



Execution Version

# Sydney Metro – Western Sydney Airport

## Stations, Systems, Trains, Operations and Maintenance (SSTOM)

### SSTOM Project Deed

—  
Sydney Metro (**Principal**)  
Parklife Metro Pty Ltd (**OpCo**)  
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# SSTOM Project Deed

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<b>Details</b>	<b>19</b>
<b>Operative Provisions</b>	<b>20</b>
<b>1. Interpretation</b>	<b>20</b>
1.1 Definitions	20
1.2 SSTOM Specification definitions	88
1.3 Schedule definitions	88
1.4 Interpretation	88
1.5 Resolution of ambiguities	91
1.6 National Public Private Partnership Policy and Guidelines	92
1.7 No bias against drafter	92
1.8 Business Day	92
1.9 Excluding liability	92
1.10 CPI Indexed	92
1.11 WPI Indexed	93
1.12 Changes to indexes	93
1.13 Authorities	94
1.14 Reasonable endeavours	94
1.15 Minimum requirement not sufficient	95
1.16 Standards	95
1.17 Electronic files	95
1.18 Capacity of OpCo	95
1.19 Facility Agreement	95
<b>2. Conditions Precedent</b>	<b>95</b>
2.1 Conditions Precedent	95
2.2 Satisfaction of Conditions Precedent	96
2.3 Waiver of Conditions Precedent	96
2.4 Condition Precedent Deadline Dates	97
<b>3. Term</b>	<b>97</b>
3.1 Commencement date	97
3.2 End of Term	97
3.3 Term extension	97
<b>4. Objectives, primary obligations and risk allocation</b>	<b>99</b>
4.1 Objectives for Sydney Metro – Western Sydney Airport	99
4.2 Objectives for the SSTOM PPP	99
4.3 Customer is at the centre	100
4.4 Achievement of Project Values	100
4.5 OpCo's primary obligations	100
4.6 Principal's primary obligations	100
4.7 Project risks	100
4.8 Principal's rights do not affect risk allocation	101
<b>5. Collaborative framework</b>	<b>102</b>
5.1 Relationship Principles	102
5.2 Reporting	102
5.3 Handover Induction Workshop and transition from procurement to delivery	103
5.4 Other Relationship Tools	104
5.5 Proactive Principal engagement	104



5.6	Key Result Areas	104
5.7	No claim	105
<b>6.</b>	<b>Governance</b>	<b>105</b>
6.1	Principal's Representative	105
6.2	Appointees of Principal's Representatives	105
6.3	OpCo's Representative	106
6.4	Independent Certifier	106
6.5	Senior Project Group	108
6.6	Working Groups	109
6.7	Quarterly whole of project reviews	110
6.8	Risk management meetings	110
6.9	IDAR Panel	111
6.10	No legal effect	111
6.11	Annual relationship review	111
6.12	Call-in	111
<b>7.</b>	<b>Law and Approvals</b>	<b>112</b>
7.1	Compliance with Laws	112
7.2	Approvals	112
7.3	Modifications to Planning Approvals	114
7.4	Legal challenge to Planning Approvals	114
7.5	Environment Protection Licence	114
7.6	Crown Building Work	115
7.7	Planning Approval Representatives	115
7.8	Long service leave levy	116
7.9	On-Airport Construction (Rail) Plan and Construction Environmental Management Plans	116
<b>8.</b>	<b>Rail Safety</b>	<b>116</b>
8.1	Principal's Accreditation	116
8.2	OpCo to assist	117
8.3	OpCo's rail safety obligations	117
8.4	Rail Safety Workers	118
8.5	Principal to provide information	118
<b>9.</b>	<b>Project Plans</b>	<b>118</b>
9.1	Purpose	118
9.2	Initial Project Plans	119
9.3	Updated Project Plans	119
9.4	Fitness for purpose	120
9.5	Review of Project Plans	120
9.6	Principal may request updates	121
9.7	Implementation and compliance	122
<b>10.</b>	<b>OpCo's general obligations</b>	<b>122</b>
10.1	All work included	122
10.2	Principal contractor	122
10.3	Protection of persons and property	125
10.4	Health and safety	125
10.5	WHS Accreditation Scheme	127
10.6	Sydney Metro Health and Safety Standards	127
10.7	Health and Safety Plans	127
10.8	Principal may act if OpCo fails to comply	128
10.9	Prevention of nuisance and interference	128

10.10	Control of traffic	129
10.11	Industrial relations	129
10.12	Workforce Development and Industry Participation	130
10.13	Australian Jobs Act	130
10.14	Community relations	131
10.15	Cooperation and coordination with Other Contractors	131
10.16	Master Interface Deed	133
10.17	Cooperation and coordination with FIW Contractors	134
10.18	Cooperation and coordination with Airport Lessee and Airport Lessee Contractors	136
10.19	No Claims arising out of Airport Works	137
10.20	ETS	137
10.21	FSM Works	138
10.22	Modern Slavery	139
10.23	Personnel	142
10.24	Utility Services	143
10.25	Electricity	145
10.26	Project Documentation	149
10.27	TAO status	150
10.28	Third Party Agreements	150
10.29	Sustainability	152
10.30	NSW Guidelines	153
10.31	Australian Government Requirements	154
10.32	Transport for NSW Statement of Business ethics	155
10.33	Procurement of public art	155
<b>11.</b>	<b>Site Conditions, Information Documents, Contamination and Environment</b>	<b>155</b>
11.1	Physical conditions	155
11.2	Information Documents	156
11.3	Geotechnical Reports	157
11.4	Condition of the Sydney Metro Site and structures	158
11.5	Contamination	158
11.6	Detailed Site Investigation Report	161
11.7	Remediation by FIW Contractors	163
11.8	Remediation Action Plans	163
11.9	Site Audit and validation requirements	165
11.10	Long Term Environmental Management Plan	167
11.11	Reuse and Disposal of Contamination and Waste	168
11.12	Environmental compliance	170
11.13	Liability under the NGER Legislation	171
11.14	Provision of Emissions and Energy Data to the Principal	171
11.15	Reporting Emissions and Energy Data	171
<b>12.</b>	<b>Land</b>	<b>172</b>
12.1	Construction Site Licence	172
12.2	Licence to use Licensed Maintenance Area and to access Additional Maintained Assets	174
12.3	Licensed Maintenance Area	175
12.4	Existing Land Arrangements, Easements, Land Arrangements, Commercial Opportunities	175
12.5	Native Title Claims	175
12.6	Artefacts	176
12.7	Unexploded Ordnances	176
12.8	Working hours	177

12.9	Extra Land	177
12.10	Property Works on Unowned Parcels	178
12.11	Permitted use	179
12.12	Temporary Areas	179
12.13	Sydney Metro office accommodation	179
<b>13.</b>	<b>Handover of Foundation Infrastructure Works</b>	<b>179</b>
13.1	Handover of FIW Portions	179
13.2	Early handover	179
13.3	Access by FIW Contractors	180
<b>14.</b>	<b>Design</b>	<b>180</b>
14.1	Design obligations	180
14.2	Reference Design and Proposal Design	180
14.3	Design warranties	181
14.4	Preparation, submission and review of Design Documentation	182
14.5	Design Life	182
<b>15.</b>	<b>Flood modelling</b>	<b>183</b>
15.1	OpCo acknowledgements	183
15.2	Consistency of Design Documentation with Flood Resilience Requirements	184
15.3	Development Changes	184
15.4	Reliance on Reference Flood Model	185
15.5	Flooding in the Operations Phase	185
15.6	Baseline Reference Flood Model	185
<b>16.</b>	<b>Integration with Foundation Infrastructure Works</b>	<b>186</b>
16.1	Foundation Infrastructure Works are fit for OpCo's purposes	186
16.2	Principal initiated FIW Change	186
16.3	OpCo initiated FIW Change	188
16.4	FIW design team meetings	189
16.5	FIW Design Documentation	189
16.6	Accepted FIW Change	189
16.7	FIW Asset Management Information	190
16.8	Inspection of Foundation Infrastructure Works	190
16.9	Foundation Infrastructure Works documentation	191
16.10	Care and maintenance of Foundation Infrastructure Works	192
16.11	Compensation Event	192
16.12	Claims	192
<b>17.</b>	<b>Foundation Infrastructure Works Defects</b>	<b>193</b>
17.1	Principal notification of FIW Known Defects	193
17.2	OpCo notification of FIW Known Defects	193
17.3	FIW Defects	194
17.4	Temporary Repairs	196
17.5	Collateral Warranty Deed Poll	197
<b>18.</b>	<b>Construction</b>	<b>198</b>
18.1	Construction obligations	198
18.2	Construction warranties	198
<b>19.</b>	<b>Quality</b>	<b>198</b>
<b>20.</b>	<b>Time</b>	<b>199</b>
20.1	Performance	199
20.2	Dates for Completion	199

20.3	Delivery Program	199
20.4	Acceleration by OpCo	200
20.5	Delays	201
20.6	Corrective action plan	201
20.7	Delays entitling claim	202
20.8	Claim for extension of time	202
20.9	Conditions precedent to extension	203
20.10	Determination and grant of extension of time	203
20.11	Extension to Site Access Expiry Date	204
20.12	Principal directed acceleration	205
20.13	Unilateral extension	206
20.14	Concurrent delays	206
20.15	Delivery Phase Progress Reports	206
20.16	Target Date for Completion	206
20.17	Early Completion	207
20.18	Time not at large	208
20.19	Sole remedy	208
<b>21.</b>	<b>Testing and Commissioning</b>	<b>208</b>
21.1	Testing and Commissioning Plan	208
21.2	Test Procedures	208
21.3	Notice of Tests	210
21.4	Conduct of Tests	210
21.5	Test Reports	210
21.6	Failure of Test	211
21.7	Non-compliant Test Report	211
21.8	Additional testing by the Principal	211
<b>22.</b>	<b>First Passenger Service, Completion and Final Completion</b>	<b>212</b>
22.1	Requirements for First Passenger Service	212
22.2	Notice of First Passenger Service	213
22.3	Certification of Readiness for First Passenger Service	214
22.4	Local Area Works	214
22.5	Utility Service Works	215
22.6	Property Works	216
22.7	Requirements for Completion	217
22.8	Notice of Completion	217
22.9	Certification of Completion	217
22.10	Final Completion	218
<b>23.</b>	<b>Operations</b>	<b>219</b>
23.1	Operations Activities	219
23.2	Required Train Services	219
23.3	Operations Activities Review	220
23.4	Service Changes required by the Principal	220
23.5	Service Changes proposed by OpCo	221
23.6	Provision of real-time information	221
23.7	Publication and display of information	221
23.8	Cooperation with other transport providers	221
23.9	Customer feedback	222
23.10	Ticketing, fare collection and revenue protection	222
23.11	Law enforcement agencies	222

23.12	Additional Planned Service Disruptions	222
23.13	Management of Incidents, emergencies and unplanned service disruptions	222
23.14	Station Precincts	222
23.15	Car Parks	223
23.16	Cleaning and presentation	223
23.17	Graffiti removal and Vandalism	223
23.18	ETS	224
23.19	Operation and maintenance of the Foundation Infrastructure Works	224
23.20	Operations Phase construction warranties	224
23.21	Post Final Completion design changes	224
23.22	Terms and conditions – Customer	225
<b>24.</b>	<b>Asset management</b>	<b>225</b>
24.1	OpCo's asset management obligations	225
24.2	Asset Management System	225
24.3	Spares	225
24.4	Asset Management Plan	225
24.5	Obsolescence	226
24.6	Rectification of Defects	228
24.7	Asset Information System	228
24.8	Asset Management Failures	228
24.9	Asset Condition Assessment	229
24.10	Reporting	229
24.11	Handback Audit	229
24.12	Rectification work	230
24.13	Handback obligations	230
24.14	Assistance in securing continuity	231
24.15	Power of attorney	231
24.16	Final Inspection	232
24.17	Interim inspection	232
<b>25.</b>	<b>Security</b>	<b>233</b>
25.1	Provision of security	233
25.2	Increase or decrease in Handback Security Bond	234
25.3	Return of security	234
25.4	Requirements of Bond	235
25.5	Issuer ceases to have Required Rating	235
25.6	No injunction	235
25.7	Proceeds of security	236
25.8	No interest	236
25.9	No trust	236
25.10	Right to call on the D&C Contractor Construction Bond	236
<b>26.</b>	<b>Commercial Opportunities</b>	<b>237</b>
<b>27.</b>	<b>Naming and branding</b>	<b>237</b>
27.1	Name	237
27.2	Government logo and corporate image	237
27.3	OpCo name/corporate image	238
27.4	Station names	238
27.5	Wayfinding	238
27.6	Other signage and displays	238
<b>28.</b>	<b>Payment provisions</b>	<b>238</b>

28.1	Principal's payment obligation	238
28.2	Capital Contribution	239
28.3	Adjustments to the Capital Contribution Schedule	239
28.4	Conditional Debt Pay Down	240
28.5	Payment claims for Service Payments and other amounts	243
28.6	Payment schedule	244
28.7	Payment	244
28.8	Net amount due from OpCo to the Principal	244
28.9	Refund	244
28.10	Payment on account	244
28.11	Correction of payment schedules	245
28.12	Interest	245
28.13	Set off	245
28.14	Payment of employees and subcontractors	246
28.15	Service Payment Monitoring System	246
28.16	SOP Act	247
28.17	Cost Risk Sharing	249
28.18	Delivery Phase Performance Incentive	249
<b>28A.</b>	<b>Licence Payments</b>	<b>250</b>
<b>28B.</b>	<b>Securitised Licence Structure</b>	<b>250</b>
28B.1	Construction Payment B	250
28B.2	Securitised NFI Payment	251
28B.3	No change in risk allocation	251
28B.4	GST on Construction Payment B and Securitised NFI Event Payment	252
<b>29.</b>	<b>Compensation Events</b>	<b>252</b>
29.1	Entitlement to claim compensation	252
29.2	Claim for compensation	252
29.3	Continuing Compensation Events	253
29.4	Condition precedent to compensation	253
29.5	Compensation for Net Financial Impact	254
29.6	Calculation and payment of Net Financial Impact	254
29.7	Mitigation	254
29.8	Non-compliance	254
29.9	OpCo conduct	254
29.10	Limitation of liability	255
<b>30.</b>	<b>Relief Events</b>	<b>255</b>
30.1	Time	255
30.2	Notification	255
30.3	Continuing Relief Event	255
30.4	Condition precedent to relief	256
30.5	Relief from obligations	256
30.6	Mitigation	256
30.7	Payment regime not affected	256
<b>31.</b>	<b>Force Majeure</b>	<b>256</b>
31.1	Force Majeure Event	256
31.2	Meeting	256
31.3	Notice of Intention to Terminate	256
31.4	Termination for Force Majeure Event	257
31.5	Suspension of OpCo's right to terminate	257

31.6	Termination for Force Majeure Events which are [REDACTED]	258
<b>32.</b>	<b>Modifications</b>	<b>259</b>
32.1	Purpose	259
32.2	Principal's Modifications Manager	259
32.3	OpCo's Modifications Personnel	260
32.4	Governance of Modifications	261
32.5	Modifications Register	261
32.6	Modifications Working Group meetings	262
32.7	Open Book	263
32.8	Consultation with FIW Contractors	263
32.9	Project Documentation	264
32.10	Templates	264
32.11	Modifications review	264
<b>33.</b>	<b>Principal Initiated Modifications</b>	<b>264</b>
33.1	Modification Impact Request	264
33.2	Modification Impact Proposal	265
33.3	Cost of preparing Modification Impact Proposal	267
33.4	Tender for works	268
33.5	Election by the Principal	269
33.6	Principal rejects Modification Impact Proposal	271
33.7	Parties reach agreement	271
33.8	If parties fail to reach agreement	271
33.9	Principal may direct that Modification proceed	271
33.10	Principal options following determination	272
33.11	Instruction to proceed	272
33.12	OpCo to implement Modification	272
33.13	Omissions	273
33.14	No liability unless Modification Order	274
33.15	Changes to Contract Service Level Requirements	274
33.16	Fire & life safety Modification	274
<b>34.</b>	<b>OpCo initiated Modifications</b>	<b>275</b>
34.1	OpCo may propose a Modification	275
34.2	Principal may approve or reject	276
34.3	Modifications as a result of a Change in Law or Change in Government Policy	277
34.4	OpCo to bear risks and costs	277
<b>35.</b>	<b>Minor Modifications</b>	<b>278</b>
35.1	Purpose	278
35.2	Minor Modification Proposal	278
35.3	Accumulation	278
35.4	Amount payable	278
35.5	Election by the Principal	278
35.6	Disagreement as to amount payable	278
35.7	Implementation of the Minor Modification	279
35.8	No claims	279
35.9	Failure to agree	279
35.10	Principal direction	280
35.11	Recommence Minor Modification process	280
<b>36.</b>	<b>Future Changes</b>	<b>280</b>
36.1	Pre-Agreed Options	280

36.2	Future Over Station Developments	280
36.3	Scope Deferral	281
<b>37.</b>	<b>Transport planning</b>	<b>281</b>
37.1	OpCo acknowledgement	281
37.2	OpCo participation	281
37.3	No claim	281
<b>38.</b>	<b>Extensions</b>	<b>282</b>
38.1	Flexible process	282
38.2	Termination in connection with an Extension	282
38.3	No limitation	282
<b>39.</b>	<b>Proximate Work Activities</b>	<b>282</b>
39.1	Right to carry out Proximate Work Activities	282
39.2	Proposed Proximate Work Activity	282
39.3	Carrying out Proximate Work Activities	282
39.4	No claim	283
39.5	No limitation	283
<b>40.</b>	<b>Pandemics</b>	<b>283</b>
40.1	Initial Pandemic Management Plan	283
40.2	No Claims	284
40.3	Pandemic obligations	284
40.4	Moratorium on Claims	285
<b>41.</b>	<b>Change in Law</b>	<b>285</b>
41.1	Non-compensable changes in Law	285
41.2	Compensable Change in Law	285
41.3	Beneficial Change in Law	285
41.4	Pandemic Change in Law	285
41.5	Implementation of Change in Law	286
<b>42.</b>	<b>Government Policy</b>	<b>286</b>
42.1	OpCo to comply with Government Policy	286
42.2	OpCo to notify	286
42.3	Principal's Direction	286
42.4	Compensation for Compensable Change in Government Policy	286
42.5	Beneficial Change in Government Policy	286
<b>43.</b>	<b>Reinstatement of loss or damage</b>	<b>286</b>
43.1	Reinstatement	286
43.2	Direction by the Principal to reinstate to different specifications	288
43.3	Minor damage	288
43.4	Consequences of the Principal's election not to repair or reinstate	288
43.5	Damage to third party property	289
43.6	Principal may repair or reinstate	289
<b>44.</b>	<b>Indemnity and liability exclusions</b>	<b>289</b>
44.1	Indemnity from OpCo	289
44.2	Exclusions from indemnity	290
44.3	Exclusion of Consequential or Indirect Loss	290
44.4	Liability for events triggering Service Payment Deductions	293
44.5	Procedure for Third Party Claims	294
44.6	Counsel's opinion	294
44.7	Obligations not affected	295



44.8	Indemnified Parties	295
44.9	Release	295
44.10	Liability with respect to third parties	296
<b>45.</b>	<b>Insurance</b>	<b>296</b>
45.1	Principal's Insurances	296
45.2	OpCo's Delivery Phase insurance obligations	298
45.3	OpCo's Operations Phase insurance obligations	299
45.4	Periods of OpCo's insurance	300
45.5	Additional, increased or varied Insurances	300
45.6	Review of Insurance limits and deductibles	301
45.7	Joint names	301
45.8	Insurance requirements generally	301
45.9	Premiums	302
45.10	Evidence of insurance	302
45.11	Failure to produce proof of insurance	303
45.12	OpCo's obligations not limited	303
45.13	General insurance obligations	303
45.14	Claims under Insurances	303
45.15	Insurance Proceeds Account	303
45.16	Benchmarking of Insurances	304
<b>46.</b>	<b>Uninsurable Risks</b>	<b>305</b>
46.1	Notice and meeting	305
46.2	Relief from obligation to insure	305
46.3	Obligation to monitor and reinsure	306
<b>47.</b>	<b>Default</b>	<b>306</b>
47.1	OpCo Events of Default	306
47.2	Default Notice	308
47.3	Cure Plan	308
47.4	Prevention Plan	310
47.5	Extension during period of suspension	311
47.6	Persistent Breach	312
47.7	Frequent Breaches	312
<b>48.</b>	<b>Step-In</b>	<b>313</b>
48.1	Step-in Events	313
48.2	Step-in Rights	314
48.3	Step-in Powers	314
48.4	OpCo's obligations	314
48.5	Principal's obligations	315
48.6	Payments during step-in	316
48.7	No liability	316
48.8	Step-out	317
<b>49.</b>	<b>Termination</b>	<b>317</b>
49.1	OpCo Termination Events	317
49.2	Termination for failure to achieve Completion	319
49.3	Notice of OpCo Termination Event	319
49.4	Termination for OpCo Termination Event	320
49.5	Voluntary termination by the Principal	320
49.6	Termination for Force Majeure Event	320
49.7	Termination in connection with Extensions	320

49.8	Termination for Uninsurable Risk	320
49.9	Consequences of termination	320
49.10	Termination Payments	320
49.11	No other termination rights	321
49.12	Option to assume Project Debt	321
<b>50.</b>	<b>Transition out provisions</b>	<b>322</b>
50.1	Right to appoint Successor OpCo	322
50.2	Transition Out Plan	322
50.3	Preparation for contracting at end of Term	322
50.4	Continuity of OpCo's Activities	322
50.5	Non frustration of transfer	322
50.6	Assistance in securing continuity	322
50.7	Access	323
50.8	Required Employee details	323
50.9	Variation of terms and conditions of employment	323
50.10	Transfer of employees to Successor OpCo	324
50.11	Asset Information System	324
<b>51.</b>	<b>Access, inspections and audits</b>	<b>325</b>
51.1	Principal's right of entry	325
51.2	Access to information	326
51.3	Access to third parties' information	326
51.4	OpCo to cooperate	326
<b>52.</b>	<b>Records, reporting obligations and privacy</b>	<b>326</b>
52.1	Records	326
52.2	Financial reporting	326
52.3	Project reporting and Risk Register	328
52.4	Notices under Project Agreements	330
52.5	Advice on rights of third parties under Project Agreements	330
52.6	Information provided to Debt Financiers	330
52.7	ASIC and ASX notices	330
52.8	Other information	330
52.9	Retention of records	330
52.10	Privacy	330
<b>53.</b>	<b>Data and cyber security</b>	<b>332</b>
53.1	Cyber security	332
53.2	Security of Critical Infrastructure Laws	333
<b>54.</b>	<b>Disclosure, confidentiality, publicity and probity</b>	<b>333</b>
54.1	Disclosure by the Principal	333
54.2	Confidentiality	333
54.3	Public Disclosure Obligations	334
54.4	Publicity	334
54.5	Probity Event	335
54.6	Probity Investigation	335
54.7	Principal costs of Probity Events and Probity Investigation	335
<b>55.</b>	<b>Intellectual Property</b>	<b>335</b>
<b>56.</b>	<b>Financing and Refinancing</b>	<b>336</b>
56.1	Debt Financing Documents	336
56.2	Copies of Debt Financing Documents	336
56.3	General	336

56.4	OpCo to provide details of Refinancing	336
56.5	Principal consent to Refinancing	337
56.6	Review Process	338
56.7	Refinancing documents	338
56.8	Calculation of Refinancing Gain or Refinancing Loss	338
56.9	Sharing Refinancing Gains	339
56.10	Costs relating to a Refinancing	339
56.11	Adjustments to Financial Model upon a Refinancing Gain	339
<b>57.</b>	<b>Financial Models</b>	<b>340</b>
57.1	Base Case Financial Model	340
57.2	Updates to the Financial Model	340
57.3	Operational Financial Model	342
<b>58.</b>	<b>Ownership of assets and licences to use</b>	<b>343</b>
58.1	Fixtures	343
58.2	Moveable Assets	343
58.3	Moveable Asset register	343
<b>59.</b>	<b>Restrictions</b>	<b>343</b>
59.1	Restrictions on amendment to Project Agreements	343
59.2	Restriction on amendment of the Equity Documents	344
59.3	Restrictions on assignment	344
59.4	Financier's Securities	344
59.5	Restrictions on dealings with Sydney Metro – Western Sydney Airport	344
59.6	Restrictions on business	345
59.7	Restrictions on revenue	345
59.8	Restrictions on acquisition of property and liabilities being incurred	345
59.9	Restrictions on related party contracts	345
59.10	Restriction on Tax consolidation and GST grouping	345
59.11	Restrictions on changes in residency	345
<b>60.</b>	<b>Change of Ownership / Control</b>	<b>345</b>
60.1	Initial status of ownership	345
60.2	Change of Ownership of [REDACTED] or [REDACTED]	346
60.3	Change in Control of the D&C Contractor or D&C Restructure Event	347
60.4	Change in Control of O&M Contractor	348
<b>61.</b>	<b>Subcontracting</b>	<b>349</b>
61.1	Subcontracting	349
61.2	Core Contracts	349
61.3	Significant Contracts	349
61.4	Nominated Subcontractors	351
61.5	Subcontracting requirements in Schedule 8 (Cost Risk Sharing)	351
61.6	Probity Investigation	351
61.7	Occurrence of Probity Event	352
61.8	Financial Assessment of D&C Contractor or D&C Guarantor	352
61.9	D&C Financial Reporting Events	352
61.10	Financial Mitigation Plan	352
<b>62.</b>	<b>Representations, warranties and undertakings</b>	<b>354</b>
62.1	Principal representations and warranties	354
62.2	OpCo representations and warranties	355
62.3	Trust representations	356
62.4	Repetition of representation and warranties	357

62.5	Trust undertakings	357
<b>63.</b>	<b>Dispute resolution</b>	<b>358</b>
63.1	Disputes generally	358
63.2	Independent Dispute Avoidance and Resolution Panel	358
63.3	Notice of Dispute	359
63.4	Executive Negotiation	359
63.5	Role of IDAR Panel – Dispute Resolution Process	360
63.6	Expert determination	361
63.7	Notice of dissatisfaction	362
63.8	Final and binding decision	362
63.9	Litigation or arbitration	362
63.10	Arbitration rules	363
63.11	Exclusion from determination or award	363
63.12	Payments	364
63.13	Parties to continue performing obligations	364
63.14	Urgent relief	364
63.15	Dispute under related contracts	364
63.16	Role of IDAR Panel – Dispute Avoidance Process	364
63.17	Core Contract disputes	365
63.18	Survive termination	365
<b>64.</b>	<b>Notice of Claims</b>	<b>366</b>
64.1	Notice of Modification	366
64.2	Notices of other Claims	366
64.3	Prescribed notices	367
64.4	Notification of OpCo Contractor defaults, claims and disputes	367
64.5	Notification of disputes generally	367
64.6	Obligations as to Claims made on pass-through basis	368
64.7	Continuing events	368
64.8	Time bar	368
64.9	Temporary waiver of notification requirements	368
64.10	Other provisions unaffected	369
<b>65.</b>	<b>Notices</b>	<b>369</b>
<b>66.</b>	<b>Transfer of functions</b>	<b>372</b>
66.1	Transfer of Functions or NSW Public Transport Assets	372
<b>67.</b>	<b>Proportionate liability</b>	<b>373</b>
67.1	Exclusion of proportionate liability scheme	373
67.2	Contractor not to apply proportionate liability scheme	373
67.3	Subcontracts	373
<b>68.</b>	<b>Taxes</b>	<b>373</b>
68.1	Liability for Taxes	373
68.2	GST	374
<b>69.</b>	<b>General</b>	<b>375</b>
69.1	Certification	375
69.2	Cost of performing obligations	375
69.3	Governing Law and jurisdiction	375
69.4	Amendments	376
69.5	Waiver	376
69.6	Survival of certain provisions; no merger	376
69.7	Further acts and documents	376

69.8	Consents	376
69.9	No representation or reliance	376
69.10	Severance	377
69.11	Exercise of remedies	377
69.12	Moratorium legislation	377
69.13	Entire agreement	377
69.14	Indemnities	377
69.15	Counterparts	378
69.16	Attorneys	378
69.17	Relationship between the Principal and OpCo	378
69.18	Contract documents to be in English	378
69.19	Vienna convention	378
69.20	Performance Standards and civil penalty provisions	378
69.21	Assumptions	378

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## Schedules

1. Conditions Precedent
2. Service Payment calculation
3. Modifications
4. Headway and Fleet Size Parameters
5. Pre-Agreed Options
6. Net Financial Impact
7. Schedule of Rates
8. Cost Risk Sharing
9. Delivery Phase Performance Incentive
10. Key Result Areas
11. Design Review
12. Public Art
13. Planning Approval Conditions
14. Easements, Land Arrangements and Commercial Opportunities
15. Key Offsite Areas
16. ETS Interface
17. FSM Interface
18. Requirements of Third Party Agreements
19. Form of Collateral Warranty Deeds
20. [REDACTED]
21. Permitted Change of Ownership and Permitted Change in Control
22. Key personnel
23. Significant Contracts
24. Nominated Subcontractors
25. Commercially Sensitive Information
26. Termination Payments
27. Insurances
28. Hired Moveable Assets
29. Amendments to Financial Model on CDPD Payment Date
30. Form of Bond
31. Notice of Release (Bonds)
32. Intellectual Property
33. Modification to the Expert Determination Rules
34. Certificates
35. Statutory Declaration
36. Subcontractor's Statement
37. Extensions

### 38. Flexibility for Scope Deferral

## Exhibits

1. SSTOM Specification
2. Initial Delivery Program
3. Site Access Schedule
4. Planning Approvals
5. Information Documents
6. Site Conditions
  - 6A. Geotechnical Reports and Reliance Letters
  - 6B. Identified Utilities Register
  - 6C. Certified Utility Services Designs
  - 6D. Definition of contestable and Non-contestable Utility Service Works
  - 6E. Endeavour Energy Baseline Design
7. Land dealings
8. FIW Contracts
9. FSM Interface Requirements Specification
10. Master Interface Deed
11. Third Party Agreements
12. Principal's Insurances
13. OpCo's Delivery Phase Insurances
14. Financial Close Adjustment Protocol
15. IDAR Panel Agreement
- 15A. Fire & Life Safety
16. Electronic files



# Details

Date 15 DECEMBER 2022

## Parties

Name **Sydney Metro** ABN 12 354 063 515 a New South Wales Government agency constituted by section 38 of the *Transport Administration Act 1988* (NSW)  
Short form name **Principal**  
Address Level 43, 680 George Street, Sydney NSW 2000

Name **Parklife Metro Pty Ltd** ACN 657 249 682 in its personal capacity and in its capacity as trustee of the Parklife Metro Unit Trust (ABN 50 667 445 077)  
Short form name **OpCo**  
Address Rialto Tower South Level 43, 525 Collins Street, Melbourne VIC 3000

## Background

- A The Principal is procuring the Project on behalf of the Commonwealth and NSW governments and the people of New South Wales.
- B The Project is to be delivered in the following major contract packages:
- (i) the station boxes and tunnelling works package, which is being delivered by the SBT Contractor under the SBT Contract;
  - (ii) the surface and civil alignment works package, which is being delivered by the SCAW Contractor under the SCAW Contract; and
  - (iii) the stations, systems, trains, operations and maintenance package, otherwise known as the SSTOM PPP, which is being delivered under this deed.
- C The SSTOM PPP is a critical component of Sydney Metro – Western Sydney Airport.
- D Following the completion of a public procurement process, the Principal selected OpCo to deliver the SSTOM PPP.
- E The Principal and OpCo now wish to enter into this deed to record the terms on which the SSTOM PPP will be carried out.
- F Finance Co has agreed to securitise the Licence Payments and will do so by entry into the Securitisation Agreement and Payment Directions Deed with the Principal and OpCo and by entry into the Debt Financing Documents with the Debt Financiers.

# Operative Provisions

## 1. Interpretation

### 1.1 Definitions

The following definitions apply in this document.

**ABC Approval** means the approval of the SSTOM Works by the Airport Building Controller which is made, given or issued under the Airports Act and the *Airports (Building Control) Regulations 1996* (Cth) from time to time.

**ABC Commissioner** means the Australian Building and Construction Commissioner referred to in subsection 15(1) of the BCIIIP Act.

**ABCC** means the body referred to in subsection 29(2) of the BCIIIP Act.

**Aboriginal Object** means an Artefact which is an 'Aboriginal object' as defined in the *National Parks and Wildlife Act 1974* (NSW).

**Acceptable** means a defect in the Foundation Infrastructure Works that does not:

- (a) prevent, delay or disrupt OpCo from complying with its obligations under this deed;
- (b) affect any warranty provided by OpCo under this deed;
- (c) affect OpCo's performance against any performance indicator or requirement which could result in a Service Payment Deduction; or
- (d) increase OpCo's costs of carrying out OpCo's Activities or cause OpCo to incur any loss, in each case other than in a de minimis manner.

**Accepted FIW Change** means any change or variation to the Foundation Infrastructure Works (including Deferred FIW Activities) that does not:

- (a) prevent, delay or disrupt OpCo from complying with its obligations under this deed;
- (b) affect any warranty provided by OpCo under this deed;
- (c) affect OpCo's performance against any performance indicator or requirement which could result in a Service Payment Deduction; or
- (d) increase OpCo's costs of carrying out OpCo's Activities or cause OpCo to incur any loss, in each case other than in a de minimis manner.

**Accepted FIW Defect** means an Accepted SBT Defect or Accepted SCAW Defect.

**Accepted SBT Defect** means a defect in the SBT Works that the Principal has directed under the SBT Contract does not need to be rectified and which is listed in a SBT Notice of Substantial Completion as an "Accepted Defect".

**Accepted SCAW Defect** means a defect in the SCAW Works that the Principal has directed under the SCAW Contract does not need to be rectified and which is listed in a SCAW Notice of Substantial Completion as an "Accepted Defect".

**Access Licence (RID)** has the meaning given to the term "Access Licence" in the Airport Rail Integration Deed.

**Accessible** means, in respect of a part of the Construction Site, that it is clean and clear and capable of safe use by OpCo for the purposes of OpCo's Activities.

[REDACTED]

**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).

**Accredited Contractor** means an OpCo Contractor that holds an Accreditation in accordance with clauses 8.3(a) or (b).

**Accredited Person** means a person who is authorised at Law and on the Defence Infrastructure Panel – Environmental, Heritage and Estate Engineer Services 2020-2025 within the Commonwealth Department of Defence to perform the relevant extraction works under clause 12.7.

**Accredited Site Auditor** means a person who is accredited as a site auditor under the *Contaminated Land Management Act 1997* (NSW).

**Actual Headway** has the meaning given in Schedule 2 (*Service Payment calculation*).

**Additional Maintained Asset** means an asset identified in Attachment B2 (*Licensed Maintenance Area Drawings*) to the Particular Specification as an "Additional Maintained Asset".

**Additional Mitigation Costs** has the meaning given in clause 29.2(b)(vi)(A).

**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 23.12(c).

**Additional Purchase Date** has the meaning given to that term in the Securitisation Agreement.

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

**Additional Third Party Agreement** has the meaning given in clause 10.28(c)(i).

**Adjusted Indexed Availability Fee** has the meaning given in Schedule 2 (*Service Payment calculation*).

**Adjustment Note** has the meaning given in the GST Act.

**AFC Design Documentation** has the meaning given in Schedule 11 (*Design Review*).

**Affected Assets** has the meaning given in clause 24.5(a)(i)(B).

[REDACTED]

**Agreed FIW Defect** means an Agreed SBT Defect or Agreed SCAW Defect.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**Agreed Modification Cost** means a Modification Cost Proposal that has been accepted by the Principal and set out in a Modification Order.

**Airport Building Controller** means Phillip Chun & Associates Pty Ltd or such replacement controller appointed under the Airports Act.

**Airport Lessee** means WSA Co Limited ACN 618 989 272.

**Airport Lessee Consent** means any Approval by the Airport Lessee of the SSTOM Works required under the Airports Act and the *Airports (Building Control) Regulations 1996* (Cth) as a precondition to the ABC Approval.

**Airport Lessee Contractor** means each of the contractors engaged by the Airport Lessee each acting in connection with the design and construction of the Western Sydney Airport.

**Airport Plan** means the Western Sydney Airport – Airport Plan determined pursuant to section 96B of the Airports Act, and as varied in accordance with section 96D of the Airports Act in September 2021, a copy of which (as at the date of this deed) appears in Exhibit 4 (*Planning Approvals*), and includes all:

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

as the approval may be modified from time to time.

**Airport Rail Integration Deed (or RID)** means the deed titled 'Western Sydney International (Nancy-Bird Walton) Airport And Rail Integration Deed' between the Principal, Airport Lessee, TfNSW and Commonwealth of Australia as represented by the Department of Infrastructure, Transport, Regional Development and Communications dated 19 August 2021.

**Airport Works** means any works or the provision of any materials, plant, equipment, machinery, systems or other infrastructure, or the provision of any operation or maintenance activities required for Western Sydney Airport, to be performed by an Airport Lessee Contractor.

**Airports Act** means the *Airports Act 1996* (Cth).

**Another Entity** means a government or semi-government entity including any agency, statutory corporation, statutory authority, department or state owned corporation.

**Anti-slavery Commissioner** means the Anti-slavery Commissioner appointed under the *Modern Slavery Act 2018* (NSW).

**Applicable Cure Period** has the meaning given in clause 47.3(f)(i) and includes any extension granted under clause 47.5(b).

**Appointed Principal Contractor** means:

- (a) with respect to the period referred to in clause 10.2(d) and the Delivery Activities, the D&C Principal Contractor or any of its contractors that have been engaged as the principal contractor by the Principal under a deed of appointment of principal contractor in accordance with the D&C Contract Side Deed; and
- (b) with respect to the period referred to in clause 10.2(e) and the Operations Activities, the O&M Contractor or any of its contractors that have been engaged as the principal contractor by the Principal 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 the Sydney Metro Site and Extra Land;
  - (iii) for the use and occupation of:
    - (A) the SSTOM Works; and
    - (B) the Sydney Metro; or
  - (iv) otherwise to comply with Law; or
- (b) the Principal, acting reasonably, notifies OpCo from time to time is necessary, or is consistent with Good Industry Practice, to be held by the Principal in respect of:
  - (i) the Principal's ownership of the electrical infrastructure forming part of the Sydney Metro; or
  - (ii) the Principal's purchase of electricity in accordance with clause 10.25,

and includes:

- (c) the Planning Approvals;

- (d) any ABC Approval; and
- (e) any Environment Protection Licence which applies to OpCo's Activities, but does not include:
- (f) any Direction given by the Principal or the Principal's Representative pursuant to this deed; or
- (g) the exercise by the Principal of its rights under this deed.

**Approved Cure Plan** has the meaning given in clause 47.3(f).

**Approved FIW Change** means an FIW Change:

- (a) described in clause 16.2(e)(ii);
- (b) proposed by OpCo and implemented by the Principal pursuant to clause 16.3; or
- (c) deemed to be an Approved FIW Change pursuant to clauses 16.6(c), 16.6(e)(i) or 16.6(f)(ii).

**Approved Prevention Plan** has the meaning given in clause 47.4(g).

**Approved TPPC Estimate** means the estimate of Third Party Preparation Costs for a Modification Impact Proposal:

- (a) as approved by the Principal under clause 33.3(c)(i);
- (b) agreed by the parties in accordance with clause 33.3(d)(ii);
- (c) as determined by the Principal (on an interim basis) pursuant to clause 33.3(d)(iii)(B); or
- (d) as determined by dispute resolution under clause 63 pursuant to clause 33.3(d)(iii)(B).

**Artefacts** means each:

- (a) valuable mineral, fossil or coin;
- (b) article or object of value or antiquity;
- (c) article, object or relic of heritage significance; or
- (d) other thing of geological, archaeological, anthropological or other special interest, found on or under the surface of the Sydney Metro Site.

**Asset** means:

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

**Asset Condition Assessment** means the assessment of the condition of the Assets, as described in section 13.12 of Particular Specification 13 (*Asset Management*).

**Asset Functionality KPI** has the meaning given in Schedule 2 (*Service Payment calculation*).

**Asset Information System** means the system for the storage, processing, transmission and management of Asset information as described in section 13.11 of Particular Specification 13 (*Asset Management*).

**Asset Maintenance Standards** means the standards developed by OpCo in accordance with section 13.8 of Particular Specification 13 (*Asset Management*).

**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 24 and the SSTOM Specification, including inspecting, maintaining and repairing Sydney Metro – Western Sydney Airport and the Assets (including the Replacement and Refurbishment of Assets), 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 24.8(b).

**Asset Management Information** has the meaning given in section 13.11.2 of Particular Specification 13 (*Asset Management*).

**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 system and arrangements described in section 13.3 of Particular Specification 13 (*Asset Management*).

**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:
  - (i) OpCo's Representative;
  - (ii) any [REDACTED] (other than OpCo) and their respective Associates, each to the extent acting in connection with the SSTOM PPP;
  - (iii) any [REDACTED] and their respective Associates, each to the extent acting in connection with the SSTOM PPP;
  - (iv) the Equity Investors and OpCo Contractors (that are not covered by paragraph (a)(ii)) and their respective Associates, each to the extent acting in connection with the SSTOM PPP;
  - (v) OpCo Contractors and their respective Associates, each to the extent acting in connection with the SSTOM PPP; and
  - (vi) any person on or at the Sydney Metro Site at the express or implied invitation of OpCo or an OpCo Contractor,

but does not include the Principal or any of its Associates;

- (b) in the case of the Principal, includes:
  - (i) the Principal's Representative;
  - (ii) Transport for NSW; and
  - (iii) any other person to whom the Principal delegates a right, power, function or duty under this deed or any other Principal Project Agreement,

but does not include OpCo or any of its respective Associates; and

- (c) in the case of both parties, does not include:
  - (i) the Independent Certifier;
  - (ii) the Handback Auditor;
  - (iii) the Interim Inspection Auditor;
  - (iv) the Final Inspection Auditor;
  - (v) the CDPD Defects Assessor;
  - (vi) the Independent Assessor;
  - (vii) the IDAR Panel;
  - (viii) the Planning Approval Representatives;
  - (ix) Infrastructure NSW;
  - (x) the Airport Lessee;
  - (xi) the Airport Lessee Contractors;
  - (xii) the CRS Estimator; or
  - (xiii) the Structural Engineer.

**Assurance and Governance Plan** means the Project Plan of that name.

**Australian Autonomous Sanction** means punitive measures implemented under the *Autonomous Sanctions Act 2011* (Cth) and the *Autonomous Sanctions Regulations 2011* (Cth) that do not involve the use of armed force and that are imposed unilaterally by the Australian Government.

**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 or any Approval 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 the Local Areas,

and, to avoid doubt, includes the Clean Energy Regulator and the Environmental Representative but excludes the Airport Lessee.

**Availability Deduction** has the meaning given in Schedule 2 (*Service Payment calculation*).

**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 12:00pm (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 12:00pm, 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 any Project Entity, and is before any Tax paid or payable by Equity Investors) and is equal to the percentage set out in cell H13 of the Model Outputs Schedule.

**Base Costs** has the meaning given in Schedule 6 (*Net Financial Impact*).

**Baseline FLS Mitigation Measures** has the meaning given in clause 33.16(b).

**Baseline Reference Flood Model** has the meaning given in clause 15.6(d)(i).

**BCIIP Act** means the *Building and Construction Industry (Improving Productivity) Act 2016* (Cth).

**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 clause 1.1 of Annexure A of Schedule 2 (*Service Payment calculation*).

**Benchmarked Insurances** means those insurances set out in clauses 45.3(a) and 45.3(c).

**Bond** means:

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

**BPS** has the meaning given in Attachment A (*SSTOM Specification Glossary*) to the Particular Specification.

**Building Code** means the *Code for Tendering and Performance of Building Work 2016* (Cth), or any subsequent code of practice which takes effect and supersedes that code.

**Building Work** has the meaning given to that term in subsection 3(4) of the Building Code.

**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 Day (SOP)** means any day other than a Saturday, Sunday or public holiday in Sydney, or 27, 28, 29, 30 and 31 December.

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

**CACN Certification Year 1** has the meaning given to it in clause 10.29(f).

**Calendar Year** means a year from 1 January until 31 December.

**Capacity Performance Test** has the meaning given in section 12.6.3 of Particular Specification 12 (*Testing and Commissioning*).

[REDACTED]

[REDACTED]

[REDACTED]

**Capital Contribution Schedule** means the Capital Contribution Schedule shown in the Model Outputs Schedule as adjusted pursuant to clause 28.3.

**Car** has the meaning given in Attachment A (*SSTOM Specification Glossary*) to the Particular Specification.

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

**CBTC** has the meaning given in Attachment A (*SSTOM Specification Glossary*) to the Particular Specification.

**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.

[REDACTED]

[REDACTED]

[REDACTED]

**CDPD Conditions** means the conditions set out in clause 28.4(b).

**CDPD Defects Assessor** has the meaning given in clause 28.4(e)(i).

**CDPD Notice Date** means the date of the notice issued by OpCo under clause 28.4(d)(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 the Principal in its absolute discretion.

**CDPD Period** means the period of time beginning on the 2nd anniversary of the Date of Completion and ending on the 4th anniversary of the Date of Completion.

**CDPD Satisfaction Notice** means the notice delivered pursuant to clause 28.4(d)(iv)(A).

**Certificate of Completion** means a certificate referred to in clause 22.9(a)(i) substantially in the form of Part J of Schedule 34 (*Certificates*).



**Certificate of Final Completion** means a certificate referred to in clause 22.10(d) substantially in the form of Part K of Schedule 34 (*Certificates*).

**Certificate of Readiness for First Passenger Service** means a certificate referred to in clause 22.3(a)(i) substantially in the form of Part F of Schedule 34 (*Certificates*).

**Certified Contaminated Land Consultant** means a consultant that holds current certification in accordance with the NSW EPA Contaminated Land Consultant Certification Policy.

**Certified D&C Payment Claim** means a payment claim from the D&C Contractor under the D&C Contract which has been certified and issued by the D&C Independent Certifier as a payment scheduled under and in accordance with the D&C Contract.

**Certified Utility Services Design** means each certified approved for construction utility services works design specified in Exhibit 6C (*Certified Utility Services Designs*).

**Chair** means the chairperson of the IDAR Panel as appointed under the IDAR Panel Agreement from time to time.

**Change in Certified Utility Services Designs** means any direction by a relevant Authority to OpCo or its Associate to carry out Utility Services Works which are an enhancement, an upgrade or an increase in the scope of the original Utility Service Works set out in the relevant Certified Utility Services Design.

**Change in Control** means, in respect of an entity, any event which 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 chemicals;
- (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 SSTOM 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 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 Government Policy; or
- (b) the coming into effect or implementation of a new Government Policy, other than any such repeal, change, coming into effect or implementation which, on the date of this deed:
- (c) has been published or of which public notice has been given; or
- (d) a party experienced and competent in the delivery of works and/or services similar to the SSTOM 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 60.2(a).

**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.

**Classification and Excavation Map** means the document(s) submitted as part of each Remediation Action Plan as described under clause 11.8(d)(i).

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

**Collateral Warranty Deed** means the document to be executed by:

- (a) the SBT Contractor substantially in the form of Part A of Schedule 19 (*Form of Collateral Warranty Deeds*); and
- (b) the SCAW Contractor substantially in the form of Part B of Schedule 19 (*Form of Collateral Warranty Deeds*).

**Commercial Opportunities** means the commercial opportunities and activities on Sydney Metro – Western Sydney Airport which are intended to generate revenue, including:

- (a) the commercial opportunities set out in, or contemplated by, Schedule 14 (*Easements, Land Arrangements and Commercial Opportunities*); and
- (b) any other retail and related activities, advertising and secondary revenue activities.

**Commercially Sensitive Information** means the information identified in or of the type referred to in Schedule 25 (*Commercially Sensitive Information*).

**Community Communications Strategy – Delivery Phase** means the Project Plan of that name.

**Community Communications Strategy – Operations Phase** means the Project Plan of that name.

**Community Complaints Mediator** means Steve Lancken Conflict Management Pty Ltd (Business name Negocio Resolutions) ABN 21 158 098 554, 162 Albany Rd Stanmore NSW 2048, appointed by the Principal under a separate contract and any person appointed by the Principal as a replacement from time to time, as notified to OpCo.

**Compensable Change in Law** means:

- (a) a Project-Specific Change in Law (other than with respect to Tax);
- (b) a Change in Disability Law;
- (c) a Change in Environmental Law;
- (d) a Change in Rail Safety Law;
- (e) subject to clause 41.4, a Pandemic Change in Law; or
- (f) a General Change in Law (other than with respect to Tax).

**Compensable Change in Government Policy** means a Change in Government Policy in relation to which the Principal has issued a Direction in accordance with clause 42.3(a)(i).

**Compensation Event** means each of the following:

- (a) a breach by the Principal of its obligations under this deed or any other Project Agreement;
- (b) if:
  - (i) there is a legal challenge through the commencement of court proceedings in relation to a Planning Approval; or
  - (ii) 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) any event the subject of clause 7.3 which is at OpCo's cost and risk;
- (c) if:
  - (i) the Principal fails to comply with its obligations under clauses 10.15(b) or 10.15(e); or
  - (ii) the SSTOM Works, the Temporary Works, any part of the Foundation Infrastructure Works during any period in which OpCo is responsible for the Foundation Infrastructure Works in accordance with clause 16.10, Sydney Metro – Western Sydney Airport or the Sydney Metro Site are damaged by an Other Contractor,except to the extent that OpCo's non-compliance with the Systems Engineering 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;
- (d) damage is caused by the ETS Delivery Partner or its Associate to the SSTOM Works, the Temporary Works, any part of the Foundation Infrastructure Works during the period in which OpCo is responsible for the Foundation Infrastructure Works in accordance with clause 16.10, the Sydney Metro Site or Sydney Metro – Western Sydney Airport, whether or not that damage is necessary to install, operate, maintain or replace the ETS and 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);
- (e) damage is caused by the FSM Contractor or its Associate to the SSTOM Works, the Temporary Works, any part of the Foundation Infrastructure Works during the period in which OpCo is responsible for the Foundation Infrastructure Works in accordance with clause 16.10, the Sydney Metro Site or Sydney Metro – Western Sydney Airport, and 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);
- (f) if OpCo, or an OpCo Contractor, is required to comply with an Environmental Notice to the extent that it does not:
  - (i) arise out of or in connection with any Contamination for which OpCo is responsible under clause 11.5; or
  - (ii) arise as a result of a failure by OpCo to comply with its obligations under this deed or any other Project Agreement;
- (g) notwithstanding clause 12.1(c)(i), if the Principal 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 at any time thereafter where access is required to be given under this deed;

- (h) in the Delivery Phase, 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:
  - (i) the register maintained by NSW Land Registry Services under the *Real Property Act 1900* (NSW) as at the date of this deed;
  - (ii) the Third Party Agreements; or
  - (iii) Exhibit 7 (*Land dealings*),
 and that has an adverse effect on OpCo's Activities;
- (i) in the Operations Phase, the:
  - (i) creation of an Easement;
  - (ii) release, variation, modification or waiver of an Easement; or
  - (iii) dedication of land of which the Principal is the owner of the fee simple estate, for road, rail or other purposes,
 in accordance with clause 3.1 of Schedule 14 (*Easements, Land Arrangements and Commercial Opportunities*) that is not contemplated in:
  - (iv) the Third Party Agreements; or
  - (v) Exhibit 7 (*Land dealings*),
 and that has an adverse effect on OpCo's Activities;
- (j) any change to the Licensed Maintenance Area made pursuant to clause 12.3(d);
- (k) 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 clause 12.5;
- (l) if:
  - (i) OpCo discovers a State Significant Artefact on the Sydney Metro Site;
  - (ii) 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 clause 12.6;
  - (iii) the nature and extent of the discovery could not have been reasonably anticipated by a competent and experienced contractor that had examined:
    - (A) the Sydney Metro Site and its surroundings; and
    - (B) all Information Documents and any other information that was made available in writing by the Principal, or any other person on the Principal's behalf, to OpCo prior to the date of this deed; and
  - (iv) OpCo complies with its obligations in clause 12.6(b);
- (m) the discovery of a UXO on the Construction Site to the extent that the discovery of that UXO directly results in:
  - (i) OpCo being directed, ordered or required by the Principal's Representative, an Authority, a court or tribunal or by Law to suspend or cease to perform OpCo's Activities; or
  - (ii) any additional work or change to OpCo's work methodology in the IC Project Plans,
 provided that OpCo has complied with its obligations in clause 12.7(c);
- (n) industrial action which occurs only at the Sydney Metro Site or otherwise only in respect of the SSTOM PPP, which is the direct result of an act or omission of the Principal or any of its Associates at the Sydney Metro Site (but excluding acts or omissions of an FIW Contractor, FSM Contractor or any Other Contractor and their Associates) and in connection with the SSTOM PPP, other than any act or omission which is authorised or permitted under a Principal Project Agreement, NSW Guidelines or Law;

- (o) subject to clause 16.11, the:
  - (i) SSTOM Works, the Temporary Works, any part of the Foundation Infrastructure Works during any period in which OpCo is responsible for the Foundation Infrastructure Works in accordance with clause 16.10 or Sydney Metro – Western Sydney Airport on the relevant part of the Sydney Metro Site; or
  - (ii) the relevant part of the Sydney Metro Site,
 are damaged by an FIW Contractor or its Associate on or after the OpCo Handover Date relating to that part of the Sydney Metro Site;
- (p) subject to clause 16.11, the occurrence of:
  - (i) an Accepted FIW Defect in respect of which the Principal's Representative is obliged to, following the expiry of the period in clause 17.2(b) or the outcome of a dispute referred to in clause 17.2(d), but has not directed a Modification pursuant to clause 17.2(b)(i), for the period from the expiry of the period in clause 17.2(b) until the Principal directs the Modification;
  - (ii) an Agreed FIW Defect or a Minor FIW Defect in respect of which the Principal's Representative is obliged to, following the expiry of the period in clause 17.2(c) or the outcome of a dispute referred to in clause 17.2(d), but has not directed a Modification pursuant to clause 17.2(c)(i), for the period from the expiry of the period in clause 17.2(c) until the Principal directs the Modification; or
  - (iii) an FIW Defect notified by OpCo under clause 17.3(b) in respect of which the Principal's Representative:
    - (A) has notified OpCo that the Principal will procure the rectification of the FIW Defect under clause 17.3(d)(i) but the FIW Defect has not yet been rectified; or
    - (B) is obliged to, following the expiry of the period in clause 17.3(d) or the outcome of a dispute referred to in clause 17.3(f), but has not issued a notice pursuant to clause 17.3(d)(i) or clause 17.3(d)(ii),
 (as applicable), for the period arising from the date that the FIW Defect (either):
    - (C) prevents, delays or disrupts OpCo from complying with its obligations under this deed;
    - (D) affects any warranty provided by OpCo under this deed;
    - (E) affects OpCo's performance against any performance indicator or requirement which could result in a Service Payment Deduction; or
    - (F) increases OpCo's costs of carrying out OpCo's Activities or causes OpCo to incur any loss (in each case other than in a de minimis manner),
 until either the Principal has procured rectification of the FIW Defect or directed a Modification as referred to in clause 17.3(d)(ii);
- (q) implementation of an FIW Change in the circumstances described in, and subject to, clause 16.2(e)(i)(C) or clause 16.2(e)(ii)(A);
- (r) subject to clause 21.8(c), the Principal carries out, or directs OpCo to carry out, tests pursuant to clause 21.8;
- (s) if the SSTOM Works, Temporary Works, Foundation Infrastructure Works, Sydney Metro – Western Sydney Airport, Sydney Metro Site or OpCo's Activities are damaged or adversely affected (including by OpCo incurring Loss or delay) by any Proximate Work Activity;
- (t) subject to clause 10.24(c), to the extent that OpCo is required to carry out any Utility Service Works (other than Excluded Utility Services Works) on or in the vicinity of the Project Site:
  - (i) in relation to a Utility Service:

- (A) in a location where no Utility Service was identified in the Identified Utilities Register; or
  - (B) which is identified in the Identified Utilities Register but which:
    - (I) is owned or leased by a different Authority to that identified in the Identified Utilities Register; or
    - (II) is of a different type to the Utility Service identified in the Identified Utilities Register, for example the Utility Service identified in the Identified Utilities Register is a telecommunications service but the actual Utility Service is an electricity service; and
  - (ii) such Utility Service Works are required as a direct result of the construction of the SSTOM Works on the Project Site;
- (u) the discovery of Contamination on the Sydney Metro Site that was caused or disturbed by:
  - (i) the Principal or its Associates (other than FIW Contractors); or
  - (ii) FIW Contractors, but only to the extent that the Contamination was not Remediated or otherwise dealt with by the FIW Contractor in accordance with the relevant FIW Contract,

and that Contamination is required to be Remediated by OpCo under this deed;
- (v) the occurrence of a Compensable Change in Law;
- (w) the occurrence of a Compensable Change in Government Policy;
- (x) subject to clause 40.4, the occurrence of a Pandemic Compensation Event;
- (y) 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:
  - (i) was an OpCo Termination Event; or
  - (ii) arises as a result of a failure by OpCo to comply with its obligations under this deed or any other Project Agreement;
- (z) if:
  - (i) the Principal approves or directs a Modification in accordance with clause 34.3(a)(i) or clause 34.3(a)(ii); and
  - (ii) the Modification is required to ensure that the SSTOM Works, the Temporary Works or Sydney Metro – Western Sydney Airport comply with a Compensable Change in Law or a Compensable Change in Government Policy;
- (aa) if neither Electricity Provider Connection Point (including any connection and augmentation works to the Electricity Provider's network) has been completed by the Electricity Provider and made operational by the Electricity Provider in accordance with the Electricity Connection Agreement by the later of:
  - (i) [REDACTED]
  - (ii) the date when OpCo has completed all of OpCo's Activities for the bulk supply connection being:
    - (A) the BPS and HV Reticulation systems equipment at the SMF;
    - (B) any works required at the Electricity Provider zone substation / switching station to facilitate the bulk supply connection;
    - (C) the connection between the BPS and HV Reticulation systems equipment at the SMF and the Electricity Provider zone substation / switching station; and
    - (D) any tests and Approvals required to commence testing and commissioning to permanently energise the BPS and HV Reticulation systems equipment at the SMF with an incoming Electricity Provider 132kV supply feed; and

- (iii) the last date required by OpCo in accordance with its Delivery Program to avoid any delay to Completion;

[REDACTED]

**Completion** has the meaning given in clause 22.7.

**Completion Price** means the price to be paid by the Principal to OpCo in accordance with clause 28B.1, being the sum of the Construction Payment B Payments, which must equal the aggregate of the amount of the Receivables Purchase Price for the Initial Receivables payable by Finance Co to the Principal under the Securitisation Agreement.

**Condition Monitoring System** means the system for Asset data collection, analysis, and prediction and forecasting of failures as described in section 14.3 of Particular Specification 14 (*Condition Monitoring*).

**Condition Precedent** means a condition precedent set out in Schedule 1 (*Conditions Precedent*).

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

**Consequential or Indirect Loss** has the meaning given in clause 44.3(a).

**Construction Environmental Management Plan and Sub-Plans (Off Airport)** means the Project Plan of that name.

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

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

**Construction Payment B** means each payment to be made in accordance with clause 28B.1 by the Principal to OpCo of an amount equal to the corresponding Receivables Purchase Payment for the Initial Receivables payable by Finance Co to the Principal under the Securitisation Agreement.

**Construction Payment B Date** means, with respect to each Construction Payment B, the date on which Finance Co pays the corresponding Receivables Purchase Payment for the Initial Receivables to the Principal in accordance with the Securitisation Agreement and the Payment 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 water or any other aspect of the Environment of:

- (a) a substance (whether occurring naturally or otherwise) which is at a concentration above the concentration at which the substance (whether occurring naturally or otherwise) is normally present in, on or under land or water 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) any natural or artificial substance whether solid, liquid or gas (alone or in combination with any other substance) which is toxic, flammable or otherwise capable of causing harm to humans or damage to the Environment.

**Contract Service Level Requirements** means the requirements set out in section 11.3 of Particular Specification 11 (*Operations and Customer Service*), as amended from time to time in accordance with clause 13 of Schedule 2 (*Service Payment calculation*).

**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 Guarantor; and
- (b) each O&M Guarantor.

**Core Contractor Interface Deed** means the document titled "Core Contractor 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 (April 2020).

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

**Counterparty Details** means, in respect of each person who is a party to a Principal Project Agreement (other than the Principal, the Independent Certifier, the FIW Contractors, the Security Trustee, the Agent, the Account Bank, the members of the IDAR Panel and Infrastructure NSW):

- (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 Principal Project Agreement as trustee for;
- (c) a certified copy of any powers of attorney under which the person executed each Principal 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 Principal 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 Principal Project Agreements.





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

**Customer Delay Measure** has the meaning given in Schedule 2 (*Service Payment calculation*).

**Cyber Security Incident** means one or more acts, events or circumstances involving the unauthorised:

- (a) access to or modification of computer data or a computer program;
- (b) impairment of electronic communication to or from a computer; or
- (c) impairment of the availability, reliability, security, or operation of a computer, computer data, or a computer program.

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

**D&C Contract Side Deed** means the deed titled "D&C Contract Side Deed" between the Principal, OpCo, the D&C Contractor, the D&C Independent Certifier and the O&M Contractor dated on or about the date of this deed.

**D&C Contractor** means the unincorporated joint venture between Webuild S.p.A., Siemens Mobility GmbH (Commercial Register B Munich, HRB 237219), Siemens Mobility Austria GmbH (Registered in Austria, FN 483145 h) and Siemens Mobility Pty Ltd ACN 625 304 556.

**D&C Contractor Construction Bond** has the meaning given in clause 25.10(a).

**D&C Contractor Construction Bond Amount** means an amount equal to [REDACTED] of the D&C Price.

**D&C Contractor DLP Bond Amount** means an amount equal to [REDACTED] of the D&C Price.

**D&C Contractor's Modifications Manager** means:

- (a) the person engaged by the D&C Contractor in the position of "Modifications Manager" in accordance with clause 10.23(c)(i); or
- (b) any other person from time to time engaged by the D&C Contractor to replace that person in accordance with clause 10.23(c)(ii).

**D&C Contractor's Representative** means [REDACTED] or any other person from time to time notified by OpCo to replace that person.

**D&C Financial Capacity Event** means any fact, matter or thing which, in the opinion of the Principal (acting reasonably), has or may have a material adverse effect upon the financial standing of the D&C Contractor (or any entity that comprises the D&C Contractor), a D&C Guarantor or any Significant Contractor.

**D&C Financial Mitigation Plan** means a plan which satisfies the requirements of clause 61.10 for the mitigation of a Financial Capacity Event.

**D&C Financial Reporting Event** means any of the following events, as applicable to the D&C Contractor (or any entity that comprises the D&C Contractor), a D&C Guarantor or any Significant Contractor:

- (a) a downgrade in any applicable credit rating;
- (b) a short term share price decrease of greater than 10%;
- (c) a significant loss suffered or incurred on a project or under a contract;
- (d) a significant fine or financial penalty;
- (e) a profit warning to a stock exchange or the making of any public announcement regarding a material deterioration in financial position or prospects;
- (f) a public investigation into improper financial accounting and reporting or suspected fraud;
- (g) a material breach of a covenant to a lender or lenders;
- (h) a material refinancing;
- (i) a failure to pay a Significant Contractor (other than for reason of a bona fide dispute);

- (j) any financial indebtedness becoming due as a result of an event of default; or
- (k) its external auditor expressing a qualified opinion in relation to its audited accounts.

**D&C Guarantee** means the deed titled "D&C Guarantee" dated on or about the date of this deed between OpCo and the D&C Guarantor.

**D&C Guarantor** means Siemens AG (HRB 12300).

**D&C Independent Certifier** has the meaning given in the D&C Contract.

**D&C Independent Certifier Deed** means the deed so titled dated on or about the date of the D&C Contract between OpCo, the D&C Contractor and the D&C Independent Certifier.

**D&C Price** means the amount set out in the Model Outputs Schedule.

**D&C Principal Contractor** means Webuild S.p.A.

**D&C Restructure Event** means any transfer of assets, transfer of equity interests or corporate restructure that:

- (a) results in the D&C Contractor (or an entity comprising the D&C Contractor) or a D&C Guarantor having a materially diminished financial capacity; or
- (b) adversely affects the ability of the D&C Contractor (or an entity comprising the D&C Contractor) or a D&C Guarantor to meet its obligations under the Project Agreements.

**Date for Completion** means [REDACTED] as extended in accordance with this deed.

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

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

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

**Day 1 Uninsurable Risk** means:

- (a) war (declared or undeclared), armed conflict, riot or civil commotion; or
- (b) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel,

save to the extent caused by or contributed to by an act or omission of OpCo or any of its Associates.

**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 an [REDACTED] or [REDACTED] for the purposes of carrying out the SSTOM PPP 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 each [REDACTED] and [REDACTED] under the Debt Financing Facilities.

**Debt Financing Documents** means:

- (a) the Facility Agreement;
- (b) the Security Trust Deed;
- (c) the Debt Financiers' Securities;
- (d) each Consent Deed (as defined in the Facility Agreement) dated on or about the date of this deed (other than the Financiers Tripartite Deed);;
- (e) each Swap Agreement (as defined in the Facility Agreement) dated on or about the date of this deed;
- (f) the Arranging and Structuring Fee Letter (as defined in the Facility Agreement) dated on or about the date of this deed;
- (g) the Agency and Security Trustee Fee Letter (as defined in the Facility Agreement) dated on or about the date of this deed;

- (h) the Sustainability Coordinators' Mandate Letter (as defined in the Facility Agreement) dated on or about the date of this deed;
- (i) any document entered into in relation to a Refinancing approved by the Principal pursuant to clause 56;
- (j) any document (including a Modification Facility Agreement) entered into in relation to any Modification Facility (as those terms are defined in the Facility Agreement) and which has been approved by the Principal;
- (k) any other document that the parties agree is a Debt Financing Document for the purposes of this deed; and
- (l) any document or agreement entered into by any Project Entity:
  - (i) with the approval of the Principal under or for the purpose of amending, novating or acceding to any of the above; or
  - (ii) pursuant to an event or circumstance described in paragraphs (d) to (h) of the definition of "Refinancing".

**Debt Financing Facilities** means the facilities, financial arrangements or accommodation provided, or to be provided, in accordance with the Debt Financing Documents, to the Project Entities for the purposes of carrying out the SSTOM PPP.

**Deed of Assurance** has the meaning given in Schedule 32 (*Intellectual Property*).

**Deeds of Disclaimer** means each deed poll titled "Deed of Disclaimer" executed by OpCo, Plenary Origination Pty Ltd ABN 81 161 527 519, each entity comprising the D&C Contractor, Siemens Project Ventures GmbH and the O&M Guarantor (RATP Developpement S.A).

**Default Notice** has the meaning given in clause 47.2.

**Default Rate** means, in respect of a period, a rate equivalent to [REDACTED] above the Bank Bill Rate for that period.

**Defect** means:

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

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

and excluding FIW Known Defects or Deviations within the FIW Tolerances.

**Defects Correction Period** means a period referred to in clauses 22.4(f), 22.5(c) or 22.6(d).

**Deferred FIW Activities** has the meaning given to the term Deferred Activities in the relevant FIW Contract.

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

- (a) in connection with the design and construction of the SSTOM Works and the design and construction of the Temporary Works (whether such things are performed, or required to be performed, prior to the date of this deed or 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 1.2.1.2 of Particular Specification 01 (*General*), 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 Performance Incentive** has the meaning given in Schedule 9 (*Delivery Phase Performance Incentive*).

**Delivery Phase Performance Incentive Payment** has the meaning given in Schedule 9 (*Delivery Phase Performance Incentive*).

**Delivery Phase Progress Report** means each progress report to be submitted by OpCo under clause 20.15.

**Delivery Phase Scope 3 Emissions** has the meaning given in the SSTOM Specification.

**Delivery Phase Scope 3 Emissions Baseline** means the Delivery Phase Scope 3 Emissions as estimated prior to the Delivery Phase, totalling [REDACTED] CO2e, as may be amended from time to time in accordance with the terms of this deed.

**Delivery Program** means the program of the Delivery Activities, as updated from time to time in accordance with clause 20.3. The initial Delivery Program is contained in Exhibit 2 (*Initial Delivery Program*).

**Delivery Site Integration Group** has the meaning given in the Master Interface Deed.

**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.

**Design Life** means in relation to each Asset:

- (a) the period specified for that Asset in section 1.5.9 of Particular Specification 01 (*General*) commencing on the Date of Completion and ending on the day after expiry of the period specified for that Asset in section 1.5.9 of Particular Specification 01 (*General*); and
- (b) if the Asset is replaced or refurbished during the Term, the period specified for that Asset in section 1.5.9 of Particular Specification 01 (*General*) commencing on the date the Asset is replaced or refurbished and ending on the day after expiry of the period specified for that Asset in section 1.5.9 of Particular Specification 01 (*General*).

**Design Management Plan** means the sub-Project Plan of that name in the Systems Engineering Management Plan.

**Design Review Process** means the process for the development of the design of the SSTOM Works and Temporary Works which is described in Schedule 11 (*Design Review*).

**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 Attachment A (*SSTOM Specification Glossary*) to the Particular Specification and section 1.5.17.2.3 of Particular Specification 01 (*General*).

**Design Stage 2** means stage 2 of the development of the Design Documentation as described in Attachment A (*SSTOM Specification Glossary*) to the Particular Specification and section 1.5.17.2.4 of Particular Specification 01 (*General*).

**Design Stage 3** means stage 3 of the development of the Design Documentation as described in Attachment A (*SSTOM Specification Glossary*) to the Particular Specification and section 1.5.17.2.5 of Particular Specification 01 (*General*).

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

**Destination Station** has the meaning given in Schedule 2 (*Service Payment calculation*).

**Detailed Site Investigation** means a detailed investigation of Contamination performed and reported in accordance with all guidelines made or approved by the EPA including the National Environment Protection (Assessment of Site Contamination) Measure 1999 and the Contaminated Land Guidelines: Consultants Reporting on Contaminated Land (NSW EPA, 2020).

**Developed Intellectual Property** has the meaning given in Schedule 32 (*Intellectual Property*).

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

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

**Dispute** has the meaning given in clause 63.1.

**Dispute Avoidance Process** has the meaning given in the IDAR Panel Agreement.

**Dispute Resolution Process** has the meaning given in the IDAR Panel Agreement.

**Distribution** means, whether in cash or in kind:

- (a) any distribution by Project Entity 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 any Project Entity, units in a trust or any subordinated debt;
- (b) the receipt from any Project Entity, 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 any Project Entity to a Related Body Corporate of that Project Entity; 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 47.3(a)(iv).

**Draft Prevention Plan** has the meaning given in clause 47.4(a).

[REDACTED]

**DSU Policy** has the meaning given in Schedule 6 (*Net Financial Impact*).

**Early Handover Notice** has the meaning given in clause 13.2(a).

**Early Handover Payment** means the payment to be determined in accordance with clause 13.2.

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

**Early Warning Notification** has the meaning given in clause 52.3(d).

**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 of Schedule 14 (*Easements, Land Arrangements and Commercial Opportunities*) 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 14 (*Easements, Land Arrangements and Commercial Opportunities*).

**Effective Date** means, in respect of a Pre-Agreed Option, the date specified as the "Effective Date" for that Pre-Agreed Option in Schedule 5 (*Pre-Agreed Options*).

**Election Date** means in respect of a Pre-Agreed Option, the relevant date specified as the "Election Date" in Schedule 5 (*Pre-Agreed Options*).

**Electricity Compliance Reporting Year** has the meaning given in Schedule 2 (*Service Payment calculation*).

**Electricity Connection Agreement** means:

- (a) the Electricity Connection Agreement (Connection Establishment) and the Electricity Connection Agreement (Supply Services), or either of them, as the context requires; and
- (b) any other agreement entered into by the Principal and the Electricity Provider from time to time, including any operations and maintenance protocol (or similar) agreed by the Principal and the Electricity Provider in accordance with the documents referred to in paragraph (a),

pursuant to which Sydney Metro – Western Sydney Airport is connected to the Electricity Provider's network through the Electricity Provider Connection Points (including any connection and augmentation works required for this purpose).

**Electricity Connection Agreement (Connection Establishment)** means the agreement titled 'Negotiated Connection Contract (Connection Establishment)' between the Electricity Provider and the Principal dated on or after the date of this deed.

**Electricity Connection Agreement (Supply Services)** means the agreement titled 'Negotiated Connection Contract (Supply Services)' between the Electricity Provider and the Principal dated on or after the date of this deed.

**Electricity Consumption Software Model** has the meaning given in Attachment A (*SSTOM Specification Glossary*) to the Particular Specification.

**Electricity Provider** means the Endeavour Network Operator Partnership trading as Endeavour Energy ABN 11 247 365 823, a partnership carried on under that name by:

- (a) Edwards O Pty Limited (ACN 618 643 486) as trustee for the Edwards O Trust;
- (b) ERIC Epsilon Operator Corporation 1 Pty Ltd (ACN 617 221 735) as trustee for the ERIC Epsilon Operator Trust 1;
- (c) ERIC Epsilon Operator Corporation 2 Pty Ltd (ACN 617 221 744) as trustee for the ERIC Epsilon Operator Trust 2;
- (d) ERIC Epsilon Operator Corporation 3 Pty Ltd (ACN 617 221 753) as trustee for the ERIC Epsilon Operator Trust 3; and
- (e) ERIC Epsilon Operator Corporation 4 Pty Ltd (ACN 617 221 771) as trustee for the ERIC Epsilon Operator Trust 4.

**Electricity Provider Connection Point** means the permanent point or points at which Sydney Metro – Sydney Western Airport's electrical infrastructure connects to the Electricity Provider's electricity distribution network for bulk supply but does not include either prior to, or after the Date of Completion, any temporary connection points established between Sydney Metro – Sydney Western Airport's electrical infrastructure and the Electricity Provider's electricity distribution network for the purposes of supplying construction power prior to the Date of Completion.

