ii) any claim against a State Indemnified Party (including by another State Indemnified Party) in respect of:
 - A. any illness, personal injury to, or death of, any person; or
 - B. damage to, loss or destruction of, or loss of use of or access to (whether total or partial), any real or personal property, caused by, arising out of, or in any way in connection with OpCo's Activities; or
- (b) any Loss incurred by a State Indemnified Party arising out of or in any way in connection with:
 - (i) any breach or failure to comply with the terms of any Project Agreement by OpCo; or
 - (ii) any fraudulent, negligent or other wrongful act or omission by OpCo.

37.2 Exclusions from indemnity

OpCo's liability under clause 37.1 or under any other indemnity given by OpCo to or for the benefit of any person (**Indemnified Party**) under any Project Agreement will be reduced to the extent that the Loss arises from:

- (a) any act or omission of any Indemnified Party or its Associates;
- (b) a third party claim for pure economic loss arising solely as a result of:
 - (i) the decision by the State or TfNSW to proceed with the NWRL; or
 - (ii) the existence or location of the NWRL;
- (c) OpCo complying with express directions of TfNSW or TfNSW's Representative other than those given in accordance with clause 5.1(c); or
- (d) loss of use of or access to (whether total or partial), any real or personal property, to the extent OpCo has not received the proceeds of Insurance (provided OpCo has complied with its insurance obligations under this deed and has diligently pursued all insurance claims under the Insurances available to it).

37.3 Exclusion of Consequential or Indirect Loss

- (a) **Consequential or Indirect Loss** means any loss of income, loss of revenue, loss of profit, loss of financial opportunity, loss of business or loss of business opportunity, loss of contract, loss of goodwill, loss of use, loss of production or failure to realise anticipated savings (whether the loss is direct or indirect).
- (b) Subject to clause 37.3(d), but otherwise despite any other provision of this deed, OpCo has no liability to any Indemnified Party (whether in contract, tort or otherwise, including under clause 37.1 or under any other indemnity given by OpCo under any Project Agreement), nor will any Indemnified Party be entitled to make any Claim against OpCo, in respect of Consequential or Indirect Loss incurred or sustained by the Indemnified Party as a result of any act or omission of OpCo (whether negligent or otherwise).
- (c) Subject to clause 37.3(e), but otherwise despite any other provision of this deed, TfNSW has no liability to OpCo (whether in contract, tort or otherwise), nor will OpCo be entitled to make any Claim against TfNSW, in respect of Consequential or Indirect Loss incurred or sustained by OpCo as a result of any act or omission of TfNSW (whether negligent or otherwise).
- (d) Clause 37.3(b) does not operate to limit or restrict OpCo's liability to an Indemnified Party:
 - (i) to the extent that OpCo has:
 - A. recovered from a third party (including any subcontractor and whether by way of indemnity or otherwise); or
 - B. would have recovered from a third party, had it diligently pursued a claim against the third party,an amount in respect of that liability; and
 - (ii) to the extent that OpCo:

- A. is indemnified in respect of that liability by a policy of insurance required under this deed; or
- B. would have been indemnified in respect of that liability by a policy of insurance required under this deed if OpCo had:
 - 1) diligently pursued a claim under that policy of insurance;
 - 2) complied with the terms and conditions of that policy of insurance; or
 - 3) complied with its insurance obligations under this deed;
- (iii) for Loss in respect of any liability of an Indemnified Party to a third party (including to another Indemnified Party), except to the extent that such liability arises in contract;
- (iv) for Loss arising from any criminal acts or fraud on the part of OpCo or an Associate of OpCo;
- (v) for Loss arising from Wilful Misconduct on the part of OpCo or an Associate of OpCo; or
- (vi) to the extent to which, by law, the parties cannot limit or contract out of.
- (e) Clause 37.3(c) does not operate to limit or restrict TfNSW's liability to OpCo:
 - (i) in respect of a Compensation Event;
 - (ii) for the Construction Payment A, the Final Completion Payment, the CDPD Amount or the Service Payments payable under clause 25;
 - (iii) for any interest payable under clause 25.10;
 - (iv) for any amount payable under clause 39.3(b)(i) if an Uninsurable Material Risk materialises;
 - (v) for any amount payable under clause 28.4 or clause 42.6(g) if TfNSW suspends OpCo's right to terminate;
 - (vi) for any Termination Payment payable under clause 42.12;
 - (vii) to the extent that TfNSW has:
 - A. recovered from a third party (including any subcontractor and whether by way of indemnity or otherwise); or
 - B. would have recovered from a third party, had it diligently pursued a claim against the third party,
 an amount in respect of that liability;
 - (viii) to the extent that TfNSW:

- A. is indemnified in respect of that liability by a policy of insurance required under this deed; or
- B. would have been indemnified in respect of that liability by a policy of insurance required under this deed if TfNSW had:
 - 1) diligently pursued a claim under that policy of insurance;
 - 2) complied with the terms and conditions of that policy of insurance; or
 - 3) complied with its insurance obligations under this deed;
- (ix) for Loss in respect of any liability of OpCo to a third party;
- (x) for Loss arising from any criminal acts or fraud on the part of TfNSW or an Associate of TfNSW;
- (xi) for Loss arising from Wilful Misconduct on the part of TfNSW or an Associate of TfNSW; or
- (xii) to the extent to which, by law, the parties cannot limit or contract out of.

37.4 Liability for events triggering Service Payment Deductions

- (a) Subject to clauses 37.4(b) and 37.4(c) , OpCo will not be liable for any Loss incurred by TfNSW as a result of any breach by OpCo of:
 - (i) its obligation to provide the Required Train Services without any Missed Platforms or its obligations under clause 20.2(b); or
 - (ii) any other obligation the breach of which results in an Service Payment Deduction.
- (b) Clause 37.4(a) does not affect:
 - (i) the application of any Service Payment Deduction; or
 - (ii) OpCo's liability under clause 37.1(a).
- (c) If a Service Payment Deduction is held to be legally unenforceable, OpCo will be liable for any Loss incurred by TfNSW as a result of any event which would have triggered that Service Payment Deduction up to the amount of the Service Payment Deduction which would have applied if it were enforceable.

37.4A Liability for events triggering interference payments

- (a) Subject to clause 37.4A(b), OpCo will not be liable for any Loss incurred by TfNSW as a result of any breach by OpCo of:
 - (i) clause 3.2 (Non-interference with Sydney Trains) of Schedule 3; or
 - (ii) any other obligation the breach of which results in a liability under clause 16(a) of Schedule 3.

- (b) Clause 37.4A(a) does not affect OpCo's liability under clauses 11(g) or 16(a) of Schedule 3 or clause 37.1(a).
- (c) If a liability under clause 16(a) of Schedule 3 is held to be legally unenforceable, OpCo will be liable for any Loss incurred by TfNSW as a result of any act or omission of OpCo which would have triggered that payment, up to \$ (CPI Indexed) per incident.
- (d) OpCo's maximum aggregate liability to TfNSW under clause 16(a) of Schedule 3 and clause 37.4A(c):
 - (i) in connection with:
 - A. the Delivery Activities; or
 - B. the rectification of Defects by the D&C Contractor before the date falling 12 months after the Date of Completion,
 is limited to \$ (CPI Indexed); and
 - (ii) in connection with the Operations Activities, is unlimited.

37.5 Procedure for Third Party Claims

- (a) If a State Indemnified Party wishes to claim indemnity under clause 37.1 in respect of a claim against the State Indemnified Party by a third party (**Third Party Claim**), the State Indemnified Party must give notice of the Third Party Claim to OpCo as soon as reasonably practicable.
- (b) If OpCo gives written notice to the State Indemnified Party confirming that the State Indemnified Party is indemnified under clause 37.1 in respect of the Third Party Claim, the State Indemnified Party must:
 - (i) subject to clause 37.5(c), take such actions as OpCo may reasonably direct in defending or mitigating the Third Party Claim;
 - (ii) subject to clause 37.5(f), not settle or compromise the Third Party Claim without OpCo's consent (not to be unreasonably withheld or delayed). OpCo will be deemed to be acting reasonably if OpCo refuses to provide its consent as a result of restrictions or obligations under any insurance policy to which such Third Party Claim may be subject; and
 - (iii) periodically inform OpCo of the status of the Third Party Claim and the actions taken to defend or mitigate it.
- (c) If OpCo wishes to direct a State Indemnified Party to take actions in defending or mitigating the Third Party Claim, OpCo must first give reasonable security to the State Indemnified Party for any cost or liability arising out of such direction.
- (d) OpCo's liability under clause 37.1 will be reduced to the extent that a failure by a State Indemnified Party to comply with clause 37.5(a) prejudices OpCo, but not otherwise.
- (e) If OpCo unreasonably withholds or delays its consent to a request under clause 37.5(b)(ii), the State Indemnified Party may instruct a Queen's Counsel or Senior Counsel in accordance with clause 37.6 to provide a legal opinion on whether a proposed settlement or compromise of the Third Party Claim is reasonable.

- (f) The State Indemnified Party may settle or compromise the Third Party Claim without OpCo's consent if, following the procedure outlined in clause 37.5(e), the Queen's Counsel or Senior Counsel opines that the proposed settlement or compromise of the Third Party Claim is reasonable.

37.6 Counsel's opinion

- (a) If a State Indemnified Party wishes to instruct a Queen's Counsel or Senior Counsel pursuant to clause 37.5(e) to provide an opinion (**Opinion**), then the State Indemnified Party must appoint a Queen's Counsel or Senior Counsel agreed by the State Indemnified Party and OpCo in writing (**Counsel**) to provide the Opinion in accordance with clause 37.6(b). If the State Indemnified Party and OpCo do not agree within 10 Business Days on the Counsel to be appointed, the State Indemnified Party may ask the President of the New South Wales Bar Association to select a barrister who:
- (i) is a Queen's Counsel or Senior Counsel;
 - (ii) practises at the New South Wales Bar; and
 - (iii) has appropriate and relevant expertise,
- and the State Indemnified Party must appoint the Counsel selected by the President of the New South Wales Bar Association or his or her nominee.
- (b) The State Indemnified Party must procure that Counsel provides the Opinion in accordance with the following provisions:
- (i) the State Indemnified Party must instruct Counsel to provide a copy of Counsel's written Opinion to the State Indemnified Party and OpCo within the shortest possible time but, in any event, within 20 Business Days after the date on which Counsel is instructed to provide the Opinion;
 - (ii) the State Indemnified Party and OpCo must, each at their own cost, provide Counsel with any information and assistance reasonably required by Counsel to enable Counsel to provide the Opinion;
 - (iii) Counsel must take into account the economics of defending the Third Party Claim, the damages and costs which are likely to be recovered by the third party, the likely costs of defence, the prospects of defending successfully the Third Party Claim and whether the proposed settlement or compromise of the Third Party Claim is likely to prejudice any relevant Insurance that may respond to that Third Party Claim;
 - (iv) Counsel must take into account any concerns relating to the reputation of the State Indemnified Party communicated to Counsel by the State Indemnified Party;
 - (v) Counsel will act as an independent expert and not as an arbitrator and the Opinion of Counsel will be final and binding on the State Indemnified Party and OpCo;
 - (vi) the Opinion will be for the benefit of the State Indemnified Party and OpCo jointly; and

- (vii) the costs of Counsel in connection with the Opinion are payable as determined by the Counsel.
- (c) OpCo must do all things necessary, and execute all documents, authorities and directions as are required by the State Indemnified Party to give effect to Counsel's advice as set out in the Opinion.

37.7 Obligations not affected

- (a) Clause 37.1 does not limit or otherwise affect OpCo's other obligations under this deed or otherwise according to law.
- (b) OpCo is not relieved of any obligation to indemnify a State Indemnified Party under clause 37.1 by reason of effecting insurance or being an insured party under an insurance policy effected by TfNSW.

37.8 Indemnified Parties

- (a) To the extent that the indemnity in clause 37.1 is of State Indemnified Parties other than TfNSW, TfNSW has sought and obtained that indemnity as agent on behalf of each State Indemnified Party. TfNSW may also enforce that indemnity as agent on behalf of each State Indemnified Party.
- (b) If TfNSW does not have authority to act as agent on behalf of a State Indemnified Party other than TfNSW, then TfNSW will be deemed to have sought and obtained that indemnity as trustee for that State Indemnified Party and holds the benefit of that indemnity as trustee. TfNSW may also enforce that indemnity as trustee for the benefit that State Indemnified Party.
- (c) If the indemnity in clause 37.1 is unenforceable to the extent that it is expressed to be given in favour of a State Indemnified Party other than TfNSW, all references in this clause 37 to "the State Indemnified Party" or "a State Indemnified Party" will be read as a reference to "TfNSW" only.

37.9 Release

OpCo releases (to the full extent permitted by law) the Indemnified Parties from all Claims which arise from the provision of the Train Services or the carrying out of other OpCo's Activities, except to the extent that the Claim arises from the negligence or other wrongful act or omission of an Indemnified Party or a breach by TfNSW of its obligations under a TfNSW Project Agreement or as otherwise provided for under a TfNSW Project Agreement.

37.10 Liability with respect to third parties

OpCo agrees that none of the Indemnified Parties will be responsible for the actions of OpCo or its Associates and that OpCo will provide the Train Services and carry out the other OpCo's Activities at its own cost and risk without recourse to TfNSW or the State, other than as provided for under a TfNSW Project Agreement.

38. Insurance

38.1 TfNSW's Insurances

- (a) TfNSW must effect and maintain at all relevant times the insurance policies set out in Exhibit 7 (**TfNSW's Insurances**).

- (b) OpCo acknowledges that TfNSW's Insurances:
- (i) are subject to the limits, exclusions, conditions, deductibles and excesses noted on the policies set out in Exhibit 7; and
 - (ii) do not cover every risk to which OpCo might be exposed.
- (c) OpCo:
- (i) must satisfy itself of the nature and extent of the cover provided by TfNSW's Insurances; and
 - (ii) may, if it wishes to do so and at its own cost, effect appropriate insurance for any risk or liability which is not covered by TfNSW's Insurances.
- (d) Where OpCo:
- (i) must, under clause 36.1, reinstate or repair at its cost any loss, destruction or damage, or is required to indemnify TfNSW or another Indemnified Party under clause 37.1, and makes a claim under any of TfNSW's Insurances in respect of the destruction or damage or the event giving rise to the indemnity; or
 - (ii) otherwise makes a claim under or in respect of any of TfNSW's Insurances,

OpCo must bear the cost of any excesses or deductibles in TfNSW's Insurances or in any insurance effected by OpCo under this clause 38.1, that may apply in those circumstances, without prejudice to any right OpCo may have under clause 26 to seek reimbursement of such cost.

- (e) OpCo must:
- (i) comply with the terms and conditions of TfNSW's Insurances; and
 - (ii) ensure that OpCo's Contractors comply with the terms of TfNSW's Insurances.
- (f) TfNSW must give OpCo:
- (i) notice of any claim TfNSW makes on TfNSW's Insurances;
 - (ii) notice of any fact or circumstance which may prejudice TfNSW's Insurances;
 - (iii) certified copies of all:
 - A. policies (including policy schedules, wordings and endorsements);
 - B. renewal certificates; and
 - C. slips and cover notes,for TfNSW's Insurances, within 10 Business Days after TfNSW receives them from the insurer or broker; and

- (iv) a certificate of currency satisfactory to OpCo's Representative (acting reasonably) to confirm that TfNSW's Insurances have been effected and maintained in accordance with the requirements of this clause 38.1, whenever requested by OpCo's Representative.
- (g) TfNSW must:
 - (i) ensure that TfNSW's Insurances are taken out with Reputable Insurers;
 - (ii) not knowingly do or permit, or omit to do, anything which prejudices TfNSW's Insurances;
 - (iii) rectify anything which might prejudice TfNSW's Insurances;
 - (iv) not cancel TfNSW's Insurances, or vary TfNSW's Insurances in a manner detrimental to OpCo's interests, without the prior written consent of OpCo (which must not be unreasonably withheld);
 - (v) give full and true particular information to the insurer of all matters and things the non-disclosure of which might in any way prejudice or affect TfNSW's Insurances or the payment of all or any benefits under TfNSW's Insurances; and
 - (vi) comply at all times with the terms and conditions of TfNSW's Insurances.

38.2 OpCo's Delivery Phase insurance obligations

OpCo must effect and maintain (or cause to be effected and maintained) the following insurances for amounts not less than, and with deductibles not more than, those specified in Schedule 32:

- (a) **(plant and equipment insurance):** a plant and equipment insurance policy which covers physical loss or damage to any plant or equipment (whether owned, hired or leased by OpCo or OpCo's Contractors) which is used in connection with the carrying out of OpCo's Activities and not otherwise covered by the TfNSW Insurances or any Insurances effected by OpCo in compliance with clause 38.2;
- (b) **(marine cargo and marine advance consequential loss):** a marine cargo and marine advance consequential loss insurance policy covering the Trains and other components of the OTS Works that will be procured outside of Australia against physical damage, loss or destruction, and loss of Service Payment as a consequence of such damage and such other insurable risks as are reasonably required by TfNSW;
- (c) **(professional indemnity insurance):** a project specific professional indemnity insurance policy covering the liability of OpCo in respect of any breach of a duty owed in a professional capacity by OpCo, OpCo's Contractors and anyone engaged by OpCo or any OpCo Contractor in a professional capacity;
- (d) **(employers' liability and workers' compensation insurance):** workers' compensation insurance as required by law (and on the basis that, where permitted under the relevant statutory workers compensation or accident compensation scheme, the insurance shall extend to cover the vicarious liability of TfNSW for the acts or omissions of OpCo) and, where common law claims can be brought outside of the relevant statutory workers compensation or accident compensation scheme, employer's liability insurance covering any injury, damage, expense, loss or liability

suffered or incurred by any persons employed by OpCo or engaged in performing OpCo's Activities or their dependants (and on the basis that such insurance shall extend to cover the vicarious liability of TfNSW for the acts or omissions of OpCo);

- (e) **(own damage motor vehicle insurance)**: a motor vehicle insurance policy which covers all physical loss or damage to motor vehicles (whether owned, hired or leased by OpCo or OpCo's Contractor) which are used in connection with OpCo's Activities;
- (f) **(third party property damage motor vehicle insurance)**: a motor vehicle insurance policy which covers third party property damage related to any motor vehicles which are used in connection with OpCo's Activities;
- (g) **(compulsory third party motor vehicle insurance)**: compulsory third party motor vehicle insurance, in respect of all registrable motor vehicles which are used in connection with OpCo's Activities; and
- (h) **(terrorism insurance for Trains and Trains manufacturing facility)** a stand-alone project specific insurance policy covering:
 - (i) the Trains and components of the Trains that will be procured outside of Australia against physical damage, loss or destruction, and loss of Service Payment as a consequence of such damage while outside of Australia (excluding during marine transit); and
 - (ii) loss of Service Payment as a consequence of physical damage, loss or destruction of the overseas manufacturing facility of the Trains caused by or arising from terrorism.

38.3 OpCo's Operations Phase insurance obligations

OpCo must effect and maintain (or cause to be effected and maintained) the following insurances for amounts not less than, and with deductibles not more than, those specified in Schedule 32:

- (a) **(industrial special risks insurance)**: an industrial special risks insurance policy:
 - (i) covering the NWRL;
 - (ii) against destruction, loss or damage and other insurable risks as are reasonably required by TfNSW; and
 - (iii) including cover for business interruption arising from such destruction, loss or damage;
- (b) **(plant and equipment insurance)**: a plant and equipment insurance policy which covers physical loss or damage to any plant or equipment (whether owned, hired or leased by OpCo or OpCo's Contractors) which is used in connection with the carrying out of OpCo's Activities and not otherwise covered by any Insurances effected by OpCo in compliance with clause 38.3;
- (c) **(public and products liability insurance)**: a public and products liability insurance policy, written on an occurrence basis, which covers the liability of OpCo and OpCo's Contractors (including to TfNSW) in respect of:

- (i) damage to, loss or destruction of, or loss of use of, real or personal property;
- (ii) injury to, or death or disease of, any persons (other than employees); and
- (iii) advertising injury or advertising liability risks (including: libel, slander or defamation; infringement of copyright or of title or slogan; piracy or unfair competition or idea misappropriation under an implied contract; and invasion of privacy) committed or alleged to have been committed in any advertisement, publicity article, broadcast or telecast,

arising out of, or in connection with, OpCo's Activities;

- (d) **(professional indemnity insurance)**: a project specific professional indemnity insurance policy covering the liability of OpCo and OpCo's Contractors in respect of any breach of a duty owed in a professional capacity by OpCo, OpCo's Contractors and anyone engaged by them in a professional capacity;
- (e) **(employers' liability and workers' compensation insurance)**: and workers' compensation insurance as required by law (and on the basis that, where permitted under the relevant statutory workers compensation or accident compensation scheme, the insurance shall extend to cover the vicarious liability of TfNSW for the acts or omissions of OpCo) and, where common law claims can be brought outside of the relevant statutory workers compensation or accident compensation scheme, employer's liability insurance covering any injury, damage, expense, loss or liability suffered or incurred by any persons employed by OpCo or engaged in performing OpCo's Activities or their dependants (and on the basis that such insurance shall extend to cover the vicarious liability of TfNSW for the acts or omissions of OpCo);
- (f) **(own damage motor vehicle insurance)**: a motor vehicle insurance policy which covers all physical loss or damage to motor vehicles (whether owned, hired or leased by OpCo or OpCo's Contractors) which are used in connection with OpCo's Activities;
- (g) **(third party property damage motor vehicle insurance)**: a motor vehicle insurance policy which covers third party property damage related to any motor vehicles which are used in connection with OpCo's Activities; and
- (h) **(compulsory third party motor vehicle insurance)**: compulsory third party motor vehicle insurance, in respect of all registrable motor vehicles which are used in connection with OpCo's Activities.

38.4 Periods of OpCo's insurance

- (a) OpCo must maintain:
 - (i) the insurances referred to in clause 38.2 (other than the professional indemnity insurance policy referred to in clause 38.2(c) and the terrorism insurance policy referred to in clause 38.2(h)) from the date of Financial Close until the Date of Completion including any associated defects liability period (as applicable) ;
 - (ii) the professional indemnity insurance policy referred to in clause 38.2(c) from the date of Financial Close for a period of 10 years and, prior to or following expiration of such policy, OpCo will use best endeavours to obtain the professional indemnity insurance policy referred to in clause

38.2(c) for a further period to the 7th anniversary of the Date of Completion (the period from the expiration of the initial 10 years to the 7th anniversary of the Date of Completion, being the **PI Extended Period**);

- (iii) the terrorism insurance policy referred to in clause 38.2(h) from the date of Financial Close until the date that the last Train has been manufactured and is covered by the insurance referred to in clause 38.2(b) (marine cargo and marine advance consequential loss);
 - (iv) the insurances referred to in clause 38.3 (other than the public and products liability insurance referred to in clause 38.3(c) and the professional indemnity insurance policy referred to in clause 38.3(d)) from the Date of Completion until the end of the Term;
 - (v) the public and products liability insurance referred to in clause 38.3(c) from the date of First Passenger Service until the end of the Term; and
 - (vi) the professional indemnity insurance policy referred to in clause 38.3(d) from the Date of Completion until the date which is 7 years after the end of the Term.
- (b) OpCo must promptly inform TfNSW of the amount of any additional premium payable in giving effect to a requirement of TfNSW under clause 38.4(a)(ii) to obtain the professional indemnity insurance policy referred to in clause 38.2(c) for the PI Extended Period before it implements the requirement (using reasonable endeavours to minimise any increase in or maximise any reduction in the cost of any additional, increased or varied Insurances), and TfNSW will advise OpCo in writing whether it still requires OpCo to give effect to that requirement.
- (c) Any premiums paid on the professional indemnity insurance policy in respect of the PI Extended Period as well as any brokerage and Taxes payable in respect of those premiums, will be reimbursed by TfNSW to OpCo within 20 Business Days after OpCo provides evidence satisfactory to TfNSW (acting reasonably) that the insurance cover has been so effected and the premium paid.