**Electricity Purchase Agreement** means an agreement for the purchase of electricity with an electricity retailer authorised under the National Energy Retail Law.

**Electricity Purchase Obligation** has the meaning given in clause 10.25(c).

**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.

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

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

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

**Environmental Documents** means the Planning Approvals.

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

**Environmental Representative** means Healthy Buildings International Pty Ltd (ABN 39 003 270 693) of Suite 2.06, Level 2, 29-31 Solent Circuit, Norwest, NSW 2153, appointed by the Principal under a separate contract and any person appointed by the Principal as a replacement from time to time, as notified to OpCo.

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

**EPA** means the Environment Protection Authority constituted by the *Protection of the Environment Administration Act 1991* (NSW).

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

**EPBC Act Approval** means the Minister for the Environment's approval under the EPBC Act (EPBC reference: 2020/8687) dated 3 June 2021, a copy of which (as at the date of this deed) appears in Exhibit 4 (*Planning Approvals*), and includes all:

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

as the approval may be modified from time to time.

[REDACTED]

[REDACTED]

[REDACTED]



[REDACTED]

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

[REDACTED]

**Escrow Deed** has the meaning given in Schedule 32 (*Intellectual Property*).

**ETS** means the ticketing system for Sydney Metro – Western Sydney Airport, including the ETS Equipment, software, smartcards and all other aspects of the system, as modified or replaced from time to time.

**ETS Delivery Partner** means Transport for NSW.

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

- (a) installed on Sydney Metro – Western Sydney Airport by or on behalf of the ETS Delivery Partner; or
- (b) provided by or on behalf of the ETS Delivery Partner and intended to be used by OpCo, excluding smartcards.

**ETS IP** has the meaning given in Schedule 32 (*Intellectual Property*).

**ETS Program** has the meaning given in clause 1 of Schedule 16 (*ETS Interface*).

**Excavated Natural Material (ENM)** means Waste which is excavated natural material in accordance with *The excavated natural material order 2014* (NSW EPA Resource Recovery Order under Part 9, clause 93 of the *Protection of the Environment Operations (Waste) Regulation 2014* (NSW)).

**Excluded Asset** means the assets referred to section 1.2.1.3.2 of Particular Specification 01 (*General*).

**Excluded Utility Services Works** means the construction, modification or relocation of incidental Utility Services, and includes Utility Services associated with:

- (a) local feeds to residential properties;
- (b) local feeds to farms and reticulation within farms;
- (c) drainage;
- (d) temporary utilities for construction purposes; and
- (e) demolition of street lighting infrastructure,

to be designed or constructed by OpCo and handed over to the Principal, an Authority or any other person in accordance with this deed.

**Exclusion Sanction** has the meaning given to that term in subsection 3(3) of the Building Code.

**Executive Negotiator** means:

- (a) for OpCo, its chief executive officer; and
- (b) for the Principal, the Sydney Metro Chief Executive,  
(or his or her delegate).

**Existing Land Arrangements** means the dealings described in clause 2.1 of Schedule 14 (*Easements, Land Arrangements and Commercial Opportunities*) and clause 12.4.

**Expert** means the person appointed to determine a Dispute pursuant to clause 63.6.

**Expiry Date** means:

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

**Extension** means a continuous extension to Sydney Metro – Western Sydney Airport to form an integrated, operational extended metro system.

**Extension Supply Direct Deed** means:

- (a) the deed titled "Siemens Mobility Extension Supply Direct Deed" dated on or about the date of this deed between the Principal, OpCo, Siemens Mobility Pty Ltd ACN 625 304 556, Siemens Mobility Austria GmbH (Registered in Austria, FN 483145 h) and Siemens Mobility GmbH (Commercial Register B Munich, HRB 237219;
- (b) the deed titled "O&M Contractor Extension Supply Direct Deed" dated on or about the date of this deed between the Principal, OpCo and the O&M Contractor and
- (c) any other Extension supply direct deed entered into in accordance with clause 61.3(f).

**Exterior Fence** means the exterior fence for the rail corridor.

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

**Facility Agreement** means the agreement titled 'Syndicated Facility Agreement in relation to Sydney Metro Western Sydney Airport – Stations, Systems, Trains, Operations and Maintenance (SSTOM) PPP Project' dated on or about the date of this deed between, amongst others, the Debt Financiers, the Agent, the Security Trustee, the Account Bank, OpCo, OpCo HoldCo, Finance Co and Finance HoldCo.

**Final Completion** has the meaning given in clause 22.10(b).

**Final Completion Payment** means [REDACTED].

**Final Design Documentation** means:

- (a) AFC Design Documentation; or
- (b) AFC Design Documentation which:
  - (i) has been amended by a Modification directed or approved by the Principal's Representative in accordance with clauses 33, 34, 35 or 36; or
  - (ii) has been amended in accordance with clause 23.21.

**Final Frequent Breaches Notice** means a notice issued under clause 47.7(c) which complies with the requirements of clause 47.7(d).

**Final Impact Statement** means an assessment of the anticipated impact that the Extension option is likely to have (both during construction and after completion) on Sydney Metro – Western Sydney Airport.

**Final Inspection Auditor** has the meaning given in clause 24.16(a).

**Final Performance Test** has the meaning given in Attachment A (*SSTOM Specification Glossary*) to the Particular Specification and section 12.6.4 of Particular Specification 12 (*Testing and Commissioning*).

**Final Persistent Breach Notice** means a notice issued under clause 47.6(c) which complies with the requirements of clause 47.6(d).

**Finance Co** means Parklife Metro Finance Pty Ltd ACN 657 444 141.

**Finance Co Deed of Charge** means the deed titled 'SMWSA – SSTOM – FinanceCo Deed of Charge' between the Principal and Finance Co dated on or around the date of this deed.

**Finance HoldCo** means Parklife Metro Finance Holdings Pty Ltd ACN 663 673 489.

**Finance HoldCo Deed of Charge** means the deed of charge with respect to the shares and other marketable securities in Finance Co dated on or about the date of this deed between the Principal as chargee and Finance HoldCo as chargor.

**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 14 (*Financial Close Adjustment Protocol*).

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

**Financial Model** means the Base Case Financial Model as updated from time to time after Financial Close in accordance with clause 57.2(a).

**Financial Year** means a financial year commencing on 1 July, except that:

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

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

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

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

**First Operations Period** means with respect to an FIW Defect the period of [REDACTED] commencing on the day after the earlier of the Date of Completion and the Date for Completion.

**First Passenger Service** means the first Train Service with Customers on board the Train on Sydney Metro – Western Sydney Airport.

**FIW Asset Management Information** means any "Asset Management Information" (as defined in each FIW Contract), including any draft "Asset Management Information" submitted to the Principal by each FIW Contractor under an FIW Contract.

**FIW Change** means an SBT Change or SCAW Change.

**FIW Completion** means SBT Completion or SCAW Completion.

**FIW Contract** means the SBT Contract and the SCAW Contract.

**FIW Contractor** means the SBT Contractor and the SCAW Contractor.

**FIW Date of Substantial Completion** means the SBT Date of Substantial Completion or the SCAW Date of Substantial Completion.

**FIW Defect** means a SBT Defect or a SCAW Defect.

**FIW Design Documentation** means all design documentation for the Foundation Infrastructure Works.

**FIW Detailed Site Investigation** means a 'Detailed Site Investigation' (as defined in each FIW Contract) performed by or on behalf of an FIW Contractor under an FIW Contract.

**FIW Detailed Site Investigation (UXO)** means a 'Detailed Site Investigation (UXO)' (as defined in each FIW Contract) performed by or on behalf of an FIW Contractor under an FIW Contract.

**FIW Interface Requirements Specification** means:

- (a) in relation to the interface between the SSTOM Works and the SBT Works, the 'Interface Requirements Specification' included in Schedule C1 of the SBT Contract; and
- (b) in relation to the interface between the SSTOM Works and the SCAW Works, the 'Interface Requirements Specification' included in Schedule C1 of the SCAW Contract.

**FIW Interim Site Audit Advice** means an 'Interim Site Audit Advice' (as defined in each FIW Contract) prepared by or on behalf of an FIW Contractor under an FIW Contract.

**FIW Known Defect** means:

- (a) in respect of the SBT Works, a Minor SBT Defect, Agreed SBT Defect or Accepted SBT Defect; and
- (b) in respect of the SCAW Works, a Minor SCAW Defect, Agreed SCAW Defect or Accepted SCAW Defect.

**FIW Notice of Substantial Completion** means a SBT Notice of Substantial Completion or a SCAW Notice of Substantial Completion (as applicable).

**FIW O&M Manual** means the SBT O&M Manual and the SCAW O&M Manual.

**FIW Portion** means a SBT Portion or a SCAW Portion.

**FIW Remediation Action Plan** means a 'Remediation Action Plan' (as defined in each FIW Contract) prepared by or on behalf of an FIW Contractor under an FIW Contract.

**FIW Site** means each of the following:

- (a) the SBT Site; and
- (b) the SCAW Site.

**FIW Site Audit Report** means a 'Site Audit Report' (as defined in each FIW Contract) prepared by or on behalf of an FIW Contractor under an FIW Contract.

**FIW Site Audit Statement** means a 'Site Audit Statement' (as defined in each FIW Contract) prepared by or on behalf of an FIW Contractor under an FIW Contract.

**FIW Structural Defect** means an SBT Structural Defect or a SCAW Structural Defect.

**FIW Subcontractor** means a contractor, sub-contractor, sub-sub-contractor and so on right down the contracting chain (including all suppliers, tradespersons and consultants) of an FIW Contractor but excludes the Independent Certifier.

**FIW Substantial Completion** means SBT Substantial Completion or SCAW Substantial Completion.

**FIW Tolerances** means the permitted tolerances for certain aspects of the Foundation Infrastructure Works, as set out in section 1.4.2 of Particular Specification 01 (*General*).

**FIW Validation Report** means a 'Validation Report' (as defined in each FIW Contract) prepared by or on behalf of an FIW Contractor under an FIW Contract.

**Flood Model Baseline Design Scenario** means all those input variables relating to the design of the SSTOM Works and Temporary Works as provided for and populated by the Principal in the version of the Reference Flood Model provided to proponents as part of the Request for Proposal.

**Flood Model Output Schedule** means the output variables from the Reference Flood Model used to demonstrate the compliance of the Design Documentation with the Flood Resilience Requirements.

**Flood Model Proposal Design Scenario** means the Flood Model Baseline Design Scenario as amended by OpCo as part of and to reflect OpCo's Proposal Design.

**Flood Model SSTOM Design Inputs** means the parameters populated by OpCo in the Flood Model SSTOM Design Scenario to reflect the design of the SSTOM Works and Temporary Works, including the following elements:

- (a) basin configuration;
- (b) design alignment and earthworks profiles;
- (c) surface water drainage elements including catch drains and cess drains; and
- (d) station structure locations and precinct designs.

**Flood Model SSTOM Design Scenario** means (as applicable):

- (a) the Flood Model Baseline Design Scenario;
- (b) the Flood Model Proposal Design Scenario; and
- (c) each subsequent iteration of the Flood Model SSTOM Design Inputs developed in accordance with clause 15.2(a).

**Flood Resilience Requirements** means each of the following requirements:

- (a) section 3.7 of Particular Specification 03 (*Civil Engineering*); and
- (b) the requirement to not exceed the flood impacts presented in the documents listed in the Condition A1 of the Project Planning Approval or the flood impact criteria in Table 5 of Condition E15 of the Project Planning Approval, whichever is greater, within and in the vicinity of the Project for all flood events up to and including the one (1) per cent Annual Exceedance Probability (AEP) flood event.

**Force Majeure Event** has the meaning given in clause 31.1.

**Forecast Aggregate Consumption** means the volume of electricity which OpCo estimates it will consume through the Electricity Provider Connection Points over a Forecast Period for the purposes of operating and maintaining Sydney Metro – Western Sydney Airport during the Operations Phase, as notified and updated to the Principal in accordance with clause 10.25(e).

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

**Foundation Infrastructure Works** or **FIW** means the:

- (a) SBT Works; and
- (b) SCAW Works.

**Framework Principles** has the meaning given in the Master Interface Deed.

**Frequent Breach** has the meaning given in clause 47.7.

**Frequent Breaches Notice** means a notice issued under clause 47.7(a) which complies with the requirements of clause 47.7(b).

**FSM Contract** means the deed titled "Managing Contractor Contract – Contract Number: ISD-18-7541-G – Transport Access Program – Station Upgrades – Footbridge St Marys" entered into or to be entered into between TfNSW and the FSM Contractor.

**FSM Contractor** means Laing O'Rourke Australia Pty Limited ABN 71 111 023 431.

**FSM Interface Requirements Specification** means the 'Interface Requirements Specification' for the SSTOM Works and the FSM Works, which is set out at in Exhibit 9 (*FSM Interface Requirements Specification*) of this deed.

**FSM Works** means the physical works in relation to the pedestrian overbridge at St Marys which are to be designed and constructed by the FSM Contractor under the FSM Contract.

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

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

**General Specification** or **GS** means the section of the SSTOM Specification of that name.

**Geotechnical Reports** means the geotechnical reports listed in Exhibit 6A (*Geotechnical Reports and Reliance Letters*).

**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 SSTOM PPP.

**Government Policy** means any of:

- (a) policies or guidelines of the NSW Government or Commonwealth Government; or
- (b) notwithstanding clause 1.16:
  - (i) a Sydney Metro Principal Contractor Health and Safety Standard; or
  - (ii) a Sydney Metro Principal Operator and Maintainer Health and Safety Standard,

as published from time to time.

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

**Graffiti/Vandalism Relevant Amount** means for each Financial Year (Operations), [REDACTED] (CPI Indexed), provided that where a Financial Year (Operations) is less than 365 days the Graffiti/Vandalism Relevant Amount will be calculated on a pro-rata basis.

**GSF Act** means the *Government Sector Finance Act 2018* (NSW).

**GSF Act Guarantee** means the guarantee made on or prior to the date of Financial Close pursuant to section 6.27 of the GSF Act in respect of the Principal's obligations under the Principal Project Agreements.

**GST** has the meaning given in the GST Act.

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

**GST Return** has the meaning given in the GST Act.

**Handback Auditor** has the meaning given in clause 24.11(a).

**Handback Audits** has the meaning given to that term in clause 24.11(a).

**Handback Condition** means the required condition of Sydney Metro – Western Sydney Airport as at the Expiry Date (or, if this deed is terminated early, at the end of the Term), as set out in section 13.13 of Particular Specification 13 (*Asset Management*) and provided that any FIW Known Defects or Deviations within the FIW Tolerances are permitted for the purposes of section 1.4.2 of Particular Specification 01 (*General*).

**Handover Induction Workshop** has the meaning given in clause 5.3(a).

**Handback Rectification Costs** has the meaning given in clause 24.11(c)(iii).

**Handback Security Bond** means the bond referred to in clause 25.1(a)(i) and any replacement bond provided under clauses 25.2 or 25.5.

**Handover Spares** means in respect of each category of Spares the greater of:

- (a) the Spares identified to be made available at hand back in the then current Spares and Consumables Strategy; and

- (b) the average number of Spares held in each category at the end of the Financial Years (Operations) falling 2, 3 and 4 years before the end of the Term.

**Hassell D&C Significant Contract (Architecture and Urban Design)** means the agreement titled 'Design Services Agreement – Architectural Design Services' between Webuild S.p.A and the Hassell Significant Contractor dated on or about the date of this deed.

**Hassell D&C Significant Contract (Architecture and Urban Design) Side Deed** means the deed titled 'Hassell D&C Significant Contractor Side Deed' between the Principal, the Hassell Significant Contractor and the D&C Contractor dated on or around the date of this deed.

**Hassell Significant Contractor** means Hassell Limited ABN 24 007 711 435.

**Health and Safety Plan – Delivery Phase** means the Project Plan of that name.

**Health and Safety Plan – Operations Phase** means the Project Plan of that name.

**Heavy Vehicle National Law** means the *Heavy Vehicle National Law* (NSW) and the regulations and any other legislative instruments under that Act.

**Hired Moveable Asset** means any Moveable Asset set out in Schedule 28 (*Hired Moveable Assets*) 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 Principal's Representative pursuant to clause 9.3(f).

**Human Health and Environment Risk Assessment** means the assessment for Spoil Reuse- Sydney Metro and Western Sydney Airport, prepared by Cardno, Rev003 and dated 2 July 2021.

**Human Resources Plan** means the Project Plan of that name.

**HV Reticulation** has the meaning given in Attachment A (*SSTOM Specification Glossary*) to the Particular Specification.

**HVAC** has the meaning given in Attachment A (*SSTOM Specification Glossary*) to the Particular Specification.

**IC Project Plan** means the Project Plans identified as requiring certification by the Independent Certifier in section 5 of the General Specification.

**IDAR Panel** means the Independent Dispute Avoidance and Resolution Panel which has been or will be constituted under the IDAR Panel Agreement, referred to in clause 63.

**IDAR Panel - Dispute Referral Notice** has the meaning given in clause 63.5(a).

**IDAR Panel Agreement** means the agreement titled "Independent Dispute Avoidance and Resolution Panel Agreement" between the Principal, the members of the IDAR Panel and any other party that accedes to the agreement from time to time. A copy of the draft IDAR Panel Agreement as at the date of this deed is contained in Exhibit 15 (*IDAR Panel Agreement*).

**IDAR Panel Agreement Accession Deed Poll** means an accession deed poll substantially in the form of Schedule 1 of the IDAR Panel Agreement.

**Identified Utilities Register** means:

- (a) the register of Utility Services referred to in Section A of Exhibit 6B (*Identified Utilities Register*); and
- (b) any investigation reports referred to in Section B of Exhibit 6B (*Identified Utilities Register*).

**Incident** means an accident, event or occurrence which:

- (a) actually or potentially causes death, serious injury, significant passenger disruption;
- (b) affects the operation of the Stations or the Trains on, or operational capacity or efficiency of, Sydney Metro – Western Sydney Airport; or
- (c) affects the operation of trains on the Sydney metropolitan rail network.

**Incident Management Plan** means the Project Plan of that name.

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

**Indemnified IP Parties** has the meaning given to the term 'Indemnified Parties' in Schedule 32 (*Intellectual Property*).

**Indemnified Party** has the meaning given in clause 44.2.

**Independent Assessor** means an independent assessor (if any) engaged by the Principal in accordance with clause 35.6 for a Minor Modification.

**Independent Auditor** means any independent auditor appointed by the Principal in accordance with the Planning Approvals and the Principal's obligations in Schedule 13 (Planning Approval Conditions) and any person appointed by the Principal as a replacement from time to time, as notified to OpCo.

**Independent Certifier** means together Systra (387 949 530 R.C.S. Paris) of 72 Rue Henry Farman, 75015, Paris, France and Kellogg Brown & Root Pty Ltd (ABN 91 007 660 317) of 186 Greenhill Road, Parkside SA 5063 or such other person(s) as may be engaged by the Principal and OpCo in accordance with the SSTOM Independent Certifier Deed.

**Indexing Capital Component** means the Indexing Capital Component of the Base Availability Fee identified as such and stated as the 'Indexing Capital Component of the Base Availability Fee' in the Model Outputs Schedule.

**Indicative Timetable** has the meaning given in section 11.2.9 of Particular Specification 11 (*Operations and Customer Service*).

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

- (a) is referred to in Exhibit 5 (*Information Documents*);
- (b) is issued or made available by, or on behalf of, the Principal, Transport for NSW or the State to OpCo and its Associates in connection with the Request for Proposal, the SSTOM Works, the Project or the ETS (including anything issued or made available through the Principal or Transport for NSW's website) regardless of whether at the time of issue (or being made available) was expressly classified or stated to be an "Information Document"; or
- (c) is 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:

- (d) 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 or request for tender process (or equivalent)); or
- (e) on, before or after the date of execution of this deed,

other than any information, data, document or material which the Principal 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.

**Infrastructure Maintenance Vehicle** has the meaning given to that term in Attachment A (*SSTOM Specification Glossary*) to the Particular Specification.

**Infrastructure NSW** means the independent statutory agency established under the *Infrastructure NSW Act 2011* (NSW).

**Initial Defects Period** means with respect to an FIW Defect, the period commencing on the FIW Date of Substantial Completion of the FIW Portion in which the FIW Defect occurred under the relevant FIW Contract and ending on the earlier of the Date of Completion and the Date for Completion.



**Initial Equity Interest** means in respect of an Equity Investor in OpCo, the respective proportion for that Equity Investor detailed in schedule 3 of the Shareholders Agreement at the date of this deed.

**Initial Handback Audit** means the first Handback Audit undertaken by the Handback Auditor in accordance with clause 24.11.

**Initial Pandemic Management Plan** means the initial Pandemic Management Plan set out in Attachment C (*Initial Project Plans*) to the Particular Specification.

**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 the Principal 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 the Principal 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 [REDACTED], the holder of a Security Interest takes (or appoints an agent to take) possession of any property of that [REDACTED] 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;
  - (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 the Principal, 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 Date of Completion and each third, or multiple thereof, anniversary of that date;
- (b) falling three months after the date on which OpCo receives written notification from the Principal's Representative in accordance with clause 45.5(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 the Principal's Representative in accordance with clause 45.6 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 45.15(a).

**Insurance Proceeds Account** means the account referred to in clause 45.15(b).

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

**Intellectual Property** has the meaning given in Schedule 32 (*Intellectual Property*).

**Interface Management Plan** means the sub-Project Plan of that name in the Systems Engineering Management Plan.

**Interface Works** means the work to be executed by the FIW Contractors, which will interface with, or affect or be affected by, OpCo's Activities and the SSTOM Works.

**Interim Inspection Auditor** has the meaning given in clause 24.17(a)(ii).

**Interim Site Audit Advice** means formal, written advice provided by an Accredited Site Auditor confirming that a Detailed Site Investigation, Remediation Action Plan (and any addenda), Validation Report or Remediation activity (as applicable) has been performed in accordance with guidelines made or approved by the EPA and is free from significant errors and omissions.

**Internal Funding Agreement** has the meaning given in the Facility Agreement but refers only to the version of those agreements dated on or about the date of this deed as varied, novated, ratified or replaced pursuant to this deed.

[REDACTED]

**Key Offsite Area** means a location identified as a Key Offsite Area in Schedule 15 (*Key Offsite Areas*) and any other such location agreed by the Principal in writing (in its absolute discretion) after the date of this deed.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED];



governments or local councils or Authorities, with which OpCo is legally required to comply.

**Licensed Intellectual Property** has the meaning given in Schedule 32 (*Intellectual Property*).

**Licensed Maintenance Area** means the land (including subsurface land) and airspace more particularly described as the "Licensed Maintenance Area" in Attachment B2 (*Licensed Maintenance Area Drawings*) to the Particular Specification, as amended in accordance with clause 12.3.

**Licence Payment** means each licence payment payable by OpCo to the Principal under clause 28A 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.

**Local Area Works** means the modification, reinstatement and improvement of Local Areas which OpCo must design and construct and hand over to the Principal 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).

**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 SSTOM 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.

**Long Term Environmental Management Plan** has the meaning given in clause 11.10(a).

**Longstop Date** means the date that falls 18 months after the Date for Completion.

**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 over the next rolling two (2) year time period as set out in section 13.10.1 of Particular Specification 13 (*Asset Management*).

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

**Management Services Agreement** means the deed titled 'Management Services Deed' between OpCo and Plenary Asset Management Pty Ltd ACN 161 527 466 dated on or around the date of this deed.

**Master Interface Deed** means the deed titled "Sydney Metro Master Interface Deed" between the Principal, the FIW Contractors and any other party that accedes to the deed from time to time, including, from the date that OpCo enters into the Master Interface Deed – Accession Deed Poll, OpCo. A copy of the Master Interface Deed is contained in Exhibit 10 (*Master Interface Deed*).

**Master Interface Deed – Accession Deed Poll** means the "Accession Deed Poll" executed by OpCo substantially in the form of Schedule 1 of the Master Interface Deed.

**Material Change to Baseline Reference Flood Model** has the meaning given in clause 15.6(d)(ii).

**Material Development Change** has the meaning given to it in clause 15.3(a).

**Material Impact** has the meaning given in the Master Interface Deed.

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

**Maximum Headway** has the meaning given in Schedule 2 (*Service Payment calculation*).

**Maximum Train Journey Time** has the meaning given in Schedule 2 (*Service Payment calculation*).

**Member** has the meaning given to it in the IDAR Panel Agreement.

**Minimum Operating Standards** means the minimum operating standards developed in accordance with section 11.2.3 of Particular Specification 11 (*Operations and Customer Service*).

**Minor Defect** means a Defect:

- (a) which:
  - (i) does not:
    - (A) prevent Sydney Metro – Western Sydney Airport from being fit for its intended purpose;
    - (B) prevent the achievement of the system performance requirements specified in section 1.3.2 of Particular Specification 01 (*General*);
    - (C) prevent access to the Station Precincts or Stations; or
    - (D) in the Principal's reasonable opinion, affect the public image of Sydney Metro – Western Sydney Airport; and
  - (ii) the Independent Certifier determines that OpCo has reasonable grounds for not promptly rectifying; or
- (b) which the parties agree in writing is a Minor Defect.

**Minor FIW Defect** means a Minor SBT Defect or a Minor SCAW Defect.

**Minor Modification** means a Modification:

- (a) to the Temporary Works, the SSTOM Works, the Delivery Activities or any Operations Activities in the Delivery Phase that will not:
  - (i) involve Base Costs exceeding [REDACTED]
  - (ii) delay Completion; or
  - (iii) have any effect on the Foundation Infrastructure Works; or
- (b) to the Operations Activities in the Operations Phase that will not:
  - (i) involve Base Costs exceeding [REDACTED] (WPI Indexed) in any Financial Year (Operations) when aggregated with the Base Costs of all other Minor Modifications in that Financial Year (Operations); or
  - (ii) increase the recurrent costs of performing the Operations Activities,

and that:

- (c) will not require any new Approvals or changes to existing Approvals to implement the proposed Modification, or have any adverse effect on existing Approvals;
- (d) in respect of which the Principal does not require OpCo to obtain any additional finance to fund the Modification;
- (e) will not have any adverse impact on:
  - (i) OpCo's ability to satisfy its obligations under this deed (including any warranties given by OpCo under this deed); or

- (ii) the Operations Activities including OpCo's performance against any performance indicator or requirement which could result in a Service Payment Deduction; or
- (f) will not require any relief 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.

**Minor Modification Cost Proposal** has the meaning given in clause 35.4.

**Minor Modification Proposal** means a proposal for a Minor Modification entitled "Minor Modification Proposal".

**Minor Non-Compliance** means a minor error, minor omission or minor non-compliance:

- (a) which:
  - (i) does not:
    - (A) prevent Sydney Metro – Western Sydney Airport from being fit for its intended purpose;
    - (B) prevent the achievement of the system performance requirements specified in section 1.3.2 of Particular Specification 01 (*General*); or
    - (C) affect the safety of Sydney Metro – Western Sydney Airport; and
  - (ii) the Principal's Representative or Independent Certifier (as applicable) determines that OpCo has reasonable grounds for not promptly correcting prior to the certification required to be obtained under this deed; or
- (b) which the parties agree in writing is a Minor Non-Compliance.

**Minor SBT Defect** means a SBT Defect that is capable of being corrected after the relevant part of the Construction Site has been handed over to OpCo without causing delay or disruption to OpCo's Activities within the relevant part of the Construction Site, and which is listed in the relevant SBT Notice of Substantial Completion as a "Minor Defect".

**Minor SCOW Defect** means a SCOW Defect that is capable of being corrected after the relevant part of the Construction Site has been handed over to OpCo without causing delay or disruption to OpCo's Activities within the relevant part of the Construction Site, and which is listed in the relevant SBT Notice of Substantial Completion as a "Minor Defect".

**Missed Platform** has the meaning given in Schedule 2 (*Service Payment calculation*).

**Missed Train Service** has the meaning given in Schedule 2 (*Service Payment calculation*).

[REDACTED]

**Modern Slavery** has the same meaning given to the term 'modern slavery' in the Modern Slavery Laws and includes slavery, servitude, forced labour, human trafficking, debt bondage, organ trafficking, forced marriage and the exploitation of children.

**Modern Slavery Information** may include (as applicable) information about:

- (a) any risks of, actual or suspected occurrences of, and/or remedial action taken in respect of, Modern Slavery;
- (b) Modern Slavery policies and due diligence frameworks;
- (c) Modern Slavery training programs;
- (d) engagement by OpCo or the Core Contractors with their respective supply chains and/or OpCo Contractors in relation to Modern Slavery;
- (e) Modern Slavery audits (including any independent audit of OpCo, a Core Contractor or any other OpCo Contractor) and factory inspections; and
- (f) the source, place and country of origin of goods and services being supplied,

but excludes "personal information" as defined in the PPIP Act or information which tends to identify individuals.

**Modern Slavery Laws** means, as applicable, the *Modern Slavery Act 2018* (NSW) and the *Modern Slavery Act 2018* (Cth).

**Modern Slavery Offence** has the same meaning as in the *Modern Slavery Act 2018* (NSW).

**Modern Slavery Statement** means a 'modern slavery statement' as required or volunteered under the *Modern Slavery Act 2018* (Cth).

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

- (a) the SSTOM Works;
- (b) the Temporary Works;
- (c) Sydney Metro – Western Sydney Airport; or
- (d) OpCo's Activities (or the sequencing or timing of them),

including:

- (e) any addition, reduction, increase, decrease or omission to or from them; and
- (f) any design works, surveys or site investigations in respect of a potential or proposed change referred to in paragraphs (a) to (d) in order to:
  - (i) better understand the feasibility of the potential or proposed change referred to in paragraphs (a) to (d); or
  - (ii) advance progress in respect of a potential or proposed change referred to in paragraphs (a) to (d) to ensure that, if approved, implementation of the change would not be unreasonably delayed,

but excluding any changes that are required as a result of a Pre-Agreed Option which the Principal has directed pursuant to clause 36.1(a).

**Modification Approval** means a notice titled "Modification Approval" issued by the Principal under clause 34.2(a)(ii)(A) or clause 34.2(d)(i).

**Modification Cost Proposal** has the meaning given in clause 33.2(e)(i).

**Modification Impact Proposal** means a proposal submitted by OpCo under clause 33.2(a).

**Modification Impact Request** means a notice titled "Modification Impact Request" issued by the Principal under clause 33.1(a).

**Modification Order** means a notice titled "Modification Order" issued by the Principal under clause 33.

**Modification Payment Schedule** has the meaning given in clause 33.2(e)(ii).

**Modifications Register** has the meaning given in clause 32.5(a).

**Modifications Review** has the meaning given in clause 32.11(a).

**Modifications Review Date** means each anniversary of the date of Financial Close.

**Modifications Working Group** means the working group established in accordance with clause 32.6 to manage Modifications during the Delivery Phase and First Operations Period and includes:

- (a) the Principal's Modifications Manager; and
- (b) OpCo's Modifications Personnel.

**Monthly Operations Performance Report** means the monthly report prepared in accordance with, and containing the information required by, section 6.3 of the General Specification.

**Monthly Service Payment Report** means the monthly report prepared in accordance with, and containing the information required by, section 6.3 of the General Specification and submitted in accordance with clause 28.15.

**Moral Rights Consent** has the meaning given in Schedule 32 (*Intellectual Property*).

**Moveable Assets** means:

- (a) the Trains;
- (b) the Spares, including the Handover Spares;
- (c) the Special Tools and Equipment;
- (d) the Infrastructure Maintenance Vehicles; and
- (e) all other chattels:
  - (i) forming part of the SSTOM Works;
  - (ii) used by OpCo or OpCo Contractors for the purpose of carrying out the Operations Activities and permanently stored within the Licensed Maintenance Areas; or
  - (iii) which are vehicles with the primary function of transporting equipment to, from and within the Licensed Maintenance Areas for the purpose of carrying out the Operations Activities,

but excluding any chattels used for the Commercial Opportunities.

**National Energy Retail Law** means 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).

**National Remediation Framework** means the National Remediation Framework (CRC CARE, 2020).

**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.

**NEPM (2013)** means the 'National Environment Protection (Assessment of Site Contamination) Measure 1999' as amended on 16 May 2013.

**Net Financial Impact** means the net financial impact of a NFI Event calculated in accordance with Schedule 6 (*Net Financial Impact*).

**Network Charges** means all charges payable to the Electricity Provider:

- (a) under the Electricity Connection Agreement; or
- (b) by the electricity retailer from which the Principal purchases electricity for Sydney Metro – Western Sydney Airport, and which are passed through to the Principal by that electricity retailer in respect of that electricity,

but does not include any charges relating to:

- (c) augmentation of the Electricity Provider's electricity networks (which includes any consequential work required by the Electricity Provider to their respective network); or
- (d) connection to facilitate the Electricity Provider Connection Points 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.

**NFI Event** has the meaning given in Schedule 6 (*Net Financial Impact*).

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

**Nominated Member** has the meaning given in the IDAR Panel Agreement.

**Nominated Subcontract** has the meaning given in clause 61.4(b)(i).

**Nominated Subcontractor** means the nominated subcontractors and suppliers specified in Schedule 24 (*Nominated Subcontractors*).

**Nominated Subcontractor Work** means OpCo's Activities to be performed by a Nominated Subcontractor which are described in Schedule 24 (*Nominated Subcontractors*).



**Non-contestable Utility Service Works** means those Utility Service Works identified as Non-Contestable Utility Service Works in Exhibit 6D (*Definition of contestable and Non-Contestable Utility Service Works*).

**Non-Indexing Component** means the Non-Indexing Component of the Base Availability Fee identified as such and stated as the 'Non-Indexing Component of the Base Availability Fee' in the Model Outputs Schedule.

**Notice Confirming Participation** has the meaning given to clause 63.16(d).

**Notice of Dispute** means a notice given under clause 63.3(a).

**Notice of Intention to Terminate** has the meaning given in clause 31.3(a).

**Notice of Proposed Extension** has the meaning given in Schedule 37 (*Extensions*).

**Notice of Referral of Dispute to Expert Determination** has the meaning given in clause 63.6(a).

**Notifiable Event** has the meaning given in clause 52.10(b).

**NSW Government** means the State and its agencies.

**NSW Guidelines** means the NSW Industrial Relations Guidelines: Building and Construction Procurement (July 2013, updated September 2017), available at [www.industrialrelations.nsw.gov.au](http://www.industrialrelations.nsw.gov.au), or any substitute for, or update to, such guidelines.

**NSW Trains** means the corporation constituted by section 37(1) of the *Transport Administration Act 1988* (NSW).

**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 and the [transportnsw.info](http://transportnsw.info) website (or any replacement service that serves a similar function).

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

**O&M Contract Side Deed** means the deed titled "O&M Contract Side Deed" between the Principal, 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 Contractor** means RATP Dev WSA Pty Ltd ABN 64 664 164 872.

**O&M Contractor Deed of Charge** means the deed of charge dated on or about the date of this deed between the Principal as chargee and the O&M Contractor as chargor.

**O&M Contractor's Modifications Manager** means:

- (a) the person engaged by the O&M Contractor in the position of "Modifications Manager" in accordance with clause 10.23(c)(i); or
- (b) any other person from time to time engaged by the O&M Contractor to replace that person in accordance with clause 10.23(c)(ii).

**O&M Contractor's Representative** means [REDACTED] or any other person from time to time notified by OpCo to replace that person.

**O&M Guarantee** means:

- (a) in respect of O&M Guarantor (RATP Developpement S.A.), the deed titled "O&M Guarantee" dated on or about the date of this deed between OpCo and O&M Guarantor (RATP Developpement S.A.); and
- (b) [REDACTED]

**O&M Guarantor** means each of:

- (a) O&M Guarantor (RATP Developpement S.A.); and

[REDACTED]

**O&M Guarantor (RATP Developpement S.A)** means RATP Developpement S.A. (RCS PARIS 389 795 006).

**Obsolescence or Obsolete** means, in respect of an Asset:

- (a) the Asset is no longer:
  - (i) manufactured by its original manufacturer; or
  - (ii) supported by the original manufacturer;
- (b) any Spare, Special Tools and Equipment or component part is no longer generally available;
- (c) any consumable materials required to support the operation, maintenance, repair or overhaul of that Asset during the Term are no longer generally available; or
- (d) if it is software, it is no longer supported by its supplier.

**Obsolescence Management Plan** means the Project Plan of that name.

**Obsolescence Notice** has the meaning given in clause 24.5(a)(i).

**On-Airport Construction (Rail) Plan and Construction Environmental Management Plans** means the 'On-Airport Construction (Rail) Plan' and 'Construction Environmental Management Plans' developed by the Principal for Sydney Metro – Western Sydney Airport in accordance with the Airport Plan, as amended from time to time.

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

**On-Sale Price** has the meaning given in clause 10.25(a)(ii)(A).

**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 but excludes the Independent Certifier and Infrastructure NSW.

**OpCo ETS Works** has the meaning given in Schedule 16 (*ETS Interface*).

**OpCo Event of Default** means any event specified in clause 47.1.

[REDACTED]

[REDACTED]

**OpCo Handover Date** means with respect to each SBT Site (SSTOM) and SCAW Site (SSTOM):

- (a) the Site Access Date for that SBT Site (SSTOM) or SCAW Site (SSTOM); or
- (b) any earlier date OpCo accepts that SBT Site (SSTOM) or SCAW Site (SSTOM) in accordance with clause 13.2(b).

**OpCo HoldCo** means Parklife Metro Holdings Pty Ltd ACN 663 673 489 in its personal capacity and in its capacity as trustee of the OpCo Hold Co Trust.

**OpCo HoldCo Deed of Charge** means the deed of charge with respect to the shares and other marketable securities in OpCo dated on or about the date of this deed between the Principal as chargee and OpCo HoldCo as chargor.

**OpCo HoldCo Trust** means the trust known as the Parklife Metro Holdings Unit Trust (ABN 30 737 151 082) and constituted by the OpCo HoldCo Trust Deed.

**OpCo HoldCo Trust Deed** means the Parklife Metro Holdings Unit Trust Deed dated 30 November 2022 signed by OpCo HoldCo.

**OpCo Personal Information** means any information or an opinion about an identified individual, or an individual who is reasonably identifiable:

- (a) whether the information or opinion is true or not; and
  - (b) whether the information or opinion is recorded in a material form or not,
- that is collected, used, stored, disclosed or handled by OpCo or its officers, employees, contractors, sub-contractors or agents in the course of OpCo's business that is not otherwise Personal Information.

**OpCo Submissions** has the meaning given in clause 4.8(a)(i).

**OpCo Termination Event** means any event specified in clause 49.1.

**OpCo Trust** means the trust known as the Parklife Metro Unit Trust (ABN 50 667 445 077), constituted by the OpCo Trust Deed.

**OpCo Trust Deed** means the Parklife Metro Unit Trust Deed dated 30 November 2022 signed by OpCo.

**OpCo Trust Property** means all present and future undertakings, assets, property and rights comprising the trust fund of the OpCo 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 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 the Principal 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 the Principal 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 Modifications Manager** means:

- (a) the person employed by OpCo in the position of "Modifications Manager" in accordance with clause 10.23(c)(i); or
- (b) any other person from time to time employed by OpCo to replace that person in accordance with clause 10.23(c)(ii).

**OpCo's Modifications Personnel** means:

- (a) during the Delivery Phase:
  - (i) OpCo's Modifications Manager;
  - (ii) the D&C Contractor's Modifications Manager;
  - (iii) the O&M Contractor's Modifications Manager; and
  - (iv) any additional personnel employed in accordance with clause 32.3(g);
- (b) during the First Operations Period:
  - (i) OpCo's Modifications Manager;
  - (ii) the O&M Contractor's Modifications Manager; and
  - (iii) any additional personnel employed in accordance with clause 32.3(g); and
- (c) at all other times during the Operations Phase, any personnel engaged in accordance with clause 32.3(g),



- (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 the activities described in section 1.2.1.3 of Particular Specification 01 (*General*).

**Operations Activities Review** has the meaning given in clause 23.3(a).

**Operations and Maintenance Manuals (O&M Manuals)** has the meaning given in Attachment A (*SSTOM Specification Glossary*) to the Particular Specification.

**Operations Control Centre** means the centralised command and control facility for Sydney Metro – Western Sydney Airport operations as described in section 4.5 of Particular Specification 04 (*Stabling and Maintenance Facility*).

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

**Operations Phase Scope 1 Carbon Offsets** means the carbon offsets to be purchased to offset the Operations Phase Scope 1 Emissions.

**Operations Phase Scope 1 Carbon Offsets Cost** has the meaning given to it in clause 10.29(e).

**Operations Phase Scope 1 Emissions** means the direct greenhouse gas (GHG) emissions occurring from sources that are owned or controlled by OpCo and the OpCo Contractors related to the Operations Activities from, and including, First Passenger Service until the expiry of the Term.

**Operations Plan** means the Project Plan of that name.

**Operative Provisions** means the operative provisions of this deed, being clauses 1 to 69 and excluding all Schedules and exhibits.

**Origin Station** has the meaning given in Schedule 2 (*Service Payment calculation*).

**Original Date for Completion** means the Date for Completion as at Financial Close and stated as the "Original Date for Completion" in the Model Outputs Schedule.

**Original Expiry Date** means the 15th anniversary of the Date for Completion or the Date of Completion, whichever is the earlier.

**OSD Enabling Works** has the meaning given in Attachment A (*SSTOM Specification Glossary*) to the Particular Specification.

**OSD Above Ground Enabling Works** has the meaning given in Attachment A (*SSTOM Specification Glossary*) to the Particular Specification.

**Other Contractors** means any contractor, consultant, tradesperson, supplier or other person engaged or authorised by the Principal to do work on or about the Sydney Metro Site but excluding OpCo, OpCo's Contractors, FIW Contractors, FIW Subcontractors, the ETS Delivery Partner and its contractors, the FSM Contractor, the Airport Lessee and Airport Lessee Contractors.

**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 SSTOM Works or Sydney Metro – Western Sydney Airport, including any Proximate Work Activities undertaken by an Other Contractor.

**Over Station Development or OSD** has the meaning given in Attachment A (*SSTOM Specification Glossary*) to the Particular Specification.

**Pandemic** means:

- (a) COVID-19; and
- (b) any other infectious disease that is declared as a pandemic by the World Health Organisation after the date of this deed.

**Pandemic Change in Law** means (if it takes effect after the date of this deed):

- (a) a change in (including any extension, repeal, revocation or expiry of) Legislation in response to a Pandemic;
- (b) new Legislation in response to a Pandemic; or
- (c) a new Pandemic Direction or a change to (including any extension, repeal, revocation or expiry of) an existing Pandemic Direction.

**Pandemic Compensation Event** means any of the following occurring after the date of this deed:

- (a) a Pandemic Subcontractor's Plant Closure; or
- (b) in the Delivery Phase only:
  - (i) a full day delay in the supply of any Key Plant and Equipment from a Key Plant and Equipment Manufacturing Country as a result of:
    - (A) Australian quarantine restrictions; or
    - (B) a closure of the Australian international border or any other international border,
 where such quarantine restrictions or border closures are introduced after the date of this deed as a result of a Pandemic and have a material adverse impact on OpCo's Activities; or
  - (ii) a Pandemic Construction Site Closure,

but in each case:

- (c) provided that OpCo has demonstrated to the Principal that it has complied and is continuing to comply with the Pandemic Management Plan in relation to the relevant events in paragraphs (a) and (b); and
- (d) excluding a Pandemic Compensation Event that arises from a Pandemic Change in Law (which shall be treated as a Pandemic Change in Law).

**Pandemic Construction Site Closure** means a full day closure of the Construction Site which:

- (a) occurs after the date of this deed;
- (b) is required to be closed by Law or a Pandemic Direction as a result of an outbreak of a Pandemic;
- (c) has been closed in compliance with the Pandemic Management Plan; and
- (d) has a material impact on OpCo's Activities.

**Pandemic Direction** means a direction, order, requirement, declaration or exercise of a power by a relevant Authority in New South Wales or in any other Australian jurisdiction in response to a Pandemic which OpCo is required to implement in order to comply with its obligations under Legislation, including:

- (a) a public health order or direction issued by a relevant Authority under the *Public Health Act 2010* (NSW) or the equivalent public health Legislation in another Australian jurisdiction;
- (b) the exercise of powers or issuing of directions or requirements by a relevant Authority under the *Biosecurity Act 2015* (Cth);
- (c) the exercise of powers or issuing of directions pursuant to a declaration of an emergency as a 'state of disaster' or a declaration of a 'state of emergency'; or
- (d) the exercise of powers or issuing of directions analogous or with a similar effect to those contemplated in paragraphs (a) to (c).

**Pandemic Impact Date** has the meaning given in clause 40.4(a).

**Pandemic Management Plan** means the Project Plan referred to as the Pandemic Management Plan in section 5.2.30 of the General Specification, as updated from time to time in accordance with clause 41.4.

**Pandemic Subcontractor's Plant Closure** means the full day closure of an OpCo Contractor's plant or factory:

- (a) in the Delivery Phase:
  - (i) located within Australia where that plant or factory supplies Critical Domestic Construction Materials to OpCo; or
  - (ii) located in a Key Plant and Equipment Manufacturing Country where that plant or factory supplies Key Plant and Equipment to OpCo,
 which delays OpCo in achieving Completion by more than one day per event; or
- (b) in the Operations Phase, located in a Critical Overseas Operations Materials Manufacturing Country where that plant or factory supplies Critical Overseas Operations Materials to OpCo,

in each case which:

- (c) is required to be closed by:
  - (i) if the plant or factory is located in Australia, Law or a Pandemic Direction; or
  - (ii) if the plant or factory is located in a Key Plant and Equipment Manufacturing Country or a Critical Overseas Operations Materials Manufacturing Country, law,
 as a result of an outbreak of a Pandemic;
- (d) occurs after the date which is the later of the date of execution of the relevant Subcontract and the date of this deed;
- (e) has been closed in compliance with a "Pandemic management plan" prepared by the relevant OpCo Contractor; and
- (f) has a material impact on OpCo's Activities.

**Particular Specification** means the section of the SSTOM Specification of that name.

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

**PDCS** means the Principal's web based TeamBinder project data and collaboration system, or such other electronic project data and collaboration system notified by the Principal's Representative under clause 65(b).

**Performance Failure** has the meaning given in clause 44.4(a).

**Performance Test** has the meaning given in Attachment A (*SSTOM Specification Glossary*) to the Particular Specification.

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

- (a) external surfaces of the viaduct structure, not facing the running rails;
- (b) underbridge and overbridge surfaces not facing the rail corridor;
- (c) noise wall surfaces not facing the rail corridor;
- (d) Exterior Fence surfaces not facing the rail corridor; and
- (e) in relation to the Stations:
  - (i) substations and ancillary sites where these are separate from the Station and immediate environs; and
  - (ii) barriers and gates where these are separate from the Station and immediate environs.

**Permitted Act** means an act or omission:

- (a) permitted, authorised or required under a Principal Project Agreement; or
- (b) required to comply with any Law or Standard.

**Permitted Change in Control** means a Change in Control described in Part B of Schedule 21 (*Permitted Change of Ownership and Permitted Change in Control*).

**Permitted Change of Ownership** means a Change of Ownership described in Part A of Schedule 21 (*Permitted Change of Ownership and Permitted Change in Control*).

**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 Principal Project Agreements, the Financiers Tripartite Deed or the Debt Financing Documents; and
- (f) any other Security Interest to which the Principal has given its prior written consent, but only to the extent it secures Financial Indebtedness in amounts to which the Principal has given its consent.

**Persistent Breach** has the meaning given in clause 47.6(a).

**Persistent Breach Notice** means a notice issued under clause 47.6(a) which complies with the requirements of clause 47.6(b).

**Personal Information** means information or an opinion about an identified individual, or an individual who is reasonably identifiable whether the information or opinion is:

- (a) true or not; and
- (b) recorded in a material form or not,

that is collected, used, stored, disclosed or handled by OpCo or its officers, employees, contractors, sub-contractors or agents in connection with the Project.

**PFAS** means per- and poly-fluoroalkyl substances, including those identified in Appendix A of the PFAS National Environmental Management Plan 2.0 dated January 2020 developed by the Heads of EPAs Australia and New Zealand, as updated, replaced or amended from time to time, in soil and rock.

**PFAS Time Event** means a requirement for OpCo to Remediate any PFAS for which OpCo is responsible under clause 11.5(a), except to the extent the PFAS is in groundwater and only to the extent that:

- (a) OpCo is required to suspend OpCo's Activities, or is prevented from removing the PFAS from the Construction Site, due to a requirement of, or direction issued by, an Authority;
- (b) OpCo has demonstrated to the Principal's satisfaction that:
  - (i) PFAS cannot be left on the Construction Site; and
  - (ii) a further Approval is required for the pre-treatment or disposal of the PFAS prior to removal from the Construction Site; or
- (c) OpCo has demonstrated to the Principal's satisfaction that no licensed waste facilities are able to lawfully accept and manage that PFAS.

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

**Planning Approval Representatives** means the following persons to be engaged by the Principal in accordance with the Planning Approvals and Schedule 13 (*Planning Approval Conditions*):

- (a) the Environmental Representative;
- (b) the Independent Auditor;
- (c) the Community Complaints Mediator; and



- (d) any other person engaged by the Principal under the Planning Approvals in accordance with the Principal's obligations in Schedule 13 (*Planning Approval Conditions*)

**Planning Approvals** means:

- (a) the Project Planning Approval;
- (b) the Airport Plan;
- (c) the EPBC Act Approval; and
- (d) any other consent, concurrence or approval, or determination of satisfaction with any matter, which is made, given or issued under the Planning Approvals referred to in paragraphs (a) to (c) above 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 (*Service Payment calculation*).

**Platform Closure** has the meaning given Schedule 2 (*Service Payment calculation*).

**Platform Screen Doors** has the meaning given in Attachment A (*SSTOM Specification Glossary*) to the Particular Specification.

**Plenary** has the meaning given in clause 60.2(e).

**POEO Act** means the *Protection of the Environment Operations Act 1997* (NSW).

**Potential Matter** means any matter which a party considers may, or has the potential to, give rise to a Dispute.

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

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

**Pre-Agreed Option** means any of the pre-agreed options specified in Schedule 5 (*Pre-Agreed Options*).

**Pre-Agreed Option Construction Payment** means, in respect of a month and a Pre-Agreed Option which the Principal has directed pursuant to clause 36.1(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.

**Principal Capital Contribution Account** has the meaning given in the Financiers Tripartite Deed.

**Principal Deed of Charge** (or **OpCo Deed of Charge**) means the deed of charge dated on or about the date of this deed between the Principal as chargee and OpCo as chargor.

**Principal ETS Activities** has the meaning given in Schedule 16 (*ETS interface*).

**Principal Project Agreements** means those Project Agreements to which the Principal is a party.

**Principal Refinancing Share** has the meaning given in clause 56.9(a).

**Principal's Insurances** has the meaning given in clause 45.1.

**Principal's Modifications Manager** means the person appointed by the Principal and notified to OpCo in writing or any other person from time to time appointed by the Principal to replace that person in accordance with clause 32.2.

**Principal's Representative** means [REDACTED] or any other person from time to time appointed by the Principal to replace that person in accordance with clause 6.1(a).

**Privacy Act** means the *Privacy Act 1988* (Cth) and the Australian Privacy Principles in that Act.

**Privacy Laws** means:

- (a) the Privacy Act;
- (b) the PPIP Act;

- (c) any codes or guidelines approved under the Acts referred to in paragraphs (a) and (b); and
- (d) all other Laws that apply to the privacy, protection and handling of any Personal Information in force from time to time.

**Probity Event** includes any event or thing which occurs before or after the date of this deed which:

- (a) has a material adverse effect on, or on the perception of, the character, integrity or honesty of an [REDACTED], an Equity Investor, a Core Contractor, a Core Contractor Guarantor or a Relevant Person;
- (b) relates to an [REDACTED], an Equity Investor, a Core Contractor, a Core Contractor Guarantor or a Relevant Person and has or may have a material adverse effect on the public interest, or public confidence, in the SSTOM PPP; or
- (c) involves a material failure of an [REDACTED], an Equity Investor, a Core Contractor, a Core Contractor Guarantor, Relevant Person or any OpCo Contractor to achieve or maintain:
  - (i) reasonable standards of ethical behaviour;
  - (ii) the avoidance of conflicts of interest which will have a material adverse effect on the ability of the [REDACTED], Equity Investor, a Core Contractor, a Core Contractor Guarantor, Relevant Person or OpCo Contractor (as applicable) to carry out and observe its obligations in connection with the SSTOM PPP; or
  - (iii) other standards of conduct that would otherwise be expected of a party involved in a Principal or NSW Government project.

**Probity Investigation** means any probity, criminal or security investigations to report on or check the character, integrity, experience or honesty of a person or entity, including:

- (a) investigations into commercial structure, business and credit history, prior contract compliance or any criminal records or pending charges; and
- (b) interviews of any person or research into any relevant activity that is or might reasonably be expected to be the subject of criminal or other regulatory investigation.

**Professional Service Providers** has the meaning given in Schedule 6 (*Net Financial Impact*).

**Project** means the Sydney Metro – Western Sydney Airport project and the operation and maintenance of the same.

**Project Agreements** means:

- (a) this deed;
- (b) the SSTOM Independent Certifier Deed;
- (c) the SBT Independent Certifier Deed;
- (d) the SBT IC Deed of Accession;
- (e) the SCAW Independent Certifier Deed;
- (f) the SCAW IC Deed of Accession;
- (g) the Master Interface Deed;
- (h) the Master Interface Deed – Accession Deed Poll;
- (i) the D&C Contract;
- (j) the D&C Contract Side Deed;
- (k) the D&C Guarantee;
- (l) the D&C Independent Certifier Deed;
- (m) the O&M Contract;
- (n) the O&M Contract Side Deed;

- (o) each O&M Guarantee;
- (p) the O&M Contractor Deed of Charge;
- (q) the Core Contractor Interface Deed;
- (r) each Significant Contract;
- (s) each Significant Contractor Side Deed;
- (t) the Equity Purchase Deed;
- (u) the OpCo HoldCo Deed of Charge;
- (v) the Finance HoldCo Deed of Charge;
- (w) the Debt Financing Documents;
- (x) each Internal Funding Agreement;
- (y) the Equity Documents;
- (z) the Financiers Tripartite Deed;
- (aa) the OpCo Deed of Charge;
- (bb) the Finance Co Deed of Charge;
- (cc) the GSF Act Guarantee;
- (dd) any Deeds of Assurance;
- (ee) any Moral Rights Consents;
- (ff) any Rail Safety Interface Agreement;
- (gg) the IDAR Panel Agreement;
- (hh) the IDAR Panel Agreement Accession Deed Poll;
- (ii) the TLS Deed;
- (jj) the TLS Contractor Guarantee;
- (kk) each Extension Supply Direct Deed;
- (ll) the CRS Estimator Deed;
- (mm) the CRS Estimator Deed Poll;
- (nn) the Management Services Agreement;
- (oo) the Escrow Deed
- (pp) the Securitisation Agreement; and
- (qq) the Payment Directions Deed.

**Project Briefing** has the meaning given in the IDAR Panel Agreement.

**Project Debt** means the Financial Indebtedness of any Project Entity under the Debt Financing Documents.

**Project 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 Contractors in performing OpCo's Activities; and
- (b) without limiting paragraph (a), the Design Documentation and the Project Plans.

**Project Entity** means OpCo or Finance Co.

**Project Integration Group** has the meaning given in the Master Interface Deed.

**Project Management Plan** means the Project Plan of that name.

**Project Planning Approval** means the approval granted by the Minister for Planning and Public Spaces under section 5.19 of the EP&A Act dated 23 July 2021, a copy of which (as at the date of this deed) appears in Exhibit 4 (*Planning Approvals*) and includes all:

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

as the approval may be modified from time to time.

**Project Plans** means the plans listed in section 5 of the General Specification, 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 Attachment B1 (*Construction Site Drawings*) to the Particular Specification.

**Project Values** means the values that will guide the delivery of the Project, being:

- (a) safety and wellbeing;
- (b) collaboration;
- (c) integrity;
- (d) innovation;
- (e) excellence; and
- (f) achievement.

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

- (a) all or part of Sydney Metro – Western Sydney Airport, and not to other railways in Australia;
- (b) OpCo, and not to other persons;
- (c) the Sydney Metro Site and not to any other:
  - (i) similarly situated land or facilities; or
  - (ii) land or facilities where similar activities to OpCo's Activities are undertaken; or
- (d) projects procured or established under the:
  - (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 Policy and 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 section 1.2.2.11.4 of Particular Specification 01 (*General*) (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 Request for Proposal (or equivalent).

**Proposal Design** means the concept design for Sydney Metro – Western Sydney Airport prepared by OpCo or an OpCo Contractor as part of the Proposal and included in Attachment D (*Proposal Design*) to the Particular Specification.

**Proposed Accepted FIW Change** has the meaning given in clause 16.6(a).

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

**Proximate Work Activity** means any activities that the Principal wishes to carry out (or have carried out by an Other Contractor) within, adjacent to, over or under the Sydney Metro Site), including the activities listed in clause 39.1, but excluding:

- (a) the Principal ETS Activities;
- (b) the construction of the Foundation Infrastructure Works;
- (c) the construction of the FSM Works;
- (d) the rectification of an FIW Defect by an FIW Contractor or an Other Contractor; and
- (e) OpCo's Activities.

**Public Disclosure Obligations** has the meaning given in clause 54.3(a).

**Public Transport Agency** means the Principal, Transport for NSW (and each of its divisions), TAHE, Sydney Trains and NSW Trains.

**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.

**Rail Easement (RID)** means the Rail Easement granted by the Commonwealth (as those terms are defined in the Airport and Rail Integration Deed) in accordance with clause 15 of the Airport and Rail Integration Deed.

**Rail Entity** means TAHE, 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 2012 No. 82a* (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).

**Rail Transport Operator** has the meaning given in the Rail Safety National Law.

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

**Rates** means all rates, Taxes or charges or other amounts which any Authority levies by reference to Sydney Metro – Western Sydney Airport or the Sydney Metro Site, but excluding head works costs or other contributions levied by reference to the SSTOM Works or the Operations Activities and excluding any Land Tax.

**Receivables Purchase Payment** has the meaning given to that term in the Securitisation Agreement.

**Receivables Purchase Price** has the meaning given to that term in the Securitisation Agreement.

**Reference Design** means the reference design for Sydney Metro – Western Sydney Airport prepared by or on behalf of the Principal and provided as an Information Document.

**Reference Flood Model** means the scenario based computer model initially prepared by the Principal to predict the height, flow and duration of flood events in the catchment area of the Project, as amended and reissued from time to time in accordance with clause 15.

**Reference Pictures** has the meaning given in Schedule 2 (*Service Payment calculation*).

**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 SSTOM 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 56.8.

**Refinancing Loss** has the meaning given in clause 56.8.

**Related Body Corporate:**

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

**Related Offence Provisions** means those provisions of the *Crimes Act 1900* (NSW), the *Human Tissue Act 1983* (NSW) and the Commonwealth *Criminal Code* which create slavery and associated offences, as listed from time to time in Schedule 2 to the *Modern Slavery Act 2018* (NSW).

**Relationship Principles** has the meaning given in clause 5.1(a).

**Relevant Entity** has the meaning given in the Security of Critical Infrastructure Laws from time to time.

**Relevant Infrastructure** has the meaning given in clause 43.1(b).

**Relevant Person** means:

- (a) a director or secretary of OpCo, an [REDACTED], an Equity Investor, a Core Contractor or a Core Contractor Guarantor;
- (b) the personnel referred to in clause 10.23(c)(i); or
- (c) an officer, agent, employee or consultant of OpCo, an [REDACTED], an Equity Investor, a Core Contractor, a Core Contractor Guarantor or an OpCo Contractor who has the ability to exercise influence or control over the decisions or actions of OpCo, an [REDACTED], an Equity Investor, a Core Contractor, a Core Contractor Guarantor or an OpCo Contractor in relation to the SSTOM PPP other than solely through the exercise of voting rights at a meeting of shareholders or directors of OpCo, an [REDACTED], an Equity Investor, a Core Contractor, a Core Contractor Guarantor or an OpCo Contractor.

**Reliance Letters** means the reliance letters contained in Exhibit 6A (*Geotechnical Reports and Reliance Letters*).

**Relief Event** means each of the following:

- (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) excluding an [REDACTED];
- (c) a Terrorist Act excluding an [REDACTED];

- (d) war (declared or undeclared), armed conflict, riot or civil commotion excluding an [REDACTED];
- (e) 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 11.5);
- (f) any blockade or embargo, excluding an [REDACTED] and excluding a blockade or embargo:
  - (i) which only affects OpCo and/or one or more OpCo Contractors; or
  - (ii) as a result of or in connection with a Pandemic;
- (g) any event or occurrence which deprives OpCo of any access to the Sydney Metro Site that it is entitled to under this deed excluding an [REDACTED]
- (h) an act or omission by the Principal 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 the Principal of its obligations under this deed or any other Project Agreement (without prejudice to clause 29); or
  - (iv) which is caused or contributed to by a breach by OpCo of the Project Agreements or any fraudulent, reckless, unlawful, negligent or malicious act or omission of OpCo or its Associates;
- (i) the Principal directs an amendment to the ETS Program in accordance with clause 3.1(d) of Schedule 16 (*ETS Interface*);
- (j) a direction by the Minister under Part 2 of the *Public Health Act 2010* (NSW) (other than a Pandemic Direction) to the extent that OpCo cannot, in compliance with Law, comply with a material part of its obligations under this deed;
- (k) a PFAS Time Event; and
- (l) there is a total failure of all electricity supply at the Electricity Provider Connection Points due to an interruption of supply upstream from the Electricity Provider Connection Points and that failure occurs:
  - (i) on or after the TCP Date but before the Date of Completion, provided the failure of electricity supply impacts OpCo's testing and commissioning activities under this deed which require electricity supply from an Electricity Provider Connection Point; or
  - (ii) after the Date of Completion.

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

- (m) was within the reasonable control of OpCo or an OpCo Contractor; or
- (n) occurs or arises as a result of any act or omission of OpCo or OpCo Contractors (other than where the act or omission is a Permitted Act).

**Remediation** or **Remediate** has the meaning given in the *Contaminated Land Management Act 1997* (NSW).

**Remediation Action Plan** means a plan for the Remediation of Contamination which satisfies the requirements of clause 11.8 and is prepared in accordance with the Contaminated Land Guidelines: Consultants Reporting on Contaminated Land (NSW EPA, 2020).

**Remediation Activities** means the Remediation of Contamination on the Sydney Metro Site by OpCo in accordance with the Remediation Action Plan.

**Remediation Period** has the meaning given in clause 24.8(d).

**Remediation Practical Completion** means the stage where the physical Remediation of any area has reached practical completion as described in the applicable Remediation Action Plan.

**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 so that:

- (a) there ceases to be any continuing detrimental effect of that breach or OpCo Event of Default;
- (b) any prior detrimental effect is rectified; and
- (c) the Principal and its Associates are in the position they would have been in had the relevant breach or OpCo Event of Default not taken place.

**Replacement and Refurbishment** has the meaning given in section 13.10.4 of Particular Specification 13 (*Asset Management*).

**Reputable Insurer** means an insurance company having the Required Rating.

**Request for Proposal** means the Request for Proposal in respect of the SSTOM PPP issued by the Principal on 25 November 2021.

**Required 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 the Principal 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 (as approved by the Principal in writing).

**Required Train Services** means, at any time, the railway passenger services which OpCo is required to provide set out in clause 5 of Annexure A of Schedule 2 (*Service Payment calculation*), that must as a minimum meet the requirements in section 11.3.4 of Particular Specification 11 (*Operations and Customer Service*).

**Resolution Institute** means the Resolution Institute, Australia.

**Respective Proportion** has the meaning given in clause 60.2(e).

**Revised FSM Requirements** has the meaning given in clause 10.21(b).

**Rhomberg Rail D&C Significant Contract** means the construct-only contract titled "Construction Subcontract – Significant Contractor" between Webuild S.p.A and the Rhomberg Rail Significant Contractor dated on or about the date of this deed

**Rhomberg Rail D&C Significant Contract Side Deed** means the deed titled 'Rhomberg Rail D&C Significant Contractor Side Deed' between the Principal, the Rhomberg Rail Significant Contractor, Rhomberg Rail Significant Contractor Guarantor and the D&C Contractor dated on or around the date of this deed.

**Rhomberg Rail Significant Contractor** means Rhomberg Rail Australia Pty Ltd ABN 70 082 016 608.

**Rhomberg Rail Significant Contractor Guarantor** means Rhomberg Australia Pty Ltd ABN 32 118 517 052.

**Richard Crookes D&C Significant Contract** means the construct-only contract titled "Construction Subcontract – Significant Contractor" between Webuild S.p.A and the Richard Crookes Significant Contractor dated on or about the date of this deed.

**Richard Crookes D&C Significant Contract Side Deed** means the deed titled 'Richard Crookes D&C Significant Contractor Side Deed' between the Principal, the Richard Crookes Significant Contractor, Richard Crookes Significant Contractor Guarantor and the D&C Contractor dated on or around the date of this deed.

**Richard Crookes Significant Contractor** means Richard Crookes Constructions Pty Ltd ABN 33 001 375 266.



**Richard Crookes Significant Contractor Guarantor** means R.C. & L.C. Holdings Pty Limited ABN 41 105 030 117.

**Risk Management Plan** means the Project Plan of that name.

**Risk Register** means a register of risks which OpCo has notified in accordance with clause 52.3(e).

**Rolling Stock Operator** has the meaning given in the Rail Safety National Law.

**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.

**SBT Change** means:

- (a) any change or variation to the SBT Works; or
- (b) any change or variation to the design of the SBT Works arising from a "Change" (as defined under the SBT Contract) directed by the Principal or proposed by the SBT Contractor and approved by the Principal under the SBT Contract,

following the date of this deed including any Deferred FIW Activities or any addition, reduction, increase, decrease, omission, deletion, demolition or removal to or from the SBT Works not including any change or variation that the SBT Contractor is entitled to make to the design of the SBT Works under the SBT Contract without the Principal's consent where, following any such change or variation, the SBT Works will continue to comply with the requirements of the SBT Contract.

**SBT Completion** has the meaning given to the term "Completion" in the SBT Contract.

**SBT Contract** means the deed titled "Sydney Metro – Western Sydney Airport Station Boxes and Tunnelling Works Design and Construction Deed" between the Principal and the SBT Contractor dated 21 December 2021. A copy of the SBT Contract as at the date of this deed is contained in Exhibit 8 (*FIW Contracts*).

**SBT Contractor** means CPB Contractors Pty Limited (ABN 98 000 893 667) and Ghella Pty Ltd (ABN 85 142 392 461).

**SBT Date of Substantial Completion** means, in respect of an SBT Portion:

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

**SBT Defect** means:

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

but does not include any Deviations within the FIW Tolerances or any Accepted SBT Defect that is Acceptable.

**SBT 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 SBT Independent Certifier Deed.

**SBT Independent Certifier Deed** means the deed titled "Sydney Metro – Western Sydney Airport – Independent Certification of the SBT Works – Independent Certifier Deed" entered into between the Principal, the SBT Contractor and the Independent Certifier, dated 25 January 2022, to which OpCo acceded under the SBT IC Deed of Accession.

**SBT Notice of Substantial Completion** has the meaning given to the term "Notice of Substantial Completion" in the SBT Contract.

**SBT O&M Manual** means the operation and maintenance manuals forming part of the FIW Asset Management Information under the SBT Contract.

**SBT Portion** has the meaning given to the term "Portion" in the SBT Contract.

**SBT Site** has the meaning given to the term "Construction Site" in the SBT Contract.

**SBT Site (SSTOM)** means that part of the SBT Site that forms part of the Construction Site.

**SBT Structural Defect** means either:

- (a) any SBT Defect in a load bearing component of the SBT Works that is essential to the structural integrity or stability of the SBT Works; or
- (b) any settlement of earthworks, engineering fill components, substrate and/or bedrock of the SBT Works beyond the amounts specified in the SBT Contract,

that, in either case:

- (c) causes the SBT Works (or any part of it) to be closed or prohibited from being used by or under any Law;
- (d) in the written opinion of a Structural Engineer is likely to result in the SBT Works (or any part of it) being closed or prohibited from being used by or under any Law if not rectified, repaired or replaced expeditiously;
- (e) is the cause of physical damage to the SBT Works (or any part of it) such that it will no longer meet the required level of performance or service;
- (f) in the written opinion of an appropriately qualified independent expert (appointed jointly by the Principal and OpCo with the costs shared on an equal basis) is likely to result in physical damage to the SBT Works (or any part of it) such that it will no longer meet the required level of performance or service if not rectified, repaired or replaced expeditiously;
- (g) causes the requirement for closure by or under any Law of any dependent or adjacent property (other than the SSTOM Works) which is supported by or structurally dependent upon the SBT Works; or
- (h) in the written opinion of a Structural Engineer is likely to require closure by or under any Law of any dependent or adjacent property (other than the SSTOM Works) which is supported by or structurally dependent upon the SBT Works,

other than to the extent a defect is caused, exacerbated or contributed to, including by way of any breach of its obligations, by OpCo or its Associates.

**SBT Substantial Completion** has the meaning given to the term "Substantial Completion" in the SBT Contract.

**SBT Works** means the physical works designed and constructed by the SBT Contractor under the SBT Contract.

**SCAW Change** means:

- (a) any change or variation to the SCAW Works; or
- (b) any change or variation to the design of the SCAW Works arising from a "Change" (as defined under the SCAW Contract) directed by the Principal or proposed by the SCAW Contractor and approved by the Principal under the SCAW Contract,

following the date of this deed, including any Deferred FIW Activities or any addition, reduction, increase, decrease, omission, deletion, demolition or removal to or from the SCAW Works not including any change or variation that the SCAW Contractor is entitled to make to the design of the SCAW Works under the SCAW Contract without the Principal's consent where, following any such change or variations, the SCAW Works will continue to comply with the requirements of the SCAW Contract.

**SCAW Completion** has the meaning given to the term "Completion" in the SCAW Contract.

**SCAW Contract** means the deed titled " Sydney Metro – Western Sydney Airport Surface and Civil Alignment Works and Design and Construction Deed " between the Principal and the SCAW Contractor dated 1 March 2022 in relation to the SCAW Works. A copy of the SCAW Contract as at the date of this deed is contained in Exhibit 8 (*FIW Contracts*).

**SCAW Contractor** means CPB Contractors Pty Limited (ABN 98 000 893 667) and United Infrastructure Pty Limited (ABN 39 634 541 807).

**SCAW Date of Substantial Completion** means, in respect of an SCAW Portion:

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

**SCAW Defect** means:

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

but does not include any Deviations with the FIW Tolerances or an Accepted SCAW Defect that is Acceptable.

**SCAW 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 SCAW Independent Certifier Deed.

**SCAW Independent Certifier Deed** means the deed titled "Sydney Metro – Western Sydney Airport – Independent Certification of the SCAW Works – Independent Certifier Deed" entered into between the Principal, the SCAW Contractor and the Independent Certifier, dated 31 March 2022, to which OpCo acceded under the SCAW IC Deed of Accession.

**SCAW Notice of Substantial Completion** has the meaning given to the term "Notice of Substantial Completion" in the SCAW Contract.

**SCAW O&M Manual** means the operation and maintenance manuals forming part of the FIW Asset Management Information under the SCAW Contract.

**SCAW Portion** has the meaning given to the term "Portion" in the SCAW Contract.

**SCAW Site** has the meaning given to the term "Construction Site" in the SCAW Contract.

**SCAW Site (SSTOM)** means that part of the SCAW Site that forms part of the Construction Site.

**SCAW Structural Defect** means either:

- (a) any SCAW Defect in a load bearing component of the SCAW Works that is essential to the structural integrity or stability of the SCAW Works; or
- (b) any settlement of earthworks, engineering fill components, substrate and/or bedrock of the SCAW Works beyond the amounts specified in the SCAW Contract,

that, in either case:

- (c) causes the SCAW Works (or any part of it) to be closed or prohibited from being used by or under any Law;
- (d) in the written opinion of a Structural Engineer is likely to result in the SCAW Works (or any part of it) being closed or prohibited from being used by or under any Law if not rectified, repaired or replaced expeditiously;
- (e) is the cause of physical damage to the SCAW Works (or any part of it) such that it will no longer meet the required level of performance or service;
- (f) in the written opinion of an appropriately qualified independent expert (appointed jointly by the Principal and OpCo with the costs shared on an equal basis) is likely to result in physical damage to the SCAW Works (or any part of it) such that it will no longer meet the required level of performance or service if not rectified, repaired or replaced expeditiously;

- (g) causes the requirement for closure by or under any Law of any dependent or adjacent property (other than the SSTOM Works) which is supported by or structurally dependent upon the SCAW Works; or
- (h) in the written opinion of a Structural Engineer is likely to require closure by or under any Law of any dependent or adjacent property (other than the SSTOM Works) which is supported by or structurally dependent upon the SCAW Works,

other than to the extent a defect is caused, exacerbated or contributed to, including by way of any breach of its obligations, by OpCo or its Associates.

**SCAW Substantial Completion** has the meaning given to the term "Substantial Completion" in the SCAW Contract.

**SCAW Works** means the physical works to be designed and constructed by the SCAW Contractor under the SCAW Contract.

**Schedule of Rates** means the schedules of rates in Schedule 7 (*Schedule of Rates*).

**Scope Deferral** has the meaning given in Schedule 38 (*Flexibility for Scope Deferral*).

**Second Operations Period** means the period commencing on the day after expiry of the First Operations Period until the end of the Term.

**Securitisation Agreement** means the agreement titled "Securitisation Agreement" dated on or about the date of this deed, between the Principal, 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, clause 28A and clause 28B (other than clause 28B.3).