38.5 Additional, increased or varied Insurances

- (a) If TfNSW at any time reasonably requires OpCo to:
- (i) insure against a risk not specifically provided for or contemplated under clauses 38.2 or 38.3; or
 - (ii) increase the extent of, or change the terms of, an existing Insurance from that set out in clauses 38.2 or 38.3,
- it may notify OpCo in writing and request that OpCo give effect to TfNSW's requirements.
- (b) OpCo must promptly inform TfNSW of the amount of any additional premium payable in giving effect to a requirement of TfNSW under clause 38.5(a) before it implements the requirement (using reasonable endeavours to minimise any increase in or maximise any reduction in the cost of any additional, increased or varied Insurances), and TfNSW will advise OpCo in writing whether it still requires OpCo to give effect to that requirement.

- (c) Any additional premiums paid on any additional, increased or varied Insurances required by TfNSW under clause 38.5(b), as well as any brokerage and Taxes payable in respect of those premiums, will be reimbursed by TfNSW to OpCo within 20 Business Days after OpCo provides evidence satisfactory to TfNSW (acting reasonably) that the insurance cover has been so effected and the premium paid.

38.6 Review of Insurance limits and deductibles

- (a) The minimum sums insured and maximum deductibles for the insurances referred to in clause 38.3 (other than the insurances referred to in clauses 38.3(e) and 38.3(h)) will be reviewed by TfNSW's Representative on each anniversary of the Date of Completion to determine whether and by how much the minimum sums insured and maximum deductibles should be increased or decreased, having regard to the opinion of a reputable insurance broker as to prudent insurance practice at the time.
- (b) Clause 38.5 will not apply to any increase or decrease in the minimum sums insured or maximum deductibles pursuant to this clause 38.6. Rather, any change in insurance costs due to an increase or decrease in the minimum sums insured or maximum deductibles pursuant to this clause 38.6 will be subject to the benchmarking regime in clause 38.16.

38.7 Joint names

OpCo must ensure that:

- (a) all Insurances effected by OpCo in compliance with this clause 38 other than the Insurances referred to in clauses 38.2(a), 38.2(b) (to the extent it relates to marine advanced consequential loss), 38.2(c), 38.2(d), 38.2(e), 38.2(f), 38.2(g), 38.3(b), 38.3(d), 38.3(e), 38.3(f), 38.3(g) and 38.3(h):
 - (i) are in the joint names of OpCo, TfNSW and the Security Trustee; and
 - (ii) extend cover to OpCo's Contractors and others described in the relevant policy, by specifying them within the definition of "Insured", for their respective rights and interests; and
- (b) the Insurance required by clause 38.2(c) extends cover to TfNSW as principal for liability which TfNSW incurs as a result of a claim made against TfNSW by any person or entity (other than an insured under the policy) which results from liability of OpCo in respect of any breach of a duty owed in a professional capacity by OpCo, OpCo's Contractors and anyone engaged by OpCo or any OpCo Contractor in a professional capacity or liability incurred by any insured under the policy in the performance of professional services.

38.8 Insurance requirements generally

All Insurances effected by OpCo in compliance with this clause 38, other than the Insurances referred to in clauses 38.2(d), 38.2(e), 38.2(f), 38.2(g), 38.3(e), 38.3(f), 38.3(g) and 38.3(h):

- (a) **(insurers):** must be taken out with Reputable Insurers or with insurers approved by TfNSW's Representative (such approval not to be unreasonably withheld);
- (b) **(terms):** must be on the terms required by this clause 38 or otherwise as approved by TfNSW's Representative (such approval not to be unreasonably withheld);

- (c) **(exclusions)**: must not contain any exclusion, endorsement or alteration unless it is first approved in writing by TfNSW's Representative (such approval not to be unreasonably withheld);
- (d) **(contractually assumed liability)**: in the case of the Insurances specified in clause 38.3(c), will not expressly exclude liability arising under clause 37.1 solely on the basis that it is a contractually assumed liability;
- (e) **(proportionate liability)**: in the case of the Insurances specified in clauses 38.2(c) and 38.3(d), must:
 - (i) cover any legal liability contractually assumed to the extent that OpCo, TfNSW and any other insureds under those Insurances have contracted out of the operation of Part 4 of the Civil Liability Act 2002 (NSW) or assumed liability for others under this deed;
 - (ii) without limiting clause 38.8(e)(i), cover OpCo for potential liability to TfNSW assumed by reason of the exclusion of Part 4 the Civil Liability Act 2002 (NSW); and
 - (iii) not exclude any potential liability OpCo may have to TfNSW under or by reason of this deed;
- (f) **(waiver and cross liability clause)**: which name more than one insured must include a waiver and cross liability clause in which the insurer agrees:
 - (i) to waive all rights of subrogation or action that it may have or acquire against all or any of the persons comprising the insured;
 - (ii) that the term "insured" applies to each of the persons comprising the insured as if a separate policy of insurance had been issued to each of them (subject always to the overall sum insured not being increased as a result); and
 - (iii) that any non-disclosure, breach of any duty or act or omission by one insured does not prejudice the right of any other insured to claim under any Insurance;
- (g) **(notice)**: must contain a term which requires the lead insurer to give:
 - (i) TfNSW 30 Business Days' notice prior to the lead insurer cancelling the policy on the request of OpCo; and
 - (ii) OpCo and TfNSW 30 Business Days' notice of:
 - A. giving a notice of cancellation;
 - B. expiration of the policy; or
 - C. any other notice in respect of the policy;
- (h) **(loss payee)**: in the case of the Insurances specified in clause 38.3(a) (other than in respect of the business interruption cover referred to in clause 38.3(a)(iii)), must specify TfNSW, OpCo and the Security Trustee as joint loss payees;
- (i) **(reinstatement)**: in the case of the Insurances specified in clauses 38.2(a), 38.2(b), 38.3(a) and 38.3(b) must be endorsed to note and allow OpCo's obligations under

clause 36.1, to the effect that compliance with the provisions of those clauses will not prejudice OpCo's or any other insured's rights to indemnity under the Insurances; and

- (j) **(notice of a claim):** notice of a claim by any insured will be accepted by the insurer as notice by all insureds.

The parties acknowledge and agree that the Core Contractors may, to the extent permitted by law, self-insure in relation to the Insurances specified in clauses 38.2(d), 38.2(e), 38.3(e) and 38.3(f).

38.9 Premiums

OpCo must punctually pay all premiums and other amounts payable in respect of the Insurances effected by it, and give TfNSW evidence of payments for premiums if and when requested by TfNSW.

38.10 Evidence of insurance

In respect of the Insurances required to be effected and maintained by OpCo under this clause 38 (other than clauses 38.2(g) and 38.3(h) or where a Core Contractor self-insures in accordance with clause 38.8), OpCo must give TfNSW's Representative:

- (a) certified copies of all:
- (i) policies (including policy schedules, wordings and endorsements);
 - (ii) renewal certificates; and
 - (iii) slips and cover notes,
- within 10 Business Days after it receives them from the insurer or broker; and
- (b) a certificate of currency satisfactory to TfNSW's Representative (acting reasonably) to confirm that the Insurances which OpCo must effect and maintain pursuant to this clause 38 have been effected and maintained in accordance with the requirements of this clause 38, whenever requested by TfNSW's Representative.

38.11 Failure to produce proof of insurance

If OpCo fails to provide evidence satisfactory to TfNSW's Representative in accordance with clause 38.10(a) or within 10 Business Days of a request under clause 38.10(b), TfNSW may effect and maintain the relevant Insurances and pay the premium. The costs incurred by TfNSW in connection with taking such action will be recoverable from OpCo as a debt due and payable from OpCo to TfNSW.

38.12 OpCo's obligations not limited

The effecting of Insurances does not limit the liabilities or obligations of OpCo under this deed. OpCo bears the risk of the Insurances being inadequate to enable OpCo to fulfil its obligations under this deed.

38.13 General insurance obligations

OpCo must:

- (a) not knowingly do or permit, or omit to do, anything which prejudices any Insurance;
- (b) rectify anything which might prejudice any Insurance;
- (c) reinstate an Insurance required to be maintained under clauses 38.2 or 38.3 if it lapses;
- (d) not cancel, vary or allow any Insurance required to be maintained under clauses 38.2 or 38.3 to lapse without the prior written consent of TfNSW's Representative;
- (e) immediately notify TfNSW of any fact or circumstance or change in circumstances which may prejudice an Insurance;
- (f) without limiting clause 38.14(a), immediately notify TfNSW's Representative if it receives any claim or notice in connection with an Insurance;
- (g) give full and true particular information to the insurer of all matters and things the non-disclosure of which might in any way prejudice or affect any such policy or the payment of all or any benefits under the Insurance; and
- (h) comply at all times with the terms of each Insurance.

38.14 Claims under Insurances

In addition to the obligations to notify the insurer under any Insurance, OpCo must:

- (a) notify TfNSW's Representative of any occurrence of which it is aware that may give rise to a claim (other than a claim by TfNSW or its Associates) under any Insurance other than statutory insurance;
- (b) keep TfNSW's Representative informed of subsequent developments of which it is aware concerning the claim;
- (c) do everything reasonably required by TfNSW (or any other person in whose name the relevant policy is effected) to enable TfNSW or such other person to claim, collect or recover money due under an Insurance;
- (d) subject to clause 38.14(e), diligently pursue any material claim which it has under any Insurance in relation to that occurrence; and
- (e) to the extent TfNSW is an insured party under an Insurance, not compromise, settle, prosecute or enforce a claim under that Insurance without the prior written consent of TfNSW's Representative (which must not be unreasonably withheld or delayed).

38.15 Insurance Proceeds Account

- (a) **(Insurance Proceeds):** This clause 38.15 applies to the following insurance proceeds:
 - (i) all amounts received under the Insurances referred to in clauses 38.1, 38.2(b), 38.2(h) and 38.3(a);
 - (ii) all amounts received under the Insurances referred to in clauses 38.2(a) and 38.3(b) to the extent they relate to Moveable Assets and Existing ECRL Moveable Assets; and

- (iii) any amounts paid by TfNSW pursuant to clause 39.3(b)(i) (Uninsurable Risks) representing the insurance proceeds that would have been payable under the Insurances referred to in paragraph (a), had such insurance remained available,

but excluding:

- (iv) any amounts received under the construction liability insurance policy referred to in clause 38.1(a); and
- (v) any proceeds of delay in start up, marine advance consequential loss or business interruption insurance.

(b) **(Establish account):** OpCo must:

- (i) establish an account to be known as the Insurance Proceeds Account;
- (ii) maintain that account in the name of OpCo and the Security Trustee with a financial institution nominated by OpCo and approved by TfNSW (each approval not to be unreasonably withheld) or with the Account Bank which is a party to the Financiers Tripartite Deed;
- (iii) give details of that account to TfNSW;
- (iv) notify the financial institution referred to in clause 38.15(b)(ii) of the charge over the Insurance Proceeds Account in accordance with the TfNSW Deed of Charge and procure, and provide TfNSW with a copy of, acknowledgment of that notice from the financial institution; and
- (v) procure the agreement of the financial institution referred to in clause 38.15(b)(ii):
 - A. that, other than any Security Interest contained in the Debt Financing Documents, the financial institution does not hold and will not obtain, take or accept any Security Interest in favour of the financial institution in respect of the Insurance Proceeds Account;
 - B. not to assert, claim or exercise:
 - 1) any Security Interest, right of set off, combination of accounts or counterclaim in relation to the Insurance Proceeds Account;
 - 2) any other right with respect to the Insurance Proceeds Account which is inconsistent with the rights and interests of the parties under this deed or the Financiers Tripartite Deed which may diminish, impair or terminate the Insurance Proceeds Account; or
 - 3) make a deduction or withdrawal from the Insurance Proceeds Account or apply any part of the balance of the Insurance Proceeds Account towards satisfaction of any obligation owing to the financial institution.

- (c) **(Deposit Insurance Proceeds):** All Insurance Proceeds must be deposited into the Insurance Proceeds Account.
- (d) **(Application of moneys):** Subject to clause 38.15(f), moneys in the Insurance Proceeds Account may only be applied towards the cost of repair or reinstatement.
- (e) **(Records):** OpCo must give TfNSW records of expenditure from the Insurance Proceeds Account within 30 Business Days of such expenditure.
- (f) **(Early termination):** If this deed is terminated under clauses 42 (Termination), 28 (Force Majeure), 36 (Reinstatement of loss or damage) or 39 (Uninsurable Risks), TfNSW will be entitled to any moneys remaining in the Insurance Proceeds Account on the date of termination.

38.16 Benchmarking of Insurances

- (a) Three months prior to each Insurance Benchmark Date, OpCo must, where possible, obtain separate quotations from three Reputable Insurers in the commercial insurance market at that time, for annual premium costs of obtaining the Benchmarked Insurances.
- (b) TfNSW's Representative will select one quotation for each Benchmarked Insurance which will form the basis of the benchmarking of the Benchmarked Insurance Component.
- (c) On each Insurance Benchmark Date, if the annual insurance premiums for the Benchmarked Insurances (as specified in the quotations selected by TfNSW's Representative) are greater or less than the insurance premiums (indexed in accordance with clause 14 of Schedule 2) for the Benchmarked Insurances at the commencement of the Operations Phase or the last Insurance Benchmark Date on which an adjustment to the Benchmarked Insurance Component occurred under this clause 38.16 (as applicable), the Benchmarked Insurance Component will be adjusted by the amount by which the insurance premium for the Benchmarked Insurance:
 - (i) exceeds the Benchmarked Insurance Component; or
 - (ii) is less than the Benchmarked Insurance Component,
 provided that:
 - (iii) any increase or decrease in the cost of obtaining the Benchmarked Insurance which is attributable to:
 - A. the insurance history of OpCo or an OpCo Contractor;
 - B. a change in the sum insured or deductible, unless such change is approved by TfNSW's Representative (such approval not to be unreasonably withheld); or
 - C. any other relevant act or omission of OpCo or an OpCo Contractor,
 will be disregarded; and

- (iv) the increase or decrease in the cost of obtaining the Benchmarked Insurances is due to circumstances generally prevailing in the Australian and overseas insurance market for the relevant class of insurance.

39. Uninsurable Risks

39.1 Notice and meeting

If either party considers that a risk that:

- (a) this deed requires to be insured; and
- (b) was insurable at the date of this deed,

has become an Uninsurable Risk:

- (c) the party must immediately notify the other party in writing, giving particulars; and
- (d) the parties will meet and discuss the means by which the risk should be managed.

39.2 Relief from obligation to insure

If:

- (a) a risk that:
 - (i) this deed requires to be insured; and
 - (ii) was insurable at the date of this deed,has become an Uninsurable Risk; and
- (b) the risk did not become an Uninsurable Risk as a result of an act or omission of the party who is required to effect the relevant insurance or its Associates,

then, for so long as the risk is and remains an Uninsurable Risk, the relevant party is not required to effect and maintain insurance against that risk.

39.3 If no agreement

If the risk that has become an Uninsurable Risk is a risk which, at the date of this deed, is usually covered by the insurance referred to in Item 1 and 3 of the contents of Exhibit 7 or by the insurance specified in clauses 38.3(a) or 38.3(c) (an **Uninsurable Material Risk**) and the parties cannot reach agreement on how the risk should be managed, then:

- (a) this deed will continue but Annexure A of Schedule 2 will be amended to reduce the Benchmarked Insurance Component by an amount equal to the premium that was last paid for insuring the Uninsurable Material Risk (indexed in accordance with clause 14 of Schedule 2); and
- (b) if the Uninsurable Material Risk materialises, TfNSW must (at TfNSW's option) do one of the following within a reasonable period of the relevant event occurring:
 - (i) pay to OpCo an amount equal to the insurance proceeds that would have been payable had the relevant insurance continued to be available (after deducting any deductibles that would have been deducted); or

- (ii) where the Uninsurable Material Risk causes material damage, loss or destruction to a substantial portion of the NWRL or the OTS Works, terminate this deed.

39.4 Obligation to monitor and reinsure

- (a) Whilst ever a risk that:

- (i) this deed requires to be insured; and
- (ii) was insurable at the date of this deed,

is an Uninsurable Risk, the party who is required to effect the relevant insurance must approach the insurance market on a regular basis (but no more than once every 12 months) to establish whether that risk remains uninsurable and advise the other party accordingly.

- (b) Upon the insurance becoming available for the Uninsurable Risk referred to in clause 39.4(a):

- (i) the party who is required to effect the relevant insurance must immediately notify the other party; and

- (ii) if the insurance is to be effected by OpCo, OpCo must:

- A. obtain separate quotations to cover the risk in accordance with the requirements set out in clause 38 from three Reputable Insurers and provide these quotations to TfNSW within 10 Business Days of submission to TfNSW of the notice described in clause 39.4(b)(i) together with such other documentation or information as TfNSW reasonably requires in connection with those quotations;
- B. within 5 Business Days of receipt of confirmation from TfNSW that one of the quotations provided under clause 39.4(b)(ii) is acceptable, effect insurance with the provider of the quotation to cover the risk in accordance with the requirements set out in clause 38; and
- C. update Annexure A of Schedule 2 to increase the Benchmarked Insurance Component by an amount equal to the price of the quotation that is accepted by TfNSW.

40. Default

40.1 OpCo Events of Default

Each of the following events is an OpCo Event of Default:

- (a) **(failure to progress)**: OpCo fails to diligently progress the Delivery Activities as required under clause 17.2(a)(ii);
- (b) **(funding cancelled)**: the obligation of a Debt Financier or an Equity Investor to provide funding under the Debt Financing Documents or the Equity Documents, respectively, is cancelled due to an event of default under a Debt Financing Document or an Equity Document (as applicable), or a Debt Financier or Equity Investor fails (in whole or in part) to provide funding under the Debt Financing

Documents or the Equity Documents as contemplated by the Base Case Financial Model when required to do so;

(c) **(unacceptable availability):** after the Date of Completion:

- (i) the number of Missed Train Services exceeds [] of the total number of Required Train Services for [] for any [] ;
- (ii) the number of Missed Train Services in any rolling [] period exceeds [] % of the total number of Required Train Services for that period;
- (iii) the total number of hours of Platform Closure:
 - A. [] for any Platform in [] exceeds [] ; or
 - B. [] across all Platforms in [] exceeds [] ;
- (iv) the first Train Service of the day in either direction is not delivered within [] of the scheduled time for the first Required Train Service on more than [] occasions in a rolling [] period; or
- (v) the Last Train of the day in either direction is not delivered within [] of the scheduled time for the last Required Train Service on more than [] occasions in a rolling [] period,

in each case, disregarding any such unacceptable availability which is:

- (vi) directly caused by a Relief Event during a period when OpCo's non-financial obligations are suspended under clause 27.5; or
- (vii) excluded from the calculations of Availability Deductions in accordance with clause 16 of Schedule 2;

(d) **(unacceptable timeliness):** after the Date of Completion:

- (i) more than [] of Train Services in [] exceed the Maximum Train Journey Time by [] for each of [] or any [] ; or
- (ii) more than [] of Actual Headways in [] exceed the relevant Maximum Headway by more than [] for each of [] or any [] ,

in each case, disregarding any such unacceptable timeliness which is:

- (iii) directly caused by a Relief Event during a period when OpCo's non-financial obligations are suspended under clause 27.5; or
- (iv) excluded from the calculations of Timeliness Deductions in accordance with clause 16 of Schedule 2;

(e) **(unacceptable quality):** after the Date of Completion, OpCo accrues:

- (i) [] Service Failure Points over a rolling period of [] ; or

- (ii) a Service Failure Point for the same Service Quality KPI or Asset Functionality KPI in any in a rolling
- in each case, disregarding any such unacceptable quality which is directly caused by a Relief Event during a period when OpCo's non-financial obligations are suspended under clause 27.5;
- (f) **(failure to pay)**: OpCo fails to pay an amount that is due under any TfNSW Project Agreement when it is due and the failure is not remedied within 20 Business Days of a written demand from TfNSW;
 - (g) **(failure to remedy an Asset Management Failure)**: OpCo fails to remedy an Asset Management Failure within 6 months of the expiry of the Remediation Period;
 - (h) **(failure to report)**: OpCo fails to comply with its reporting obligations under this deed or a report from OpCo contains an inaccuracy which in either case has a material impact on TfNSW or Rail Entity or Customers;
 - (i) **(refinancing)**: OpCo breaches its obligations under clause 49.1;
 - (j) **(subcontracting)**: OpCo breaches its obligations under clauses 54.3(a), 54.3(b), 54.3(e) or 54.3(f);
 - (k) **(lack of or breach of Accreditation)**: OpCo or an OpCo Contractor:
 - (i) undertakes any of OpCo's Activities which require Accreditation without being Accredited to do so or without doing so for or on behalf of a person who holds the required Accreditation; or
 - (ii) breaches the terms of its Accreditation in a material respect in performing OpCo's Activities;
 - (l) **(threatened suspension or revocation of Accreditation)**: ONRSR notifies OpCo or a Core Contractor that:
 - (i) it proposes to suspend or revoke OpCo's Accreditation or a Core Contractor's Accreditation with respect to OpCo's Activities; or
 - (ii) a failure to take action specified by ONRSR within a time period specified by ONRSR may result in ONRSR suspending or revoking OpCo's Accreditation or a Core Contractor's Accreditation with respect to OpCo's Activities;
 - (m) **(fraud)**: TfNSW is the victim of any fraud or dishonest conduct by OpCo or a Core Contractor in connection with the OTS PPP, or the Independent Commission Against Corruption or similar public body determines that OpCo (or a Core Contractor, in performing OpCo's Activities) has engaged in corrupt conduct, collusive pricing or other similar activity;
 - (n) **(incorrect representation or warranty)**: a representation or warranty made or given by OpCo in this deed or any other TfNSW Project Agreement proves to be untrue which has a material adverse effect on OpCo's ability to comply with its obligations under the Project Agreements; and

- (o) **(other breach)**: any other material breach by OpCo of an obligation under this deed (other than a breach which results in a Service Payment Deduction) or any other TfNSW Project Agreement.

40.2 Default Notice

If an OpCo Event of Default occurs, TfNSW may give OpCo a notice (the **Default Notice**):

- (a) stating that it is a notice under this clause 40.2; and
- (b) specifying the nature of OpCo Event of Default.