**Securitised NFI Event Payment** means an amount equal to the corresponding Receivables Purchase Payment in respect of the Additional Receivables purchased by Finance Co from the Principal 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 PPS Act.

**Security Management Plan** means the sub-Project Plan of that name in the Systems Engineering Management Plan.

**Security of Critical Infrastructure Laws** means the *Security of Critical Infrastructure Act 2018* (Cth), and any statutory rules or guidelines approved under that Act, and all other Laws that apply to the security of critical infrastructure from time to time.

**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 ABN 12 004 044 937.

**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.

**Self-Assesses** means self-assesses using a methodology that is satisfactory to the Principal, acting reasonably.

**Senior Project Group** means the group established under clause 6.5.

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

**Service Change Limitations** has the meaning given in Schedule 2 (*Service Payment calculation*).

**Service Failure Points** has the meaning given in Schedule 2 (*Service Payment calculation*).

**Service Level Adjustment Amount** has the meaning given in Schedule 2 (*Service Payment calculation*).

**Service Payment** means, in respect of a month, the service payment for that month (if any) payable by the Principal to OpCo, calculated in accordance with Schedule 2 (*Service Payment calculation*), 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) a Reporting Deduction; or
- (f) a negative Asset Management Adjustment,

all as defined in Schedule 2 (*Service Payment calculation*).

**Service Payment Monitoring System** means the system referred to in clause 28.15.

**Service Quality Deduction** has the meaning given in Schedule 2 (*Service Payment calculation*).

**Service Quality KPI** has the meaning given in Schedule 2 (*Service Payment calculation*).

**Shareholders Agreement** means the agreement titled 'Securityholders Agreement' between Plenary Investments (SMWSA) Pty Ltd ACN 657 216 825, RATP Developpement S.A (RCS PARIS 389 795 006), SYD TS Pty Ltd ACN 663 897 872, Project Ventures Rail Investments (SMWSA) Pty Ltd ACN 664 015 203 and OpCo HoldCo dated on or before the date of this deed.

**Short Form Validation Report** means a short form report prepared by a Certified Contaminated Land Consultant which describes the activities performed to Remediate Contamination and includes relevant validation data.

**Siemens Mobility O&M Significant Contract** means the contract titled 'Sydney Metro – Western Sydney Airport Stations, Systems, Trains, Operations and Maintenance (SSTOM) Services Contract' between the O&M Contractor and the Siemens Mobility Significant Contractor dated on or about the date of this deed.

**Siemens Mobility O&M Significant Contract Side Deed** means the deed titled 'Siemens Mobility O&M Significant Contractor Side Deed' between the Principal, the Siemens Mobility Significant Contractor, Siemens Mobility GmbH (Commercial Register B Munich, HRB 237219 (as Significant Contractor Guarantor) and the O&M Contractor dated on or around the date of this deed.

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

**Significant Contractor** means each of:

- (a) the Hassell Significant Contractor;
- (b) the Rhomberg Rail Significant Contractor;
- (c) the Richard Crookes Significant Contractor;
- (d) the Siemens Mobility Significant Contractor;
- (e) the SMEC and Arup Design Significant Contractor; and
- (f) any other party (other than OpCo or a Core Contractor) to a Significant Contract.

**Significant Contractor Guarantor** means each entity named as a Significant Contractor Guarantor in a Significant Contractor Side Deed.

**Significant Contractor Side Deed** means:

- (a) each Significant Contractor Side Deed (Day 1); and
- (b) any additional side deeds entered into by a Significant Contractor and the Principal in accordance with clause 61.3(e).

**Significant Contractor Side Deed (Day 1)** means each of:

- (a) the Rhomberg Rail D&C Significant Contract Side Deed;
- (b) the Richard Crookes D&C Significant Contract Side Deed;

- (c) the Hassell D&C Significant Contract (Architecture and Urban Design) Side Deed;
- (d) the SMEC and Arup Design Joint Venture D&C Significant Contract Side Deed; and
- (e) the Siemens Mobility O&M Significant Contract Side Deed.

**Significant Contract** means each of:

- (a) the Rhomberg Rail D&C Significant Contract;
- (b) the Richard Crookes D&C Significant Contract;
- (c) the Hassell D&C Significant Contract (Architecture and Urban Design);
- (d) the SMEC and Arup Design Joint Venture D&C Significant Contract;
- (e) the Siemens Mobility O&M Significant Contract;
- (f) the contracts listed in Schedule 23 (*Significant Contracts*); and
- (g) any other contract that the parties agree from time to time is a Significant Contract.

**Significant Incident** has the meaning given in the Sydney Metro Principal Contractor Health and Safety Standard or the Sydney Metro Operator and Maintainer Health and Safety Standard (as applicable).

**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 Deed Poll** means a deed poll substantially in the form of Schedule 4 of the Master Interface Deed.

**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 extended in accordance with this deed.

**Site Access Schedule** means Exhibit 3 (*Site Access Schedule*).

**Site Audit Report** has the meaning given in the *Contaminated Land Management Act 1997* (NSW).

**Site Audit Statement** has the meaning given in the *Contaminated Land Management Act 1997* (NSW).

**Site Audit Statement – Section A1** means a Site Audit Statement that indicates the Remediation required to be performed by OpCo under this deed has been completed and the site is suitable for its intended use.

**Site Audit Statement – Section A2** means a Site Audit Statement that indicates the Remediation required to be performed by OpCo under this deed has been completed and the site is suitable for its intended use subject to compliance with either an active or passive environmental management plan.

**Site Audit Statement – Section B5** means a Site Audit Statement certifying that a Remediation Action Plan is appropriate and that the site can be made suitable for the proposed use.

**Site Conditions** are any physical conditions and characteristics of, upon, above, below or over the surface, or in the vicinity of, the Sydney Metro 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 the Principal or others;
- (d) surface water, ground water, ground water hydrology and the effects of any dewatering;
- (e) any Contamination, hazardous chemical or other spoil or waste;

- (f) topography of the Sydney Metro Site and any Extra Land, ground surface conditions and geology, including rock and sub-surface conditions or other materials encountered at the Sydney Metro 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;
- (k) any latent conditions; and
- (l) any UXOs.

**Site Interface Work** has the meaning given in clause 10.2(a)(ii).

**SMEC and Arup Design Joint Venture D&C Significant Contract** means the agreement titled 'Design Services Agreement – Engineering Design Services' between the Webuild S.p.A and the SMEC Arup Design Significant Contractor dated on or about the date of this deed.

**SMEC and Arup Design Joint Venture D&C Significant Contract Side Deed** means the deed titled 'SMEC and Arup Design Significant Contractor Side Deed' between the Principal, the SMEC and Arup Design Significant Contractor and the D&C Contractor dated on or around the date of this deed.

**SMEC and Arup Design Significant Contractor** means the unincorporated joint venture between SMEC Australia Pty Ltd ACN 065 475 149 and Arup Australia Projects Pty Ltd ACN 625 911 711.

**SMF** has the meaning given in Attachment A (*SSTOM Specification Glossary*) to the Particular Specification.

**Solid Waste** means soils and rock excavated from the Construction Site, comprising General Solid Waste (Putrescible), General Solid Waste (Non-Putrescible), Special Waste (Asbestos), Restricted Solid Waste, Hazardous Waste, Virgin Excavated Natural Material (VENM) and/or Excavated Natural Material (ENM) or soils and rock which are otherwise reusable in accordance with the POEO Act.

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

**Spares** has the meaning given in Attachment A (*SSTOM Specification Glossary*) to the Particular Specification.

**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 11.3.4.4 of Particular Specification 11 (*Operations and Customer Service*); or
- (b) a special event in respect of which the Principal directs a Service Change under clause 23.4.

**Special Majority Directors Approval** has the meaning given in clause 60.2(e).

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

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

**SSTOM PPP** means:

- (a) the financing, design and construction of the SSTOM Works and the Temporary Works and the performance of the other Delivery Activities;

- (b) the operation and maintenance of Sydney Metro – Western Sydney Airport and the ETS Equipment and the performance of the other Operations Activities; and
- (c) the handback to the Principal of Sydney Metro – Western Sydney Airport and the ETS Equipment,

in accordance with this deed.

**SSTOM Specification** means the General Specification and the Particular Specification contained in Exhibit 1 (*SSTOM Specification*).

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

- (a) the Trains and rail systems;
- (b) the linewide systems;
- (c) the Stations and Station Precincts;
- (d) the Stabling and Maintenance Facility;
- (e) the OpCo ETS Works and the Third Party Works;
- (f) the physical works, assets, systems and deliverables described in section 1.2.2 of Particular Specification 01 (*General*);
- (g) the OSD Enabling Works;
- (h) integration of the SSTOM Works and:
  - (i) the Foundation Infrastructure Works, including in accordance with each FIW Interface Requirements Specification; and
  - (ii) the FSM Works, including in accordance with the FSM Interface Requirements Specification;
- (i) to the extent relevant to such works, assets, systems and deliverables, any Modifications directed or approved in accordance with clauses 33, 34 or 35; and
- (j) pursuant to the exercise of a Pre-Agreed Option pursuant to clause 36.

but excluding the Temporary Works.

**Stabling and Maintenance Facility** means the stabling and maintenance facility (including the Operations Control Centre) at Orchard Hills described in Particular Specification 04 (*Stabling and Maintenance Facility*) to be designed and constructed by OpCo under this deed.

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

**Standard** has the meaning given in clause 1.16(a).

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

**State Significant Artefact** means an Artefact that meets any one or more of the requirements for "State Heritage Significance" under the *Heritage Act 1977* (NSW).

**Station** means in respect of the railway stations at St Mary's, Orchard Hills East, Luddenham, Airport Business Park, Airport Terminal and the Aerotropolis, 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 Attachment A (*SSTOM Specification Glossary*) to the Particular Specification.

**Step-in Event** has the meaning given in clause 48.1.

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

**Step-in Powers** has the meaning given in clause 48.3.



**Step-in Rights** has the meaning given in clause 48.2(a).

**Structural Engineer** means an independent structural engineer appointed jointly by the Principal and OpCo with the costs shared on an equal basis.

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

**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.

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

**Sydney Metro** means each present and future metro rail network procured and operated by or on behalf of the Principal, including:

- (a) Sydney Metro Northwest;
- (b) Sydney Metro City & Southwest;
- (c) Sydney Metro West; and
- (d) Sydney Metro – Western Sydney Airport.

**Sydney Metro Australian Industry Participation Plan** means the "AIP plan" (as defined in the *Australian Jobs Act 2013* (Cth)) developed by the Principal for Sydney Metro – Western Sydney Airport, as amended from time to time.

**Sydney Metro Operator and Maintainer Health and Safety Standard** means the "Sydney Metro Operator and Maintainer Health and Safety Standard (SM-21-00424917)", as amended from time to time.

**Sydney Metro Principal Contractor Health and Safety Standard** means the "Sydney Metro Principal Contractor Health and Safety Standard (SM-20-00100838)", as amended from time to time.

**Sydney Metro Site** means:

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

**Sydney Metro Unexpected Heritage Finds Procedure** means the document referred to as the "Sydney Metro Unexpected Heritage Finds Procedure (SM-18-00105232)", as amended from time to time.

**Sydney Metro – Western Sydney Airport** means the railway line from St Marys to Western Sydney Aerotropolis including the SBT Works, SCAW Works and SSTOM Works during delivery and as constructed, but excluding the ETS and the Third Party Works.

**Sydney Trains** means the corporation constituted by section 36(1) of the *Transport Administration Act 1988* (NSW).

**Sydney Trains Transition Agreement** means:

- (a) the agreement titled "Third Deed of Amendment to the Sydney Metro City & Southwest – Transition Agreement – Foundation Infrastructure Works Contracts (000-TPA-ST\_RC-02)" between the Principal, Transport Asset Holding Entity and Sydney Trains as set out in Schedule 1 to the Third Amendment to the Sydney Metro City & Southwest – Transition Agreement – Foundation Infrastructure Works Contracts (000-TPA-ST-RC-02) between the Principal, Transport Asset Holding Entity and Sydney Trains, such amendment being dated 27 September 2021 (as may be updated or replaced in accordance with clause 10.28); and
- (b) the agreement titled "Scope of Works and Access Schedule Sydney Metro Western Sydney Airport – Stations, Systems, Trains, Operations and Maintenance (SSTOM) Project Deed, Contract No TBA" between the Principal, Transport Asset Holding Entity and Sydney Trains dated 27 October 2022 (as may be updated or replaced in accordance with clause 10.28).

**Systems Engineering Management Plan** means the Project Plan of that name.

**TAHE** means the Transport Asset Holding Entity of New South Wales, a NSW Government agency constituted by section 4 of the *Transport Administration Act 1988* (NSW).

**TAO or Technically Assured Organisation** means an organisation providing a defined engineering service or product that has been assessed and granted authorised engineering status for the Project by Transport for NSW.

**Target Date for Completion** means [REDACTED]

**Tax** means any present or future tax, GST, levy, impost, duty, deduction, fee, charge, compulsory loan or withholding plus any interest, penalty, charge, fees or other amounts payable in respect thereof, imposed or levied by an Authority, the State, the NSW Government or the Commonwealth.

**Tax Invoice** has the meaning given in the GST Act.

**Taxable Supply** has the meaning given in the GST Act.

**TCP Date** means the date on which OpCo first draws electricity from an Electricity Provider Connection Point.

**TCP Electricity** has the meaning given in clause 10.25(a)(ii).

**Temporary Areas** means the land more particularly described as the "Temporary Areas" in Attachment B1 (*Construction Site Drawings*) to the Particular Specification.

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

**Tendered Works** means all or part of the works which would be required to effect a Modification in respect of which the Principal requires OpCo to conduct a tender process in accordance with clause 33.4.

**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.

**Term Extension Order** means a notice issued by the Principal pursuant to clause 3.3(i)(iii).

**Term Extension Period** means a period of up to 24 months as set out in the Term Extension Proposal Request issued by the Principal under clause 3.3(a).

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

**Term Extension Proposal Request** means a notice titled "Term Extension Proposal Request" issued by the Principal under clause 3.3(a).

**Term Extension Security Bond** means the bond referred to in clause 25.1(a)(ii) and any replacement bond provided under clause 25.5.

**Termination Payment** means an amount payable by the Principal to OpCo under clause 49.10, in each case calculated in accordance with Schedule 26 (*Termination Payments*) and clause 49.12 (if applicable).

**Terrorist Act** has the meaning given in section 3 of the *Terrorism and Cyclone Insurance Act 2003* (Cth) as at the date of this deed.

**Test** means:

- (a) a test required by the SSTOM Specification or the Testing and Commissioning Plan; and
- (b) an additional test which OpCo is directed to carry out under clause 21.8(a).

**Test Procedure** means a detailed procedure for the conduct of a Test that complies with the requirements of Particular Specification 12 (*Testing and Commissioning*).

**Test Program** has the meaning given in clause 21.3(d)(i).

**Test Report** means a report on the conduct of a Test, including supporting documentation, that complies with the requirements of Particular Specification 12 (*Testing and Commissioning*).

**Testing** means the carrying out of the Tests.

**Testing and Commissioning Plan** means the sub-Project Plan of that name in the Systems Engineering Management Plan.

**Third Party** means a party to a Third Party Agreement other than the Principal.

**Third Party Agreements** means the agreements referred to in Schedule 18 (*Requirements of Third Party Agreements*) entered into by the Principal with the parties referred to in Schedule 18 (*Requirements of Third Party Agreements*). Copies of the Third Party Agreements, as at the date of this deed, are contained in Exhibit 11 (*Third Party Agreements*).

**Third Party Agreement Amendment** has the meaning given in clause 10.28(d).

**Third Party Investor** has the meaning given in clause 60.2(e).

**Third Party Preparation Costs** means, in respect of a Modification proposed by the Principal or proposed FIW Change issued by the Principal under clause 16.2 (as applicable), the actual costs properly and reasonably incurred by a third party consultant engaged on arm's length terms by OpCo or a Core Contractor to provide services that are directly attributable to the preparation of a Modification Impact Proposal or assessment of a proposed FIW Change issued by the Principal under clause 16.2 (as applicable), but not including:

- (a) any third party consultant fees that would have been payable by OpCo or the Core Contractor, notwithstanding the issue of the Modification Impact Request or proposed FIW Change (as applicable) by the Principal;
- (b) any fees of a Professional Service Provider; or
- (c) any costs directly incurred by OpCo, an [REDACTED] Member, a Core Contractor or their Related Bodies Corporate, including any amount payable to an employee of OpCo, an [REDACTED] a Core Contractor or their Related Bodies Corporate.

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

**Timeliness Deduction** has the meaning given in Schedule 2 (*Service Payment calculation*).

**TLS Contractor Guarantee** means the deed titled "Deed of Guarantee and Indemnity" dated on or about the date of this deed between the Principal and Siemens Mobility GmbH Commercial Register B Munich, HRB 237219.

**TLS Deed** means the deed titled "Through Life Support Deed" dated on or about the date of this deed between the Principal and Siemens Mobility Pty Ltd ACN 625 304 556.

**TPPC Threshold** has the meaning given in clause 33.3(b).

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

**Training Management Plan** means the Project Plan of that name.

**Trains** means the trains, and each car which comprises a train, which OpCo must supply under this deed and operate and maintain for the purpose of conveying Customers under this deed.

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

**Transition Out Plan** means the Project Plan of that name.

**Transparent Basis** has the meaning given in clause 5.1(a)(v).

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

**Transport for NSW or TfNSW** means the NSW Government agency constituted by section 3C of the *Transport Administration Act 1988* (NSW).

**Transport Integration Plan** means the Project Plan of that name.

**Trial Operations** has the meaning given in Attachment A (*SSTOM Specification Glossary*) to the Particular Specification.

**Trustee's Indemnity** means, in relation to the OpCo, in its capacity as trustee of the OpCo Trust, and the OpCo Trust, the present and future rights and interest of the Trustee in respect of:

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

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

**UFWL** has the meaning given in Attachment A (*SSTOM Specification Glossary*) to the Particular Specification.

**Unexploded Ordnance Plan** means the plan to be submitted to the Principal's Representative in accordance with clause 12.7.

[REDACTED]

**Uninsurable Risk** means a risk in respect of which:

- (a) insurance is not available in the international insurance market with any Reputable Insurer and coverage is not available under the *Terrorism and Cyclone Insurance Act 2003* (Cth) or a similar legislative scheme; or
- (b) the insurance premium payable for insuring that risk with a Reputable Insurer or the terms and conditions of the relevant insurance are such that the risk is no longer generally being

insured against by private sector providers of infrastructure similar to the Sydney Metro – Western Sydney Airport or activities similar to OpCo's Activities in Australia or in the United Kingdom.

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

**Urgent Funding Call** has the meaning given in clause 60.2(d).

**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, termination, removal or relocation of Utility Services all of which are to be designed and undertaken by OpCo and handed over to the Principal, an Authority or any other person in accordance with this deed including any such works specified in the SSTOM Specification (and including, to the extent relevant to such works, Modifications directed or approved in accordance with this deed).

**UXO** means any explosive ordnance (including, but not limited to, ammunition, projectile, mortar, bomb, grenade or torpedo) which:

- (a) has been fired and failed to function as intended;
- (b) has functioned but which contains residual explosive; or
- (c) has not been fired but has been found.

**UXO Area** means the parts of the Construction Site specified as a 'UXO Area' in the Site Access Schedule.

**Validation Report** has the meaning given in the Contaminated Land Guidelines: Consultants Reporting on Contaminated Land (NSW EPA, 2020).

**Valuable Find** means an Artefact (including an Aboriginal Object) which is not a State Significant Artefact.

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

**VEMS** has the meaning given in Attachment A (*SSTOM Specification Glossary*) to the Particular Specification.

**Virgin Excavated Natural Material (VENM)** means Waste which is 'virgin excavated natural material' as defined in the *Protection of the Environment Operations Act 1997* (NSW).

**Waste** has the meaning given in the *Protection of the Environment Operations Act 1997* (NSW).

**Waste Classification** means the waste classification in the Waste Classification Guidelines.

**Waste Classification Guidelines** means the NSW EPA Waste Classification Guidelines (2014) as revised from time to time (including through any addendum).

**Webuild S.p.A** means Webuild S.p.A registered in Milan, Italy with company number 3109 (ABN 83 159 573 896).

**Western Sydney Airport** means Western Sydney International (Nancy-Bird Walton) Airport.

**WHS Accreditation Scheme** means the Australian Government Building and Construction WHS Accreditation Scheme established by the BCIP Act, or any scheme replacing it.

**WHS Act** means the *Work Health and Safety Act 2011* (NSW).

**WHS Code of Practice** means a code of practice which has been approved as a code of practice for the purposes of the WHS Act.

**WHS Incident** means an accident, event or occurrence involving health or safety issues which:

- (a) actually or potentially causes death, serious injury or significant passenger disruption;
- (b) must be reported to SafeWork NSW, the ONRSR or other work health and safety regulator; or

- (c) involves damage to persons or property occurring at the Sydney Metro Site, any other premises where OpCo's Activities are being carried out or in the supply chain where the Heavy Vehicle National Law applies.

**WHS Legislation** means:

- (a) the WHS Act and the *Work Health and Safety Regulation 2017* (NSW); and
- (b) any legislation in other States and Territories of Australia addressing work health and safety which applies to the SSTOM Works, Temporary Works or OpCo's Activities.

**WHS Management Guidelines** means the New South Wales Government Work Health and Safety Management Guidelines (6th edition) December 2019, or any document issued from time to time which amends or replaces this document.

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

**Workforce Development, Industry and Aboriginal Participation Plan** means the Project Plan of that name.

**Working Group** means each working group established pursuant to clause 6.6.

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

**WPI** means:

- (a) the "Wage Price Index: Total Hourly Rates of Pay Excluding Bonuses" as maintained and published quarterly by the Australian Bureau of Statistics, which as at the date of this deed is located at ABC catalogue number 6345.0, Table 1, Series ID A2603609J; or
- (b) as otherwise determined in accordance with clause 1.12.

**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 SSTOM Specification definitions**

The definitions and abbreviations in Attachment A (*SSTOM Specification Glossary*) to the Particular Specification 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 person, entity or contractor (including a Core Contractor, Significant Contractor or FIW Contractor) includes that person, entity or contractor'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;

- (e) a reference to a document, contract or agreement (including this deed, a Project Agreement or an FIW Contract) is to that document, contract or agreement as varied, novated, ratified or replaced from time to time;
- (f) 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;
- (g) 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;
- (h) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (i) a reference to:
  - (i) a part, schedule, exhibit, attachment or annexure is a reference to a part, Schedule, exhibit, attachment or annexure to or of this deed;
  - (ii) this deed includes all schedules, exhibits, attachments and annexures to it, including the SSTOM Specification, the FIW Interface Requirements Specifications and the FSM Interface Requirements Specification; and
  - (iii) the SSTOM Specification includes both the General Specification and Particular Specification and all appendices, schedules, exhibits, attachments or annexures to it; and
  - (iv) the Particular Specification includes each part of the Particular Specification, being Particular Specification 01 (*General*) to Particular Specification 19 (*Project Integration Management*) (inclusive) and all appendices, schedules, exhibits, attachments or annexures to it;
- (j) 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;
- (k) any reference to:
  - (i) the Assets, SSTOM Works, the Temporary Works or Sydney Metro – Western Sydney Airport;
  - (ii) the Operations Activities;
  - (iii) the Project Plans;
  - (iv) the SSTOM Specification;
  - (v) the Design Documentation and the Project 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) the Principal's intention that the SSTOM Works will be used as an integral part of an operating and integrated rail system intended to provide frequent high speed mass transit services between St Mary's and Western Sydney Aerotropolis, and which may:
  - (A) be subject to continuous operation;
  - (B) be operated by either the State of New South Wales or by private operator(s) on its behalf;
  - (C) involve further development of rail stations, including station structures and fit out to the extent referred to in this deed;
  - (D) be upgraded, augmented, extended and expanded to the extent referred to in this deed;
  - (E) be connected to and/or integrated with other transport infrastructure to the extent referred to in this deed; and
  - (F) involve future construction and development of buildings, over station developments and/or other infrastructure on, over, under or adjacent to railway stations and other parts of Sydney Metro – Western Sydney Airport 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:
    - (I) the principles and drivers referred to in section 1.1.2 and 1.1.3 of Particular Specification 01 (*General*); and
    - (II) the requirement that the SSTOM Works, when completed, and Sydney Metro – Western Sydney Airport 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 the Principal to OpCo specifically in connection with the Modification (excluding any Information Documents);
- (l) 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;
- (m) 'includes' in any form is not a word of limitation;
- (n) a reference to \$ or dollar is to Australian currency;
- (o) a reference to construction includes development, manufacture, supply, installation, integration, testing and commissioning;
- (p) any reference to an Asset includes any part, item, component or element of that Asset;
- (q) 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;
- (r) 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 the Principal's Representative under clause 9 in respect of which:
  - (i) during the Delivery Phase, the Principal's Representative has certified under clause 9.5(a)(ii)(B)(III); or



- (ii) during the Operations Phase, the Principal's Representative has not given a notice under clause 9.5(b)(ii),
- (as applicable); and
- (s) any obligation of OpCo under this deed to mitigate will be read as an obligation to mitigate having regard to OpCo's obligations under this deed and the SSTOM PPP.

## 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) subject to clauses 1.5(a)(ii) to 1.5(a)(iv), 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 schedules and exhibits; and
    - (B) the schedules and exhibits;
  - (ii) where there is an ambiguity, discrepancy or inconsistency in or between different codes, standards, specifications or guidelines with which OpCo must comply, the order of precedence set out in section 9.1 of the General Specification will apply;
  - (iii) to the extent clause 1.5(a)(ii) does not apply or resolve the ambiguity, discrepancy or inconsistency and the ambiguity, discrepancy or inconsistency is in or between the different parts of the SSTOM Specification and Environmental Documents, the document which prescribes or requires the highest standard of compliance consistent with complying with all Approvals will take precedence (unless directed otherwise by the Principal's Representative);
  - (iv) to the extent clauses 1.5(a)(ii) and 1.5(a)(iii) do not apply or resolve the ambiguity, discrepancy or inconsistency and the ambiguity, discrepancy or inconsistency relates to required scope, quantum, quality, standard, safety or other requirement of the SSTOM Works, the Temporary Works or OpCo's Activities, the highest scope, quantum, quality, standard or other requirement on OpCo or the more onerous obligation specified will prevail; and
  - (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 between figured and scaled dimensions, figured will prevail over the scaled dimensions.
- (b) The documents comprising this deed (including the SSTOM Specification) 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) The following order of precedence applies in the event of any ambiguity, discrepancy or inconsistency in, or between, this deed and any other Principal Project Agreement:
  - (i) the Financiers Tripartite Deed;
  - (ii) this deed; and
  - (iii) the remaining Principal Project Agreements.
- (d) If an ambiguity, discrepancy, inadequacy or inconsistency in, or between:
  - (i) the documents comprising this deed (including in any schedules and exhibits); or
  - (ii) this deed and any other Principal Project Agreement,
 is discovered by OpCo, OpCo must notify the Principal within 5 Business Days of such discovery.
- (e) If the Principal's Representative considers, or if OpCo notifies the Principal's Representative in writing that it considers, that there is an omission, ambiguity, discrepancy, inadequacy or inconsistency in, or between:
  - (i) the documents comprising this deed (including in any schedules and exhibits); or

- (ii) this deed and any other Principal Project Agreement,  
the Principal's Representative must direct the interpretation of this deed which OpCo must follow in accordance with the rules set out in this clause 1.5.
- (f) The Principal's Representative, in giving a direction in accordance with clause 1.5(e), is not required to determine whether or not there is an omission, ambiguity, discrepancy, inadequacy or inconsistency in, or between the documents comprising this deed or this deed and any other Principal Project Agreement (as applicable).
- (g) Any direction which the Principal's Representative gives in accordance with clause 1.5(e):
  - (i) will not relieve OpCo from or alter its liabilities or obligations under this deed or otherwise according to Law;
  - (ii) will not entitle OpCo to make (nor will it make the Principal liable upon) any Claim arising out of or in any way in connection with the direction;
  - (iii) will not limit or otherwise affect the Principal's rights against OpCo, whether under this deed or otherwise according to Law; and
  - (iv) must, in respect of a notice given by OpCo under clause 1.5(d), be given within 20 Business Days of receipt of that notice.

#### **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 for Privately Financed Projects, 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**

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

#### **1.9 Excluding liability**

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

#### **1.10 CPI Indexed**

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

$$A \text{ (CPI Indexed)} = A \times \frac{CPI_{q-2}}{CPI_0}$$

Where:

A is the monetary amount originally specified;

CPI<sub>q-2</sub> 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<sub>0</sub> is the CPI published for the Quarter End ending 30 June 2022, 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 Principal Project Agreement means that the amount will be indexed for movements in the WPI in accordance with the following formula:

$$A \text{ (WPI Indexed)} = A \times \frac{WPI_{q-2}}{WPI_0}$$

Where:

A is the monetary amount originally specified;

WPI<sub>q-2</sub> 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<sub>0</sub> is the WPI published for the Quarter End ending 30 June 2022, being the Quarter End preceding the Quarter most recently ended prior Financial Close.

### 1.12 Changes to indexes

The following rules apply to all indexation under this deed unless otherwise specified in Schedule 2 (*Service Payment calculation*):

- (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 Actuaries Institute (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 63.

### **1.13 Authorities**

- (a) The Principal Project Agreements will not in any way unlawfully restrict or otherwise unlawfully affect the unfettered discretion of the Principal to exercise any of its statutory functions or powers pursuant to any Law. Unless otherwise expressly provided in the Principal Project Agreements, nothing in the Principal Project Agreements gives rise to any duty on the part of the Principal to consider interests other than its own interests when exercising any of its rights or carrying out any of its obligations in accordance with the Principal Project Agreements.
- (b) OpCo acknowledges that, without limiting clause 1.13(a), anything the Principal does, fails to do or purports to do pursuant to its functions and powers under any Law (but to avoid doubt, excluding the GSF 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 the Principal (including a breach of contract) under or in connection with the Principal Project Agreements and will not entitle OpCo to make any Claim against the Principal.
- (c) Clauses 1.13(a) and 1.13(b) do not limit any liability which the Principal would have to OpCo under any Principal Project Agreement as a result of a breach by the Principal of a term of any Principal Project Agreement but for clauses 1.13(a) and 1.13(b).
- (d) OpCo acknowledges that:
  - (i) there are many Authorities (other than the Principal) with jurisdiction over aspects of OpCo's Activities, parts of the Sydney Metro 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 1.13(d)(ii) and will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in any way in connection with such occurrences.
- (e) The Principal and its Associates are not obliged to exercise any executive or statutory right or duty, or to influence, over-ride, interfere with or direct any other government party in the proper exercise and performance of any of the Principal or its Associates' executive or statutory rights or duties.

### **1.14 Reasonable endeavours**

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

- (a) the Principal 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) the Principal cannot guarantee the relevant outcome; and

- (c) the Principal, by undertaking to exercise reasonable endeavours, does not agree to:
  - (i) interfere with or influence the exercise by any person of a statutory power or discretion;
  - (ii) exercise a power or discretion or otherwise act in a manner that promotes the objectives and expected outcomes of the Project Agreements if the Principal 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 the Principal regards as not in the public interest.

#### **1.15 Minimum requirement not sufficient**

OpCo acknowledges and agrees that to the extent the SSTOM Specification specifies a minimum requirement, the delivery of the SSTOM Works or the performance of OpCo's Activities in accordance with that minimum requirement may not, of itself, be sufficient to discharge OpCo's obligations under this deed.

#### **1.16 Standards**

- (a) 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 SSTOM Works or the provision of a service included in the Operations Activities, that does not constitute Legislation or Government Policy (**Standard**), 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.
- (b) OpCo must promptly notify the Principal of any change in, or the introduction of any new, Standard which:
  - (i) applies to OpCo's Activities (including those Standards referred to in the SSTOM Specification); and
  - (ii) takes effect after the date of this deed.

#### **1.17 Electronic files**

Where this deed refers to an electronic file which forms part of this deed, such electronic files are contained in the discs or other electronic storage device included in Exhibit 16 (*Electronic files*).

#### **1.18 Capacity of OpCo**

- (a) OpCo incurs each of its obligations and liabilities under the Principal Project Agreements in its personal capacity and as trustee of the OpCo Trust.
- (b) A liability of OpCo arising under or in connection with the Principal Project Agreements (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 OpCo Trust.

#### **1.19 Facility Agreement**

OpCo has received and reviewed or is deemed to have received and reviewed the Facility Agreement.

## **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;

- (b) this clause 2;
- (c) clause 11.1;
- (d) clause 11.2;
- (e) clause 11.3;
- (f) clauses 11.4(a) and 11.4(b);
- (g) clause 16.1;
- (h) clause 26(a);
- (i) clause 54;
- (j) clause 56;
- (k) clause 59;
- (l) clause 60;
- (m) clause 61;
- (n) clause 62;
- (o) clause 63;
- (p) clause 64;
- (q) clause 65;
- (r) clause 67;
- (s) clause 68; and
- (t) clause 69,

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

## **2.2 Satisfaction of Conditions Precedent**

- (a) The Principal must:
  - (i) apply for the consents and approvals under section 6.23 of the GSF 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 the Principal),
 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 the Principal (or the Principal 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 in writing 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 (*Conditions Precedent*) in respect of that Condition Precedent (or, if both parties are the "Benefiting Party" in respect of that Condition Precedent, either party) may give notice in writing to the other party that it is terminating this deed if the Condition Precedent in question is not satisfied (or waived under clause 2.3) 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 Principal Project Agreements or in respect of any Loss suffered or incurred in connection with the SSTOM 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) The Principal's Representative may, at any time prior to the date that is 30 months before the Original Expiry Date, issue to OpCo a Term Extension Proposal Request seeking to extend the Term by the Term Extension Period.
- (b) Within 40 Business Days after receipt of the Term Extension Proposal Request, OpCo must provide the Principal with a proposal to extend the Term for the Term Extension Period (**Term Extension Proposal**).
- (c) The Term Extension Proposal must set out detailed particulars of the program of Asset Management Activities, including Replacements and Refurbishments, for the Term Extension Period.
- (d) OpCo must allow (and must procure Finance Co to allow) the Principal to review and audit OpCo's and Finance Co's records on an Open Book Basis to verify the information contained in the Term Extension Proposal.
- (e) Within 30 Business Days after receiving the Term Extension Proposal, the Principal's Representative may:
  - (i) accept the Term Extension Proposal;
  - (ii) reject the Term Extension Proposal; or
  - (iii) inform OpCo that it does not wish to proceed with the Term extension, by written notice to OpCo.
- (f) If the Principal accepts the Term Extension Proposal in accordance with clause 3.3(e)(i):
  - (i) subject to the balance of this clause 3.3(f), the terms of this deed will continue to apply until the expiry of the Term Extension Period;

- (ii) the relevant components of the Service Payment as outlined in clauses 1.1(d), 1.1(e) and 1.2(c) of Annexure A of Schedule 2 (*Service Payment calculation*) will apply for the Term 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 13.13 of Particular Specification 13 (*Asset Management*) will be replaced by "Original Expiry Date and the Expiry Date";
  - (v) from the Original Expiry Date, clauses 49.10(a) and 49.10(b) will be deleted; and
  - (vi) if this deed is terminated during the Term Extension Period, the Principal must pay OpCo the Termination Payment determined in accordance with clause 7 of Schedule 26 (*Termination Payments*).
- (g) If the Principal rejects the Term Extension Proposal in accordance with clause 3.3(e)(ii), the Principal may require that OpCo (and OpCo must procure Finance Co) consults in good faith and uses its reasonable endeavours to reach agreement with the Principal on a mutually acceptable resolution to the matters set out in the Term Extension Proposal which are not agreed.
- (h) If the parties reach agreement on the terms of the Term Extension Proposal by the date that is 24 months before the Original Expiry Date, clause 3.3(f) will apply as if the Principal had accepted the Term Extension Proposal as varied by the agreement of the parties.
- (i) 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 Term Extension Security Bond in accordance with clause 25.1(a)(ii),
 the Principal may elect:
  - (iii) to direct OpCo to implement the Term Extension Proposal by issuing a Term Extension Order; or
  - (iv) that the Term will expire on the Original Expiry Date.
- (j) If the Principal issues a Term Extension Order pursuant to clause 3.3(i)(iii):
  - (i) clause 3.3(f) will apply as if the Principal had accepted the Term Extension Proposal in accordance with clause 3.3(e)(i);
  - (ii) either party may refer any outstanding matters to dispute resolution in accordance with clause 63;
  - (iii) any disputed matters will, until the Principal and OpCo otherwise agree or a determination is made in accordance with clause 63, be reasonably determined by the Principal's Representative. In making his or her determination, the Principal's Representative will determine all matters required to be implemented to enable the Term to be extended by the Term Extension Period;
  - (iv) OpCo must proceed with the Term extension on the basis determined by the Principal's Representative (notwithstanding that any matters in dispute have not been agreed or determined in accordance with clause 63); and
  - (v) any necessary adjustments will be made following the determination of a dispute (where applicable).
- (k) If OpCo prepares a Term Extension Proposal in accordance with this clause 3.3 then the Principal must reimburse the reasonable third party costs incurred by OpCo in:
  - (i) preparing the Term Extension Proposal; and
  - (ii) performing its obligations under clause 3.3(g).



## **4. Objectives, primary obligations and risk allocation**

### **4.1 Objectives for Sydney Metro – Western Sydney Airport**

The Principal's objectives for Sydney Metro – Western Sydney Airport are to:

- (a) deliver easy, safe and accessible transport services that meet the needs of the Principal's Customers;
- (b) support the long-term success of the Western Sydney Airport and the Western Parkland City by optimising land use and development, transport and green infrastructure;
- (c) support Western Sydney's international competitiveness and productivity by supporting employment precincts and attracting knowledge-intensive jobs;
- (d) connect Western Sydney communities with an integrated transport network to maximise the 30-minute city catchment of the Western Parkland City;
- (e) facilitate the development of the Western Parkland City to create liveable, vibrant and environmentally sustainable precincts and places with a diverse mix of new dwellings; and
- (f) ensure a value for money, sustainable and deliverable solution to support long-term growth of the Western Parkland City.

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 SSTOM PPP**

The Principal's objectives for the SSTOM PPP are:

- (a) to deliver world class metro services which will provide Customers with a safe, high quality, reliable, efficient and affordable public transport solution and meet the specified performance requirements;
- (b) to provide a Customer experience with:
  - (i) a fully-integrated transport solution 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 Sydney Metro 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 the Principal and OpCo and OpCo Contractors;
- (d) to design, deliver, test and commission, and operate a safe metro 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 holistic approach to design, construction, operations and asset management throughout the duration of the deed;
- (g) to provide future proofing and flexibility within the technical, commercial and financial solutions that safeguards for future expansion of services and any potential future Extensions on a demonstrable value-for-money basis and without impact to Customers and/or network operations;
- (h) that OpCo will engage with the community and implement proactive stakeholder and community liaison strategies to minimise disruption and develop community ownership of Sydney Metro – Western Sydney Airport;

- (i) 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
- (j) that OpCo will deliver a sound financing strategy for the SSTOM PPP which provides value for money to the State, and a robust and financially sustainable business for the operation of Sydney Metro – Western Sydney Airport.

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 the Principal's vision statement, namely "Transforming Sydney with a world class metro".
- (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 Achievement of Project Values**

The parties:

- (a) acknowledge that adherence to and upholding of the Project Values is of fundamental importance to the Principal; and
- (b) agree to:
  - (i) adhere to and uphold the Project Values; and
  - (ii) work collaboratively in a spirit of mutual trust and cooperation in the performance of their obligations under this deed.

#### **4.5 OpCo's primary obligations**

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

- (a) finance, or procure the financing of, the SSTOM PPP;
- (b) design and construct the SSTOM Works;
- (c) operate and maintain Sydney Metro – Western Sydney Airport and the ETS during the Operations Phase in order to provide a safe, secure, continuous, reliable, effective and efficient metro service that from a Customer perspective integrates with the rest of Sydney's public transport system; and
- (d) hand Sydney Metro – Western Sydney Airport and the ETS Equipment back to the Principal at the end of the Term,

subject to, and in accordance with, this deed.

#### **4.6 Principal's primary obligations**

Without limiting the Principal's obligations under this deed, the Principal must:

- (a) obtain and provide the Planning Approvals;
- (b) grant OpCo the licences under clauses 12.1 and 12.2;
- (c) procure the design and construction of the Foundation Infrastructure Works in accordance with the FIW Contracts (in the form contained in Exhibit 8 (*FIW Contracts*) as changed or varied for any FIW Change); and
- (d) pay OpCo in accordance with clause 28,

subject to, and in accordance with, this deed.

#### **4.7 Project risks**

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

- (b) OpCo acknowledges and agrees that its sole financial entitlement and the Principal's sole financial liability for prevention, delay, hindrance, disruption or disturbance to the progress of any part of the SSTOM Works or the performance of the Delivery Activities or Operations Activities, including by reason of a Relief Event, Compensation Event or a Modification is limited to the amounts payable by the Principal to OpCo in accordance with clause 29 and clause 33.

#### 4.8 Principal's rights do not affect risk allocation

- (a) The Principal has various rights under this deed which are designed to give the Principal 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, Financial Models, Operational Financial Models and other documents which OpCo must submit to the Principal (**OpCo Submissions**);
  - (ii) rights to inspect, monitor or audit OpCo's Activities, the Assets or the SSTOM Works; 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 the Principal's rights against OpCo whether under this deed or otherwise according to Law; or
  - (iii) without limiting clause 4.8(b)(ii), preclude the Principal from subsequently asserting that OpCo has not fulfilled its obligations whether under this deed or otherwise according to Law.
- (c) Without limiting clause 4.8(b):
  - (i) neither the Principal nor the Principal'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 or any Law or standard;
  - (ii) no review of, comments upon, notice in respect of, acceptance, approval or certification 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 the Principal'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;
    - (D) affect the time for the performance of the Principal's obligations; or
    - (E) constitute an approval by the Principal of OpCo's performance of its obligations in accordance with the Principal Project Agreements;
  - (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 the Principal of OpCo's compliance with any Project Plan; or
    - (C) any failure by the Principal, or anyone acting on behalf of the Principal, to detect any non-compliance including where any failure arises from any negligence on the part of the Principal or such other person;

- (iv) neither the Principal nor the Principal'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 SSTOM Works, Sydney Metro – Western Sydney Airport 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 the Principal 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 the Principal's rights against OpCo whether under this deed or otherwise according to Law.
- (d) This clause 4.8 does not affect OpCo's rights in respect of any breach of clause 51.1(b).

## 5. Collaborative framework

### 5.1 Relationship Principles

- (a) Each party agrees that, in giving effect to the objectives in clauses 4.1 and 4.2 and the Project Values, they will abide by the following principles of behaviour (**Relationship Principles**):
  - (i) promoting a 'one team' culture co-operating to achieve the objectives in clauses 4.1 and 4.2, the Project Values and a 'best for project' outcome;
  - (ii) establishing and maintaining a culture that emphasises and reinforces safety and wellbeing, innovation and collaboration, excellence and achievement, certainty and responsiveness, integrity, mutual trust and respect and personal relationships;
  - (iii) notifying each other of potential, perceived or real differences of opinion or conflicts of interest as soon as they arise so as to promote the resolution of such issues within the shortest possible timeframe;
  - (iv) always acting in a manner that delivers value for money for the Principal;
  - (v) being transparent in all dealings and sharing all relevant information in a timely way and on an Open Book Basis (**Transparent Basis**);
  - (vi) ensuring their respective officers, agents, advisers, consultants, contractors, subcontractors and employees are also committed to these Relationship Principles; and
  - (vii) ensuring that learnings of the parties are identified and shared and capability is developed.
- (b) Each party will actively identify and support behaviour which reflects the Relationship Principles, and promptly take reasonable steps to address behaviour that does not reflect the Relationship Principles.
- (c) The Senior Project Group will carry out functions in accordance with clause 6.5 to establish, support and demonstrate a culture consistent with the Relationship Principles.

### 5.2 Reporting

- (a) OpCo will prepare and submit to the Senior Project Group written reports regarding OpCo's and the Principal's performance against the KRAs under this deed (**Regular Performance Reports**).
- (b) The Regular Performance Reports will be submitted:
  - (i) every two months, and no later than 5 Business Days prior to each meeting of the Senior Project Group (or as otherwise directed by the Senior Project Group); and
  - (ii) in a format acceptable to the Senior Project Group.

- (c) OpCo will ensure that OpCo's Representative is available to present each Regular Performance Report to the Senior Project Group and answer any queries the Senior Project Group may have about that Regular Performance Report.

### 5.3 Handover Induction Workshop and transition from procurement to delivery

- (a) The parties agree that, in giving effect to the objectives in clauses 4.1 and 4.2, the Project Values and Relationship Principles, the parties will host a collective and collaborative workshop to facilitate a handover induction and transition from the procurement teams to the delivery teams (**Handover Induction Workshop**).
- (b) The functions of the Handover Induction Workshop will be to:
  - (i) facilitate a smooth transition from the procurement teams to the delivery teams;
  - (ii) ensure the delivery teams understand the key contractual, technical and commercial issues raised during the procurement and commercial negotiations of this deed and how such issues were agreed to be managed;
  - (iii) collaboratively identify and assess managed risks and opportunities;
  - (iv) facilitate early resolution, mitigation or proactive management of any potential issues on a 'best for project' basis;
  - (v) seek to avoid misunderstandings or double-handling of key commercial or technical issues and risks;
  - (vi) seek to ensure the appropriate use of the expertise and experience of the procurement and delivery teams;
  - (vii) collaborate and coordinate interfaces between the procurement and delivery teams;
  - (viii) deal transparently and share all relevant information in a timely way between the procurement and delivery teams;
  - (ix) share learnings identified during the procurement phase with the delivery team to develop the capability of the delivery team; and
  - (x) seek to commence the relationship between the parties in a way which facilitates the long term working relationship of the parties and achievement of the objectives in clauses 4.1 and 4.2.
- (c) The Handover Induction Workshop must proceed in the following manner:
  - (i) the parties must ensure that the Handover Induction Workshop occurs within 30 Business Days after Financial Close or as otherwise agreed between the parties;
  - (ii) the Principal and OpCo must each ensure that all key commercial, technical and legal stakeholders from their procurement team and delivery team attend the Handover Induction Workshop, including:
    - (A) OpCo's Representative;
    - (B) the D&C Contractor's Representative;
    - (C) the O&M Contractor's Representative;
    - (D) the Principal's Representative; and
    - (E) the Chief Executive Officer of OpCo.The full list of participants from each party must be circulated to the other party no less than 5 Business Days prior to the Handover Induction Workshop;
  - (iii) if requested by the Principal's Representative, the Handover Induction Workshop must occur in person at a location to be agreed between the parties;
  - (iv) the Chief Executive Officer of OpCo will chair the Handover Induction Workshop unless otherwise agreed between the parties and must:
    - (A) seek input from OpCo's Representative and the Principal's Representative in determining an agenda for the Handover Induction Workshop which

must be circulated to the parties at least 5 Business Days prior to the Handover Induction Workshop; and

- (B) take minutes of the Handover Induction Workshop and distribute such minutes within 10 Business Days after the Handover Induction Workshop takes place; and
- (v) the Handover Induction Workshop is consultative in nature and its functions as outlined in clause 5.3(b) will not (unless agreed otherwise by the parties) affect or alter the rights and obligations of the parties under this deed.

#### **5.4 Other Relationship Tools**

In addition to clauses 5.2 and 5.3 above, the parties agree to adopt the following features in order to deliver on the objectives in clauses 4.1 and 4.2 and the Project Values and Relationship Principles:

- (a) a staged approach to identifying, assessing and solving for collaboratively managed risks and opportunities as contemplated in clause 28.17; and
- (b) KRAs as outlined in clause 5.6 below, for the Principal and OpCo, to be used to inform Senior Project Group meetings.

#### **5.5 Proactive Principal engagement**

- (a) The parties acknowledge that some of the risks allocated to, or shared by, OpCo under this deed are affected by:
  - (i) the timely provision of accurate and comprehensive information from third parties, including Authorities;
  - (ii) the timely and facilitative exercise of powers or discretions by third parties, including Authorities;
  - (iii) the effective management of project stakeholders, including design user groups, adjacent property owners and occupiers and some of the Principal's Associates;
  - (iv) the timely, collaborative and best for project coordination of interfaces with:
    - (A) the Foundation Infrastructure Works;
    - (B) Proximate Work Activity;
    - (C) the FSM Works;
    - (D) the Airport Lessee;
    - (E) Western Sydney Aerotropolis; and
    - (F) other projects in the vicinity of the SSTOM Works or Sydney Metro – Western Sydney Airport,

and that regular and proactive engagement by the Principal in connection with these matters has the potential to facilitate achievement of the objectives under clauses 4.1 and 4.2.

- (b) Accordingly, the parties have agreed the Principal's KRAs. Achievement (or otherwise) of the Principal's KRAs:
  - (i) must be regularly assessed in accordance with clause 5.6(b);
  - (ii) must be monitored and reviewed as part of the Senior Project Group; and
  - (iii) does not give rise to any Claim by OpCo.

#### **5.6 Key Result Areas**

- (a) The purpose of the KRAs are to facilitate achievement of the objectives in clauses 4.1 and 4.2. Failure to achieve a KRA is not, of itself, a default and does not give rise to a Claim by either party.
- (b) As and when agreed by the parties but at least every two months, the parties must consult in good faith to determine the ongoing fitness of the KRAs to facilitate achievement of the

objectives in clauses 4.1 and 4.2, and to consider whether additional or modified KRAs may better facilitate this outcome.

- (c) To the extent that the parties agree that:
- (i) a KRA, or part of it, should be omitted, replaced or otherwise amended; or
  - (ii) a new KRA should be inserted,
- then:
- (iii) the Principal will prepare and provide OpCo with an amended version of the Key Result Areas Schedule which identifies any amendments (**Amended Key Result Areas**); and
  - (iv) both parties must sign the Amended Key Result Areas,
- and, from the date on which the Amended Key Result Areas has been signed by both parties, the Amended Key Result Areas will be deemed to have replaced the Key Result Areas Schedule.

## 5.7 No claim

Neither party:

- (a) is entitled to make any Claim against the other party; nor
- (b) will have any Liability to the other party,

in connection with any breach of this clause 5 or any KRA under this clause 5 by either party and nothing in this clause 5, nor any failure by OpCo or any [REDACTED] or the Principal or the Principal's Representative to comply with this clause 5, will relieve the parties from or alter their liabilities under the Principal Project Agreements or at Law.

## 6. Governance

### 6.1 Principal's Representative

- (a) The Principal may at any time by written notice to OpCo replace the Principal's Representative with another person.
- (b) The Principal's Representative will carry out all of its functions under this deed as the agent of the Principal (and not as an independent certifier, assessor or valuer), but when performing the functions listed in clause 6.1(d), the Principal's Representative must act reasonably.
- (c) OpCo must comply with all Directions given by the Principal's Representative in accordance with this deed.
- (d) If OpCo or the Principal gives notice that it considers any assessment, determination or certification of the Principal's Representative under clauses 9.5(a)(ii)(B), 9.5(b)(ii), 20.10(a), 20.10(b), 20.10(d), 20.11(d) or clause 3.4(h)(ii) of Schedule 11 (*Design Review*) was not made in accordance with this deed, then OpCo or the Principal may seek through dispute resolution under clause 63 an alternative assessment, determination or certification that is in accordance with this deed. A determination under this clause 6.1(d) is OpCo's sole remedy in respect of the relevant assessment, determination or certification and OpCo will have no Claim for damages.

### 6.2 Appointees of Principal's Representatives

The Principal's Representative may:

- (a) by written notice to OpCo appoint persons to exercise any of the functions of the Principal'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 6.2(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 6.2(a) (provided that any directions of the Principal's Representative take precedence over those of any representatives to the extent of any inconsistency).

All references in this deed to the Principal's Representative include a reference to an appointee under this clause 6.2.

### 6.3 OpCo's Representative

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

### 6.4 Independent Certifier

- (a) **(SSTOM Independent Certifier Deed)**: The Independent Certifier will be engaged on the terms of the SSTOM Independent Certifier Deed.
- (b) **(Role)**: The Independent Certifier is required to perform the functions set out in the SSTOM Independent Certifier Deed which includes, amongst other things, independently certifying in accordance with the SSTOM Independent Certifier Deed:
  - (i) that the IC Project Plans which are provided to the Independent Certifier in accordance with clause 9 comply with the requirements of this deed;
  - (ii) that the Stage 3 Design Documentation which is provided to the Independent Certifier in accordance with the Design Review Process complies with the requirements of this deed;
  - (iii) that the Test Procedures comply with the requirements of this deed;
  - (iv) the outcome of the Tests;
  - (v) the completion of Local Area Works;
  - (vi) that the requirements for First Passenger Service on Sydney Metro – Western Sydney Airport have been satisfied;
  - (vii) the achievement of Completion; and
  - (viii) the achievement of Final Completion.
- (c) **(Independent)**: The Independent Certifier is obliged to act independently of the Principal, OpCo and OpCo Contractors.
- (d) **(Conduct does not affect obligations)**: Without limiting clause 6.4(j), an act or omission (including negligence) of the Independent Certifier will not:
  - (i) relieve a party from, or alter or affect, a party's liabilities, obligations or responsibilities to the other party whether under this deed or otherwise according to Law; or
  - (ii) prejudice or limit a party's rights against the other party whether under this deed or otherwise according to Law.
- (e) **(Provision of information)**: The Principal and OpCo must provide the Independent Certifier with all information and documents and allow the Independent Certifier:
  - (i) to attend meetings (including any Senior Project Group meetings); and
  - (ii) access to all premises,as may be necessary or reasonably required by the Independent Certifier to allow the Independent Certifier to perform its obligations under the SSTOM Independent Certifier Deed.
- (f) **(Copy all information to other party)**: All notices and documents provided by a party to the Independent Certifier must be copied to the other party. If a party is required to provide a notice or document to the Independent Certifier within a specified time period, that notice or document must be provided to the other party within the same time period.



- (g) **(Principal may provide comments):** The Principal's Representative may provide comments to the Independent Certifier in respect of OpCo's Activities.
- (h) **(Effect of determinations):** Without limiting clauses 6.4(d) or 6.4(j), in the absence of manifest error on the face of the determination notice, the following determinations of the Independent Certifier are final and binding on the parties:
  - (i) a determination under clause 9.5 in relation to an IC Project Plan;
  - (ii) a determination under Schedule 11 (*Design Review*) in relation to Design Stage 3 Design Documentation;
  - (iii) a determination under clause 21.2(d)(ii) in relation to Test Procedures;
  - (iv) a determination under clause 21.5(d) in relation to a Test being passed or failed;
  - (v) a determination under clause 22.3 in relation to First Passenger Service on Sydney Metro – Western Sydney Airport;
  - (vi) a determination under clause 22.4(c) in relation to Local Area Works;
  - (vii) a determination under clause 22.9(a) in relation to Completion;
  - (viii) a determination under clause 22.10(d) in relation to Final Completion; and
  - (ix) any determination under this deed in relation to:
    - (A) the action that must be taken by OpCo to address a Minor Non-compliance; and
    - (B) the time for OpCo to correct the Minor Non-Compliance.
- (i) **(Dispute of determination):** If either party:
  - (i) believes that there is a manifest error on the face of the determination notice from the Independent Certifier referred to in clause 6.4(h) and wishes to dispute the determination on that basis; or
  - (ii) wishes to dispute any other determination by the Independent Certifier not referred to in clause 6.4(h),

it must do so in accordance with clause 63. Determinations of the Independent Certifier referred to in clause 6.4(h) 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 63.
- (j) **(Not approval or evidence):**
  - (i) A certification or determination by the Independent Certifier will not:
    - (A) constitute an approval by the Principal of OpCo's performance of its obligations under this deed;
    - (B) constitute an approval by OpCo of the Principal's performance of its obligations under this deed;
    - (C) be taken as an admission or evidence that the SSTOM Works or any other matters certified or determined by the Independent Certifier comply with this deed (including in relation to whether or not any direction by the Principal's Representative under clause 3.4 of Schedule 11 (*Design Review*) involves or constitutes a Modification); or
    - (D) prejudice any rights or powers of the Principal or OpCo under this deed or otherwise according to Law, including any rights which the Principal may have in respect of Defects.
  - (ii) No act or omission of the Independent Certifier, including any certification or determination by the 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 the Principal or OpCo (including a breach of contract) under or in connection with the Principal Project Agreements; or
  - (E) entitle OpCo to make any Claim against the Principal.
- (k) **(Independent Certifier's costs):** If the Principal becomes liable to the Independent Certifier for any additional costs in respect of the matters set out in paragraph 4(a) of Schedule 2 of the SSTOM Independent Certifier Deed and the fact, matter or thing which gave rise to the liability to pay such additional costs arose out of an act or omission of OpCo, such costs will be a debt due and payable by OpCo to the Principal.

## 6.5 Senior Project Group

- (a) **(Delivery Phase Composition):** During the Delivery Phase, a Senior Project Group must be established consisting of:
- (i) the Principal's Representative;
  - (ii) OpCo's Representative;
  - (iii) the D&C Contractor's Representative;
  - (iv) the O&M Contractor's Representative;
  - (v) if required by the Principal, a senior representative of the Debt Financiers;
  - (vi) a senior representative of the Equity Investors (who must be a director of one of the Equity Investors);
  - (vii) two persons from each party holding positions more senior than the persons referred to in clauses 6.5(a)(i) and 6.5(a)(ii) (as applicable to the relevant party); and
  - (viii) 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) the Principal's Representative;
  - (ii) OpCo's Representative;
  - (iii) the O&M Contractor's Representative;
  - (iv) if required by the Principal, a senior representative of the Debt Financiers;
  - (v) a senior representative of the Equity Investors (who must be a director of one of the Equity Investors);
  - (vi) the Deputy Chief Executive of the Principal or his or her nominee;
  - (vii) the Chief Executive Officer of OpCo (if different to OpCo's Representative);
  - (viii) the Chief Executive Officer of the O&M Contractor; and
  - (ix) such other persons as the parties agree.
- (c) **(Delegates):** The persons referred to in clause 6.5(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 6.5(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, including by implementing the Relationship Principles;
  - (ii) monitor the overall progress of the SSTOM 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) in relation to any Potential Matters or Disputes, actively consider whether the process in clause 63 is appropriate to resolve that Potential Matter or Dispute and determine whether there is a bespoke resolution procedure which will be better suited to resolve the Potential Matter or Dispute expeditiously and effectively (which may involve modifying or omitting any of the processes or forums referred to in clause 63);
  - (v) review each Delivery Phase Progress Report provided by OpCo during the Delivery Phase;
  - (vi) review each Monthly Operations Performance Report provided by OpCo during the Operations Phase;
  - (vii) review each Regular Performance Report provided by OpCo in accordance with clause 5.2; and
  - (viii) review and consider such other matters relating to the SSTOM PPP or Sydney Metro – Western Sydney Airport 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 Operations Phase, unless the parties agree otherwise.
  - (f) **(Administration):** The Principal's Representative will convene the meetings of the Senior Project Group. The meetings will be chaired by the most senior attendee of the Principal.
  - (g) **(Principal may require certain representatives to attend):** At the Principal'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. The Principal is also entitled to have representatives of the State, any Authority or any Public Transport Agency attend meetings.
  - (h) **(OpCo may bring certain representatives):** OpCo may, with the Principal's consent, have a representative of each Core Contractor attend any meeting of the Senior Project Group.

## 6.6 Working Groups

- (a) **(Disciplines):** Working Groups will be established by the Principal from time to time in relation to particular aspects of OpCo's Activities, including those Working Groups contemplated in the SSTOM Specification and Design Management Plan. There will be a Working Group with respect to:
  - (i) interfaces with the Foundation Infrastructure Works, including coordination of the handover of the Foundation Infrastructure Works from the FIW Contractors to OpCo; and
  - (ii) any other matter contemplated by the SSTOM Specification.
- (b) **(Composition):** Unless otherwise provided in the SSTOM Specification, the composition of each Working Group will include a nominated representative of the Principal, OpCo, the D&C Contractor, the O&M Contractor and any other 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 the Principal having regard to the particular solutions being discussed. If the Principal 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:
  - (i) in relation to the Working Groups established under clause 6.6(a)(i), provide a non-binding forum for OpCo to present its proposed solutions, for the Principal to understand those solutions and for the parties to discuss the solutions; and

- (ii) otherwise as provided for in the SSTOM Specification.
- (d) **(Frequency of meetings):** Each Working Group will meet monthly unless otherwise:
  - (i) agreed by the Senior Project Group; or
  - (ii) provided in the SSTOM Specification.
- (e) **(Administration):** OpCo must convene and chair meetings of each Working Group unless otherwise agreed between the parties.
- (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.

## 6.7 Quarterly whole of project reviews

- (a) In each quarter in a Financial Year at any time prior to the Date of Completion, the Principal may require that OpCo attend and participate in one or more meetings with the Principal and its other contractors. The purpose of these meetings is for the Principal, OpCo and the Principal's other contractors to work together in good faith on a co-operative and collaborative basis to identify and consider:
  - (i) issues and potential issues that have, or which may have, an adverse impact upon the successful delivery of the Project or any part of the Project;
  - (ii) solutions to such issues or potential issues which may mitigate, remedy or avoid any adverse impact upon the successful delivery of the Project or any part of the Project;
  - (iii) improvements that can be implemented to save time, reduce cost or improve the quality of the Project or any part of the Project;
  - (iv) the manner in which any such solutions and improvements can be implemented; and
  - (v) any other matters that the Principal may require.
- (b) If the Principal requires OpCo to attend and participate in any meeting contemplated by clause 6.7(a), the Principal's Representative must provide OpCo with at least 10 Business Days prior written notice of any such meeting.
- (c) If the Principal's Representative provides OpCo with a notice under clause 6.7(b):
  - (i) the D&C Contractor and the O&M Contractor will also be entitled to attend such meeting; and
  - (ii) OpCo must ensure that the following personnel attend and participate in the meeting:
    - (A) OpCo's Representative;
    - (B) representatives of any Significant Contractors which the Principal's Representative reasonably requires; and
    - (C) any other person directed by the Principal's Representative.

## 6.8 Risk management meetings

- (a) OpCo must attend risk management meetings with the Principal's Representative on a monthly basis or as otherwise directed by the Principal's Representative.
- (b) The D&C Contractor and the O&M Contractor will also be entitled to attend any risk management meeting.
- (c) At risk management meetings, the parties agree to:
  - (i) review the current Risk Register;

- (ii) develop proposals and seek solutions for avoiding or mitigating the risks listed on the Risk Register;
  - (iii) decide upon any specific action to be taken by the parties in response to the risks listed on the Risk Register; and
  - (iv) remove from the Risk Register those risks which have been avoided or passed.
- (d) OpCo must advise the Principal at the risk management meetings if it considers that any proposal or solution discussed at the meeting would be a Modification or could give rise to a Claim.

## **6.9 IDAR Panel**

The members of the IDAR Panel may, by invitation of either party, attend any meeting of the Senior Project Group or any Working Group.

## **6.10 No legal effect**

The Senior Project Group, the Modifications Working Group, any meeting held pursuant to clauses 6.7(a) or 6.8(a), any meeting held pursuant to the Framework Principles and each Working Group are consultative and advisory only and do not have any legal responsibilities, liability or right to require any of the parties to act or refrain from acting in any way 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:
  - (i) make any Claim against the other; or
  - (ii) rely on any statement, opinion, advice, representation, warranty, promise or undertaking made or given by or on behalf of any member of any such group (in its capacity as a member);
- (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.

## **6.11 Annual relationship review**

- (a) As soon as practicable after the end of each Financial Year, the Principal 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 Financial Year; and
  - (ii) identify opportunities to improve the working relationship between the parties during the forthcoming Financial Year.

## **6.12 Call-in**

- (a) If, in the Operations Phase:
  - (i) the Principal is dissatisfied with OpCo's performance;
  - (ii) OpCo is in breach of an obligation under this deed or, in the Principal's reasonable view, OpCo will be in breach of an obligation if its current performance continues unchanged; and
  - (iii) in the Principal's reasonable view, its concerns are not being addressed in the various governance mechanisms referred to in this clause 6,

the Principal may issue a notice to OpCo stating that it is a notice under this clause 6.12(a) and outlining the nature of the Principal's dissatisfaction.
- (b) If required by the Principal in the notice under clause 6.12(a), OpCo must:

- (i) provide information;
- (ii) attend meetings with the Principal; and
- (iii) prepare and implement remedial plans to improve performance in the areas identified by the Principal.

## 7. Law and Approvals

### 7.1 Compliance with Laws

- (a) OpCo must:
  - (i) in performing OpCo's Activities, comply with all applicable Laws;
  - (ii) ensure that OpCo Contractors, in performing OpCo's Activities, comply with all applicable Laws;
  - (iii) ensure that the SSTOM Works, Temporary Works and from the Date of Completion, Sydney Metro – Western Sydney Airport, comply with all applicable Laws;
  - (iv) give the Principal'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 in any event no later than 5 Business Days after receipt by OpCo or the Significant Contractor (as applicable);
    - (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 or in connection with a Planning Approval, which is also required to be submitted to an Authority:
    - (A) provide the Principal's Representative with copies of any such documents;
    - (B) provide the Principal with an opportunity to comment on any such documents;
    - (C) consider any comments made by the Principal in relation to any such documents; and
    - (D) deliver a final version of any such documents in order to enable the Principal to submit the relevant document to any Authority; and
  - (vi) provide the Principal with such assistance as may be reasonably required by the Principal to enable the Principal to comply with all applicable Laws.
- (b) The Principal must comply with all Laws applicable to its obligations in respect of the SSTOM PPP.

### 7.2 Approvals

- (a) The Principal 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 Contractors obtain and maintain, all Approvals required to perform OpCo's Activities (other than those Approvals which this deed expressly states that the Principal has obtained or requires the Principal to obtain or maintain);

- (ii) except to the extent otherwise expressly specified in Schedule 13 (*Planning Approval Conditions*):
  - (A) in performing OpCo's Activities, comply with, carry out and fulfil, and ensure that OpCo Contractors comply with, carry out and fulfil; and
  - (B) ensure that the SSTOM Works, the Temporary Works and from the Date of Completion, Sydney Metro – Western Sydney Airport, comply with, the conditions and requirements of all Approvals (including any modification to any Approvals), including those which the Principal 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 the Principal against any Loss suffered by the Principal arising out of or in any way in connection with a failure by OpCo to comply with its obligations under clauses 7.2(b)(i) and 7.2(b)(ii);
- (iv) except to the extent otherwise expressly specified in clause 45.1(a) and Schedule 13 (*Planning Approval Conditions*), pay all fees, effect all insurances, provide any bonds and execute any undertakings or agreements or any other document required by any relevant Authority in respect of any Approval which OpCo must obtain or comply with (and ensure that OpCo Contractors do likewise in relation to any Approvals which they must maintain or comply with in connection with OpCo's Activities);
- (v) without limiting clause 7.2(b)(ii), provide the Principal with such assistance as may reasonably be required by the Principal to enable it to obtain or satisfy or fulfil the conditions and requirements in respect of any:
  - (A) Approvals which are obtained by the Principal or its Associates after the date of this deed; or
  - (B) conditions and requirements of Approvals which are required to be satisfied or fulfilled by the Principal pursuant to Schedule 13 (*Planning Approval Conditions*); and
- (vi) where any Approval which is obtained by OpCo is issued with conditions which would or could have a material adverse effect on the ability of OpCo to carry out OpCo's Activities under this deed, or otherwise affects OpCo's ability to meet its obligations under this deed:
  - (A) notify the Principal of those conditions and details of how they would or could have such an effect; and
  - (B) provide the Principal for review a copy of the relevant Approvals and conditions, together with OpCo's detailed proposal for satisfying those Approvals in a manner that would not have a material adverse effect.
- (c) Without limiting clause 7.6, Schedule 13 (*Planning Approval Conditions*) and Schedule 18 (*Requirements of Third Party Agreements*), in respect of any submissions, surveys, investigations, reports, studies or other documents:
  - (i) required to be submitted to obtain an Airport Lessee Consent, by a term of the Planning Approvals or ABC Approval; or
  - (ii) proposed to be submitted by OpCo to obtain an Airport Lessee Consent, in support of any application to amend the Planning Approvals or an ABC Approval,
 OpCo:
  - (iii) must prepare, carry out and provide to the Principal any submissions, surveys, investigations, reports, studies or other documents:
    - (A) requested by the Principal's Representative;
    - (B) to the standard directed by the Principal's Representative; and
    - (C) within the time directed by the Principal's Representative;

- (iv) must provide whatever other assistance and information the Principal's Representative reasonably requests within the time reasonably requested by the Principal's Representative; and
- (v) agrees that OpCo will not be entitled to make any Claim against the Principal arising out of or in connection with any act or omission (including delay or refusal) by the Principal or the relevant Authority in respect of an application to amend the Planning Approvals or ABC Approval.
- (d) OpCo must copy the Principal's Representative into all correspondence with the Airport Building Controller (or if communicating via an online portal, provide copies of all communications with the Airport Building Controller) in relation to completion of the SSTOM Works and obtaining a certificate of compliance from the Airport Building Controller and invite the Principal's Representative to attend all meetings with the Airport Building Controller.

### **7.3 Modifications to Planning Approvals**

Notwithstanding clause 41, 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 Division 4 or Division 5.2 of the EP&A Act (or any equivalent provision in the EP&A Act or other Legislation) in connection with the SSTOM PPP;
- (b) the Principal determines that it is necessary to carry out any further environmental impact assessment under Part 5 of the EP&A Act (or any equivalent provision in the EP&A Act or other Legislation) in connection with the SSTOM PPP;
- (c) a Planning Approval is modified and/or amended under the EP&A Act, the EPBC Act, the Airports Act or any other Legislation;
- (d) a new Approval is issued under the EP&A Act, the EPBC Act, the Airports Act or any other Legislation in respect of Sydney Metro – Western Sydney Airport, either in substitution for or replacement of a Planning Approval or otherwise; or
- (e) any such new Approval is modified under the EP&A Act, the EPBC Act, the Airports Act or any other Legislation,

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.

### **7.4 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 the Principal.

### **7.5 Environment Protection Licence**

- (a) Subject to clauses 7.5(b) and 7.5(d), 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:
  - (C) with respect to each SBT Site (SSTOM) and SCAW Site (SSTOM), the relevant OpCo Handover Date; or
  - (D) with respect to any other part of the Construction Site, the Site Access Date for that part of the Construction Site;



- (ii) ensure that, from each date after the date referred to in clause 7.5(a)(i) on which the Construction Site Licence commences in accordance with clause 12.1(c) 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 to the extent required by Law 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 the Project Planning Approval is substantially consistent with the Project Planning Approval.
- (c) In the event that an Environment Protection Licence is not substantially consistent with the Project Planning 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 performed on land which is subject to an Environment Protection Licence held by a person other than OpCo, OpCo must comply with the terms of that Environment Protection Licence.

## **7.6 Crown Building Work**

- (a) OpCo must, in relation to any part of the SSTOM Works or Temporary Works that is Crown Building Work (as defined in section 6.1 of the EP&A Act), certify (on behalf of the Principal) as required by section 6.28 of the EP&A Act.
- (b) Any certification under clause 7.6(a) will not lessen or otherwise affect:
  - (i) OpCo's other liabilities or responsibilities under this deed or otherwise according to Law; or
  - (ii) the Principal's rights against OpCo, whether under this deed or otherwise according to Law.

## **7.7 Planning Approval Representatives**

- (a) OpCo acknowledges that:
  - (i) the Principal will engage the Planning Approval Representatives in accordance with Schedule 13 (*Planning Approval Conditions*); and
  - (ii) the Planning Approval Representatives:
    - (A) are independent of the parties;
    - (B) are required to discharge certain functions as identified in the Planning Approvals; and
    - (C) are required to advise the Principal and the Principal's Representative on OpCo's compliance with the Planning Approvals.
- (b) Without limiting clause 7.7(a), OpCo acknowledges and agrees that the Environmental Representative is required to oversee the implementation of all environmental management plans and monitoring programs required under the Project Planning Approval and will advise the Principal upon achievement of the outcomes contemplated in the Project Planning Approval.
- (c) OpCo must co-operate with the Planning Approval Representatives and:
  - (i) provide the Planning Approval Representatives with all information and documents (including licences and approvals relating to environmental performance and environmental impacts); and
  - (ii) allow the Planning Approval Representatives:
    - (A) to attend meetings; and
    - (B) access to such premises,

all as may be:

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

## **7.8 Long service leave levy**

Before commencing construction of the SSTOM 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 the Principal's Representative the document evidencing payment of the levy.

## **7.9 On-Airport Construction (Rail) Plan and Construction Environmental Management Plans**

- (a) OpCo warrants that it has reviewed and carefully considered the On-Airport Construction (Rail) Plan and Construction Environmental Management Plans provided by the Principal prior to the date of this deed and that they are proper, fit and adequate for the purpose of enabling OpCo to carry out OpCo's Activities in accordance with this deed.
- (b) Except to the extent otherwise expressly specified in Schedule 13 (*Planning Approval Conditions*), OpCo must, in performing OpCo's Activities, comply with, carry out and fulfil, and ensure that all relevant OpCo Contractors comply with, carry out and fulfil, the On-Airport Construction (Rail) Plan and Construction Environmental Management Plans.
- (c) Subject to clauses 20.10, 29 and 30, the Principal will not be liable upon any Claim by OpCo arising out of or in any way in connection with the On-Airport Construction (Rail) Plan and Construction Environmental Management Plans.

# **8. Rail Safety**

## **8.1 Principal's Accreditation**

OpCo acknowledges that:

- (a) the Foundation Infrastructure Works are being carried out by the FIW Contractors for and on behalf of the Principal under the Principal's Accreditation;
- (b) the Principal will continue to be the Rail Infrastructure Manager in respect of any Foundation Infrastructure Works carried out after the relevant OpCo Handover Date for that FIW Portion; and
- (c) no part of OpCo's Activities will be carried out under the Principal's Accreditation.