40.3 Cure Plan

- (a) If:
 - (i) a Default Notice is given; and
 - (ii) the OpCo Event of Default is capable of being Remedied,OpCo must, within 10 Business Days (or such longer period as TfNSW may agree) after receipt of the Default Notice:
 - (iii) Remedy the OpCo Event of Default; or
 - (iv) prepare and submit to TfNSW a draft plan describing the actions and measures which OpCo will diligently pursue to Remedy the OpCo Event of Default (including the proposed cure period) (**Draft Cure Plan**).
- (ab) The parties acknowledge that where the Draft Cure Plan involves the replacement of a Core Contractor that holds Accreditation in respect of OpCo's Activities, the cure period will need to take into account a reasonable period of time for a replacement contractor to obtain the required Accreditation to undertake OpCo's Activities.
- (b) Within 10 Business Days after receipt of the Draft Cure Plan, TfNSW must either:
 - (i) approve the Draft Cure Plan by notifying OpCo; or
 - (ii) reject the Draft Cure Plan by notifying OpCo and providing reasons to OpCo for its rejection.
- (c) If TfNSW approves a Draft Cure Plan pursuant to clause 40.3(b)(i) (the **Approved Cure Plan**):
 - (i) the period of time in the Approved Cure Plan to Remedy the OpCo Event of Default is the cure period (the **Applicable Cure Period**); and
 - (ii) OpCo must comply with and implement the Approved Cure Plan (or otherwise diligently pursue the Remediation of the OpCo Event of Default) and Remedy the OpCo Event of Default within the Applicable Cure Period.
- (d) If TfNSW rejects a Draft Cure Plan pursuant to clause 40.3(b)(ii), OpCo, in consultation in good faith with TfNSW, must amend the Draft Cure Plan to meet TfNSW's reasonable requirements and submit the amended Draft Cure Plan to

TfNSW for its approval, in which case this clause 40.3 will apply to the amended Draft Cure Plan as if it were originally submitted under clause 40.3(a).

- (da) The parties acknowledge and agree that an Applicable Cure Period will not take into account any period of time during which the performance of the relevant obligations by OpCo is suspended by operation of clause 27.5.
- (e) If:
 - (i) a Default Notice is given;
 - (ii) the OpCo Event of Default is capable of being Remedied; and
 - (iii) OpCo fails to:
 - A. Remedy the OpCo Event of Default, or submit a Draft Cure Plan, in accordance with clause 40.3(a);
 - B. if TfNSW rejects a Draft Cure Plan pursuant to clause 40.3(b)(ii), amend the Draft Cure Plan to meet TfNSW's reasonable requirements and submit the amended Draft Cure Plan in accordance with clause 40.3(d); or
 - C. comply with and implement the Approved Cure Plan (or otherwise diligently pursue the Remediation of the OpCo Event of Default), except in a minor respect,

and such failure is not remedied by OpCo within 5 Business Days of notice from TfNSW regarding that failure, an OpCo Termination Event will occur.

- (f) If at any time prior to the expiry of an Applicable Cure Period OpCo reasonably considers that it requires an extension to the Applicable Cure Period it may request an extension to the Applicable Cure Period by notifying TfNSW in writing setting out the reasons for that belief and the reasonable period of time proposed by OpCo for the extension of the Applicable Cure Period.
- (g) If:
 - (i) OpCo gives TfNSW a notice under clause 40.3(f); and
 - (ii) TfNSW is reasonably satisfied that OpCo has diligently pursued and is continuing to diligently pursue a Remedy (other than in a minor respect) of the applicable OpCo Event of Default but that the OpCo Event of Default cannot, despite such diligence, be Remedied within the Applicable Cure Period,

TfNSW must grant an extension of the Applicable Cure Period for such period as TfNSW considers is reasonably required to Remedy the OpCo Event of Default, provided that TfNSW is not required to grant more than one extension to an Applicable Cure Period.

40.4 Prevention Plan

- (a) If:
 - (i) a Default Notice is given; and

(ii) the OpCo Event of Default is not capable of being Remedied,

OpCo must, within 10 Business Days after receipt of the Default Notice prepare and submit to TfNSW a draft plan describing the actions and measures which OpCo will diligently pursue to prevent the OpCo Event of Default from recurring (**Draft Prevention Plan**).

- (b) Within 10 Business Days after receipt of the Draft Prevention Plan, TfNSW must either:
- (i) approve the Draft Prevention Plan by notifying OpCo; or
 - (ii) reject the Draft Prevention Plan by notifying OpCo and providing reasons to OpCo for its rejection.
- (c) If TfNSW approves a Draft Prevention Plan pursuant to clause 40.4(b)(i) (the **Approved Prevention Plan**), OpCo must comply with and implement the Approved Prevention Plan.
- (d) If TfNSW rejects a Draft Prevention Plan pursuant to clause 40.4(b)(ii), OpCo, in consultation in good faith with TfNSW, must amend the Draft Prevention Plan to meet TfNSW's reasonable requirements and submit the amended Draft Prevention Plan to TfNSW for its approval, in which case this clause 40.4 will apply to the amended Draft Prevention Plan as if it were originally submitted under clause 40.4(a).
- (e) If:
- (i) a Default Notice is given;
 - (ii) the OpCo Event of Default is not capable of being Remedied; and
 - (iii) OpCo fails to:
 - A. submit a Draft Prevention Plan in accordance with clause 40.4(a);
 - B. if TfNSW rejects a Draft Prevention Plan pursuant to clause 40.4(b)(ii), amend the Draft Prevention Plan to meet TfNSW's reasonable requirements and submit the amended Draft Prevention Plan in accordance with clause 40.4(d); or
 - C. comply with and implement, except in a minor respect, the Approved Prevention Plan,

and such failure is not remedied by OpCo within 5 Business Days of notice from TfNSW regarding that failure, an OpCo Termination Event will occur.

40.5 Persistent Breach

- (a) TfNSW may issue a notice to OpCo (**Persistent Breach Notice**) if a breach of the same OpCo obligation under this deed or any other TfNSW Project Agreement occurs more than once in any 12 month period (**Persistent Breach**).
- (b) A Persistent Breach Notice must:
- (i) state that it is a Persistent Breach Notice;

- (ii) identify the breach;
 - (iii) not relate to:
 - A. an OpCo Event of Default which is the subject of a current Approved Cure Plan or Approved Prevention Plan which OpCo is diligently implementing; or
 - B. a breach which results in a Service Payment Deduction; or
 - C. a breach in relation to which TfNSW has issued a Frequent Breaches Notice under clause 40.6(a) and which OpCo is diligently remedying; and
 - (iv) state that, if the breach continues beyond 30 Business Days or recurs within the 12 month period commencing 30 Business Days after the date of service of the Persistent Breach Notice, it may result in TfNSW becoming entitled to terminate this deed.
- (c) If, following the issue of a Persistent Breach Notice, the breach specified in the Persistent Breach Notice has continued beyond 30 Business Days or recurred within the 12 month period commencing 30 Business Days after the date of service of the Persistent Breach Notice, then TfNSW may issue a notice to OpCo (**Final Persistent Breach Notice**).
- (d) A Final Persistent Breach Notice must:
- (i) state that it is a Final Persistent Breach Notice;
 - (ii) identify the breach;
 - (iii) state that the breach has been the subject of a Persistent Breach Notice served within the period of 12 months and 30 Business Days prior to the date of the service of the Final Persistent Breach Notice; and
 - (iv) state that if the breach continues beyond 30 Business Days or recurs 3 or more times within the 6 month period after the date of service of the Final Persistent Breach Notice, TfNSW will become entitled to terminate this deed.

40.6 Frequent Breaches

- (a) TfNSW may issue a Frequent Breaches Notice to OpCo if OpCo commits frequent breaches of this deed which, in aggregate:
- (i) substantially frustrate the objects of this deed;
 - (ii) significantly impair TfNSW's ability to fulfil any of its objectives under the Transport Administration Act;
 - (iii) have a material adverse effect on the NWRL, the ETS or Customers; or
 - (iv) in TfNSW's reasonable opinion indicate that OpCo does not intend to be or does not regard itself as being bound by this deed,

whether or not such breaches are of the same type or class (**Frequent Breaches**).

- (b) A Frequent Breaches Notice must:

- (i) state that it is a Frequent Breaches Notice;
 - (ii) identify the Frequent Breaches; and
 - (iii) not relate to:
 - A. an OpCo Event of Default which is the subject of a current Approved Cure Plan or Approved Prevention Plan which OpCo is diligently implementing; or
 - B. a breach which results in a Service Payment Deduction; or
 - C. a breach in relation to which TfNSW has issued a Persistent Breach Notice under clause 40.5(a) and which OpCo is diligently remedying; and
 - (iv) state that, if Frequent Breaches continue to occur during the 12 month period commencing 30 Business Days after the date of service of a Frequent Breaches Notice, they may result in TfNSW becoming entitled to terminate this deed.
- (c) If Frequent Breaches continue to occur during the 12 month period commencing 30 Business Days after the date of service of a Frequent Breaches Notice, TfNSW may issue a Final Frequent Breaches Notice to OpCo.
- (d) A Final Frequent Breaches Notices must:
- (i) state that it is a Final Frequent Breaches Notice;
 - (ii) identify the Frequent Breaches;
 - (iii) state that the Frequent Breaches have been the subject of a Frequent Breaches Notice served within the period of 12 months and 30 Business Days prior to the date of service of the Final Frequent Breaches Notice; and
 - (iv) state that if Frequent Breaches continue to occur at any time in the 6 month period commencing 30 Business Days after the date of service of the Final Frequent Breaches Notice, TfNSW will become entitled to terminate this deed.

41. Step-In

41.1 Step-In Events

Each of the following is a Step-In Event:

- (a) an OpCo Termination Event; and
- (b) an event or circumstance which arises out of or in connection with OpCo's Activities or the OTS PPP that poses a serious threat to, or causes or will cause material damage or material disruption to:
 - (i) the health or safety of persons;
 - (ii) the Environment;

- (iii) any property; or
- (iv) the safe and secure performance of OpCo's Activities.

41.2 Step-in Rights

- (a) If:
 - (i) a Step-In Event occurs; and
 - (ii) TfNSW has given notice to OpCo in accordance with clause 41.2(b),
then a Step-in Party may exercise all or any of the Step-in Powers set out in clause 41.3 in an endeavour to remedy the Step-in Event or overcome the risk or mitigate any consequences resulting from the Step-in Event (the **Step-in Right**).
- (b) The notice referred to in clause 41.2(a)(ii):
 - (i) must be in writing and must specify:
 - A. the Step-in Event which has triggered the Step-in Right;
 - B. the OpCo's Activities which the Step-in Party proposes to perform;
 - C. the date on which the relevant Step-in Party proposes to commence performing the relevant OpCo's Activities; and
 - D. the date on which the relevant Step-in Party proposes to cease exercising the relevant OpCo's Activities; or
 - (ii) may be given orally if TfNSW's Representative considers that the Step-in Event requires urgent remedy or action and there is insufficient time to issue a written notice under clause 41.2(b)(i), but if given orally must be followed within 24 hours by a written notice under clause 41.2(b)(i).
- (c) The Step-in Right is without prejudice to TfNSW's other rights in respect of a Step-in Event, including its rights under clause 42 (Termination).

41.3 Step-in Powers

A Step-in Party may, in performing the OpCo Activities referred to in the notice under clause 41.2(b), do anything in respect of those activities that OpCo could do including:

- (a) enter into and remain in possession of all or any of the Assets;
- (b) operate and manage all or any of the Assets;
- (c) exercise all or any of OpCo's rights, and perform all or any of OpCo's obligations:
 - (i) in connection with the performance of OpCo's Activities;
 - (ii) under or in relation to a Project Agreement or any other document to which OpCo is a party; and
 - (iii) under or in relation to any Accreditation or other Approval held by OpCo,

as if it were OpCo, to the exclusion of OpCo;

- (d) do anything the Step-in Party considers necessary or desirable to remedy the Step-in Event or overcome the risk or mitigate any consequences resulting from the Step-in Event; and
- (e) do anything incidental to the matters listed in paragraphs (a) to (d),

(Step-in Powers).

41.4 OpCo's obligations

- (a) OpCo must:
 - (i) cooperate with the Step-in Party in the exercise of the Step-in Powers; and
 - (ii) take any step which the Step-in Party considers necessary or desirable to remedy the Step-in Event or overcome the risk or mitigate any consequences resulting from the Step-in Event; and
 - (iii) ensure that its Significant Contractors, and use its best endeavours to ensure all other OpCo Contractors, do likewise.
- (b) Without limiting clause 41.4(a), OpCo must:
 - (i) allow the Step-in Party to access and use:
 - A. all or any of the land and assets used in the performance of OpCo's Activities;
 - B. its Staff; and
 - C. any information the Step-in Party reasonably requires;
 - (ii) to the extent necessary, use reasonable endeavours to procure any consents to disclose Personal Information to the Step-in Party;
 - (iii) assist the Step-in Party in dealing with ONRSR in relation to any Accreditation issues;
 - (iv) comply with all reasonable directions given by the Step-in Party; and
 - (v) ensure that its Significant Contractors, and use its best endeavours to ensure all other OpCo Contractors do likewise,

to enable the Step-in Party to exercise its Step-in Powers.
- (c) OpCo irrevocably appoints TfNSW as its attorney with full power to exercise the Step-in Powers (or to delegate the exercise of the Step-in Powers to another Step-in Party).
- (d) OpCo's obligations under this deed will be suspended to the extent and for such period as is necessary to permit TfNSW to exercise its Step-in Rights.

41.5 TfNSW's obligations

- (a) TfNSW must ensure that each Step-in Party, in exercising the Step-in Powers, uses its reasonable endeavours to perform OpCo's Activities in accordance with the requirements of this deed.
- (b) OpCo acknowledges that a Step-in Party is not under any obligation to remedy the Step-in Event nor to overcome the risk or mitigate any consequences resulting from the Step-in Event.
- (c) TfNSW must ensure that each Step-in Party:
 - (i) cooperates with OpCo and the Core Contractors in relation to OpCo's (or any Core Contractor's) compliance with its Accreditation obligations under the Rail Safety National Law and Rail Safety Regulations;
 - (ii) does not put OpCo (or any Core Contractor) in breach of its obligations as a Rail Infrastructure Manager or Rolling Stock Operator under the Rail Safety National Law and Rail Safety Regulations;
 - (iii) complies with all reasonable requirements of OpCo (or any Core Contractor) in relation to compliance with the Accreditation of OpCo (or any Core Contractor); and
 - (iv) does not do anything (or fail to do anything) which jeopardises the Accreditation of OpCo (or any Core Contractor) or an application for Accreditation by OpCo (or any Core Contractor), including anything that may be grounds for the ONRSR to refuse an application for Accreditation by OpCo (or any Core Contractor), or to suspend or revoke (in whole or in part) or impose or vary conditions or restrictions on the Accreditation of OpCo (or any Core Contractor).

41.6 Payments during step-in

- (a) If, during a period when TfNSW is exercising its Step-in Rights, OpCo continues to perform obligations under this deed which affect the calculation of the Service Payment, the parts of the Service Payment affected by the performance of those obligations will continue to be calculated in accordance with Schedule 2 based on the actual performance of those obligations during the period when TfNSW is exercising its Step-in Rights.
- (b) If, during a period when TfNSW is exercising its Step-in Rights, OpCo's performance of an obligation which affects the calculation of the Service Payment is suspended, the parts of the Service Payment which are affected by the Step-in Party's performance of those obligations will continue to be calculated in accordance with Schedule 2, but based on the average performance of the relevant obligation by OpCo for the 6 months immediately prior to TfNSW exercising the Step-in Right). In other words, each Service Payment Deduction referable to an obligation which is being performed by the Step-in Party will be calculated based on the average level of that Service Payment Deduction for the 6 months immediately prior to TfNSW exercising the Step-in Right.
- (c) TfNSW will be entitled to deduct the following amounts, without double counting, from any Service Payment payable in respect of a period when TfNSW is exercising its Step-in Rights:
 - (i) where the Step-in Event was an OpCo Termination Event:

- A. the costs avoided by OpCo as a result of the exercise of the Step-in Right; and
 - B. the reasonable costs incurred by TfNSW in exercising the Step-in Right, including all reasonable costs incurred by a Step-in Party in performing OpCo's Activities; or
- (ii) where the Step-in Event was not an OpCo Termination Event, the costs avoided by OpCo as a result of the exercise of the Step-in Right.
- (d) If the aggregate amount to be deducted under clauses 41.6(c)(i) or 41.6(c)(ii) is greater than the Service Payment payable in respect of the relevant period, the difference will be a debt due and payable from OpCo to TfNSW.

41.7 No liability

OpCo acknowledges that TfNSW will have no liability to OpCo, and OpCo will not be entitled to make any Claim against TfNSW, arising out of or in connection with:

- (a) any conduct, delay, negligence or breach of duty in the exercise or non-exercise of a Step-in Power; nor
- (b) for any Loss which results,

except where it arises from:

- (c) fraud, Wilful Misconduct or gross negligence on the part of the Step-in Party or its Associates; or
- (d) a Compensation Event or a Relief Event.

41.8 Step-out

- (a) A Step-in Party must cease to exercise the Step-in Powers as soon as reasonably practicable and, in any event, upon the earlier of:
 - (i) the relevant Step-in Event being remedied (or the risk or consequences resulting from the Step-in Event being overcome) to the satisfaction of TfNSW; and
 - (ii) TfNSW's Representative notifying OpCo in writing that the Step-in Party will no longer exercise the Step-in Powers.
- (b) TfNSW must give written notice to OpCo of the date on which the Step-in Party will cease to exercise the Step-in Powers (which notice must be given by TfNSW to OpCo a reasonable time prior to the date the Step-in Party proposes to cease to exercise the Step-in Powers).
- (c) TfNSW and OpCo must consult with each other with the intention of ensuring that the transition from the Step-in Party ceasing to exercise the Step-in Powers to OpCo resuming the performance of the relevant OpCo Activities is effected without interruption to OpCo's Activities.
- (d) Upon the Step-in Party ceasing to exercise the Step-in Powers, OpCo must resume the performance of the relevant OpCo Activities in accordance with this deed (unless this deed has been terminated).

42. Termination

42.1 OpCo Termination Events

Each of the following events is an OpCo Termination Event:

- (a) **(unacceptable availability):** after the Date of Completion:
- (i) the number of Missed Train Services in : 1 exceeds of the total number of Required Train Services for for each of any ; or
 - (ii) the number of Missed Train Services in any rolling period exceeds % of the total number of Required Train Services for that period,
- in each case, disregarding any such unacceptable availability which is:
- (iii) directly caused by a Relief Event during a period when OpCo's non-financial obligations are suspended under clause 27.5; or
 - (iv) excluded from the calculations of Availability Deductions in accordance with clause 16 of Schedule 2;
- (b) **(unacceptable timeliness):** after the Date of Completion more than of Train Services in exceed the Maximum Train Journey Time by for any , disregarding any such unacceptable timeliness which is:
- (i) directly caused by a Relief Event during a period when OpCo's non-financial obligations are suspended under clause 27.5; or
 - (ii) excluded from the calculations of Timeliness Deductions in accordance with clause 16 of Schedule 2;
- (c) **(unacceptable quality):** after the Date of Completion, OpCo accrues or more Service Failure Points over a rolling period of , disregarding any such unacceptable quality directly caused by a Relief Event during a period when OpCo's non-financial obligations are suspended under clause 27.5;
- (d) **(Persistent Breach):** TfNSW has issued a Final Persistent Breach Notice and the relevant breach has continued beyond 30 Business Days or recurred 3 or more times within the 6 month period after the date of service of the Final Persistent Breach Notice;
- (e) **(Frequent Breaches):** TfNSW has issued a Final Frequent Breaches Notices and Frequent Breaches continue to occur at any time in the 6 month period commencing 30 Business Days after the date of service of the Final Frequent Breaches Notice;
- (f) **(failure to Remedy):** a failure by OpCo to Remedy an OpCo Event of Default which is capable of being Remedied within the Applicable Cure Period;
- (g) **(failure to prevent):** a failure by OpCo to prevent the recurrence of a OpCo Event of Default which is the subject of an Approved Prevention Plan;
- (h) **(failure to submit, amend or implement cure/prevention plan):** an event described in clauses 40.3(e) or 40.4(e);

- (i) **(failure to achieve Completion by Longstop Date):** Completion has not occurred by the Longstop Date;
- (j) **(abandonment):** OpCo abandons the OTS PPP;
- (k) **(insolvency of OpCo):** an Insolvency Event occurs in relation to an OpCo Entity, whether or not OpCo has been in breach of this deed;
- (l) **(suspension or revocation of Accreditation):** ONRSR suspends (other than a suspension not exceeding 6 weeks under section 74 of the Rail Safety National Law) or revokes any Accreditation required by OpCo or a Core Contractor to perform OpCo's Activities;
- (m) **(insolvency of contractor or guarantor):** an Insolvency Event occurs in relation to a Core Contractor or a Core Contractor Guarantor (and which, in relation to the D&C Contractor or a D&C Contractor Guarantor, only occurs prior to the Date of Final Completion) whether or not OpCo is then in breach of this deed, and:
 - (i) that Core Contractor or Core Contractor Guarantor is not replaced within 120 Business Days; or
 - (ii) at any time during that period, OpCo is not diligently pursuing the replacement of that Core Contractor or Core Contractor Guarantor (as applicable),
 by a person that:
 - (iii) satisfies the requirements of clause 54.3(b); or
 - (iv) is otherwise acceptable to TfNSW (acting reasonably);
- (n) **(failure to insure):** OpCo does not effect and maintain (or cause to be effected and maintained) an insurance as required by this deed, and fails to do so within 10 Business Days after receipt of a notice from TfNSW directing it to do so;
- (o) **(assignment etc):** OpCo breaches its obligations under clause 52.2(b);
- (p) **(restriction on Change of Ownership of OpCo):** OpCo breaches its obligations under clause 53.2;
- (q) **(restriction on Change in Control of D&C Contractor):** a Change in Control of the D&C Contractor occurs without TfNSW's approval under clause 53.3(a) and OpCo fails to comply with the requirements of clause 53.3(e);
- (r) **(restriction on Change in Control of O&M Contractor):** OpCo breaches its obligation under clause 53.4(a);
- (s) **(restrictions on replacement of a Core Contractor or Alstom Significant Contractor):** a Core Contractor or Alstom Significant Contractor is replaced by OpCo or a Core Contractor without TfNSW's approval under clause 54.3(a) and OpCo fails to:
 - (i) terminate any Significant Contract with the replacement Core Contractor or Alstom Significant Contractor and retender the works or services within 90 days after receipt of a notice from TfNSW directing it to do so; or

- (ii) ensure the Core Contractor terminates any Significant Contract with the replacement Alstom Significant Contractor and retenders the works or services within 90 days after receipt of a notice from TfNSW directing it to do so; and
- (t) **(Illegality Event):** the occurrence of any of the following events:
 - (i) OpCo or a Core Contractor ceases to hold an Approval or breaches a law, and such failure or breach is, in the reasonable opinion of TfNSW, material to the performance of OpCo's obligations under this deed and is not remedied within 30 days of the earlier of:
 - A. the date on which TfNSW notifies OpCo of the failure or breach; or
 - B. the date on which OpCo becomes aware of the failure or breach;
 - (ii) any Project Agreement:
 - A. being revoked, repudiated or terminated or ceasing to be legal, valid and binding and enforceable against OpCo or any other party to a Project Agreement (other than TfNSW, the State, Sydney Trains or a Civil Works Contractor), other than as contemplated by the Project Agreements; or
 - B. becoming invalid, void or voidable in any material respect other than where TfNSW, the State, Sydney Trains or a Civil Works Contractor has caused it to be invalid, void or voidable,

and, where the event is capable of being remedied, the event is not Remedied within 30 days of OpCo becoming aware of the relevant event occurring; or
 - (iii) it is or becomes unlawful for OpCo or a Core Contractor to perform any of its obligations under the Project Agreements, and such event is not remedied within 30 days of OpCo becoming aware of the relevant event occurring.

42.2 Notice of OpCo Termination Event

Without limiting TfNSW's other rights or OpCo's other obligations under this deed, OpCo must notify TfNSW's Representative immediately upon becoming aware of an OpCo Termination Event or an event or occurrence that, with the giving of notice, or lapse of time, would or is likely to become an OpCo Termination Event.

42.3 Not used

42.4 Termination for OpCo Termination Event

If an OpCo Termination Event occurs and is subsisting, TfNSW may give a written notice to OpCo immediately terminating this deed. The notice must set out details of the OpCo Termination Event for which TfNSW is giving the notice.

42.5 TfNSW Termination Events

Each of following events is a TfNSW Termination Event:

- (a) **(Failure to pay):** TfNSW fails to comply with its payment obligations under clause 25 and the failure is not remedied within 20 Business Days of a written demand from OpCo (provided that an amount disputed under clause 25.9 is not to be taken into account for the purposes of this clause 42.5(a));
- (b) **(Expropriation):** the State expropriates, sequesters or requisitions a material part of the NWRL or any Equity Interest; or
- (c) **(Frustration):** a breach by TfNSW of this deed which substantially frustrates or renders it impossible for OpCo to achieve Completion of the OTS Works or comply with a material part of its obligation under this deed for a continuous period of 2 months.

42.6 Termination for TfNSW Termination Event

- (a) If a TfNSW Termination Event occurs, OpCo may give TfNSW 30 Business Days' notice of its intention to terminate this deed.
- (b) If OpCo gives a notice under clause 42.6(a), TfNSW may suspend OpCo's right to terminate by giving a suspension notice within 30 Business Days of receipt of OpCo's notice.
- (c) TfNSW's suspension of OpCo's right to terminate expires on the earliest of:
 - (i) TfNSW notifying OpCo that it is ending the suspension period;
 - (ii) in the case of the TfNSW Termination Event referred to in clause 42.5(a), 30 Business Days after the date of OpCo's notice under clause 42.6(a);
 - (iii) in the case of any other TfNSW Termination Event, 24 months after the date of OpCo's notice under clause 42.6(a); and
 - (iv) when the relevant TfNSW Termination Event has been remedied (or its effects overcome).
- (d) If TfNSW's suspension of OpCo's right to terminate expires:
 - (i) under clauses 42.6(c)(i), 42.6(c)(ii) or 42.6(c)(iii) and the TfNSW Termination Event has not been Remedied, OpCo may immediately terminate this deed by notice to TfNSW; and
 - (ii) under clause 42.6(c)(iv), this deed will continue in force.
- (e) OpCo must continue to perform its obligations under this deed while its right to terminate is suspended, to the extent that it is lawful and practicable to do so.
- (f) If TfNSW does not give a suspension notice under clause 42.6(b) and the relevant TfNSW Termination Event has not been remedied (or its effects overcome) within 30 Business Days of receipt of OpCo's notice under clause 42.6(a), OpCo may, if the TfNSW Termination Event is still subsisting, immediately terminate this deed by notice to TfNSW.

- (g) If TfNSW issues a notice to OpCo under clause 42.6(b) TfNSW must pay OpCo monthly an amount sufficient to place OpCo in the net after tax position it would have been in had the relevant TfNSW Termination Event not occurred, from the date TfNSW issues a notice under clause 42.6(b) until the end of the period of suspension.
- (h) TfNSW will not be entitled to give any notice under clauses 40.2 or 42.4 to the extent the occurrence or circumstance which would otherwise entitle TfNSW to give such a notice results from the relevant TfNSW Termination Event.

42.7 Voluntary termination by TfNSW

TfNSW may:

- (a) at any time for its sole convenience and without giving reasons terminate this deed by written notice to OpCo with effect from the date stated in the notice (which date must not precede the date the notice is received by OpCo); and
- (b) thereafter either itself or by third parties carry out some or all of OpCo's Activities (if TfNSW elects to do so).

42.8 Termination for Force Majeure Event

Either party may terminate this deed pursuant to clause 28.3.

42.9 Termination in connection with Augmentations

TfNSW may terminate this deed pursuant to clause 33.9 or to clause 20 of Schedule 46.

42.10 Termination for Uninsurable Risk

TfNSW may terminate this deed pursuant to clause 39.

42.11 Consequences of termination

Upon expiry or termination of this deed, the rights and obligations of the parties under this deed will cease except for:

- (a) any accrued rights and obligations under this deed, including those arising out of the termination of this deed; and
- (b) any rights and obligations which expressly or impliedly continue after termination of this deed, including those referred to in clause 62.6.

42.12 Termination Payments

- (a) Subject to clause 42.12(b), if this deed is terminated under this clause 42 or clauses 28.3, 33.9 or 39, TfNSW must pay to OpCo:
 - (i) if this deed is terminated under clause 42.4 (other than as the result of an OpCo Termination Event referred to in clause 42.1(j)), the Termination Payment determined in accordance with clause 3 of Schedule 31;
 - (ii) if this deed is terminated under clauses 42.6, 42.7 or 33.9, the Termination Payment calculated in accordance with clause 4 of Schedule 31; or

- (iii) if this deed is terminated under clauses 28.3 or 39, the Termination Payment calculated in accordance with clause 5 of Schedule 31.
- (b) If this deed is terminated as the result of an OpCo Termination Event referred to in clause 42.1(j), OpCo will receive no compensation.
- (c) In the calculation of Termination Payments under Schedule 31, there will not be any double counting of any amounts, whether such amounts are referred to in Schedule 31 or elsewhere in this deed.
- (d) If this deed is terminated as a result of a TfNSW Termination Event or a breach by TfNSW:
 - (i) payment of the relevant Termination Payment will be full and final settlement of any Claim which OpCo has against TfNSW arising out of that breach and/or the termination of this deed; and
 - (ii) OpCo will not be entitled to pursue a claim of restitution of any kind, including a claim of unjust enrichment or quantum meruit.

42.13 No other termination rights

Despite any rule of law or equity to the contrary, this deed may not be terminated other than as provided for in this deed.

42.14 Option to assume Project Debt

- (a) If:
 - (i) this deed is terminated, other than as a result of a TfNSW Termination Event arising under clause 42.5(a); and
 - (ii) as at the date of termination, an OpCo Entity has any outstanding Financial Indebtedness,

TfNSW may, subject to complying with law, elect to assume all of that OpCo Entity's rights and liabilities under the Debt Financing Documents.
- (b) If TfNSW elects to assume all of an OpCo Entity's rights and liabilities under clause 42.14(a):
 - (i) OpCo must ensure that such rights and liabilities are novated to TfNSW on the date of termination of this deed (but subject to clause 42.14(b)(v));
 - (ii) TfNSW agrees to meet all further obligations to the Debt Financiers on the same terms and conditions as contained in the Debt Financing Documents;
 - (iii) TfNSW's assumption of the OpCo Entity's rights and liabilities must be supported by a guarantee from the State on terms no less favourable than those contained in the PAFA Act Guarantee, together with any necessary approvals that may be required for such guarantee;
 - (iv) the Termination Payment which TfNSW would otherwise be obliged to pay to OpCo will be reduced by:

- A. the principal payable directly to the Debt Financiers by TfNSW following any novation of the Debt Financing Documents to TfNSW under this clause 42.14; and
 - B. the amount of any costs of terminating the Debt Financing Documents which would otherwise have been taken into account in determining the Termination Payment, but which are not incurred by reason of the novation; and
- (v) subject to clauses 42.14(b)(iv), TfNSW must pay the Termination Payment to OpCo prior to the novation becoming effective.
- (c) OpCo must ensure that both OpCo and Finance Co are permitted, under the terms of all of the Debt Financing Documents, to procure the novation of their respective rights and obligations under those Debt Financing Documents pursuant to this clause 42.14.

43. Transition out provisions

43.1 Right to appoint Successor OpCo

- (a) OpCo acknowledges that TfNSW may, on or before the expiry or termination of the Term, invite any person (including OpCo) to perform all or any part of OpCo's Activities for the period commencing after expiry or termination of the Term.
- (b) The following clauses will not apply if OpCo is the Successor OpCo:
 - (i) clause 43.6; and
 - (ii) clause 43.7.

43.2 Transition Out Plan

- (a) OpCo must prepare, update and submit the Transition Out Plan in accordance with clause 8.
- (b) OpCo must ensure that a Step-In Party, prospective Successor OpCo, Successor OpCo or nominee of TfNSW has, to the extent permitted by law, immediate access to the information required to be included in the Transition Out Plan on reasonable notice from TfNSW and in any case on the dates OpCo is required to submit the Transition Out Plan to TfNSW in accordance with clause 8.

43.3 Preparation for contracting at end of Term

- (a) OpCo must, to the extent permitted by law, provide TfNSW with reasonable access to the Staff and the information, books and records, kept by or on behalf of OpCo in connection with the OTS PPP, for the purpose of TfNSW preparing reports and documents in connection with any invitation to a person for the performance of all or part of OpCo's Activities.
- (b) OpCo must use reasonable endeavours to assist TfNSW in the preparation for, and the conduct of, a fair and competitive expression of interest or tendering process.
- (c) Without limiting clause 43.3(b), OpCo must, to the extent permitted by law, make available to TfNSW any information, and assist in the verification of any information (including the provision of answers to verification questions), as they reasonably require in connection with the contracting of OpCo's Activities.

- (d) OpCo warrants to TfNSW that to the best of its belief all information provided under clauses 43.2 and 43.3 will be, at the time it is provided, true and correct in all material respects and will not be misleading, by omission or otherwise.

43.4 Continuity of OpCo's Activities

OpCo must manage, perform and maintain OpCo's Activities in a way that an appropriately qualified and resourced Step-In Party or Successor OpCo (or nominee of TfNSW) is able at any time to immediately take over the performance of OpCo's Activities without interruption.

43.5 Non frustration of transfer

OpCo must not do anything that directly or indirectly avoids or materially prejudices or frustrates the transfer of the performance of OpCo's Activities at termination or expiry of the Term to a Successor OpCo (or nominee of TfNSW).

43.6 Assistance in securing continuity

OpCo must do everything, both before and after the expiry or termination of the Term, as TfNSW may reasonably require to assist and advise any Step-In Party, prospective Successor OpCo, Successor OpCo or nominee of TfNSW in performing OpCo's Activities, including the provision of:

- (a) information and records related to the performance of OpCo's Activities (excluding Commercially Sensitive Information); and
- (b) training sessions to any person nominated by TfNSW in relation to the performance of OpCo's Activities.

43.7 Access

OpCo must ensure that a prospective Successor OpCo, Successor OpCo or nominee of TfNSW has access to the Assets, systems, Rapid Transit Rail Facility and the Required NWRL Employees for the purpose of:

- (a) the prospective Successor OpCo, Successor OpCo or nominee of TfNSW receiving information in respect of OpCo's Activities; and
- (b) preparations by the prospective Successor OpCo, Successor OpCo or nominee of TfNSW to take over the performance of OpCo's Activities following expiry or termination of the Term,

but only to the extent that any of the above does not unduly interfere with the performance of OpCo's Activities.

43.8 Required NWRL Employee details

- (a) No later than 30 Business Days prior to the Expiry Date, or, in the event that this deed is terminated, within 7 Business Days of any notice of termination, OpCo must:
 - (i) provide to each Required NWRL Employee a statement setting out that Required NWRL Employees:
 - A. grade/classification;
 - B. rate of pay;

- C. date of commencement of employment; and
 - D. estimated accrued entitlements (including annual leave, long-service leave, sick pay and rostered days off) as at the Expiry Date or termination of this deed; and
- (ii) provide to TfNSW information on the Required NWRL Employees, including:
- A. the statement provided to each Required NWRL Employee pursuant to clause 43.8(a)(i);
 - B. a list of the names of the Required NWRL Employees;
 - C. each Required NWRL Employee's terms and conditions of employment; and
 - D. each Required NWRL Employee's roster.
- (b) In the event that a Required NWRL Employee notifies OpCo that he or she disputes any of the information contained in the statement provided to that Required NWRL Employee pursuant to clause 43.8(a)(i), OpCo must notify TfNSW of such dispute and TfNSW shall refer the disputed issue to an actuary.

43.9 Variation of terms and conditions of employment

OpCo must not, without the prior written consent of TfNSW (which must not be unreasonably withheld), vary, or purport or promise to vary, the terms or conditions of employment (including superannuation entitlements) of any Required NWRL Employee where:

- (a) the variation takes effect in the 12 months prior to the Expiry Date unless:
 - (i) it is in the ordinary course of business and, when aggregated with any other variation which takes effect during that period, represents a percentage increase in the remuneration of the Required NWRL Employee of no more than the percentage increase in the index referred to in clause 14.2(b) of Schedule 2 over the twelve month period ending on the month for which that index was last published; or
 - (ii) is a variation imposed by a determination of the Fair Work Commission or the New South Wales Industrial Relations Commission;
- (b) all or part of the variation first takes effect after the end of the Term;
- (c) the variation relates to the provision of a financial or non-financial benefit (but excluding base salary and the Required NWRL Employee's legal entitlements) which the Required NWRL Employee will or may have a contractual right to receive after the expiry or termination of the Term; or
- (d) the variation prevents, restricts or hinders the Required NWRL Employee from working for a Successor OpCo in any capacity whether as an employee, independent contractor or otherwise, or from performing any duties which are the same as or similar to the duties the Required NWRL Employee performed in the course of his or her employment with OpCo.

43.10 Transfer of employees to Successor OpCo

- (a) At the end of the Term TfNSW may, and at the Expiry Date TfNSW must, procure that Successor OpCo (or a contractor of Successor OpCo) makes offers of employment to the Required NWRL Employees on terms which are similar to and are, on an overall basis, no less favourable than their terms of employment with OpCo (or the relevant O&M Contractor).
- (b) Notwithstanding clause 43.10(a), OpCo will (or will ensure that the relevant OpCo Contractor will) pay to any employee who becomes entitled to any redundancy payment upon the cessation of their employment with OpCo (or the relevant O&M Contractor), an amount which:
 - (i) complies with the terms of any relevant employment agreement and applicable laws; and
 - (ii) is consistent with general standards applicable at that time.
- (c) For the purposes of this clauses 43.10, any offer of employment by Successor OpCo (or a contractor of Successor OpCo) must:
 - (i) recognise continuity of service for all service related entitlements;
 - (ii) expressly waive any qualifying period which would otherwise preclude an employee's access to Commonwealth unfair dismissal laws in place from time to time; and
 - (iii) meet any criteria as to 'acceptable alternative employment' for the purposes of any exemption from the liability of OpCo (or the O&M Contractor) to make redundancy payments set under any applicable contract, policy or enterprise agreement which applies to the employee as at the end of the Term.
- (d) This clause 43.10 does not apply if this deed is terminated under clauses 28.3 or 39.

43.11 Asset Information System

OpCo must commence the transfer of the Asset Information System database to TfNSW, as required by clause 21.12(f), at least 12 months prior to the Expiry Date.

44. Access, inspections and audits

44.1 TfNSW's right of entry

- (a) TfNSW (and any person authorised by TfNSW) may, at any time, enter the NWRL Site and any other premises where OpCo's Activities are being carried out for the purpose of:
 - (i) observing or inspecting OpCo's Activities;
 - (ii) monitoring compliance by OpCo with its obligations under any TfNSW Project Agreement; or
 - (iii) exercising any right or performing any obligation which TfNSW has under any TfNSW Project Agreement.

- (b) When exercising this right, TfNSW must do so (and must ensure any person authorised by TfNSW does so) in a manner that:
 - (i) does not unreasonably interfere with OpCo's Activities; and
 - (ii) complies with OpCo's reasonable site access and work health and safety procedures.
- (c) OpCo must use reasonable endeavours to:
 - (i) coordinate OpCo's Activities so they do not interfere with the exercise by TfNSW of its right of entry; and
 - (ii) provide TfNSW with every reasonable facility and other assistance necessary for any inspection by TfNSW, including providing access to any relevant systems, registers, manuals, records (including financial records), plans and programs.
- (d) If an inspection shows that OpCo has not complied or is not complying with its obligations under this deed, TfNSW's Representative:
 - (i) may notify OpCo of the details of the non-compliance;
 - (ii) may specify a reasonable period within which OpCo must carry out appropriate rectification and/or remedy activities; and
 - (iii) will be entitled to be reimbursed by OpCo for the reasonable costs of the inspection including any reasonable administrative costs incurred by TfNSW in relation to the inspection.
- (e) When exercising this right in clause 44.1(a), TfNSW must ensure that TfNSW and its nominees:
 - (i) cooperate with OpCo and the Core Contractors in relation to OpCo's (or any Core Contractor's) compliance with its Accreditation obligations under the Rail Safety National Law and Rail Safety Regulations;
 - (ii) do not put OpCo (or any Core Contractor) in breach of its obligations as a Rail Infrastructure Manager or Rolling Stock Operator under the Rail Safety National Law and Rail Safety Regulations;
 - (iii) comply with all reasonable requirements of OpCo (or any Core Contractor) in relation to compliance with the Accreditation of OpCo (or any Core Contractor); and
 - (iv) do not do anything (or fail to do anything) which jeopardises the Accreditation of OpCo (or any Core Contractor) or an application for Accreditation by OpCo (or any Core Contractor), including anything that may be grounds for the ONRSR to refuse an application for Accreditation by OpCo (or any Core Contractor), or to suspend or revoke (in whole or in part) or impose or vary conditions or restrictions on the Accreditation of OpCo (or any Core Contractor).

44.2 Access to information

Without limiting any other provision of this deed:

- (a) TfNSW may at any time notify OpCo that it requires access to any information held by OpCo or a Significant Contractor which relates to OpCo's Activities;
- (b) upon receipt of a notice under clause 44.2(a), OpCo must immediately provide TfNSW (and any person authorised by TfNSW) with access to, or a copy of, the required information, except to the extent that the information is subject to legal professional privilege; and
- (c) TfNSW (and any person authorised by TfNSW) may review, copy, retain or otherwise deal with such information,

provided that where such information relates to the Net Financial Impact of an NFI Event, TfNSW's right to request and OpCo's obligation to provide such information will be limited to the extent set out in clause 3.10 of Schedule 29.

44.3 Access to third parties' information

OpCo must:

- (a) ensure that TfNSW (and any person authorised by TfNSW) has direct access to any information, documents or material that:
 - (i) is maintained by a third party (including OpCo's Associates); and
 - (ii) TfNSW is entitled to have access to, or have copies of, from OpCo under this deed;
- (b) ensure that any contractual arrangements between OpCo or OpCo's Contractors and any third parties acknowledge TfNSW's right of access under clause 44.3(a); and
- (c) provide to TfNSW on demand written evidence (including copies of any contractual arrangements referred to in clause 44.3(b)) showing compliance by OpCo with its obligations under clause 44.3(b).

44.4 OpCo to cooperate

OpCo must cooperate, and must ensure that OpCo's Contractors cooperate, with TfNSW and any persons authorised by TfNSW in the exercise of TfNSW's rights under this clause 44.

45. Records, reporting obligations and privacy

45.1 Records

- (a) OpCo must keep appropriate books of account, records, documentation and systems which evidence its performance of OpCo's Activities and its compliance with the Project Agreements.
- (b) OpCo must ensure its books of account, records, documentation and systems are available to TfNSW in accordance with clause 44.2.

45.2 Financial reporting

- (a) Not later than 4 months after the end of each financial year, OpCo must give TfNSW:
 - (i) unconsolidated audited financial statements for the previous financial year for each OpCo Entity;

- (ii) the audited financial statements for the previous financial year of any consolidated entity of which OpCo forms part; and
 - (iii) the audited financial statements for the previous financial year of the Core Contractors, provided that OpCo will not be required to give TfNSW the audited financial statements of the D&C Contractor in respect of any period after the date of Final Completion.
- (b) Each of the documents to be provided to TfNSW in accordance with this clause 45.2 must be accompanied by a certificate signed by two authorised officers of the relevant entity certifying that the information provided is accurate, complete and correct in all respects.
- (c) OpCo must prepare (or procure the preparation of) the accounts and financial statements required under this clause 45.2 in compliance with law and, without limitation, in accordance with the accounting principles generally accepted in Australia and consistently applied.

45.3 Project reporting

Without limiting OpCo's other reporting obligations under this deed, OpCo must provide the following reports:

- (a) during the Delivery Phase:
- (i) the Delivery Phase Progress Report;
 - (ii) Test Reports in accordance with clause 18.5;
 - (iii) an Intellectual Property report under clause 19.12;
 - (iv) a report on the effects of OpCo's Activities under section 3.5 of the SPR;
 - (v) site investigation reports under section 3.15 of the SPR;
 - (vi) survey reports under section 3.16 of the SPR;
 - (vii) Quality Plan audit reports under section 5.5.6 of the SPR;
 - (viii) as constructed documentation and construction completion report under section 5.12 of the SPR; and
 - (ix) design reports under section 6.4.3 of the SPR;
 - (x) durability assessment reports under section 6.4.6 of the SPR;
 - (xi) the reports required under section 6.4.7 of the SPR; and
 - (xii) accident and Incident reports under section 6.5.20 of the SPR; and
- (b) during the Operations Phase:
- (i) reports on the Asset Management Activities in accordance with clause 21.9;
 - (ii) the Monthly Operations Performance Report;
 - (iii) the Monthly Service Payment Report;

- (iv) Asset Condition Assessment reports under section 8.9 of the SPR; and
 - (v) the configuration management reports, quarterly performance reports, annual performance reports and Special Event reports required by SPR Appendix 53; and
- (c) during the Term, written reports of all work health, safety and rehabilitation matters under clause 9.4(f) and any other reports required by OpCo under this deed and the SPR.

45.4 Notices under Project Agreements

OpCo must give TfNSW as soon as practicable certified copies of all notices of default, breach or dispute given or received by it under the Project Agreements from any of its co-contracting parties.

45.5 Advice on rights of third parties under Project Agreements

OpCo undertakes to advise TfNSW as soon as practicable after an event has occurred which, to OpCo's actual knowledge, could in any way materially prejudice TfNSW's rights under the Project Agreements by reason of the exercise of rights available to third parties arising from the Project Agreements.

45.6 Information provided to Debt Financiers

OpCo must promptly provide to TfNSW copies of all documents, financial models, reports, notices and other information which an OpCo Entity provides to any Debt Financier under the Debt Financing Documents.