## 8.2 OpCo to assist

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

## 8.3 OpCo's rail safety obligations

- (a) **(OpCo or certain OpCo Contractors to hold Accreditation):** Without limiting clause 7.2, OpCo must ensure:
  - (i) subject to clause 8.3(a)(ii), that OpCo or one or more of its Core Contractors at all times:
    - (A) holds the necessary Accreditation for OpCo or OpCo Contractors to carry out any Railway Operations that form part of OpCo's Activities; and
    - (B) complies with all conditions of such Accreditation and all obligations of accredited persons under the Rail Safety National Law and Rail Safety Regulations; or
  - (ii) in relation to Accreditation for plant or work trains only, that OpCo or one or more of its OpCo Contractors at all times:
    - (A) holds the necessary Accreditation for OpCo or OpCo Contractors to carry out those relevant Railway Operations involving plant or work trains that form part of OpCo's Activities; and
    - (B) 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, in relation to the carrying out of OpCo's Activities, that:
  - (i) OpCo or one or more of its Core Contractors; or
  - (ii) to the extent only that OpCo's Activities involves plant or work trains and requires Accreditation, one or more of its OpCo Contractors,acts as and complies with applicable obligations of a Rail Transport Operator under the Rail Safety National Law and Rail Safety Regulations.
- (c) **(OpCo Contractors):** OpCo must ensure that OpCo Contractors engaged in or in connection with OpCo's Activities comply with their obligations under the Rail Safety National Law and Rail Safety Regulations.
- (d) **(Utilising Accreditation):** OpCo must ensure that it is able to comply at all times with clause 8.3(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:
  - (i) ensure that its or the Accredited Contractor's RSNL Safety Management System contemplates and provides for the continuance of OpCo's Activities following the occurrence of a Step-in Event;
  - (ii) provide the Principal with the then current version of the RSNL Safety Management System for OpCo's Activities promptly upon request by the Principal; and
  - (iii) provide the Principal with an updated version of such RSNL Safety Management System within 5 Business Days of any update.
- (f) **(Notices):** OpCo must provide the Principal 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 or to be held by OpCo or its Associates,

in connection with OpCo's Activities or Sydney Metro – Western Sydney Airport 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.

- (g) **(Meetings):** OpCo must give reasonable notice of, and invite the Principal to, any meetings with the ONRSR in relation to OpCo's Activities or Sydney Metro – Western Sydney Airport in connection with any Accreditation held or to be held by OpCo or its Associates.
- (h) **(Information):** OpCo must provide the Principal with any information or material prepared by OpCo or its Associates in relation to OpCo's Activities or Sydney Metro – Western Sydney Airport which is to be provided to the ONRSR, including in relation to OpCo or its Associates obtaining or varying Accreditation held or to be held by OpCo or its Associates, any and give the Principal a reasonable opportunity to review and provide comments prior to such information being provided to ONRSR.

#### **8.4 Rail Safety Workers**

Without limiting clauses 7.1 and 7.2, OpCo must ensure that all Staff who are rail safety workers (as defined in the Rail Safety National Law):

- (a) are competent to carry out the rail safety work (as that term is defined in the Rail Safety National Law) for which they are engaged for the purposes of the Rail Safety National Law, including sections 52 and 117 of the Rail Safety National Law;
- (b) are of sufficient good health and fitness to carry out rail safety work (as that term is defined in the Rail Safety National Law) and are not impaired by alcohol, drugs or fatigue when carrying out that rail safety work;
- (c) comply with their obligations under the Rail Safety National Law, including their duties under section 56 of the Rail Safety National Law; and
- (d) at all times carry with them the form of identification required by section 118 of the Rail Safety National Law.

#### **8.5 Principal to provide information**

If requested by OpCo to do so, the Principal must provide OpCo with any information then held by the Principal, Transport for NSW or Sydney Trains that:

- (a) OpCo or one or more of its Accredited 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 Accredited Contractor cannot obtain from another source.

### **9. Project Plans**

#### **9.1 Purpose**

The intended purposes of the Project Plans include:

- (a) to demonstrate to the Principal 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 Sydney Metro – Western Sydney Airport 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 the Principal 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.

## 9.2 Initial Project Plans

- (a) Initial versions of certain Project Plans are included in Attachment C (*Initial Project Plans*) to the Particular Specification.
- (b) OpCo must submit initial versions of the remaining Project Plans to the Principal's Representative and the Independent Certifier at the times required by section 5 of the General Specification.

## 9.3 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 requirements of any Authority;
  - (vi) the commencement of new phases or stages of design, construction, testing, commissioning or operations;
  - (vii) those events or circumstances expressly identified for each Project Plan in section 5 of the General Specification; and
  - (viii) any breach or potential breach of the warranty in clause 9.4;
- (b) without limiting clause 9.3(a), update each Project Plan at the times required by section 5 of the General Specification;
- (c) promptly submit each updated Project Plan to the Principal's Representative and, in the Delivery Phase only, the Independent Certifier;
- (d) not update any Project Plan in a manner which makes the Principal's obligations under the Principal Project Agreements more onerous or increases any liability or potential liability, or reduces any right, of the Principal in connection with the SSTOM Works, Sydney Metro – Western Sydney Airport or the ETS;
- (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 Attachment C (*Initial Project Plans*) to the Particular Specification (where applicable) and any version of the Project Plan which has been either:
    - (iii) certified by the Principal's Representative or the Independent Certifier under clause 9.5(a)(ii)(B)(III); or
    - (iv) submitted to the Principal's Representative and the time specified in clause 9.5(b) has expired without the Principal's Representative having issued a notice under that clause during that time,(as applicable); and
- (f) provide the Principal's Representative and Independent Certifier with all information and documents and allow the Principal's Representative and the Independent Certifier (in relation to IC Project Plans in the Delivery Phase only), acting reasonably, to insert Hold Points or Witness Points in the Project Plans and designate the authority to release the Hold Points.

#### 9.4 Fitness for purpose

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

#### 9.5 Review of Project Plans

(a) During the Delivery Phase:

(i) in relation to the IC Project Plans:

- (A) the Principal's Representative and the Independent Certifier will review each IC Project Plan submitted under this clause 9;
- (B) the Principal's Representative may, within 15 Business Days of the date on which the IC Project Plan is submitted to it under this clause 9, notify the Independent Certifier (with a copy to OpCo) of any non-compliances or potential non-compliances with the requirements of this deed or any other observations;
- (C) the Independent Certifier must, taking into account any comments received from the Principal's Representative in accordance with clause 9.5(a)(i)(B), determine whether the Project Plan complies with the requirements of this deed and either:
  - (I) if the Independent Certifier considers that the IC Project Plan does not comply with the requirements of this deed, notify OpCo of the non-compliances (with detailed reasons);
  - (II) if the Independent Certifier considers that one or more sub-plans comprising the IC Project Plan does not comply with the requirements of this deed:
    - (1) certify the compliant sub-plans in the IC Project Plan by providing to OpCo a certificate (with a copy to the Principal's Representative) in the form of Part A of Schedule 34 (*Certificates*); and
    - (2) notify OpCo (with a copy to the Principal's Representative) of the non-compliances in the sub-plans in the IC Project Plan (with detailed reasons); or
  - (III) if the Independent Certifier considers that the IC Project Plan complies with the requirements of this deed, certify the IC Project Plan by providing to OpCo a certificate in the form of Part A of Schedule 34 (*Certificates*),

within 20 Business Days following submission of the IC Project Plan to the Principal's Representative and Independent Certifier.

(ii) in relation to all other Project Plans which are not IC Project Plans, the Principal's Representative:

- (A) will review each Project Plan submitted under this clause 9; and
- (B) must determine whether the Project Plan complies with the requirements of this deed and either:
  - (I) if the Principal's Representative considers that the Project Plan does not comply with the requirements of this deed, notify OpCo (with a copy to the Independent Certifier) of the non-compliances (with detailed reasons);
  - (II) if the Principal's Representative considers that one or more sub-plans comprising the Project Plan does not comply with the requirements of this deed:
    - (1) certify the compliant sub-plans in the Project Plan by providing to OpCo a certificate (with a copy to the Independent Certifier) in the form of Part B of Schedule 34 (*Certificates*); and

- (2) notify OpCo (with a copy to the Independent Certifier) of the non-compliances in the sub-plans in the Project Plan (with detailed reasons); or
    - (III) if the Principal's Representative considers that the Project Plan complies with the requirements of this deed, certify the Project Plan by providing to OpCo (with a copy to the Independent Certifier) a certificate in the form of Part B of Schedule 34 (*Certificates*),

within 20 Business Days following submission of the Project Plan to the Principal's Representative and Independent Certifier.
- (b) During the Operations Phase, the Principal's Representative may (but is not obliged to):
  - (i) review any Project Plan submitted under this clause 9; and
  - (ii) notify OpCo if, in the opinion of the Principal'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 the Principal's Representative.
- (c) If OpCo receives a notice in accordance with clauses 9.5(a)(i)(C)(I), 9.5(a)(i)(C)(II)(2), 9.5(a)(ii)(B)(I), 9.5(a)(ii)(B)(II)(2) or 9.5(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 and 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 the Principal's Representative whereupon the provisions of this clause 9.5 will reapply to the revised Project Plan or affected plans (as applicable).
- (d) A certificate provided by:
  - (i) the Independent Certifier pursuant to clauses 9.5(a)(i)(C)(II)(1) or 9.5(a)(i)(C)(III); or
  - (ii) the Principal's Representative pursuant to clauses 9.5(a)(ii)(B)(II)(1) or 9.5(a)(ii)(B)(III),

may list any Minor Non-Compliance the Principal's Representative or Independent Certifier (as applicable) determines that OpCo has reasonable grounds for not promptly correcting prior to the certification and:

  - (iii) the Independent Certifier or Principal's Representative (as applicable) may, in the certificate, identify the action that must be taken by OpCo to address the Minor Non-Compliance; and
  - (iv) OpCo must:
    - (A) complete the required action, or take any other action OpCo deems reasonable in the circumstances to correct the Minor Non-Compliance to the extent required for that Project Plan to comply with this deed, within the time frame (if any) specified by the Independent Certifier or Principal's Representative (as applicable); and
    - (B) provide to the Independent Certifier (with a copy to the Principal) or the Principal's Representative (as applicable) a copy of the corrected Project Plan or other reasonable evidence, in such detail that the Independent Certifier or Principal's Representative (as applicable) may require to confirm that the Minor Non-Compliance has been addressed.

## 9.6 Principal 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 9.3(a),

the Principal's Representative or the Independent Certifier (with respect to IC Project Plans only) 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 the Principal's Representative or the Independent Certifier (with respect to IC Project Plans only) to comply with the requirements of this deed; and
- (f) submit the amended or updated Project Plan to the Principal's Representative and Independent Certifier (as applicable) within the time specified under clause 9.6(d).

## **9.7 Implementation and compliance**

- (a) OpCo must implement and comply with each Project Plan (and any sub-plan which forms part of a Project Plan) which has been:
  - (i) during the Delivery Phase, certified by:
    - (A) the Independent Certifier under clauses 9.5(a)(i)(C)(II)(1) or 9.5(a)(i)(C)(III); or
    - (B) the Principal's Representative under clauses 9.5(a)(ii)(B)(II)(1) or 9.5(a)(ii)(B)(III); or
  - (ii) during the Operations Phase, submitted to the Principal's Representative and the time specified in clause 9.5(a) has expired without the Principal's Representative having issued a notice under that clause during that time.
- (b) During the Delivery Phase, if the Independent Certifier or Principal's Representative (as applicable) does not, in respect of a Project Plan referred to in clause 18.1(b)(i), either certify or reject the Project Plan within 20 Business Days following submission of the Project Plan to the Principal's Representative and Independent Certifier, OpCo may use the Project Plan at OpCo's own risk.
- (c) OpCo must comply with the Hold Point and Witness Point procedures required by this deed, including as set out in the SSTOM Specification or inserted in the Project Plans by the Principal's Representative or Independent Certifier pursuant to clause 9.3(f).

## **10. OpCo's general obligations**

### **10.1 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.

### **10.2 Principal contractor**

- (a) **(Definitions):** In this clause 10.2 and clause 10.4 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) construction work involved in OpCo's Activities; and
  - (ii) any construction work carried out on the Sydney Metro Site by the Principal, an FIW Contractor, the ETS Delivery Partner or any of its contractors, an Other Contractor or the FSM 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 (**Site Interface Work**),

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

- (b) **(Engagement as principal contractor under Core Contractor Side 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, where the Site Access Schedule provides that OpCo will have control of that part of the Construction Site:
- (i) to the extent that OpCo's Activities or any Site Interface Work includes construction work, the Principal:
    - (A) engages the Appointed Principal Contractor as the principal contractor in respect of OpCo's Activities and the Site Interface Work;
    - (B) authorises the Appointed Principal Contractor to have management and control of each workplace at which OpCo's Activities and the 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 or the ETS Delivery Partner or any of its contractors undertaking Site Interface Work before such Site Interface Work commences; and
    - (D) must provide the Appointed Principal Contractor with executed Site Access Deed Polls from each Other Contractor undertaking Site Interface Work.
- (c) **(Engagement of Core Contractor's Contractor):** If the Principal agrees to engage one of the D&C Contractor's contractors or one of the O&M Contractor's contractors as principal contractor pursuant to clause 14 of the D&C Contract Side Deed or clause 13 of the O&M Contract Side Deed (as applicable), such that the relevant D&C Contractor's contractor or O&M Contractor's contractor (as applicable) is the Appointed Principal Contractor during the Delivery Phase or the Operations Phase and with respect to the Construction Site or the Licensed Maintenance Area (as applicable), then:
- (i) the Principal will engage the relevant contractor as principal contractor under a deed of appointment executed in accordance with the D&C Contract Side Deed or O&M Contract Side Deed (as applicable);
  - (ii) the Principal will authorise the relevant contractor to have management and control of each workplace at which OpCo's Activities and the Site Interface Work is to be carried out and to discharge the duties of a principal contractor under the WHS Legislation;
  - (iii) the relevant contractor will accept, under a deed of appointment executed in accordance with the D&C Contract Side Deed or O&M Contract Side Deed (as applicable), the engagement as principal contractor and agree to discharge the duties imposed on a principal contractor by the WHS Legislation; and
  - (iv) once the contractor's engagement as principal contractor is effective, the D&C Contractor or O&M Contractor (as applicable) will be released from its obligations under clause 14 of the D&C Contract Side Deed or clause 13 of the O&M Contract Side Deed (as applicable) to the extent that the contractor has been appointed as principal contractor.
- (d) **(Period of engagement – Delivery):** The D&C Principal Contractor's engagement and authorisation as an Appointed Principal Contractor will:
- (i) commence on the date on which OpCo is given access to a part of the Construction Site in accordance with this deed; and
  - (ii) continue until the earlier of:
    - (A) termination of this deed; and
    - (B) in respect of:

- (I) 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 22.4, 22.5 or 22.6 (as applicable); and
  - (II) the balance of the SSTOM Works, the Date of Completion.
- (e) **(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 an Appointed Principal Contractor will:
  - (i) commence on the Date of Completion; and
  - (ii) continue until the earlier of:
    - (A) the termination of this deed; and
    - (B) the Expiry Date.
- (f) **(Authorisations and licences):** OpCo must:
  - (i) ensure that if any Law, including in the State or Territory in which the SSTOM Works are situated or OpCo's Activities are carried out (as the case may be) requires that:
    - (A) a person:
      - (I) 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
      - (II) 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) to the extent relevant to OpCo's Activities or during the periods set out in clauses 10.2(d) and 10.2(e), not direct or allow a person to carry out work or use plant or substance at a workplace unless the requirements of clause 10.2(f)(i) are met (including any requirement to be authorised, licensed, qualified or supervised); and
  - (iii) if requested by the Principal 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 the Principal before OpCo or an OpCo Contractor (as the case may be) commences such work.
- (g) **(If engagement not effective):** If the engagement of an Appointed Principal Contractor as principal contractor under the Core Contractor Side Deeds 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 10.2(b).
- (h) **(Other principal contractors):** At any time:
  - (i) when the Site Access Schedule provides that OpCo will not have control of a part of the Construction Site; or
  - (ii) during the period when the Appointed Principal Contractor is not engaged and authorised as the principal contractor in accordance with clauses 10.2(d) and 10.2(e),

OpCo:

- (iii) acknowledges that the Other Contractor, FSM Contractor, FIW Contractor or other entity who is specified in:
  - (A) the Site Access Schedule; or
  - (B) a notice from the Principal,
 as being in control of the part of the Construction Site (**Other Principal Contractor**) is the principal contractor in respect of all construction work carried out on that part of the Construction Site during the period in which that Other Principal Contractor is in control of the part of the Construction Site; and
- (iv) must comply with any exercise by the Other Principal Contractor referred to in clause 10.2(h)(iii) 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.
- (i) (**Indemnity**): To the extent not prohibited by Law, OpCo must indemnify the Principal from and against any Claims against the Principal, or Loss suffered or incurred by the Principal, 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 this clause 10.2, clause 10.3 and clause 10.4.

### 10.3 Protection of persons and property

- (a) OpCo must carry out OpCo's Activities in a manner that:
  - (i) does not put the health or safety of persons at risk and prevents injury or death;
  - (ii) protects and prevents damage to property and the Environment; and
  - (iii) protects and prevents damage to:
    - (A) the SSTOM Works, the Temporary Works and OpCo's Activities; and
    - (B) any Foundation Infrastructure Works on or in the vicinity of the Sydney Metro Site.
- (b) If the Principal's Representative considers there is a risk to the health or safety of people or damage to property arising from OpCo's Activities:
  - (i) the Principal's Representative may direct OpCo to change its manner of working or to cease working; and
  - (ii) OpCo must, at its cost, comply with any direction by the Principal's Representative under clause 10.3(b)(i).

### 10.4 Health and safety

OpCo must:

- (a) (**Compliance with health and safety Laws**): ensure that in carrying out OpCo's Activities under this deed:
  - (i) it complies with all Laws (including the WHS Legislation, Rail Safety National Law, Rail Safety Regulations and the Heavy Vehicle National Law), WHS Codes of Practice, Australian Standards and other requirements of this deed for work health, safety and rehabilitation management;
  - (ii) all OpCo Contractors comply with their respective obligations under all Laws (including the WHS Legislation, Rail Safety National Law, Rail Safety Regulations and the Heavy Vehicle National Law), WHS Codes of Practice, Australian Standards and other requirements of this deed for work health, safety and rehabilitation management; 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 (as defined in the WHS Management Systems and Auditing Guidelines) which complies with the Law and is otherwise in accordance with the Office of the Federal Safety Commissioner's Audit Criteria Guidelines and WHS Management Guidelines);
- (c) **(Notify)**: notify the Principal's Representative in accordance with the Sydney Metro Principal Contractor Health and Safety Standard and Sydney Metro Operator and Maintainer Health and Safety Standard (as applicable) of all WHS Incidents and Significant Incidents and notify the Principal's Representative within 12 hours of any other work health and safety matter arising out of, or in any way in connection with, OpCo's Activities;
- (d) **(Assurances)**: provide the Principal's Representative with written assurances (in a form reasonably acceptable to the Principal) from:
  - (i) OpCo about OpCo's ongoing compliance; and
  - (ii) all OpCo Contractors about each OpCo Contractor's ongoing compliance, with WHS Legislation, Rail Safety National Law, Rail Safety Regulations, Heavy Vehicle National Law, WHS Codes of Practice and other requirements of this deed for work health, safety and rehabilitation management at the following times:
    - (iii) in the Delivery Phase, following commencement of construction on the Construction Site and at the end of March, June, September and December of each year (or at any other time required by the Principal's Representative); and
    - (iv) in the Operations Phase, at the end of March, June, September and December of each year (or at any other time required by the Principal's Representative);
- (e) **(Report)**: without limiting OpCo's other reporting obligations in the SSTOM Specification in respect of work health, safety and rehabilitation, provide the Principal's Representative with a written report of all work health, safety and rehabilitation matters in connection with OpCo's Activities:
  - (i) in accordance with the Sydney Metro Principal Contractor Health and Safety Standard, Sydney Metro Operator and Maintainer Health and Safety Standard and the SSTOM Specification; and
  - (ii) at any other times the Principal's Representative may require from time to time;
- (f) **(Cooperate)**: consult, cooperate and co-ordinate activities with the Principal, the FIW Contractors, Other Contractors and the FSM Contractor to ensure that all parties are able to comply with their respective obligations under the WHS Legislation;
- (g) **(Duty)**: carry out OpCo's duties under the WHS Legislation to enable the Principal to discharge its duties under the WHS Legislation and other applicable Laws;
- (h) **(Ensure Principal does not breach WHS Legislation)**: ensure that it does not do anything or fail to do anything that would cause the Principal to be in breach of the WHS Legislation or other Law concerning health and safety;
- (i) **(Significant Contracts)**: ensure that each Significant Contract includes provisions equivalent to clauses 10.2(f), 10.3, 10.4 and 10.7(b);
- (j) **(Health and Safety Leadership)**: provide strong health and safety leadership and continuously promote health and safety as a core value; and
- (k) **(Directions)**: comply with any direction about work health, safety and rehabilitation matters from an Authority or the Principal, which may include:
  - (i) a direction to issue a direction to an OpCo Contractor; or
  - (ii) if the Principal's Representative reasonably considers there is a risk to the health or safety of people or damage to property arising from OpCo's Activities:
    - (A) the Principal's Representative may direct OpCo to change its manner of working or to cease working; and

- (B) OpCo must, at its cost, comply with any direction by the Principal's Representative under this paragraph (ii).

#### **10.5 WHS Accreditation Scheme**

OpCo:

- (a) warrants that the Core Contractors are accredited under the WHS Accreditation Scheme; and
- (b) must ensure that the Core Contractors comply with all requirements of, and maintain accreditation under, the WHS Accreditation Scheme at all times whilst carrying out building work (as defined in section 6 of the BCIP Act) as part of OpCo's Activities.

#### **10.6 Sydney Metro Health and Safety Standards**

- (a) OpCo must comply with, and procure that its OpCo Contractors comply with, the:
  - (i) Sydney Metro Principal Contractor Health and Safety Standard, as amended from time to time, as if it was a principal contractor for the purposes of that standard; and
  - (ii) Sydney Metro Operator and Maintainer Health and Safety Standard, as amended from time to time, as if it was the operator and maintainer for the purposes of that standard.
- (b) OpCo acknowledges and agrees that:
  - (i) the Principal will update the Sydney Metro Principal Contractor Health and Safety Standard and Sydney Metro Operator and Maintainer Health and Safety Standard from time to time, including to address health and safety issues relating to OpCo's Activities and Sydney Metro – Western Sydney Airport; and
  - (ii) subject to clause 42, OpCo will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in any way in connection with:
    - (A) any update or amendment to the Sydney Metro Principal Contractor Health and Safety Standard or Sydney Metro Operator and Maintainer Health and Safety Standard; or
    - (B) any act or omission of the Principal in relation to the Sydney Metro Principal Contractor Health and Safety Standard or Sydney Metro Operator and Maintainer Health and Safety Standard (including any failure of the Principal to do anything specified in the Sydney Metro Principal Contractor Health and Safety Standard or Sydney Metro Operator and Maintainer Health and Safety Standard as the obligation of the Principal or an Associate of the Principal).
- (c) Nothing in clauses 10.6(a) or 10.7(c), requires OpCo to be a principal contractor for the purposes of this deed or the WHS Legislation.

#### **10.7 Health and Safety Plans**

- (a) OpCo acknowledges that preparation of the Health and Safety Plan – Delivery Phase in accordance with clause 9 is a condition precedent to the Principal's obligations under clause 12.1.
- (b) Without limiting any requirement of the WHS Legislation or any other applicable Law (including the Rail Safety National Law, Rail Safety Regulations and Heavy Vehicle National Law) or this deed, the Health and Safety Plan – Delivery Phase and Health and Safety Plan – Operations Phase must:
  - (i) set out in adequate detail the policies and 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, WHS Codes of Practice, Australian Standards for work health, safety and rehabilitation management and any other

- applicable Law (including the Rail Safety National Law, Rail Safety Regulations and Heavy Vehicle National Law);
  - (iii) address the matters specified in the WHS Legislation, Rail Safety National Law, Rail Safety Regulations, Heavy Vehicle National Law, WHS Codes of Practice, Australian Standards for work health, safety and rehabilitation management and any other applicable Law;
  - (iv) comply with the requirements applicable to a "Project Safety Plan" or "Project WHS Management Plan" set out in the Office of the Federal Safety Commissioner's Audit Criteria Guidelines and the WHS Management Systems and Auditing 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 9, OpCo must:
- (i) continue to correct any defects in or omissions from the Health and Safety Plan – Delivery Phase and Health and Safety Plan – Operations Phase (whether identified by the Principal's Representative or OpCo); and
  - (ii) regularly review and, as necessary, revise the Health and Safety Plan – Delivery Phase and Health and Safety Plan – Operations Phase in accordance with the WHS Legislation, Rail Safety National Law, Rail Safety Regulations, any other Law concerning work health and safety, applicable WHS Codes of Practice, the Sydney Metro Principal Contractor Health and Safety Standard and Sydney Metro Operator and Maintainer Health and Safety Standard, as amended from time to time,
- and submit an amended draft of its Health and Safety Plan – Delivery Phase and Health and Safety Plan – Operations Phase (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 the Principal's Representative, after which clauses 9.3, 9.5 and 9.7 will reapply to the revised Health and Safety Plan – Delivery Phase or Health and Safety Plan – Operations Phase or affected plans (as applicable).
- (d) OpCo must document and maintain detailed records of inspections or audits undertaken in accordance with the Health and Safety Plan – Delivery Phase and Health and Safety Plan – Operations Phase.
  - (e) OpCo must carry out OpCo's Activities in accordance with, and otherwise implement, the latest Health and Safety Plan – Delivery Phase and Health and Safety Plan – Operations Phase.

## 10.8 Principal may act if OpCo fails to comply

To the extent that OpCo fails to comply with any obligation under clauses 10.2 to 10.7, the Principal may, in addition to any other remedies under this deed or at Law, on reasonable prior notice to OpCo, do all things, or engage a third party to do all things, necessary to rectify the failure and the reasonable costs of doing so will be a debt due and payable by OpCo to the Principal.

## 10.9 Prevention of nuisance and interference

- (a) In performing OpCo's Activities, OpCo must:
  - (i) prevent nuisance (including any nuisance caused by noise, dust, light emission, vibration, electromagnetic interference, disturbance, air pollution, water pollution or odour) on or adjacent to the Sydney Metro Site and any Extra Land that is in excess of that permitted by Law, the Planning Approvals, the ABC Approval, any Third Party Agreement or the Project Plans; and
  - (ii) not interfere with the passage of people and vehicles, access to any premises, car parks, roads or pedestrian ways or the operations or activities carried out on or adjacent to the Sydney Metro Site, except to the extent that such interference is:

- (A) required for purposes of public health or safety;
  - (B) not reasonably avoidable; or
  - (C) permitted by Law; and
- (b) if, in the reasonable opinion of the Principal's Representative, OpCo has failed to meet its obligations under clause 10.9(a)(i) or clause 10.9(a)(ii), OpCo must comply with any direction of the Principal's Representative to:
  - (i) stop or change the manner of carrying out OpCo's Activities; and
  - (ii) amend any applicable Project Plans to remedy the nuisance or interference and submit to the Principal for review in accordance with clause 9.

#### **10.10 Control of traffic**

OpCo:

- (a) during the periods set out in clauses 10.2(d) and 10.2(e):
  - (i) is responsible for the control, direction and protection of all road, waterborne and pedestrian traffic, in any way affected by the carrying out of OpCo's Activities; and
  - (ii) must manage all such traffic to ensure:
    - (A) its continuous, safe and efficient movement;
    - (B) the traffic carrying capacity of Local Areas is maintained; and
    - (C) that any delays and disruptions to:
      - (I) road traffic and the movement of road traffic; and
      - (II) waterborne traffic and the movement of waterborne traffic, are kept to an absolute minimum;
- (b) at all other times:
  - (i) is responsible for coordinating with the relevant principal contractor who has control and management of the Construction Site (including the surrounding traffic management) to minimise the impact of OpCo's Activities on all road, waterborne and pedestrian traffic; and
  - (ii) must coordinate with the relevant principal contractor (as applicable) to allow the relevant principal contractor to manage all such traffic to ensure:
    - (A) its continuous, safe and efficient movement;
    - (B) the traffic carrying capacity of Local Areas is maintained; and
    - (C) that any delays and disruptions to:
      - (I) road traffic and the movement of road traffic; and
      - (II) waterborne traffic and the movement of waterborne traffic, are kept to an absolute minimum;
- (c) must at all times comply with the Construction Environmental Management Plan and Sub-Plans (Off Airport), Transport Integration Plan and the requirements of the SSTOM Specification and any Third Party Agreement in respect of:
  - (i) road traffic management and safety; and
  - (ii) waterborne traffic and the movement of waterborne traffic; and
- (d) must comply with the directions of any relevant Authority and the Principal's Representative with respect to such management.

#### **10.11 Industrial relations**

OpCo must, in performing OpCo's Activities:

- (a) assume sole responsibility for and manage all aspects of industrial relations;

- (b) [REDACTED]
- (c) comply with its Human Resources Plan;
- (d) comply with its Workplace Relations Management Plan;
- (e) comply with the NSW Guidelines in respect of industrial relations;
- (f) keep the Principal fully and promptly informed of:
  - (i) all industrial relations problems, issues or action which affect or are likely to affect the carrying out of OpCo's Activities or the activities of Sydney Trains or other public transport operators; and
  - (ii) the actions or measures (including settlements) OpCo has taken or proposes to take to overcome the effects of such industrial relations problems, issues or action; and
- (g) use its best endeavours to minimise potential redundancy and termination costs by, without limitation, formulating and administering terms and conditions of employment which minimise potential termination and redundancy costs.

#### **10.12 Workforce Development and Industry Participation**

- (a) OpCo must:
  - (i) ensure that workforce development is addressed throughout the performance of OpCo's Activities;
  - (ii) comply with the workforce development requirements set out in section 2.9 of the General Specification;
  - (iii) achieve the "Workforce Development, Industry and Aboriginal Participation Outputs" required by sections 2.9.3 and 2.9.4 of the General Specification; and
  - (iv) develop, implement and maintain a Workforce Development, Industry and Aboriginal Participation Plan in accordance with the requirements in section 5.2.15 of the General Specification.
- (b) Without limiting clause 10.12(a), OpCo and its OpCo Contractors must:
  - (i) at all times comply with the requirements of the Workforce Development, Industry and Aboriginal Participation Plan and the Training Management Plan that OpCo is permitted to use in accordance with clause 9.7;
  - (ii) cooperate with the Principal and provide any assistance or documentation that the Principal may reasonably require in relation to the implementation of its workforce development and industry participation initiatives for the Project;
  - (iii) attend and participate in working groups and forums established by the Principal in relation to its workforce development and industry participation initiatives for the Project;
  - (iv) maintain records evidencing OpCo's compliance with the requirements in section 2.9 of the General Specification; and
  - (v) make available all records maintained in accordance with clause 10.12(b)(iv) to the Principal or its nominees.

#### **10.13 Australian Jobs Act**

- OpCo must:
  - (a) take reasonable steps, and must ensure that the OpCo Contractors take reasonable steps, to ensure that Australian companies have full, fair and reasonable opportunities to bid for the supply of key goods and services that OpCo requires in order to perform OpCo's Activities; and
  - (b) without limiting clause 7.1, cooperate with the Principal in relation to:
    - (i) compliance with the requirements of the *Australian Jobs Act 2013* (Cth); and



- (ii) the implementation of the Sydney Metro Australian Industry Participation Plan.

#### **10.14 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 General Specification;
  - (ii) required by any Approvals;
  - (iii) contained in the Community Communications Strategy – Delivery Phase and Community Communications Strategy – Operations Phase; and
  - (iv) reasonably required by the Principal from time to time.

#### **10.15 Cooperation and coordination with Other Contractors**

(a) OpCo:

- (i) acknowledges that:
  - (A) the Principal may engage Other Contractors to carry out Other Contractors' Activities upon or in the vicinity of the Sydney Metro 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 Sydney Metro Site, or adjacent to the Sydney Metro 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 Sydney Metro Site or any adjacent property to the Sydney Metro Site:
    - (I) at the same time as OpCo is performing OpCo's Activities; and
    - (II) at the times agreed with the Other Contractor, or failing agreement at times determined by the Principal's Representative,and for this purpose ensure they have safe, clean and clear access to those parts of the Sydney Metro Site, or property adjacent to the Sydney Metro Site (to the extent that OpCo has access to the Sydney Metro Site or that property and for the period of such access), required by them for the purpose of carrying out their work, subject to the Other Contractor complying with OpCo's reasonable site access and work health and safety procedures;
  - (B) take all reasonably necessary precautions to ensure that the SSTOM Works, the Temporary Works, any part of the Foundation Infrastructure Works during the period in which OpCo is responsible for the Foundation Infrastructure Works, the Sydney Metro Site, Sydney Metro – Western Sydney Airport 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:
    - (I) facilitate the Other Contractors' Activities, including providing Other Contractors with such assistance as may be directed by the Principal's Representative; and
    - (II) 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 the Principal's Representative with Other Contractors and others at such times as may be reasonably required by the Principal's Representative, to review current and future issues; and
- (iii) must promptly advise the Principal'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) The Principal 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 10.15(a); or
  - (ii) provide personnel to accompany Other Contractors in order to comply with its obligations under clause 10.15(a),

the Principal must pay OpCo for the provision of such services:

- (iii) where the services are carried out on the Construction Site during the Delivery Phase, 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 10.15	■ per induction (WPI Indexed)
Providing personnel to accompany Other Contractors in order to comply with OpCo's obligations under clause 10.15	■ per hour (WPI Indexed)

- (iv) where the services are carried out on the Licensed Maintenance Area during the Operations Phase, in accordance with the Schedule of Rates.
- (d) To the extent that OpCo is required to:
- (i) create information that did not previously exist for the purposes of clause 10.15(a)(i)(D);

- (ii) provide safe, clean and clear access to areas of the Sydney Metro Site to which there is no previously existing safe, clean or clear access for the purposes of clause 10.15(a)(ii)(A); or
- (iii) comply with a direction by the Principal's Representative given pursuant to clause 10.15(a)(ii)(D)(I),

the Principal must compensate OpCo for the Net Financial Impact of providing such services which will be calculated and paid in accordance with Schedule 6 (*Net Financial Impact*).

- (e) The Principal must ensure that Other Contractors:
  - (i) cooperate with OpCo and the Accredited Contractors in relation to OpCo's (or any Accredited Contractor's) compliance with its Accreditation obligations under the Rail Safety National Law and Rail Safety Regulations;
  - (ii) do not put OpCo (or any Accredited 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 Accredited Contractor) in relation to compliance with the Accreditation of OpCo (or any Accredited Contractor); and
  - (iv) do not do anything (or fail to do anything) which jeopardises the Accreditation of OpCo (or any Accredited Contractor) or an application for Accreditation by OpCo (or any Accredited Contractor), including anything that may be grounds for the ONRSR to refuse an application for Accreditation by OpCo (or any Accredited 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 Accredited Contractor).
- (f) Subject to clause 10.15(c) and clause 29, the Principal will not be liable upon any Claim by OpCo arising out of or in any way in connection with any Other Contractors' Activities.

#### **10.16 Master Interface Deed**

- (a) The Principal and OpCo acknowledge that they have entered into, and are bound by the terms of the Master Interface Deed.
- (b) OpCo must:
  - (i) at all relevant times comply with the terms of the Master Interface Deed;
  - (ii) must attend meetings as required in accordance with the Master Interface Deed; and
  - (iii) update the Interface Management Plan as required to reflect the interface between OpCo's Activities and the activities to be performed by each relevant FIW Contractor.
- (c) OpCo must ensure that the Interface and Integration Manager (as referred to in Schedule 22 (*Key personnel*)) attends and participates in all relevant Governance Forums (as that term is defined in the Master Interface Deed) established in accordance with the Master Interface Deed.
- (d) The Principal will procure that each FIW Contractor which is a member of a Delivery Site Integration Group to which OpCo is also a member under the terms of the Master Interface Deed accedes to the Master Interface Deed in accordance with its terms.
- (e) If:
  - (i) the Framework Principles are amended or replaced in accordance with clause 10.5(b) of the Master Interface Deed; and
  - (ii) compliance with the amended or replacement Framework Principles will have a Material Impact on OpCo,

then the Principal will promptly issue a Modification Impact Request under clause 33.1(a) and clause 33.2 will apply.

- (f) Where the Principal issues a Modification Impact Request in accordance with clause 10.16(e), the Principal's right to reject the Modification Impact Proposal in accordance with clause 33.5(b)(iv) or elect not to proceed with the proposed Modification in accordance with clause 33.5(b)(v) will not apply.

#### **10.17 Cooperation and coordination with FIW Contractors**

Without limiting OpCo obligations under the Master Interface Deed, OpCo:

- (a) acknowledges that:
  - (i) the Foundation Infrastructure Works forms part of Sydney Metro – Western Sydney Airport;
  - (ii) OpCo's Activities interface with the Foundation Infrastructure Works;
  - (iii) FIW Contractors will be executing the Foundation Infrastructure Works on the FIW Site which:
    - (A) includes some parts of the Construction Site or Extra Land; or
    - (B) is adjacent to the Construction Site or Extra Land,at the same time as OpCo is performing OpCo's Activities;
  - (iv) the FIW Contractors will be principal contractor of the FIW Site (including those parts which forms part of the Construction Site) prior to the OpCo Handover Date and will require access to the Construction Site in order to perform their obligations under their respective contracts with the Principal;
  - (v) it may require certain design and work methodology input from the FIW Contractors to coordinate the design of the SSTOM Works and Temporary Works with the Foundation Infrastructure Works;
  - (vi) the FIW Contractors may require OpCo to provide information to them to coordinate the design of the Foundation Infrastructure Works with the SSTOM Works and the Temporary Works, and this must be provided in a timely manner by OpCo; and
  - (vii) any delay in the performance of OpCo's Activities or in OpCo providing information to, or cooperating and coordinating with any FIW Contractor, may adversely impact upon, delay or disrupt any one or more FIW Contractors or OpCo's Activities in a way which may lead to the Principal suffering or incurring additional costs, Losses and damages;
- (b) must at all times:
  - (i) protect the SSTOM Works, Temporary Works and other improvements on the Construction Site or Extra Land from accidental damage by the FIW Contractors;
  - (ii) fully cooperate with FIW Contractors, and do everything reasonably necessary to:
    - (A) facilitate the execution of work by the FIW Contractors, including providing the FIW Contractors with such assistance as may be directed by the Principal's Representative; and
    - (B) ensure the effective coordination of the design and construction of the SSTOM Works and the Temporary Works with the design and construction of the Foundation Infrastructure Works;
  - (iii) carefully coordinate and interface OpCo's Activities with the Foundation Infrastructure Works and for this purpose:
    - (A) make proper allowance in all programs for the Foundation Infrastructure Works;

- (B) review all programs provided by the FIW Contractors and confirm that they adequately allow for OpCo's Activities and the interfaces of the Foundation Infrastructure Works with OpCo's Activities;
  - (C) monitor the progress or conduct of the Foundation Infrastructure Works;
  - (D) notify the Principal's Representative of any interface or sequence of activities of which OpCo is aware that may affect the commencement, progress or Completion of the SSTOM Works; and
  - (E) provide the FIW Contractors with sufficient information about the current and expected OpCo's Activities to assist them to coordinate the Foundation Infrastructure Works with OpCo's Activities;
- (iv) perform OpCo's Activities so as to minimise any interference with or disruption or delay to the Foundation Infrastructure Works;
- (v) be responsible for coordinating OpCo's Activities, including work sequencing, construction methods, safety and industrial relations matters with those affecting, and influenced by, the FIW Contractors' personnel and work;
- (vi) work directly with the FIW Contractors where required to complete the design of the SSTOM Works and:
  - (A) provide all necessary information to the FIW Contractors in respect of the SSTOM Works to permit the FIW Contractors to complete the design of the Foundation Infrastructure Works so that they are acceptable to the Principal; and
  - (B) otherwise comply with this deed;
- (vii) without limiting clause 10.16(c), attend coordination meetings chaired by the Principal's Representative with the FIW Contractors and others at such times as may be reasonably required by the Principal's Representative, to review current and future issues;
- (viii) when any information is requested by the Principal or the FIW Contractors, including confirming the compatibility or suitability of the design of, work methods to be used in, or any other aspect of, the Foundation Infrastructure Works with the SSTOM Works or OpCo's Activities:
  - (A) provide the information to the Principal's Representative or the FIW Contractor(s), with a copy to the Principal's Representative (as the case may be), within the time requested by the Principal or the FIW Contractor, provided that this time is reasonable; and
  - (B) ensure and warrant that the information provided is accurate as at the date it is provided; and
- (ix) use its best endeavours to resolve any problems, and work closely and iteratively, with the FIW Contractors, including providing design options, iterations, and work methodologies, to achieve the best solution to such problems, related to:
  - (A) the provision of information;
  - (B) the obtaining of information;
  - (C) the adequacy of information provided to, or received from, FIW Contractors;
  - (D) the compatibility of the SSTOM Works with the Foundation Infrastructure Works;
  - (E) coordination in accordance with this clause 10.17; and
  - (F) technical issues with the information provided to, or received from, FIW Contractors;
- (c) must at all times during the periods set out in clauses 10.2(d) and 10.2(e):

- (i) on reasonable prior written notice (including during OpCo's out of hour periods when OpCo or its OpCo Contractors are themselves performing OpCo's Activities), permit the FIW Contractors to execute the Foundation Infrastructure Works on the applicable parts of the Construction Site or Extra Land, or on any adjacent property to the Construction Site or Extra Land, and for this purpose ensure the FIW Contractors have safe, clean and clear access to:
  - (A) those parts of the Construction Site or Extra Land required by them for the purpose of carrying out their work;
  - (B) access roads to traverse the Construction Site or Extra Land to access such adjacent property; or
  - (C) property adjacent to the Construction Site or Extra Land (to the extent that OpCo has the right to access the property adjacent to the Construction Site or Extra Land and for the period during which such right subsists) required by the FIW Contractors for the purpose of carrying out the Foundation Infrastructure Works,
 subject to, where the FIW Contractor is carrying out Site Interface Work, the relevant FIW Contractor executing a Site Access Deed Poll;
- (ii) protect improvements on the Construction Site or Extra Land from accidental damage by the FIW Contractors; and
- (iii) provide means of receiving, storing and protecting goods and equipment supplied by the FIW Contractors;
- (d) must promptly advise the Principal's Representative of all matters arising out of the liaison with the FIW Contractors that may have an adverse effect upon OpCo's Activities; and
- (e) acknowledges that conditions similar to those in this clause 10.17 applying to OpCo will apply to all FIW Contractors engaged by the Principal, whether working on the Construction Site or on any other site.

#### **10.18 Cooperation and coordination with Airport Lessee and Airport Lessee Contractors**

Without limiting OpCo's obligations under clause 2.1 of Schedule 18 (*Requirements of Third Party Agreements*), OpCo:

- (a) acknowledges that:
  - (i) OpCo's Activities interface with the Airport Works;
  - (ii) Airport Lessee Contractors will be executing work adjacent to the Construction Site, at the same time as OpCo is performing OpCo's Activities;
  - (iii) it may require certain design and work methodology input from the Airport Lessee and Airport Lessee Contractors to coordinate the design of the SSTOM Works and Temporary Works with the Airport Works;
  - (iv) the Airport Lessee and Airport Lessee Contractors may require OpCo to provide information to them to coordinate the design of the Airport Work with the SSTOM Works and the Temporary Works, and this must be provided in a timely manner by OpCo; and
  - (v) any delay in the performance of OpCo's Activities or in OpCo providing information to, or cooperating and coordinating with any Airport Lessee Contractor, may adversely impact upon, delay or disrupt any one or more Airport Lessee Contractors or OpCo's Activities in a way which may lead to the Principal suffering or incurring additional costs, Losses and damages;
- (b) must in accordance with the requirements of Schedule 18 (*Requirements of Third Party Agreements*) (as applicable):
  - (i) permit Airport Lessee Contractors to execute the Airport Works on any adjacent property to the Construction Site and for this purpose ensure they have safe, clean and clear access to those parts of the Construction Site, or property adjacent to the Construction Site, required by them for the purpose of carrying out their work;

- (ii) fully co-operate with Airport Lessee Contractors, and do everything reasonably necessary to:
  - (A) facilitate the execution of work by Airport Lessee Contractors; and
  - (B) ensure the effective coordination of the design and construction of the SSTOM Works and the Temporary Works with the design and construction of the Airport Work;
- (iii) carefully coordinate and interface OpCo's Activities with the Airport Work and for this purpose;
  - (A) make proper allowance in all programs for the performance of the Airport Work;
  - (B) notify the Principal's Representative of any interface or sequence of activities of which OpCo is aware that may affect the commencement, progress or Completion of the SSTOM Works; and
  - (C) upon request, provide the Airport Lessee Contractors with sufficient information about the current and expected OpCo's Activities to assist them to coordinate their Airport Works with OpCo's Activities;
- (iv) attend coordination meetings chaired by the Principal's Representative or the Airport Lessee with Airport Lessee Contractors and others at such times as may be reasonably required, to review current and future issues; and
- (v) when any information is requested by the Principal or the Airport Lessee Contractors, provide the information to the Principal's Representative or the Airport Lessee Contractor, with a copy to the Principal's Representative (as the case may be), within the time requested by the Principal or the Airport Lessee Contractor, provided that this time is reasonable; and
- (c) must promptly advise the Principal's Representative of all matters arising out of the liaison with Airport Lessee Contractors that may have an adverse effect upon OpCo's Activities.

#### **10.19 No Claims arising out of Airport Works**

- (a) Subject to clauses 10.19(c) and 10.28(b), the Principal will not be liable upon any Claim by OpCo arising out of or in any way in connection with:
  - (i) the Airport Lessee Contractors carrying out the Airport Works; or
  - (ii) any act or omission of the Airport Lessee or an Airport Lessee Contractor; and
- (b) OpCo warrants that the Financial Model and the Delivery Program contain sufficient allowances for the assumption by OpCo of the obligations and risks under clause 10.18 and this clause 10.19, including the cost of all the design iterations required to accommodate the Airport Works.
- (c) If the RID terminates or expires before the end of the Term, then any agreements to address Rail Activities on the Airport Site, as contemplated by clause 3.3.1 of the RID, and any new access arrangements entered into under clause 3.3.2 of the RID, will be Additional Third Party Agreements.

#### **10.20 ETS**

- (a) OpCo and the Principal acknowledge and agree that:
  - (i) the Principal and the ETS Delivery Partner will be responsible for providing the ETS for Sydney Metro – Western Sydney Airport;
  - (ii) the ETS will be the only ticketing or fare system for Sydney Metro – Western Sydney Airport; and
  - (iii) the Principal and the ETS Delivery Partner 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 the Principal and the ETS Delivery Partner;
- (ii) provide resources and attend meetings as required for the purposes of the delivery, operation, maintenance and replacement of the ETS in relation to Sydney Metro – Western Sydney Airport;
- (iii) integrate the ETS with Sydney Metro – Western Sydney Airport and the Operations Activities in accordance with the SSTOM Specification;
- (iv) provide the Principal with any information the Principal may require in relation to Sydney Metro – Western Sydney Airport for the purposes of the delivery, operation, maintenance and replacement of the ETS;
- (v) not damage the ETS Equipment or the plant and equipment of, or the work performed by the ETS Delivery Partner or any of its contractors; and
- (vi) comply with its obligations regarding the ETS in:
  - (A) Schedule 16 (*ETS Interface*); and
  - (B) the SSTOM Specification.
- (c) The Principal will ensure that the ETS Delivery Partner does not damage the SSTOM Works, the Temporary Works, any parts of the Foundation Infrastructure Works during the period in which OpCo is responsible for the Foundation Infrastructure Works in accordance with clause 16.10, the Sydney Metro Site or Sydney Metro – Western Sydney Airport, except to the minimum extent necessary to install, operate, maintain and replace the ETS.

#### 10.21 FSM Works

- (a) OpCo and the Principal must comply with their respective obligations in relation to the interface between OpCo's Activities and the FSM Works:
  - (i) as specified in Schedule 17 (*FSM Interface*); and
  - (ii) otherwise as required by this deed (including the SSTOM Specification and Exhibit 9 (*FSM Interface Requirements Specification*)).
- (b) The parties acknowledge and agree that the Principal may:
  - (i) direct amendments to the FSM Program in accordance with clause 2.5(e) of Schedule 17 (*FSM Interface*);
  - (ii) require other amendments to the parties' respective obligations in relation to the interface between OpCo's Activities and the FSM Works; and
  - (iii) give OpCo a copy of amendments to:
    - (A) Schedule 17 (*FSM Interface*);
    - (B) Exhibit 9 (*FSM Interface Requirements Specification*); and
    - (C) this deed (including the SSTOM Specification),
 (as applicable) (**Revised FSM Requirements**).
- (c) OpCo must carry out its obligations under this deed:
  - (i) on the basis of the Revised FSM Requirements; and
  - (ii) subject to clause 10.21(d), at its own cost, without any extension to the Date for Completion and without any entitlement to make any other Claim.
- (d) To the extent the Revised FSM Requirements imposes greater or different obligations on OpCo (including with respect to time) such that:
  - (i) OpCo is no longer able to comply with its obligations under this deed;
  - (ii) it affects OpCo's performance against any performance indicator or requirement which could result in a Service Payment Deduction;



- (iii) it increases OpCo's costs of carrying out OpCo's Activities or causes OpCo to incur any loss, in each case other than in a de minimis manner;
- (iv) it prevents OpCo being granted access to the Construction Site in accordance with the Site Access Schedule (as applicable); or
- (v) it adversely affects OpCo's right of access to, or use of, the Licensed Maintenance Area or access to any Additional Maintained Asset,

the Principal will promptly issue a Modification Impact Request under clause 33.1(a) and clause 33.2 will apply and to the extent the Revised FSM Requirements impose greater or different obligations such that any of the matters referred to in paragraphs (d)(i), (ii), (iv) or (v) apply, OpCo will be relieved of those greater or different obligations (as applicable) until such time as the Principal issues a Modification Order in respect of the relevant Modification.

- (e) Where the Principal issues a Modification Impact Request in accordance with clause 10.21(d), the Principal's right to reject the Modification Impact Proposal in accordance with clause 33.5(b)(iv) or elect not to proceed with the proposed Modification in accordance with clause 33.5(b)(v) will not apply.

## 10.22 Modern Slavery

### (a) (Modern Slavery compliance):

- (i) OpCo warrants that, as at the date of its execution of this deed:
  - (A) any Modern Slavery Information it has provided to the Principal in relation to Modern Slavery is, to the best of its knowledge, complete and accurate;
  - (B) neither OpCo or, to the best of its knowledge, any OpCo Contractor, has been convicted of a Modern Slavery Offence; and
  - (C) OpCo is not aware of any circumstances within its operations that could give rise to an official investigation or prosecution of a Modern Slavery Offence.
- (ii) During the Term, OpCo:
  - (A) must not, and must take reasonable steps to ensure that any OpCo Contractor does not engage in any activity or practice in the nature of Modern Slavery in its operations;
  - (B) must take reasonable steps to ensure that Modern Slavery is not occurring in its, and to the best of its knowledge, any OpCo Contractor's supply chains; and
  - (C) must otherwise comply, and take reasonable steps to ensure that any OpCo Contractor complies, with the Modern Slavery Laws and the Related Offence Provisions, to the extent applicable.

### (b) (Modern Slavery Information):

- (i) OpCo must:
  - (A) subject to any restrictions under any applicable Laws by which it is bound, provide to the Principal, within 20 Business Days of a request by the Principal, any Modern Slavery Information and other assistance, as reasonably requested by the Principal, to enable the Principal to meet its obligations under the *Modern Slavery Act 2018* (NSW) and any associated regulatory requirements (for example, annual reporting requirements and any NSW Procurement Board directions), including:
    - (I) cooperating in any Modern Slavery audit undertaken by the Principal (including by a third party on behalf of the Principal) or the NSW Audit Office; and
    - (II) providing reasonable access to the Principal's/Audit Office's auditors to interview OpCo's staff;

- (B) within 5 Business Days of providing a Modern Slavery Statement to the Commonwealth, provide a copy of that Modern Slavery Statement to the Principal; and
- (C) notify the Principal in writing as soon as it becomes aware of either or both of the following:
  - (I) a material change to any of the Modern Slavery Information it has provided to the Principal; and
  - (II) any actual or suspected occurrence of Modern Slavery in its operations or supply chains (or those of any OpCo Contractor).

Failure to comply with clause 10.22(b)(i)(C) will be deemed to be an OpCo Event of Default to which clause 47 will apply.

- (ii) Without limiting clause 10.22(b)(i)(A), in providing Modern Slavery Information to the Principal as to any actual or suspected occurrence of Modern Slavery in OpCo's and any OpCo Contractor's operations or supply chains, OpCo must provide sufficient Modern Slavery Information:
  - (A) to identify where the occurrence has arisen in those operations or supply chains and its scale and severity; and
  - (B) to enable the Principal to be satisfied, acting reasonably, that OpCo is taking reasonable steps to respond to and address that occurrence in accordance with any internal Modern Slavery policy and procedures of OpCo and any relevant Code of Practice/Conduct or other guidance issued by the Anti-slavery Commissioner or the NSW Procurement Board.
- (iii) Promptly following execution of this deed, OpCo must communicate to its relevant staff and any OpCo Contractor's staff (as applicable):
  - (A) the name and contact details of a specified representative of OpCo whom staff are invited to contact in respect of any actual or suspected occurrence of Modern Slavery in OpCo's and any OpCo Contractor's operations and supply chains; and
  - (B) where to access further information about Modern Slavery Laws, including contact details for the Anti-slavery Commissioner.
- (iv) In providing any requested Modern Slavery Information to the Principal, OpCo must:
  - (A) make such inquiries in relation to its operations and supply chains as may be reasonably expected to inform its response; and
  - (B) communicate openly about the extent to which the Modern Slavery Information it provides is complete and accurate (including a statement as to the limitations of the Modern Slavery Information provided).
- (v) OpCo may provide any Modern Slavery Information or report requested by the Principal in the form of a previously-prepared statement or re-purposed report, for example a statement provided in response to a similar request for Modern Slavery Information from another Australian public sector agency, or refer the Principal to its publicly available Modern Slavery Statement, provided that such statement or report provides generally the same Modern Slavery Information as that sought by the Principal.
- (vi) OpCo must, during the Term and for a further period of seven (7) years:
  - (A) maintain; and
  - (B) upon the Principal's reasonable request, give the Principal access to, and/or copies of,

a complete set of records in the possession or control of OpCo to trace, so far as practicable, the supply chain of all goods and services provided under this deed and to enable the Principal to assess OpCo's compliance with clause 10.22.

- (vii) OpCo consents to the Principal sharing Modern Slavery Information obtained from OpCo in respect of Modern Slavery, including records referred to in clause 10.22(b)(vi), with any other NSW Government agency or entity:
  - (A) for the purpose of identifying or addressing that actual or potential Modern Slavery; or
  - (B) to the extent the Principal has a reasonable belief of Modern Slavery actually or potentially occurring in the operations or supply chains of OpCo or any OpCo Contractor.
- (viii) Without limiting any other provision of clause 10.22(b), OpCo:
  - (A) agrees that the communication of such information to any NSW Government agency or entity pursuant to clause 10.22(b)(vii) is a communication falling within section 30 of the *Defamation Act 2005* (NSW); and
  - (B) releases and indemnifies the Principal and the State from and against any Claim in respect of any matter arising out of such communications, including the use of such information by the recipient.
- (c) **(Modern Slavery policy, due diligence processes, staff programs and training):**  
Without affecting the generality of clause 10.22(a)(ii), if OpCo:
  - (i) submits a Modern Slavery Statement; or
  - (ii) Self-Assesses as at high risk of causing or contributing to Modern Slavery in its operations or supply chains,
 OpCo must, if, and to the extent, requested by the Principal:
  - (iii) develop and implement, and ensure that any OpCo Contractor which is exposed to similar risks develops and implements, a Modern Slavery plan, which includes:
    - (A) a strategy on how to respond to and address an actual or suspected case of Modern Slavery; and
    - (B) due diligence processes in relation to Modern Slavery in its operations and supply chains;
  - (iv) provide programs and training for its staff and any OpCo Contractor's staff (as applicable) about Modern Slavery, including to:
    - (A) ensure compliance with the Modern Slavery Laws and any Modern Slavery strategy and due diligence processes of OpCo;
    - (B) promote awareness of the risks of Modern Slavery taking place in OpCo's operations and supply chains; and
    - (C) develop capacity to assess and effectively address such risks; and
  - (v) provide the Principal with:
    - (A) a copy of each of the strategy and processes referred to in clause 10.22(c) and Modern Slavery Information on their implementation; and
    - (B) Modern Slavery Information on implemented training and programs.
- (d) **(OpCo Contractors):** OpCo must take reasonable steps to ensure that all Subcontracts contain Modern Slavery provisions that are reasonably consistent with the provisions in clause 10.22, having regard to the nature of the procurement.
- (e) **(Response to Modern Slavery incident):**
  - (i) If OpCo becomes aware of any actual or suspected occurrence of Modern Slavery in its operations or supply chains (or in those of any OpCo Contractor), OpCo must take reasonable steps to respond to and address the occurrence in accordance with any applicable policies and guidance as identified in clause 10.22(b)(ii)(B). Failure to comply with this clause 10.22(e)(i) will be deemed to be an OpCo Event of Default and clause 47 will apply.

- (ii) Any action taken by OpCo under clause 10.22(e)(i) will not affect any rights of the Principal under this deed, including its rights under clause 10.22(f).
- (f) **(Termination and default events):**
  - (i) If:
    - (A) OpCo has failed to disclose to the Principal, prior to execution of this deed, that OpCo or any OpCo Contractor has been convicted of a Modern Slavery Offence; or
    - (B) OpCo or any OpCo Contractor is convicted of a Modern Slavery Offence during the Term and is unable to demonstrate to the Principal (acting reasonably) that OpCo has taken all reasonable steps to respond to and address the Modern Slavery Offence,

then an OpCo Termination Event will be deemed to have occurred and the Principal may issue a notice to terminate this deed under clause 49.4 of this deed.
  - (ii) If, in the Principal's reasonable view, OpCo has committed a material breach of clause 10.22(a), clause 10.22(b) or clause 10.22(d), then that will be deemed to be an OpCo Event of Default and clause 47 will apply.

### 10.23 Personnel

- (a) OpCo must:
  - (i) provide experienced and skilled personnel to perform its obligations under this deed; and
  - (ii) ensure that all persons employed or engaged on OpCo's Activities hold appropriate qualifications and have received appropriate training for their intended duties, and provide evidence of such qualifications and training to the Principal as reasonably requested.
- (b) OpCo must notify the Principal:
  - (i) within 4 months of Financial Close, of the names and experience of the personnel to be employed by OpCo and the Core Contractors (as applicable) in the positions set out in Part A of Schedule 22 (*Key personnel*); and
  - (ii) 9 months prior to the Date of Completion, the names and experience of the personnel to be employed by OpCo and the O&M Contractor (as applicable) to fill the roles set out in Part B of Schedule 22 (*Key personnel*),

for the Principal's approval (which must not be unreasonably withheld).
- (c) OpCo must:
  - (i) employ, and ensure that the Core Contractors and the Significant Contractors (as applicable) employ, those personnel approved by the Principal under clause 10.23(b) in the positions specified in Schedule 22 (*Key personnel*) for which they are approved; and
  - (ii) if any of the personnel referred to in clause 10.23(c)(i):
    - (A) die;
    - (B) become seriously ill;
    - (C) resign from the employment of OpCo, a Core Contractor or a Significant Contractor (as applicable); or
    - (D) become the subject of a direction under clause 10.23(e),

replace them with personnel of at least equivalent experience, ability and expertise.
- (d) The personnel referred to in clause 10.23(c)(i) 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 the Principal's Representative when the Principal's Representative reasonably requires.
- (e) The Principal's Representative may, acting reasonably, direct OpCo to remove any person from the performance of OpCo's Activities.
- (f) OpCo must ensure that any person the subject of a direction under clause 10.23(e) is not again involved in the performance of OpCo's Activities.

#### 10.24 Utility Services

- (a) OpCo:
  - (i) subject to clauses 10.25 and 10.28, must obtain, pay for, contract for the provision of, acquire or otherwise procure or provide any Utility Services and all connections for all Utility Services it requires to perform OpCo's Activities;
  - (ii) must make all Utility Services available to any tenants of the Principal at the Stations without charge;
  - (iii) must investigate, protect, relocate, remove, modify, support, reinstate and provide for all Utility Services necessary for it to comply with its obligations under the Project Agreements;
  - (iv) must not, without the Principal's Representative's prior written consent, obtain any Utility Services or connect any Utility Services to the SSTOM Works, Sydney Metro – Western Sydney Airport or the ETS Equipment except to the extent necessary to allow OpCo to carry out OpCo's Activities;
  - (v) must obtain the Principal'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 the Principal fully informed as to OpCo's dealings with the Authorities providing Utility Services and comply fully with their requirements;
  - (vii) must ensure there are no unplanned disruptions to the Utility Services in carrying out OpCo's Activities, 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) to the extent applicable to the SSTOM Works or OpCo's Activities, must ensure that maintenance points for Utility Services are located within the Project Site in a location approved by the Principal's Representative (such approval not to be unreasonably withheld or delayed); and
  - (ix) must, to the extent not prohibited by Law, indemnify the Principal from and against any claims against the Principal, or Loss suffered by the Principal 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:
      - (I) a failure by OpCo to comply with any obligations under this deed; or
      - (II) any act or omission of OpCo or its Associates; or
    - (B) a failure by OpCo to comply with any obligations under this deed with respect to the Utility Services or the Utility Service Works.
- (b) Subject to clauses 20.10, 29 and 30, OpCo assumes the risk of the existence, location, condition and availability of Utility Services (in so far as they affect OpCo's Activities).
- (c) The parties acknowledge and agree that OpCo will not be entitled to make, and the Principal will not be liable upon, any Claim in respect of any Utility Service Works that are required to be performed in relation to any Utility Service:

- (i) in a location shown in the Identified Utilities Register regardless of whether the relevant Utility Service(s) in that location are of a different size, volume or quantity to that shown in the Identified Utilities Register; or
  - (ii) where the characteristics of the Utility Service are expressly classified as "unknown" or "unidentified" in the Identified Utilities Register.
- (d) Where there is a Change in Certified Utility Services Designs:
  - (i) OpCo must give a written notice to the Principal's Representative within 20 Business Days of becoming aware of (or when it ought reasonably to have first become aware of) the Change in Certified Utility Services Designs containing:
    - (A) details of the Change in Certified Utility Services Designs; and
    - (B) details of any Net Financial Impact that the Change in Certified Utility Services Designs would have if implemented and how such Net Financial Impact has been calculated; and
  - (ii) if a notice is given by OpCo which complies with clause 10.24(d)(i), then within 10 Business Days of the notice being given, the Principal's Representative will either:
    - (A) direct OpCo to disregard the Change in Certified Utility Services Designs if the additional scope in respect of the relevant Utility Service Works is no longer required by the relevant Authority; or
    - (B) subject to clause 10.24(e), issue a Modification Impact Request under clause 33.1 or direct OpCo to implement a Modification in accordance with clause 33.11 in respect of the Change in Certified Utility Services Designs.
- (e) If the Change in Certified Utility Services Designs:
  - (i) arises out of or in connection with any breach of this deed by OpCo or a fraudulent, reckless, unlawful, negligent or malicious act or omission of OpCo or its Associates; or
  - (ii) is related to rectification of a Defect,

then OpCo must comply with the Change in Certified Utility Services Designs at its own cost and the Principal is not required to issue a Modification Impact Request or direct a Modification in accordance with clause 10.24(d)(ii)(B).
- (f) If the Principal's Representative gives a notice under clause 10.24(d)(ii)(A), OpCo will not be regarded as being in breach of this deed to the extent that it disregards the relevant Change in Certified Utility Services Designs.
- (g) To the extent that:
  - (i) the Utility Service Works required to be performed by OpCo under this deed include any Non-contestable Utility Service Works which must be carried out by an Authority; and
  - (ii) OpCo or an OpCo Contractor procures the Non-contestable Utility Service Works from an Authority in accordance with the requirements of this deed,

the Principal must compensate OpCo for any negative Net Financial Impact calculated and paid in accordance with Schedule 6 (*Net Financial Impact*) arising from the requirement to undertake those Non-contestable Utility Service Works.
- (h) Subject to Schedule 2 (*Service Payment calculation*) and clause 10.25, the Principal will not be liable under this deed or otherwise in relation to any Utility Services required or used for the SSTOM PPP.
- (i) Subject to this clause 10.24 and clauses 20.10, 29 and 30, 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.
- (j) OpCo must obtain the prior consent of the Principal (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.

## 10.25 Electricity

### (a) (Purchase of electricity – Delivery Phase):

- (i) Subject to clause 10.25(a)(ii) OpCo must purchase all electricity required to perform the Delivery Activities prior to the Date of Completion (including for testing and commissioning).
- (ii) During the period commencing on the TCP Date and ending on the Date of Completion, OpCo must purchase all electricity required to be consumed through an Electricity Provider Connection Point (**TCP Electricity**) from either:
  - (A) the Principal for [REDACTED] (**On-Sale Price**); or
  - (B) an electricity retailer authorised under the National Energy Retail Law.
- (iii) OpCo must give notice to the Principal if OpCo enters into an Electricity Purchase Agreement for the purposes of clause 10.25(a)(ii)(B) within 5 Business Days of entry into that agreement, which notice must include details of the period during which that agreement will apply to the purchase of TCP Electricity.
- (iv) To the extent OpCo purchases TCP Electricity in accordance with clause 10.25(a)(ii)(A) the Principal must have in place an Electricity Purchase Agreement to purchase the TCP Electricity.
- (i) In respect of electricity OpCo purchases from the Principal as contemplated in clause 10.25(a)(ii)(A), OpCo must pay the Principal the On-Sale Price within 20 Business Days of a request by the Principal.
- (v) without limiting OpCo's obligations under clause 21.3, OpCo must:
  - (A) give the Principal 20 Business Days' notice of the expected TCP Date;
  - (B) within 10 Business Days of a request by the Principal, give the Principal a notice detailing OpCo's anticipated TCP Electricity requirements (including OpCo's anticipated electricity load profile);
  - (C) give notice to the Principal on the TCP Date that the TCP Date has occurred;
  - (D) arrange for the electricity meter/s to be read and recorded as at the TCP Date and give notice of those meter readings to the Principal; and
  - (E) arrange for the electricity meter/s to be read and recorded on the Date of Completion and give notice of those meter readings to the Principal.
- (vi) If requested by OpCo, the Principal will provide such assistance as may be reasonably requested by OpCo to assist OpCo to arrange for electricity meters to be read as contemplated in clause 10.25(a)(v)(D) and (E).

### (b) (Purchase of electricity – Operations Phase) The Principal must at all times between the Date of Completion and the end of the Operations Phase have in place an Electricity Purchase Agreement to:

- (i) purchase all electricity required to be consumed through the Electricity Provider Connection Points by OpCo; and
- (ii) allow OpCo to use at no charge all electricity purchased pursuant to an Electricity Purchase Agreement,

from the Date of Completion until the end of the Operations Phase to operate and maintain Sydney Metro – Western Sydney Airport and the ETS Equipment.

### (c) The Principal's obligations under clauses 10.25(b) and 10.25(a)(iv) (to the extent applicable) will be fully discharged by the Principal having an Electricity Purchase

Agreement in place and not being in breach of that agreement (**Electricity Purchase Obligation**). Subject to clauses 29 and 30, provided the Principal discharges the Electricity Purchase Obligation, the Principal is not liable under this deed if electricity is for any reason unavailable to be consumed by OpCo through the Electricity Provider Connection Points or the quality or other characteristics of the electricity supplied.

- (d) The Principal must:
  - (i) comply with its obligations under an Electricity Purchase Agreement; and
  - (ii) provide any consents reasonably requested by OpCo which are needed for electricity to be sold and supplied through the Electricity Provider Connection Points.
- (e) (**Electricity consumption models and estimates**): OpCo must develop the Electricity Consumption Software Model and Operational Electricity Consumption Tool in accordance with the SSTOM Specification, and:
  - (i) without limiting any other obligation of OpCo to provide the Electricity Consumption Software Model under this deed (including in the Design Review Process), OpCo must provide the Principal with a final Electricity Consumption Software Model no later than 2 months prior to commencement of the Operations Phase which must not materially depart from the Electricity Consumption Software Model included in the Final Design Documentation;
  - (ii) OpCo must review the Electricity Consumption Software Model having regards to the actual electricity consumption on Sydney Metro – Western Sydney Airport and provide the Principal with the Operational Electricity Consumption Tool (as updated in accordance with Annexure D of Schedule 2 (*Service Payment calculation*)) at the following times:
    - (A) no later than 4 months after the end of the 18th Operating Month;
    - (B) within 4 months after the end of the 90th Operating Month; and
    - (C) within 4 months after the end of the 138th Operating Month; and
  - (iii) no later than 2 months prior to the commencement of the Operations Phase, OpCo must provide the Principal with an accurate estimate of the Forecast Aggregate Consumption. OpCo must use reasonable endeavours to provide the Principal with a reasonably accurate revised estimate of Forecast Aggregate Consumption 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 the Principal 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 the Principal, broken down across such peak, shoulder and off-peak periods as the Principal has notified to OpCo (being the relevant periods used by the electricity tariffs of the electricity retailer from which the Principal will be purchasing electricity for Sydney Metro); and
    - (C) prepared using:
      - (I) the Electricity Consumption Software Model in relation to Operating Months 7 to 18 (inclusive); and
      - (II) the Operational Electricity Consumption Tool in relation to subsequent Electricity Compliance Reporting Years to those referred to in clause 10.25(e)(iii)(C)(I).
- (f) (**Data and audits**): OpCo must promptly provide to the Principal such electricity demand and consumption data as is requested by the Principal from time to time, and must participate at no cost in any audit undertaken by or on behalf of the Principal of OpCo's electricity consumption (in addition to any electricity audits which OpCo is itself required to conduct). The Principal may make available to the public the results of any such audit.



- (g) **(No customer connection services)**: The Principal does not, and OpCo acknowledges that the Principal does not, provide any customer connection services in respect of Sydney Metro – Western Sydney Airport or the ETS Equipment. The Principal is not, and OpCo acknowledges that the Principal is not, responsible for:
- (i) the connection of Sydney Metro – Western Sydney Airport to the electricity supply network;
  - (ii) the maintenance of that connection;
  - (iii) the supply of electricity from the electricity supply network to Sydney Metro – Western Sydney Airport or the ETS Equipment; and
  - (iv) the quality and other characteristics of electricity supplied.
- (h) **(Electricity Provider customer connection services)**: OpCo acknowledges that in respect of Sydney Metro – Western Sydney Airport, the Principal will have the Electricity Connection Agreement with the Electricity Provider for the provision of customer connection services to Sydney Metro – Western Sydney Airport under which the Electricity Provider is responsible for:
- (i) the connection of Sydney Metro – Western Sydney Airport to the electricity supply network;
  - (ii) the maintenance of that connection;
  - (iii) the supply of electricity from the electricity supply network to Sydney Metro – Western Sydney Airport; and
  - (iv) the quality and other characteristics of electricity supplied,
- which OpCo must comply with in accordance with clause 10.28 and Schedule 18 (*Requirements of Third Party Agreements*).
- (i) **(Principal not liable)**: Subject to clauses 29 and 30 and Schedule 18 (*Requirements of Third Party Agreements*), at any time where:
- (i) the Principal is responsible for performing the Electricity Purchase Obligations, including where OpCo purchases TCP Electricity from the Principal in accordance with clause 10.25(a)(ii)(A); or
  - (ii) the Customer purchases electricity as contemplated in clause 10.25(a)(ii)(B).
- the following provisions apply:
- (iii) the Principal is not responsible for the connection or supply of electricity to Sydney Metro – Western Sydney Airport;
  - (iv) the Principal does not undertake to provide or maintain any particular quality, voltage, frequency, waveform or system of supply;
  - (v) all warranties, terms and conditions (implied by statute or otherwise) in relation to the supply or sale of electricity are, to the extent permitted by Law, excluded;
  - (vi) the Principal is not liable for any loss suffered by OpCo as a consequence of any supply or lack of supply of electricity to Sydney Metro – Western Sydney Airport (other than as a result of a breach of the Electricity Purchase Obligation);
  - (vii) the Principal 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;
  - (viii) the Principal is not responsible for any act, omission or default of the Electricity Provider or any other person (including a generation entity or a transmission entity) in relation to the connection and supply of electricity to Sydney Metro – Western Sydney Airport;
  - (ix) OpCo must satisfy itself that the electrical capacity of the connection for Sydney Metro – Western Sydney Airport is adequate for OpCo's purposes, with the Principal having no responsibility or liability in this respect; and

- (x) 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.
- (j) **(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 10.25(i) to be void, the Principal's liability for breach of such warranty, term or condition is limited, at the Principal'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 the Principal's liability is not limited under this deed).
- (k) **(Interruption to customer connection services):** Subject to clauses 29 and 30 and Schedule 18 (*Requirements of Third Party Agreements*), OpCo acknowledges that the provision of customer connection services to Sydney Metro – Western Sydney Airport 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 Electricity Connection Agreement with the Electricity Provider, the Electricity Provider may disconnect Sydney Metro – Western Sydney Airport and the ETS Equipment.
- (l) **(Approvals and obligations under Law):**
  - (i) Without limiting clause 7.1 but subject to Schedule 18 (*Requirements of Third Party Agreements*), if the Principal, as owner of Sydney Metro – Western Sydney Airport 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 the Principal to comply with the relevant Law insofar as it is relevant to Sydney Metro – Western Sydney Airport and the ETS Equipment. The Principal must provide such assistance and cooperation as OpCo may reasonably require in order for OpCo to ensure that the Principal 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 10.25(l)(i) and clause 7.2, OpCo must:
    - (A) if a network management plan in relation to the electricity infrastructure forming part of Sydney Metro – Western Sydney Airport is required by the Authority, develop, implement, maintain and submit to the Principal and, subject to clause 10.25(l)(v), the Authority, a network management plan;
    - (B) perform any obligations imposed on the Principal or OpCo or any of its OpCo Contractors in connection with the electrical infrastructure of Sydney Metro – Western Sydney Airport if the Principal, OpCo or any OpCo Contractor is characterised as a "distributor" for the purposes of the *Electricity Supply Act 1995* (NSW);
    - (C) prior to carrying out Testing, prepare an application for, and obtain (if needed), an exemption from the requirement to register as a distribution network service provider under the National Electricity Law (which forms a Schedule to the *National Electricity (South Australia) Act 1996* (SA) and which applies in the state of New South Wales under the *National Electricity (New South Wales) Act 1997*) for the benefit of both the Principal and OpCo and its OpCo Contractors; and
    - (D) assist the Principal 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 for the benefit of the Principal.
  - (iii) OpCo must provide the Principal with:
    - (A) any documents (including any applications for Approvals or changes to Approvals) prepared for the purpose of satisfying OpCo's obligations under

clause 10.25(l)(ii), including the then current version of the network management plan or exemption application (as the case may be) promptly upon request by the Principal; 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 the Principal and any relevant Authority;
  - (B) provide any reasonable assistance and information required by the Principal or any relevant Authority within any reasonable timeframe required by the Principal (if so specified); and
  - (C) if required by the Principal or any relevant Authority, procure the attendance of representatives of OpCo at the meetings of any Authority in relation to electricity matters.
- (v) The Principal may, but is not obliged to, comment on any documents submitted by OpCo to the Principal under this clause 10.25. OpCo:
  - (A) must allow and notify the Principal 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 Law, after the date of submission of documents to the Principal (**Review Period**) to review and comment on drafts of the documents;
  - (B) if the Principal makes any comments on the drafts of the documents within the Review Period, must address the Principal's comments on the documents and promptly resubmit the draft relevant documents to the Principal, whereupon the provisions of this clause 10.25(l)(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 the Principal:
    - (I) making any comments on the documents or, if the Principal does provide comments, after OpCo has complied with clause 10.25(l)(v)(B); and
    - (II) advising that the Principal (rather than OpCo) will submit the relevant documents to the relevant Authority.
- (vi) The Principal appoints OpCo to act as the Principal'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 10.25; 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 the Principal).
- (m) (**Minimisation of Aggregate Metered Demand**): Except in an emergency or if Good Industry Practice or the Electricity Connection Agreement (Supply Services) otherwise requires, OpCo must use reasonable endeavours to minimise the Aggregate Metered Demand (as defined in Schedule 4 of the Electricity Connection Agreement (Supply Services)), including by using reasonable endeavours not to switch all demand from one Connection Point to the other Connection Point in a 30 minute period (commencing on the hour or half hour) during a Peak Window (as defined in Schedule 4 of the Electricity Connection Agreement (Supply Services)), provided that nothing in this clause requires OpCo to minimise its metered energy demand on a Connection Point.