45.7 ASIC and ASX notices

OpCo must give TfNSW, as soon as practicable, copies of all notices and other documents given or received by a member of the OpCo Group to or from the Australian Securities and Investments Commission or the ASX Limited.

45.8 Other information

OpCo must promptly give TfNSW such other information relating to the OTS PPP or OpCo's Activities as TfNSW may reasonably require from time to time.

45.9 Retention of records

OpCo must retain all records in relation to the OTS PPP:

- (a) until they are delivered to TfNSW pursuant to clause 21.12(g); or
- (b) if not so delivered to TfNSW, for at least 7 years after the end of the Term.

45.10 Privacy

- (a) **(Definitions):** In this clause **Privacy Obligations** means:
 - (i) while the PPIPA is in force, obligations imposed on public sector agencies under the PPIPA; and

- (ii) if the PPIPA is repealed, obligations imposed on Authorities and private sector organisations by any Commonwealth or New South Wales legislation that replaces the PPIPA in whole or in part.
- (b) **(PPIPA):** OpCo acknowledges that:
 - (i) under this deed it is providing "data services" as that term is defined in the PPIPA; and
 - (ii) it is a "public sector agency" as that term is defined in the PPIPA.
- (c) **(Compliance with Privacy Obligations and privacy plans):** OpCo must:
 - (i) comply with the Privacy Obligations and OpCo's Privacy Plan; and
 - (ii) provide all reasonable assistance to enable TfNSW to comply with the Privacy Obligations.
- (d) **(Personal Information):** Without limiting clause 45.10(c), OpCo must ensure that Personal Information is collected, used, disclosed and handled by it in accordance with OpCo's Privacy Plan and this deed.
- (e) **(OpCo's Privacy Plan):** At least 20 Business Days prior to the first occasion on which OpCo will handle any Personal Information in undertaking OpCo's Activities, OpCo must submit to TfNSW's Representative an OpCo's Privacy Plan which sets out OpCo's procedures in relation to privacy protection and includes, as a minimum, procedures which:
 - (i) ensure that OpCo will comply with the Privacy Obligations;
 - (ii) are consistent with the Privacy Obligations as they apply to TfNSW; and
 - (iii) are consistent with Good Industry Practice.
- (f) **(TfNSW's review):** TfNSW's Representative will have the right to comment on OpCo's Privacy Plan and OpCo must amend OpCo's Privacy Plan to address any comments by TfNSW's Representative.
- (g) **(Updating of OpCo's Privacy Plan):** Throughout the Term, OpCo must review and, if necessary, update OpCo's Privacy Plan:
 - (i) to take account of:
 - A. events or circumstances which will, or may, affect the manner in which OpCo carries out OpCo's Activities; and
 - B. any evolution in technology and in security threats; and
 - (ii) upon written request by TfNSW's Representative.
- (h) **(Submission of updated plan):** OpCo must submit any plan updated in accordance with clause 45.10(g) to TfNSW's Representative, in which case clause 45.10(f) will reapply.
- (i) **(Subcontracts):** OpCo must ensure that all Subcontracts with any Significant Contractor who collects, uses, stores, disposes or discloses Personal Information contains provisions to the same or similar effect as clause 45.9.

- (j) **(Audit):** TfNSW may require OpCo and Significant Contractors to have their privacy procedures audited by a qualified nationally recognised firm provided that TfNSW is not entitled to require such an audit more frequently than annually. OpCo and Significant Contractors must take such action as is reasonable to comply with any exceptions or discrepancies discovered by any such audit.

46. Strategic Business Plan

- (a) OpCo must prepare and update the Strategic Business Plan in accordance with clause 8.
- (b) The Strategic Business Plan must:
 - (i) describe OpCo's overall vision and management approach;
 - (ii) explain how OpCo's Activities will promote the achievement of the objectives referred to in clauses 4.1 and 4.2; and
 - (iii) otherwise comply with the requirements of the SPR.

47. Disclosure, confidentiality and publicity

47.1 Disclosure by TfNSW

TfNSW may publish or disclose (on the internet or otherwise):

- (a) the terms and conditions of this deed or any other TfNSW Project Agreement; and
- (b) any document or information arising under, out of or in connection with this deed or any other Project Agreement or relating to the performance of this deed or any other Project Agreement,

provided TfNSW redacts any Commercially Sensitive Information.

47.2 Confidentiality

- (a) Subject to clause 47.2(c), OpCo must:
 - (i) keep confidential the Project Agreements and information relating to the OTS PPP, OpCo's Activities and any discussions concerning the Project Agreements (including the materials and information referred to in the definition of ETS IP); and
 - (ii) ensure that each of its Associates comply with the terms of clause 47.2(a)(i).
- (b) TfNSW must keep confidential the Commercially Sensitive Information.
- (c) Neither party is obliged to keep confidential any information:
 - (i) which is in the public domain through no fault of the disclosing party; or
 - (ii) the disclosure of which is:
 - A. required by law;

- B. required by any recognised stock exchange or a New South Wales or Commonwealth regulator;
 - C. given with the written consent of TfNSW;
 - D. to professional advisers who are under a duty of confidentiality;
 - E. given to a court in the course of proceedings to which the disclosing party is a party; or
 - F. in the case of TfNSW, required by a House of Parliament, a Committee of a House of Parliament or for any legitimate government purpose.
- (d) If TfNSW requires OpCo to provide a confidentiality deed in favour of a third party in respect of any of that third party's confidential information that is provided to OpCo, then OpCo must execute such a confidentiality deed in the form reasonably specified by TfNSW.

47.3 Public Disclosure Obligations

- (a) OpCo acknowledges and agrees that disclosures regarding the OTS PPP by TfNSW, the State or any Authority may be required:
- (i) under law, including the Government Information (Public Access) Act 2009 (NSW) or any similar or replacement legislation;
 - (ii) to satisfy the disclosure requirements of the Auditor General and to satisfy the requirements of Parliamentary accountability,
- (Public Disclosure Obligations).**
- (b) OpCo must use all reasonable endeavours to assist TfNSW, the State or an Authority in meeting their Public Disclosure Obligations in connection with the OTS PPP.

47.4 Publicity

Except for notices which OpCo is required to disclose to any recognised stock exchange, OpCo must:

- (a) not make any public announcements or statements in relation to the OTS PPP (including by posting any information relating to the OTS PPP on any website) without TfNSW's prior consent;
- (b) use reasonable endeavours to agree with TfNSW the wording and timing of all public announcements and statements by it or its Associates relating to the OTS PPP before the relevant announcement or statement is made;
- (c) give TfNSW a draft of any proposed media release relating to the OTS PPP and obtain TfNSW's approval of the media release before distributing it;
- (d) give TfNSW a copy of any announcement or media release as soon as practicable after it is made or distributed; and

- (e) ensure that its Associates comply with the requirements referred to in this clause 47.4.

48. Intellectual Property

- (a) The parties rights and obligations in relation to Intellectual Property are set out in Schedule 34.
- (b) In the event that the Escrow Material is released to TfNSW pursuant to clause 2.20(b) of Schedule 34, TfNSW will from time to time make available to OpCo (or its Core Contractors) such part of the Escrow Material as may be necessary to enable OpCo to continue to comply with its obligations under this deed provided that OpCo's use of that Escrow Material is limited to the purposes set out in clause 2.4(b) of Schedule 34. OpCo acknowledges that its indemnity in clause 2.2 of Schedule 34 applies to any Claims which may be brought or made against TfNSW by any person in respect of TfNSW making Escrow Material so available to OpCo and subsequent use of the Escrow Material by OpCo or any person by or on behalf of OpCo.

49. Financing and Refinancing

49.1 Debt Financing Documents

OpCo must not, and must ensure that Finance Co does not, without the prior written consent of TfNSW's Representative:

- (a) enter into any financing agreements (including in respect of present or contingent indebtedness, deferred purchase or leasing arrangements or similar obligations, but excluding indebtedness incurred in the ordinary course of business) other than the Debt Financing Documents or any intercompany financing agreements between OpCo Entities; or
- (b) make any material amendment to, or waive, vary or change any material provision of, the Debt Financing Documents,

other than in respect of a Refinancing implemented in accordance with this clause 49 or an event or circumstance described in paragraphs (d) to (h) of the definition of "Refinancing".

49.2 Copies of Debt Financing Documents

OpCo must deliver to TfNSW's Representative a certified complete copy of each financing agreement entered into by an OpCo Co Entity and each amendment to, or waiver, variation or change of any provision of, the Debt Financing Documents, in each case within 5 Business Days after its execution.

49.3 General

- (a) The Financial Indebtedness assumed by an OpCo Entity under any Refinancing must be used:
 - (i) solely for the OTS PPP; or
 - (ii) for refinancing Financial Indebtedness used solely for the OTS PPP and for paying legal, swap break and other costs reasonably and properly incurred in connection with the Refinancing including those costs paid to TfNSW in accordance with clause 49.10.

- (b) OpCo must :
 - (i) promptly and efficiently procure any Refinancing required to ensure that it complies with its obligations under the Debt Financing Documents; and
 - (ii) in undertaking any Refinancing, act reasonably as any reasonable borrower would in the circumstances and given the market conditions at that time.

49.4 OpCo to provide details of Refinancing

- (a) OpCo must promptly provide TfNSW with full details of any proposed Refinancing, including:
 - (i) a copy of the then current Base Case Financial Model as adjusted for the proposed Refinancing, showing all of the material changes to OpCo's obligations to the Debt Financiers in a format that allows the calculation of the anticipated Refinancing Gain or Refinancing Loss in accordance with clause 49.8;
 - (ii) the basis for assumptions used in the financial model referred to in clause 49.4(a)(i);
 - (iii) a certificate on terms and in a form acceptable to TfNSW from the auditors of the financial model referred to in clause 49.4(a)(i), as to its operation and effect;
 - (iv) all information, including terms and conditions, provided by an OpCo Entity to its existing and prospective financiers, or by an OpCo Entity's existing and prospective financiers to that OpCo Entity, in relation to the proposed Refinancing; and
 - (v) whether OpCo considers that the consent of TfNSW under clause 49.5 is required for the proposed Refinancing.
- (b) TfNSW may, within 10 Business Days after receiving details of the proposed Refinancing referred to in clause 49.4(a) (or any revised proposed Refinancing submitted under clause 49.6(c)), request any further information which TfNSW reasonably requires from OpCo regarding the proposed Refinancing. If such further information is available to an OpCo Entity, OpCo must (to the extent that further information is available to an OpCo Entity) provide it to TfNSW as soon as reasonably practicable but no later than 5 Business Days after TfNSW's request.

49.5 TfNSW consent to Refinancing

- (a) OpCo must not, and must ensure that Finance Co does not, enter into any Refinancing which gives rise to:
 - (i) a Refinancing Gain;
 - (ii) an increase in the amount of outstanding Project Debt at or beyond the Refinancing date above that forecast in the Base Case Financial Model;
 - (iii) an increase in the amount of outstanding Project Debt beyond that forecast for any future period in the Base Case Financial Model; or

- (iv) a reduction in the tenor of greater than 18 months from that forecast in the Base Case Financial Model at Financial Close for the relevant Refinancing tranche,

without the prior written consent of TfNSW, which must be provided in accordance with this clause 49.5.

- (aa) Prior to the Date for Completion or, if a Notice of Proposed Augmentation (as defined in Schedule 46) has been issued, 1 July 2023, OpCo must not, and must ensure that Finance Co does not, enter into any Refinancing which:
 - (i) gives the Debt Financiers the right to demand repayment of the Project Debt as a result of TfNSW exercising its rights under the Equity Purchase Deed;
 - (ii) prohibits, or imposes additional non-market standard fees or costs on Finance Co in connection with, an early repayment of the Project Debt; or
 - (iii) involves a bond issue,

without the prior written consent of TfNSW (which may be given or withheld in its absolute discretion).

- (b) TfNSW may only withhold its consent to a Refinancing under clause 49.5(a) if TfNSW's Representative reasonably believes that:
 - (i) the Refinancing will bring about an increase or adverse change in the liabilities or the profile of the risks or liabilities of TfNSW under any Project Agreement (other than as consented to by TfNSW and reflected in the Base Case Financial Model) without adequate compensation to TfNSW; or
 - (ii) other than as reflected in the Base Case Financial Model, the Refinancing, taken as a whole, is materially more onerous or disadvantageous to the relevant OpCo Entity than the terms and conditions under the existing Debt Financing Documents and TfNSW reasonably considers that the relevant OpCo Entity will be unable to adequately service and repay the Financial Indebtedness assumed under the Refinancing, or that as a result of such Financial Indebtedness it is reasonably likely that the relevant OpCo Entity will be unable to perform its obligations under the Project Agreements.
- (c) TfNSW must not withhold its consent to a Refinancing under clause 49.5(a) if:
 - (i) the sole purpose of the Refinancing is to prevent a maturity date under the Debt Financing Documents being reached;
 - (ii) the circumstances in clause 49.5(b)(i) have not or will not arise; and
 - (iii) OpCo has:
 - A. complied with its obligations under clause 49.4;
 - B. delivered to TfNSW the information required under clause 49.4(b) no less than 2 months but no more than 9 months

before the relevant maturity date under the Debt Financing Documents; and

- C. used its best endeavours to ensure that the circumstances referred to in clause 49.5(b)(ii) do not arise in connection with the proposed Refinancing.
- (d) The granting of consent under clause 49.5(a) by TfNSW shall be without prejudice to TfNSW's rights under this deed, including its right to any TfNSW Refinancing Share.

49.6 Review Process

- (a) If under clause 49.5(a) TfNSW is required to provide its consent to a Refinancing, TfNSW must provide or withhold its consent within the period commencing on the date OpCo provides all of the details of the proposed Refinancing referred to in clause 49.4(a) and ending 20 Business Days after that date (**Review Period**).
- (b) During the Review Period, prior to providing or withholding consent, TfNSW may provide comments (and sufficient detail to substantiate those comments) to OpCo in respect of the proposed Refinancing if TfNSW has reasonably formed the view that either or both of the events in clauses 49.5(b)(i) or 49.5(b)(ii) will occur as a result of the proposed Refinancing.
- (c) Following receipt of comments from TfNSW under clause 49.6(b), OpCo may vary the proposed Refinancing in order to ensure that neither of the events in clauses 49.5(b)(i) or 49.5(b)(ii) will occur as a result of the proposed Refinancing and resubmit the revised proposed Refinancing to TfNSW for review during the Review Period.
- (d) Upon receipt of the revised proposed Refinancing TfNSW may request further information from OpCo regarding the revised proposed Refinancing in accordance with clause 49.4(b).
- (e) If OpCo resubmits the proposed Refinancing to TfNSW in accordance with clause 49.6(c), the Review Period will be extended for a further period of 20 Business Days (or such shorter period as requested by OpCo and agreed to by TfNSW) from the date of such resubmission.
- (f) If TfNSW does not notify OpCo of its consent or refusal to consent to the Refinancing within the Review Period, TfNSW will be deemed to have consented to the proposed Refinancing.
- (g) Any dispute as to whether TfNSW's consent is required for a proposed Refinancing or TfNSW is entitled to withhold its consent to a proposed Refinancing may be referred by either party for resolution in accordance with clause 56.

49.7 Refinancing documents

- (a) OpCo must deliver a certified true copy of each amended and amending Debt Financing Documents to TfNSW within 5 Business Days after execution.
- (b) OpCo must not, and must ensure that Finance Co does not, execute any Refinancing until:

- (i) any new Debt Financiers have executed a deed with TfNSW substantially in the form of the Financiers Tripartite Deed or become bound by the Financiers Tripartite Deed; and
- (ii) any retiring Debt Financiers have executed any documents reasonably requested by TfNSW to terminate their rights under the Financiers Tripartite Deed.

49.8 Calculation of Refinancing Gain or Refinancing Loss

- (a) For each proposed Refinancing, the impact of the proposed Refinancing on Distributions to Equity Investors in the then current Base Case Financial Model must be calculated in order to establish the extent to which gains may arise that may need to be shared with TfNSW in accordance with clause 49.9.
- (b) The impact of the proposed Refinancing will be calculated in accordance with the following definitions:

Refinancing Gain means any amount greater than zero when calculated in accordance with the below formula, in which case clause 49.9 will apply.

Refinancing Loss means any amount equal to or less than zero when calculated in accordance with the below formula, in which case clause 49.9 will not apply.

Formula = A - B

where:

A = the net present value of Distributions projected over the remaining period of the Term if the proposed Refinancing is executed, using the Base Case Equity Return and the then current Base Case Financial Model as adjusted to reflect the proposed Refinancing, in a manner consistent with clause 49.11 but without taking into account any adjustment for any sharing with TfNSW of any Refinancing Gain arising from the proposed Refinancing; and

B = the net present value of the Distributions projected over the remaining period of the Term immediately prior to the proposed Refinancing using the Base Case Equity Return and the then current Base Case Financial Model prior to any adjustments to reflect the proposed Refinancing.

49.9 Sharing Refinancing Gains

- (a) TfNSW will be entitled to 50% of the benefit of any Refinancing Gain that arises from a Refinancing (**TfNSW Refinancing Share**).
- (b) TfNSW may, taking into account the nature and timing of the Refinancing Gain, elect to receive the TfNSW Refinancing Share as:
 - (i) a direct payment (to the extent OpCo receives an amount referable to the Refinancing Gain as a direct payment);
 - (ii) a reduction in the Service Payments for the period of the Refinancing; or
 - (iii) a combination of the above.

- (c) TfNSW and OpCo must act reasonably to agree the manner and timing of payments of the TfNSW Refinancing Share.

49.10 Costs relating to a Refinancing

OpCo must pay to TfNSW its reasonable costs incurred in relation to considering a proposed Refinancing or consenting to a Refinancing.

49.11 Adjustments to Base Case Financial Model upon a Refinancing Gain

On execution of a Refinancing that results in a Refinancing Gain, the Base Case Financial Model will be adjusted in accordance with clause 50.1 as follows:

- (a) Project Debt, fees and margins for the period of the Refinancing will be updated to reflect the amended or amending Debt Financing Documents;
- (b) the actual Project Debt balance after the Refinancing and the forecast amortisation profile of Project Debt balances for the remainder of the Term will be updated to reflect the amended or amending Debt Financing Documents;
- (c) the impact of financial covenants which result in the forced retention of cash amounts within OpCo will be updated to reflect the amended or amending Debt Financing Documents;
- (d) legal, swap break and other costs reasonably and properly incurred in connection with the Refinancing will replace those equivalent costs previously forecast for the period of the Refinancing including those costs paid to TfNSW in accordance with clause 49.10;
- (e) the Service Payments for the period of the Refinancing will be adjusted and direct payments to TfNSW will be recorded to reflect the TfNSW Refinancing Share in accordance with clause 49.9 as adjusted in accordance with close protocols for the Refinancing to be agreed prior to the financial close of the relevant Refinancing; and
- (f) further required adjustments as otherwise agreed between TfNSW and OpCo.

50. Financial Models

50.1 Updates to Base Case Financial Model

- (a) **(When BCFM must be updated):** The Base Case Financial Model must be updated:
 - (i) as required by clause 25.3 (Conditional Debt Pay Down);
 - (ii) as required by clause 49.11 (Adjustments to Base Case Financial Model upon a Refinancing Gain);
 - (iii) if the Indexed Availability Fee (as defined in Schedule 2) or the Indexed Life Cycle Component (as defined in Schedule 2) is adjusted in accordance with clause 6.1(a)(i) of Schedule 29 as a result of a Compensation Event, a Modification directed by TfNSW under clause 29 or Proximate Work Activities; and
 - (iv) if the Base Case Availability Fee (as defined in Schedule 2), Base Lifecycle Component (as defined in Schedule 2) or Floating Rate

Amount (as defined in Schedule 2) is adjusted under a Pre-Agreed Option.

- (b) **(Information to be submitted):** When an update of the Base Case Financial Model is required under clause 50.1(a), OpCo must submit to TfNSW's Representative:
- (i) a proposed revised Base Case Financial Model (**Proposed Base Case Financial Model**) (incorporating all adjustments to the Service Payment made in accordance with this deed) and all supporting formulae and data;
 - (ii) an instruction manual outlining how to use the Proposed Base Case Financial Model, which is acceptable to TfNSW's Representative, acting reasonably;
 - (iii) a financial close protocol (if applicable) outlining the interest rate and/or foreign exchange setting procedures and model solving procedures for adjusting the Proposed Base Case Financial Model to incorporate updated interest rates and/or foreign exchange rates;
 - (iv) a revised Model Outputs Schedule; and
 - (v) a certificate from an auditor acceptable to TfNSW's Representative confirming that an independent audit of the Proposed Base Case Financial Model has been completed and that:
 - A. calculations in the Proposed Base Case Financial Model have been checked and are in all material respects internally consistent and mathematically correct;
 - B. the Proposed Base Case Financial Model allows changes in assumptions to correctly flow through to the results;
 - C. any macros in the Proposed Base Case Financial Model that govern the calculation of the Proposed Base Case Financial Model are correct;
 - D. the input data used in the Proposed Base Case Financial Model is consistent with all relevant supporting project documentation, formulae or constants;
 - E. the calculations of any relevant ratios and financial covenants in the Proposed Base Case Financial Model have been checked and that the Proposed Base Case Financial Model correctly reflects the definitions contained in the Debt Financing Documents;
 - F. the Proposed Base Case Financial Model correctly incorporates the relevant structural features in the Debt Financiers' term sheets such as reserve accounts, lock up provisions, default provisions and amortisation;
 - G. the accounting assumptions and outputs from the Proposed Base Case Financial Model are in accordance with the generally accepted accounting principles in Australia; and

- H. the income taxation assumptions and outputs from the Proposed Base Case Financial Model are in accordance with the relevant income tax legislation.
- (c) **(TfNSW's review):** OpCo must:
- (i) allow TfNSW's Representative 15 Business Days to either approve or submit proposed amendments to the Proposed Base Case Financial Model and the financial close protocol (if applicable); and
 - (ii) if required by TfNSW's Representative:
 - A. make available, at the cost and expense of OpCo, the appropriate personnel to explain; or
 - B. provide information, in such form as TfNSW's Representative reasonably requests, in relation to,

the Proposed Base Case Financial Model and the financial close protocol(if applicable).
- (d) **(Approval):** TfNSW's Representative must, within 15 Business Days of receipt of the Proposed Base Case Financial Model and the financial close protocol(if applicable) , either approve or submit proposed amendments to the Proposed Base Case Financial Model and the financial close protocol (if applicable).
- (e) **(Consultation in good faith):** If TfNSW's Representative submits amendments to the Proposed Base Case Financial Model or the financial close protocol then OpCo and TfNSW's Representative must consult in good faith with respect to, and use their reasonable endeavours to agree on, the amendments required to the Proposed Base Case Financial Model and the financial close protocol(if applicable).
- (f) **(Dispute resolution):** If TfNSW's Representative and OpCo do not agree on the amendments required to be made to the Proposed Base Case Financial Model or the financial close protocol (if applicable) within 10 Business Days after the commencement of the consultation pursuant to clause 50.1(e) or if no consultation has been held within 12 Business Days after the date when TfNSW's Representative submitted the amendments , then TfNSW's Representative and OpCo must refer the dispute for resolution in accordance with clause 56.
- (g) **(Adjustment of Base Case Financial Model):** Once the Proposed Base Case Financial Model and the financial close protocol (if applicable) has been approved by TfNSW's Representative, agreed between the parties or determined under clause 56, the Proposed Base Case Financial Model (as adjusted in accordance with the financial close protocol, if applicable) will be the Base Case Financial Model for the purposes of this deed.
- (h) **(Further audit):** If the Proposed Base Case Financial Model is adjusted under clause 50.1(g) in accordance with the financial close protocol, OpCo must submit to TfNSW's Representative a certificate from an auditor acceptable to TfNSW's Representative confirming that an independent audit of the Base Case Financial Model has been completed in accordance with the requirements of clause 50.1(b)(v).
- (i) **(Model Outputs Schedule):** Whenever the Base Case Financial Model is updated, the Model Outputs Schedule must be updated to reflect the updated Base Case Financial Model.

50.2 Operational Financial Model

- (a) Not later than 4 months after the end of each financial year, OpCo must give TfNSW certified copies of:
 - (i) an electronic copy of the Base Case Financial Model updated in accordance with this clause 50.2 (the **Operational Financial Model**) showing the actual performance of OpCo in the previous financial year and cumulatively since the date of Financial Close and the then current performance projections for the remaining years of the Term (assuming no, or no further, extension);
 - (ii) a statement in such detail as TfNSW may reasonably require reconciling the information in the electronic copy of the Operational Financial Model provided under clause 50.2(a)(i) with the audited financial statements of OpCo for the same period and the Base Case Financial Model; and
 - (iii) a statement in such detail as TfNSW may reasonably require reconciling the information in the electronic copy of the Operational Financial Model provided under clause 50.2(a)(i) with any financial information or financial model provided for or utilised for the purposes of the Debt Financing Documents.
- (b) OpCo must ensure that the assumptions book for the Operational Financial Model (and consequently the Operational Financial Model itself) incorporates relevant and accurate data (including actual data when available).
- (c) TfNSW will not be bound by any forecasts or other data contained in the Operational Financial Model.

51. Ownership of assets and licences to use

51.1 Fixtures

All fixtures affixed to the NWRL Site will be owned by the owner of the relevant part of the Project Site from the time they are affixed.

51.2 Moveable Assets

- (a) OpCo must acquire title to all Moveable Assets:
 - (i) in the case of chattels forming part of the OTS Works, by no later than the Date of Completion; and
 - (ii) in all other cases (excluding the Hired Moveable Assets), by no later than the Original Expiry Date.
- (b) OpCo must ensure that ownership of the Moveable Assets (excluding the Hired Moveable Assets) transfers to TfNSW:
 - (i) on the date on which OpCo acquires title to the relevant Moveable Asset;
 - (ii) in the case of chattels forming part of the OTS Works and without limiting clause 51.2(b)(i), no later than the Date of Completion; and
 - (iii) free from any Security Interests, other than Permitted Security Interests.

- (c) TfNSW grants OpCo an exclusive licence to use and to permit OpCo's Contractors to use all Moveable Assets then owned by TfNSW for the purpose of fulfilling OpCo's obligations under this deed. This licence commences in respect of each such Moveable Asset on the date on which ownership of the Moveable Asset transfers to TfNSW and terminates at the end of the Term.
- (d) OpCo must not enter into any lease or hire arrangement in respect of a Hired Moveable Asset unless the terms of that lease or hire arrangement:
 - (i) where the Hired Moveable Assets are owned by any Related Body Corporate of OpCo or a Core Contractor, permit OpCo to novate its rights and obligations under the lease or hire arrangement to TfNSW (or its nominee) the end of the Term; and
 - (ii) are approved by TfNSW (such approval not to be unreasonably withheld), where the Hired Moveable Asset is a Special Tool or Equipment.

51.3 Existing ECRL Moveable Assets

- (a) TfNSW grants OpCo an exclusive licence to use and to permit OpCo's Contractors to use the moveable assets listed in Schedule 35 (**Existing ECRL Moveable Assets**) for the purpose of fulfilling OpCo's obligations under this deed.
- (b) This licence commences on the date of Financial Close and terminates at the end of the Term.
- (c) TfNSW makes no representations and gives no warranty to OpCo in respect of the condition, location, adequacy or suitability of the Existing ECRL Moveable Assets.
- (d) OpCo accepts the Existing ECRL Moveable Assets in their present condition subject to all defects and agrees that it is responsible for, and assumes the risk of:
 - (i) all Loss, delay or disruption it suffers or incurs; and
 - (ii) any adverse effect on the OTS Works, the Temporary Works or the NWRL,
 arising out of, or in any way in connection with the Existing ECRL Moveable Assets.

51.4 Moveable Asset register

OpCo must maintain a register of all Moveable Assets and Existing ECRL Moveable Assets, and provide it to TfNSW upon request.

52. Restrictions

52.1 Restrictions on amendment to Project Agreements

OpCo must not:

- (a) where it may impact the rights or increase the liabilities or obligations of TfNSW, make or permit any amendment to, replacement of or waiver of a provision of or any supplement or agreement collateral to;
- (b) terminate, surrender, rescind or accept the repudiation of;

- (c) permit the novation, assignment or substitution of any counterparty's right, obligation or interest in; or
- (d) where it may impact the rights or increase the liabilities or obligations of TfNSW, enter into any agreement or arrangement which affects the operation or interpretation of,

any Project Agreement (other than a Debt Financing Document) to which TfNSW is not a party, the D&C Consortium Deed, the IJV Deed, the SJV Deed or the O&M Shareholders Agreement, without TfNSW's written consent (which consent will not be unreasonably withheld or delayed).

52.1A Restriction on amendment of Shareholders Agreement

Notwithstanding clause 52.1, OpCo must not without TfNSW's written consent:

- (a) make or permit any amendment to, replacement of, or waiver of a provision of, or any supplement or agreement collateral to; or
- (b) enter into any agreement or arrangement which affects the operation or interpretation of,

the Shareholders Agreement such that a vote, resolution, consent or approval by more than of the OpCo Equity Interest is required to proceed with, or participate in, an Augmentation. in accordance with Schedule 46 (Augmentation).

52.2 Restrictions on assignment

- (a) **(TfNSW):** TfNSW may assign, novate, transfer or otherwise deal with its rights or obligations under any Project Agreement without OpCo's prior approval, provided the transferee is an authority of the State, a Minister or a government entity (including a State owned corporation) supported by a guarantee from the State on terms no less favourable than those contained in the PAFA Act Guarantee.
- (b) **(OpCo):** Except as expressly permitted by this deed, the Financiers Tripartite Deed or the TfNSW Deed of Charge, OpCo must not assign, novate, transfer, mortgage, charge or otherwise deal with its rights or obligations under any Project Agreement, without TfNSW's prior approval.

52.3 Financier's Securities

OpCo may, after execution of the Financiers Tripartite Deed, mortgage or charge its interest under the Project Agreements to secure obligations to any Debt Financier (or trustee or agent for any Debt Financier) under the Debt Financing Documents, if, and for so long only as, the Debt Financier (or the trustee or agent for the Debt Financier) is a party to the Financiers Tripartite Deed.

52.4 Restrictions on dealings with NWRL

OpCo must not:

- (a) create, permit or suffer any Security Interest over;
- (b) lease, licence, transfer, sell, part with possession of, or otherwise deal with; or
- (c) operate or use, or permit any other person to operate or use,

the NWRL, the ETS or any part of the NWRL Site, except a Permitted Security Interest or as otherwise approved by TfNSW.

52.5 Restrictions on business

OpCo must not conduct any business other than the OTS PPP and the performance of its obligations and the exercise of its rights under the Project Agreements without TfNSW's prior consent.

52.6 Restrictions on revenue

- (a) **(OpCo):** OpCo may only derive revenue or other returns from:
 - (i) payments received from TfNSW under the TfNSW Project Agreements;
 - (ii) interest or other returns on monies held by or on behalf of OpCo;
 - (iii) surplus funds in the Insurance Proceeds Account after application in accordance with clause 38.15(d);
 - (iv) Commercial Opportunities;
 - (v) other activities contemplated by this deed or any other Project Agreement; and
 - (vi) activities approved by TfNSW.
- (b) **(Significant Contractors):** OpCo must ensure that, after the date of this deed, none of its Significant Contractors derive revenue or other returns from the OTS PPP other than revenue or returns derived:
 - (i) directly or indirectly from payments made by OpCo or otherwise contemplated by a Project Agreement; or
 - (ii) under an arrangement approved by TfNSW (such approval not to be unreasonably withheld if the arrangement is on arm's length commercial terms).

52.7 Restrictions on acquisition of property and liabilities being incurred

OpCo must not acquire or hold any property, or incur any liability, other than for purposes of the Project without TfNSW's prior consent.

52.8 Restrictions on related party contracts

OpCo must not (and must ensure that OpCo's Contractors do not) enter into any contract relating to OpCo's Activities with a Related Body Corporate (other than on arm's length commercial terms) without TfNSW's prior consent.

52.9 Restriction on tax consolidation

OpCo must not become a member of a consolidated group for the purposes of the *Income Tax Assessment Act 1997* (Cth) without TfNSW's prior consent.

53. Change of Ownership / Control

53.1 Initial status of ownership

OpCo represents and warrants that, at Financial Close, the legal and beneficial ownership of each member of:

- (a) OpCo Group;
- (b) Finance Co Group; and
- (c) _____,

will be as set out in Schedule 36.

53.2 Change of Ownership of OpCo Group Member

- (a) **(No change without consent):** Subject to clause 53.2(b), OpCo must not permit any direct or indirect change to the legal or beneficial ownership of any OpCo Equity Interest (**Change of Ownership**) without TfNSW's prior written consent (which must not be unreasonably withheld).
- (b) **(Exceptions):** TfNSW's consent is not required for a Change of Ownership resulting from:
 - (i) a transfer of any share or unit or other interest in the nature of equity which is listed on a recognised stock exchange;
 - (ii) any transfer of a share or unit or other interest in the nature of equity by a person to a Related Body Corporate of that person, provided OpCo gives TfNSW prior written notice of the transfer; or
 - (iii) a Permitted Change in Ownership, provided OpCo gives TfNSW prior written notice.
- (c) **(When consent may be withheld):** TfNSW will be deemed to be acting reasonably if it withholds its consent to a proposed Change of Ownership where TfNSW is of the reasonable opinion that:
 - (i) OpCo has not provided it with full details of the proposed Change of Ownership and any further information requested by TfNSW;
 - (ii) the Change of Ownership is to take effect prior to the date which is 2 years after the Date of Completion;
 - (iii) the new OpCo Equity Investor or OpCo Equity Investors (or any direct or indirect holding company of the new OpCo Equity Investor or OpCo Equity Investors):
 - A. is or are not solvent and reputable; or
 - B. has or have an interest or duty which conflicts in a material way with the interests of the OTS PPP and is or are involved in a business or activity which is incompatible, or inappropriate, in relation to the OTS PPP; or
 - (iv) the proposed Change of Ownership:

- A. is against the public interest;
 - B. would adversely affect the ability or capability of OpCo to perform its obligations under any Project Agreement; or
 - C. would increase the liability of, or risks accepted by, TfNSW under the Project Agreements.
- (d) **(No relief):** TfNSW's consent to a Change of Ownership will not relieve OpCo of any of its obligations under this deed.

53.3 Change in Control of an entity comprising D&C Contractor

- (a) **(TfNSW to approve):** If a Change in Control of an entity that is a joint venture participant in the D&C Contractor has occurred prior to the Date of Final Completion, OpCo must promptly notify TfNSW's Representative and obtain TfNSW's approval (which must not be unreasonably withheld).
- (b) **(Details to be provided):** OpCo must provide to TfNSW's Representative in its notification under this clause 53.3:
- (i) full details of the Change in Control, including the acquisition of voting power, the change in equity interests or any other event which has caused or constituted the Change in Control; and
 - (ii) all other information necessary for TfNSW to determine whether to exercise its rights under clause 53.3(d), in relation to the Change in Control.
- (c) **(Exceptions):** TfNSW's approval is not required for a Change in Control arising from:
- (i) a transfer of any share or unit or other interest in the nature of equity which is listed on a recognised stock exchange;
 - (ii) any transfer of a share or unit or other interest in the nature of equity by a person to a Related Body Corporate of that person, provided OpCo gives TfNSW prior written notice of the transfer; or
 - (iii) a Permitted Change in Control, provided OpCo gives TfNSW written notice of the Permitted Change in Control.
- (d) **(When approval must be given):** TfNSW must give its approval to a Change in Control of an entity that is a joint venture participant in the D&C Contractor if:
- (i) the person which now exercises Control of the relevant entity comprising the D&C Contractor:
 - A. is solvent and reputable; or
 - B. does not have any interest or duty which conflicts in a material way with the interests of the OTS PPP and is not involved in a business or activity which is incompatible, or inappropriate, in relation to the OTS PPP; and
 - (ii) the D&C Contractor continues to:

- A. have sufficient expertise and ability; and
 - B. be of sufficiently high financial and commercial standing,
- to properly carry out the obligations of the D&C Contractor under the relevant Project Agreements.
- (e) **(If approval is withheld):** If TfNSW notifies OpCo that TfNSW does not approve the Change in Control of an entity that is a joint venture participant in the D&C Contractor, OpCo must, within 90 days of receiving such notice, do one of the following:
- (i) terminate the D&C Contract and re-tender those works or services;
 - (ii) procure that the relevant entity is replaced as a joint venture participant in the D&C Contractor or otherwise remove the relevant entity as a joint venture participant and continue with the remaining joint venture participants as the D&C Contractor; or
 - (iii) take such other action as TfNSW may agree.
- (f) **(No relief):** TfNSW's approval of a Change in Control of the D&C Contractor will not relieve OpCo of any of its obligations under this deed.

53.4 Change in Control of O&M Contractor

- (a) **(No change without consent):** Subject to clause 53.4(b), OpCo must not permit a Change in Control of the O&M Contractor without TfNSW's prior written consent (which must not be unreasonably withheld).
- (b) **(Exceptions):** TfNSW's consent is not required for a Change of Control resulting from:
- (i) a transfer of any share or unit or other interest in the nature of equity which is listed on a recognised stock exchange;
 - (ii) any transfer of a share or unit or other interest in the nature of equity by a person to a Related Body Corporate of that person, provided OpCo gives TfNSW prior written notice of the transfer; or
 - (iii) a Permitted Change in Control, provided OpCo gives TfNSW written notice of the Permitted Change in Control.
- (c) **(When approval may be withheld):** TfNSW will be deemed to be acting reasonably if it withholds its approval to a proposed Change in Control of the O&M Contractor where TfNSW is of the reasonable opinion that:
- (i) OpCo has not provided it with full details of the proposed Change of Control and any further information requested by TfNSW;
 - (ii) the person or entity proposed to exercise Control of the O&M Contractor:
 - A. is not solvent and reputable; or
 - B. has an interest or duty which conflicts in a material way with the interests of the OTS PPP and is or are involved in a

business or activity which is incompatible, or inappropriate, in relation to the OTS PPP; or

- (iii) as a result of the proposed Change in Control, the O&M Contractor will no longer:
 - A. have sufficient expertise and ability; or
 - B. be of sufficiently high financial and commercial standing, to properly carry out its obligations under the relevant Project Agreements.
- (d) **(No relief):** TfNSW's approval of a Change in Control of the O&M Contractor (or an entity comprising the O&M Contractor) will not relieve OpCo of any of its obligations under this deed.

54. Subcontracting

54.1 Subcontracting

- (a) OpCo must not subcontract the performance of OpCo's Activities or any part of them except in accordance with this clause 54.
- (b) OpCo will be liable to TfNSW for the acts and omissions of OpCo's Contractors in connection with OpCo's Activities as if such acts or omissions were acts or omissions of OpCo. Subcontracting by OpCo of any obligation under the TfNSW Project Agreements will not relieve OpCo of, or otherwise affect, any obligation or liability it has to TfNSW under the TfNSW Project Agreements.

54.2 Core Contracts

Subject to clause 54.3, OpCo may subcontract the performance of its obligations:

- (a) in relation to the design and construction of the OTS Works, to the D&C Contractor; and
- (b) in relation to the operation and maintenance of the NWRL and the ETS Equipment, to the O&M Contractor.

54.3 Significant Contracts

- (a) **(TfNSW consent required):** OpCo must not, and must ensure that the Core Contractors do not:
 - (i) enter into;
 - (ii) where it may impact the rights or increase the liabilities or obligations of TfNSW, make or permit any amendment to, or replacement of or waiver of a provision of;
 - (iii) terminate, surrender, rescind or accept repudiation of (or give the relevant Significant Contractor an entitlement to terminate, surrender, rescind or accept repudiation of);
 - (iv) permit the novation, assignment or substitution of any counterparty's right, obligation or interest in; or

- (v) where it may impact the rights or increase the liabilities or obligations of TfNSW, enter into any agreement or arrangement which affects the operation or interpretation of,

a Significant Contract without obtaining TfNSW's prior consent (which consent must not be unreasonably withheld or delayed).

(b) **(Qualifications):** OpCo must:

- (i) use its best endeavours to ensure that each Significant Contractor:

- A. is solvent and reputable;
- B. does not have any interest or duty which conflicts in a material way with the interests of the OTS PPP and is not involved in any business or activity which is incompatible, or inappropriate, in relation to the OTS PPP; and
- C. has sufficient expertise and ability, and is of sufficiently high financial and commercial standing, to properly carry out the obligations of OpCo which are being subcontracted to it; and

- (ii) immediately upon becoming aware that a Significant Contractor does not satisfy the requirements of clause 54.3(b)(i), use its best endeavours to cause:

- A. the Significant Contractor to do whatever is necessary to promptly satisfy the requirements of clause 54.3(b)(i); or
- B. subject to clause 54.3(a), the relevant Significant Contract to be terminated.

(c) **(Provisions to be included in Significant Contracts):** OpCo must ensure that each Significant Contract contains provisions which:

- (i) satisfy the requirements of clauses 9.4(j), 45.10(i) and 60.3;
- (ii) recognise TfNSW's rights under clauses 41, 42.14(c) and 44;
- (iii) enable OpCo to comply with its novation obligations under clause 21.12(i); and
- (iv) are consistent with TfNSW's rights under Schedule 34.

(d) **(Monitoring of Significant Contracts):** OpCo must:

- (i) use its best endeavours to ensure that each Significant Contractor complies with the terms of its Significant Contract; and

- (ii) notify TfNSW of:

- A. any material breach of a Significant Contract; or
- B. any dispute which notified as such under a Significant Contract,

immediately upon becoming aware of such breach or dispute; and

- (iii) keep TfNSW informed of the status of any such breach or dispute.
- (e) **(Side Deed):** OpCo must, if requested by TfNSW, ensure that each Significant Contractor (other than the Alstom Significant Contractor) enters into a side deed with TfNSW containing terms equivalent to those in the D&C Contract Side Deed and the O&M Contract Side Deed or such other terms as TfNSW may reasonably require.
- (f) **(Copy):** OpCo must provide TfNSW with a copy of each Significant Contract (subject to removal, exclusion or redaction of any "commercial-in-confidence provision" as that term is defined in the Government Information (Public Access) Act 2009 (NSW)).

55. Representations, warranties and undertakings

55.1 TfNSW representations and warranties

TfNSW represents and warrants for the benefit of OpCo that:

- (a) it is a statutory body validly constituted and existing under the Transport Administration Act;
- (b) it has or will have in full force and effect all authorisations necessary under its constituent legislation to enter into and perform its obligations under each TfNSW Project Agreement (or will have them in full force and effect at the time the obligation is to be performed);
- (c) each TfNSW Project Agreement constitutes a valid and legally binding obligation of it in accordance with its terms; and
- (d) the execution, delivery and performance of each TfNSW Project Agreement does not violate any law, or any document or agreement to which it is a party or which is binding on it or its assets.

55.2 OpCo representations and warranties

OpCo represents and warrants for the benefit of TfNSW that:

- (a) it is duly registered and remains in existence;
- (b) the execution, delivery and performance of each Project Agreement to which it is a party does not violate any law, or any document or agreement to which it is a party or which is binding on it or any of its assets;
- (c) it has taken all corporate and other action required to enter into any Project Agreement to which it is a party and to authorise the execution and delivery of that Project Agreement and the satisfaction of its obligations under it;
- (d) each Project Agreement to which it is a party constitutes a valid and legally binding obligation of it in accordance with its terms;
- (e) it subsists and is properly constituted;
- (f) except in its capacity as trustee of the Trust, it is not the trustee or responsible entity of any trust, nor does it hold any property subject to or impressed by any trust;
- (g) OpCo has no subsidiaries;

- (h) except as disclosed in writing to TfNSW prior to the date of this deed, it is not a member of any consolidated group for purposes of the Income Tax Assessment Act 1997 (Cth);
- (i) no OpCo Event of Default or OpCo Termination Event has occurred or is subsisting;
- (j) it is not in default of its material obligations under any TfNSW Project Agreement;
- (k) it has not traded since its incorporation other than for the purposes of entering into the Project Agreements to which it is a party and has no liabilities other than those that have arisen in connection with entering into those Project Agreements;
- (l) except as contemplated by the Financiers Tripartite Deed, subject to laws from time to time, its obligations under the TfNSW Deed of Charge will rank ahead of, and its obligations under each TfNSW Project Agreement (other than the TfNSW Deed of Charge) will rank at least equally with, all its present and future unsecured obligations;
- (m) it does not have immunity from the jurisdiction of a court or from legal process (whether through service of notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise);
- (n) there has been no material change in the financial condition of OpCo (since its incorporation) or the OpCo Equity Investors or Core Contractors (since the date of their last audited accounts) which would prejudice the ability of OpCo to perform its obligations under the Project Agreements;
- (o) the most recently published financial statements of the OpCo Equity Investors and Core Contractors have been prepared on a basis consistently applied and using accounting principles which are generally accepted and give a true and fair view of the financial condition of the OpCo Equity Investors and Core Contractors and are unqualified for the period in question;
- (p) OpCo is not aware of any material facts or circumstances that have not been disclosed to TfNSW and which might, if disclosed, materially adversely affect the decision of a prudent person considering whether or not to enter into this deed with OpCo;
- (q) it has provided to TfNSW all material documents relating to the financing of the OTS PPP; and
- (r) no litigation, arbitration, mediation, conciliation, criminal or administrative procedures are current, pending or to its knowledge, threatened, which, if adversely determined, would or could have a material adverse effect upon it or its ability to perform its financial or other obligations under any Project Agreement to which it is expressed to be a party.