## 10.26 Project Documentation

OpCo warrants that the Project Documentation:

- (a) will sufficiently, adequately and accurately document Sydney Metro – Western Sydney Airport, the operation of Sydney Metro – Western Sydney Airport and any interfaces with

Sydney Metro – Western Sydney Airport during the Operations Phase and will be capable of sufficiently, adequately and accurately documenting Sydney Metro – Western Sydney Airport, the operation of Sydney Metro – Western Sydney Airport and any interfaces with Sydney Metro – Western Sydney Airport after the Operations Phase;

- (b) will be sufficient, adequate and accurate so as to enable the Principal or a third party to operate and maintain Sydney Metro – Western Sydney Airport 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 the Principal or a third party to operate and maintain Sydney Metro – Western Sydney Airport after the Operations Phase; and
- (c) will be fit for its purposes.

For the purposes of this clause 10.26, the Project Documentation does not include any documentation prepared by or on behalf of any Other Contractor, the FSM Contractor, the ETS Delivery Partner or an FIW Contractor.

#### 10.27 TAO status

OpCo must ensure that its Core Contractors maintain, TAO status for all required engineering services during the Term in accordance with section 3.1 of the General Specification.

#### 10.28 Third Party Agreements

- (a) OpCo:
  - (i) acknowledges that it has reviewed and carefully considered the Third Party Agreements (in the forms contained in Exhibit 11 (*Third Party Agreements*)); and
  - (ii) must comply with, and ensure that its OpCo Contractors comply with, its obligations in Schedule 18 (*Requirements of Third Party Agreements*) and must not cause, and ensure that its OpCo Contractors do not cause, the Principal to be in breach of any Third Party Agreement.
- (b) The Principal:
  - (i) has or will enter into the Third Party Agreements;
  - (ii) will comply with the obligations in the Third Party Agreements identified in Schedule 18 (*Requirements of Third Party Agreements*) as retained obligations of the Principal;
  - (iii) acknowledges that clause 10.28(a)(ii) does not limit any express entitlement of OpCo under this deed in relation to:
    - (A) access under clauses 12.1 and 12.2;
    - (B) entitlements with respect to Contamination under Schedule 8 (*Cost Risk Sharing*);
    - (C) relief for Compensation Events under clause 29; or
    - (D) relief for Modifications;
  - (iv) will require that each Third Party complies with the Third Party's obligations under that Third Party Agreement; and
  - (v) agrees that clause 10.28(a)(ii) will not apply to the extent the relevant provisions are redacted in the Third Party Agreements provided to OpCo in Exhibit 11 (*Third Party Agreements*).
- (c) The parties acknowledge and agree that during the Term the Principal may, in its absolute discretion:
  - (i) enter into additional Third Party Agreements, including by finalising any Draft Third Party Agreement (**Additional Third Party Agreements**); and
  - (ii) require amendments to the Third Party Agreements.
- (d) Following:
  - (i) the execution of any Additional Third Party Agreement; or

- (ii) any amendment to a Third Party Agreement,
- after the date of this deed, the Principal must promptly give OpCo a copy of the:
- (iii) executed version of the Additional Third Party Agreement; or
  - (iv) amended version of the Third Party Agreement,
- together with amendments to this deed (if any) (including Schedule 18 (*Requirements of Third Party Agreements*) and the SSTOM Specification) arising out of the execution of any Additional Third Party Agreements or any amended Third Party Agreement (**Third Party Agreement Amendments**).
- (e) OpCo must carry out its obligations under this deed on the basis of:
    - (i) any Additional Third Party Agreement or amended Third Party Agreement (as applicable); and
    - (ii) the Third Party Agreement Amendments,

and subject to clause 10.28(f), at its own cost, without any extension to the Date for Completion and without any entitlement to make any other Claim.
  - (f) Subject to clause 10.28(fa), to the extent any Additional Third Party Agreement, any amended Third Party Agreement or any Third Party Agreement Amendments imposes greater or different obligations (including with respect to time) on OpCo such that:
    - (i) OpCo is no longer able to comply with its obligations under this deed;
    - (ii) it affects OpCo's performance against any performance indicator or requirement which could result in a Service Payment Deduction;
    - (iii) it increases OpCo's costs of carrying out OpCo's Activities or causes OpCo to incur any loss, in each case other than in a de minimis manner;
    - (iv) it prevents OpCo being granted access to the Construction Site in accordance with the Site Access Schedule (as applicable); or
    - (v) adversely affects OpCo's rights of access to or use of the Licensed Maintenance Area or access to any Additional Maintained Asset,

the Principal will promptly issue a Modification Impact Request under clause 33.1(a) and clause 33.2 will apply and to the extent any amended Third Party Agreement imposes greater or different obligations such that any of the matters referred to in paragraph (f)(i), (ii), (iv) or (v) apply, OpCo will be relieved of those greater or different obligations (as applicable) until such time as the Principal issues a Modification Order in respect of the relevant Modification.
  - (fa) If the Third Party Agreement Amendments are the result of the finalisation and execution of a Draft Third Party Agreement, whether those Third Party Agreement Amendments impose greater or different obligations such that any of the matters referred to in clause 10.28(f) apply will be determined by reference to the Draft Third Party Agreement and the existing provisions of Schedule 18 (*Requirements of Third Party Agreements*).
  - (g) Where the Principal issues a Modification Impact Request in accordance with clause 10.28(f), the Principal's right to reject the Modification Impact Proposal in accordance with clause 33.5(b)(iv) or elect not to proceed with the proposed Modification in accordance with clause 33.5(b)(v) will not apply.
  - (h) Subject to clauses 10.28(c) to 10.28(fa), the Principal 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 the Principal to satisfy their obligations under this deed, without OpCo's prior written consent (which consent will not be unreasonably withheld or delayed).

## 10.29 Sustainability

- (a) OpCo must comply with the sustainability requirements set out in the SSTOM Specification, including section 2.8 of the General Specification and section 1.5.6 of Particular Specification 01 (*General*).
- (b) Without limiting clause 10.29(a), OpCo must:
  - (i) achieve the Infrastructure Sustainability Council (**ISC**) Sustainability Rating Tool v1.2 ratings set out in section 2.8 of the General Specification;
  - (ii) support the Principal to achieve the Climate Active Carbon Neutral – Service certification set out in section 2.8 of the General Specification including by providing all documents, assistance and cooperation described in section 2.8 of the General Specification or as otherwise reasonably requested by the Principal (and in the time requested by the Principal); and
  - (iii) achieve the Green Building Council of Australia Green Star Rating set out in section 2.8 of the General Specification.
- (c) In order to achieve the ratings referred to in clause 10.29(b), but without limiting that clause, OpCo must:
  - (i) register with the ISC or the Green Building Council of Australia (as applicable) for the purposes of obtaining a rating;
  - (ii) cooperate and liaise with the ISC or the Green Building Council of Australia (as applicable) and the Principal as required; and
  - (iii) provide any documentation required by the ISC or the Green Building Council of Australia (as applicable) and the Principal.
- (d) To support the Principal's Climate Active Carbon Neutral – Service certification set out in section 2.8 of the General Specification and the Principal's objective for the SSTOM PPP described in clause 4.2(i), OpCo must use best endeavours to not exceed the Delivery Phase Scope 3 Emissions Baseline in the performance of the Delivery Activities.
- (e) In order to achieve the Climate Active Carbon Neutral – Service certification, the Principal will be responsible for procuring Operations Phase Scope 1 Carbon Offsets to offset OpCo's Operations Phase Scope 1 Emissions from the Date of Completion until the Expiry Date. OpCo is responsible, and will be liable to the Principal, for the cost of the Operations Phase Scope 1 Carbon Offsets purchased (or required to be purchased) by the Principal as determined in accordance with clauses 10.29(f) to clause 10.29(i) (**Operations Phase Scope 1 Carbon Offsets Cost**) and, subject to the true up process described in clause 10.29(h), the Principal may set off that cost against amounts otherwise due to OpCo under this deed in accordance with clause 28.13.
- (f) In respect of the period from First Passenger Service until the end of the Calendar Year in which Completion occurs (**CACN Certification Year 1**), the Principal will procure the Operations Phase Scope 1 Carbon Offsets for that period prior to Completion based on a reasonable estimated forecast of OpCo's Operations Phase Scope 1 Emissions during CACN Certification Year 1, subject to the true up adjustment process described in clause 10.29(h).
- (g) In the second Calendar Year after CACN Certification Year 1 and each subsequent full Calendar Year of the Term, the Principal will procure Operations Phase Scope 1 Carbon Offsets based on OpCo's actual reported Operations Phase Scope 1 Emissions in the previous Calendar Year.
- (h) In the second Calendar Year after CACN Certification Year 1, based on OpCo's actual reported Operations Phase Scope 1 Emissions in CACN Certification Year 1:
  - (i) where additional Operations Phase Scope 1 Carbon Offsets are required to be purchased by the Principal to offset Operations Phase Scope 1 Emissions in

CACN Certification Year 1, the Principal will procure the relevant additional Operations Phase Scope 1 Carbon Offsets at that time; or

- (ii) if the volume of Operations Phase Scope 1 Carbon Offsets purchased by the Principal to offset Operations Phase 1 Emissions in CACN Certification Year 1 was greater than the actual volume of Operations Phase Scope 1 Carbon Offsets required to be purchased to offset the actual Operations Phase Scope 1 Emissions in CACN Certification Year 1, the Principal will determine an amount (acting reasonably) representing the difference in cost between the offsets purchased and the offsets required to be purchased and that amount will be deducted from the cost of other offsets for which OpCo is otherwise liable to the Principal under this clause 10.29.
- (i) In respect of the period from the end of the last full Calendar Year of the Term until the Expiry Date (**Last CACN Certification Year**), the Principal will determine (acting reasonably) its projected cost of purchasing Operations Phase Scope 1 Carbon Offsets in the next Calendar Year to offset OpCo's Operations Phase Scope 1 Emissions during the Last CACN Certification Year 1 based on a reasonable estimated forecast of the price of offsets available in the market at that time and OpCo's historic Operations Phase Scope 1 Emissions during the Term.
- (j) For the purposes of this clause 10.29, the amount recoverable by the Principal from OpCo in respect of the Principal's cost of purchasing Operations Phase Scope 1 Emissions will not exceed [REDACTED] per ton (CPI Indexed).

#### 10.30 NSW Guidelines

- (a) (**NSW Guidelines**): In addition to terms defined in this deed, terms used in this clause 10.30 have the same meaning as is attributed to them in the NSW Guidelines.
- (b) (**Primary obligation**):
  - (i) OpCo must at all times comply with, and meet any obligations imposed by, the NSW Guidelines.
  - (ii) OpCo must notify the Construction Compliance Unit (**CCU**) and the Principal of any possible non-compliance with the NSW Guidelines and of remedial action taken, within 24 hours of becoming aware of the possible non-compliance.
  - (iii) 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 10.30, including that the subcontractor or consultant must at all times comply with, and meet any obligations imposed by, the NSW Guidelines.
  - (iv) 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 Guidelines.
- (c) (**Access and information**):
  - (i) OpCo must maintain adequate records of compliance with the NSW Guidelines by it and its subcontractors and consultants.
  - (ii) OpCo must allow, and take reasonable steps to facilitate, authorised personnel (including personnel of the CCU) to:
    - (A) enter and have access to sites and premises controlled by OpCo, including the Construction Site;
    - (B) inspect any work, material, machinery, appliance, article or facility;
    - (C) access information and documents;
    - (D) inspect and copy any record relevant to OpCo's Activities;
    - (E) have access to personnel; and
    - (F) interview any person,

as is necessary for the authorised personnel to monitor and investigate compliance with the NSW Guidelines by OpCo and its subcontractors and consultants.

- (iii) 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.

(d) **(Sanctions):**

- (i) 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 Guidelines that would have precluded it from responding to a procurement process for work to which the NSW Guidelines apply.
- (ii) If OpCo does not comply with, or fails to meet any obligation imposed by, the NSW Guidelines, a sanction may be imposed against it in connection with the NSW Guidelines.
- (iii) Where a sanction is imposed:
  - (A) it is without prejudice to any rights that would otherwise accrue to the parties; and
  - (B) the State (through its agencies, Ministers and the CCU) is entitled to:
    - (I) record and disclose details of non-compliance with the NSW Guidelines and the sanction; and
    - (II) 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 Guidelines apply.

(e) **(Compliance):**

- (i) OpCo bears the cost of ensuring its compliance with the 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 the Principal and the State will not be liable upon, any Claim against the Principal or the State arising out of or in any way in connection with OpCo's compliance with the NSW Guidelines.
- (ii) Compliance with the 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 SSTOM Works, the Temporary Works or Sydney Metro – Western Sydney Airport or from any other legal liability, whether or not arising from its compliance with the NSW Guidelines.
- (iii) Where a Modification is proposed, and that Modification may, or may be likely to, affect compliance with the NSW Guidelines, OpCo must immediately notify the Principal of:
  - (A) the circumstances of the proposed Modification;
  - (B) the extent to which compliance with the NSW Guidelines will be, or is likely to be, affected by the Modification; and
  - (C) what steps OpCo proposes to take to mitigate any adverse impact of the Modification (including any amendments it proposes to the Workplace Relations Management Plan),

and the Principal will direct OpCo as to the course it must adopt within 10 Business Days of receiving the notice.

### 10.31 Australian Government Requirements

- (a) OpCo:
  - (i) declares as at the date of this deed; and



- (ii) must ensure during the term of this deed, that, in relation to OpCo's Activities that are Commonwealth funded building work, it and its OpCo Contractors and each related entity:
  - (iii) complies with, and acts consistently with, the Building Code;
  - (iv) meets the requirements of section 11F of the Building Code;
  - (v) is not subject to an Exclusion Sanction; and
  - (vi) only uses products that comply with the relevant Australian standards published by, or on behalf of, Standards Australia.
- (b) OpCo acknowledges and agrees that compliance with the Building Code does not relieve OpCo from any responsibility or obligations under this deed, or from liability for any Defect arising from compliance with the Building Code.
- (c) OpCo acknowledges the powers and functions of the ABC Commissioner, the ABCC and the Minister under the BCIIIP Act and the Building Code and must ensure that it (and must procure that its OpCo Contractors and each related entity) complies with any requests made by the ABC Commissioner, the ABCC and the Minister within those powers and functions, including requests:
  - (i) for entry under section 72 of the BCIIIP Act;
  - (ii) to interview any person under section 74 of the BCIIIP Act; and
  - (iii) to produce records or documents under sections 74 and 77 of the BCIIIP Act.
- (d) OpCo must maintain adequate records of the compliance with the Building Code by OpCo.
- (e) For the purposes of this clause 10.31:
  - (i) "Commonwealth funded building work" has the meaning given to that term in subsection 3(1) of the Building Code; and
  - (ii) "related entity" has the meaning given to that term in subsection 3(2) of the Building Code.

### **10.32 Transport for NSW Statement of Business ethics**

- (a) OpCo must at all times comply with the Transport for NSW Statement of Business Ethics, a copy of which is available at [www.transport.nsw.gov.au](http://www.transport.nsw.gov.au).
- (b) Prior to the engagement of any OpCo Contractor by OpCo, OpCo must obtain a written acknowledgement from such OpCo Contractor that it has received, read, understood and will comply with the Transport for NSW Statement of Business Ethics.

### **10.33 Procurement of public art**

OpCo must comply with its obligations in Schedule 12 (*Public Art*) and section 5.2.25 of the General Specification and section 2.5.9 of Particular Specification 02 (*Built Environment*) in relation to procurement of public art as part of the SSTOM Works for Sydney Metro – Western Sydney Airport.

## **11. Site Conditions, Information Documents, Contamination and Environment**

### **11.1 Physical conditions**

- (a) **(Examination and investigation):** OpCo warrants and for all purposes it will be deemed to be the case that, prior to the date of this deed, OpCo:
  - (i) examined this deed (including the SSTOM Specification), the Sydney Metro Site and its surroundings and any other information that was made available in writing

by the Principal or any other person on the Principal's behalf, to OpCo or its Associates for the purpose of submitting the 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 the Proposal and its obligations under this deed;
  - (iii) satisfied itself as to the correctness and sufficiency of the 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 Sydney Metro Site;
  - (v) was given the opportunity prior to submitting the 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 the Proposal, the performance of its obligations and its potential liabilities under this deed; and
  - (vii) had sufficient access to the Sydney Metro Site, undertook sufficient tests, enquiries and investigations, had sufficient information and obtained a sufficient understanding of the risks involved to enable it to make an informed decision about whether or not to enter into this deed and assume the obligations and potential risks and liabilities which it imposes on OpCo.
- (b) **(Site Conditions):** Subject to clauses 17, 20.10, 29, 30 and 31, 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 SSTOM 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 the Principal in respect of Information Documents provided by the Principal or Transport for NSW to OpCo.
- (b) **(No warranty):** Without limiting clause 11.2(c) or the warranties or acknowledgements in any Deed of Disclaimer:
  - (i) the Principal 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 which are provided by or on behalf of the Principal for the information only of OpCo;
  - (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; and

- (iii) the Principal 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 the Principal to provide any information to OpCo.
- (c) **(No reliance):** OpCo:
  - (i) subject to clause 15, 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 the Principal or anyone on behalf of the Principal or any other information, data, representation, statement or document for which the Principal is responsible or may be responsible whether or not obtained from the Principal or anyone on behalf of the Principal; 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 the Principal 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):** Subject to clause 15, OpCo releases and indemnifies the Principal from and against:
  - (i) any Claim against the Principal by, or liability of the Principal to, any person; or
  - (ii) (without being limited by clause 11.2(d)(i)) any Loss incurred by the Principal, 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 the Principal 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.

### 11.3 Geotechnical Reports

The parties acknowledge and agree that:

- (a) prior to the date of this deed the Principal procured:
  - (i) the Geotechnical Reports for the benefit of the Principal and OpCo; and
  - (ii) the Reliance Letters from the authors of the Geotechnical Reports; and
- (b) while OpCo may rely on each Geotechnical Report to the extent provided by the Reliance Letters, OpCo is not entitled to make any Claim against the Principal (and the Principal will

not be liable upon any Claim by OpCo) arising out of or in connection with any Geotechnical Report or the accuracy of any information contained within any Geotechnical Report.

#### **11.4 Condition of the Sydney Metro Site and structures**

- (a) The Principal 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 Sydney Metro Site, Extra Land or their surroundings; or
    - (B) any structure or other thing on, under, above or adjacent to the Sydney Metro Site or Extra Land;
  - (ii) the adequacy or suitability of the Sydney Metro Site for the SSTOM PPP; or
  - (iii) the existence, location, condition or availability of Utility Services on, under, above, adjacent to or related to the Sydney Metro Site or Extra Land.
- (b) Subject to clauses 10.24(d), 10.24(f), 10.24(g), 11.5(c), 11.5(e), 12.6, 12.7, 15, 17, 20.10, 29, 30 and 31, OpCo accepts:
  - (i) the Sydney Metro Site and any Extra Land; and
  - (ii) any structures or other things on, above or adjacent to, or under the surface of, the Sydney Metro 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 SSTOM Works, OpCo's Activities, the Temporary Works, any part of the Foundation Infrastructure Works during the period in which OpCo is responsible for them in accordance with clause 16.10 or the Sydney Metro,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 SSTOM 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 Sydney Metro 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 Sydney Metro 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 11.4(c)(ii).

#### **11.5 Contamination**

- (a) Without limiting clause 11.3, clause 11.4 or clause 11.12, OpCo is responsible for all Contamination:
  - (i) on, in, over or under the Sydney Metro Site (but in each case within) or any Extra Land:
    - (A) which is required to be remediated in accordance with the Environmental Documents;

- (B) which is otherwise disturbed by or interfered with by OpCo, OpCo Contractors or their respective Associates; or
    - (C) to the extent caused by or contributed to by OpCo, OpCo Contractors or their respective Associates;
  - (ii) which migrates:
    - (A) on to, in to, over or under the Sydney Metro Site as a result of OpCo's Activities and which could or ought to have been reasonably anticipated by a competent and experienced contractor that had examined:
      - (I) the Sydney Metro Site and its surroundings; and
      - (II) all Information Documents and any other information that was made available in writing by the Principal, or any other person on the Principal's behalf, to OpCo prior to the date of this deed;
    - (B) on to, in to, over or under any Extra Land as a result of OpCo's Activities; or
    - (C) from the Sydney Metro Site or any Extra Land as a result of OpCo's Activities or due to a breach of this deed or any fraudulent, reckless, unlawful, negligent or malicious act or omission by OpCo, OpCo Contractor's or their respective Associates; or
  - (iii) which otherwise arises out of or in connection with OpCo's Activities, provided that this clause 11.5(a)(iii) shall not operate to expand OpCo's risk in respect of Contamination of the types dealt with in clauses 11.5(a)(i) and 11.5(a)(ii).
- (b) Without limiting clause 11.12, OpCo must undertake Remediation of any Contamination for which OpCo is responsible under clause 11.5(a) in accordance with Law, the Environmental Documents, Good Industry Practice, applicable codes and standards, all guidelines made or approved by the EPA, the National Remediation Framework and any applicable Remediation Action Plan so that:
- (i) the affected area of the Sydney Metro Site and any Extra Land is suitable for the performance of OpCo's Activities;
  - (ii) Contamination referred to in clause 11.5(a) within the Sydney Metro Site will not, during the construction, operation and maintenance of Sydney Metro – Western Sydney Airport:
    - (A) pose unacceptable exposure risks to workers, customers or the public;
    - (B) cause damage or degradation to infrastructure installed in connection with Sydney Metro – Western Sydney Airport; or
    - (C) pose unacceptable risks to environmental receptors; and
  - (iii) whole of life costs associated with the further construction, operation and maintenance of Sydney Metro – Western Sydney Airport after the Expiry Date are minimised.
- (c) Without limiting OpCo's obligations under clauses 11.6 to 11.12, OpCo's risk and obligation under clause 11.5(b) to Remediate Contamination described in:
- (i) clause 11.5(a)(i)(B) is limited to that part of such Contamination which is actually disturbed by or interfered with by OpCo, OpCo Contractors or their respective Associates (and not to Remediate the entire mass of such Contamination or trace to the source of the Contamination to the extent that wider mass or source has not actually been disturbed by or interfered with by OpCo, OpCo Contractors or their respective Associates);
  - (ii) clause 11.5(a)(i)(C) is limited to that part of such Contamination which is caused or contributed to by OpCo, OpCo Contractors or their respective Associates (and not to Remediate the entire mass of such Contamination or trace to the source of the Contamination to the extent that wider mass or source has not actually been caused or contributed to by OpCo, OpCo Contractors or their respective Associates); and

- (iii) clause 11.5(a)(ii)(A) does not require OpCo to Remediate the entire mass of such Contamination or trace to the source of such Contamination to the extent such wider mass or source is outside the Sydney Metro Site or any Extra Land except to the extent that wider mass or source has actually been disturbed by or interfered with by OpCo, OpCo Contractors or their Associates or that Contamination was caused or contributed to by a breach of this deed or a negligent or unlawful act or omission by OpCo, OpCo Contractors or their respective Associates.
- (d) OpCo may not commence Remediation Activities in an area where a Detailed Site Investigation is required under the Environmental Documents or by Law unless and until:
  - (i) either:
    - (A) a Detailed Site Investigation report prepared by OpCo pursuant to clause 11.6(a) for the relevant area has been submitted to the Principal's Representative and has not been the subject of a notice under clause 11.6(g)(ii) within the time period specified in clause 11.6(g)(ii); or
    - (B) clause 11.6(b) applies; and
  - (ii) the Remediation Action Plan for any area where the Detailed Site Investigation has been performed, has been submitted to the Principal's Representative under clause 11.8(a) and has not been the subject of a notice under clause 11.8(f)(ii) within the time period specified in clause 11.8(f)(ii).
- (e) To the extent practicable, OpCo must retain and protect existing groundwater monitoring wells and soil vapour monitoring locations to ensure serviceability for monitoring, including sampling. If OpCo considers that existing groundwater monitoring wells and soil vapour monitoring locations cannot be retained or protected in the performance of OpCo's Activities, OpCo must notify the Principal in writing within 10 Business Days. If the Principal's Representative determines, acting reasonably, that existing groundwater monitoring wells and soil vapour monitoring locations cannot be retained, the Principal must:
  - (i) issue a Modification Impact Request under clause 33.1 (provided that the Principal's right to reject the Modification Impact Proposal in accordance with clause 33.5(b)(iv) or elect not to proceed with the proposed Modification in accordance with clause 33.5(b)(v) will not apply); or
  - (ii) direct OpCo to implement a Modification in accordance with clause 33.11, to decommission the existing groundwater monitoring wells and soil vapour monitoring locations, which must be undertaken in accordance with Law, the Environmental Documents, Approvals, applicable codes and standards, the lawful requirements of any Authority, Good Industry Practice, all guidelines made or approved by the EPA, the National Remediation Framework, the Human Health and Environment Risk Assessment and any other requirements of this deed.
- (f) OpCo must provide the Principal with reasonable access to perform the monitoring (including sampling) of existing groundwater monitoring wells and soil vapour monitoring locations on the Sydney Metro Site and any Extra Land.
- (g) The parties acknowledge and agree that the documents to be provided to the Independent Certifier under clauses 11.6 to 11.9 are provided to the Independent Certifier for information purposes only and that only the Principal's Representative has the authority to review any such document as per the processes set out in clauses clauses 11.6 to 11.9.
- (h) Without limiting OpCo's obligations under this clause 11.5 and clauses 11.6 to 11.11 (inclusive), to the extent that OpCo is responsible for remediating Contamination where paragraph (c) of the definition of PFAS Time Event applies, the Principal's Representative may direct OpCo how to proceed in relation to that PFAS Time Event.
- (i) Except to the extent prohibited by Law, OpCo must indemnify the Principal and each State Indemnified Party against any Loss incurred by the Principal or the State Indemnified Party arising out of or in any way in connection with:

- (i) any claim against the Principal or the State Indemnified Party (including by another State Indemnified Party) in respect of Contamination for which OpCo is responsible under clause 11.5(a) except that this clause 11.5(i)(i) does not apply in respect of Loss arising from either:
  - (A) Contamination to the extent that OpCo is in the process of undertaking Remediation of that Contamination in accordance with a Remediation Action Plan for that Contamination in compliance with this deed or in accordance with another remediation action plan agreed between the parties; or
  - (B) to the extent OpCo is not required to comply with a Remediation Action Plan for that Contamination in compliance with this deed and no other remediation action plan has been agreed between the parties, before OpCo has had reasonable opportunity to complete Remediation of that Contamination required under clause 11.5(a);
- (ii) any failure by OpCo to comply with any obligation under this deed in connection with Contamination; or
- (iii) any Contamination to the extent otherwise caused or contributed to by OpCo, OpCo Contractors or their respective Associates.

## **11.6 Detailed Site Investigation Report**

- (a) Subject to clause 11.6(b), OpCo must perform and submit to the Principal's Representative and the Independent Certifier a Detailed Site Investigation prior to commencing any excavation activities on the Construction Site to the extent required under the Environmental Documents or by Law.
- (b) OpCo will not be required to perform a Detailed Site Investigation in accordance with clause 11.6(a) in respect of the Sydney Metro Site to the extent that an FIW Detailed Site Investigation has been performed by an FIW Contractor under an FIW Contract and provided to OpCo in accordance with clause 11.7(a) (or such FIW Detailed Site Investigation is required to be performed by an FIW Contractor) and that FIW Detailed Site Investigation:
  - (i) remains representative of current Site Conditions having regard to all intervening works, disturbance and interference on the relevant part of the Construction Site since the FIW Detailed Site Investigation was undertaken; and
  - (ii) meets all requirements under the Environmental Documents and Law.
- (c) Notwithstanding clause 11.6(a), OpCo may also perform additional Detailed Site Investigations in other areas of the Construction Site or outside the Construction Site if OpCo deems it necessary to manage the risks associated with contaminated land and to appropriately plan for Remediation. Any additional Detailed Site Investigation performed in accordance with this clause 11.6(c) must also be submitted to the Principal's Representative and the Independent Certifier.
- (d) Each Detailed Site Investigation required to be performed by OpCo under this deed must:
  - (i) investigate areas of proposed excavation or disturbance;
  - (ii) investigate land within the Construction Site or Extra Land surrounding the areas of proposed excavation or disturbance with respect to the potential migration of Contamination via groundwater, ground gas and odour into the areas of excavation or disturbance;
  - (iii) characterise risks to the construction, operation and maintenance of Sydney Metro – Western Sydney Airport and its infrastructure from Contamination;
  - (iv) be prepared in accordance with Law, the Environmental Documents, Approvals, applicable codes and standards, the lawful requirements of any Authority, Good Industry Practice, all guidelines made or approved by the EPA, the National Remediation Framework, the Human Health and Environment Risk Assessment and any other requirements of this deed;

- (v) be reviewed and approved by a Certified Contaminated Land Consultant;
  - (vi) be reviewed and endorsed by an Accredited Site Auditor;
  - (vii) be accompanied by an Interim Site Audit Advice prepared by the Accredited Site Auditor when submitted to the Principal's Representative and the Independent Certifier in accordance with clause 11.6(a);
  - (viii) characterise the risk of Contamination migrating from the Construction Site as a result of OpCo's Activities; and
  - (ix) characterise the suitability of Contamination for reuse on the Construction Site in accordance with the terms of this deed, the Law, Approvals, applicable codes and standards, the lawful requirements of any Authority, guidelines made or approved by the EPA, the National Remediation Framework and the Human Health and Environment Risk Assessment.
- (e) In addition to the requirements set out in clauses 11.6(d), each Detailed Site Investigation must be prepared in accordance with the relevant guidelines made or approved by the EPA and:
- (i) determine and delineate the lateral and vertical extent of Contamination within each area the subject of Detailed Site Investigation;
  - (ii) include in-situ classification of Solid Waste at sampling densities not less than that specified within the NEPM (2013) and the Industrial Waste Resources Guidelines (7), Sampling and Analysis: Soil Sampling (EPA Victoria 2010), except for Virgin Excavated Natural Material (VENM) and Excavated Natural Material (ENM) which are to be classified in accordance with the requirements of the POEO Act;
  - (iii) classify the Solid Waste in accordance with the Waste Classification Guidelines and the relevant provisions of the POEO Act including resource recovery exemptions and orders, using a statistical approach where relevant; and
  - (iv) be suitably detailed so as to inform the development of the Remediation Action Plan and to characterise contamination risk to the construction, operation and maintenance of Sydney Metro – Western Sydney Airport (including but not limited to soil, groundwater, ground gas and odour risks arising from Contamination within the area of proposed excavation or disturbance or migrating into the area of proposed excavation or disturbance).
- (f) The Detailed Site Investigation reports must be submitted in the manner and at the rate set out in the initial Delivery Program which manner and rate, having regard to the quantum of Detailed Site Investigation reports submitted, will give the Principal's Representative a reasonable opportunity to review the submitted Detailed Site Investigation reports and sufficient time for the process set out in clauses 11.6(g), 11.6(h) and 11.8.
- (g) The Principal's Representative may:
- (i) review any Detailed Site Investigation report submitted under clauses 11.6(a) or 11.6(c); and
  - (ii) if the Detailed Site Investigation report submitted does not comply with this deed, notify OpCo within 15 Business Days of the initial submission of the Detailed Site Investigation report providing reasons for the non-compliance.
- (h) If OpCo receives a notice under clause 11.6(g)(ii), OpCo must promptly submit an amended Detailed Site Investigation report, or relevant part or component of it, to the Independent Certifier and the Principal's Representative and the process in this clause 11.6 will reapply, except the review period for the resubmitted Detailed Site Investigation report, or relevant part or component, will be 5 Business Days.
- (i) The Principal's Representative owes no duty to OpCo to review any Detailed Site Investigation report submitted by OpCo for errors, omissions or compliance with this deed.
  - (j) No review of, comments upon, notice in respect of any Detailed Site Investigation report or any other act or omission of the Principal's Representative (including a direction under



clause 11.6(g)(ii) in relation to any Detailed Site Investigation report) will lessen or otherwise affect:

- (i) OpCo's liabilities or responsibilities under this deed or otherwise according to Law; or
- (ii) the Principal's rights against OpCo, whether under this deed or otherwise according to Law.

#### **11.7 Remediation by FIW Contractors**

- (a) To the extent they relate to the Sydney Metro Site or OpCo's Activities, the Principal will provide OpCo with all final FIW Detailed Site Investigations, FIW Remediation Action Plans, FIW Interim Site Audit Advice, FIW Validation Reports, FIW Site Audit Statements and FIW Site Audit Reports prepared by the FIW Contractors under the FIW Contracts.
- (b) To the extent that an FIW Contractor only partially Remediates Contamination on the Sydney Metro Site in accordance with the FIW Contract (including if a Site Audit Statement – Section B5 is submitted by an FIW Contractor under an FIW Contract), OpCo must Remediate that Contamination in accordance with this deed (to the extent OpCo is responsible for that Contamination under clause 11.5(a)) so that the requirements of clause 11.5(b) are satisfied.
- (c) Subject to clauses 20.10, 28.17, 29 and 30, the Principal will not be liable upon any Claim by OpCo arising out of or in any way in connection with any:
  - (i) FIW Detailed Site Investigations, FIW Remediation Action Plans, FIW Interim Site Audit Advice, FIW Validation Reports, FIW Site Audit Statements and FIW Site Audit Reports provided by the Principal under clause 11.7(a); or
  - (ii) any Remediation performed or not-performed by an FIW Contractor under an FIW Contract.

#### **11.8 Remediation Action Plans**

- (a) OpCo must prepare and submit to the Principal's Representative and the Independent Certifier a Remediation Action Plan if:
  - (i) in respect of each Detailed Site Investigation performed by OpCo in accordance with clause 11.6, the Detailed Site Investigation identifies Contamination which OpCo is required to Remediate under this deed to make the Sydney Metro Site or any Extra Land suitable for its intended use;
  - (ii) to the extent that any part of the Sydney Metro Site was subject to partial Remediation by an FIW Contractor under an FIW Contract (including if an FIW Site Audit Statement – Section B5 is provided by the Principal under clause 11.7(a)) and further Remediation is required to make the Sydney Metro Site suitable for its intended use; and
  - (iii) otherwise required by the Environmental Documents or Law, prior to commencing any excavation activities.
- (b) To the extent that clause 11.8(a)(i) applies, OpCo must not submit a Remediation Action Plan under this clause unless and until the Detailed Site Investigation report for the relevant area has been submitted to the Principal's Representative and has not been the subject of a notice under clause 11.6(g)(ii) within the time period specified in clause 11.6(g)(ii) or clause 11.6(h) (as applicable).
- (c) Each Remediation Action Plan must:
  - (i) describe the nature and extent of Contamination based on the Detailed Site Investigation, the Information Documents and any other relevant information which is necessary to characterise the risk to the construction, operation and maintenance of Sydney Metro – Western Sydney Airport;
  - (ii) describe the manner in which OpCo will Remediate Contamination in accordance with this deed;

- (iii) include a detailed risk assessment to determine and describe the requirements for Remediation of Contamination of land (including soil, groundwater, ground gas and vapour) within the Construction Site or Extra Land with respect to potential exposure scenarios, including but not limited to migration of Contamination via groundwater, ground gas and odour into the areas of excavation or disturbance;
  - (iv) present a preferred Remediation option based on:
    - (A) whole-of-life costs;
    - (B) to the extent practicable, maintaining the Delivery Program;
    - (C) benefits (as far as is practicable based on available infrastructure design information); and
    - (D) compliance with this deed;
  - (v) define what will constitute Remediation Practical Completion of the Remediation;
  - (vi) be prepared in accordance with Law, the Environmental Documents, Approvals, applicable codes and standards, the lawful requirements of any Authority, Good Industry Practice, all guidelines made or approved by the EPA, the National Remediation Framework, the Human Health and Environment Risk Assessment and any other requirements of this deed;
  - (vii) be reviewed and approved by a Certified Contaminated Land Consultant;
  - (viii) be reviewed and endorsed by an Accredited Site Auditor;
  - (ix) be accompanied by an Interim Site Audit Advice and a Site Audit Statement – Section B5 prepared by the Accredited Site Auditor when submitted to the Principal's Representative and the Independent Certifier in accordance with clause 11.8(a);
  - (x) consider and plan to mitigate the migration of Contamination from the Construction Site; and
  - (xi) to the extent that clause 11.8(a)(ii) applies, be consistent with, or developed from, the FIW Remediation Action Plan prepared by the FIW Contractor under the FIW Contract.
- (d) In addition to the requirements set out in clause 11.8(c), each Remediation Action Plan must contain:
- (i) a Classification and Excavation Map in relation to Solid Waste Remediation, being a detailed map or maps, drawn to a practical scale of the relevant area the subject of a Remediation Action Plan that accurately identifies:
    - (A) the location of any samples that have been taken by and/or made available to OpCo, including the Detailed Site Investigation samples or any relevant information provided to OpCo in the Information Documents; and
    - (B) a detailed mapping of remaining Solid Waste and its respective waste classification in accordance with the Waste Classification Guidelines and the relevant provisions of the POEO Act including resource recovery exemptions and orders across the relevant area the subject of a Remediation Action Plan, based on the relevant Detailed Site Investigations and clearly detailing the extent of lateral and vertical classification of Waste within each area the subject of a Remediation Action Plan;
  - (ii) detailed excavation plan that is consistent with the Classification and Excavation Map prepared under clause 11.8(d)(i) describing the quantities in tonnes and cubic metres of each material, including a register in estimated tonnes and cubic metres of each waste classification of Solid Waste, proposed to be excavated and to be reused and/or disposed offsite;
  - (iii) details of any other elements of Remediation that are required to mitigate risks to the construction, operation and maintenance of Sydney Metro – Western Sydney

- Airport including, but not limited to infrastructure design requirements, treatment of Contamination, capping and containment; and
- (iv) precise details of how the validation of Remediation will be achieved and demonstrated.
  - (e) The Remediation Action Plans must be submitted in the manner and at the rate set out in the initial Delivery Program which manner and rate, having regard to the quantum of Remediation Action Plans submitted, will give the Principal's Representative a reasonable opportunity to review the submitted Remediation Action Plans and sufficient time for the process set out in clauses 11.8(f) and 11.8(g) to be followed.
  - (f) The Principal's Representative may:
    - (i) review any Remediation Action Plan submitted under clause 11.8(a); and
    - (ii) if the Remediation Action Plan submitted does not comply with the requirement of this deed, notify OpCo within 15 Business Days of the initial submission of the Remediation Action Plan providing reasons for the non-compliance.
  - (g) If OpCo receives a notice under clause 11.8(f)(ii), OpCo must promptly submit an amended Remediation Action Plan, or relevant part or component of it, to the Independent Certifier and the Principal's Representative and the process in this clause 11.8 will reapply, except that the Principal may only issue a further notice under clause 11.8(f)(ii) in relation to any new or amended aspect of the Remediation Action Plan and the review period for the resubmitted Remediation Action Plan, or relevant part or component, will be 5 Business Days.
  - (h) The Principal's Representative owes no duty to OpCo to review any Remediation Action Plan submitted by OpCo for errors, omissions or compliance with this deed.
  - (i) No review of, comments upon, notice in respect of any Remediation Action Plan or any other act or omission of the Principal's Representative (including a direction under clause 11.8(f)(ii)) in relation to any Remediation Action Plan will lessen or otherwise affect:
    - (i) OpCo's liabilities or responsibilities under this deed or otherwise according to Law; or
    - (ii) the Principal's rights against OpCo, whether under this deed or otherwise according to Law.

## **11.9 Site Audit and validation requirements**

- (a) This clause 11.9 applies to any area the subject of a Remediation Action Plan. OpCo must engage an Accredited Site Auditor to perform those parts of OpCo's Activities that are required to be performed by an Accredited Site Auditor under Law, the Environmental Documents, any guidelines made or approved by the EPA and the terms of this deed.
- (b) Without limiting clause 11.9(a), OpCo must:
  - (i) ensure that an Accredited Site Auditor:
    - (A) reviews, comments on and endorses:
      - (I) the Detailed Site Investigation prepared by OpCo under clauses 11.6(a) or 11.6(c);
      - (II) the Remediation Action Plan prepared by OpCo under clause 11.8(a); and
      - (III) the Validation Report prepared by OpCo under clause 11.9(d)(i);
    - (B) prepares Interim Site Audit Advice at key milestones throughout the Remediation process in accordance with clauses 11.6(d)(vii), 11.8(c)(ix) and 11.9(f)(ii)(D); and
    - (C) reviews all information and data generated through the Remediation process; and
  - (ii) provide the Principal's Representative with a monthly written report authored or approved by the Accredited Site Auditor, from the commencement of the first

Detailed Site Investigations until the completion of the last Site Audit Statement and Site Audit Report, detailing:

- (A) the reports and all other information that have been provided for review to the Accredited Site Auditor;
  - (B) all written comments provided by the Accredited Site Auditor to OpCo in response to the information described under clause 11.9(b)(ii)(A); and
  - (C) the outstanding actions required to address the comments of the Accredited Site Auditor described under clause 11.9(b)(ii)(B) and the status of those actions.
- (c) OpCo must attend (and must procure the attendance of the Accredited Site Auditor) to coordination meetings chaired by the Principal's Representative as may be reasonably required by the Principal's Representative, to review and discuss the status and suitability of any Remediation, Detailed Site Investigation, Remediation Action Plan, Interim Site Audit Advice and/or Validation Report.
- (d) With respect to each area for which a Remediation Action Plan has been developed in accordance with clause 11.8(a), OpCo must submit to the Principal's Representative and the Independent Certifier:
  - (i) a Validation Report that meets the requirements of clause 11.9(f)(ii) within 60 days of the Remediation Practical Completion of that area; and
  - (ii) a Site Audit Statement and Site Audit Report that meet the requirements of clause 11.9(f)(i) within 90 days of the Remediation Practical Completion of that area,and the submission of these documents to the Principal's Representative and the Independent Certifier is a condition precedent to Completion of the SSTOM Works.
- (e) If OpCo is required to Remediate Contamination under this deed in an area which is not the subject of a Remediation Action Plan under clause 11.8, OpCo must submit to the Principal's Representative and Independent Certifier a Short Form Validation Report which must be prepared using Good Industry Practice and any other requirements of this deed.
- (f) Each Validation Report, Site Audit Statement and Site Audit Report must relate to each area the subject of a Remediation Action Plan under clause 11.8, be prepared using Good Industry Practice and in accordance with the requirements of Law, the Environmental Documents, all guidelines made or approved by the EPA and any other requirements of this deed. Additionally each:
  - (i) Site Audit Statement and Site Audit Report must:
    - (A) contain a level of detail commensurate with the nature and extent of Contamination at each area with respect to which a Remediation Action Plan has been developed; and
    - (B) be prepared by an Accredited Site Auditor; and
  - (ii) Validation Report must:
    - (A) describe the Remediation Activities completed;
    - (B) present all relevant information and data to demonstrate that risks associated with Contamination have been mitigated to an acceptable level;
    - (C) be reviewed and approved by a Certified Contaminated Land Consultant and endorsed by an Accredited Site Auditor; and
    - (D) be accompanied by an Interim Site Audit Advice produced by the Accredited Site Auditor.
- (g) OpCo must submit to the Principal's Representative and the Independent Certifier all versions (including drafts) of:
  - (i) each Validation Report that is submitted to the Accredited Site Auditor at the same time as it is submitted to the Accredited Site Auditor; and

- (ii) each Site Audit Statement, Site Audit Report and Interim Site Audit Advice that is submitted to OpCo by the Accredited Site Auditor immediately following receipt from the Accredited Site Auditor.

Such submissions will not be taken to be formal submissions under clause 11.9(d) and the period under clause 11.9(h)(ii) will not commence until OpCo formally submits to the Principal's Representative and the Independent Certifier:

- (iii) a Validation Report which satisfies the requirements of clause 11.9(f)(ii); or
  - (iv) a Site Audit Statement or Site Audit Report (as applicable) which satisfies the requirements of clause 11.9(f)(i).
- (h) The Principal's Representative may:
- (i) review any Validation Report, Site Audit Statement and Site Audit Report submitted under clause 11.9(f)(ii); and
  - (ii) if the Validation Report, Site Audit Statement or Site Audit Report submitted does not comply with this deed, notify OpCo within 15 Business Days of the initial submission of the Validation Report, Site Audit Statement or Site Audit Report (as applicable) providing reasons for the non-compliance.
- (i) If OpCo receives a notice under clause 11.9(h)(ii), OpCo must promptly submit an amended Validation Report, Site Audit Statement or Site Audit Report (as applicable), or relevant part or component of it, to the Principal's Representative and the Independent Certifier and the process in this clause 11.9 will reapply, except the review period for the resubmitted Validation Report, Site Audit Statement or Site Audit Report (as applicable), or relevant part or component, will be 5 Business Days.
- (j) The Principal's Representative may:
- (i) provide copies of any Detailed Site Investigation, Remediation Action Plan, Interim Site Audit Advice, Validation Report, Site Audit Statement and Site Audit Report (or any draft thereof) to; and
  - (ii) seek comments in respect of any Detailed Site Investigation, Remediation Action Plan, Interim Site Audit Advice, Validation Report, Site Audit Statement and Site Audit Report (or any draft thereof) from,
- any FIW Contractor, Other Contractor, FSM Contractor or any Authority.
- (k) No review of, comments upon, notice with respect to (including a notice under clause 11.9(h)(ii)) or any other act or omission of the Principal's Representative in relation to any Validation Report, Site Audit Statement and Site Audit Report will lessen or otherwise affect:
- (i) OpCo's liabilities or responsibilities under this deed or otherwise according to Law; or
  - (ii) the Principal's rights against OpCo, whether under this deed or otherwise according to Law.
- (l) OpCo acknowledges and agrees that any Site Audit Statement required to be provided under this deed must meet the requirements of a Site Audit Statement – Section A1 unless a Site Audit Statement – Section A2 is otherwise agreed to be suitable by the Principal in accordance with the applicable Remediation Action Plan.
- (m) Nothing in this clause 11.9 in any way limits OpCo's obligations under clauses 7.1 and 7.2 or any other clause of this deed.

## **11.10 Long Term Environmental Management Plan**

- (a) If OpCo:
  - (i) provides a Site Audit Statement under this deed which meets the requirements of a Site Audit Statement – Section A2;
  - (ii) is provided with an FIW Site Audit Statement for the Sydney Metro Site which meets the requirements of a Site Audit Statement – Section A2; or

- (iii) is otherwise required to establish or operate permanent water treatment systems under this deed,  
 due to the requirement for ongoing management of residual Contamination post - Remediation, then OpCo will be required to prepare a long term environmental management plan in accordance with this clause 11.10 (**Long Term Environmental Management Plan**).
- (b) The Long Term Environmental Management Plan must:
  - (i) be prepared in accordance with the requirements of Law, the Environmental Documents, all guidelines made or approved by the EPA and any other requirements of this deed; and
  - (ii) describe all of OpCo's arrangements for the management of residual Contamination across the entire Sydney Metro Site.
- (c) To the extent required under clause 11.10(a), OpCo must submit to the Principal's Representative and the Independent Certifier a Long Term Environmental Management Plan at the same time it formally submits the Site Audit Statement under clause 11.9(g)(ii).
- (d) The Principal's Representative may:
  - (i) review any Long Term Environmental Management Plan submitted under clause 11.10(c); and
  - (ii) if the Long Term Environmental Management Plan submitted does not comply with this deed, notify OpCo within 15 Business Days of the initial submission of the Long Term Environmental Management Plan providing details of the non-compliance.
- (e) If OpCo receives a notice under clause 11.10(d)(ii), OpCo must promptly submit an amended Long Term Environmental Management Plan, or relevant part or component of it, to the Principal's Representative and the Independent Certifier and the process in this clause 11.10 will reapply, except the review period for the resubmitted Long Term Environmental Management Plan, or relevant part or component, will be 5 Business Days.
- (f) The Principal's Representative owes no duty to OpCo to review any Long Term Environmental Management Plan submitted by OpCo for errors, omissions or compliance with this deed.
- (g) No review of, comments upon or notice in respect of any Long Term Environmental Management Plan or any other act or omission of the Principal's Representative (including a direction under clause 11.10(d)(ii), in relation to any Long Term Environmental Management Plan) will lessen or otherwise affect:
  - (i) OpCo's liabilities or responsibilities under this deed or otherwise according to Law; or
  - (ii) the Principal's rights against OpCo, whether under this deed or otherwise according to Law.
- (h) If the time specified in clause 11.10(d)(ii) or clause 11.10(e) (as applicable) has expired without the Principal's Representative having issued a notice under clause 11.10(d)(ii) during that time, OpCo must implement and comply with, and ensure that its OpCo Contractors implement and comply with, the Long Term Environmental Management Plan as submitted to the Principal.

#### **11.11 Reuse and Disposal of Contamination and Waste**

- (a) In respect of Contamination or Waste that OpCo is required to Remediate under this deed, OpCo must either:
  - (i) where permitted under the terms of this deed treat and reuse that Contamination in accordance with all relevant Law, Approvals, applicable codes and standards, the lawful requirements of any Authority, Good Industry Practice, all guidelines made or approved by the EPA, the National Remediation Framework and the Human Health and Environment Risk Assessment, any applicable Remediation Action Plan and the Final Design Documentation; or

- (ii) remove that Contamination or Waste from the Construction Site and any Extra Land and dispose of it to a licensed waste facility in accordance with all relevant Law and Approvals.
- (b) OpCo must:
  - (i) ensure that the entity that carries out the storage, treatment, transport and disposal of the Contamination or Waste from the Construction Site or Extra Land holds all relevant Approvals that are necessary or desirable; and
  - (ii) procure and provide evidence of such Approvals to the Principal's Representative upon request.
- (c) OpCo must:
  - (i) sort all Contamination and Waste (including separating Contamination from clean material and Waste);
  - (ii) not contaminate clean material by intermixing any Contamination or Waste;
  - (iii) not intermix Contamination (or different Waste Classifications) with clean material or any other type of Contamination or Waste;
  - (iv) digitally track Waste and spoil movements from cradle to grave, including but not limited to:
    - (A) movement of Waste or spoil within the boundaries of the Construction Site or any Extra Land; and
    - (B) movement of Waste or spoil from the Construction Site to offsite reuse locations; and
  - (v) perform OpCo's Activities in a manner that minimises the Net Financial Impact of OpCo's Remediation obligations under this deed, including by:
    - (A) without limiting clause 11.6, carrying out all reasonable investigations on the Construction Site as early as possible;
    - (B) subject to clause 11.11(c)(v)(E), limiting the amount of any material disposed of at a higher Waste Classification than is necessary;
    - (C) incorporating as much soil into the SSTOM Works where this is technically feasible and permitted by Law;
    - (D) prioritising the incorporation of material of a higher Waste Classification into the SSTOM Works over that of a lower Waste Classification (where technically feasible and permitted by Law);
    - (E) where material must be disposed offsite, prioritising the most sustainable and cost efficient disposal site where it reduces the cost to the Principal, does not unduly impact the Delivery Program, is technically feasible and is permitted by Law; and
    - (F) performing all other Remediation obligations in a cost effective manner.
- (d) OpCo must ensure, and must procure that its OpCo Contractors ensure, that their respective employees, agents and contractors, as applicable, are suitably trained in correct and safe methods of loading, unloading and handling any Contamination or other spoil or wastes and that they comply with all applicable Laws, Approvals, applicable codes and standards, the lawful requirements of any Authority, Good Industry Practice, all guidelines made or approved by the EPA, the National Remediation Framework, the Human Health and Environment Risk Assessment and specific requirements of this deed that are relevant to their role.
- (e) OpCo must:
  - (i) keep complete, accurate and up to date digital records of all materials that are treated and reused, disposed of or otherwise removed from the Construction Site or any Extra Land (including all Contamination, each waste classification of Solid Waste and other wastes), including classification certificates and tip dockets for all loads and Waste tracking from cradle to grave and detailed and careful records of

spoil movement within the boundaries of the Construction Site or any Extra Land including tracking of onsite material movements; and

- (f) OpCo must indemnify the Principal from and against any claims against the Principal, or Loss suffered or incurred by the Principal, arising out of or in any way in connection with any failure by OpCo to comply with any obligation under this clause 11.11.

### 11.12 Environmental compliance

OpCo must:

- (a) **(no improper use of Sydney Metro Site or Extra Land):** not use the Sydney Metro Site or Extra Land, or allow OpCo Contractors to use the Sydney Metro Site or Extra Land, so that:
  - (i) any hazardous chemical is abandoned or dumped on the Sydney Metro Site or Extra Land;
  - (ii) any hazardous chemical 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 Sydney Metro Site or Extra Land such that a state of Contamination occurs;
- (b) **(be environmentally responsible):** at all times carry out, and ensure that OpCo 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 Sydney Metro Site in a good and safe condition;
- (c) **(comply with Environmental Laws):** without limiting clause 7:
  - (i) comply with, and ensure that OpCo Contractors in performing OpCo's Activities comply with:
    - (A) all Laws relating to the Environment;
    - (B) the Environmental Documents; and
    - (C) all Environmental Notices; and
  - (ii) obtain and comply with all requirements of, and ensure that OpCo 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 Sydney Metro 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 Guidelines (4th Edition) (December 2019);
- (e) **(notification):** immediately notify the Principal in writing as soon as OpCo:
  - (i) becomes aware of any non-compliance with the requirements of any Law or Approval regarding the Environment in performing of OpCo's Activities;
  - (ii) becomes aware of any information, fact or circumstance where, if the Principal were to be aware of such information, fact or circumstance, the Principal 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 the Principal 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 the Principal and each State Indemnified Party against any Loss incurred by the Principal or the State Indemnified Party arising out of or in any way in



connection with an Environmental Notice received by the Principal or the State Indemnified Party to the extent that it arises out of or in connection with any Contamination:

- (i) for which OpCo is responsible under clause 11.5(a) except that this clause does not apply in respect of Loss arising from Contamination before OpCo has had reasonable opportunity to complete remediation required under clause 11.5(a); or
- (ii) that occurs as a result of a breach by OpCo of this deed.

#### **11.13 Liability under the NGER Legislation**

- (a) Without limiting any other clause in this deed, OpCo acknowledges and agrees that if 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.
- (b) If, for the purpose of the NGER Legislation, OpCo is not taken to have operational control of the facility or facilities referred to in clause 11.13(a):
  - (i) OpCo must comply with any obligations arising under the NGER Legislation in respect of OpCo's Activities as if it was the person with operational control of such facility or facilities; and
  - (ii) where section 11B(1) of the *National Greenhouse and Energy Reporting Act 2007* (Cth) applies, OpCo agrees that upon written request by the Principal the parties will, for the purposes of the NGER Legislation, jointly nominate OpCo as the person with operational control of such facility or facilities (with such nomination continuing until the completion of OpCo's Activities) and will do all things reasonably necessary to give effect to such nomination (including providing all relevant information and completing and executing all relevant documents and forms).
- (c) If, despite the operation of clauses 11.13(a) and 11.13(b), the Principal incurs, or but for this clause would incur, a liability under or in connection with the NGER Legislation as a result of or in connection with OpCo's Activities, and the NGER Legislation provides:
  - (i) that such liability can be transferred by the Principal to OpCo; or
  - (ii) for a declaration or other mechanism by which OpCo can become the person with such liability under the NGER Legislation,

OpCo must, upon written request by the Principal, do all things reasonably necessary to achieve such outcome (including providing all relevant information and completing and executing all relevant documents and forms).

#### **11.14 Provision of Emissions and Energy Data to the Principal**

- (a) OpCo must provide OpCo's Emissions and Energy Data to the Principal's Representative:
  - (i) at such times as may be agreed by the Principal and OpCo, or, if no such agreement is reached, within 10 Business Days of receiving written notice from the Principal 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) The Principal may use OpCo's Emissions and Energy Data for any purpose as it sees fit.

#### **11.15 Reporting Emissions and Energy Data**

- (a) This clause 11.15 applies if despite the operation of clause 11.13, the Principal 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 the Principal to comply with the NGER Legislation in relation to any aspect of OpCo's Activities.

- (c) Without limiting clause 11.15(b), if the Principal notifies OpCo in writing that OpCo is required to provide OpCo's Emissions and Energy Data to the Principal, then OpCo must:
  - (i) provide OpCo's Emissions and Energy Data to the Principal 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 the Principal was that Authority;
    - (B) in accordance with the requirements or approvals of any Authority and any directions given by the Principal; and
    - (C) without limiting clauses 11.15(c)(i)(A) or 11.15(c)(i)(B), as may be required to enable the Principal:
      - (I) 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
      - (II) 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 11.15(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 the Principal 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 11.15(c)(ii) and 11.15(c)(iii)) and answering questions.
- (d) OpCo acknowledges and agrees that:
  - (i) OpCo's Emissions and Energy Data is provided to the Principal:
    - (A) to discharge any obligations that the Principal may have to provide such Emissions and Energy Data to an Authority; and
    - (B) so that the Principal may provide to any Authority any OpCo's Emissions and Energy Data concerning any greenhouse gas project;
  - (ii) the Principal may provide or otherwise disclose OpCo's Emissions and Energy Data to any Authority; and
  - (iii) nothing in this clause 11.15 is to be taken as meaning that the Principal 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) OpCo acknowledges and agrees that access to the Construction Site will be provided progressively to OpCo as set out in the Site Access Schedule and such access is subject to the terms of this clause 12, clause 13 and any other provision of this deed affecting access.
- (b) Subject to this clause 12, clause 13 and any other provision of this deed affecting access, the Principal grants to OpCo a non-exclusive licence to use and occupy, and to permit

OpCo Contractors to use and occupy, the Construction Site for the purpose of performing OpCo's Activities in accordance with this deed.

- (c) The licence referred to in clause 12.1(b):
  - (i) commences in respect of each part of the Construction Site:
    - (A) on the Site Access Date for that part of the Construction Site;
    - (B) if a period is specified in the Site Access Schedule in relation to access to a part of the Construction Site, by the last day of that period; or
    - (C) on such earlier date in accordance with clause 13.2;
  - (ii) subject to clause 12.1(c)(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 Site Access Expiry Date for that part of the Construction Site; or
    - (B) where a Site Access Expiry Date is not specified, the Date of Completion; and
  - (iii) terminates on the termination of this deed.
- (d) OpCo acknowledges and agrees that:
  - (i) its access to the Construction Site is subject to:
    - (A) the Master Interface Deed;
    - (B) restrictions upon the access, possession and use of the Construction Site set out in:
      - (I) the Site Access Schedule; and
      - (II) the terms of the Third Party Agreements (but without prejudice to OpCo's rights in respect of any relief that arises under this deed due to a failure of any party to perform an obligation under the Third Party Agreement that OpCo is not responsible for under Schedule 18 (*Requirements of Third Party Agreements*) or rights in respect of relief for an adjustment of OpCo's access entitlements under any of those Third Party Agreements);
    - (C) this clause 12 and clause 13; and
    - (D) any other provision of this deed relating to access, possession or use, including clause 10.17 and clause 10.18; and
  - (ii) in accessing the Construction Site, OpCo must comply with:
    - (A) the Master Interface Deed;
    - (B) the terms of the Third Party Agreements other than to the extent that OpCo is not responsible for the relevant obligation in accordance with Schedule 18 (*Requirements of Third Party Agreements*) (provided that OpCo does not, by its action, place the Principal in breach of any such obligations);
    - (C) in the case of the part of the Construction Site subject to:
      - (I) an Access Licence (RID), the terms of the relevant Access Licence (RID) other than to the extent that OpCo is not responsible for the relevant obligation in accordance with Schedule 18 (*Requirements of Third Party Agreements*) (provided that OpCo does not, by its action, place the Principal in breach of any such obligations); and
      - (II) the Rail Easement (RID), the Easement Obligations (as that term is defined in the Rail Easement (RID)) as if OpCo were the Grantee under the Rail Easement (RID); and

- (D) the appointment and obligations of the Appointed Principal Contractor under clause 10.2.
- (e) The rights conferred by the Construction Site License are personal rights in contract only and do not create any tenancy or any estate or interest in the Construction Site or any land referred to under that licence.
- (f) OpCo acknowledges and agrees that:
  - (i) consistent with clauses 12.1(b) and 12.1(d) the Principal is not obliged to provide, and OpCo may not be given, exclusive use or occupation to or possession of any part of the Construction Site; and
  - (ii) the Principal is not obliged to carry out any work or provide any facilities to OpCo which may be necessary to enable OpCo to obtain access to any part of the Construction Site or carry out OpCo's Activities.
- (g) Not used
- (h) 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 the Principal in connection with access, or failure to gain or delay in gaining access, to and from the Construction Site.
- (i) 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.
- (j) OpCo must comply with 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:
  - (i) recorded in the register maintained by NSW Land Registry Services under the *Real Property Act 1900* (NSW) as at the date of this deed; or
  - (ii) identified in Exhibit 7 (*Land dealings*).
- (k) OpCo must not use the Construction Site, or permit it to be used, for any purpose other than OpCo's Activities, without the Principal's prior consent.

## **12.2 Licence to use Licensed Maintenance Area and to access Additional Maintained Assets**

- (a) The Principal grants to OpCo a non-exclusive licence to use and occupy and to permit OpCo Contractors to use and occupy the Licensed Maintenance Area for the purpose of performing OpCo's Activities, subject to:
  - (i) any Existing Land Arrangements, Easements or Land Arrangements concerning, benefiting or burdening the Licensed Maintenance Area; and
  - (ii) the terms of the Third Party Agreements (but without prejudice to OpCo's rights in respect of any relief that arises under this deed due to a failure of any party to perform an obligation under the Third Party Agreement that OpCo is not responsible for under Schedule 18 (*Requirements of Third Party Agreements*) or rights in respect of relief for an adjustment of OpCo's access entitlements under any of those Third Party Agreements).
- (b) The Principal grants to OpCo a non-exclusive licence to access, and to permit OpCo 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 the Principal 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 and the Third Party Agreements.

- (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 and in any event does not arise until the dates referred to in clause 12.2(c)(i).

### 12.3 Licensed Maintenance Area

- (a) The Principal and OpCo acknowledge that:
  - (i) the Licensed Maintenance Area is based on the Reference Design;
  - (ii) the Design Documentation will be developed and finalised in accordance with clause 14;
  - (iii) the SSTOM Works will be constructed in accordance with the AFC Design Documentation and otherwise in accordance with this deed; and
  - (iv) the location of Sydney Metro – Western Sydney Airport and the Assets when constructed may differ from the Reference Design, and changes may be required to the Licensed Maintenance Area as a result.
- (b) Prior to the Date of Completion, the Principal and OpCo will review the Licensed Maintenance Area shown in Attachment B2 (*Licensed Maintenance Area Drawings*) to the Particular Specification and either party may propose changes to the Licensed Maintenance Area by notice in writing to the other party.
- (c) The Principal 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 Sydney Metro – Western Sydney Airport or the ability of OpCo to undertake the SSTOM PPP in accordance with the Project Agreements;
  - (ii) the Principal 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 the Principal unless that change would have a material and adverse effect on the maintenance or operation of Sydney Metro – Western Sydney Airport or the ability of OpCo to undertake the SSTOM PPP in accordance with the Project Agreements.

### 12.4 Existing Land Arrangements, Easements, Land Arrangements, Commercial Opportunities

Provisions regarding Existing Land Arrangements, Easements, Land Arrangements, Commercial Opportunities and advertising in respect of the Licensed Maintenance Area and the Additional Maintained Assets are set out in Schedule 14 (*Easements, Land Arrangements and Commercial Opportunities*).

### 12.5 Native Title Claims

- (a) If there is a Native Title Claim with respect to the Sydney Metro Site or any part of the Sydney Metro Site, OpCo must:
  - (i) continue to perform OpCo's Activities, except to the extent otherwise:
    - (A) directed by the Principal's Representative;
    - (B) ordered by a court or tribunal; or
    - (C) required by Law; and

- (ii) at the request of the Principal, 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 the Principal and any other persons authorised by the Principal access to the Sydney Metro Site or that part of the Sydney Metro Site which is the subject of the Native Title Claim when reasonably required by the Principal for that purpose).
- (b) For the purposes of clause 12.5(a)(i)(A), the Principal may by written notice direct OpCo to suspend performance of any or all of OpCo's Activities until such time as the Principal gives OpCo further notice.

## 12.6 Artefacts

- (a) All Artefacts found on or under the surface of the Sydney Metro Site will, as between the parties, be the absolute property of the Principal.
- (b) Where such an Artefact is found, OpCo must:
  - (i) immediately notify the Principal's Representative;
  - (ii) ensure that the Artefact is managed in accordance with:
    - (A) any Project Plans relating to heritage management or the discovery of Artefacts; and
    - (B) the Sydney Metro Unexpected Heritage Finds Procedure (if applicable);
  - (iii) comply with all:
    - (A) Laws and the Environmental Documents relating to heritage and conservation in relation to the Artefact; and
    - (B) requirements of Authorities and any Directions of the Principal's Representative in relation to the Artefact; and
  - (iv) continue to perform OpCo's Activities, except to the extent otherwise:
    - (A) directed by the Principal's Representative;
    - (B) ordered by a court or tribunal; or
    - (C) required by Law.
- (c) If:
  - (i) OpCo is directed, ordered or required to cease to perform any of OpCo's Activities (or to change the way it does so) as a result of the discovery of a Valuable Find in accordance with clause 12.6(b) causing OpCo to incur additional costs exceeding [REDACTED] (in aggregate over the Term);
  - (ii) the nature and extent of the discovery could not have been reasonably anticipated by a competent and experienced contractor that had examined:
    - (A) the Sydney Metro Site and its surroundings; and
    - (B) all Information Documents and any other information that was made available in writing by the Principal, or any other person on the Principal's behalf, to OpCo prior to the date of this deed; and
  - (iii) OpCo has complied with its obligations in clause 12.6(b),

the Principal must compensate OpCo for any negative Net Financial Impact in excess of [REDACTED] (in aggregate over the Term) arising from OpCo being directed, ordered or required to cease to perform any of OpCo's Activities (or to change the way it does so) as a result of the discovery of a Valuable Find, which will be calculated and paid in accordance with Schedule 6 (*Net Financial Impact*).

## 12.7 Unexploded Ordnances

- (a) OpCo acknowledges and agrees that, as at the date of this deed, the Principal has provided OpCo with each FIW Detailed Site Investigation (UXO) performed by or on behalf of:

- (i) an FIW Contractor and approved by an Accredited Person under the FIW Contracts; or
  - (ii) the Principal,

as Information Documents.
- (b) OpCo must:
  - (i) engage an Accredited Person to prepare an Unexploded Ordnance Plan in accordance with Law, Good Industry Practice, the Environmental Documents, applicable codes and standards and any other requirements of this deed establishing the steps to safely manage construction works in relation to the potential for UXO risk and management in the event that any UXOs are encountered; and
  - (ii) submit it to the Principal's Representative,

prior to commencing any OpCo's Activities on the UXO Area.
- (c) OpCo must:
  - (i) immediately notify the Principal's Representative if any UXO is found and whether the UXO was previously identified by an FIW Contractor in an FIW Detailed Site Investigation (UXO) report;
  - (ii) ensure that the UXO is managed in accordance with the Unexploded Ordnance Plan;
  - (iii) comply with all Laws and Approvals relating to UXOs;
  - (iv) comply with the requirements of any Authorities and directions of the Principal's Representative in relation to the UXO; and
  - (v) continue to perform OpCo's Activities except to the extent otherwise:
    - (A) directed by the Principal's Representative;
    - (B) ordered by a court or tribunal; or
    - (C) required by Law.

## 12.8 Working hours

Unless otherwise agreed between OpCo and the Principal's Representative, the hours of work applicable to OpCo's Activities to be carried out on the Sydney Metro Site are those permitted by relevant Law, Approvals 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 Sydney Metro 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 as applicable 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 the Principal's Representative:
    - (A) a properly executed release, on terms satisfactory to the Principal'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 the Principal against any Loss incurred by the Principal 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) the Principal 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 Contractors to obtain access to Extra Land or integrate such Extra Land with the Sydney Metro Site.

## 12.10 Property Works on Unowned Parcels

This clause 12.10 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 the Principal'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 12.10(a); or
  - (ii) such other date as may be agreed between OpCo and the owner or owners,
 OpCo:
  - (iii) must:
    - (A) give the Principal's Representative a notice stating this; and
    - (B) not carry out the Property Works until the Principal's Representative gives OpCo a notice specifying that the owner or owners of the property have agreed to give access, in which event clause 12.10(a) will reapply; and
  - (iv) will be liable for the consequences of, and will have no Claim against the Principal 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 12.10.



### 12.11 Permitted use

OpCo must not undertake:

- (a) the SSTOM Works (other than the Third Party Works that lie outside the Project Site) such that the final location of such works is outside the Project Site;
- (b) the Temporary Works outside the Construction Site; or
- (c) the Local Area Works outside the Construction Site and the Local Areas.

### 12.12 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 in relation to the Project.

### 12.13 Sydney Metro office accommodation

- (a) The Principal will establish and maintain office accommodation for use by Staff in accordance with section 2.13.2 of the General Specification.
- (b) If the Principal does not establish office accommodation for use by Staff in accordance with clause 12.13(a), then the Principal will not be in breach of this deed but will direct a Modification under clause 33 to the extent that OpCo is required to procure alternative office accommodation for use by Staff.
- (c) Subject to clause 12.13(b), the Principal will not be liable upon any Claim by OpCo arising out of or in any way in connection with any failure by the Principal to comply with its obligations in 12.13(a).

## 13. Handover of Foundation Infrastructure Works

### 13.1 Handover of FIW Portions

The Principal must hand control of each FIW Portion to OpCo on the OpCo Handover Date.

### 13.2 Early handover

- (a) If an FIW Date of Substantial Completion of an FIW Portion is proposed earlier than the Site Access Date, the Principal's Representative may (but is not obliged to) give written notice offering to handover the Construction Site from a specified date prior to the Site Access Date (**Early Handover Notice**), provided that the date specified in the Early Handover Notice is no earlier than the date that is six weeks after the date of the Early Handover Notice.
- (b) If the date specified in the Early Handover Notice is:
  - (i) earlier than the Site Access Date and on or later than the Early Site Access Date, OpCo must accept the relevant part of the Construction Site from the date specified in the Early Handover Notice; or
  - (ii) earlier than the Site Access Date and earlier than the Early Site Access Date, OpCo and the Principal must consult in good faith to agree the earliest practicable date from which OpCo can accept the relevant part of the Construction Site (which must be a date in the period from the date specified in the Early Handover Notice and the Early Site Access Date) and OpCo must accept the relevant part of the Construction Site from that agreed date or, failing agreement, from the Early Site Access Date.
- (c) From the date specified in the Early Handover Notice (or other date determined under clause 13.2(b)(ii)):
  - (i) the licence under clause 12.1(b) will commence with respect to the relevant part of the Construction Site; and
  - (ii) OpCo will become responsible for the care and maintenance of an FIW Portion in accordance with clause 16.10.

- (d) If OpCo accepts handover of any part of the Construction Site earlier than the Site Access Date in accordance with this clause 13.2, the Principal will pay OpCo the Early Handover Payment for each day during the period:
  - (i) commencing on the date OpCo accepts the relevant part of the Construction Site; and
  - (ii) ending on the Site Access Date for the relevant part of the Construction Site,
 and the Principal will be deemed to have issued a notice under clause 33.1(a) and clause 33 will apply to the extent applicable to determine the amount for the Early Handover Payment which will be based on the daily rate for that Construction Site in the Schedule of Rates.

### **13.3 Access by FIW Contractors**

From the OpCo Handover Date, OpCo must provide each FIW Contractor (and any person authorised by an FIW Contractor) with such access to the relevant part of the Sydney Metro Site as may be required by the FIW Contractor, in order to meet its obligations under the Master Interface Deed and each FIW Contract, including:

- (a) the rectification of any FIW Known Defect during the applicable Known Defects Rectification Period;
- (b) the rectification of any FIW Defect pursuant to clause 17.3(d)(i); and
- (c) subject to clause 16.2 and clause 16.6, to undertake Deferred FIW Activities in accordance with the relevant FIW Contract,

subject to the FIW Contractors complying with OpCo's site access and work, health and safety procedures in accordance with the Master Interface Deed and Site Access Deed Poll.

## **14. Design**

### **14.1 Design obligations**

OpCo must design the SSTOM Works, the Temporary Works and any works carried out as part of the Operations Activities in accordance with:

- (a) the SSTOM Specification;
- (b) all relevant Laws and Approvals;
- (c) any Modification:
  - (i) directed by the Principal by a Modification Order; or
  - (ii) approved by the Principal by a Modification Approval; and
- (d) the other requirements of this deed.

### **14.2 Reference Design and Proposal Design**

- (a) Prior to the date of this deed:
  - (i) the Principal prepared the Reference Design; and
  - (ii) OpCo or an OpCo Contractor prepared the Proposal Design.
- (b) 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 Reference Design or the Proposal Design in performing OpCo's Activities and that such use and reliance will not limit any of its obligations under this deed.

- (c) 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 SSTOM Works and the Temporary Works in accordance with the Reference Design or the Proposal Design costing more or taking longer than anticipated; and
  - (ii) any differences between the Reference Design or the Proposal Design and the SSTOM 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 differences:
    - (A) necessitated by any Site Conditions encountered; and
    - (B) required to ensure that the SSTOM 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 Reference Design.
- (d) OpCo warrants that:
  - (i) prior to the date of this deed, the Proposal Design has been prepared by OpCo or an OpCo Contractor;
  - (ii) in preparing the Design Documentation for the SSTOM Works in accordance with this deed, OpCo will take into account the FIW Design Documentation provided to OpCo in accordance with clause 16.5;
  - (iii) if the SSTOM Works and the Temporary Works are designed and constructed in accordance with the Proposal Design for the SSTOM Works, the SSTOM Works and the Temporary Works will satisfy the requirements of this deed (but nothing in this clause 14.2(d)(iii) affects or limits clauses 14.2(b) and 14.2(c), which will prevail to the extent of any inconsistency;
  - (iv) it will carry out and complete OpCo's Activities in accordance with the Proposal Design for the SSTOM Works (as further developed in accordance with this deed) (but nothing in this clause 14.2(d)(iv) affects or limits clauses 14.2(b) or 14.2(c), which will prevail to the extent of any inconsistency);
  - (v) it will not depart from Proposal Design for the SSTOM Works in a manner that is prohibited by section 1.5.17 of Particular Specification 01 (*General*); and
  - (vi) it remains responsible for ensuring that the SSTOM Works and the Temporary Works will satisfy the requirements of this deed notwithstanding that the Proposal Design was prepared by OpCo or an OpCo Contractor.

### 14.3 Design warranties

- (a) OpCo warrants that:
  - (i) it has checked, examined, analysed and carefully considered the SSTOM Specification and Environmental Documents and that:
    - (A) it has satisfied itself as to the completeness, correctness, accuracy, appropriateness, suitability and adequacy of the SSTOM Specification;
    - (B) it has satisfied itself that there are no omissions, ambiguities, discrepancies or inconsistencies in or between the SSTOM Specification and Environmental Documents;
    - (C) the SSTOM Specification 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 SSTOM 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 SSTOM Specification; and

- (E) the use of, or reliance upon, the SSTOM Specification does not affect any of its obligations under this deed or entitle OpCo to make any Claim against the Principal arising out of or in any way in connection with the SSTOM Specification; and
- (ii) the Design Documentation (other than the FIW Design Documentation) will:
  - (A) satisfy the applicable requirements of the SSTOM Specification and the other requirements of this deed; and
  - (B) be fit for its intended purpose.
- (b) The warranties given in clauses 14.2(d) and 14.3(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 (but without prejudice to clauses 16, 17, 29 or 30 in respect of the Foundation Infrastructure Works); or
  - (ii) the termination (for any reason) of this deed.

#### **14.4 Preparation, submission and review of Design Documentation**

- (a) OpCo must:
  - (i) prepare and submit Design Documentation in accordance with Schedule 11 (*Design Review*) and the SSTOM Specification; and
  - (ii) comply with the Design Review Process.
- (b) OpCo acknowledges and agrees that:
  - (i) the purpose of the Design Review Process is to develop, refine and finalise the Design Documentation for the SSTOM Works so that the SSTOM Works meet the requirements of this deed; and
  - (ii) changes to the Design Documentation arising from the Design Review Process will not constitute a Modification or otherwise entitle OpCo to make any Claim against the Principal or its Associates for any Loss incurred by OpCo in connection with the conduct of the Design Review Process.
- (c) OpCo must:
  - (i) cooperate with the Principal's Representative and, if applicable, the Independent Certifier, to procure the review of the Design Documentation; and
  - (ii) make qualified personnel available to explain Design Documentation as reasonably required by the Principal's Representative.

#### **14.5 Design Life**

- (a) OpCo represents and warrants that:
  - (i) each Asset will:
    - (A) be designed and constructed so that, with respect to each Asset forming part of the SSTOM Works, at the Date of Completion, such Asset is fit for its intended purpose;
    - (B) will be maintained during the Term so that it is fit for its intended purpose at all times during the Term; and
    - (C) will 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; and
  - (ii) where an Asset is replaced or refurbished during the Term, the replacement or refurbished Asset will:
    - (A) in the case of replacement, have a Design Life which is equal to or longer than the Design Life of the Asset which is being replaced, and, in the case of refurbishment (as a minimum), maintain the existing Design Life of the Asset;

- (B) be designed and constructed so that, at the time of its replacement or refurbishment, it is fit for its intended purpose;
  - (C) be maintained during the Term so that it is fit for its intended purpose at all times during the Term; and
  - (D) 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.
- (b) The representations and warranties made by OpCo:
  - (i) under clause 14.5(a)(i) are made, and will be deemed to have been made on the date of this deed; and
  - (ii) under clause 14.5(a)(ii) are made, and will be deemed to have been made, on the date the replacement or refurbishment of the relevant Asset has been completed, and, in either case, each day thereafter until the date falling [REDACTED]
- (c) Clause 14.5(b) will survive the rescission, termination or expiry 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 the Principal has or may have against OpCo arising out of or in connection with any false representation, or breach of warranty, under this clause 14.5 in respect of an Asset is statute-barred before the date falling [REDACTED].
- (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 14.5(d).
- (f) OpCo must indemnify the Principal against any Loss suffered by the Principal as a result of:
  - (i) any action by OpCo in breach of clause 14.5(d); and
  - (ii) the enforcement of any judgment or award by OpCo in breach of clause 14.5(e).

## 15. Flood modelling

### 15.1 OpCo acknowledgements

- (a) OpCo acknowledges that prior to the date of this deed:
  - (i) the Principal prepared the Reference Flood Model, including the Flood Model Baseline Design Scenario, and this was provided to OpCo as an Information Document;
  - (ii) the FIW Design Documentation submitted under each FIW Contract included a version of the Reference Flood Model incorporating the Flood Model SBT Design Scenario and Flood Model SCAW Design Scenario (as those terms are defined in the relevant FIW Contracts);
  - (iii) OpCo reviewed the Flood Model SBT Design Scenario and Flood Model SCAW Design Scenario (as those terms are defined in the relevant FIW Contracts) in accordance with clause 16.5; and
  - (iv) upon certification of the relevant FIW Design Documentation by the Independent Certifier under the FIW Contract, the version of the Reference Flood Model incorporating the certified Flood Model SBT Design Scenario or Flood Model SCAW Design Scenario (as applicable) (as those terms are defined in the relevant FIW Contracts) became the Reference Flood Model for the purposes of OpCo's obligations in clause 15.2.
- (b) OpCo warrants to the Principal that:

- (i) the Flood Model Proposal Design Scenario as submitted by OpCo with OpCo's Proposal Design, including its input of the Flood Model SSTOM Design Inputs and any amendments by OpCo to the Flood Model Baseline Design Scenario, is a complete and accurate reflection of OpCo's Proposal Design; and
- (ii) without prejudice to the warranties given by OpCo in clause 14.3, if the SSTOM Works and Temporary Works are designed and constructed using OpCo's Proposal Design, the SSTOM Works and Temporary Works will each satisfy the Flood Resilience Requirements.
- (c) OpCo acknowledges and agrees that it bears the risk of the:
  - (i) subject to clause 15.6, the accuracy and completeness of the Reference Flood Model from the date of this deed; and
  - (ii) the accuracy and modelling of the Flood Model SSTOM Design Inputs.

## 15.2 Consistency of Design Documentation with Flood Resilience Requirements

At each Design Stage, OpCo must:

- (a) review and assess the accuracy and completeness of the Flood Model SSTOM Design Scenario and the Reference Flood Model;
- (b) amend the Flood Model SSTOM Design Scenario and the Flood Model SSTOM Design Inputs as required to ensure that it is a complete and accurate reflection of the Design Documentation, and submit details of all such amendments with the corresponding Design Documentation and Flood Model Output Schedule (which amended Flood Model SSTOM Design Scenario will form part of the Design Documentation and be reviewed as part of the Design Review Process); and
- (c) ensure that the SSTOM Works and Temporary Works when constructed in accordance with the Design Documentation will satisfy the Flood Resilience Requirements.

## 15.3 Development Changes

- (a) If, prior to Completion, either party becomes aware of any proposed new third party development or change to an existing planned third party development within the catchment area the subject of the Reference Flood Model that will (or is reasonably likely to) have a material adverse impact on the compliance of the SSTOM Works or Temporary Works with the Flood Resilience Requirements (**Material Development Change**), it must notify the other party.
- (b) The parties must consult in good faith concerning any notice given under clause 15.3(a) in particular considering:
  - (i) whether there is a Material Development Change;
  - (ii) any additional design work required to determine or ensure the continued compliance of the SSTOM Works or Temporary Works with the Flood Resilience Requirements; and
  - (iii) any change to the:
    - (A) SSTOM Works or Temporary Works; or
    - (B) Flood Resilience Requirements,
 in each case to ensure the continued compliance of the SSTOM Works or Temporary Works with the Flood Resilience Requirements.
- (c) Following the consultation process in clause 15.3(b), the Principal's Representative must direct a Modification in accordance with clause 33 to address the impacts of the Material Development Change where the parties agree (or it is determined in accordance with clause 63) that:
  - (i) there is Material Development Change and:

- (ii) additional design work is required to determine or ensure the continued compliance of the SSTOM Works or Temporary Works with the Flood Resilience Requirements; or
- (iii) a change to the:
  - (A) SSTOM Works or Temporary Works; or
  - (B) Flood Resilience Requirements,

is required to ensure the continued compliance of the SSTOM Works or Temporary Works with the Flood Resilience Requirements.

#### **15.4 Reliance on Reference Flood Model**

OpCo acknowledges and agrees that, subject to this clause 15 and except as expressly provided in this deed in respect of an FIW Change:

- (a) the Principal will not be liable for and OpCo is not entitled to Claim any Loss suffered or incurred by OpCo arising out of or any way in connection with the provision of, or the purported reliance upon, or use of, the Reference Flood Model by OpCo; and
- (b) OpCo is responsible for, and assumes the risk of all additional work, increased costs and any other Loss, liability, Claim, delay or disruption (including any delay in achieving Completion) it suffers or incurs arising out of or in any way in connection with any change to the Reference Flood Model as described in this clause 15 and the accuracy and modelling of the Flood Model SSTOM Design Inputs.

#### **15.5 Flooding in the Operations Phase**

For the avoidance of doubt:

- (a) OpCo will not be entitled to make any Claim against the Principal, and the Principal will have no liability to OpCo, in relation to any flood event in the Operations Phase which was caused or contributed to by an inaccuracy or error in the Reference Flood Model; and
- (b) OpCo's sole entitlement to relief in relation to any flood event in the Operations Phase will be in accordance with clause 30 (to the extent that clause applies).

#### **15.6 Baseline Reference Flood Model**

- (a) The parties each acknowledge and agree that, for the purposes of this clause 15:
  - (i) subject to clause 15.6(a)(ii), the Reference Flood Model at the date of this deed is deemed to be the Baseline Reference Flood Model; and
  - (ii) from the date when the Principal provides to OpCo the replacement version of the Reference Flood Model described in clause 15.6(b), the Reference Flood Model is deemed to be that replacement version.
- (b) As soon as reasonably practicable after receipt by the Principal, the Principal must provide OpCo with the final version of the Reference Flood Model (including all supporting information) incorporating the final certified Flood Model SCAW Design Scenario.
- (c) If OpCo reasonably considers that any difference between the Baseline Reference Flood Model and the replacement version of the Reference Flood Model described in clause 15.6(b) will (or is reasonably likely to) constitute a Material Change to Baseline Reference Flood Model, within 15 Business Days of receiving the replacement version of the Reference Flood Model described in clause 15.6(b), OpCo may notify the Principal of that fact (providing reasonable details) and the provisions of clause 15.3(b) and clause 15.3(c) will apply as if a reference to:
  - (i) clause 15.3(a) is a reference to this clause 15.6(c); and
  - (ii) Material Development Change is a reference to Material Change to Baseline Reference Flood Model
- (d) In this clause 15.6:

- (i) **Baseline Reference Flood Model** means the version of the Reference Flood Model provided to OpCo as an Information Document on 8 November 2022.
- (ii) **Material Change to Baseline Reference Flood Model** means a change in the Flood Model Output Schedule which:
  - (A) impacts on OpCo's designed surface levels or otherwise has a material impact on OpCo's design responses to mitigate flooding as determined by the Reference Flood Model outputs;
  - (B) is required to ensure that the SSTOM Works or Temporary Works comply with the Flood Resilience Requirements and obligations under the Project Planning Approval; and
  - (C) is unable to be mitigated by OpCo through reasonable alternate measures.

## 16. Integration with Foundation Infrastructure Works

### 16.1 Foundation Infrastructure Works are fit for OpCo's purposes

- (a) OpCo warrants that:
  - (i) it has reviewed and carefully considered the FIW Contracts (including the FIW Interface Requirements Specifications) in the form contained in Exhibit 8 (*FIW Contracts*); and
  - (ii) the Foundation Infrastructure Works will be fit for the purposes of enabling OpCo to comply with its obligations under this deed if:
    - (A) the SBT Works achieve SBT Substantial Completion and, except for any FIW Known Defects during the Known Defects Rectification Period or any Deviations within the FIW Tolerances, comply with the requirements of the SBT Contract (in the form and to the extent contained in Exhibit 8 (*FIW Contracts*) as changed or varied for any Approved FIW Change; and
    - (B) the SCAW Works achieve SCAW Substantial Completion and, except for any FIW Known Defects during the Known Defects Rectification Period or any Deviations within the FIW Tolerances, comply with the requirements of the SCAW Contract (in the form and to the extent contained in Exhibit 8 (*FIW Contracts*) as changed or varied for any Approved FIW Change.
- (b) Subject to clauses 17, 17.4, 16.11, 29 and 30, OpCo will not be entitled to:
  - (i) make (nor will the Principal be liable upon) any Claim arising out of or in any way in connection with the Foundation Infrastructure Works, including in relation to the Foundation Infrastructure 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 SBT Works achieve SBT Substantial Completion and, except for any FIW Known Defects or any Deviations within the FIW Tolerances, comply with the requirements of the SBT Contract (in the form and to the extent contained in Exhibit 8 (*FIW Contracts*) as changed or varied for any Approved FIW Change; and
  - (iv) the SCAW Works achieve SCAW Substantial Completion and, except for any FIW Known Defects or any Deviations within the FIW Tolerances, comply with the requirements of the SCAW Contract (in the form and to the extent contained in Exhibit 8 (*FIW Contracts*) as changed or varied for any Approved FIW Change.

### 16.2 Principal initiated FIW Change

- (a) The Principal's Representative may at any time issue to OpCo written notice of a proposed FIW Change that is not, or is unlikely to be, an Accepted FIW Change.



- (b) Within 20 Business Days of OpCo either receiving a notice under clause 16.2(a) or of OpCo otherwise becoming aware of an FIW Change that is not, or that is unlikely to be, an Accepted FIW Change (or such longer period as the Principal's Representative reasonably agrees, having regard to the size and complexity of the FIW Change), OpCo must:
  - (i) provide the Principal's Representative with a written notice including:
    - (A) subject to clause 16.2(c), confirmation that the Foundation Infrastructure Works will remain fit for the purpose of enabling OpCo to comply with its obligations under this deed despite the FIW Change;
    - (B) details of any Net Financial Impact that the FIW Change has had or would have on implementation and how such Net Financial Impact has been calculated; and
    - (C) details of any extension of time required to the Date for Completion as a result of the FIW Change; or
  - (ii) subject to clause 16.2(c), OpCo may decline to give the confirmation referred to in clause 16.2(b)(i)(A) in which case OpCo's notice under clause 16.2(b)(i) must provide the Principal's Representative with:
    - (A) detailed written reasons explaining why the FIW Change has prevented or will prevent OpCo from complying with its obligations under this deed; and
    - (B) details of any modification it requires to the FIW Change in order to give the confirmation, including details regarding any change to the timing of the FIW Change or to the manner in which the FIW Change is implemented) to reduce or avoid the impact of the FIW Change on the SSTOM Works, the Temporary Works, Sydney Metro – Western Sydney Airport or OpCo's Activities (as applicable).
- (c) OpCo's confirmation under clause 16.2(b)(i)(A) may only be withheld if the FIW Change has prevented or will prevent OpCo from complying with its obligations under this deed.
- (d) If OpCo provides notice pursuant to clause 16.2(b)(ii) the Principal must within 10 Business Days either:
  - (i) refer the determination of whether the proposed FIW Change has prevented or will prevent OpCo from complying with its obligations under this deed to be decided in accordance with clause 63;
  - (ii) notify OpCo of any changes to the proposed FIW Change, in which case this clause 16.2 will reapply;
  - (iii) in the case of a proposed FIW Change that has not yet been implemented, withdraw the proposed FIW Change; or
  - (iv) notify OpCo that it agrees that the FIW Change has prevented or will prevent OpCo from complying with its obligations under this deed.
- (e) If it is determined under clause 63 or the parties agree that:
  - (i) the FIW Change has prevented or will prevent OpCo from complying with its obligations under this deed, the Principal may elect either to:
    - (A) in the case of a proposed FIW Change that has not yet been implemented, withdraw the proposed FIW Change;
    - (B) modify the FIW Change, in which case this clause 16.2 will reapply;
    - (C) proceed with the proposed FIW Change on the basis that:
      - (I) clauses 16.1(a)(ii) and 16.1(b) will not apply in relation to the FIW Change to the extent determined under clause 63 or agreed by the parties; and
      - (II) it will be a Compensation Event; or

- (D) issue a Modification Impact Request (provided that, if the Principal does not ultimately instruct the Modification under clause 33.11, the Principal must elect an option in paragraphs (A), (B) or (C) of this clause 16.2(e)) or instruct OpCo to implement a Modification under clause 33.11 to accommodate the FIW Change; or
- (ii) the FIW Change has not prevented and will not prevent OpCo from complying with its obligations under this deed:
  - (A) if the FIW Change is implemented:
    - (I) the FIW Change will be an Approved FIW Change and clauses 16.1(a)(ii) and 16.1(b) will continue to apply with respect to the modified Foundation Infrastructure Works; and
    - (II) it will otherwise be a Compensation Event; and
  - (iii) OpCo will not, except in respect of a Compensation Event described in clause 16.2(e)(i)(C)(II) (and subject to clause 16.2(e)(i)(C)(I)) or clause 16.2(e)(ii)(A)(II) be entitled to claim any relief from any obligations under this deed.
- (f) The Principal must reimburse OpCo for any Third Party Preparation Costs reasonably incurred by OpCo in assessing each FIW Change pursuant to this clause 16.2.

### **16.3 OpCo initiated FIW Change**

- (a) If OpCo wishes to request the Principal to procure an FIW Change, including any FIW Change that OpCo considers is required as a result of or in connection with a Modification proposed by OpCo under clause 34.1, it must give the Principal a written notice with full details of:
  - (i) the proposed FIW Change; and
  - (ii) the reason for the proposed FIW Change.
- (b) Upon receipt of a notice under clause 16.3(a) and subject to clause 16.3(c), the Principal must not unreasonably refuse to procure the relevant FIW Contractor to carry out the FIW Change, provided that OpCo agrees to pay all additional costs incurred by the Principal in connection with the FIW Change or its assessment, including all amounts payable to the relevant FIW Contractor in connection with the FIW Change or its assessment.
- (c) The Principal's refusal to procure the FIW Change will be deemed to be reasonable if the implementation of the FIW Change would:
  - (i) not promote the objectives and expected outcomes of the Project Agreements;
  - (ii) not, in the Principal's opinion, be in the public interest;
  - (iii) result in a delay to the Date of Completion;
  - (iv) result in a delay to a Site Access Date; or
  - (v) have any other effect which the Principal considers to be unreasonable in the circumstances of the SSTOM PPP.
- (d) If required by the Principal, and without limiting OpCo's obligations under clause 32.8, OpCo must attend any meetings with the relevant FIW Contractor regarding the FIW Change and provide such further information regarding the FIW Change as may be required by the Principal or the relevant FIW Contractor.
- (e) The Principal must notify OpCo within 25 Business Days (or such longer period as the Principal reasonably requires, having regard to the size and complexity of the proposed FIW Change) after receiving a notice from OpCo under clause 16.3(a):
  - (i) that it will direct the relevant FIW Contractor to carry out the FIW Change; or
  - (ii) that it will not direct the relevant FIW Contractor to carry out the FIW Change.
- (f) OpCo must pay any additional costs referred to in clause 16.3(b) within 20 Business Days of being requested to do so by the Principal.
- (g) Subject to clauses 16.10 and 17, OpCo:

- (i) will not be entitled to make any Claim against the Principal arising out of or in connection with:
  - (A) any FIW Change implemented by the Principal and an FIW Contractor pursuant to this clause 16.3; or
  - (B) a permitted refusal by the Principal under this clause 16.3 to direct an FIW Contractor to carry out the FIW Change; and
- (ii) agrees that the refusal by the Principal to direct an FIW Change requested by OpCo will not affect the operation of clause 16.1(b).
- (h) OpCo warrants that if an FIW Change requested by OpCo is implemented, the Foundation Infrastructure Works will, if designed and constructed in accordance with the FIW Contracts (amended to incorporate the FIW Change), be fit for the purposes of enabling OpCo to comply with its obligations under this deed.

#### 16.4 FIW design team meetings

The Principal must:

- (a) notify OpCo of, and provide OpCo with a reasonable opportunity to attend, meetings of the FIW 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 FIW Contractors to the Principal.

#### 16.5 FIW Design Documentation

- (a) Within 20 Business Days of Financial Close, the Principal must provide OpCo with a copy of all FIW Design Documentation submitted by the FIW Contractors to the Principal before Financial Close and, in the case of all other FIW Design Documentation, promptly following receipt of the FIW Design Documentation by the Principal.
- (b) OpCo may:
  - (i) review the FIW Design Documentation provided to it pursuant to clause 16.5(a); and
  - (ii) to the extent that the FIW Design Documentation does not comply with the requirements of the relevant FIW Contract, provide written comments to the Principal;
    - (A) in the case of FIW Design Documentation submitted to the Principal before Financial Close, within 20 Business Days of the date on which OpCo received the FIW Design Documentation; and
    - (B) in the case of all other FIW Design Documentation, within 10 Business Days of the date on which OpCo received the FIW Design Documentation.
- (c) The Principal must provide OpCo with a copy of any comments the Principal receives from the Independent Certifier in response to any comments made by OpCo under clause 16.5(b) promptly and in any event no later than 10 Business Days after receipt.

#### 16.6 Accepted FIW Change

- (a) The Principal's Representative may notify OpCo with details of any FIW Change it considers to be an Accepted FIW Change (**Proposed Accepted FIW Change**).
- (b) OpCo may, within 10 Business Days (or such longer period as the Principal's Representative reasonably agrees, having regard to the size and complexity of the FIW Change) of receipt of a notice under clause 16.6(a), provide the Principal's Representative with a written notice stating that it:
  - (i) agrees the Proposed Accepted FIW Change is an Accepted FIW Change; or

- (ii) does not consider the Proposed Accepted FIW Change to be an Accepted FIW Change.
- (c) If OpCo gives the Principal a notice in accordance with clause 16.6(b)(i) then the Proposed Accepted FIW Change will be deemed to be an Approved FIW Change.
- (d) If OpCo gives the Principal a notice in accordance with clause 16.6(b)(ii), the Modifications Working Group must, at the next Modifications Working Group meeting (or as many additional meetings as agreed by the parties):
  - (i) discuss the Proposed Accepted FIW Change; and
  - (ii) use their reasonable endeavours to agree whether the Proposed Accepted FIW Change is an Accepted FIW Change.
- (e) If the Modifications Working Group:
  - (i) agrees that the Proposed Accepted FIW Change is an Accepted FIW Change, then the Proposed Accepted FIW Change will be deemed to be an Approved FIW Change; or
  - (ii) does not agree that the Proposed Accepted FIW Change is an Accepted FIW Change, then the Principal may issue a notice to OpCo pursuant to clause 16.2(a).
- (f) If a notice is not received by the Principal within the time specified in clause 16.6(b):
  - (i) OpCo is deemed to have accepted the Proposed Accepted FIW Change is an Accepted FIW Change; and
  - (ii) the Proposed Accepted FIW Change will be deemed to be an Approved FIW Change.
- (g) If requested by OpCo, the Principal must attend any meetings with OpCo and the relevant FIW Contractor regarding the Proposed Accepted FIW Change and provide such further information as may be reasonably required by OpCo.

#### **16.7 FIW Asset Management Information**

- (a) The Principal must provide OpCo with a copy of any FIW Asset Management Information (including the FIW O&M Manuals) submitted by the FIW Contractors to the Principal in accordance with the FIW Contract promptly following receipt by the Principal.
- (b) OpCo may, or if requested by the Principal must:
  - (i) review the FIW Asset Management Information provided to it pursuant to clause 16.7(a); and
  - (ii) to the extent that the FIW Asset Management Information does not comply with the requirements of the relevant FIW Contract, provide comments to the Principal, within 5 Business Days of the date on which OpCo received the FIW Asset Management Information pursuant to clause 16.7(a).
- (c) The Principal must provide OpCo with a copy of any comments the Principal receives from the Independent Certifier under the FIW Contracts in response to any comments made by OpCo under clause 16.7(b) promptly and in any event no later than 10 Business Days after receipt.

#### **16.8 Inspection of Foundation Infrastructure Works**

- (a) Prior to the relevant OpCo Handover Date, if OpCo wishes to inspect the Foundation Infrastructure Works, OpCo must:
  - (i) submit a written request to the Principal'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 the Principal's Representative may agree); and
  - (ii) promptly provide any further information or documentation required by the Principal's Representative before the inspection can be carried out, including any information or documentation required under the relevant FIW Contract.

- (b) OpCo may only inspect the Foundation Infrastructure Works when accompanied by the Principal's Representative (or its nominee).
- (c) The Principal's Representative must:
  - (i) facilitate all reasonable requests by OpCo to inspect the Foundation Infrastructure Works; and
  - (ii) notify OpCo of, and provide OpCo with a reasonable opportunity to attend, all joint inspections of the Foundation Infrastructure Works carried out in accordance with clauses 17.13, 19.12 and 19.13 of each FIW Contract.
- (d) OpCo:
  - (i) must attend the final inspection of the Foundation Infrastructure Works carried out in accordance with clause 17.13 of each FIW Contract; and
  - (ii) despite any other provision of this deed, must give the Independent Certifier (with a copy to the Principal's Representative) a written notice of any FIW Defects observed during the final inspection.
- (e) Without limiting clause 16.8(d), and subject to clause 16.8(h), to the extent that the Foundation Infrastructure Works do not comply with the requirements of the relevant FIW Contract, OpCo may provide written comments to the Principal:
  - (i) in the case of an inspection carried out in accordance with clauses 19.12 or 19.13 of an FIW Contract, within 1 Business Day of the date of the relevant inspection; and
  - (ii) in the case of any other inspection under this clause 16.8 (other than a final inspection of the Foundation Infrastructure Works in accordance with clause 16.8(d)), within 5 Business Days of the date of the relevant inspection.
- (f) The Principal must provide OpCo with a copy of any comments the Principal receives from the Independent Certifier in response to any comments made by OpCo under clause 16.8(e) promptly and in any event no later than 10 Business Days after receipt.
- (g) OpCo may (acting reasonably) provide to the Principal any comments in relation to non-compliance by an FIW Contractor with any completion requirements under the relevant FIW Contract if such non-compliance would not subsequently be an FIW Defect and the Principal agrees to pass such comments to the Independent Certifier.
- (h) This clause 16.8 does not in any way affect or limit the rights and obligations of the parties in clause 17 in relation to FIW Defects, including any obligation on OpCo to notify the Principal of:
  - (i) the effect of FIW Known Defects in accordance with clause 17.2; or
  - (ii) FIW Defects in accordance with clause 17.3.

## **16.9 Foundation Infrastructure Works documentation**

- (a) If requested by OpCo, the Principal must:
  - (i) make available to OpCo through its project data and collaboration system (or by such other method notified by the Principal's Representative to OpCo); or
  - (ii) otherwise provide OpCo with,
    - copies of:
    - (iii) all documents or other information in respect of the design, construction, occupation, use and maintenance of the Foundation Infrastructure Works which:
      - (A) the FIW Contractors must provide to the Principal as a condition precedent to FIW Substantial Completion and FIW Completion of each FIW Portion; or
      - (B) must necessarily be provided to the Principal before each FIW Portion can be used for its intended purpose;

- (iv) any correspondence with, or certificates issued by, the Independent Certifier in relation to the Foundation Infrastructure Works (excluding any confidential commercial information regarding the FIW Contractors);
  - (v) any notices of FIW Defects notified to the Principal by the FIW Contractors, or by the Principal to the FIW Contractors, after the Date of Completion (as that term is defined in the relevant FIW Contract, as applicable) of the relevant FIW Portion;
  - (vi) any warranties provided by the FIW Contractors to the Principal from any subcontractors to the FIW Contractors; and
  - (vii) any documents the Principal is entitled to, and actually, receives from the FIW Contractors in relation to the quality of the Foundation Infrastructure Works or the maintenance of those Foundation Infrastructure Works by the FIW Contractors, to the extent that any documentation is not provided directly to OpCo by an FIW Contractor or the Independent Certifier.
- (b) OpCo warrants that it does not require any further documents in relation to the FIW Contracts or the Foundation Infrastructure Works to enable OpCo to carry out its obligations under this deed.

#### **16.10 Care and maintenance of Foundation Infrastructure Works**

- (a) OpCo is responsible for the care and maintenance of any parts of the Foundation Infrastructure Works located within the Construction Site, in accordance with the FIW O&M Manuals, commencing from the relevant OpCo Handover Date for that part of the Construction Site and for the period of the Construction Site Licence.
- (b) If:
  - (i) OpCo fails to occupy a part of the Construction Site from the relevant OpCo Handover Date for that part of the Construction Site (**Relevant Date**); and
  - (ii) the Principal incurs a liability to an FIW Contractor in relation to Transitional Handover Services (as defined in each FIW Contract) carried out by the FIW Contractor on that part of the Construction Site on or after the Relevant Date,
 OpCo must indemnify the Principal from and against such liability.

#### **16.11 Compensation Event**

OpCo's entitlement to compensation in relation to the Compensation Events referred to in paragraphs (o) and (p) of the definition of Compensation Event will be reduced to the extent that OpCo's non-compliance with:

- (a) the Interface Management Plan;
- (b) the Master Interface Deed; or
- (c) its obligations under this deed in connection with the FIW Contractors, the Foundation Infrastructure Works and any FIW 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.

#### **16.12 Claims**

Subject to clauses 16.2, 17, 20, 29 and 30:

- (a) the Principal will not be liable upon any Claim by OpCo arising out of or in any way in connection with:
  - (i) the FIW Contractors carrying out the Foundation Infrastructure Works; or
  - (ii) any act or omission of an FIW Contractor; and
- (b) OpCo warrants that the Financial Model and the Delivery Program contain sufficient allowances for the assumption by OpCo of the obligations and risks under this clause 16, including the cost of all the design iterations required to accommodate the Foundation Infrastructure Works.

## 17. Foundation Infrastructure Works Defects

### 17.1 Principal notification of FIW Known Defects

- (a) The Principal may, prior to FIW Substantial Completion of an FIW Portion, give OpCo a written notice setting out details of any defects in the Foundation Infrastructure Works that are proposed to be listed in the FIW Notice of Substantial Completion for the relevant Portion as an Agreed FIW Defect, Minor FIW Defect or an Accepted FIW Defect.
- (b) OpCo must promptly, and in any event no later than 20 Business Days from the date on which OpCo receives a notice from the Principal in accordance with clause 17.1(a) give written notice to the Principal if it reasonably considers that a proposed:
  - (i) Agreed FIW Defect:
    - (A) will, or is likely to, have an impact on OpCo's ability to perform its obligations under this deed during the relevant Known Defects Rectification Period; or
    - (B) is unlikely to be capable of correction within the relevant Known Defects Rectification Period;
  - (ii) Minor FIW Defect:
    - (A) will, or is likely to, prevent the Foundation Infrastructure Works from being fit for their intended purpose; or
    - (B) is not capable of being corrected after the relevant part of the Construction Site has been handed over to OpCo without causing delay or disruption to those OpCo's Activities that are to be performed within the relevant part of the Construction Site,  
  
and should therefore be rectified as a pre-condition to the achievement of FIW Substantial Completion; or
  - (iii) Accepted FIW Defect is not Acceptable.
- (c) OpCo acknowledges and agrees that:
  - (i) the Foundation Infrastructure Works may achieve FIW Substantial Completion and be handed over to OpCo with FIW Known Defects; and
  - (ii) without limiting clauses 13.1 or 16.1, OpCo must accept control of each FIW Portion notwithstanding the presence of any FIW Known Defects or the fact that OpCo may have given notice to the Principal in accordance with clause 17.1(b).
- (d) OpCo agrees that, except where expressly provided under this deed, if OpCo does not give notice to the Principal under clause 17.1(b) within the period required by that clause:
  - (i) the Principal will not be liable (insofar 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 the Principal, arising out of, or in relation to:
    - (iii) any Accepted FIW Defects the subject of a notice by the Principal under clause 17.1(a); and
    - (iv) during the relevant Known Defects Rectification Period, any Agreed FIW Defect or Minor FIW Defect the subject of a notice by the Principal under clause 17.1(a).
- (e) The Principal must promptly, and in any event no later than 10 Business Days from the date on which the Principal receives the notice from the Independent Certifier, provide to OpCo any FIW Notice of Substantial Completion containing any FIW Known Defects.

### 17.2 OpCo notification of FIW Known Defects

- (a) OpCo must promptly, and in any event no later than 30 Business Days from the date on which OpCo receives an FIW Notice of Substantial Completion in accordance with clause 17.1(e), give written notice to the Principal if it reasonably considers that:

- (i) an Accepted FIW Defect listed in that FIW Notice of Substantial Completion is not Acceptable; or
  - (ii) an Agreed FIW Defect or a Minor FIW Defect listed in that FIW Notice of Substantial Completion has, or will have, an impact on OpCo's ability to perform its obligations under this deed during the relevant Known Defects Rectification Period.
- (b) If OpCo gives the Principal a notice under clause 17.2(a)(i), the Principal'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) a direction to OpCo to carry out a Modification pursuant to clause 33 to modify the SSTOM Works or OpCo's Activities to make the relevant Accepted FIW Defect Acceptable; or
  - (ii) a notification to OpCo that the Principal considers the Accepted FIW Defect to be Acceptable.
- (c) If OpCo gives the Principal a notice under clause 17.2(a)(ii), the Principal'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) a direction to OpCo to carry out a Modification pursuant to clause 33.11 to modify the SSTOM Works or OpCo's Activities to accommodate the impact (if any) of the relevant Agreed FIW Defect or Minor FIW Defect (as applicable) on the SSTOM PPP during the relevant Known Defects Rectification Period; or
  - (ii) a notification to OpCo that the Principal does not consider the relevant Agreed FIW Defect or Minor FIW Defect (as applicable) to have, or will have, an impact on OpCo's ability to perform its obligations under this deed during the relevant Known Defects Rectification Period.
- (d) If there is any dispute between OpCo and the Principal as to whether:
  - (i) an Accepted FIW Defect is Acceptable; or
  - (ii) an Agreed FIW Defect or a Minor FIW Defect (as applicable) has, or will have, an impact on OpCo's ability to perform its obligations under this deed during the relevant Known Defects Rectification Period,

the dispute resolution process in clause 63 will apply, and if the outcome of that dispute is that an Accepted FIW Defect is not Acceptable, or that an Agreed FIW Defect or Minor FIW Defect has or will have an impact on OpCo's ability to perform its obligations under this deed, the Principal will be required to make a direction under clauses 17.2(b)(i) or 17.2(c)(i) (as applicable).
- (e) OpCo agrees that, except where expressly provided under this deed, if OpCo does not give notice to the Principal under clause 17.2(a) within the period required by that clause:
  - (i) the Principal will not be liable (insofar 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 the Principal, arising out of, or in relation to:
    - (iii) any Accepted FIW Defects listed in the relevant FIW Notice of Substantial Completion; or
    - (iv) during the relevant Known Defects Rectification Period, any Agreed FIW Defect or Minor FIW Defect listed in the relevant FIW Notice of Substantial Completion.

### 17.3 FIW Defects

- (a) This clause 17.3 does not apply to:
  - (i) any Accepted FIW Defect; or
  - (ii) during the applicable Known Defects Rectification Period, any Agreed FIW Defect or Minor FIW Defect.



- (b) OpCo must promptly, and in any event within 20 Business Days after OpCo first became aware, give written notice to the Principal if:
  - (i) during the Initial Defects Period or the First Operations Period, OpCo discovers an FIW Defect (excluding any Accepted FIW Defect but including any Agreed FIW Defect or Minor FIW Defect that was not rectified during the Known Defects Rectification Period); or
  - (ii) during the Second Operations Period, OpCo discovers an FIW Structural Defect.
- (c) OpCo must provide the Principal's Representative with any information reasonably requested in relation to the relevant FIW Defect.
- (d) If OpCo gives the Principal a notice under clauses 17.3(b)(i) or 17.3(b)(ii) in respect of an FIW Defect, the Principal's Representative must within 30 Business Days of OpCo's notice, the receipt from OpCo of all information requested under clause 17.3(c), or such longer period as the parties may agree (acting reasonably):
  - (i) notify OpCo that the Principal will procure the rectification of the FIW Defect;
  - (ii) direct OpCo to carry out a Modification pursuant to clause 33.11 to:
    - (A) rectify the FIW Defect; or
    - (B) modify the SSTOM Works or OpCo's Activities to accommodate the impact (if any) of the FIW Defect on the SSTOM PPP; or
  - (iii) notify OpCo that:
    - (A) in the case of an alleged defect the subject of a notice under clause 17.3(b)(i), the relevant FIW Contractor disputes that the alleged defect is an FIW Defect under the relevant FIW Contract;
    - (B) the Principal does not consider the alleged defect to be an FIW Defect or FIW Structural Defect (as the case may be); or
    - (C) the Principal does not consider the alleged defect to be an FIW Defect or FIW Structural Defect (as the case may be) and considers the alleged defect to be a Defect,

and, if applicable, the process in clause 17.4 will apply.

- (e) If there is any dispute between:
  - (i) the Principal and the relevant FIW Contractor during the Defects Correction Period (as defined and interpreted in accordance with the relevant FIW Contract) under the relevant FIW Contract as to whether an alleged defect the subject of a notice under clause 17.3(b)(i) constitutes an FIW Defect, the parties acknowledge and agree that:
    - (A) except for clause 63.13, the dispute resolution process in clause 63 will not apply;
    - (B) the dispute resolution process in the relevant FIW Contract will apply to determine whether an alleged defect in the Foundation Infrastructure Works referred to in clause 17.3(b)(i) constitutes an FIW Defect;
    - (C) under that dispute resolution process the Independent Certifier will determine whether the alleged defect constitutes an FIW Defect;
    - (D) the Principal must provide OpCo with the Independent Certifier's determination promptly following receipt from the Independent Certifier; and
    - (E) the Independent Certifier's determination as to whether the alleged defect constitutes an FIW Defect is final and binding on:
      - (I) the Principal and the relevant FIW Contractor under the FIW Contract; and
      - (II) the Principal and OpCo under this deed,

in the absence of manifest error (it is acknowledged that the SCAW Contractor has a right to dispute any responsibility for the defects following determination of the Independent Certifier in accordance with clause 17.14 of the SCAW Contract, but any such dispute or its outcome does not affect the operation of this clause (E)); and

- (F) OpCo will have no Claim against the Principal in relation to any determination by the Independent Certifier, including for manifest error, and will have no right to refer the determination to dispute resolution under clause 63; and
- (ii) OpCo and the Principal as to whether an alleged defect in the Foundation Infrastructure Works:
  - (A) referred to in clause 17.3(b)(i) constitutes an FIW Defect, which is not covered by clause 17.3(e)(i); or
  - (B) referred to in clause 17.3(b)(ii) constitutes an FIW Structural Defect, the dispute resolution process in clause 63 will apply.
- (f) If clause 17.3(e) applies and it is determined that an alleged defect in the Foundation Infrastructure Works referred to in clauses 17.3(b) constitutes an FIW Defect or FIW Structural Defect (as the case may be), the Principal must, within 5 Business Days of such determination, issue a notice pursuant to clauses 17.3(d)(i) or 17.3(d)(ii).

#### 17.4 Temporary Repairs

- (a) This clause 17.4 applies to:
  - (i) Accepted FIW Defects the subject of a notice from OpCo pursuant to clause 17.2(a)(i);
  - (ii) Agreed FIW Defects or Minor FIW Defects the subject of a notice from OpCo pursuant to clause 17.2(a)(ii);
  - (iii) alleged FIW Defects in the Initial Defects Period and First Operations Period the subject of a notice from OpCo pursuant to clause 17.3(b)(i); and
  - (iv) alleged FIW Structural Defects in the Second Operations Period the subject of a notice from OpCo pursuant to clause 17.3(b)(ii).
- (b) Subject to clause 17.4(c), if an FIW Defect or alleged FIW Defect described in clause 17.4(a) will have an adverse effect on:
  - (i) the safe and secure performance of OpCo's Activities; or
  - (ii) OpCo's ability to perform OpCo's Activities in a manner that does not result in any Availability Deduction or Timeliness Deduction,OpCo may carry out temporary repairs or other works it considers reasonably necessary to temporarily overcome the adverse effect (**Temporary Repairs**).
- (c) Before carrying out any Temporary Repairs, OpCo must:
  - (i) provide the Principal with:
    - (A) at least 24 hours' prior written notice;
    - (B) the opportunity to inspect the FIW Defect or alleged FIW Defect;
    - (C) a detailed report of the FIW Defect or alleged FIW Defect (including photographs) and details of the Temporary Repairs and why they are required; and
    - (D) the estimated cost of the Temporary Repairs; and
  - (ii) subject to clause 17.4(d), obtain the Principal's prior written approval:
    - (A) to carry out Temporary Repairs; and
    - (B) for the cost of carrying out Temporary Repairs.

- (d) If an FIW Defect or alleged FIW Defect described in clause 17.4(a) poses an immediate risk:
  - (i) to the health or safety of any person; or
  - (ii) of loss of or damage to property,
 and it is strictly necessary for OpCo to undertake Temporary Repairs on an urgent basis, OpCo may carry out any urgent repairs or other works it considers necessary (acting reasonably) to overcome the immediate risk from the FIW Defect or alleged FIW Defect without first obtaining prior authorisation from the Principal provided:
  - (iii) where practicable, OpCo must give the Principal at least 24 hours' prior notice;
  - (iv) as soon as reasonably practicable OpCo must provide the Principal with:
    - (A) the opportunity to inspect the FIW Defect or alleged FIW Defect;
    - (B) a detailed report of the FIW Defect or alleged FIW Defect (including photographs), details of any urgent Temporary Repairs undertaken and any further Temporary Repairs proposed and why they are required; and
    - (C) details of the estimated cost of the Temporary Repairs including the costs of any urgent Temporary Repairs already undertaken; and
  - (v) OpCo obtains the Principal's written approval for any further Temporary Repairs, that have not yet been completed for those matters set out in clauses 17.4(d)(iv)(B) and 17.4(d)(iv)(C).
- (e) Within 3 Business Days of completing the Temporary Repairs (but no later than 10 Business Days after commencing the Temporary Repairs), OpCo must provide the Principal with a detailed report of the Temporary Repairs undertaken including the cost of the Temporary Repairs.
- (f) If:
  - (i) the Principal issues a notice to OpCo under clauses 17.2(b)(i), 17.2(c)(i), 17.3(d)(i) or 17.3(d)(ii) (as applicable), the Principal will be responsible for OpCo's costs of undertaking Temporary Repairs approved under this clause 17.4; and
  - (ii) OpCo will otherwise be responsible for the costs of undertaking Temporary Repairs.

## **17.5 Collateral Warranty Deed Poll**

- (a) The Principal must, prior to the expiry of the First Operations Period, procure from each Foundation Infrastructure Works Contractor, the relevant Collateral Warranty Deed in favour of OpCo.
- (b) To the extent that:
  - (i) an FIW Contractor is liable to OpCo under the relevant Collateral Warranty Deed in respect of OpCo's costs of the rectification of an FIW Defect during the Second Operations Period (other than an FIW Structural Defect); and
  - (ii) OpCo is unable to recover those costs from the relevant FIW Contractor as a result of an Insolvency Event occurring in relation to that FIW Contractor,
 the Principal must pay OpCo those costs within 40 Business Days of receipt of a notice from OpCo requiring such payment.
- (c) Except to the extent expressly set out in this deed (including in respect of FIW Structural Defects), during the Second Operations Period, the Principal will not be liable to OpCo for any costs or Claim in respect of an FIW Defect and OpCo will retain all risk and liability as between the Principal and OpCo in relation to such FIW Defects.

## 18. Construction

### 18.1 Construction obligations

- (a) OpCo must construct the SSTOM Works and the Temporary Works in accordance with:
  - (i) the SSTOM Specification;
  - (ii) the AFC Design Documentation;
  - (iii) any Modification Order or Modification Approval issued by the Principal; and
  - (iv) the other requirements of this deed.
- (b) Subject to clause 9.7, OpCo must not commence any work upon the Construction Site:
  - (i) until each of the following IC Project Plans have been certified by the Independent Certifier under clause 9.5:
    - (A) Project Management Plan;
    - (B) Risk Management Plan;
    - (C) Health and Safety Plan – Delivery Phase;
    - (D) Sustainability Plan – Delivery Phase;
    - (E) Safety Accreditation Plan;
    - (F) Assurance and Governance Plan;
    - (G) Construction Management Plan;
    - (H) Incident Management Plan covering the Delivery Phase; and
    - (I) Human Resources Plan;
  - (ii) until OpCo has provided the Principal with a "Site Security Management Plan" (as required by the Sydney Metro Principal Contractor Standard) which complies with the requirements of the Sydney Metro Principal Contractor Standard; and
  - (iii) 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 Assurance and Governance Plan.
- (c) OpCo accepts full responsibility for all construction means, methods and techniques used in the performance of the Delivery Activities.

### 18.2 Construction warranties

OpCo warrants that:

- (a) construction will be carried out in accordance with the AFC Design Documentation;
- (b) construction carried out in accordance with the AFC Design Documentation will satisfy the requirements of this deed;
- (c) the SSTOM Works and the Temporary Works will be completed in accordance with, and satisfy the requirements of, this deed; and
- (d) the SSTOM Works will, upon Completion and thereafter at all relevant times during the Term, be safe and fit for their intended purposes.

## 19. Quality

OpCo must, in performing OpCo's Activities:

- (a) use workmanship:
  - (i) of:
    - (A) the standard set out in the SSTOM Specification; 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's Activities; and
  - (ii) which is fit for its intended purpose; and
- (b) use Materials:
  - (i) which:
    - (A) comply with the requirements of the SSTOM Specification; or
    - (B) if not fully described in the SSTOM Specification, are consistent with the Good Industry Practice for work of a similar nature to the applicable OpCo's Activities; and
  - (ii) which:
    - (A) are free from defects and other imperfections; and
    - (B) are safe and fit for their intended purpose.

## 20. Time

### 20.1 Performance

OpCo must:

- (a) promptly commence performance of the Delivery Activities following Financial Close; and
- (b) expeditiously and diligently progress the Delivery Activities to achieve Completion.

### 20.2 Dates for Completion

(a) OpCo must:

- (i) without limiting clauses 20.16 and 20.17, achieve Completion by the Date for Completion; and
- (ii) use its best endeavours to achieve Final Completion as soon as practicable after the Date of Completion.

- (b) Subject to clause 20.17, OpCo must not achieve Completion earlier than the Target Date for Completion unless the Principal agrees otherwise.

### 20.3 Delivery Program

- (a) The initial Delivery Program is contained in Exhibit 2 (*Initial Delivery Program*).

(b) OpCo must:

- (i) prepare the Delivery Program in accordance with section 2.2.1 of the General Specification which must be based upon the initial Delivery Program;
- (ii) update the Delivery Program:
  - (A) within 20 Business Days of the date of Financial Close to reflect the date of Financial Close and the Original Date for Completion;
  - (B) monthly in accordance with section 2.2.1 of the General Specification, including to take account of:
    - (I) changes to the program, activities, times, durations or other information contained in the Delivery Program and any sub-programs;
    - (II) delays which have occurred;
    - (III) any corrective action plan submitted by OpCo under clause 20.5 for which the Principal does not issue any comments under clause 20.6(b); and

- (IV) key interface activities identified by the Project Integration Group; and
- (C) within 5 Business Days of:
  - (I) OpCo being:
    - (1) granted an extension to any Date for Completion; or
    - (2) instructed to accelerate the Delivery Activities;
      - in accordance with this deed;
  - (II) deciding to depart in a material way from the then current Delivery Program; and
  - (III) any request by the Principal or the Independent Certifier at any time;
- (iii) report against the updated Delivery Program in accordance with section 6 of the General Specification;
- (iv) ensure that each update of the Delivery Program contains the details required by section 2.2.1 of the General Specification and any other details which the Principal's Representative reasonably directs;
- (v) explain any changes to the critical path in the Delivery Program;
- (vi) ensure that each update of the Delivery Program makes allowance for the Project Plans and Design Documentation to be submitted to the Principal's Representative and Independent Certifier in a manner and at a rate which will give the Principal's Representative and Independent Certifier a reasonable opportunity to review the submitted Project Plans or Design Documentation within the period referred to in clause 9.5 or the periods referred to in Schedule 11 (*Design Review*) (as the case may be); and
- (vii) give the Independent Certifier copies of each update of the Delivery Program.
- (c) The:
  - (i) submission or review of, comment upon or Direction relating to the Delivery Program by the Principal or the Principal's Representative; or
  - (ii) the inclusion of the initial Delivery Program in Exhibit 2 (*Initial Delivery Program*), will not:
  - (iii) relieve OpCo from or alter its liabilities or obligations under this deed, including (without limitation) the obligations under clause 20.2;
  - (iv) evidence or constitute notification of a delay or the claiming of or the granting of, an extension of time to the Date for Completion or a Direction by the Principal's Representative to accelerate, defer, prolong or vary any, or all, of the Delivery Activities; or
  - (v) affect the time for performance of the Principal's or the Principal's Representative's obligations under this deed, including obliging the Principal or the Principal's Representative to do anything earlier than is necessary to enable OpCo to achieve Completion by the Date for Completion.

#### 20.4 Acceleration by OpCo

If OpCo chooses to accelerate progress of the Delivery Activities then:

- (a) the Principal 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 the Principal's or the Principal's Representative's obligations will not be affected; and
- (c) OpCo will not be entitled to make any Claim against the Principal in relation to such acceleration (or any failure or inability by OpCo or the Principal to accelerate).

## 20.5 Delays

- (a) Without limiting OpCo's obligations under clause 20.8, if OpCo becomes aware of any matter which will, or is likely to, give rise to a delay in:
  - (i) providing the First Passenger Service; or
  - (ii) achieving Completion,(other than as a result of a Relief Event or a Modification), OpCo must give the Principal:
  - (iii) a notice setting out detailed particulars of the delay; and
  - (iv) a detailed corrective action plan in accordance with clause 20.6,in each case as soon as reasonably practicable.
- (b) If the Principal reasonably believes that OpCo will be delayed in:
  - (i) providing the First Passenger Service; or
  - (ii) achieving Completion,(other than as a result of a Relief Event or a Modification), the Principal may give notice to that effect to OpCo, and OpCo must then give the Principal a detailed corrective action plan in accordance with clause 20.6.
- (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 of or duration of any delay, including any delay arising from a Relief Event or a Modification,including through:
  - (iii) the expenditure of reasonable sums of money to accommodate the cause of delay and avoid or minimise its effects on OpCo's Activities; and
  - (iv) taking reasonable steps to reschedule or resequence activities within the Delivery Program,provided that in the case of delay caused by a Relief Event, nothing in this clause 20.5(c) requires OpCo to accelerate OpCo's Activities to accommodate the Relief Event and its effects.

## 20.6 Corrective action plan

- (a) Each corrective action plan which OpCo must provide pursuant to clause 20.5 must:
  - (i) include full details of:
    - (A) the actions that OpCo proposes to take to avoid, mitigate or minimise the consequences of the delay consistent with its obligations under clause 20.2;
    - (B) the additional resources, labour, plant and/or equipment (if any) that OpCo will dedicate to implementing the actions described in clause 20.6(a)(i)(A); and
    - (C) the time period within which OpCo will implement each of the actions described in clause 20.6(a)(i)(A);
  - (ii) be provided together with a proposed updated Delivery Program that reflects the actions and time periods described in clause 20.6(a)(i); and
  - (iii) include any further information reasonably requested by the Principal.
- (b) The Principal 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 20.6(a).
- (c) If the Principal rejects the corrective action plan under clause 20.6(b), OpCo must amend and resubmit the corrective action plan to the Principal, after which clause 20.6(b) and this clause 20.6 will reapply.

- (d) OpCo must comply with any corrective action plan which is not rejected under clause 20.6(b), including:
  - (i) implementing each of the actions set out in the corrective action plan within the relevant time period specified in the corrective action plan; and
  - (ii) dedicating the additional resources, labour, plant and/or equipment specified in the corrective action plan.
- (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 the Principal under clause 20.6(b); or
  - (ii) the implementation of any corrective action plan.
- (f) OpCo will not be entitled to make any Claim against the Principal arising out of or in connection with any notice by the Principal under clause 20.6(b) or any Loss suffered or incurred by OpCo in preparing, or complying with, a corrective action plan.

## **20.7 Delays entitling claim**

- (a) If a Relief Event delays or will delay OpCo in achieving Completion, subject to clause 6 of Schedule 8 (*Cost Risk Sharing*), OpCo may make a Claim under clause 20.8.
- (b) OpCo acknowledges that it is only entitled to make a claim for an extension of time under this clause 20 in relation to Completion due to the occurrence of a Relief Event.

## **20.8 Claim for extension of time**

- (a) Subject to clause 64.9, if OpCo wishes to make a Claim under this clause 20.8 it must:
  - (i) within 25 Business Days of becoming aware of the commencement of a Relief Event which has delayed or will delay OpCo in achieving Completion, submit a written claim for an extension to the Date for Completion to the Principal's Representative specifying:
    - (A) details of the Relief Event and why the Relief Event actually caused or will cause a delay in achieving Completion, including a statement of the facts and provisions of this deed on which the Claim is based;
    - (B) detailed evidence in satisfaction of the requirements of this clause 20.8;
    - (C) the number of days claimed;
    - (D) critical path analysis in the same format as the Delivery Program for the period of the delay;
    - (E) where the Claim is for an extension of time to the Date for Completion and the Relief Event is a Compensation Event, details of the Net Financial Impact arising from the Compensation Event to which it believes it will be entitled; and
    - (F) if early access to the Construction Site was given in accordance with clause 13.2, details of the extent (if any) to which OpCo has used Accessible parts of the Construction Site to mitigate delay (or details of why such use has not mitigated the delay) or to the extent OpCo did not use the parts of the Construction Site made Accessible, why the delay would not have been mitigated had it used such early access; and
  - (ii) if the effects of the delay continue for more than 25 Business Days after the date of commencement of the Relief Event 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 the Principal's Representative containing the information required by clause 20.8(a)(i):
    - (A) every 15 Business Days after the first written claim made under clause 20.8(a)(i) (or such other period as approved by the Principal's Representative); and
    - (B) until 5 Business Days after the cessation of the Relief Event.



- (b) The Principal'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 the Principal's Representative with the information requested.

## **20.9 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 20.8 as required by that clause;
- (b) OpCo is actually, or will be, delayed in achieving Completion by one or more Relief Events;
- (c) to the extent that the Principal's Representative has issued a notice under clause 64.9(a), OpCo has complied with clause 64.9(e);
- (d) not used; and
- (e) the Principal has not directed OpCo to accelerate the Delivery Activities in accordance with clause 20.12 with respect to the whole of the delay the subject of the Claim under clause 20.8.

## **20.10 Determination and grant of extension of time**

- (a) Subject to clause 20.10(d), if the conditions precedent in clause 20.9 have been satisfied, the Principal's Representative must determine the reasonable extension of time to the Date for Completion to which OpCo is entitled within either:
  - (i) 25 Business Days after receiving a Claim which complies with clause 20.8(a)(i) (or, if later and where applicable, within 25 Business Days after OpCo provides any additional information requested by the Principal's Representative in accordance with clause 20.8(b));
  - (ii) in the case of ongoing delay referred to in clause 20.8(a)(ii), within 25 Business Days after receiving a Claim which complies with:
    - (A) clause 20.8(a)(i);
    - (B) clause 20.8(a)(ii)(A); or
    - (C) clause 20.8(a)(ii)(B); and
  - (iii) where applicable, 25 Business Days after the date that OpCo provides any additional information requested by the Principal's Representative in accordance with clause 20.8(b)),
 by giving OpCo:
  - (iv) written notice of the determination which includes the extension of time granted and the adjusted Date for Completion, with reasons where the extension of time granted is for a shorter period than that claimed by OpCo; or
  - (v) if no extension is granted, written notice of that decision, with reasons.
- (b) In the circumstances contemplated by clause 20.10(a)(ii), the Principal's Representative may, at its discretion give interim determinations of OpCo's entitlement to an extension of time notwithstanding that the effects of the relevant Relief Event are continuing.
- (c) In determining any extension of time under clause 20.10(a), the Principal's Representative:
  - (i) will not be bound by the Delivery Program or any Delivery Phase Progress Report;
  - (ii) may consider the minutes of any meeting held pursuant to the Master Interface Deed; and
  - (iii) to the extent OpCo does not comply with any request for additional information by the Principal's Representative under clause 20.8(b) within the time required by that

clause, will be entitled to make an adverse determination on any matter in respect of which the Principal's Representative is not reasonably satisfied in the absence of that additional information.

- (d) The Principal's Representative will reduce any extension to the Date for Completion that it would have otherwise granted to OpCo under clause 20.10(a) to the extent that:
  - (i) OpCo or any of its Associates caused or contributed to the delay;
  - (ii) if OpCo is given access to part of the Construction Site earlier than the Site Access Date for that part of the Construction Site in accordance with clause 13.2 and:
    - (A) the part of the Construction Site was Accessible;
    - (B) OpCo failed to use the part of the Construction Site; and
    - (C) the cause of the delay could practicably have been prevented or the consequences or duration of the delay could have been avoided or minimised if OpCo had utilised that part of the Construction Site;
  - (iii) OpCo failed to take all reasonably practicable steps which a prudent, competent and experienced contractor in the circumstances of OpCo or the OpCo Contractor would have taken to prevent the cause of the delay or avoid or minimise the consequences of or duration of the delay including without limitation the steps OpCo was obliged to take pursuant to clause 20.5(c);
  - (iv) OpCo has not submitted its written claim pursuant to clause 20.8(a)(i) within 25 Business Days after it ought reasonably to have become aware of the occurrence of the Relief Event;
  - (v) the Principal has directed OpCo to accelerate the Delivery Activities in accordance with clause 20.12 to overcome the whole or part of any delay; and
  - (vi) if the Claim for an extension of time is due to a Pandemic Change in Law or Pandemic Compensation Event, OpCo has failed to implement the Pandemic Management Plan.
- (e) If the Date for Completion is extended pursuant to clause 20.10(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 29 in respect of the Net Financial Impact for the extension of time directed by the Principal's Representative under clause 20.10(a).
- (f) If the Principal directs OpCo to accelerate the Delivery Activities in accordance with clause 20.12 and the Modification only applies to part of the delay, OpCo's entitlement to any extension of time which it otherwise would have had will be reduced to the extent that the Modification to accelerate requires OpCo to accelerate to overcome the delay.

#### **20.11 Extension to Site Access Expiry Date**

- (a) If a Relief Event 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, OpCo may make a Claim under this clause 20.11.
- (b) If OpCo wishes to make a Claim under this clause 20.11, it must:
  - (i) within 25 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 25 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, promptly submit an updated Claim to the Principal containing the information required by clause 20.11(b)(i).
- (c) The Principal's Representative may, within 10 Business Days of receiving OpCo's Claim or further Claim for an extension of time to the Site Access Expiry Date, 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 the Principal's Representative with the information requested.
- (d) If:
  - (i) OpCo submits the written Claim or Claims required by clause 20.11(b) as required by that clause; and
  - (ii) a Relief Event actually 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,

the Principal's Representative will, within 20 Business Days of receipt of the last written Claim under clause 20.11(b) (or, where applicable, 20 Business Days of the date that OpCo provides any additional information requested by the Principal's Representative in accordance with clause 20.11(c)), either:

  - (iii) determine a reasonable extension to the relevant Site Access Expiry Date;
  - (iv) direct OpCo to accelerate the Delivery Activities in accordance with clause 20.12 so that OpCo will no longer require access to that part of the Construction Site after the Site Access Expiry Date for that part of the Construction Site; or
  - (v) will direct a Modification under clause 33 to modify OpCo's Activities so that OpCo will no longer require access to part of the Construction Site after the Site Access Expiry Date for that part of the Construction Site.
- (e) The Principal's Representative will reduce any extension to the relevant Site Access Expiry Date to the extent that any of the events described in clause 20.10(d) apply (as those events are amended to apply to a Claim under this clause 20.11).

## **20.12 Principal directed acceleration**

- (a) Whether or not OpCo makes a claim under clause 20.8, if:
  - (i) any part of the whole of the Delivery Activities are delayed by a Relief Event; and
  - (ii) OpCo would have been entitled to an extension of time to the Date for Completion for the cause of delay in accordance with this clause 20,

the Principal may direct OpCo to submit a notice setting out the estimated time and cost consequences of accelerating any part, or the whole of, the Delivery Activities to overcome or minimise the extent and effect of some or all of the delay including, if required, in order to achieve Completion by the Date for Completion.
- (b) OpCo must submit the notice referred to in clause 20.12(a) within 5 Business Days of the Principal's direction under clause 20.12(a).
- (c) The notice submitted by OpCo in response to a direction under clause 20.12(a) must identify whether and to what extent the acceleration is reasonably achievable in the circumstances.
- (d) If some or all of the acceleration is not reasonably achievable in the circumstances then the Principal must not direct the acceleration to the extent that it is not reasonably achievable.
- (e) If the Principal gives OpCo a direction to accelerate in response to a notice submitted by OpCo under clause 20.12(b):
  - (i) OpCo must accelerate the Delivery Activities as directed;

- (ii) if OpCo would, but for the direction, have been entitled to an extension of time to the Date for Completion for the cause of the delay, the Principal must compensate OpCo for the Net Financial Impact of accelerating the Delivery Activities which will be calculated and paid in accordance with Schedule 6 (*Net Financial Impact*); and
- (iii) OpCo's rights under clause 20.8 will not be affected for that part of any delay that is not the subject of the Principal's direction to accelerate.

#### **20.13 Unilateral extension**

- (a) Whether or not OpCo has made, or is entitled to make, a claim for, or is entitled to, an extension of time under this clause 20, the Principal's Representative may, in its absolute discretion at any time, from time to time, unilaterally issue a notice to OpCo extending the Date for Completion by the period specified in the notice to OpCo.
- (b) The parties acknowledge that:
  - (i) the Principal is not required to exercise the Principal's discretion under clause 20.13(a) for the benefit of OpCo; and
  - (ii) the exercise or failure to exercise the Principal's discretion under this clause 20.13 is not capable of being the subject of a dispute for the purposes of clause 63 or otherwise subject to review.
- (c) In circumstances where the Principal exercises its power under this clause 20.13 as a consequence of a delay to Completion caused by a Compensation Event for which OpCo is entitled to an extension of time in accordance with this deed, OpCo will be entitled to claim compensation in accordance with clause 29 in respect of the Net Financial Impact for the period of time by which the Date for Completion is extended.

#### **20.14 Concurrent delays**

OpCo is not entitled to make a Claim under clause 20.8 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, concurrent or overlapping with a delay to Completion caused by an event which is not a Relief Event.

#### **20.15 Delivery Phase Progress Reports**

In addition to OpCo's obligations under clauses 20.5 and 20.6, OpCo must give the Principal a Delivery Phase Progress Report containing the details required by section 6 of the General Specification each month during the Delivery Phase.

#### **20.16 Target Date for Completion**

- (a) Notwithstanding the Date for Completion and the Delivery Program, the parties acknowledge and agree:
  - (i) that a primary objective of the Principal in relation to the SSTOM PPP is to achieve Completion on or as soon as reasonably practicable after the Target Date for Completion;
  - (ii) this clause 20.16 provides for OpCo's obligations in relation to, and the process for, achieving Completion on or as soon as reasonably practicable after the Target Date for Completion; and
  - (iii) to the extent OpCo is able to achieve Completion on or as soon as reasonably practicable after the Target Date for Completion, subject to the terms of this deed, it is intended OpCo will be entitled to Service Payments from the Date of Completion in accordance with Schedule 2 (*Service Payment calculation*).
- (b) Without limiting clause 20.1, OpCo must:
  - (i) use reasonable endeavours to identify program efficiencies for the Delivery Activities so as to achieve Completion on or as soon as reasonably practicable after the Target Date for Completion; and

- (ii) where reasonably practicable, implement those program efficiencies to achieve Completion on or as soon as reasonably practicable after the Target Date for Completion.
- (c) In the event that OpCo proposes to achieve Completion on or after the Target Date for Completion but before the Original Date for Completion, OpCo must:
  - (i) as part of its Delivery Phase Progress Report, notify the Principal as soon as reasonably practicable (and in any event no less than four months before any Proposed Early Completion Date) of any Proposed Early Completion Date; and
  - (ii) obtain the Principal's written consent to the Proposed Early Completion (which, subject to clause 20.16(e), must not be unreasonably withheld or delayed by the Principal).
- (d) Except as set out in Schedule 2 (*Service Payment calculation*) or as otherwise agreed with the Principal as part of any consent granted under clause 20.16(c)(ii), OpCo will not be entitled to any payment (including any accelerated payment) and will not have any Claim against the Principal in connection with any Loss suffered or incurred by OpCo arising out of or in connection with OpCo accelerating, compressing, resequencing or reorganising OpCo's Activities to achieve Completion before the Original Date for Completion.
- (e) If a proposal by OpCo to achieve Completion on or after the Target Date for Completion but before the Original Date for Completion would require:
  - (i) any additional payments by the Principal (including any accelerated payment or amendment to the Capital Contribution Schedule (whether pursuant to clause 28.3 or otherwise));
  - (ii) any update to the Financial Model under clause 57.2; or
  - (iii) any other change to a Principal Project Agreement,
 a request for the Principal's written consent under clause 20.16(c)(ii) may be withheld in the Principal's absolute discretion, or granted subject to such conditions as the Principal sees fit.

## 20.17 Early Completion

- (a) This clause 20.17 only applies to the extent OpCo proposes to achieve Completion earlier than the Target Date for Completion.
- (b) OpCo may request to achieve Completion earlier than the Target Date for Completion in accordance with this clause 20.17.
- (c) OpCo must, as part of its Delivery Phase Progress Report, notify the Principal as soon as reasonably practicable of any Proposed Early Completion Date.
- (d) OpCo must not achieve Completion earlier than the Target Date for Completion unless:
  - (i) OpCo has provided the Principal's Representative with at least 9 months' written notice (or another period as agreed by the parties) that OpCo anticipates it will achieve Completion on the Proposed Early Completion Date;
  - (ii) if the Proposed Early Completion Date is in a different Financial Year to the Target Date for Completion, OpCo has provided the written notice by 1 March of the Financial Year prior to the Financial Year the Proposed Early Completion Date falls in; and
  - (iii) the Principal has provided OpCo with its written consent that OpCo is permitted to achieve Completion on or after the Proposed Early Completion Date (such consent being at the Principal's absolute discretion).
- (e) The Principal may assist OpCo, but will not be obliged to take any action to assist or enable OpCo, to achieve early Completion.
- (f) Except as set out in Schedule 2 (*Service Payment calculation*), OpCo will not be entitled to any payment and must not make any Claim against the Principal in connection with any costs, losses or damages suffered or incurred by OpCo arising out of or in connection with

OpCo accelerating, compressing, resequencing or reorganising OpCo's Activities to achieve early Completion.

## **20.18 Time not at large**

None of:

- (a) a breach of this deed or any other Principal Project Agreement by the Principal or any of its Associates;
- (b) a Modification if directed, or a Modification Order issued, by the Principal or the Principal's Representative;
- (c) an act or omission of the Principal, the Independent Certifier or any of the Principal's Associates;
- (d) a failure by the Principal to grant an extension of time under clause 20.10 or to do so within the time required by that clause;
- (e) a failure by the Principal to exercise its discretion pursuant to clause 20.13;
- (f) the operation of any time bar, including clause 20.9(a); or
- (g) other default, act or omission of the Principal, the Independent Certifier or any of the Principal's Associates,

sets the Date for Completion, or any other thing, at large.

## **20.19 Sole remedy**

- (a) Except if the Principal elects to terminate this deed, the Principal acknowledges and agrees that the Principal's sole financial remedy, and OpCo's sole financial liability, for failure to achieve Completion by the Date for Completion is limited to the amount of the Service Payment not required to be paid by the Principal in those circumstances.
- (b) OpCo acknowledges and agrees that nothing in clause 20.19(a) limits the Principal's right with respect to an event giving rise to delay or the consequences of such event.

## **21. Testing and Commissioning**

### **21.1 Testing and Commissioning Plan**

OpCo must carry out the Tests in accordance with the Testing and Commissioning Plan.

### **21.2 Test Procedures**

- (a) For each Test, OpCo must:
  - (i) prepare a Test Procedure which complies with the requirements in Particular Specification 12 (*Testing and Commissioning*) and the Testing and Commissioning Plan; and
  - (ii) submit the Test Procedure to the Principal's Representative at least 60 Business Days prior to the date on which OpCo proposes to conduct the Test.
- (b) OpCo must also submit the Test Procedure to the Independent Certifier at the same time the Test Procedure is submitted to the Principal's Representative under clause 21.2(a)(ii).
- (c) The Principal's Representative may (but is not obliged to):
  - (i) review the Test Procedure submitted under clause 21.2(a)(ii); and
  - (ii) notify the Independent Certifier in writing (with a copy to OpCo) of any comments which the Principal has in respect of the Test Procedure, within 15 Business Days of the date on which it is submitted to the Principal's Representative.
- (d) The Independent Certifier must, within 20 Business Days of the date on which it receives the Test Procedure under clause 21.2(b):

- (i) review each Test Procedure and, in doing so, must consider any comments received from the Principal's Representative under clause 21.2(c)(ii); and
- (ii) determine whether such Test Procedure complies with the requirements of this deed and either:
  - (A) if the Independent Certifier considers that the Test Procedure does not comply with the requirements of this deed, notify OpCo and the Principal of the non-compliances (with detailed reasons); or
  - (B) certify the Test Procedure by providing to OpCo and the Principal's Representative a certificate in the form of Part C of Schedule 34 (*Certificates*).
- (e) If OpCo receives a notice in accordance with clause 21.2(d)(ii)(A) OpCo must submit a revised Test Procedure to the Independent Certifier whereupon the provisions of this clause 21.2 (other than clause 21.2(a)(ii)) will reapply to the revised Test Procedure.
- (f) OpCo may not conduct a Test:
  - (i) until the Test Procedure has been certified by the Independent Certifier; and
  - (ii) if the Principal has given a direction under clause 21.2(j), until such time as the Test Procedures have been amended as required by the Principal in that direction.
- (g) OpCo may update any Test Procedure whereupon this clause 21.2 (other than clause 21.2(a)(ii)) will reapply.
- (h) The Independent Certifier must, within 5 Business Days of:
  - (i) giving a notice under clause 21.2(d)(ii)(A), to the extent that the Independent Certifier did not include in its notice to OpCo any comments received from the Principal's Representative under clause 21.2(c)(ii) regarding actual or potential non-compliances in OpCo's Test Procedure, provide the Principal with detailed written reasons of why it did not include such comments; and
  - (ii) certifying a Test Procedure under clause 21.2(d)(ii)(B), to the extent that the Independent Certifier received comments from the Principal under clause 21.2(c)(ii) regarding non-compliances in OpCo's Test Procedure, provide the Principal with detailed written reasons of why it certified the Test Procedure despite the Principal's comments.
- (i) If the certificate provided by the Independent Certifier pursuant to clause 21.2(d)(ii)(B) lists any Minor Non-Compliances:
  - (i) the Independent Certifier may, in the certificate, recommend the action that could be taken by OpCo to address the Minor Non-Compliance;
  - (ii) OpCo must:
    - (A) complete the recommended action, or take any other action OpCo deems reasonable in the circumstances to correct the Minor Non-Compliance to the extent required for the Test Procedure to comply with this deed, within the time frame (if any) specified by the Independent Certifier and in any event prior to OpCo carrying out the Test Procedures to which the Minor Non-Compliance relates; and
    - (B) provide to the Independent Certifier, with a copy to the Principal, a statement or other reasonable evidence, in such detail that the Independent Certifier may require to confirm that the Minor Non-Compliance has been addressed; and
  - (iii) the Independent Certifier will determine whether the Minor Non-Compliance has been addressed.
- (j) The Principal may, if it considers that the Test Procedures do not comply with this deed (and whether or not the Test Procedures have been certified by the Independent Certifier pursuant to clause 21.2(d)(ii)(B)), direct OpCo to make amendments to the Test Procedures to bring them into compliance with this deed and if the Principal does so, OpCo must:

- (i) comply with that direction; and
- (ii) if it considers that the direction constitutes or involves a Modification, give notice under clause 64.1(a)(i).