55.3 Trust representations

OpCo represents and warrants for the benefit of TfNSW, in its personal capacity and in its capacity as trustee of the Trust, that:

- (a) it is empowered by the Trust Deed:

- (i) to enter into and perform the Project Agreements to which it is expressed to be a party and to carry on the transactions contemplated by those documents; and
- (ii) to carry on the business of the Trust as now conducted or contemplated and to own the assets of the Trust (including any asset purported to be charged or mortgaged by it),

and there are no restrictions on or conditions of its doing so;

- (b) all necessary resolutions have been duly passed and all consents, approvals and other procedural matters have been obtained or attended to as required by the Trust Deed for it to enter into and perform its obligations under the Project Agreements to which it is expressed to be a party and any other instrument required under any such Project Agreement;
- (c) the Trust has been validly created and is in existence at the date of this deed;
- (d) it has been validly appointed as trustee of the Trust;
- (e) it is the sole trustee of the Trust;
- (f) it has not given notice of its intention to retire as trustee of the Trust;
- (g) no action has been taken or threatened to remove it as trustee of the Trust or appoint an additional trustee of the Trust;
- (h) to the best of its knowledge and belief following due enquiry, no proceedings of any description have been or are likely to be commenced or threatened which could have a material adverse effect on the assets or financial position of the Trust or on its trusteeship of the Trust;
- (i) no property of the Trust has been re-settled or set aside or transferred to any other trust;
- (j) it is required or authorised under the terms of the Trust Deed to:
 - (i) enter into the Project Agreements to which is it expressed to be a party in its capacity as trustee of the Trust; and
 - (ii) charge the property of the Trust as provided in those Project Agreements;
- (k) the Trust is duly constituted in accordance with the Trust Deed and all applicable laws, has not been terminated, nor has any event for the vesting of the assets of the Trust occurred;
- (l) it has the right to be fully indemnified out of the assets of the Trust for the satisfaction of all liabilities and other obligations it incurs under the Project Agreements and:
 - (i) that right of indemnity out of, and its lien over, the assets of the Trust have not been limited or released in any way and the assets of the Trust are sufficient to satisfy that right in full as and when it falls due; and
 - (ii) OpCo as trustee has no material liability which may be set off against this right of indemnity;

- (m) it has complied with its obligations and duties under the Trust Deed and at law in all material respects;
- (n) the Trust is solely constituted by the Trust Deed, the copy of which provided to TfNSW prior to the date of this deed is a true and complete copy of the original and which has been neither amended nor superseded;
- (o) the rights of any beneficiaries relating to, and their interests in, the property of the Trust are subject to the prior rights and interests of:
 - (i) TfNSW under the TfNSW Deed of Charge; and
 - (ii) OpCo in the property of the Trust pursuant to its Trustee's Indemnity.

55.4 Repetition of representation and warranties

The representations and warranties contained in clauses 55.2(h), 55.2(i), 55.2(j), 55.2(k), 55.2(n), 55.2(o), 55.2(p) and 55.2(r) are made on the date of this deed. Each other representation and warranty contained in this clause 55:

- (a) is made on the date of this deed; and
- (b) will be deemed to be repeated at Financial Close and on each anniversary of the date of this deed,

with reference to the facts and circumstances then subsisting.

55.5 Trust undertakings

OpCo must:

- (a) comply fully with all of its obligations as trustee of the Trust, whether imposed under the Trust Deed or, in all material aspects, at law;
- (b) ensure that no waiver or revocation of the Trust Deed is made, whether formally or by conduct;
- (c) not amend, or agree to amend, or permit or allow to be amended, its Trust Deed in any way (other than changes of a minor or technical nature or to correct a manifest error);
- (d) ensure that no other person is appointed trustee of the Trust without the prior written consent of TfNSW;
- (e) not do anything which would cause or enable its removal, nor retire, as trustee of the Trust except in favour of a new trustee approved by TfNSW;
- (f) ensure that the vesting date is not determined, and will not otherwise alter, shorten or fix the vesting date under the Trust Deed or allow the early determination of the Trust;
- (g) not exercise in its own favour its Trustee's Indemnity under the Trust against any beneficiary of the Trust or against any Trust Property (other than in respect of any expenses which it properly incurs in the day to day performance of its obligations as trustee of the Trust);

- (h) not do anything (or permit anything to be done) which effects or facilitates or may effect or facilitate:
 - (i) the termination of the Trust or the termination, rescission or revocation of the Trust Deed;
 - (ii) the resettlement of any Trust Property; or
 - (iii) the resignation, retirement, removal or replacement of it as trustee of the Trust or the appointment of an additional trustee of the Trust;
- (i) not create a Security Interest, or allow one to exist, over its Trustee's Indemnity other than as permitted under the Project Agreements and the Debt Financing Documents;
- (j) ensure that:
 - (i) there is no restriction or limitation on, or derogation from, its right of subrogation or Trustee's Indemnity (whether or not arising under its Trust Deed);
 - (ii) the rights of any beneficiaries relating to, and their interests in, the property of the Trust are subject to the prior rights and interests of:
 - A. TfNSW under the TfNSW Deed of Charge; and
 - B. OpCo in the property of the Trust pursuant to its Trustee's Indemnity;
- (k) not do anything, or omit to do anything, where the doing or the omission to do may have the effect of releasing, waiving or impairing any Security Interest granted by or created under a Project Agreement;
- (l) unless otherwise permitted under the Project Agreements, not permit any of the beneficiaries of the Trust to use, occupy, or enjoy or possess any of the Trust Property or title documents in respect of the Trust Property or relinquish management powers which might entitle any beneficiary of the Trust to possession;
- (m) not blend or mix the Trust Property with any other property in respect of which it has been appointed trustee;
- (n) not acquire any Trust Property other than in the name of the Trustee as trustee of the Trust;
- (o) not allow any redemption, cancellation or repurchase of any units in the Trust other than as permitted by the Project Agreements;
- (p) not take any step to release a unit holder of the Trust from the obligation to pay up units;
- (q) not do anything, agree or attempt to take any step to do anything which would restrict or impair its ability to comply with its obligations under the Project Agreement; and
- (r) not do anything (or permit anything to be done) which:
 - (i) results or may result in registration of the Trust as a managed investment scheme under Part 5C.1 of the Corporations Act; or

- (ii) restricts or limits or may restrict or limit TfNSW's rights of subrogation to the Trustee's Indemnity.

56. Dispute resolution

56.1 Disputes generally

Subject to clause 56.18, any dispute, difference or controversy (**Dispute**) directly or indirectly based upon, arising out of, relating to or in connection with the OTS PPP, the OTS Works, the Temporary Works, OpCo's Activities, the NWRL, the ETS, this deed (including any questions relating to the existence, validity or termination of this deed) or either party's conduct before the date of this deed, must be resolved in accordance with this clause 56.

56.2 Dispute Avoidance Board

- (a) The Dispute Avoidance Board has been constituted under the DAB Agreement.
- (b) In performing its functions the Dispute Avoidance Board must comply with this deed and the DAB Agreement.
- (c) Each party must provide all reasonable assistance to the Dispute Avoidance Board in fulfilling its advisory function including providing all information it reasonably requests.
- (d) Either party may refer any unresolved matters that are not yet subject to a Notice of Dispute to the Dispute Avoidance Board for its opinion. Any such referrals must be made in writing to the chairperson of the Dispute Avoidance Board and a copy simultaneously provided to the other party.
- (e) For the purposes of enabling it to fulfil its functions the Dispute Avoidance Board will:
 - (i) keep itself informed as to the progress of OpCo's Activities and in particular any issues affecting the successful progression of OpCo's Activities; and
 - (ii) attend any Senior Project Group meetings which it is requested to attend by either party.
- (f) At TfNSW's request, OpCo must procure the attendance of representatives of any Core Contractor, Significant Contractor and/or the Debt Financiers at meetings of the Dispute Avoidance Board as observer.
- (g) OpCo may, unless otherwise notified by TfNSW, have a representative of any Core Contractor attend any meeting of the Dispute Avoidance Board as an observer.

56.3 Notice of Dispute

Where a Dispute arises either party may give the other party written notice of the Dispute (**Notice of Dispute**). The Notice of Dispute must:

- (a) specify the Dispute;
- (b) provide particulars of the party's reasons for being dissatisfied; and
- (c) set out the position which the party believes is correct.

56.4 Executive Negotiation

- (a) Where a Notice of Dispute is given under clause 56.3, the Dispute must be referred to the Executive Negotiators and the Executive Negotiators must, within 5 Business Days after the date on which the Notice of Dispute was given under clause 56.3, meet and negotiate with a view to resolving the Dispute.
- (b) Subject to clause 56.4(d), if the Executive Negotiators have not resolved the Dispute within 20 Business Days after the date on which the Notice of Dispute was given under clause 56.3 (or such longer period of time as the Executive Negotiators or the parties may have agreed in writing) then, whether or not the Executive Negotiators have met and undertaken negotiations with a view to resolving the Dispute, either party may by giving notice to the other party in accordance with clause 56.4(c) require that those parts of the Dispute that remain unresolved be referred to expert determination.
- (c) A notice under clause 56.4(b) must:
 - (i) be given within 20 Business Days after the expiry of the 20 Business Day period referred to in clause 56.4(b);
 - (ii) state that it is a notice under clause 56.4(b); and
 - (iii) include or be accompanied by reasonable particulars of those parts of the Dispute that remain unresolved.
- (d) Where a Notice of Dispute is given under clause 56.3 after the Date of Final Completion this clause 56.4 will still apply, but if the Dispute is not resolved within 20 Business Days after the date on which the Notice of Dispute was given under clause 56.3:
 - (i) the Dispute will not be referred to expert determination;
 - (ii) clauses 56.5 - 56.9 will not apply; and
 - (iii) whether or not the Executive Negotiators have met and undertaken negotiations with a view to resolving the dispute, the Dispute will be determined in accordance with clause 56.10.

56.5 Expert determination

- (a) Any Dispute which is referred to expert determination by a notice under clause 56.4(b) will be conducted in accordance with the Institute of Arbitrators and Mediators Australia Expert Determination Rules, as modified by Schedule 42 to this deed.
- (b) Both parties must promptly make available to the Expert all such additional information, access to the NWRL Site and appropriate facilities as the Expert may require for the purposes of making a determination on the Dispute.
- (c) At TfNSW's request, OpCo must procure the attendance of representatives of any Core Contractor, Significant Contractor and/or the Debt Financiers at any expert determination proceedings under this clause 56.5 as observers.
- (d) OpCo may, with TfNSW's consent, have a representative of any Core Contractor attend any expert determination proceedings under this clause 56.5 as an observer.

- (e) The parties agree that, to the extent permitted by law:
 - (i) the powers conferred and restrictions imposed on a court by Part 4 of the *Civil Liability Act 2002* (NSW) are not conferred on the Expert; and
 - (ii) the Expert has no power to make a binding or non-binding determination or any award in respect of a Dispute by applying or considering the provisions of Part 4 of the *Civil Liability Act 2002* (NSW) (and any equivalent statutory provisions in any other state or territory) which might, in the absence of this provision, have applied to any Dispute referred to expert determination.
- (f) Within 30 Business Days after the Expert has been appointed, or within such other period as may be proposed by the Expert and approved by both parties, the Expert must give its determination in writing, which must be reasoned and must state that it is given under this clause 56.5. The determination will be immediately binding on both parties, who must give effect to it unless and until it is revised, overturned or otherwise changed in an amicable settlement or a court judgment or an arbitral award made in court proceedings or an arbitration pursuant to this clause 56.

56.6 Notice of dissatisfaction

- (a) If:
 - (i) either party is dissatisfied with a determination made by an Expert under clause 56.5 then either party may, within 10 Business Days after receiving the determination, give notice to the other party of its dissatisfaction; or
 - (ii) an Expert fails to give its determination within a period of 30 Business Days after the Expert has been appointed by the parties (or within such other period as may be proposed by the Expert and approved by both parties), then either party may, within 10 Business Days after this period has expired, give a notice of dissatisfaction to the other party,

(Notice of Dissatisfaction).

- (b) A Notice of Dissatisfaction issued under this clause 56.6 must:
 - (i) state that it is given under this clause 56.6; and
 - (ii) set out the matter in Dispute and the reason(s) for dissatisfaction.
- (c) Except as stated in clause 56.4(d), neither party will be entitled to commence court proceedings or arbitration in respect of the Dispute unless a Notice of Dissatisfaction has been given in accordance with this clause 56.6.

56.7 Final and binding decision

- (a) If an Expert has made a determination as to a Dispute, and no Notice of Dissatisfaction has been given by either party under clause 56.6 within 10 Business Days after it received the Expert's determination, then the determination will become final and binding upon both parties.
- (b) Once a determination of an Expert has become final and binding under clause 56.7(a), neither party will be entitled to challenge the determination on any basis.

56.8 Failure to comply with an Expert's decision

If a party fails to comply with any final and binding determination of an Expert then the other party may, without prejudice to any other rights it may have, give a notice to the other party requiring the failure itself to be determined as a Dispute in accordance with clause 56.9. In these circumstances clauses 56.4 - 56.7 will not apply to this Dispute.

56.9 Amicable settlement

Where a Notice of Dissatisfaction has been given under clause 56.6, or where a notice has been given under clause 56.8, both parties must attempt to settle the Dispute amicably before the commencement of any further proceedings. However, unless both parties agree otherwise, if no amicable settlement has been reached within 15 Business Days after the day on which the Notice of Dissatisfaction or the notice under clause 56.8 was given, the Dispute will be determined in accordance with clause 56.10 whether or not the parties have met and attempted to settle the dispute amicably.

56.10 Litigation or arbitration

Where this clause applies TfNSW, in its absolute discretion, may within 10 Business Days after the expiry of:

- (a) the 15 Business Day period referred to in clause 56.9; or
- (b) the 20 Business Day period referred to in clause 56.4(d),

(as applicable) issue a notice to OpCo stating that the Dispute is to be determined by litigation pursuant to court proceedings. If TfNSW does not issue such a notice within the 10 Business Day period, the Dispute will be referred to arbitration.

56.11 Arbitration rules

- (a) Any arbitration conducted in relation to a Dispute will be conducted in accordance with the arbitration rules of the Australian Centre for International Commercial Arbitration known as the ACICA Arbitration Rules.
- (b) The seat of the arbitration will be Sydney, Australia.
- (c) The language of the arbitration will be English.
- (d) The parties further agree to the following general principles relating to the procedure of the arbitration:
 - (i) that they have chosen arbitration for the purposes of achieving a just, quick and cost-effective resolution of any Dispute;
 - (ii) that any arbitration conducted pursuant to this clause 56.11 shall not necessarily mimic court proceedings and the practices of those courts will not regulate the conduct of the proceedings before the arbitral tribunal; and
 - (iii) that in conducting the arbitration, the arbitral tribunal must take into account the matters set out above, particularly in deciding issues such as:
 - A. the number of written submissions that will be permitted;
 - B. where appropriate, the length of written submissions;

- C. the extent of document discovery permitted, if any;
- D. the consolidation of proceedings, when requested;
- E. the joinder of parties, when requested;
- F. the length of any hearing, if any; and
- G. the number of experts, if any, each party is permitted to appoint.

- (e) The parties agree that:
 - (i) subject to clause 56.12, the arbitral tribunal will have the power to grant all legal, equitable and statutory remedies, except punitive damages; and
 - (ii) section 24 of the *International Arbitration Act* 1974 (Cth) will apply in an international arbitration context.
- (f) The arbitral tribunal has the power, on the application of any party to this arbitration agreement, to allow a third party who the arbitral tribunal considers has a sufficient interest in the outcome of the arbitration to be joined in the arbitration as a party. Each party hereby consents to such joinder. In the event of such joinder of parties in the arbitration, the arbitral tribunal has the power to make a single final award, or separate awards, in respect of all parties so joined in the arbitration.
- (g) Any award of the arbitral tribunal will be final and binding upon the parties.
- (h) This arbitration agreement will be governed by and must be construed according to the laws applying in New South Wales.

56.12 Exclusion from determination or award

- (a) The powers conferred and restrictions imposed on a court by Part 4 of the *Civil Liability Act* 2002 (NSW) are not conferred on an arbitral tribunal appointed in accordance with this clause 56.
- (b) The arbitral tribunal has no power to make a binding or non-binding determination or any award in respect of a claim by applying or considering the provisions of Part 4 of the *Civil Liability Act* 2002 (NSW) (and any equivalent statutory provisions in any other state or territory) which might, in the absence of this provision, have applied to any Dispute referred to the arbitral tribunal.

56.13 Replacement of Dispute Avoidance Board member

- (a) If a member of the Dispute Avoidance Board declines to act or is unable to act as a result of death, disability, resignation or termination of appointment:
 - (i) if that member is the chairperson, the remaining two members will appoint a replacement member; and
 - (ii) if that member is not the chairperson:
 - A. if the parties have previously agreed upon one or more reserve members for the Dispute Avoidance Board, and one or more such members are willing and able to act on the Dispute Avoidance Board, the party that nominated the member to be

replaced will appoint one of the reserve members to the Dispute Avoidance Board; or

- B. if no reserve members have been agreed between the parties or none of the reserve members are willing and able to act on the Dispute Avoidance Board, the party that nominated the member to be replaced must nominate a replacement member satisfactory to the other party.
- (b) If, within 30 Business Days of a member declining to act or being unable to act on the Dispute Avoidance Board, the member has not been replaced by a person appointed in accordance with clause 56.13(a), either party may request the President of IAMA to nominate a replacement member. This appointment will be final and conclusive.
- (c) The parties, the remaining members and the new member must enter into a replacement Dispute Avoidance Board agreement on substantially the same terms as the DAB Agreement.

56.14 Termination of Dispute Avoidance Board

The appointment of any member of the Dispute Avoidance Board may be terminated by mutual agreement of both parties, but not by TfNSW or OpCo acting alone. Unless otherwise agreed by both parties, the DAB Agreement will terminate upon the Date of Final Completion.

56.15 Payments

TfNSW may withhold payment of that part of any amount which is the subject of a Dispute.

56.16 Parties to continue performing obligations

Subject to clause 56.13, despite the existence of any Dispute, TfNSW and OpCo must continue to perform their obligations under this deed.

56.17 Urgent relief

Nothing in this clause 56 will prejudice the right of a party to seek urgent injunctive or declaratory relief from a court.

56.18 Dispute under related contracts

The parties acknowledge and agree that:

- (a) the provisions of this clause 56 will not apply to any dispute, difference, controversy or claim between one or both of the parties and the OTS Independent Certifier which is to be resolved under the OTS Independent Certifier Deed;
- (b) the parties shall be bound by the outcome of any dispute, difference, controversy or claim between the parties which is resolved pursuant to the OTS Independent Certifier Deed;
- (c) the provisions of this clause 56 will not apply to any dispute, difference, controversy or claim between the parties which is to be resolved under the SVC - OTS Cooperation and Integration Deed or the TSC - OTS Cooperation and Integration Deed;

- (d) the parties shall be bound by the outcome of any dispute, difference, controversy or claim between the parties which is resolved pursuant to the SVC – OTS Cooperation and Integration Deed or the TSC – OTS Cooperation and Integration Deed; and
- (e) where the Dispute is a Common Dispute, as that term is defined in clause 16 of Schedule 8, then this clause 56 will apply subject to the provisions of clause 16 of Schedule 8.

56.19 Core Contract disputes

- (a) The parties acknowledge and agree that a dispute or difference arising under a Core Contract may concern the respective rights and obligations of TfNSW and OpCo under this deed.
- (b) Without limiting clauses 45.4 or 45.5, OpCo must inform TfNSW's Representative immediately of any formal disputes and differences under any Core Contracts and the consequences (if any) on the operation of this deed.

56.20 Survive termination

This clause 56 will survive termination of this deed.

57. Notice of Claims

57.1 Notice of Modification

- (a) If a Direction of TfNSW, other than a Modification Order under clause 29, constitutes or involves a Modification, OpCo must, if it wishes to make a Claim against TfNSW arising out of or, or in any way in connection with, the Direction:
 - (i) within 20 Business Days of receiving the Direction and before commencing work on the subject matter of the Direction or otherwise complying with the Direction, give notice to TfNSW's Representative that sets out:
 - A. that it considers the Direction constitutes or involves a Modification;
 - B. details of the relevant Direction; and
 - C. details of why it considers the Direction constitutes or involves a Modification; and
 - (ii) within 10 Business Days of giving the notice under clause 57.1(a)(i), submit a written claim to TfNSW's Representative which includes the details required by clause 57.3(b); and
 - (iii) continue to carry out OpCo's Activities in accordance with this deed including any Direction in respect of which notice has been given under this clause 57.1.
- (b) If OpCo issues a notice under clause 57.1(a)(i), TfNSW may:
 - (i) confirm that the Direction constitutes or involves a Modification, or entitles OpCo to make a Claim, by the giving of a notice under this clause 57.1(b)(i), in which case OpCo must comply with the Direction;

- (ii) deny that the Direction constitutes or involves a Modification, or entitles OpCo to make a Claim, by the giving of a notice under this clause 57.1(b)(ii), in which case OpCo:
 - A. may within 10 Business Days of the receipt of the notice issue a notice of dispute under clause 56.3; and
 - B. unless otherwise directed by TfNSW's Representative, must comply with the Direction irrespective of any Claim or Dispute in relation to the Direction or any part of it; or
- (iii) withdraw the Direction by giving a notice under this clause 57.1(b)(iii) provided that TfNSW must compensate OpCo for its reasonable costs incurred in compliance with such withdrawn Direction pursuant to clause 57.1(a)(iii).
- (c) If within 20 Business Days after first receipt of the notice under clause 57.1(a)(i), TfNSW's Representative has not taken any action under clause 57.1(b), TfNSW's Representative will be deemed to have given a notice under clause 57.1(b)(ii).

57.2 Notices of other Claims

- (a) Subject to clause 57.2(b), OpCo must give TfNSW the notices required by clause 57.3 if it wishes to make a Claim against TfNSW in respect of any Direction or any other fact, matter or thing (including a breach of this deed by TfNSW) under, arising out of, or in connection with OpCo's Activities or this deed, including anything in respect of which it is given an express entitlement under this deed.
- (b) Clause 57.2(a) does not apply to the following claims:
 - (i) a Claim for an extension of time to the Date for Completion under clause 17.8;
 - (ii) a Claim in respect of a Compensation Event under clause 26.3;
 - (iii) a Claim in respect of a Relief Event under clause 27;
 - (iv) a Claim in respect of a Modification ordered in accordance with clause 29 or to which clause 57.1 applies; or
 - (v) a Claim for payment under clause 25 of:
 - A. a Construction Payment A;
 - B. the CDPD Amount;
 - C. a Service Payment;
 - D. the Final Completion Payment;
 - E. an amount payable in connection with an extension in accordance with clause 3.3;
 - F. an amount payable in connection with an Augmentation in accordance with clauses 33.7(f) and 33.8(e); or
 - G. a Termination Payment in accordance with clause 42.12(a).

57.3 Prescribed notices

The notices referred to in clause 57.2 are:

- (a) a written notice within 20 Business Days after the earlier of when OpCo first became aware of, or ought reasonably to have become aware of, the Direction or any other fact, matter or thing on which the Claim is based, expressly specifying:
 - (i) that OpCo intends to submit a Claim; and
 - (ii) the Direction or any other fact, matter or thing upon which the Claim will be based; and
- (b) a written Claim within 10 Business Days of giving notice under clause 57.3(a), which must include:
 - (i) detailed particulars concerning the Direction or any other fact, matter or thing on which the Claim is based;
 - (ii) the legal basis for the Claim, whether based on a term of this deed or otherwise, and if based on a term of this deed, clearly identifying the specific term;
 - (iii) the facts relied upon in support of the Claim in sufficient detail to permit verification; and
 - (iv) details of the amount claimed and how it has been calculated.