### 21.3 Notice of Tests

- (a) OpCo must give the Independent Certifier and the Principal 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 Independent Certifier notice in accordance with clause 21.3(a).
- (c) If OpCo postpones a Test in accordance with clause 21.3(b), OpCo must give the Principal and the Independent Certifier:
  - (i) if the Test is to be conducted on the Construction Site or within New South Wales, at least 5 Business Days' notice of the rescheduled date, time and place of that Test; or
  - (ii) if the Test is to be conducted outside of New South Wales (including if the Test is to be conducted outside of Australia), at least 20 Business Days' notice of the rescheduled date, time and place of that Test.
- (d) OpCo must give the Independent Certifier and the Principal:
  - (i) a 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 the Principal's Representative, OpCo will be deemed to have failed a Test if it fails to give the Independent Certifier and the Principal the required notice of when the Test will be conducted.

### 21.4 Conduct of Tests

- (a) OpCo must conduct all Tests in accordance with:
  - (i) the relevant Test Procedure, as certified by the Principal's Representative or the Independent Certifier in accordance with clause 21.2; and
  - (ii) the other requirements of this deed (including Particular Specification 12 (*Testing and Commissioning*)).
- (b) The Principal and the Independent Certifier may (but are not obliged to) attend and witness the conduct of all Tests.

### 21.5 Test Reports

- (a) Each Test Report must comply with and be submitted in accordance with the requirements of Particular Specification 12 (*Testing and Commissioning*).
- (b) OpCo must, within 10 Business Days of carrying out a Test, submit a Test Report to the Independent Certifier and the Principal for that Test, irrespective of the result of the Test.
- (c) The Principal's Representative may (but is not obliged to):
  - (i) review the Test Report submitted under clause 21.5(b); and
  - (ii) notify the Independent Certifier in writing (with a copy to OpCo) of any comments which the Principal has in respect of the Test Report,
 within 5 Business Days of the date on which it is submitted to the Principal's Representative.
- (d) The Independent Certifier must, within 10 Business Days of the date on which it receives the Test Report, determine (including with consideration of any comments received from the Principal's Representative under clause 21.5(c)) 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 Part D of Schedule 34 (*Certificates*); or
- (ii) notify OpCo and the Principal that:
  - (A) the Test has been failed; and/or
  - (B) the Test Report does not comply with the requirements of this deed,
 (Minor Non-Compliances excepted).
- (e) If:
  - (i) the comments provided under clause 21.5(c)(ii) identify one or more actual or potential non-compliances; and
  - (ii) the Independent Certifier's decision under clause 21.5(d) has not adopted those comments (to the extent they identify actual or potential non-compliances),
 the Independent Certifier must, within 10 Business Days of the date on which the action referred to in clause 21.5(d) was undertaken, provide detailed reasons to the Principal (with a copy to OpCo) as to why those comments were not adopted.
- (f) If the certificate provided by the Independent Certifier pursuant to clause 21.5(d)(i) lists any Minor Non-Compliances:
  - (i) the Independent Certifier may, in the certificate, recommend the action that could be taken by OpCo to address the Minor Non-Compliance; and
  - (ii) OpCo must complete the recommended action, or take any other action OpCo deems reasonable in the circumstances to correct the Minor Non-Compliance to the extent required for the Test Report to comply with this deed, within the time frame (if any) specified by the Independent Certifier.

## 21.6 Failure of Test

If the 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 21.3(a) whereupon clauses 21.4 and 21.5 will re-apply.

## 21.7 Non-compliant Test Report

If the Independent Certifier notifies OpCo that a Test Report is non-compliant (Minor Non-Compliances excepted), OpCo must amend and re-submit the Test Report whereupon clause 21.5 will re-apply.

## 21.8 Additional testing by the Principal

- (a) The Principal's Representative may carry out, or direct OpCo to carry out, additional tests in respect of the SSTOM Works and Sydney Metro – Western Sydney Airport. The Principal's Representative must give OpCo and the Independent Certifier reasonable prior notice of these tests (being at least 24 hours). OpCo must provide all reasonable assistance required by the Principal's Representative and the Independent Certifier in relation to these tests.
- (b) The Principal's Representative may, in relation to these tests, direct that any part of the SSTOM Works not be covered up or made inaccessible for a period of not more than 5 Business Days without the Principal's Representative's prior written approval.
- (c) If the Principal carries out, or directs OpCo to carry out, tests pursuant to this clause 21.8 and:
  - (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:

- (I) an FIW Defect in respect of which the Principal has:
      - (1) not provided an undertaking pursuant to clause 17.3(d)(i);
      - (2) provided an undertaking pursuant to clause 17.3(d)(i) and has not rectified; or
      - (3) not directed a Modification as referred to in clause 17.3(d)(ii); or
    - (II) a Minor Defect;
  - (ii) the test is in respect of work covered up or made inaccessible without the prior written approval of the Principal's Representative where such was required; or
  - (iii) the test is upon work undertaken to correct or overcome a Defect, other than:
    - (A) an FIW Defect in respect of which the Principal has:
      - (I) not provided an undertaking pursuant to clause 17.3(d)(i);
      - (II) provided an undertaking pursuant to clause 17.3(d)(i) and has not rectified; or
      - (III) not directed a Modification as referred to in clause 17.3(d)(ii); or
    - (B) a Minor Defect,
- a Compensation Event will not occur and any reasonable costs incurred by the Principal in connection with these tests will be a debt due and payable from OpCo to the Principal.
- (d) The Test Report for each test carried out by OpCo under this clause 21.8 must be submitted to the Independent Certifier and the Principal in accordance with clause 21.5.

## 22. First Passenger Service, Completion and Final Completion

### 22.1 Requirements for First Passenger Service

- (a) The following requirements must be satisfied before OpCo provides the First Passenger Service:
  - (i) **(Works are complete):** the SSTOM Works are complete and comply with the requirements of this deed, except for Minor Defects;
  - (ii) **(Third Party Works):** OpCo has:
    - (A) completed all Third Party Works in accordance with clauses 22.4, 22.5 and 22.6, except for Minor Defects; and
    - (B) provided the Principal's Representative with the written notices, statements or certificates (as the case may be) referred to in clauses 22.4(d), 22.5(a) and 22.6(a),

and the Independent Certifier has provided the Principal's Representative with the certificates referred to in clause 22.4(d)(i);
  - (iii) **(Conditions of Planning Approvals):** OpCo has:
    - (A) fulfilled all conditions of the Planning Approvals and implemented all mitigation measures which OpCo must fulfil or implement prior to commencement of operations on Sydney Metro – Western Sydney Airport; and
    - (B) complied with all obligations imposed on OpCo under Schedule 13 (*Planning Approval Conditions*) in respect of any conditions of the Planning Approvals and the mitigation measures which must be fulfilled or implemented prior to commencement of operations on Sydney Metro – Western Sydney Airport;
  - (iv) **(Approvals):** OpCo has provided the Independent Certifier and the Principal's Representative with copies of all Approvals (including a certificate of compliance

from the Airport Building Controller) 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 an Accredited Contractor's Accreditation);

- (v) **(Certifications):** OpCo has provided the Independent Certifier and the Principal's Representative with a certificate in the form of Part E of Schedule 34 (*Certificates*):
  - (A) from each Designer certifying that the SSTOM Works have been constructed in accordance with the AFC Design Documentation, except for Minor Defects;
  - (B) from OpCo certifying that the SSTOM Works:
    - (I) comply with all the requirements of this deed (including the SSTOM Specification); and
    - (II) have been constructed in accordance with the AFC Design Documentation,except for Minor Defects; and
  - (C) from the O&M Contractor certifying that the SSTOM Works are acceptable;
- (vi) **(Tests):** the Independent Certifier has certified that:
  - (A) the SSTOM Works have passed the Tests referred to in sections 12.6.2 and 12.6.3 of Particular Specification 12 (*Testing and Commissioning*); and
  - (B) all of the Trains have passed the Tests referred to in section 5.4 of Particular Specification 5 (*Rolling Stock*);
- (vii) **(Trial Operations):** the Independent Certifier has certified that the Trial Operations Tests have been passed in accordance with section 12.6.1 of Particular Specification 12 (*Testing and Commissioning*);
- (viii) **(Service Payment Monitoring System):** the Service Payment Monitoring System is operational;
- (ix) **(Asset Management System):** OpCo has developed and implemented an Asset Management System (including the Condition Monitoring System) that is in accordance with the requirements of Particular Specification 13 (*Asset Management*);
- (x) **(Operational Readiness Plan):** OpCo has implemented all of the measures set out in the Operational Readiness Plan that has been certified by the Independent Certifier under clause 9.5(a)(ii)(B)(III);
- (xi) **(SSTOM Specification):** the conditions precedent to First Passenger Service set out in section 2.15 of the General Specification have been satisfied;
- (xii) **(TfNSW NAC Control Gate 5 approval):** OpCo has obtained TfNSW Network Assurance Committee Control Gate 5 approval (as defined in, and in accordance with, section 3.2 of the General Specification); and
- (xiii) **(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, except for Minor Non-Compliances.

## 22.2 Notice of First Passenger Service

- (a) OpCo must give the Principal's Representative and the Independent Certifier:
  - (i) at least 20 Business Days'; and
  - (ii) 5 Business Days',prior written notice of the date on which it expects to satisfy the requirement for First Passenger Service referred to in clause 22.1(a).
- (b) OpCo must give the Independent Certifier 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 22.1(a) (which request must not be given earlier than 5 Business Days after the date on which OpCo gives notice under clause 22.2(a)(ii)).

### 22.3 Certification of Readiness for First Passenger Service

- (a) Within 5 Business Days of receipt of the request under clause 22.2(b), the Independent Certifier must determine whether or not the requirements for First Passenger Service referred to in clause 22.1(a) have been satisfied and either:
  - (i) if the requirements for First Passenger Service referred to in clause 22.1(a) have been satisfied, issue a Certificate of Readiness for First Passenger Service to OpCo and the Principal; or
  - (ii) if the requirements for First Passenger Service referred to in clause 22.1(a) have not been satisfied, issue a notice to OpCo and the Principal which:
    - (A) lists the items which remain to be completed to satisfy the requirements for First Passenger Service; or
    - (B) states that OpCo is so far from satisfying the requirements for First Passenger Service that it is not practicable to provide the list referred to in clause 22.3(a)(ii)(A).
- (b) If the Independent Certifier issues a notice under clause 22.3(a)(ii), OpCo must continue with the Delivery Activities to satisfy the requirements in clause 22.1(a) and clause 22.2 and this clause 22.3 will reapply.

### 22.4 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, subject to clause 22.4(c)(ii), notify the Independent Certifier in writing and the Principal's Representative, the Independent Certifier and the representative of any relevant Authority must jointly inspect the relevant Local Area Works at a mutually convenient time within 5 Business Days of such notice.
- (c) **(Independent Certifier to determine completion):** Following the joint inspection under clause 22.4(b) and subject to clause 22.4(d), the Independent Certifier must determine whether the discrete part of the Local Area Works has been completed in accordance with this deed and the Third Party Agreements referred to in clauses 2.1, 2.3, 2.4, 2.7, 2.8(a)(i)(B) and 2.10 of Schedule 18 (*Requirements of Third Party Agreements*) (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 Part G of Schedule 34 (*Certificates*) to the Principal'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 22.4(e), will be the relevant date for the purposes of clause 22.4(f)(i); or
  - (ii) if the discrete part is not complete, notify OpCo and the Principal in writing of the items which remain to be completed (after which the procedure in clauses 22.4(b) and 22.4(c) will reapply).
- (d) **(Preconditions to completion):** Each discrete part of the Local Area Works will not be regarded as complete unless:
  - (i) the Independent Certifier has executed and provided to the Principal's Representative a certificate in the form of Part G of Schedule 34 (*Certificates*) with respect to the discrete part of the Local Area Works;
  - (ii) OpCo has provided the Principal with all documentation (including the Asset Management Information) required by Particular Specification 13 (*Asset Management*) in relation to the discrete part of the Local Area Works; and
  - (iii) OpCo has provided to the Principal'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 22.4(d)(iii)(A) despite having used its best endeavours to do so, a statement from OpCo to the effect that:
    - (I) the discrete part of the Local Area Works is complete and OpCo has notified the relevant Authority of this matter; and
    - (II) the relevant Authority has failed or refused to provide the written notice required under clause 22.4(d)(iii)(A) despite being given 15 Business Days to provide the notice requested by OpCo.
- (e) **(No approval):** The acceptance by the Principal's Representative of a certificate, notice and/or statement provided by OpCo under clause 22.4(d) is not approval by the Principal of OpCo's performance of its obligations with respect to the discrete part of the Local Area Works.
- (f) **(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 22.4(c)(i)); and
  - (ii) a further Defects Correction Period of 12 months in respect of any work the subject of a direction under clause 22.4(g) (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.
- (g) **(Correction of Defects):** If, during the relevant Defects Correction Period, the Principal considers (or is notified by the relevant Authority) that there is a Defect in respect of any Local Area Works, the Principal 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 the Principal will accept the work or part of it despite the Defect.

## 22.5 Utility Service Works

- (a) **(Preconditions to completion):** Each discrete part of the Utility Service Works will not be regarded as complete unless OpCo has provided to the Principal's Representative:
  - (i) all documentation (including the Asset Management Information) required by Particular Specification 13 (*Asset Management*) in relation to the discrete part of the Utility Service Works; and
  - (ii) 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.
- (b) **(No approval):** The acceptance by the Principal's Representative of a notice provided by OpCo under clause 22.5(a) is not approval by the Principal of OpCo's performance of its obligations with respect to the discrete part of the Utility Service Works.
- (c) **(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 22.5(a) has been provided to the Principal's Representative for that discrete part; and

- (ii) a further Defects Correction Period in respect of any work the subject of a direction under clause 22.5(d) (relating to the discrete part of the Utility Service Works) during the Defects Correction Period, expiring 12 months from the date when the relevant Utility Service Authority gives written notice that the Defect (or the part of it) has been corrected and the Principal's Representative has been provided with a copy of the notice pursuant to clause 22.5(a)(ii).
- (d) **(Correction of Defects):** If, during the relevant Defects Correction Period, the Principal considers (or is notified by the relevant Authority) that there is a Defect in respect of any Utility Service Works, the Principal 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 the Principal will accept the work or part of it despite the Defect.

## 22.6 Property Works

- (a) **(Preconditions to completion):** Each discrete part of the Property Works will not be regarded as complete unless OpCo has provided to the Principal's Representative:
  - (i) all documentation (including the Asset Management Information) required by Particular Specification 13 (*Asset Management*) in relation to the discrete part of the Utility Service Works; and
  - (ii) a certificate in the form of Part H of Schedule 34 (*Certificates*), duly executed by the owner or owners of any part of the Unowned Parcel.
- (b) **(Indemnity):** OpCo must indemnify the Principal against any Loss suffered by the Principal 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 Part H of Schedule 34 (*Certificates*); and
  - (ii) the claim arises out of or in any way in connection with the carrying out of the Property Works.
- (c) **(No approval):** The acceptance by the Principal's Representative of a certificate provided by OpCo under clause 22.6(a) is not approval by the Principal of OpCo's performance of its obligations with respect to the discrete part of the Property Works.
- (d) **(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 22.6(a) has been provided to the Principal'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 22.6(e) (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.
- (e) **(Correction of Defects):** If, during the relevant Defects Correction Period, the Principal considers (or is notified by the relevant property owner) that there is a Defect in respect of any Property Works, the Principal 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 the Principal will accept the work or part of it despite the Defect.

## 22.7 Requirements for Completion

Completion will be achieved when:

- (a) **(Final Performance Test passed):** the SSTOM Works have passed the Final Performance Test and the Independent Certifier has certified the Test Report for the Final Performance Test;
- (b) **(Certifications):** OpCo has provided the Independent Certifier and the Principal's Representative with a certificate in the form of Part I of Schedule 34 (*Certificates*):
  - (i) from each Designer re-certifying that the SSTOM Works have been constructed in accordance with the AFC Design Documentation, except for Minor Defects;
  - (ii) from OpCo re-certifying that the SSTOM Works:
    - (A) comply with all the requirements of this deed (including the SSTOM Specification); and
    - (B) have been constructed in accordance with the AFC Design Documentation, except for Minor Defects; and
  - (iii) from the O&M Contractor re-certifying that the SSTOM Works are acceptable; and
- (c) **(Everything else):** OpCo has done everything else which this deed requires it to have done as a condition precedent or precondition to Completion, except for Minor Non-Compliances.

## 22.8 Notice of Completion

OpCo must give the Independent Certifier:

- (a) at least 5 Business Days' notice of the date on which it expects to achieve Completion; and
- (b) a written request for a Certificate of Completion when it believes Completion has been achieved (which request must not be given earlier than 5 Business Days after the date on which OpCo gives notice under clause 22.8(a)).

## 22.9 Certification of Completion

- (a) Within 1 Business Day of receipt of the request under clause 22.8(b), the 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 the Principal:
    - (A) stating as the Date of Completion, the date on which Completion was achieved;
    - (B) specifying any Minor Defects; and
    - (C) specifying any Minor Non-Compliances; or
  - (ii) if Completion has not been achieved, issue a notice to OpCo and the Principal which:
    - (A) lists the items which remain to be completed before Completion can be achieved; or
    - (B) states that the SSTOM Works are so far from achieving Completion that it is not practicable to provide the list referred to in clause 22.9(a)(ii)(A).

- (b) If the Independent Certifier issues a notice under clause 22.9(a)(ii), OpCo must continue with the Delivery Activities to achieve Completion and clause 22.8 and this clause 22.9 will reapply.

## 22.10 Final Completion

- (a) **(OpCo to achieve Final Completion):** Immediately after the Date of Completion, OpCo must expeditiously and diligently progress the Delivery Activities required to achieve Final Completion.
- (b) **(Requirements for Final Completion):** Final Completion will be achieved when:
  - (i) **(Minor Defects):** the Minor Defects specified in the Certificate of Completion have been corrected;
  - (ii) **(Extra Land):** OpCo has rehabilitated any Extra Land and provided the Principal'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 12.12;
  - (iv) **(Documentation):** OpCo has provided the Principal with all documentation required by the SSTOM Specification;
  - (v) **(ISC "As Built" rating):** OpCo has provided the Independent Certifier with evidence that it has taken steps to procure the ISC "As Built" rating referred to in section 2.8 of the General Specification;
  - (vi) **(Green Star Buildings "Certified" rating):** OpCo has provided the Independent Certifier with evidence that it has taken steps to procure the Green Building Council of Australia Green Star Buildings "Certified" rating referred to in section 2.8 of the General Specification;
  - (vii) **(Intellectual Property report):** OpCo has provided the Principal 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:
      - (I) 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, the Principal; and
      - (II) if it is Licensed Intellectual Property:
        - (1) from whom it has been licensed;
        - (2) the basis upon which the licensor has licensed it (i.e. as owner or as a sub-licensor);
        - (3) if applicable, the ultimate owner of the Intellectual Property;
        - (4) the steps taken to procure a sub-licence for the Principal; and
        - (5) whether a Deed of Assurance is in place with the ultimate owner of the intellectual property;
  - (viii) **(Minor Non-Compliances):** all Minor Non-Compliances (whether specified in the Certificate of Readiness for First Passenger Service, the Certificate of Completion or otherwise) have been corrected; and
  - (ix) **(Everything else):** OpCo has done everything else which this deed requires OpCo to have done as a condition precedent or precondition to Final Completion.



- (c) **(Request for Final Completion):** When OpCo considers that Final Completion has been achieved, OpCo must:
  - (i) notify the Independent Certifier of its opinion; and
  - (ii) request the Independent Certifier to issue a Certificate of Final Completion.
- (d) **(Certificate of Final Completion):** Within 15 Business Days of OpCo's request under clause 22.10(c), the Independent Certifier must determine whether Final Completion has been achieved and either:
  - (i) if Final Completion has been achieved, issue to the Principal and OpCo a Certificate of Final Completion stating as the Date of Final Completion the date on which Final Completion was achieved; or
  - (ii) if Final Completion has not been achieved, issue a notice to the Principal and OpCo listing the work remaining to be performed to achieve Final Completion.
- (e) **(If Final Completion not achieved):** If the Independent Certifier issues a notice under clause 22.10(d)(ii) OpCo must continue with the Delivery Activities to achieve Final Completion and clauses 22.10(c) and 22.10(d) will reapply.
- (f) **(No restriction):** The Independent Certifier, in making a determination as to whether Final Completion has been achieved:
  - (i) will not be restricted by any:
    - (A) certification, notice, list or opinion already provided under this deed; or
    - (B) obligation of OpCo under this deed to correct any Defects which may be discovered after Final Completion; and
  - (ii) will be entitled to raise any items of work as a ground for determining that Final Completion has not been achieved.

## 23. Operations

### 23.1 Operations Activities

OpCo must:

- (a) perform the Operations Activities in accordance with the SSTOM Specification 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 Sydney Metro – Western Sydney Airport:
    - (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 Sydney Metro – Western Sydney Airport is operated and maintained in accordance with the Asset Management System;
- (c) report on the Operations Activities in accordance with clause 52.3(b); and
- (d) at all times, maintain an appropriate organisational structure, systems and resources to perform the Operations Activities.

### 23.2 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 Train wheels start at the Origin Station to the time that the Train wheels stop at the Destination Station.

### 23.3 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 the Principal 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;
    - (G) changes to staffing levels; and
    - (H) changes to the Maximum Train Journey Time; and
  - (ix) any other factors that the Principal or OpCo consider relevant.
- (d) Following any Operations Activities Review, the Principal may:
  - (i) approve or reject a request by OpCo for an Additional Planned Service Disruption under clause 23.12;
  - (ii) direct a Service Change in accordance with clause 13 of Schedule 2 (*Service Payment calculation*); or
  - (iii) direct a Modification to change the Contract Service Level Requirements in accordance with clause 33.
- (e) Following an approval or direction contemplated by clause 23.3(d), OpCo must update the Operations Plan in accordance with clause 9.3.

### 23.4 Service Changes required by the Principal

- (a) The Principal may direct a Service Change subject to and in accordance with clause 13 of Schedule 2 (*Service Payment calculation*) (whether or not the Service Change has been discussed during an Operations Activities Review).
- (b) If the Principal directs a Service Change in accordance with clause 13 of Schedule 2 (*Service Payment calculation*) the Service Payment will be adjusted for the associated Service Level Adjustment Amount in accordance with Schedule 2 (*Service Payment calculation*).
- (c) This clause does not limit the Principal's right to direct a Modification under clause 33.

### **23.5 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) The Principal may approve or reject, in its absolute discretion, a Service Change proposed by OpCo.
- (c) If the Principal approved the Service Change, the Principal's Representative will issue a "Service Change Notice" in accordance with clause 13.2(a) of Schedule 2 (*Service Payment calculation*).
- (d) This clause does not limit OpCo's right to propose a Modification under clause 34.

### **23.6 Provision of real-time information**

- (a) OpCo must provide real time information to the Principal, in accordance with Particular Specifications 01 (*General*), 10 (*Communications and Control*) and 11 (*Operations and Customer Service*). The Principal may make this information available to Customers through such channels and via such means as the Principal 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 the Principal'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 the Principal; and
  - (iii) not compete with or duplicate NSWTI services or Customer information channels.
- (c) The Principal may use data provided by OpCo for any purpose whatsoever, including planning and marketing purposes, and purposes required by the Principal's Associates.

### **23.7 Publication and display of information**

- (a) OpCo must ensure that current, accurate, up to date and relevant information relating to:
  - (i) Train Services and Sydney Metro – Western Sydney Airport; and
  - (ii) to the extent that relevant information is provided to OpCo by the Principal or other public transport providers, the interface of Train Services and Sydney Metro – Western Sydney Airport with other public transport services (including as to disruptions),is provided to Customers in accordance with the requirements of the SSTOM Specification.
- (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 SSTOM Specification, including Particular Specification 02 (*Built Environment*); or
  - (ii) as may be determined and directed from time to time by the Principal's Representative as a Modification.
- (c) Any initiative by OpCo to enhance passenger information must be developed in consultation with the Principal.

### **23.8 Cooperation with other transport providers**

- (a) OpCo must cooperate, coordinate and share information with other public transport providers (including Sydney Trains) in accordance with the procedures and requirements of the SSTOM Specification.
- (b) This clause does not limit OpCo's obligations under Schedule 18 (*Requirements of Third Party Agreements*).

### **23.9 Customer feedback**

- (a) OpCo must comply with the procedures and requirements of the SSTOM Specification (including sections 5.2.19 and 6.3.2.6 of the General Specification) with respect to Customer feedback.
- (b) OpCo must advise the Principal the category of feedback received and action taken by OpCo to resolve the matter in the Monthly Operations Performance Report.

### **23.10 Ticketing, fare collection and revenue protection**

- (a) Subject to the terms of this deed, the Principal will be responsible for the collection and protection of fare revenue.
- (b) Without limiting clause 23.10(a), OpCo must:
  - (i) provide Customers with ticketing and fare information and directions;
  - (ii) operate fare gates;
  - (iii) work collaboratively with the Principal to minimise fare evasion to the Principal;
  - (iv) give Transport Officers and NSW Police access to Sydney Metro – Western Sydney Airport; and
  - (v) report any faults with the ETS and ETS Equipment to the ETS Delivery Partner, in accordance with the SSTOM Specification, including section 11.4.3 of Particular Specification 11 (*Operations and Customer Service*).

### **23.11 Law enforcement agencies**

OpCo must:

- (a) report incidents to, provide intelligence to, cooperate with and interface with the NSW Police, Australian Federal Police and Australian Border Force (as applicable) regarding operational security and crime prevention interfaces; and
- (b) provide the NSW Police, Australian Federal Police, and Australian Border Force with all assistance, information, access, accommodation, data, equipment, resources and/or materials as they may reasonably require.

### **23.12 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) The Principal may approve or reject OpCo's request for an Additional Planned Service Disruption in its absolute discretion.
- (c) If the Principal 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 16(b) of Schedule 2 (*Service Payment calculation*).

### **23.13 Management of Incidents, emergencies and unplanned service disruptions**

OpCo must manage Incidents, emergencies and unplanned service disruptions in accordance with the requirements of the SSTOM Specification (including section 6.3.8 of the General Specification and Particular Specification 11 (*Operations and Customer Service*)) and the Principal will be responsible for any costs incurred by the Principal or Transport for NSW in connection with providing any required replacement bus services.

### **23.14 Station Precincts**

OpCo must operate and maintain from the Date of Completion, the Station Precincts located within the Licensed Maintenance Area so that the Stations Precincts (including any vegetation in the Station Precincts):

- (a) are safe, clean and in a good state of repair; and

- (b) comply with the requirements of the SSTOM Specification, including section 2.3 of Particular Specification 02 (*Built Environment*).

### 23.15 Car Parks

OpCo must operate and maintain the Car Parks located within the Licensed Maintenance Area:

- (a) so that they are safe, clean and efficient environments for Customers to park their cars and transition to Sydney Metro – Western Sydney Airport; and
- (b) so that they comply with the requirements of the SSTOM Specification, including section 2.3.3.2.6 of Particular Specification 02 (*Built Environment*).

### 23.16 Cleaning and presentation

OpCo must ensure that the Trains, Stations, ETS Equipment, Station Precincts and the Licensed Maintenance Area (including any Assets affixed to the Licensed Maintenance Area and the Peripheral Presentation Areas) meet the cleanliness and presentation standards set out in the SSTOM Specification, including Particular Specification 11 (*Operations and Customer Service*), at all times.

### 23.17 Graffiti removal and Vandalism

- (a) OpCo must:
  - (i) operate Sydney Metro – Western Sydney Airport so as to minimise the occurrence of Graffiti and Vandalism;
  - (ii) maintain the Trains, Infrastructure Maintenance Vehicles, Stations, ETS Equipment, Station Precincts and the Licensed Maintenance Area (including any Assets affixed to the Licensed Maintenance Area and the Peripheral Presentation Areas) so that:
    - (A) Graffiti is removed; and
    - (B) Vandalism is rectified,
 in accordance with the SSTOM Specification, including Particular Specification 11 (*Operations and Customer Service*); and
  - (iii) otherwise comply with the Security Management Plan and the requirements of Particular Specification 11 (*Operations and Customer Service*).
- (b) Where OpCo's costs to remove Graffiti or rectify Vandalism in Peripheral Presentation Areas under this deed in any Financial Year (Operations) have, or are reasonably likely to, exceed the Graffiti/Vandalism Relevant Amount:
  - (i) OpCo may issue a Minor Modification Proposal to which the provisions of clause 35 will apply, subject to clause 23.17(c); and
  - (ii) that Minor Modification Proposal must provide a reasonably detailed breakdown of the costs incurred in the Financial Year (Operations) to date by OpCo and further costs that are anticipated will be incurred by OpCo in the Financial Year (Operations) such that the Graffiti/Vandalism Relevant Amount has been or is reasonably likely to be exceeded.
- (c) In considering a Minor Modification Proposal validly issued by OpCo pursuant to clause 23.17(b), the Principal acknowledges and agrees:
  - (i) in each Financial Year (Operations), to the extent this deed requires OpCo to remove Graffiti or rectify Vandalism in Peripheral Presentation Areas and where OpCo's costs of such removal or rectification exceed the Graffiti/Vandalism Relevant Amount, the Principal will pay OpCo the amount of such costs incurred in excess of the Graffiti/Vandalism Relevant Amount as agreed or determined in accordance with clause 35;
  - (ii) to the extent not otherwise applicable under the process for determining the Net Financial Impact of a Minor Modification, the following costs will be excluded from the calculation of costs payable to OpCo by the Principal:

- (A) any costs incurred to the extent such Vandalism or Graffiti is caused or contributed to by OpCo or any of its Associates; or
- (B) any costs that OpCo recovers by way of insurance proceeds in respect of such Vandalism or Graffiti under any Insurances or would have recovered under such Insurances if OpCo and its Associates had:
  - (I) effected and maintained the relevant Insurances as required by this deed;
  - (II) complied with the relevant Insurances;
  - (III) submitted a claim where there was a legitimate entitlement to do so; and
  - (IV) diligently pursued the claim; and
- (iii) clause 35.5(b) and clause 35.9 will not apply.
- (d) The parties acknowledge and agree that the Principal's Representative right to suspend the Minor Modification process in clause 35.10 will not apply to Minor Modifications initiated pursuant to this clause 23.17.

### **23.18 ETS**

OpCo must operate and maintain the ETS in accordance with Particular Specification 11 (*Operations and Customer Service*).

### **23.19 Operation and maintenance of the Foundation Infrastructure Works**

OpCo:

- (a) acknowledges that under the terms of each FIW Contract, the relevant FIW Contractor warrants that the Foundation Infrastructure Works will be capable of remaining at all relevant times fit for their intended purpose, subject to OpCo operating and maintaining:
  - (i) the SBT Works in accordance with the relevant SBT O&M Manual from the OpCo Handover Date; and
  - (ii) the SCAW Works in accordance with the relevant SCAW O&M Manual from the OpCo Handover Date; and
- (b) must operate and maintain the Foundation Infrastructure Works in accordance with the FIW O&M Manuals.

### **23.20 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.

### **23.21 Post Final Completion design changes**

- (a) Subject to clauses 32, 33, 34 and 35, OpCo may only amend Final Design Documentation after the Date of Final Completion if:
  - (i) OpCo submits the amended Design Documentation to the Principal's Representative together with:
    - (A) certifications equivalent to those referred to in clause 3.6(a) of Schedule 11 (*Design Review*); 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) the Principal's Representative has not notified OpCo that, in the Principal'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 the Principal's Representative of any of its rights under this clause 23.21 will not preclude the Principal from subsequently asserting that the Design Documentation does not comply with the requirements of this deed.

#### **23.22 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 the Principal's prior written consent.

### **24. Asset management**

#### **24.1 OpCo's asset management obligations**

OpCo must perform the Asset Management Activities in accordance with:

- (a) the Asset Management System;
- (b) the SSTOM Specification; 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) Sydney Metro – Western Sydney Airport 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 the Design Life of that Asset.

#### **24.2 Asset Management System**

- (a) OpCo must develop and implement the Asset Management System in accordance with the SSTOM Specification.
- (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; and
  - (v) Asset Maintenance Standards.
- (c) The Asset Management System must:
  - (i) be supported by the Asset Information System and Condition Monitoring System; and
  - (ii) comply with the review and reporting processes set out in section 6 of the General Specification.

#### **24.3 Spares**

OpCo must maintain the minimum specified stock of Spares in accordance with:

- (a) the Spares and Consumables Strategy; and
- (b) the SSTOM Specification.

#### **24.4 Asset Management Plan**

- (a) OpCo must prepare and update the Asset Management Plan in accordance with clause 9, the General Specification and Particular Specification 13 (*Asset Management*).

- (b) The Asset Management Plan must:
  - (i) cover all Assets;
  - (ii) otherwise comply with the requirements of the General Specification and Particular Specification 13 (*Asset Management*); and
  - (iii) include the Maintenance Works Program, which must:
    - (A) describe the Asset Management Activities for the following 2 year period;
    - (B) be of sufficient detail to facilitate effective monitoring of Asset Management Activities;
    - (C) take into account all works required to ensure the Handback Condition is achieved (including any works notified by the Handback Auditor pursuant to clause 24.11(c)(ii)); and
    - (D) describe the Asset Management Activities that will be undertaken to address all critical safety issues that have emerged since the most recent Maintenance Works Program (including to prevent their reoccurrence).

## 24.5 Obsolescence

- (a) If a part of an Asset becomes, or will become, Obsolete during the Term or is likely to become Obsolete within its Design Life, OpCo must:
    - (i) as soon as possible provide the Principal with a written notice (**Obsolescence Notice**) setting out details of:
      - (A) the nature of, and reasons for, the Obsolescence;
      - (B) any other Assets that are likely to be affected by the Obsolescence (**Affected Assets**);
      - (C) the last opportunity to procure the Affected Assets before they are Obsolete and no longer supported or available;
      - (D) the availability of substitute or replacement systems or parts for Affected Assets that are at least of the equivalent or better in form, fitness for purpose and functionality when compared to the Affected Assets and the mechanism for OpCo to advise the Principal of the last opportunity to procure such substitute or replacement systems or parts for the Affected Assets; and
      - (E) any other changes required to, or information relevant to the Asset contained in, the Obsolescence Management Plan; and
- either:
- (ii) replace that part of the Asset with a replacement part which, subject to clause 24.5(d):
    - (A) is not Obsolete;
    - (B) meets, and will ensure that OpCo's Activities meet, all relevant requirements of this deed and do not prevent any other Affected Assets from meeting the relevant requirements of this deed;
    - (C) is at least of the same standard, functionality and reliability and has the same Design Life as that part of the Asset it is replacing;
    - (D) has the same or a better standard, functionality, reliability and Design Life relative to the market at the time of replacement, as that part of the Asset it is replacing had at the time that it was incorporated into the Asset; and
    - (E) will ensure any Affected Assets continue to comply with at least the same standards, and have at least the same functionality, reliability and Design Life as they would have had but for the Obsolescence of the Asset,

or:



- (iii) submit an amended Obsolescence Management Plan to the Principal for review and approval, which sets out the measures that will be undertaken to ensure that:
  - (A) OpCo will be able to continue to meet its obligations under this deed without replacing the Obsolete part of the Asset;
  - (B) the Obsolete part of the Asset will be supported:
    - (I) if the Obsolete part of the Asset is due to be replaced prior to the Expiry Date in accordance with the then current Asset Management Plan, until it is replaced in accordance with the then current Asset Management Plan; or
    - (II) if the Obsolete part of the Asset is not due to be replaced prior to the Expiry Date in accordance with the then current Asset Management Plan, until the end of its Design Life; and
  - (C) the Principal is not adversely affected by the relevant Obsolescence, including that the Principal does not incur any additional cost or expense as a result of the Obsolescence for the period that the Obsolete part of the Asset is required to be supported in accordance with clause 24.5(a)(ii)(B).
- (b) Without limiting clause 9, OpCo must update the Obsolescence Management Plan where it is necessary for OpCo to change the Obsolescence Management Plan to meet the requirements set out in clause 24.5(a)(ii) and, otherwise annually, and submit the updated Obsolescence Management Plan to the Principal for review and approval.
- (c) If at any time OpCo is no longer able to comply with an Obsolescence Management Plan or the Principal rejects an Obsolescence Management Plan on the basis that OpCo cannot continue to meet its obligations under this deed without replacing the Obsolete part of the Asset, OpCo must replace the Obsolete part of the Asset in accordance with clause 24.5(a)(ii).
- (d) If a replacement Asset exists which has a better functionality, reliability or Design Life or an ability to meet higher standards than the Asset that is being replaced, OpCo must notify the Principal in writing with details of the Asset. If at the time of replacement the Asset has a Whole of Life Cost less than or equal to 110% of the Original Whole of Life Cost (CPI Indexed) of the Asset it is replacing, OpCo must use that replacement Asset. To the extent that the replacement of the Asset would result in a better functionality, reliability or Design Life or an ability to meet higher standards than were required under this deed with the Asset that is being replaced, from the time OpCo is required to replace the Asset, this deed is varied so that OpCo is required to comply with that better functionality, reliability, Design Life or standard.
- (e) OpCo must not replace an Asset with a replacement Asset until any changes to the Accreditation (including to OpCo or an Accredited Contractor's RSNL Safety Management System) that are required for the Asset replacement to be used have been made and accepted by all relevant Authorities.
- (f) For the purposes of this clause 24.5 only:
  - (i) **Whole of Life Costs** means in respect of an Asset or proposed Asset the sum of the following costs that could reasonably be expected to be incurred by OpCo in the provision of the SSTOM Works and OpCo's Activities:
    - (A) the total anticipated purchase and lifecycle replacement costs;
    - (B) all costs associated with delivery, installation and commissioning including any design, insurance and transportation costs and costs of providing any necessary connections, or other Utility Services;
    - (C) ongoing operating costs including the cost of Utility Services, consumables and other direct operating costs; and
    - (D) ongoing repair and maintenance costs including cleaning costs; and
  - (ii) **Original Whole of Life Cost** means in respect of an Asset, the Whole of Life Cost included for that item in the Asset Management Plan current immediately prior to the replacement.

#### 24.6 Rectification of Defects

Subject to clause 17, from the Date of Completion OpCo must rectify all Defects (fair wear and tear excepted) on Sydney Metro – Western Sydney Airport within a reasonable time.

#### 24.7 Asset Information System

- (a) OpCo must provide and maintain the Asset Information System in accordance with Particular Specification 13 (*Asset Management*).
- (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 the Principal 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) The Principal:
  - (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 Particular Specification 13 (*Asset Management*).

#### 24.8 Asset Management Failures

- (a) The parties must meet annually within 3 months of the end of each Financial Year (Operations) (or at such other times directed by the Principal) to review OpCo's compliance with the Maintenance Works Program during the previous Financial Year (Operations).
- (b) An Asset Management Failure will occur if:
  - (i) either:
    - (A) OpCo failed to comply with the Maintenance Works Program; or
    - (B) the Maintenance Works Program included in the Asset Management Plan submitted by OpCo failed to comply with clause 24.4(b)(iii); and
  - (ii) in the Principal's reasonable opinion, OpCo's failure to comply with the Maintenance Works Program or the failure of the Maintenance Works Program to comply with clause 24.4(b)(iii) (as applicable) constitutes a material non-compliance with the Asset Management Plan.
- (c) If an Asset Management Failure occurs the Principal may give OpCo a notice stating the nature of the Asset Management Failure.
- (d) OpCo must remedy the Asset Management Failure within:
  - (i) 1 month of the date on which the notice referred to in clause 24.8(c) is issued; or
  - (ii) such other period agreed between the parties (acting reasonably),(the **Remediation Period**).
- (e) If OpCo fails to remedy the Asset Management Failure within the Remediation Period, the Principal may withhold the amount calculated in accordance with clause 9.2 of Schedule 2 (*Service Payment calculation*) 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, the Principal:
  - (i) must reimburse OpCo; and
  - (ii) will retain any interest accrued on,
    - all amounts retained pursuant to clause 24.8(e).

#### 24.9 Asset Condition Assessment

OpCo must conduct Asset Condition Assessments, and report to the Principal on the results of those Asset Condition Assessments, in accordance with Particular Specification 13 (*Asset Management*).

#### 24.10 Reporting

During the Operations Phase, OpCo must provide to the Principal's Representative, monthly, quarterly and annual reports on the Asset Management Activities in accordance with, and including the information specified in section 6 of the General Specification.

#### 24.11 Handback Audit

- (a) Without limiting clause 51,
  - (i) no earlier than 30 months prior to the Original Expiry Date; and
  - (ii) periodically thereafter (at intervals determined by the Principal's Representative in its absolute discretion) until the Original Expiry Date,

the Principal's Representative will procure that a program of audits and inspections of Sydney Metro – Western Sydney Airport (**Handback Audits**) is undertaken by an independent expert (**Handback Auditor**):

  - (iii) to be appointed jointly by the Principal and OpCo following agreement with OpCo as to the identity of the Handback Auditor; or
  - (iv) failing agreement within 10 Business Days of a request made in writing by the Principal identifying the proposed independent expert, to be appointed by the Principal following nomination of the independent expert by the President of Engineers Australia.
- (b) The Principal'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
  - (ii) consider in good faith any reasonable request by OpCo for a Handback Audit to be carried out on a different date.
- (c) The Handback Auditor will inspect and assess Sydney Metro – Western Sydney Airport and notify the Principal and OpCo in writing of:
  - (i) whether Sydney Metro – Western Sydney Airport has been and is being maintained by OpCo in accordance with this deed, including whether all works scheduled to have been carried out under the current Maintenance Works Program prior to the date of the Handback Audit have been satisfactorily completed;
  - (ii) any rectification, maintenance and remediation works required to be carried out by OpCo to bring the condition of Sydney Metro – Western Sydney Airport to the condition it would have been in had OpCo complied with its obligations under this deed; and
  - (iii) an estimate of the total costs of carrying out the rectification, maintenance and remediation works referred to in clause 24.11(c)(ii) (**Handback Rectification Costs**).
- (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) The Principal's Representative must use its reasonable endeavours to procure that the Handback Auditor minimises any disruption caused to OpCo's Activities by a Handback Audit.
- (f) The cost of the Handback Audits will be borne by the Principal.

#### 24.12 Rectification work

OpCo must update the Asset Management Plan and Maintenance Works Program to reflect any required rectification, maintenance and remediation work notified pursuant to clause 24.11(c)(ii) and must carry out that work:

- (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 Sydney Metro – Western Sydney Airport 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.

#### 24.13 Handback obligations

At the end of the Term, OpCo must:

- (a) surrender and return to the Principal or the Principal's nominee Sydney Metro – Western Sydney Airport 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 (including the Handover Spares) to the Principal or the Principal'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) have completed all works scheduled to be carried out under the current Maintenance Works Program for Sydney Metro – Western Sydney Airport;
- (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 (*Service Payment calculation*) Annexure B Part A: KPI Tables KPI No. 1;
  - (ii) all Stations meet the "Level 3" requirements on the "Station Views and Station Precincts Views Assessment Scale" as set out in Schedule 2 (*Service Payment calculation*) Annexure B Part A: KPI Tables KPI No. 2; and
  - (iii) the rail corridor (including the Peripheral Presentation Areas) meets the "Level 3" requirements on the "Corridor and Peripheral Presentation Area Assessment Scale" as set out in Schedule 2 (*Service Payment calculation*) 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 the Principal or the Principal'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 the Principal or the Principal'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 Project Documentation;

- (ii) all Data (as defined in Schedule 32 (*Intellectual Property*));
  - (iii) any documentation or programs required to be provided under Schedule 32 (*Intellectual Property*); and
  - (iv) any other documentation specified in the SSTOM Specification;
- (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 the Principal of any lease or hire arrangement relating to any such Hired Moveable Asset nominated by the Principal; and
  - (ii) any other Hired Moveable Assets, use its best endeavours to procure the novation to the Principal of any lease or hire arrangement relating to any such Hired Moveable Asset nominated by the Principal; and
- (j) procure the novation to the Principal 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 the Principal 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 the Principal may nominate (in its absolute discretion), with effect from the end of the Term or such other date as the Principal may agree.

#### **24.14 Assistance in securing continuity**

OpCo must, in the period which is not less than 6 months before the Expiry Date, do all things reasonably required by the Principal to ensure the smooth and orderly transfer of responsibility for delivering Sydney Metro – Western Sydney Airport including:

- (a) meeting with the Principal and such other persons notified by the Principal to discuss delivery of the Project on reasonable notice by the Principal;
- (b) providing access to its operations for managers and supervisors of the Principal or its nominee for the purpose of familiarisation;
- (c) providing sufficient information to the Principal or its nominee to determine the status and condition of the Project;
- (d) providing sufficient resources, including personnel, for the time required to facilitate the transfer of the Project to the Principal or its nominee;
- (e) procuring the novation or, if such novation cannot be procured, the assignment to the Principal or its nominee of:
  - (i) any leases, subleases and licences requested by the Principal; and
  - (ii) any warranties (provided in respect of the Project that are capable of assignment);
- (f) without limiting clause 50.10, assisting in the transfer of any employees of OpCo or any subcontractor who agree with the Principal to be employed by the Principal or its nominee after the Expiry Date;
- (g) training personnel nominated by the Principal in all aspects of the operation, maintenance and repair of the Relevant Infrastructure to a level of competency that will allow those personnel to operate, maintain and repair the Relevant Infrastructure to the standards required of OpCo under this deed from the relevant Expiry Date; and
- (h) doing all other acts and things to enable the Principal (or its nominee) to be in a position to deliver the Project to the standards specified in this deed, with minimum disruption.

#### **24.15 Power of attorney**

OpCo irrevocably appoints, with effect from the end of the Term, the Principal and such persons as are from time to time nominated by the Principal, jointly and severally, as its attorney with full power and authority to execute any agreement or novation contemplated by clause 24.13.

#### 24.16 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 the Principal, nominated by the President of Engineers Australia,  
will inspect and assess Sydney Metro – Western Sydney Airport and notify the Principal 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 24.11(c)(ii); and
      - (B) its obligations under clause 24.13; or
    - (iv) if the Term is extended in accordance with clause 3.3, its obligations under clause 24.13(e).
- (b) In assessing OpCo's compliance with clause 24.13(e), the Final Inspection Auditor will have regard to:
  - (i) the instructions for the use of the relevant assessment scale described in Schedule 2 (*Service Payment calculation*) Annexure B Part A: KPI Tables; and
  - (ii) the Reference Pictures.
- (c) The amount notified by the Final Inspection Auditor under clause 24.16(a) will be a debt due and payable from OpCo to the Principal.
- (d) The Principal may deduct or set off any amount payable by OpCo under clause 24.16(c) against any amount otherwise payable by the Principal 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 25.1(b); or
  - (ii) if the Term is extended in accordance with clause 3.3, the Term Extension Security Bond.

#### 24.17 Interim inspection

- (a) Without limiting OpCo's obligations under clause 24.13, 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 (fair wear and tear excepted);
    - (B) have completed all works scheduled to be carried out under the current Maintenance Works Program; and
    - (C) 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 (*Service Payment calculation*) Annexure B Part A: KPI Tables KPI No. 1;
      - (II) all Stations meet the "Level 3" requirements on the "Station Views and Station Precincts Views Assessment Scale" as set out in Schedule 2 (*Service Payment calculation*) Annexure B Part A: KPI Tables KPI No. 2; and
      - (III) the rail corridor (including the Peripheral Presentation Areas) meets the "Level 3" requirements on the "Corridor and Peripheral Presentation Area Assessment Scale" as set out in Schedule 2

- (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 the Principal, nominated by the President of Engineers Australia, will inspect and assess Sydney Metro – Western Sydney Airport and notify the Principal 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 24.11(c)(ii); and
    - (D) its obligations under clause 24.17(a)(i).
- (b) In assessing OpCo's compliance with clause 24.17(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 (Service Payment calculation) 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 24.17(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 the Principal.
- (d) Subject to clause 25.7(b), the Principal may deduct or set off any amount payable by OpCo under clause 24.17(c) against any amount otherwise payable by the Principal to OpCo, or may take other enforcement action available to it including under the Handback Security Bond, Term Extension Security Bond or any amount withheld under clause 25.1(b).

## 25. Security

### 25.1 Provision of security

- (a) OpCo must provide the Principal with:
  - (i) a bond (**Handback Security Bond**) for:
    - (A) subject to clauses 25.1(a)(i)(B) and 25.1(a)(i)(C), an amount equal to the Handback Rectification Costs notified by the Handback Auditor under clause 24.11(c)(iii) after the Initial Handback Audit (rounded up to the nearest million dollars);
    - (B) if the Handback Rectification Costs are less than [REDACTED] (CPI Indexed), an amount equal to [REDACTED] (CPI Indexed); or
    - (C) if the Handback Rectification Costs are greater than [REDACTED] (CPI Indexed), an amount equal to [REDACTED] (CPI Indexed),within 20 Business Days of receiving notice of the Handback Rectification Costs under clause 24.11(c)(iii) following the Initial Handback Audit; and
  - (ii) in addition to the Handback Security Bond, if the Term is extended in accordance with clause 3.3, a bond (**Term Extension Security Bond**) for [REDACTED] (CPI Indexed) 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:
      - (I) the Principal accepting the Term Extension Proposal under clause 3.3(e)(i); or

- (II) if the Principal rejects the Term Extension Proposal under clause 3.3(e)(ii), the parties reaching agreement on the terms of the Term Extension Proposal.
- (b) If OpCo fails to provide a Handback Security Bond in accordance with clause 25.1(a)(i), then OpCo will not be in breach of this deed but the Principal may withhold [REDACTED] from the payment of the Service Payments (which will be withheld by the Principal by deducting from the payment of each Service Payment an amount equal to [REDACTED] divided by the number of remaining Service Payments payable by the Principal before the Original Expiry Date).
- (c) If OpCo fails to provide a Term Extension Security Bond in accordance with clause 25.1(a)(ii), then OpCo will not be in breach of this deed and the Term will expire on the Original Expiry Date.

## 25.2 Increase or decrease in Handback Security Bond

- (a) If, as part of a Handback Audit after the Initial Handback Audit, the Handback Auditor notifies the Principal and OpCo under clause 24.11(c)(iii) that the revised Handback Rectification Costs are:
  - (i) greater than the amount of the Handback Security Bond held by the Principal at that time, OpCo must replace the Handback Security Bond held by the Principal with a bond that:
    - (A) is for an amount equal to the lesser of:
      - (I) the Handback Rectification Costs; and
      - (II) [REDACTED]; and
    - (B) complies with clause 25.4; or
  - (ii) less than the amount of the Handback Security Bond held by the Principal at that time, OpCo may replace the Handback Security Bond held by the Principal with a bond that:
    - (A) is for an amount equal to the greater of:
      - (I) the Handback Rectification Costs; and
      - (II) [REDACTED]; and
    - (B) satisfies clause 25.4.
- (b) To the extent that OpCo is obliged to provide a replacement Handback Security Bond under clause 25.2(a)(i) or exercises its rights to provide a replacement Handback Security Bond under clause 25.2(a)(ii):
  - (i) the Principal must surrender the Handback Security Bond held by the Principal 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.

## 25.3 Return of security

- (a) Subject to the Principal's right to have recourse to the Bonds, the Principal must release:
  - (i) the Handback Security Bond or any alternative amount withheld under clause 25.1(b):
    - (A) if the Term is not extended in accordance with clause 3.3, as soon as practicable after the Principal has received the Final Inspection Auditor's notice under clause 24.16(a); or
    - (B) if the Term is extended in accordance with clause 3.3, as soon as practicable after the Principal has received the Interim Inspection Auditor's notice under clause 24.17(a)(ii); and
  - (ii) the Term Extension Security Bond as soon as practicable after the Principal has received the Final Inspection Auditor's notice under clause 24.16(a).



- (b) OpCo acknowledges and agrees that, where the Principal is required to 'return', 'release' or 'surrender' any Bond held by it under this deed, it may do so, in its absolute discretion, by:
  - (i) providing a written notice in the form set out in Schedule 31 (*Notice of Release (Bonds)*) to the relevant issuer of the Bond (with a copy to OpCo) stating that the Bond is no longer required and is thereby released; or
  - (ii) returning the original copy of the Bond to OpCo.

#### **25.4 Requirements of Bond**

Each Bond must be:

- (a) in the form of Schedule 30 (*Form of Bond*) or such other form as the Principal may approve;
- (b) in favour of the Principal;
- (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 the Principal may approve).

#### **25.5 Issuer ceases to have Required Rating**

- (a) If:
  - (i) the issuer of any Bond ceases to have the Required Rating or ceases to hold a current licence issued by the Australian Prudential Regulation Authority and, at that time, another bank or insurance company acceptable to the Principal maintains the Required Rating and is regulated by the Australian Prudential Regulation Authority; or
  - (ii) the specified location within Sydney (or such other place as approved by the Principal) is no longer available for payment to be made under a Bond,
 then OpCo must:
  - (iii) promptly notify the Principal of that circumstance; and
  - (iv) within 20 Business Days of being requested to do so, procure the issue to the Principal 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 25.4,
 and the Principal 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 the Principal 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 25.4;
  - (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) the Principal must promptly surrender the original Bond to OpCo following the issue of the replacement Bond.

#### **25.6 No injunction**

- (a) The Principal may make a demand under any Bond at any time. OpCo must not take any steps to injunct or otherwise restrain:

- (i) the issuer of a Bond from paying the Principal pursuant to the Bond;
  - (ii) the Principal from making a demand under a Bond or receiving payment under a Bond; or
  - (iii) the Principal from using the proceeds of a Bond in accordance with clause 25.7.
- (b) Without limiting clause 25.7, the Bonds to be provided under this clause 25 are for the purpose of ensuring the due and proper performance by OpCo of its obligations under this deed and to provide for OpCo to bear the risk of financial burden during the time of any unresolved dispute or difference.

## 25.7 Proceeds of security

- (a) The Principal may only apply the proceeds of:
- (i) the Handback Security Bond or any alternative amount withheld under clause 25.1(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 the Principal under clause 24.16(c); or
    - (B) if the Term is extended in accordance with clause 3.3, payment of any amount due and payable by OpCo to the Principal under clause 24.17(c); and
  - (ii) the Term 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 the Principal (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 Term Extension Period.
- (b) If:
- (i) there is a debt due and owing from OpCo to the Principal under clause 24.17(c);
  - (ii) the Principal makes a deduction or set off under clause 24.17(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 the Principal must pay to OpCo an amount equal to the Claimed Amount in accordance with clause 28.5(a)(i)(B).

## 25.8 No interest

The Principal is not obliged to pay OpCo interest on a Bond or the proceeds of a Bond.

## 25.9 No trust

If the Principal makes a demand under a Bond, it does not hold the proceeds on trust for OpCo.

## 25.10 Right to call on the D&C Contractor Construction Bond

- (a) Without limiting the Principal's rights under this deed or at Law, the Principal may require OpCo to call on any Bond provided by the D&C Contractor in favour of OpCo, (**D&C Contractor Construction Bond**) that OpCo holds, or is held on OpCo's behalf, to satisfy any debt due and payable by OpCo to the Principal if OpCo has the right to call on the D&C Contractor Construction Bond under the D&C Contract and the relevant debt due and payable by OpCo to the Principal has not been paid within 10 Business Days after receipt of a demand for payment.
- (b) The amount the Principal may require OpCo to call under the D&C Contractor Construction Bond will, in aggregate, be limited to an amount no greater than:
- (i) prior to the Date of Completion, the D&C Contractor Construction Bond Amount, or if the amount the subject of the D&C Contractor Construction Bond at that time is less than the D&C Contractor Construction Bond Amount, that lesser amount; or

- (ii) for the period commencing on the Date of Completion and expiring on the later of the date 24 months after the Date of Completion and the expiration of the last defects liability period under the D&C Contract, the D&C Contractor DLP Bond Amount, or if the amount the subject of the D&C Contractor Construction Bond at that time is less than the D&C Contractor DLP Bond Amount, that lesser amount, and such amount will be a debt due and payable by OpCo to the Principal.

## 26. Commercial Opportunities

- (a) OpCo acknowledges and agrees that:
  - (i) the Principal has the right to all of the Commercial Opportunities in accordance with Schedule 14 (*Easements, Land Arrangements and Commercial Opportunities*); and
  - (ii) it has no entitlement to any revenue derived from the Commercial Opportunities.
- (b) If OpCo wishes to:
  - (i) undertake a development on the Sydney Metro Site (other than the SSTOM Works or the Temporary Works); or
  - (ii) derive revenue from activities other than as permitted by clause 59.7,
 OpCo may propose a Modification in accordance with clause 34, or otherwise seek the Principal's agreement to do so.

## 27. Naming and branding

### 27.1 Name

Sydney Metro – Western Sydney Airport will be called Sydney Metro – Western Sydney Airport or such other name as is notified by the Principal to OpCo.

### 27.2 Government logo and corporate image

- (a) OpCo must:
  - (i) display NSW Government or Transport for NSW branding, logo and corporate image and the name Sydney Metro – Western Sydney Airport (or such other name as is notified by the Principal to OpCo) on Sydney Metro – Western Sydney Airport in the locations and manner designated in sections 2.5.6, 2.5.7 and 2.5.8 of Particular Specification 02 (*Built Environment*); and
  - (ii) comply with all other branding requirements in the SSTOM Specification, including section 7.1.10.1 of the General Specification.
- (b) The Principal may at any time direct OpCo to display the NSW Government or Transport for NSW logo and corporate image and the name of Sydney Metro – Western Sydney Airport on Sydney Metro – Western Sydney Airport in areas not designated by the SSTOM Specification.
- (c) OpCo acknowledges and agrees that the State, the Principal, Transport for NSW or the Australian Government (as applicable) may change their respective branding, logos and corporate image (**New Branding and Logos**) at any time and the Principal may direct OpCo to display the New Branding and Logos on:
  - (i) Sydney Metro – Western Sydney Airport in those areas designated in the SSTOM Specification or as directed by the Principal under clause 27.2(b); or
  - (ii) any other item subject to OpCo's branding requirements in section 7.1.10.1 of the General Specification.
- (d) The Principal must compensate OpCo for all reasonable costs incurred in compliance with clause 27.2(b) and to the extent the Principal directs a requirement under clause 27.2(c) that exceeds the requirements in section 7.1.10.1 of the General Specification.

### **27.3 OpCo name/corporate image**

- (a) OpCo must display its livery, name/corporate image on Sydney Metro – Western Sydney Airport in the manner designated by the SSTOM Specification.
- (b) OpCo must not change its livery, name/corporate image without the prior written consent of the Principal.

### **27.4 Station names**

- (a) The Stations will be named as set out in section 2.5.8 of Particular Specification 02 (*Built Environment*).
- (b) OpCo acknowledges and agrees that:
  - (i) the Principal may change any Station name at any time;
  - (ii) in accordance with section 2.5.8.2 of Particular Specification 02 (*Built Environment*), the Principal will notify OpCo of the Station names for Sydney Metro – Western Sydney Airport formally approved by the Geographical Names Board of New South Wales on or before the date that is 12 months prior to the estimated date of First Passenger Service in the then current Delivery Program; and
  - (iii) if the Principal intends to change a Station name after the earlier of:
    - (A) the date that the Principal notifies OpCo of the formally approved Station names in accordance with clause 27.4(b)(ii); and
    - (B) the date that is 12 months prior to the estimated date of First Passenger Service in the then current Delivery Program,the Principal must direct OpCo to carry out a Modification pursuant to clause 33 to change a Station name.
- (c) Subject to clause 27.4(b)(iii), the Principal will not be liable upon any Claim by OpCo arising out of or in any way in connection with a change to any Station name.
- (d) The Principal will be entitled to retain all revenue received from any person in connection with any Station name.
- (e) OpCo:
  - (i) may use the Station names only for activities and purposes directly related to the SSTOM 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 27.4(a) and 27.4(b).

### **27.5 Wayfinding**

OpCo must comply with the requirements of section 2.5.7 of Particular Specification 02 (*Built Environment*) and all the other requirements of the SSTOM Specification in respect of wayfinding.

### **27.6 Other signage and displays**

Without limiting clauses 27.1 to 27.5, OpCo must display wayfinding, signage and other information, public art and branding at all times during the Term (including on hoardings, SSTOM Works, Trains, Stations and Station Precincts) as required in accordance with the SSTOM Specification.

## **28. Payment provisions**

### **28.1 Principal's payment obligation**

The Principal must pay OpCo:

- (a) each Capital Contribution in accordance with clauses 28.2 and 28.3;
- (b) the CDPD Amount in accordance with clause 28.4;

- (c) the Service Payments, the Final Completion Payment, any Pre-Agreed Option Construction Payment, the Early Handover Payment, the Delivery Phase Performance Incentive Payment and the CRS Principal Share Amount in accordance with clauses 28.5, 28.6 and 28.7; and
- (d) any other amounts which are payable by the Principal to OpCo under this deed subject to this clause 28.

## **28.2 Capital Contribution**

- (a) OpCo may give the Principal a claim for payment of a Capital Contribution:
  - (i) no later than 3 Business Days before each drawdown date for that month set out in the Capital Contribution Schedule;
  - (ii) in the form of a valid Tax Invoice; and
  - (iii) attaching:
    - (A) a copy of the Funding Notice (as defined in the Facility Agreement) given to the Agent in respect of the corresponding drawdown under the Construction Loan Facility scheduled for that drawdown date; and
    - (B) confirmation from the Agent addressed to the Principal that:
      - (I) it is not aware of any reason why the corresponding drawdown under the Construction Loan Facility scheduled for that drawdown date would not be made available; and
      - (II) the aggregate of the Certified D&C Payment Claims paid have met or exceeded the Capital Contribution Certified D&C Payment Threshold.
- (b) Subject to clause 28.2(c) the Principal must, by the later of 3 Business Days after receiving a payment claim under clause 28.2(a) and the relevant drawdown date, pay into the Principal Capital Contribution Account the amount claimed.
- (c) The Principal will only be obliged to deposit a Capital Contribution into the Principal Capital Contribution Account if:
  - (i) the aggregate of the Certified D&C Payment Claims paid to date have met or exceeded the Capital Contribution Certified D&C Payment Threshold as at the same date;
  - (ii) all amounts withdrawn from the Principal Capital Contribution Account have been applied towards payments due and payable to the D&C Contractor under the D&C Contract or transferred to the Construction Proceeds Account in order to make a GST payment to the Australian Tax Office;
  - (iii) no breach by the Agent, the Security Trustee or OpCo of clause 8 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 Principal Capital Contribution Account in accordance with clause 8.5 of the Financiers Tripartite Deed.
- (e) The Principal must not set off any amount due and payable under a Principal Project Agreement against a Capital Contribution.

## **28.3 Adjustments to the Capital Contribution Schedule**

- (a) Without prejudice to the Principal's obligations under clause 28.2, the Principal may, at any time, by giving no less than 5 days written notice to OpCo, amend the Capital Contribution Schedule by bringing forward the date for any payment which remains to be made in respect of the Capital Contributions as at the date of that notice.
- (b) If the Principal gives a notice under clause 28.3(a), the Capital Contribution Schedule will be deemed to be amended to accommodate any changes to the dates for or amounts of

payment by the Principal in respect of a Capital Contribution which are notified by the Principal under clause 28.3(a).

- (c) At any time, OpCo may request the Principal, at the Principal's discretion, gives a notice under clause 28.3(a) to effect an amendment to the Capital Contribution Schedule that accommodates a change to the Delivery Program proposed by OpCo to achieve Completion earlier than the Date for Completion in accordance with clauses 20.16 or 20.17.
- (d) **(Adjustments to Capital Contribution amounts):** Immediately after each date on which the Principal is scheduled to make a payment in respect of a Capital Contribution pursuant to the Capital Contribution Schedule (a **Monthly CC Payment Date**), the Capital Contribution Schedule will be automatically amended by increasing the amount of the next scheduled Capital Contribution payment specified in the Capital Contribution Schedule by the amount (if any) by which:
  - (i) the amount of the Capital Contribution scheduled under the Capital Contribution Schedule to have been made on that Monthly CC Payment Date;  
was greater than:
  - (ii) the amount paid by the Principal in respect of the Capital Contribution on that Monthly CC Payment Date (or, if no such payment was made on that Monthly CC Payment Date, zero).

#### **28.4 Conditional Debt Pay Down**

- (a) **(Payment of CDPD Amount):**
  - (i) Subject to this clause 28.4, the Principal must, in accordance with the Securitisation Agreement and the Payment Directions Deed, pay the CDPD Amount on the CDPD Payment Date to Finance Co to repurchase the CDPD Receivables.
  - (ii) OpCo must procure Finance Co to apply the CDPD Amount in partial repayment of the then outstanding Project Debt and ensure that the repaid amount is not available to be redrawn at any time under the Debt Financing Documents.
- (b) **(CDPD Conditions):** The Principal'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 47.1(t)) 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 47.1(t)) 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 during:
    - (A) the Initial Defects Period and the First Operations Period, an FIW Defect;  
or
    - (B) the Second Operations Period, an FIW Structural Defect,  
in respect of which the Principal has:
      - (C) not provided an undertaking pursuant to clause 17.3(d)(i);
      - (D) provided an undertaking pursuant to clause 17.3(d)(i) and has not rectified;  
or
      - (E) not directed a Modification as referred to in clause 17.3(d)(ii),

- will not exceed [REDACTED];
- (vii) the aggregate cost of rectification of all subsisting Defects, other than during:
- (A) the Initial Defects Period and the First Operations Period, an FIW Defect; or
  - (B) the Second Operations Period, an FIW Structural Defect,
- in respect of which the Principal has:
- (C) not provided an undertaking pursuant to clause 17.3(d)(i);
  - (D) provided an undertaking pursuant to clause 17.3(d)(i) and has not rectified; or
  - (E) not directed a Modification as referred to in clause 17.3(d)(ii),
- will not exceed [REDACTED]; and
- (viii) no amounts have been retained from the Service Payment pursuant to clause 24.8(e) and not subsequently released (other than any interest retained under clause 24.8(f)(ii)).
- (c) OpCo acknowledges and agrees that, for the purposes of determining whether the CDPD Condition in clause 28.4(b)(vi) has been achieved, Defects which are all of a similar type or affect the same aspect or the same area of Sydney Metro – Western Sydney Airport or are otherwise related to each other will be regarded as a single Defect.
- (d) **(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 the Principal'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 the Principal), OpCo must give the Principal's Representative:
    - (A) a written notice stating that it considers that all of the CDPD Conditions have been satisfied (or waived by the Principal); and
    - (B) an updated Financial Model which is adjusted only for inputting, in accordance with Schedule 29 (*Amendments to Financial Model on CDPD Payment Date*), the timing for payment and amount of the CDPD Amount and any other matters agreed with the Principal.
  - (iv) Within 20 Business Days after receiving a notice and an updated Financial Model under clause 28.4(d)(iii), the Principal's Representative will give OpCo:
    - (A) written notice that the Principal's Representative agrees that all of the CDPD Conditions have been satisfied (or waived by the Principal) (**CDPD Satisfaction Notice**); or
    - (B) written notice that the Principal's Representative does not agree that all of the CDPD Conditions have been satisfied (or waived by the Principal) and the reasons for the Principal's Representative's determination.
  - (v) If the Principal's Representative gives a notice under clause 28.4(d)(iv)(B), OpCo must continue to use its best endeavours to procure the satisfaction of the outstanding CDPD Conditions and this clause 28.4(d) will re-apply.
  - (vi) If the Principal's Representative does not give OpCo a written notice in accordance with clauses 28.4(d)(iv)(A) or 28.4(d)(iv)(B), the Principal's

Representative will be deemed to have given OpCo a written notice under clause 28.4(d)(iv)(B).

- (vii) A breach of clause 28.4(d)(i) by OpCo will not, of itself, be an OpCo Event of Default or an OpCo Termination Event.

(e) **(CDPD Defects Assessor):**

- (i) For the purposes of the CDPD Conditions in clauses 28.4(b)(vi) and 28.4(b)(vii), if the Principal's Representative:

- (A) gives OpCo a notice in accordance with clause 28.4(d)(iv)(B); and
- (B) does not agree with OpCo's assessment of the cost of rectifying subsisting Defects,

the Principal's Representative may refer the assessment to an independent expert **(CDPD Defects Assessor):**

- (C) to be appointed jointly by the Principal and OpCo following agreement with OpCo as to the identity of the CDPD Defects Assessor; or
  - (D) failing agreement within 10 Business Days of a notice in writing from the Principal identifying the proposed independent expert, to be appointed by the Principal following nomination of the independent expert by the President of Engineers Australia.
- (ii) The CDPD Defects Assessor will inspect and assess the subsisting Defects on Sydney Metro – Western Sydney Airport and notify the Principal and OpCo in writing of its assessment of the costs of rectifying the subsisting Defects on Sydney Metro – Western Sydney Airport.
  - (iii) Any assessment by the CDPD Defects Assessor's under clause 28.4(e)(ii) will be deemed to be the costs of rectifying the subsisting Defects for the purposes of the CDPD Conditions in clauses 28.4(b)(vi) and 28.4(b)(vii).
  - (iv) OpCo must, at its cost, co-operate with the CDPD Defects Assessor and provide the CDPD Defects Assessor with any reasonable assistance required by the CDPD Defects Assessor.
  - (v) The Principal's Representative must use its reasonable endeavours to procure that the CDPD Defects Assessor minimises any disruption caused to OpCo's Activities by the assessment.
  - (vi) The Principal will be responsible for the costs incurred by the CDPD Defects Assessor.
  - (vii) An assessment by the CDPD Defects Assessor:
    - (A) is limited to the assessment of the costs of rectifying the subsisting Defects on Sydney Metro – Western Sydney Airport and does not extend to the existence of Defects generally or OpCo's compliance with its obligations under this deed; and
    - (B) will not prejudice any rights or powers of the Principal under this deed or otherwise according to Law (including in relation to Defects).

(f) **(Waiver of CDPD Conditions):**

- (i) The Principal may waive one or more of the CDPD Conditions (with or without conditions) in its absolute discretion by giving written notice to OpCo.
- (ii) Any waiver by the Principal of a CDPD Condition does not constitute a waiver by the Principal 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) The Principal may specify the CDPD Payment Date in the notice under clause 28.4(f)(i).



- (g) **(Adjustments to the Financial Model):** On the CDPD Payment Date, OpCo will provide to the Principal an updated Financial Model from the version provided under clause 28.4(d)(iii) which is only adjusted by inputting, in accordance with Schedule 29 (*Amendments to Financial Model on CDPD Payment Date*), the amount and timing for payment of the CDPD Amount and any other matters agreed with the Principal.
- (h) **(No approval):** The payment of the CDPD Amount does not constitute approval by the Principal of the completion or acceptance of the Delivery Activities in accordance with the Principal Project Agreements, or evidence that the SSTOM Works are fit for purpose or constitute evidence that all or any other obligations of OpCo under the Principal Project Agreements have been satisfied.