57.4 Continuing events

If the Direction or any other fact, matter or thing upon which the Claim under clause 57.3(b) is based or the consequences of the events are continuing, OpCo must continue to give information required by clause 57.3(b) within 14 Business Days after the end of each calendar month after the written claim under clauses 57.1(a)(ii) or 57.3(b) (as the case may be) was submitted, until after the Direction or fact, matter or thing upon which the Claim is based has, or the consequences thereof have, ceased.

57.5 Time bar

If OpCo fails to comply with clauses 57.1, 57.2, 57.3 or 57.4:

- (a) TfNSW will not be liable (insofar as it is possible to exclude such liability) upon any Claim by OpCo; and
- (b) OpCo will be absolutely barred from making any Claim against TfNSW, arising out of, or in any way in connection with, the relevant Direction or fact, matter or thing (as the case may be) to which clauses 57.1 or 57.3 applies.

57.6 Other provisions unaffected

Nothing in clauses 57.1 - 57.5 will limit the operation or effect of any other provision of this deed which requires OpCo to give notice to TfNSW or TfNSW's Representative in order to preserve an entitlement to make a Claim against TfNSW.

58. Notices

- (a) Wherever referred to in this clause, **Notice** means each communication (including each notice, consent, approval, request and demand) under or in connection with this deed.
- (b) At any time and from time to time TfNSW's Representative may notify OpCo that a PDCS will be used for giving Notices under or in connection with this deed. TfNSW's Representative's notice will set out:
- (i) the name of the relevant PDCS;
 - (ii) the commencement date for use of the PDCS;
 - (iii) any password, login details or similar information required for OpCo to use the PDCS; and
 - (iv) any other information reasonably necessary for the use and service of Notices via the PDCS.
- (c) Each Notice must:
- (i) before the date referred to in clause 58(b)(ii):
 - A. be in writing;
 - B. be addressed:
 - 1) in the case of a Notice from OpCo, be addressed to TfNSW's Representative; or
 - 2) in the case of a Notice from TfNSW, be addressed to OpCo's Representative; or
 - C. be signed by the party making it or (on that party's behalf) by the solicitor for, or any attorney, director, secretary or authorised agent of, that party; and
 - D. be delivered or posted to the relevant address or sent to the facsimile number shown below (or to any new address or facsimile number notified by the intended recipient):

TfNSW

Name:	TfNSW, a New South Wales Government agency
Address:	Level 7 8-12 Castlereagh Street Sydney NSW 2000
Fax:	(02) 8265 6470
For the attention of:	Stuart Suthern-Brunt

OpCo

Name: NRT Pty Ltd
Address: Level 29, 140 William Street
Melbourne VIC 3000
Fax: (03) 8888 7701
For the attention of: Patrick Lauren, OpCo's
Representative

(ii) on and from the commencement date for use of the PDCS referred to in clause 58(b)(ii):

A. be sent through the PDCS in accordance with the requirements set out in clause 58(e) and:

- 1) in the case of a Notice from OpCo, be addressed to the TfNSW's Representative; or
- 2) in the case of a Notice from TfNSW, be addressed to OpCo's Representative; or

B. in circumstances where the PDCS is temporarily disabled or not operating, be issued in accordance with clause 58(c)(i).

(d) Subject to clause 58(d)(iv), a communication is taken to be received by the addressee:

- (i) (in the case of a Notice sent through the PDCS) at the time recorded on the PDCS as being the time at which the Notice was sent;
- (ii) (in the case of prepaid post sent to an address in the same country) 2 Business Days after the date of posting;
- (iii) (in the case of international post) 7 Business Days after the date of posting;
- (iv) (in the case of delivery by hand) on delivery; and
- (v) (in the case of fax) at the time in the place to which it is sent equivalent to the time shown on the transmission confirmation report produced by the fax machine from which it was sent,

provided that if the communication would be deemed to be received on a day which is not a Business Day or after 5.00pm on a Business Day, it is deemed to be received at 9.00am on the next Business Day.

(e) With respect to Notices sent through the PDCS:

- (i) all Notices must be submitted by the party making it or (on that party's behalf) by the solicitor for, or any attorney, director, secretary or authorised agent of, that party;
- (ii) only the text in any Notice, or subject to paragraph 58(e)(iii), any attachments to such Notice which are referred to in the Notice, will form part of the Notice. Any text in the subject line will not form part of the Notice; and

- (iii) an attachment to a Notice will only form part of a Notice if it is uploaded to the PDCS in:
 - A. .pdf format;
 - B. a format compatible with Microsoft Office; or
 - C. such other format as may be agreed between the parties in writing from time to time.

- (f) OpCo must:
 - (i) ensure that it has internet access which is sufficient to facilitate use of the full functionality of the PDCS;
 - (ii) ensure that relevant personnel log on and use the PDCS and check whether Notices have been received on each Business Day;
 - (iii) ensure all relevant personnel attend all necessary training required by TfNSW's Representative;
 - (iv) advise TfNSW's Representatives of which personnel require access to the PDCS;
 - (v) at all times, ensure that it has access to personnel trained in the use of the PDCS so as to be able to view, receive and submit communications (including Notices) using the PDCS; and
 - (vi) as soon as practicable, at the first available opportunity following any period of time during which the PDCS is temporarily disabled or not operating, send all communications which have been issued pursuant to clause 58(c)(ii)B to TfNSW's Representative through the PDCS.

- (g) TfNSW has no liability for any losses OpCo may suffer or incur arising out of or in connection with its access to or use of the PDCS or any failure of the PDCS, and OpCo will not be entitled to make, and TfNSW will not be liable upon, any Claim against TfNSW arising out of or in connection with OpCo's access to or use of the PDCS or any failure of the PDCS.

59. Not used

60. Proportionate liability

60.1 Exclusion of proportionate liability scheme

- (a) To the extent permitted by law, Part 4 of the Civil Liability Act 2002 (NSW) (and any equivalent statutory provision in any other state or territory) is excluded in relation to all and any rights, obligations or liabilities of either party under this deed whether these rights, obligations or liabilities are sought to be enforced in contract, tort or otherwise.

- (b) Without limiting the above, the rights, obligations and liabilities of TfNSW and OpCo under this deed with respect to proportionate liability are as specified in this deed and not otherwise, whether these rights, obligations or liabilities are sought to be enforced by a claim in contract, in tort or otherwise.

60.2 Contractor not to apply proportionate liability scheme

To the extent permitted by law:

- (a) OpCo must not seek to apply the provisions of Part 4 of the Civil Liability Act 2002 (NSW) in relation to any claim by TfNSW against OpCo (whether in contract, tort or otherwise); and
- (b) if any of the provisions of Part 4 of the Civil Liability Act 2002 (NSW) are applied to any claim by TfNSW against OpCo (whether in contract, tort or otherwise), OpCo will indemnify TfNSW against any loss, damage, cost or expense that forms part of a claim by TfNSW against OpCo which TfNSW cannot recover from OpCo because of the operation of Part 4 of the Civil Liability Act 2002 (NSW).

60.3 Subcontracts

OpCo must:

- (a) in each Subcontract into which it enters for the performance of OpCo's Activities, include a term that (to the extent permitted by law) excludes the application of Part 4 of the Civil Liability Act 2002 (NSW) in relation to all and any rights, obligations or liabilities of either party under each Subcontract whether these rights, obligations or liabilities are sought to be enforced by a claim in contract, tort or otherwise; and
- (b) require each OpCo Contractor to include, in any further contract that it enters into with a third party for the performance of OpCo's Activities, a term that (to the extent permitted by law) excludes the application of Part 4 of the Civil Liability Act 2002 (NSW) in relation to all and any rights, obligations or liabilities of either party under each further agreement whether such rights, obligations or liabilities are sought to be enforced by a claim in contract, tort or otherwise.

61. Taxes

61.1 Liability for Taxes

- (a) Subject to clause 61.2, OpCo must indemnify TfNSW against, and must pay TfNSW on demand the amount of, all Taxes (excluding Rates, Land Tax and stamp duty, and any penalty, fine, charge or interest in respect of any Rates, Land Tax or stamp duty) incurred in connection with:
 - (i) the negotiation, preparation, execution, stamping and registration of this deed or any Project Agreement;
 - (ii) the transactions that this deed or any Project Agreement contemplates; and
 - (iii) any amendment to, or any consent, approval, waiver, release or discharge of or under, this deed or any Project Agreement.
- (b) OpCo must:
 - (i) attend to the timely lodgement for stamping of the TfNSW Project Agreements and the Debt Financing Documents within the period for lodgement prescribed by law;
 - (ii) give TfNSW reasonable opportunity to review and comment on all submissions, correspondence and other materials before they are

provided to the NSW Office of State Revenue and give due consideration to such comments; and

- (iii) give TfNSW a copy of each assessment issued by the NSW Office of State Revenue as to the amount of stamp duty payable in respect of the TfNSW Project Agreements, the Debt Financing Documents or any transaction contemplated by any of them, within 2 Business Days after OpCo receives the assessment.
- (c) TfNSW must pay the amount of stamp duty assessed by the Office of State Revenue as payable in respect of the TfNSW Project Agreements, the Debt Financing Documents or any transaction contemplated by any of them, by the later of:
 - (i) date on which the assessment is due for payment; and
 - (ii) 3 Business Days after TfNSW receives the NSW Office of State Revenue's assessment.
- (d) TfNSW is not required to pay any penalty, fine, charge or interest payable in respect of any stamp duty which results from any failure by OpCo to comply with its obligation under clause 61.1(b)(i). OpCo must pay all such amounts. TfNSW must, however, pay any interest payable to the NSW Office of State Revenue to the extent such interest is payable as a result of a breach by TfNSW of its obligation under clause 61.1(c).
- (e) TfNSW must indemnify OpCo and each other Transaction Party for any liability incurred by that Transaction Party as a result of a breach by TfNSW of its obligations under clause 61.1(c) and clause 61.1(d).
- (f) TfNSW must pay OpCo and each other Transaction Party, and indemnify OpCo and each other Transaction Party against, all Rates and Land Tax, if any, in respect of the NWRL Site and Unowned Parcels until the end of the Term, provided that if the NWRL Site or Unowned Parcels or part thereof becomes subject to Rates or Land Tax payable by the relevant user as a result of Additional Commercial Opportunities, OpCo must pay for, or procure the payment of, such Rates and/or Land Tax and must, as soon as practicable after written request from TfNSW's Representative, arrange for the relevant Rates and Land Tax to be invoiced to OpCo or the relevant user and paid direct to the relevant Authority by OpCo or the relevant user in respect of that part of the NWRL Site or Unowned Parcel.
- (g) To the extent that the indemnity in clause 61.1(e) and 61.1(f) is in favour of Transaction Parties other than OpCo, OpCo has sought and obtained that indemnity as agent on behalf of each Transaction Party. OpCo may also enforce that indemnity as agent on behalf of each Transaction Party. If OpCo does not have authority to act as agent on behalf of a Transaction Party other than OpCo, then OpCo will be deemed to have sought and obtained that indemnity as trustee for that Transaction Party and holds the benefit of that indemnity as trustee. OpCo may also enforce that indemnity as trustee for the benefit that Transaction Party.

61.2 GST

- (a) **(Interpretation):**
 - (i) Except where the context suggests otherwise, terms used in this clause 61.2 have the meanings given to those terms by the GST Act (as amended from time to time).

- (ii) Any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause 61.2.
 - (iii) Unless otherwise expressly stated, all consideration to be provided under this deed is exclusive of GST. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purpose of this clause 61.2.
 - (iv) A reference to something done (including a supply made) by a party includes a reference to something done by any entity through which that party acts.
- (b) **(Reimbursements):** Any payment or reimbursement required to be made under this deed that is calculated by reference to a cost, expense, or other amount paid or incurred will be limited to the total cost, expense or amount less the amount of any input tax credit to which an entity is entitled for the acquisition to which the cost, expense or amount relates.
- (c) **(Additional amount of GST payable):** Subject to clause 61.2(e), if GST becomes payable on any supply made by a party (**Supplier**) under or in connection with this deed:
- (i) any amount payable or consideration to be provided under any provision of this deed (other than this clause 61.2), for that supply is exclusive of GST;
 - (ii) any party (**Recipient**) that is required to provide consideration to the Supplier for that supply must pay an additional amount to the Supplier equal to the amount of the GST payable on that supply (**GST Amount**), at the same time as any other consideration is to be first provided for that supply; and
 - (iii) the Supplier must provide a Tax Invoice to the Recipient for that supply, no later than the time at which the GST Amount for that supply is to be paid in accordance with clause 61.2(c)(ii).
- (d) **(Variation of GST):**
- (i) If the GST Amount properly payable in relation to a supply (as determined in accordance with clause 61.2(c) and clause 61.2(e)), varies from the additional amount paid by the Recipient under clause 61.2(c), then the Supplier will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient. Any payment, credit or refund under this clause 61.2(d) is deemed to be a payment, credit or refund of the GST Amount payable under clause 61.2(c).
 - (ii) The Supplier must issue an Adjustment Note to the Recipient in respect of any adjustment event occurring in relation to a supply made under or in connection with this deed as soon as reasonably practicable after the Supplier becomes aware of the adjustment event.
- (e) **(Exchange of non-monetary consideration):**
- (i) To the extent that the consideration provided for the Supplier's Taxable Supply to which clause 61.2(c) applies is a Taxable Supply made by the

Recipient (the **Recipient Supply**), the GST Amount that would be otherwise be payable by the Recipient to the Supplier in accordance with clause 61.2(c) shall be reduced by the amount of GST payable by the Recipient on the Recipient Supply.

- (ii) The Recipient must issue to the Supplier an invoice for any Recipient Supply on or before the time at which the Recipient must pay the GST Amount in accordance with clause 61.2(c) (or the time at which such GST Amount would have been payable in accordance with clause 61.2(c) but for the operation of clause 61.2(e)).

- (f) **(No merger):** This clause will not merge on completion or termination of this deed.

62. General

62.1 Certification

For the purposes of this deed, a copy of a document will be regarded as duly certified by OpCo if it is certified as a true copy by a director, secretary or general manager of OpCo.

62.2 Cost of performing obligations

Each party must perform its obligations under this deed at its own cost, unless expressly provided otherwise.

62.3 Governing law and jurisdiction

- (a) This deed is governed by and must be construed according to the law applying in New South Wales.
- (b) Subject to clause 56, each party irrevocably submits to the non-exclusive jurisdiction of the courts of New South Wales and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this deed.

62.4 Amendments

This deed may only be varied by a deed executed by or on behalf of each party.

62.5 Waiver

- (a) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy provided by law or under this deed by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by law or under this deed.
- (b) A waiver or consent given by a party under this deed is only effective and binding on that party if it is given or confirmed in writing by that party.
- (c) No waiver of a breach of a term of this deed operates as a waiver of another breach of that term or of a breach of any other term of this deed.

62.6 Survival of certain provisions; no merger

- (a) Without limiting clause 62.13(a):

- (i) clauses 1 (Definitions and interpretation), 5.1 (TfNSW's Representative), 11.2 (Information Documents), 13.12(b) (Design Life warranty), 13.12(g) (Design Life Claims), 21.14 (Final inspection), 22 (Security), 25.10 (Interest), 25.11 (Set off), 37 (Indemnity), 42.11 (Consequences of Termination), 42.12 (Termination Payments), 42.12(d) (Waiver and no Claim), 42.14 (Option to assume Project Debt), 43 (Transition-out provisions), 45.1 (Records), 47 (Disclosure, confidentiality and publicity), 48 (Intellectual Property), 56 (Dispute resolution), 57 (Notice of Claims), 58 (Notices), 60 (Proportionate liability), 61 (Taxes), 62 (General), the representations, warranties and indemnities given by OpCo under this deed and any other provisions which are expressed to survive termination (together, the **Surviving Clauses**) will survive rescission, termination or expiration of this deed; and
- (ii) if this deed is rescinded or terminated, no party will be liable to any other party except:
 - A. under the Surviving Clauses; or
 - B. in respect of any breach of this deed occurring before such rescission or termination.
- (b) No right or obligation of any party will merge on completion of any transaction under this deed. All rights and obligations under this deed survive the execution and delivery of any transfer or other document which implements any transaction under this deed.

62.7 Further acts and documents

Each party must promptly do all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to that party) required by law or reasonably requested by another party to give effect to this deed.

62.8 Consents

A consent required under this deed from a party may be given or withheld, or may be given subject to any conditions, as that party (in its absolute discretion) thinks fit, unless this deed expressly provides otherwise.

62.9 No representation or reliance

- (a) Each party acknowledges that no party (nor any person acting on a party's behalf) has made any representation or other inducement to it to enter into this deed, except for representations or inducements expressly set out in this deed.
- (b) Each party acknowledges and confirms that it does not enter into this deed in reliance on any representation or other inducement by or on behalf of any other party, except for representations or inducements expressly set out in this deed.

62.10 Severance

If at any time any provision of this deed is or becomes illegal, invalid or unenforceable in any respect under applicable law, that provision is to be severed to the extent necessary to make this deed enforceable, and it will not affect or impair the legality, validity or enforceability of any other provision of this deed.

62.11 Exercise of remedies

- (a) If OpCo breaches any of its obligations under this deed or any other Project Agreement, TfNSW may exercise any or all of the rights and powers and pursue any or all of the remedies available to TfNSW under the Project Agreements and/or enforce any other legal or equitable remedy available under applicable law.
- (b) Each and every right, power and remedy of TfNSW shall be cumulative and in addition to any other right, power and remedy, whether under a Project Agreement or applicable law, which may be exercised by TfNSW and the exercise of a right, power or remedy shall not be construed to be a waiver of the right to exercise any other right, power or remedy.
- (c) No delay or omission by TfNSW in the exercise of any right, power or remedy shall impair such right, power or remedy or constitute a waiver of the relevant breach.

62.12 Entire agreement

To the extent permitted by law, in relation to its subject matter, this deed:

- (a) embodies the entire understanding of the parties, and constitutes the entire terms agreed by the parties; and
- (b) supersedes any prior written or other agreement of the parties.

62.13 Indemnities

- (a) Each indemnity in this deed is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiration of this deed.
- (b) It is not necessary for a party to incur expense or to make any payment before enforcing a right of indemnity conferred by this deed.
- (c) A party must pay on demand any amount it must pay under an indemnity in this deed.
- (d) Where OpCo gives any indemnity or release under any of the Project Agreements, it gives an equivalent indemnity and release to the State. TfNSW holds for itself and on trust for the State the benefit of each such indemnity and release in this deed.
- (e) Despite any other provision of this deed, to the extent that TfNSW is liable to OpCo for any Claim arising under this deed, TfNSW will not be entitled to avoid or reduce its liability to OpCo on the basis that OpCo has not suffered all or part of the relevant loss or damage (**Related Loss**) solely because the Related Loss is incurred by a subcontractor of OpCo or because the subcontractor's right to recover the Related Loss from OpCo or any other subcontractor is deferred, suspended or dependent upon recovery or entitlement from TfNSW, OpCo or other subcontractor or is dependent upon determination of that entitlement.

62.14 Counterparts

This deed may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes the deed of each party who has executed and delivered that counterpart.

62.15 Attorneys

Each person who executes this deed on behalf of a party under a power of attorney declares that he or she is not aware of any fact or circumstance that might affect his or her authority to do so under that power of attorney.

62.16 Relationship between TfNSW and OpCo

Nothing in, or contemplated by, this deed or any other TfNSW Project Agreement will be construed or interpreted as:

- (a) constituting a relationship between TfNSW and OpCo, or any other person, of partners, joint venturers, fiduciaries, employer and employee or principal and agent; or
- (b) imposing any general duty of good faith on TfNSW to OpCo or its Associates in relation to or arising out of this deed, other than to comply with the obligations (if any) expressly stated to be assumed by TfNSW under this deed or any other TfNSW Project Agreement on a good faith basis.

62.17 Contract documents to be in English

All documentation in computer readable or other written forms brought (whether before or after the date of this deed) or required to be brought into existence as part of, or for the purpose of, performing OpCo's Activities, and which must be provided to TfNSW, must be written in the English language.

62.18 Vienna convention

The UN Convention on Contracts for the International Sale of Goods (1980) does not apply to this Contract.

62.19 Performance Standards and civil penalty provisions

- (a) OpCo acknowledges that it is required by this deed to observe **Performance Standards**, including:
 - (i) compliance with the Demand Usage Strategy during a Forecast Period;
 - (ii) compliance with the Maintenance Works Program;
 - (iii) acceptable:
 - A. availability and timeliness of Train Services;
 - B. quality of Customer service;
 - C. cleanliness of Trains, Stations and public areas;
 - D. temperature and lighting on Trains and Stations, lift and escalator access; and
 - E. availability of CCTV, PIDs, Announcement Units, Induction Loops, as defined in Schedule 2, and Help Points;
 - (iv) timely handback of track the subject of a Track Possession; and

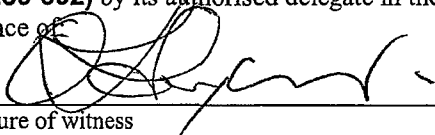
- (v) minimal disruption, interference or adverse impact on Sydney Trains and Sydney Trains' Facilities.
- (b) OpCo acknowledges that:
- (i) the Performance Standards are intended to promote the achievement of the objectives referred to in clauses 4.1 and 4.2;
 - (ii) a failure by OpCo to achieve the Performance Standards may result in a failure by TfNSW to achieve the objectives referred to in clauses 4.1 and 4.2 to the detriment of TfNSW and those on whose behalf the objectives are pursued;
 - (iii) the loss arising from the failure of TfNSW to achieve the objectives referred to in clauses 4.1 and 4.2 is not capable of easy or precise calculation; and
 - (iv) in accordance with section 38 of the *Passenger Transport Bill 2014* (NSW), Performance Standards may be enforced by civil penalty provisions.
- (c) Clauses 9.17(b)(v) (Energy Deduction) and 21.7 (Asset Management Failures), Schedule 2 (Service Payment calculation) and clauses 11(g)(ii) (Track Possessions) and 16 (interference payments) of Schedule 3 are civil penalty provisions for the purposes of section 38 of the *Passenger Transport Bill 2014* (NSW).

62.20 Assumptions

Except as stated in this deed, OpCo bears the risk that any assumptions contained in the Project Agreements, the Delivery Program, the Concept Design or any Project Plans are incorrect and will not be entitled to make any Claim against TfNSW arising out of or in connection with such assumptions.

Executed as a deed.

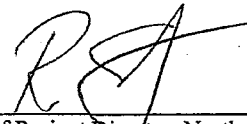
Executed by Transport for NSW (ABN 18 804 239 602) by its authorised delegate in the presence of



Signature of witness

Owen John Hayford

Name of witness in full

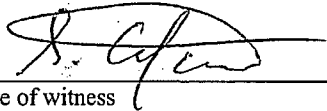


Signature of Project Director, North West Rail Link

Rodd Staples

Name Project Director, North West Rail Link

Signed, sealed and delivered for and on behalf of NRT Pty Ltd ACN 166 610 313 (in its personal capacity and as trustee of the NRT Unit Trust) under power of attorney dated 15.09.2014 in the presence of:



Signature of witness

SERGIO CALCARAO

Name of witness in full



Signature of attorney

PAUL OPPENHEIM

Name of attorney