## 28.5 Payment claims for Service Payments and other amounts

- (a) OpCo must give the Principal's Representative claims for payment of the Final Completion Payment, the Service Payments, any Pre-Agreed Option Construction Payment, the Early Handover Payment, any CRS Principal Share Amount, any CRS Principal Completion Amount, the Delivery Phase Performance Incentive Payment and any other amounts payable by the Principal to OpCo (other than the Capital Contribution or the CDPD Amount):
  - (i) in the case of a claim for payment of:
    - (A) the Final Completion Payment or any CRS Principal Completion Amount, on or after the Date of Final Completion;
    - (B) a Service Payment, within 5 Business Days after the end of each month;
    - (C) any Pre-Agreed Option Construction Payment, any Early Handover Payment, any CRS Principal Share Amount or any other amounts payable by the Principal, within 5 Business Days after the end of each month; and
    - (D) the Delivery Phase Performance Incentive Payment, after the determination of the Final DPPI Assessment in accordance with Schedule 9 (*Delivery Phase Performance Incentive*);
  - (ii) in the case of a claim for a Service Payment, in the format set out in Annexure C of Schedule 2 (*Service Payment calculation*) or such other format as the Principal's Representative reasonably requires;
  - (iii) which are valid Tax Invoices for any Taxable Supplies to which the payment relates;
  - (iv) which include:
    - (A) in the case of a claim for payment of a Service Payment, the Monthly Service Payment Report required under clause 28.15(a)(iv); and
    - (B) any other evidence of the amounts claimed reasonably required by the Principal's Representative; and
  - (v) which are based on the Schedule of Rates, to the extent relevant.
- (b) OpCo cannot include in any payment claim under this clause 28.5, a Claim which is barred by clause 64.8.
- (c) Despite any other provisions of this deed to the contrary, the amount of any progress claim to which OpCo is entitled in relation to the Pre-Agreed Option Construction Payment, CRS Principal Share Amount or any other amounts payable by the Principal and the amount to be allowed by the Principal's Representative in any payment schedule issued under clause 28.6 as the amount payable to OpCo arising out of or in any way in connection with a payment claim made under this clause 28.5 will not include the following amounts:
  - (i) any amount which this deed provides cannot be claimed or is not payable because of the failure by OpCo to take any action (including to give any notice to the Principal or the Principal's Representative);

- (ii) any amount which this deed provides is not payable until certain events have occurred or conditions have been satisfied, to the extent those events have not occurred or those conditions have not been satisfied;
- (iii) any amount in respect of which the obligation of the Principal to make payment has been suspended under this deed;
- (iv) any amount in respect of which OpCo has failed to provide supporting information as required by this clause 28; or
- (v) any amount which has already been paid or which is otherwise not claimed in accordance with this deed.

#### **28.6 Payment schedule**

- (a) Within 6 Business Days of receiving a payment claim which complies with the requirements of clause 28.5, the Principal must issue a payment schedule which sets out the Principal'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 the Principal 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.

#### **28.7 Payment**

- (a) Subject to clauses 28.13 and 28.14, the Principal must within 14 Business Days of receiving a payment claim which complies with the requirements of clause 28.5, pay OpCo the amount as set out as then payable in the payment schedule, less any amounts disclosed as unpaid under clauses 28.14(a)(i)(A) or 28.14(a)(i)(B).
- (b) The Principal is not obliged to pay any amounts disclosed as unpaid under clauses 28.14(a)(i)(A) or 28.14(a)(i)(B) until OpCo produces evidence that the amounts have been paid to the relevant persons.

#### **28.8 Net amount due from OpCo to the Principal**

Where a payment schedule states that a net amount is due from OpCo to the Principal, OpCo must (at the Principal's election):

- (a) pay that amount to the Principal within 20 Business Days of being requested by the Principal's Representative to do so; or
- (b) otherwise carry forward the amount and set it off against the next payment claim.

#### **28.9 Refund**

If:

- (a) the Principal pays OpCo any amount under this deed; and
- (b) it is subsequently agreed or determined for any reason that OpCo was not entitled to that payment under this deed,

without prejudice to the Principal's rights under clause 28.13, OpCo must immediately refund to the Principal that payment plus interest in accordance with clause 28.12 from the day the payment was paid to (and including) the date of repayment under this clause 28.9.

#### **28.10 Payment on account**

Neither the issue of a payment schedule under clause 28.6, nor the making of any payment pursuant to any such payment schedule, will:

- (a) constitute the approval of any work or other matter or prejudice any Claim by the Principal or the Principal's Representative;
- (b) constitute:
  - (i) evidence of the value of any work;
  - (ii) an admission of liability; or
  - (iii) evidence that the works or services to which the corresponding payment claim made under clause 28.5 relates have been executed or completed in accordance with this deed; or
- (c) prejudice the right of either party to dispute under clause 63 whether any amount certified as payable in a payment schedule is the amount properly due and payable (and on determination, whether under clause 63 or as otherwise agreed, of the amount properly due and payable, the Principal or OpCo, as the case may be, will be liable to pay the difference between the amount of such payment and the amount which is properly due and payable),

and any payments made pursuant to a payment schedule are payments on account only.

### **28.11 Correction of payment schedules**

The Principal's Representative may at any time correct, modify or amend any payment schedule.

### **28.12 Interest**

Any late payment of amounts that are properly due and payable by either the Principal 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 the Principal under clause 28.13(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.

### **28.13 Set off**

- (a) Other than amounts referred to in clauses 28.2(e) and 28.4(a), the Principal will be entitled to set-off or deduct from any amount due from the Principal to OpCo under a Principal Project Agreement:
  - (i) any debt or other monies due from any member of the [REDACTED] to the Principal;
  - (ii) any claim to money which the Principal makes in good faith against any [REDACTED] whether for damages or otherwise and whether or not the amount is disputed; and
  - (iii) the liabilities referred to in clause 44.4(b),

whether under a Project Agreement or otherwise at Law relating to the SSTOM PPP.
- (b) OpCo must make all payments due to the Principal under the Principal Project Agreements without set-off or counterclaim, and without any deduction or withholding for or on account of any present or future Tax, unless OpCo is compelled by Law to make such a deduction or withholding.
- (c) If OpCo is compelled by Law to make a deduction or withholding for the benefit of an Authority, it must:
  - (i) remit the deducted or withheld amount to the relevant Authority within the time required by Law; and
  - (ii) provide to the Principal all information and documentation relating to that deduction or withholding, including any information or documentation required to obtain a credit for or repayment of the deducted or withheld amount from an Authority.
- (d) Nothing in this clause 28.13 affects the Principal's right to recover from OpCo the whole of the debt or any balance that remains owing after any set-off.

- (e) Without limiting this clause 28.13, OpCo acknowledges and agrees the Principal's right to set off the CRS OpCo Completion Amount against the first Service Payment (and, to the extent necessary, the immediately following Service Payments) in accordance with clause 4.2(c) of Schedule 8 (*Cost Risk Sharing*).

#### **28.14 Payment of employees and subcontractors**

- (a) OpCo is not entitled to give the Principal a payment claim under clause 28.5 unless OpCo has provided the Principal's Representative with:
  - (i) a statutory declaration substantially in the form set out in Schedule 35 (*Statutory Declaration*), together with any supporting evidence which may be reasonably required by the Principal'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):
    - (A) all employees of OpCo have at the date of the payment claim been paid all moneys due and payable to them; and
    - (B) all Core Contractors have been paid all moneys due and payable to them in respect of OpCo's Activities;
  - (ii) a statutory declaration from each Core Contractor which satisfies the requirements of clause 28.14(a)(i) in relation to the employees of the Core Contractor and subcontractors of the Core Contractor that are Significant Contractors;
  - (iii) 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 36 (*Subcontractor's Statement*), covering the period covered by the relevant payment claim; and
  - (iv) copies of all relevant certificates of currency in respect of workers compensation insurance which OpCo has in place in connection with OpCo's Activities.
- (b) Clauses 28.14(a)(iii) and 28.14(a)(iv) will only apply in respect of those parts of OpCo's Activities carried out in New South Wales.
- (c) If an OpCo Contractor has become entitled to suspend work under a Subcontract in accordance with the SOP Act because of a failure by OpCo or any OpCo Contractor to pay moneys due and payable to that OpCo Contractor, the Principal may pay to the OpCo Contractor the amount owing to the OpCo Contractor in connection with that work, and any amount so paid by the Principal will be a debt due and payable by OpCo to the Principal. Where practicable, the Principal will provide prior written notice to OpCo prior to paying the relevant OpCo Contractor.
- (d) If any amount is:
  - (i) certified as payable; or
  - (ii) otherwise due and payable (and not disputed),to an OpCo Contractor under a Subcontract, and OpCo or the relevant OpCo Contractor does not pay such amount to that OpCo Contractor in accordance with that Subcontract, then the Principal may pay such amount to that OpCo Contractor provided it has given OpCo 10 Business Days' notice of its intention to do so, and any amount so paid by the Principal to that OpCo Contractor will be a debt due and payable by OpCo to the Principal.

#### **28.15 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 section 11.7 of Particular Specification 11 (*Operations and Customer Service*);
  - (iii) enable the Principal'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 28.5, provide the Monthly Service Payment Report to the Principal'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 the Principal's Representative must:
  - (i) include sufficient information to enable the Principal'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.

## 28.16 SOP Act

- (a) To the extent that this deed is not excluded from the operation of the SOP Act, this clause 28.16 will apply.
- (b) Expressions defined or used in the SOP Act have the same meaning for the purposes of this clause 28.16 (unless the context otherwise requires).
- (c) OpCo must ensure that a copy of any written communication it delivers or arranges to deliver to the Principal of whatever nature in relation to the SOP Act, including a payment claim under the SOP Act, is provided to the Principal's Representative at the same time.
- (d) In responding to OpCo under the SOP Act, the Principal's Representative also acts as the agent of the Principal.
- (e) If, within the time allowed by the SOP Act for the service of a payment schedule by the Principal, the Principal does not:
  - (i) serve the payment schedule itself; or
  - (ii) notify OpCo that the Principal's Representative does not have authority from the Principal to issue the payment schedule on its behalf,
 then a payment schedule issued by the Principal's Representative under clause 28 which relates to the period relevant to the payment schedule will be taken to be the payment schedule for the purpose of the SOP Act (whether or not it is expressly stated to be a payment schedule).
- (f) Without limiting paragraph (d), the Principal authorises the Principal's Representative to issue payment schedules on its behalf (without affecting the Principal's right to issue a payment schedule itself).
- (g) For the purposes of clause 28, the amount of the progress payment to which OpCo is entitled under clause 28 will be the amount certified by the Principal's Representative in a payment schedule under clause 28.6, less any amount the Principal may elect to retain, deduct, withhold or set off in accordance with this deed.
- (h) OpCo agrees that:
  - (i) the dates prescribed by clause 28.5(a)(i)(C) as the date on which OpCo is entitled to make a payment claim is, for the purposes of the SOP Act (including section 8(1B) of the SOP Act), the date on which a payment claim may be served; and
  - (ii) a payment claim is not a document notifying an obligation on the Principal to make any payment and the Principal will have no liability to make a payment of any amount in respect of a progress claim unless the amount has been included in a

payment schedule issued by the Principal's Representative in accordance with clause 28.6.

- (i) Nothing in clause 28 or this clause 28.16 will be construed to:
  - (i) make any act or omission of the Principal in contravention of the SOP Act (including failure to pay an amount becoming due under the SOP Act), a breach of this deed (unless the Principal would have been in breach of this deed if the SOP Act had no application); or
  - (ii) subject to paragraph (i), give to OpCo rights under this deed which extend or are in addition to rights given to OpCo by the SOP Act in respect of any act or omission of the Principal in contravention of the SOP Act.
- (j) If OpCo suspends the whole or part of OpCo's Activities pursuant to the SOP Act, the Principal will not be liable for and OpCo is not entitled to Claim any Loss suffered or incurred by OpCo as a result of the suspension.
- (k) OpCo must indemnify and keep indemnified the Principal against all Loss suffered or incurred by the Principal arising out of:
  - (i) a suspension by an OpCo Contractor of work which forms part of OpCo's Activities pursuant to the SOP Act; and
  - (ii) a failure by OpCo to comply with its obligations under clause 28.16(c).
- (l) OpCo agrees that for the purposes of section 17(3) of the SOP Act:
  - (i) it has irrevocably chosen the Resolution Institute as the authorised nominating authority to which any adjudication application under the SOP Act in respect of the OpCo's Activities is to be made; and
  - (ii) OpCo must make any adjudication application under the SOP Act to that authorised nominating authority (unless the Principal in its absolute discretion consents to any alternative nominating authority).
- (m) When an adjudication occurs under the SOP Act and the Principal has paid an adjudicated amount to OpCo:
  - (i) the amount will be taken into account by the Principal's Representative in issuing a payment schedule under clause 28.6;
  - (ii) if it is subsequently determined pursuant to clause 28 that OpCo was not entitled to payment of some or all of the adjudicated amount that was paid by the Principal (**overpayment**), the overpayment will be a debt due and payable by OpCo to the Principal which OpCo must pay to the Principal upon demand and in respect of which OpCo is not entitled to claim or exercise any set-off, counterclaim, deduction or similar right of defence;
  - (iii) if the adjudicator's determination is quashed, overturned or declared to be void, the adjudicated amount then becomes a debt due and payable by OpCo to the Principal upon demand and in respect of which OpCo is not entitled to claim or exercise any set-off, counterclaim, deduction or similar right of defence; and
  - (iv) the Principal's Representative:
    - (A) is not bound by the adjudication determination;
    - (B) may reassess the value of the work that was valued by the adjudicator; and
    - (C) may, if it disagrees with the adjudication determination, express its own valuation in any payment schedule.
- (n) Without limiting clause 28.13, the Principal may withhold any amount that is less than or equal to the amount claimed to be owed under a payment withholding request served on the Principal pursuant to Division 2A of the SOP Act.
- (o) If the Principal withholds from money otherwise due to OpCo any amount that is less than or equal to the amount claimed to be owed under a payment withholding request served on the Principal pursuant to Division 2A of the SOP Act, then:

- (i) the Principal may plead and rely upon Division 2A of the SOP Act as a defence to any claim for the money by OpCo from the Principal; and
- (ii) the period during which the Principal retains money due to OpCo pursuant to an obligation under Division 2A of the SOP Act will not be taken into account for the purpose of determining:
  - (A) any period for which money owed by the Principal to OpCo has been unpaid; and
  - (B) the date by which payment of money owed by the Principal to OpCo must be made.
- (p) OpCo agrees not to commence proceedings to recover any amount withheld by the Principal pursuant to a payment withholding request served on the Principal pursuant to Division 2A of the SOP Act.
- (q) Any amount paid by the Principal pursuant to section 26C of the SOP Act will be a debt due from OpCo to the Principal.
- (r) If the Principal withholds money pursuant to a payment withholding request served on the Principal pursuant to Division 2A of the SOP Act and OpCo:
  - (i) pays the amount claimed to be due under the adjudication application to which the payment withholding claim relates; or
  - (ii) becomes aware that the adjudication application to which the payment withholding claim relates has been withdrawn,

then OpCo must so notify the Principal within 5 Business Days (SOP) of the occurrence of the event in clauses 28.16(r)(i) or 28.16(r)(ii) above (as applicable) by providing to the Principal a statement in writing in the form of a statutory declaration together with such other evidence as the Principal may require evidencing that the amount has been paid or the adjudication application has been withdrawn (as the case may be).

#### **28.17 Cost Risk Sharing**

- (a) The parties must comply with their respective obligations in Schedule 8 (*Cost Risk Sharing*).
- (b) Subject to the terms of Schedule 8 (*Cost Risk Sharing*):
  - (i) the Principal will pay to OpCo each CRS Principal Share Amount;
  - (ii) OpCo will pay to the Principal the Net Gain Share Amount (if that amount is positive);
  - (iii) OpCo will pay to the Principal the Net Pain Share Amount (if that amount is positive);
  - (iv) the Principal will pay to OpCo the absolute value of the Net Gain Share Amount (if that amount is negative); and
  - (v) the Principal will pay to OpCo the absolute value of the Net Pain Share Amount (if that amount is negative),

in the manner provided for in clauses 3 and 4 of Schedule 8 (*Cost Risk Sharing*) and subject to and in accordance with this clause 28.

#### **28.18 Delivery Phase Performance Incentive**

The parties agree:

- (a) OpCo's performance during the Delivery Phase will be assessed by the Principal in accordance with Schedule 9 (*Delivery Phase Performance Incentive*) to determine OpCo's entitlement to the Delivery Phase Performance Incentive; and
- (b) to comply with their relevant obligations set out in Schedule 9 (*Delivery Phase Performance Incentive*) with respect to the review and assessment of OpCo's performance and the payment of the Delivery Phase Performance Incentive.

## 28A. 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 12.2, 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 28A(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 29 (*Amendments to Financial model on CDPD Payment Date*).

## 28B. Securitised Licence Structure

### 28B.1 Construction Payment B

- (a) Subject to clause 28B.1(b), in consideration of the execution of the SSTOM Works and the Temporary Works and the performance of the other Delivery Activities by OpCo, the Principal agrees to pay to OpCo (or as OpCo directs) the Completion Price by paying each Construction Payment B on each Construction Payment B Date.
- (b) The Principal has no obligation to pay a Construction Payment B unless, and its obligation is limited to the extent that, the Principal receives the corresponding Receivables Purchase Payment for the Initial Receivables from Finance Co under the Securitisation Agreement and in accordance with the Payment Directions Deed.
- (c) The amount of the Completion Price (and the corresponding Receivables Purchase Price for the Initial Receivables) 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 the Principal 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 the Completion Price or the corresponding Receivables Purchase Price for the Initial Receivables will affect the limitation referred to in clause 28B.1(b).
- (d) Notwithstanding any other clause of any Principal Project Agreement, the Principal may not set off any amount due and payable by OpCo or Finance Co to the Principal under the Principal Project Agreements against any Construction Payment B.
- (e) If the Completion Price (and the corresponding Receivables Purchase Payment for the Initial Receivables) are adjusted in accordance with clause 28B.1(c), the Principal and OpCo agree that the Licence Payments payable under this deed will also be adjusted in accordance with clause 28A(b).
- (f) To the extent it has not already passed, all right, title and interest of OpCo in the works to which the Receivables Purchase Payment for the Initial Receivables applies passes to the Principal on payment of the relevant Receivables Purchase Payment by the Principal in accordance with clause 28B.1(a).
- (g) Subject to clause 28B.4, the Principal acknowledges that, if a Receivables Purchase Payment for the Initial Receivables is not received in full or at all (or only part of that Receivables Purchase Payment for the Initial Receivables is received) in each case from Finance Co under the Securitisation Agreement, the Principal's only right or remedy in



respect of such non-payment or part payment is the relief from payment of the whole or part of the corresponding Construction Payment B under clause 28B.1(b) until such time as the relevant payment is received in accordance with the Payment Directions Deed.

## **28B.2 Securitised NFI Payment**

- (a) Subject to clause 28B.2(b), if an NFI Event occurs where the Net Financial Impact is agreed or determined to apply after the Date of Completion and the Principal 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, the Principal must pay the Securitised NFI Event Payment to OpCo (or as OpCo directs) on the Additional Purchase Date.
- (b) The Principal has no obligation to pay a Securitised NFI Event Payment unless, and its obligation is limited to the extent that, it receives the payment of the corresponding Receivables Purchase Payment for the relevant Additional Receivables from Finance Co under the Securitisation Agreement and in accordance with the Payment Directions Deed in relation to that NFI Event.
- (c) Notwithstanding any other clause of any Principal Project Agreement, the Principal may not set off any amount due and payable by OpCo or Finance Co to the Principal under the Principal Project Agreements against any Securitised NFI Event Payment.
- (d) If a Securitised NFI Event Payment is required to be paid under clause 28B.2(a), the Principal and OpCo agree that the Licence Payments payable under this deed will be adjusted in accordance with clause 28A(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 the Principal on payment of the relevant Securitised NFI Event Payment by the Principal in accordance with clause 28B.2(a).
- (f) Subject to clause 28B.4, the Principal acknowledges that, if the Receivables Purchase Payment in respect of the relevant Additional Receivable is not received in full or at all from Finance Co under the Securitisation Agreement, the Principal's only right or remedy in respect of such non-payment or part payment is the relief from payment of the whole or part of the corresponding Securitised NFI Event Payment under clause 28B.2(b) until such time as the relevant payment is received.

## **28B.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 Principal Risk Allocation.
- (b) OpCo undertakes not to make any Claim inconsistent with the acknowledgement in clause 28B.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 the Principal reasonably believes that the Securitised Licence Structure results or is likely to result in an Increased Principal 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 Principal Risk Allocation.
- (d) OpCo agrees to do anything reasonably requested by the Principal in a notice given by the Principal under clause 28B.3(c) or otherwise reasonably necessary to modify the Principal Project Agreements and Securitised Licence Structure to ensure there is no Increased Principal Risk Allocation.
- (e) OpCo acknowledges and agrees that:
  - (i) damages may not be an adequate remedy for the Principal for any failure by OpCo to comply with the undertakings in this clause 28B.3; and
  - (ii) if there is a breach or purported breach by OpCo of its obligations in this clause 28B.3, the Principal may seek and is entitled to injunctive or declaratory relief.
- (f) OpCo indemnifies the Principal against:

- (i) any Loss incurred by the Principal in connection with any Increased Principal Risk Allocation to the extent that it is not removed or remedied by changes to the Principal Project Agreements and Securitised Licence Structure made in accordance with this clause 28B.3; and
- (ii) any Claim brought against the Principal by Finance Co, OpCo or any of its or their respective Related Bodies Corporate which is inconsistent with the acknowledgment in clause 28B.3(a).

#### **28B.4 GST on Construction Payment B and Securitised NFI Event Payment**

Notwithstanding any other provision of clause 68.2:

- (a) the Principal 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 the Principal 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 the Principal's account (running balance account) or being refunded to the Principal in the relevant period);
- (b) the Principal 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 the Principal 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, the Principal 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).

## **29. Compensation Events**

### **29.1 Entitlement to claim compensation**

- (a) Subject to clause 6 of Schedule 8 (*Cost Risk Sharing*), if a Compensation Event causes OpCo to incur Loss, OpCo may claim compensation in accordance with this clause 29.
- (b) To the extent that any Claim for compensation under this clause 29 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 if, and only in respect of the number of days for which, it has been granted an extension of time to the Date for Completion pursuant to:
  - (i) clause 20.10(a); or
  - (ii) clause 20.13,
 due to a Compensation Event.

### **29.2 Claim for compensation**

Subject to clause 64.9, 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 the Principal'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 29.2(a), give the Principal'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 29.1(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 has caused a Net Financial Impact;
  - (v) details of the steps which OpCo has taken to mitigate the effects of the relevant Compensation Event; and
  - (vi) without limiting clauses 29.2(b)(i) to 29.2(b)(v), where the Compensation Event is a Pandemic Compensation Event:
    - (A) if pursuant to clause 29.1(b) OpCo is entitled to include in its claim a delay component, details of whether OpCo can, or is likely to be able to, mitigate any Prolongation Costs and Financing Delay Costs (as those terms are defined in Schedule 6 (*Net Financial Impact*)) likely to be incurred by OpCo by incurring additional Base Costs (**Additional Mitigation Costs**), including:
      - (I) details of the steps OpCo proposes to take; and
      - (II) OpCo's estimate of the reasonable Additional Mitigation Costs to be incurred by OpCo in carrying out the additional mitigation activities on an Open Book Basis; and
    - (B) an updated Pandemic Management Plan addressing the impacts of the Pandemic Compensation Event.

### 29.3 Continuing Compensation Events

If the Compensation Event (or its effects) are continuing, OpCo must:

- (a) continue to give the information required by clause 29.2(b) every 40 Business Days after the notice under clause 29.2(b) was provided to the Principal'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.

### 29.4 Condition precedent to compensation

- (a) It is a condition precedent to OpCo's entitlement to compensation that:
  - (i) a Compensation Event has occurred which has caused OpCo to incur a Loss;
  - (ii) OpCo has complied with the requirements of clauses 29.2, 29.3 and 64.9(e); 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:
    - (A) it has been granted an extension of time to the Date for Completion under clause 20.10(a); or
    - (B) it has been granted an extension of time to Date for Completion under clause 20.13.
- (b) Notwithstanding clause 20.10(a), OpCo's entitlement to compensation for any Loss that it has incurred and which arises out of, or in connection with, any delay to Completion due to a Compensation Event will be assessed by reference to the length of:
  - (i) the extension of time granted by the Principal's Representative under clause 20.10; or

- (ii) any unilateral extension to the Date for Completion notified by the Principal's Representative under clause 20.13.
- (c) If OpCo fails to comply with the requirements of clauses 29.2 and, if applicable, 29.3 within the periods required by those clauses:
  - (i) the Principal 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 the Principal, arising out of or in connection with the relevant Compensation Event.

#### **29.5 Compensation for Net Financial Impact**

If the conditions precedent in clause 29.4(a) have been satisfied, the Principal must (subject to Schedule 8 (*Cost Risk Sharing*)) compensate OpCo for the Net Financial Impact of the Compensation Event.

#### **29.6 Calculation and payment of Net Financial Impact**

- (a) The Net Financial Impact of a Compensation Event will be calculated and paid in accordance with Schedule 6 (*Net Financial Impact*), subject to Schedule 8 (*Cost Risk Sharing*).
- (b) Subject to clause 29.7, if the Compensation Event is a Pandemic Compensation Event, the Net Financial Impact will include the Additional Mitigation Costs only to the extent the Principal's Representative (in its absolute discretion) directs OpCo to carry out the additional mitigation activities referred to in clause 29.2(b)(vi)(A).

#### **29.7 Mitigation**

- (a) OpCo must use all reasonable endeavours and take all reasonable steps which a prudent, competent and experienced contractor would have taken to mitigate the effects of any Compensation Event (including by putting in place temporary measures reasonably acceptable to the Principal's Representative).
- (b) Without limiting clause 29.7(a), OpCo must use all reasonable endeavours to:
  - (i) avoid or minimise the duration and consequences of any delay caused by a Compensation Event;
  - (ii) minimise any incremental costs or loss of revenue incurred or suffered as a result of a Compensation Event; and
  - (iii) maximise any cost savings or additional revenue derived as a result of a Compensation Event.
- (c) OpCo's entitlement to compensation will be reduced to the extent that:
  - (i) OpCo fails to comply with its obligations under this clause 29.7; and
  - (ii) in the case of a Compensation Event which is due to a Pandemic Change in Law or Pandemic Compensation Event, OpCo has failed to implement a Pandemic Management Plan.

#### **29.8 Non-compliance**

OpCo's entitlement to compensation will be reduced to:

- (a) exclude any incremental costs or loss of revenue which would not have been incurred or suffered; and
- (b) include any cost savings or additional revenue which would have been derived, had OpCo complied with its obligations under the Project Agreements.

#### **29.9 OpCo conduct**

OpCo's entitlement to compensation will be reduced to:

- (a) exclude any incremental costs or loss of revenue which would not have been incurred or suffered; and
  - (b) include any cost savings or additional revenue which would have been derived,
- to the extent that the Compensation Event occurs or arises as a result of any act or omission of OpCo or an OpCo Contractor (other than to the extent any such act or omission is a Permitted Act).

#### **29.10 Limitation of liability**

- (a) Except as provided for in clause 20 and this clause 29, the Principal 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 the Principal.
- (b) The parties agree that OpCo's entitlements under clause 20 and this clause 29 are a limitation on the Principal's liability to OpCo for any breach of this deed by the Principal and that OpCo will not be entitled to make, nor will the Principal be liable upon, any Claim in these circumstances other than in respect of the matters for which the Principal may be liable under clause 20 and this clause 29.
- (c) Nothing in this clause 29.10 shall affect or limit OpCo's rights or entitlements under clause 30 or OpCo's right to terminate this deed.

### **30. Relief Events**

#### **30.1 Time**

This clause 30 will not apply to any claim for delay or an extension of time. Any claim for delay or an extension of time will be dealt with in accordance with clause 20.

#### **30.2 Notification**

Subject to clause 64.9, if a Relief Event occurs, OpCo must:

- (a) within 25 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 25 Business Days after Financial Close), give to the Principal's Representative a written notice stating that a Relief Event has occurred; and
- (b) within 10 Business Days of giving the notice under clause 30.2(a), give the Principal'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 is, or may reasonably be expected to become, a Force Majeure Event.

#### **30.3 Continuing Relief Event**

- (a) If the Relief Event (or its effects) is continuing, OpCo must continue to give the information required by clause 30.2(b) every 40 Business Days after the notice under clause 30.2(b) was provided to the Principal's Representative until after the Relief Event (or its effects) have ceased.
- (b) 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 25 Business Days after the occurrence of the Force Majeure Event or the date of the next notice given by OpCo under clause 30.3(a) after the occurrence of the Force Majeure Event, notify the Principal of the occurrence of the Force Majeure Event.

#### **30.4 Condition precedent to relief**

- (a) It is a condition precedent to OpCo's entitlement to relief from its obligations under clause 30.5 that OpCo has complied with the requirements of clauses 30.2, 30.3 and 64.9(e) within the periods required by those clauses.
- (b) If OpCo fails to comply with the requirements of clauses 30.2 and 30.3:
  - (i) the Principal 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 30 against the Principal,arising out of or in connection with the relevant Relief Event.

#### **30.5 Relief from obligations**

If:

- (a) a Relief Event occurs; and
- (b) the condition precedent in clause 30.4(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.

#### **30.6 Mitigation**

- (a) OpCo must use all reasonable endeavours and take all reasonable steps which a prudent, competent and experienced contractor would have taken to mitigate the effects of any Relief Event (including by putting in place temporary measures reasonably acceptable to the Principal's Representative).
- (b) OpCo's entitlement to relief will be reduced to the extent that:
  - (i) OpCo fails to comply with its obligations under this clause 30.6; and
  - (ii) in the case of a Relief Event which is due to a Pandemic Change in Law or Pandemic Compensation Event, OpCo has failed to implement a Pandemic Management Plan.

#### **30.7 Payment regime not affected**

Nothing in this clause 30 will affect the operation of Schedule 2 (*Service Payment calculation*) 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.

### **31. Force Majeure**

#### **31.1 Force Majeure Event**

A Force Majeure Event is a Relief Event (including an [REDACTED] but excluding all other Compensation Events) which prevents, or can reasonably be expected to prevent, OpCo from complying with all or a material part of its obligations under this deed for a continuous period exceeding 180 days.

#### **31.2 Meeting**

As soon as practicable after notice of the occurrence of a Force Majeure Event is given under clauses 30.2 or 30.3 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.

#### **31.3 Notice of Intention to Terminate**

- (a) If:

- (i) a Force Majeure Event is continuing or its consequence remains such that the affected party has been and remains unable to comply with a material part of its obligations under this deed after a continuous period of 180 days; and
- (ii) a party is considering whether to terminate this deed under clauses 31.4(a)(iii) or 31.4(a)(iv) (as the case may be),

then that party must give written notice to the other party (**Notice of Intention to Terminate**).

- (b) As soon as practicable after a Notice of Intention to Terminate is given under clause 31.3(a), the parties must meet and consult with each other on whether they can agree on appropriate measures to mitigate the effects of the Force Majeure Event the subject of a Notice of Intention to Terminate and facilitate the continued performance of this deed.

#### **31.4 Termination for Force Majeure Event**

- (a) Subject to clause 31.4(b), if a Notice of Intention to Terminate has been given and:
  - (i) the parties are unable to agree on appropriate measures to mitigate the effects of the Force Majeure Event the subject of the Notice of Intention to Terminate and facilitate the continued performance of this deed on or before the date falling 20 Business Days after the Notice of Intention to Terminate was given; and
  - (ii) the Force Majeure Event is continuing or its consequence remain such that the affected party has been and remains unable to comply with a material part of its obligations under this deed after a continuous period of 180 days,

then, subject to clause 31.5:

- (iii) in the case of a Force Majeure Event corresponding to the Relief Event referred to in paragraph (g) of the definition of Relief Event, OpCo may terminate this deed by giving 20 Business Days' written notice to the Principal; 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 31.4(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 DSU 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 DSU 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 clauses 31.4(a)(iii) or 31.4(a)(iv).

#### **31.5 Suspension of OpCo's right to terminate**

- (a) If OpCo gives a termination notice under clause 31.4(a), the Principal 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 the Principal gives OpCo a suspension notice under clause 31.5(a):
    - (i) the Principal 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:
- (I) 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
  - (II) the forecast performance of OpCo, if the Force Majeure Event occurred before the Date of Completion,
- less the aggregate of (without double counting):
- (III) the costs not incurred by OpCo as a result of the non-performance of OpCo's Activities;
  - (IV) the amount of the proceeds OpCo receives from the DSU Policy or any business interruption or other advance consequential loss insurances; and

[REDACTED]

- (D) if the Force Majeure Event occurred before the Date of 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 consequential loss insurances; and
- (ii) this deed will not terminate until expiry of written notice (of at least 30 Business Days) from the Principal 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 31.4(a) and the Principal may not suspend that right under this clause 31.5.
- (c) If OpCo becomes able to recommence performing the relevant obligations after the Principal gives OpCo a suspension notice:
- (i) OpCo must recommence performance of those obligations;
  - (ii) OpCo's termination notice under clause 31.4(a) will cease to have any effect; and
  - (iii) the Principal's payment obligations under clause 31.5(b) will no longer apply (except in the case of remobilisation costs under clause 31.5(b)(i)(D)).

### 31.6

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



## 32. Modifications

### 32.1 Purpose

- (a) The parties acknowledge and agree that:
  - (i) throughout the Term, a number of changes to the requirements of this deed are likely to be required; and
  - (ii) the purpose of this clause 32 and clauses 33, 34, 35 and 36 is to facilitate and efficiently give effect to such changes.
- (b) This clause 32 and clauses 33, 34, 35 and 36 seek to achieve the purpose set out in clause 32.1(a)(ii) by:
  - (i) incorporating multiple processes for the efficient implementation of change;
  - (ii) structuring each process to minimise transaction time and cost; and
  - (iii) allowing sufficient flexibility to ensure that the process adopted for a change is appropriate for the scale, cost and complexity of that change.
- (c) Each party must seek to give effect to the purpose stated in clause 32.1(a)(ii) in complying with its obligations under this clause 32 and clauses 33, 34, 35 and 36.

### 32.2 Principal's Modifications Manager

- (a) The Principal has appointed the Principal's Modifications Manager during the Delivery Phase and First Operations Period to exercise the powers, duties, discretions and authorities vested in the Principal under this clause 32 and clauses 33, 34, 35 and 36, except that only the Principal's Representative is empowered to:
  - (i) issue a Modification Order under clause 33;
  - (ii) issue a Modification Approval under clause 34;
  - (iii) direct a Minor Modification under clause 35;
  - (iv) direct OpCo to implement a Pre-Agreed Option under clause 36 (*Pre-Agreed Options*); and

- (v) exercise any other powers, duty, discretion and authority as notified in writing by the Principal to OpCo from time to time.
- (b) OpCo recognises and accepts the Principal's Modifications Manager as lawfully entitled to exercise during the Delivery Phase and First Operations Period the Principal's powers, duties, discretions and authorities under this clause 32 and clauses 33, 34, 35 and 36, subject to the limitations set out in clause 32.2(a).
- (c) The Principal may at any time by written notice to OpCo during the Delivery Phase and First Operations Period replace the Principal's Modifications Manager with another person of an equivalent level of seniority, qualifications and experience.
- (d) Subject to clause 32.2(e), a notice given to the Principal's Modifications Manager under this clause 32 or clauses 33, 34, 35 and 36, will be deemed to have been given to the Principal.
- (e) OpCo must during the Delivery Phase and First Operations Period issue the following notices to both the Principal's Representative and the Principal's Modifications Manager:
  - (i) a Modification Impact Proposal under clause 33.2;
  - (ii) a notice under clause 34.1 proposing a Modification; and
  - (iii) a Minor Modification Proposal under clause 35.2.

### **32.3 OpCo's Modifications Personnel**

- (a) OpCo has appointed OpCo's Modifications Manager during the Delivery Phase and First Operations Period to exercise the powers, duties, discretions and authorities vested in OpCo under this clause 32 and clauses 33, 34, 35 and 36.
- (b) An instruction or direction given to OpCo's Modifications Manager under this clause 32 and clauses 33, 34, 35 and 36 is deemed to be given to OpCo.
- (c) Without limiting clause 32.4 or 32.6, OpCo must ensure the appointment of all other OpCo's Modifications Personnel in addition to OpCo's Modifications Manager and that OpCo's Modifications Personnel are available for consultation with the Principal's Modifications Manager as the Principal's Modifications Manager reasonably requires.
- (d) The Principal may, at any time during the Delivery Phase or First Operations Period, give notice to OpCo requesting that:
  - (i) in addition to OpCo's Modifications Personnel referred to in clause 32.3(c), other representatives of one or more of:
    - (A) OpCo;
    - (B) the D&C Contractor;
    - (C) the O&M Contractor;
    - (D) the Significant Contractors; and
    - (E) the Designer,
 be engaged (on either full-time or part-time basis) for the management of Modifications on behalf of the relevant OpCo Contractor in accordance with clause 32.3(g); or
  - (ii) the terms of engagement (either full-time or part-time) of an existing OpCo's Modifications Personnel be terminated or changed,

together with sufficient reasons and evidence as to why the additional OpCo's Modifications Personnel is required.
- (e) OpCo may, at any time during the Delivery Phase or First Operations Period, give notice to the Principal requesting that an additional OpCo's Modifications Personnel be engaged (on either full-time or part-time basis) in accordance with clause 32.3(g), together with sufficient reasons and evidence as to why the additional OpCo's Modifications Personnel is required.
- (f) The Modifications Working Group must:

- (i) discuss a request given by the Principal under clause 32.3(d) or by OpCo under clause 32.3(e) at the next Modifications Working Group meeting; and
  - (ii) use their reasonable endeavours to agree whether OpCo is required to engage the additional OpCo's Modifications Personnel or terminate or change the terms of engagement of an existing OpCo's Modifications Personnel, and if so, the timing for engagement of, or change to the terms of engagement of, that OpCo's Modifications Personnel and the terms on which that OpCo's Modifications Personnel is to be engaged.
- (g) OpCo must procure that an appropriately qualified, experienced and capable representative of OpCo or the relevant OpCo Contractor (as applicable) is employed within the timeframe agreed by the parties under clause 32.3(f) to manage all activities in relation to Modifications on behalf of the relevant OpCo Contractor.
  - (h) Despite clause 32.3(f)(ii), if the Principal considers that any of OpCo's Modifications Personnel are no longer required, the Principal may give notice to OpCo to that effect, and OpCo must ensure that the engagement of that person as OpCo's Modifications Personnel is terminated from the date specified in the notice, being not less than three months from the date of the notice.

#### 32.4 Governance of Modifications

- (a) The parties must ensure that their respective members of the Modifications Working Group:
  - (i) attend the Modifications Working Group meetings;
  - (ii) co-operate and collaborate to ensure that, to the extent possible, each party has early notification of the prospect of a Modification, including the scope and priority of upcoming Modifications;
  - (iii) are responsible for ensuring all time periods and obligations under this clause 32 and clauses 33, 34, 35 and 36 are met; and
  - (iv) are provided with sufficient support to meet all time periods and obligations under this clause 32 and clauses 33, 34, 35 and 36.
- (b) OpCo must ensure that:
  - (i) during the Delivery Phase, OpCo's Modifications Manager, the D&C Contractor's Modifications Manager and the O&M Contractor's Modifications Manager are co-located within the same building with the Principal's Modifications Manager; and
  - (ii) during the First Operations Period, OpCo's Modifications Manager and the O&M Contractor's Modifications Manager are co-located within the same building with the Principal's Modifications Manager.
- (c) If any additional OpCo's Modifications Personnel are engaged in accordance with clause 32.3(g), the parties must agree, acting reasonably and taking into account the relevant circumstances, the extent to which that person is required to be co-located within the same building with the Principal's Modifications Manager.
- (d) The Principal may involve OpCo (and where applicable, OpCo Contractors) early in the specification of a Modification to ensure that the developed specifications reflect the inputs from OpCo (and where applicable, OpCo Contractors).

#### 32.5 Modifications Register

- (a) OpCo must prepare and continually update a running schedule of all Modifications that have been proposed or implemented (**Modifications Register**).
- (b) The Modifications Register must be in a form approved by the Principal and, at a minimum, contain the following details in respect of each Modification:
  - (i) a unique code, number or identifier (which must not be changed or removed, regardless of whether a proposed Modification has been rejected or otherwise);
  - (ii) a description of the Modification;

- (iii) the status of the Modification;
  - (iv) the reason for proposing the implementation of the Modification; and
  - (v) the amount payable (if any) in respect of the Modification.
- (c) OpCo must make available to the Principal, on request:
- (i) the Modifications Register prepared in accordance with this clause 32.5; and
  - (ii) any records relating to any Modification that has been proposed or implemented.

### 32.6 Modifications Working Group meetings

- (a) **(Establishment):** Within four months of the date of Financial Close, the parties must establish the Modifications Working Group for the duration of the Delivery Phase and First Operations Period.
- (b) **(Purpose):** The purpose of the Modifications Working Group is to provide a forum during the Delivery Phase and First Operations Period to discuss:
- (i) the status of all outstanding Modifications, including:
    - (A) any notices submitted by either party that are required to be discussed at the relevant meeting;
    - (B) any matters in relation to an outstanding Modification that are not agreed; and
    - (C) the status of any notice or proposal that a party is preparing, in order to ensure that all time periods are met;
  - (ii) the progression of all agreed Modifications;
  - (iii) any Modification that either party is planning to propose and:
    - (A) where applicable, the content of any notice that the relevant party intends to issue; and
    - (B) in respect of a proposed Modification that the Principal is considering:
      - (I) which of the items set out in clause 33.1(b) the Modification Impact Request is likely to include (if any);
      - (II) the Third Party Preparation Costs that OpCo is likely to incur in preparing a Modification Impact Proposal, taking into account the size and complexity of the proposed Modification and the information required to be included in the Modification Impact Proposal; and
      - (III) any extension to the 15 Business Day period in clause 33.2(a) for OpCo to respond to the Modification Impact Request, taking into account the size and complexity of the proposed Modification and the information required to be included in the Modification Impact Proposal; and
  - (iv) any other issues arising out of, or in connection with, any Modification or proposed Modification.
- (c) **(Frequency of meetings):** For so long as any OpCo's Modifications Personnel continue to be engaged in accordance with clause 32.3, the Modifications Working Group must meet weekly, unless the parties otherwise agree.
- (d) **(Administration):** OpCo's Modifications Manager must convene and chair each Modifications Working Group meeting, unless the parties otherwise agree.
- (e) **(Agenda):** OpCo's Modifications Manager must prepare and issue an agenda for each meeting to each member of the Modifications Working Group and any other person as required by the Principal's Modifications Manager. The agenda must:
- (i) have been prepared in consultation with the Principal's Modifications Manager; and

- (ii) be provided no less than 48 hours prior to each meeting.
- (f) **(Delegates):** Each member of the Modifications Working Group may appoint a delegate (of an equivalent level of seniority or experience) to attend Modifications Working Group meetings in their absence.
- (g) **(Principal may require certain representatives to attend):** At the Principal's request, OpCo must procure the attendance of one or more representatives of OpCo or any OpCo Contractor that the Principal considers appropriate given the nature of any proposed Modification to be discussed at the relevant meeting. The Principal is also entitled to have representatives of the State or any Authority attend meetings.
- (h) **(OpCo may bring certain representatives):** OpCo may have one or more representatives of OpCo or any OpCo Contractor attend a meeting that OpCo considers appropriate given the nature of any proposed Modification to be discussed at the relevant meeting.
- (i) **(Consultation in good faith):** Each member of the Modifications Working Group must consult in good faith and, where applicable, use their reasonable endeavours to agree on a mutually acceptable resolution to any matters which are not agreed under this clause 32 or clauses 33, 34, 35 and 36.

### 32.7 Open Book

All documentation and information provided by OpCo under this clause 32 and clauses 33, 34, 35 and 36 (including any documentation or information prepared by an OpCo Contractor) must be provided on an Open Book Basis.

### 32.8 Consultation with FIW Contractors

- (a) Without limiting clauses 16.2 and 16.3, if OpCo becomes aware that a Modification will, or is likely to, impact on any Foundation Infrastructure Works or necessitate an FIW Change, and in any case prior to:
  - (i) submitting a Modification Impact Proposal in accordance with clause 33.2;
  - (ii) proposing a Modification in accordance with clause 34.1;
  - (iii) submitting a notice in accordance with clause 16.2(b) in response to a Principal initiated FIW Change; or
  - (iv) submitting a notice in accordance with clause 16.3(a) requesting the Principal to procure an FIW Change,

OpCo must, in accordance with the Master Interface Deed:

  - (v) notify the relevant FIW Contractor of the proposed Modification; and
  - (vi) work closely and iteratively with the relevant FIW Contractor in good faith regarding:
    - (A) the scope and design of the proposed Modification (and, where applicable, the corresponding FIW Change) in order to remove or reduce the impact that the proposed Modification will or may have on the relevant Foundation Infrastructure Works; and
    - (B) the cost of implementing the proposed Modification and any corresponding FIW Change.
- (b) If a Modification Impact Proposal submitted by OpCo in accordance with clause 33.2 states that OpCo considers an FIW Change will, or is likely to, be required to enable the proposed Modification to be implemented or as a consequence of the proposed Modification, the Principal's Representative must, following further development of the scope and design of the FIW Change(s) with the relevant FIW Contractor(s), issue to OpCo a written notice in accordance with clause 16.2 regarding any required FIW Changes.
- (c) If OpCo considers that an FIW Change will, or is likely to, be required as a result of or in connection with a Modification proposed by OpCo under clause 34, then OpCo must give the Principal a written notice requesting the Principal to procure any required FIW Change

in accordance with clause 16.3 at the same time as giving notice under clause 34.1 or as soon as practicable thereafter.

### 32.9 Project Documentation

OpCo must, on completion of a Modification, update the as-built drawings and the operating and maintenance manuals (as necessary) to reflect the Modification.

### 32.10 Templates

Schedule 3 (*Modifications*) contains templates which the parties must use to document Modifications and Minor Modifications.

### 32.11 Modifications review

- (a) Three months prior to each Modifications Review Date, the Principal and OpCo must meet to review the Modifications regime (**Modifications Review**).
- (b) Factors that may be addressed in a Modifications Review include:
  - (i) review of the number of OpCo's Modifications Personnel;
  - (ii) measures to improve the Modifications process; and
  - (iii) any other factors that the Principal or OpCo consider relevant.
- (c) Following a Modifications Review, the Principal or OpCo may give notice in accordance with clause 32.3 requesting the appointment of any new OpCo's Modifications Personnel, changes to the terms of engagement of any OpCo's Modifications Personnel or termination of the engagement of any OpCo's Modifications Personnel (as applicable), with any such changes to take effect on the Modifications Review Date (unless otherwise agreed by the parties).

## 33. Principal Initiated Modifications

### 33.1 Modification Impact Request

- (a) The Principal may at any time issue to OpCo a notice setting out the details of a proposed Modification which the Principal is considering (**Modification Impact Request**).
- (b) Having regard to discussions of the Modifications Working Group, a Modification Impact Request may include any or all of the following:
  - (i) the basis (or bases) on which the Principal requires OpCo to prepare a Modification Cost Proposal, which may include:
    - (A) a single lump sum payment, or a series of lump sum payments;
    - (B) milestone payments;
    - (C) separate pricing for separate parts or components of the proposed Modification;
    - (D) a target cost basis;
    - (E) a managing contractor basis; and/or
    - (F) any other means which the Principal considers appropriate in the circumstances;
  - (ii) whether the Principal requires OpCo to conduct a tender process under clause 33.4 for all or part of the works which would be required to effect the Modification and, if OpCo is required to submit a Modification Impact Proposal prior to completion of that tender process, whether an estimate of the cost of the Tendered Works should be included in the Modification Cost Proposal submitted as part of the Modification Impact Proposal;
  - (iii) where the proposed Modification relates to an addition or increase to the requirements of this deed for the SSTOM Works, the Temporary Works, Sydney Metro – Western Sydney Airport or OpCo's Activities:

- (A) any particular timing requirements for the implementation of the required works or services;
  - (B) details of the Principal's budgetary constraints and affordability thresholds; and
  - (C) whether the Principal requires OpCo to raise additional finance to fund the proposed Modification;
- (iv) any reporting format, breakdown of quotations or additional information that the Principal reasonably requires OpCo to include in the Modification Impact Proposal; and
- (v) any other matters or information that the Principal reasonably requires OpCo to consider when preparing its Modification Impact Proposal.
- (c) Without limiting clause 33.1(a), the Principal may at any time issue to OpCo a notice requiring that a two-stage process be adopted for the development, consideration and approval of a Modification which the Principal is considering, which may include:
  - (i) Stage 1, during which the parties will explore the feasibility of the proposed Modification and the Principal will decide whether or not it wishes to proceed to Stage 2; and
  - (ii) Stage 2, during which OpCo will be required to prepare a fully developed and fully costed proposal for implementation of the proposed Modification.
- (d) If the Principal gives a notice under clause 33.1(c), the Modifications Working Group must, at the next Modifications Working Group meeting (or as many additional meetings as agreed by the parties), use their reasonable endeavours to agree on the required content and timing for the submission to be made by OpCo at each stage and the protocols for consideration and approval of the proposed Modification at each stage.
- (e) If the Modifications Working Group agrees on the requirements and protocols for the development, consideration and approval of the proposed Modification in accordance with clause 33.1(d), each party must comply with the agreed requirements and protocols.
- (f) The Principal:
  - (i) will not be obliged to proceed with any Modification proposed in a Modification Impact Request; and
  - (ii) may withdraw a Modification Impact Request at any time prior to the issue of a Modification Order by giving notice to OpCo, and thereafter, in its absolute discretion, either:
    - (A) procure the implementation of the activities the subject of the proposed Modification as Proximate Work Activity in accordance with clause 39; or
    - (B) not proceed with the activities the subject of the proposed Modification.

### 33.2 Modification Impact Proposal

- (a) As soon as practicable, and in any event within 15 Business Days (or such longer period as set out in the Modification Impact Request, agreed by the Principal through the Modifications Working Group or agreed by the Principal in accordance with clause 33.2(c)), after receipt of a Modification Impact Request, OpCo must provide the Principal with a proposal in accordance with this clause 33.2 (**Modification Impact Proposal**).
- (b) Within 5 Business Days of receiving a Modification Impact Request, OpCo may notify the Principal if it considers more than 15 Business Days is required to prepare and submit a Modification Impact Proposal, and proposing what it considers represents a reasonable time period for the preparation and submission of a Modification Impact Proposal, taking into account:
  - (i) the size and complexity of the proposed Modification;
  - (ii) the information required to be included in the Modification Impact Proposal;

- (iii) whether OpCo is required to conduct a tender process in accordance with clause 33.4;
  - (iv) whether OpCo is required to consult with Significant Contractors and/or designers; and
  - (v) whether OpCo is required to consult with any FIW Contractors in accordance with clause 32.8.
- (c) If OpCo gives the Principal notice in accordance with clause 33.2(b), the Principal may (in its absolute discretion) extend the period for submission of the Modification Impact Proposal:
- (i) by the period proposed by OpCo in accordance with clause 33.2(b); or
  - (ii) by any other period the Principal considers reasonable in the circumstances for the preparation and submission of a Modification Impact Proposal,
- by giving notice to OpCo before the expiry of the 15 Business Day period following receipt of the Modification Impact Request.
- (d) Notwithstanding that OpCo may have issued a notice under clause 33.2(b) and the Principal may be considering that notice in accordance with clause 33.2(c):
- (i) the Principal is under no obligation to agree to any extension under clause 33.2(c);
  - (ii) OpCo must continue preparing a Modification Impact Proposal on the basis that it will be required to submit the Modification Impact Proposal within 15 Business Days of receiving the Modification Impact Request; and
  - (iii) subject to the Principal agreeing to a longer period in accordance with clause 33.2(c), OpCo must provide the Principal with a Modification Impact Proposal within 15 Business Days of receiving the Modification Impact Request.
- (e) The Modification Impact Proposal must set out detailed particulars of:
- (i) OpCo's cost proposal for the proposed Modification, which:
    - (A) must be developed on the basis (or bases) requested by the Principal in the Modification Impact Request;
    - (B) must be calculated in accordance with Schedule 6 (*Net Financial Impact*); and
    - (C) may include any Third Party Preparation Costs in excess of the TPPC Threshold incurred by OpCo in preparing the Modification Impact Proposal if OpCo's estimate of Third Party Preparation Costs for a Modification Impact Proposal has been approved by the Principal under clause 33.3(c)(i) or agreed by the parties in accordance with clause 33.3(d)(ii), capped at the Approved TPPC Estimate and subject to OpCo providing evidence of the amounts claimed on an Open Book Basis,
- (Modification Cost Proposal);**
- (ii) where relevant, OpCo's proposed schedule of payments for the Modification (**Modification Payment Schedule**) including, where the Modification Cost Proposal has been prepared on the basis of milestone payments, an objective milestone or other means of providing evidence confirming that the part of the Modification corresponding to each occasion when payment is due under the Modification Payment Schedule has been duly carried out;
  - (iii) the basis (if any) on which OpCo is able to raise additional finance to fund the proposed Modification and the difference to the Modification Cost Proposal if OpCo, rather than the Principal, funds the Modification;
  - (iv) 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);
  - (v) if the Modification is proposed to be carried out during the Operations Phase, the time within which the proposed Modification will be implemented;



- (vi) any Approvals required to implement the proposed Modification, and the effect of the proposed Modification on any existing Approvals;
  - (vii) 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;
  - (viii) 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;
  - (ix) OpCo's view on the effect (if any) which the proposed Modification will, or is likely to, have on the Foundation Infrastructure Works, including whether OpCo considers that an FIW Change will, or is likely to, be required to enable the proposed Modification to be implemented or as a consequence of the proposed Modification and if so, any change that could be made to the proposed Modification (including any change to the timing of the proposed Modification or to the manner in which the Modification is proposed to be implemented) to reduce or avoid the impact of the proposed Modification on the relevant Foundation Infrastructure Works;
  - (x) OpCo's view on the effect (if any) which the proposed Modification will, or is likely to, have on the SSTOM PPP and a description of how OpCo proposes to manage those effects;
  - (xi) where requested by the Principal in the Modification Impact Request, an outline of the proposed design solution for the Modification, including an appropriate risk analysis and appraisal and, to the extent relevant, the impact on whole-of-life costs;
  - (xii) where requested by the Principal in the Modification Impact Request, the proposed method of implementation and the proposed method of certification of any design, construction or operational aspects of the works or services required to implement the proposed Modification (but only to the extent that these will be different to those specified in this deed); and
  - (xiii) any other information requested by the Principal in the Modification Impact Request.
- (f) Without limiting clause 33.11, if OpCo fails to provide a Modification Impact Proposal in accordance with the time period specified in clause 33.2(a), the Principal's Representative may issue a Modification Order in accordance with clause 33.11 instructing OpCo to implement the proposed Modification.

### 33.3 Cost of preparing Modification Impact Proposal

- (a) OpCo must use reasonable endeavours to minimise the Third Party Preparation Costs incurred by OpCo in the preparation of a Modification Impact Proposal.
- (b) If, following receipt of a Modification Impact Request, OpCo considers that it is likely to incur Third Party Preparation Costs in preparing the Modification Impact Proposal in excess of [REDACTED] (WPI Indexed) (**TPPC Threshold**), OpCo may provide the Principal with a notice setting out OpCo's estimate of the Third Party Preparation Costs that it is likely to incur (including evidence of how that estimate was developed on an Open Book Basis).
- (c) Within 5 Business Days of receiving a notice from OpCo under clause 33.3(b), the Principal must consider OpCo's estimate of the Third Party Preparation Costs for that Modification Impact Proposal and notify OpCo that the Principal either:
  - (i) approves OpCo's estimate of Third Party Preparation Costs (**Approved TPPC Estimate**); or

- (ii) considers that OpCo's estimate does not represent a reasonable estimate of Third Party Preparation Costs.
- (d) If the Principal gives a notice under clause 33.3(c)(ii):
  - (i) the Modifications Working Group must, at the next Modifications Working Group meeting:
    - (A) discuss OpCo's estimate of Third Party Preparation Costs; and
    - (B) use their reasonable endeavours to agree on a mutually acceptable estimate of Third Party Preparation Costs; and
  - (ii) if the parties agree on a mutually acceptable estimate of Third Party Preparation Costs, that agreed estimate will be the Approved TPPC Estimate; or
  - (iii) if the parties do not agree within 10 Business Days of the Modifications Working Group meeting described in clause 33.3(d)(i):
    - (A) either party may refer the disputed matters to dispute resolution in accordance with clause 63; and
    - (B) the Principal's estimate of the Third Party Preparation Costs will apply unless and until the matter is determined otherwise in accordance with clause 63.
- (e) If:
  - (i) OpCo prepares and submits a Modification Impact Proposal in accordance with clause 33.2;
  - (ii) OpCo incurs Third Party Preparation Costs in excess of the TPPC Threshold;
  - (iii) the estimate of Third Party Preparation Costs for a Modification Impact Proposal has been approved by the Principal under clause 33.3(c)(i), agreed by the parties in accordance with clause 33.3(d)(ii) or applies in accordance with clause 33.3(d)(iii)(A) as determined through the dispute resolution process in clause 63; and
  - (iv) the Principal:
    - (A) does not issue a Modification Order in respect of the proposed Modification following submission of a Modification Impact Proposal by OpCo; or
    - (B) withdraws the Modification Impact Request in accordance with clause 33.1(f)(ii) prior to expiry of the relevant time period for submission of a Modification Impact Proposal,

then the Principal must reimburse the reasonable Third Party Preparation Costs in excess of the TPPC Threshold incurred by OpCo in:

  - (v) preparing the Modification Impact Proposal; and
  - (vi) performing its obligations under clauses 33.4, 33.5(a)(ii) or 33.6,

capped at an amount equal to the Approved TPPC Estimate less the TPPC Threshold and subject to OpCo providing evidence of the amounts claimed on Open Book Basis.

- (f) OpCo's only entitlement to be reimbursed for costs incurred in:
  - (i) preparing a Modification Impact Proposal; and
  - (ii) performing its obligations under clauses 33.4, 33.5(a)(ii) or 33.6,

is as set out in this clause 33.3 and Schedule 6 (*Net Financial Impact*).

### 33.4 Tender for works

- (a) The Principal may, in a Modification Impact Request or otherwise, require OpCo to carry out a tender process for all or part of the works which would be required to effect a Modification, provided that the Principal may only require OpCo to carry out a tender

process in the Delivery Phase where it is reasonably practicable to do so having regard to the works the subject of the Modification.

- (b) If OpCo is required to carry out a tender process in accordance with clause 33.4(a), OpCo must:
  - (i) carry out the tender process promptly and in accordance with this clause 33.4 (*Tender for works*) and the Principal's reasonable requirements; and
  - (ii) permit the Principal to review all materials that are submitted in the tender process and provide any other information that the Principal reasonably requires.
- (c) Subject to clause 33.4(d), within 10 Business Days of completion of the tender process (or such longer period as is agreed by the Principal (acting reasonably)), OpCo must:
  - (i) if OpCo has not yet submitted a Modification Impact Proposal, submit a Modification Impact Proposal in accordance with clause 33.2; and
  - (ii) if OpCo has submitted a Modification Impact Proposal before the completion of the tender process (including OpCo's estimated cost of the Tendered Works), submit an appropriately amended Modification Impact Proposal,having regard to the outcome of the tender process (including the tendered price).
- (d) If, following completion of the tender process, the Principal is not reasonably satisfied:
  - (i) that the subcontractor that OpCo intends to select is the best choice having regard to:
    - (A) the price quoted for the Tendered Works in the prevailing market conditions;
    - (B) the experience and capability of that subcontractor in the context of the Tendered Works; and
    - (C) the ability of the subcontractor to carry out the work in respect of the Tendered Works in the manner required by this deed; or
  - (ii) that the tender process has been conducted in accordance with best procurement practice,the Principal may, within 20 Business Days after receiving a Modification Impact Proposal or an amended Modification Impact Proposal in accordance with clause 33.4(c) (or such longer period as the Principal reasonably requires and notifies to OpCo, having regard to the size and complexity of the Tendered Works):
  - (iii) direct OpCo not to accept any tender;
  - (iv) otherwise instruct OpCo not to proceed with the Tendered Works;
  - (v) proceed to implement the Tendered Works itself, through subcontractors selected by it; or
  - (vi) instruct OpCo to proceed with the Tendered Works, but on another basis.
- (e) If the Principal gives OpCo an instruction or direction in accordance with clause 33.4(d):
  - (i) the Modifications Working Group must discuss the Principal's instruction or direction, and the consequences of such instruction or direction, at the next Modifications Working Group meeting; and
  - (ii) where appropriate, OpCo must submit an appropriately amended Modification Impact Proposal having regard to the Principal's instruction or direction as soon as practicable, and in any event within 15 Business Days (or such longer period as is agreed by the Principal acting reasonably), after receiving the Principal's instruction or direction.

### **33.5 Election by the Principal**

- (a) Following submission of a Modification Impact Proposal:

- (i) the Modifications Working Group must discuss the Modification Impact Proposal at the next Modifications Working Group meeting; and
  - (ii) if requested by the Principal, OpCo must provide, as soon as practicable and no later than 5 Business Days after receiving a request (or such longer period as is agreed by the Principal (acting reasonably)), further evidence, information or clarification in respect of any matters set out in the Modification Impact Proposal.
- (b) Within 20 Business Days (or such longer period as agreed between the parties, having regard to the size and complexity of the proposed Modification) after receiving a Modification Impact Proposal, the Principal must do one of the following:
  - (i) accept the Modification Impact Proposal by issuing a Modification Order directing OpCo to implement the Modification in accordance with clause 33.12;
  - (ii) notify OpCo that it accepts one or more parts or components of the Modification Impact Proposal and either:
    - (A) where that part or component of the Modification Impact Proposal:
      - (I) is a standalone part or component or can be separately identified; and
      - (II) can be implemented by OpCo without impacting on another part or component of the proposed Modification,
 issue a Modification Order directing OpCo to implement that part or component of the Modification in accordance with clause 33.12; or
    - (B) where that part or component of the Modification Impact Proposal:
      - (I) is not a standalone part or component or cannot be separately identified; or
      - (II) cannot be implemented by OpCo without impacting on another part or component of the proposed Modification,
 request OpCo to provide, within 10 Business Days of receiving the notice (or such longer period as the Principal may agree), an updated Modification Impact Proposal in accordance with clause 33.2(a) in relation to that part or component of the Modification only (and the updated Modification Impact Proposal must include a detailed explanation regarding any adjustment to the time or cost required to carry out that part or component of the Modification as compared to that set out in the original Modification Impact Proposal);
  - (iii) if the Principal has not already done so, issue a Modification Order directing OpCo to implement a change referred to in paragraph (f) of the definition of Modification in respect of the proposed Modification;
  - (iv) issue a notice to OpCo in accordance with clause 33.6 rejecting the Modification Impact Proposal;
  - (v) notify OpCo that it does not wish to proceed with the proposed Modification; or
  - (vi) notify OpCo that it wishes to amend the proposed Modification, providing full details of the proposed amendments, and request that OpCo provide, within 15 Business Days (or such longer period as is agreed by the parties (acting reasonably)), a revised Modification Impact Proposal in accordance with clause 33.2(a) that reflects the amendments to the proposed Modification,

and if the Principal does not provide a response within 20 Business Days (or such longer period as agreed between the parties), the Principal will be deemed to have given a notice under clause 33.5(b)(v).
- (c) If clause 33.5(b)(ii) applies and the Principal accepts one or more components of a Modification Impact Proposal in response to a Modification Impact Request issued by the Principal pursuant to clause 33.1(a), the Principal must issue to OpCo a Modification Impact Request for that part or component of the Modification that is not accepted by the Principal and clause 33.2 will apply.

### **33.6 Principal rejects Modification Impact Proposal**

- (a) If the Principal issues a notice rejecting the Modification Impact Proposal in accordance with clause 33.5(b)(iv), the Principal:
  - (i) must set out the reasons why the Modification Impact Proposal was rejected; and
  - (ii) may, in its absolute discretion, require any of the following:
    - (A) that OpCo revise the Modification Impact Proposal to address the reasons identified in the notice and, within 15 Business Days (or such longer period as is agreed by the Principal (acting reasonably)), provide the Principal with the revised Modification Impact Proposal;
    - (B) that the parties consult in accordance with clause 33.6(b) regarding the issues raised in the notice; and/or
    - (C) that OpCo conduct a tender process (to the extent it has not already done so) under clause 33.4.
- (b) If required by the Principal in a notice given pursuant to clause 33.6(a)(ii)(B), the Modifications Working Group must, at the next Modifications Working Group meetings (or as many additional meetings as agreed by the parties):
  - (i) discuss the Modification Impact Proposal and the reasons why it was rejected by the Principal (as set out in the Principal's notice); and
  - (ii) 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.

### **33.7 Parties reach agreement**

If the parties reach agreement under clause 33.6(b) on the disputed matters in the Modification Impact Proposal, the Principal may either:

- (a) issue a Modification Order directing OpCo to implement the Modification on the basis of the Modification Impact Proposal, as varied by the agreement of the parties, in accordance with clause 33.12; or
- (b) require that OpCo revise the Modification Impact Proposal to reflect the agreement of the parties and, within 15 Business Days (or such longer period as is agreed by the Principal (acting reasonably)), resubmit the revised Modification Impact Proposal and clause 33.2 will re-apply.

### **33.8 If parties fail to reach agreement**

If the parties are unable to reach agreement under clause 33.6(b) the Principal may refer the matter for dispute resolution in accordance with clause 63.

### **33.9 Principal may direct that Modification proceed**

- (a) If the matter is referred for dispute resolution under clause 33.8, the Principal's Representative 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 63.
- (b) If the Principal's Representative issues such a Modification Order:
  - (i) any disputed matters will, until the Principal and OpCo otherwise agree or a determination is made in accordance with clause 63, be reasonably determined by the Principal's Representative. In making his or her determination, the Principal's Representative will:
    - (A) assume that funding for the Modification will be provided by the Principal, unless the parties otherwise agree; and
    - (B) determine all matters required to enable the Modification to be implemented;
  - (ii) OpCo must proceed to implement the Modification:

- (A) on the basis determined by the Principal's Representative (notwithstanding that any matters in dispute have not been agreed or determined in accordance with clause 63); and
- (B) in accordance with clause 33.12; and
- (iii) any necessary adjustments will be made following the determination of a dispute under clause 63 (where applicable).

### **33.10 Principal options following determination**

Following determination of the disputed matters referred to in clause 33.8, the Principal may, only if it has not already exercised its right under clause 33.9, either:

- (a) issue a Modification Order directing 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.

### **33.11 Instruction to proceed**

- (a) Whether or not:
  - (i) the Principal has issued a Modification Impact Request under clause 33.1(a); or
  - (ii) OpCo has submitted a Modification Impact Proposal under clause 33.2(a) in response to a Modification Impact Request,

the Principal's Representative may at any time instruct OpCo to implement a Modification by issuing a Modification Order. In these circumstances, the Principal's Representative will determine (acting reasonably):

  - (iii) OpCo's entitlement to payment for implementation of the Modification;
  - (iv) 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); and
  - (v) 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,

until the Principal and OpCo agree otherwise or a determination is made in accordance with clause 63.
- (b) In making his or her determination, the Principal's Representative will:
  - (i) assume that funding for the Modification will be provided by the Principal, 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 the Principal's Representative:
  - (i) OpCo may refer the matter for dispute resolution in accordance with clause 63;
  - (ii) OpCo must proceed to implement the Modification:
    - (A) in accordance with clause 33.12; and
    - (B) on the basis determined by the Principal's Representative notwithstanding that the matters in dispute have not been agreed or determined in accordance with clause 63; and
  - (iii) any necessary adjustments will be made following any agreement or determination under clause 63.

### **33.12 OpCo to implement Modification**

If the Principal's Representative gives a Modification Order pursuant to clauses 33.5(b)(i), 33.5(b)(ii)(A), 33.5(b)(iii), 33.7(a), 33.10(a) or 33.11(a):

- (a) OpCo must:

- (i) implement the Modification in accordance with the Modification Order and the requirements of this deed; and
- (ii) notify the Principal when it believes that the Modification has been completed;
- (b) OpCo will be relieved of its obligations under this deed to the extent specified in the Modification Order;
- (c) the Date for Completion will be extended as specified in the Modification Order; and
- (d) OpCo will be entitled to payment of:
  - (i) the Agreed Modification Cost in accordance with the agreed Modification Payment Schedule;
  - (ii) the Net Financial Impact calculated and paid in accordance with Schedule 6 (*Net Financial Impact*); or
  - (iii) the amount determined by the Principal's Representative in accordance with clause 33.11(a)(iii),
 each as adjusted in accordance with clauses 33.9(b)(iii) or 33.11(c)(iii) (where applicable).

### 33.13 Omissions

- (a) If a Modification omits any part of the SSTOM Works or OpCo's Activities, the Principal may carry out those omitted SSTOM Works or OpCo's Activities itself or by engaging an Other Contractor, the ETS Delivery Partner or an FIW Contractor, provided that the Principal may not propose a Modification that:
  - (i) omits all, or substantially all, of the SSTOM Works or OpCo's Activities; or
  - (ii) omits SSTOM Works or OpCo's Activities, where such omission would:
    - (A) put OpCo (or any Accredited 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 Accredited Contractor), or an application for Accreditation by OpCo (or any Accredited Contractor), including anything that may be grounds for the ONRSR to refuse an application for Accreditation by OpCo (or any Accredited 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 Accredited Contractor).
- (b) The Principal must ensure that it and any Other Contractor, the ETS Delivery Partner or FIW Contractor it engages to carry out those omitted SSTOM Works or OpCo's Activities:
  - (i) cooperates with OpCo and the Accredited Contractors in relation to OpCo's (or any Accredited Contractor's) compliance with its Accreditation obligations under the Rail Safety National Law and Rail Safety Regulations;
  - (ii) does not put OpCo (or any Accredited 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 Accredited Contractor) in relation to compliance with the Accreditation of OpCo (or any Accredited Contractor); and
  - (iv) does not do anything (or fail to do anything) which jeopardises the Accreditation of OpCo (or any Accredited Contractor) or an application for Accreditation by OpCo (or any Accredited Contractor), including anything that may be grounds for the ONRSR to refuse an application for Accreditation by OpCo (or any Accredited 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 Accredited Contractor).

### 33.14 No liability unless Modification Order

OpCo will not be entitled to make any Claim against the Principal 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 the Principal under this clause 33 or where clauses 33.3, 35.7 or 64.1 apply.

### 33.15 Changes to Contract Service Level Requirements

- (a) Subject to clause 36, the Principal may at any time initiate discussions with OpCo, or issue a Modification Impact Request, in respect of a proposal to amend the Contract Service Level Requirements outside the Service Change Limitations.
- (b) In respect of a proposal referred to in clause 33.15(a):
  - (i) to the extent that the proposal would involve the implementation of a Modification involving OpCo's Activities (including provision of any relevant SSTOM Works) for which there is pricing provided in Appendix 3 and Appendix 4 to Schedule 37 (*Extensions*) (and such pricing is within its Validity Period (as defined in Schedule 37 (*Extensions*)) at the time of issue of a Modification Order, OpCo's entitlement to payment in relation to the relevant OpCo Activities (including provision of any relevant SSTOM Works) will be determined in accordance with Appendix 3 and Appendix 4 to Schedule 37 (*Extensions*);
  - (ii) Schedule 2 (*Service Payment calculation*) will be amended in accordance with clause 2.1(e) of Appendix 2 to Schedule 37 (*Extensions*) to reflect the impact of the Modification on the Operations Activities; and
  - (iii) without limitation, the parameters set out in Table 1 of Schedule 4 (*Headway and Fleet size Parameters*) will apply as described in Schedule 4 (*Headway and Fleet size Parameters*).

### 33.16



## 34. OpCo initiated Modifications

### 34.1 OpCo may propose a Modification

Subject to OpCo complying with clause 32.8, OpCo may propose a Modification by giving a written notice with details of:

- (a) the proposed Modification;
- (b) the reason for the proposed Modification, including whether the proposed Modification is required to ensure that the SSTOM Works, Temporary Works or Sydney Metro – Western Sydney Airport comply with a Change in Law or a Change in Government Policy;
- (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);

- (g) the effect (if any) which the proposed Modification will have on the Foundation Infrastructure Works, including;
  - (i) whether OpCo will, or is likely to, request the Principal to procure an FIW Change in accordance with clause 16.3 as a result of or in connection with the proposed Modification, and if so, a description of the required FIW Change(s);
  - (ii) the additional costs (if any) that each FIW Contractor will, or is likely to, incur as a result of the proposed Modification;
  - (iii) the effect (if any) that the proposed Modification will, or is likely to, have on each FIW Contractor's delivery program (including any extension of time required to a date for completion under the relevant FIW Contract); and
  - (iv) the effect (if any) that the proposed Modification will, or is likely to, have on each FIW Contractor's ability to satisfy their respective obligations under the relevant FIW Contract;
- (h) the effect (if any) which the proposed Modification will, or is likely to, have on the SSTOM PPP and a description of how OpCo proposes to manage those effects; and
- (i) the value for money for the Principal arising from the Modification, including the proposed cost savings to be paid to the Principal.

### **34.2 Principal may approve or reject**

- (a) If OpCo gives a notice under clause 34.1, the Principal:
  - (i) must consider OpCo's proposed Modification in good faith; and
  - (ii) subject to clause 34.3, must, within 20 Business Days of receiving the notice (or such longer period as the Principal reasonably requires and notifies to OpCo, having regard to the size and complexity of the proposed Modification) and in its absolute discretion, either:
    - (A) approve (with or without conditions) the proposed Modification in its absolute discretion by issuing a Modification Approval to OpCo;
    - (B) notify OpCo that the proposed Modification is not approved, in which case the notice:
      - (I) must set out the reasons why the proposed Modification is not approved; and
      - (II) may request that OpCo revise the proposed Modification to address the reasons identified in the notice and resubmit the proposed Modification in accordance with clause 34.1; or
    - (C) reject the proposed Modification in its absolute discretion.
- (b) The Principal will be under no obligation to approve the proposed Modification in accordance with clause 34.2(a)(ii)(A) for the convenience of or to assist OpCo.
- (c) If the Principal gives OpCo a notice in accordance with clause 34.2(a)(ii)(B), the Modifications Working Group must, at the next Modifications Working Group meeting (or as many additional meeting as agreed by the parties):
  - (i) discuss the proposed Modification and the reasons why the proposed Modification was not approved (as set out in the Principal's notice); and
  - (ii) use their reasonable endeavours to agree on a mutually acceptable resolution to the matters set out in the Principal's notice.
- (d) If the Modifications Working Group agree in accordance with clause 34.2(b) on a mutually acceptable resolution to the matters set out in the Principal's notice, then the Principal may either:
  - (i) approve (with or without conditions) the proposed Modification, as varied by the agreement of the parties, by issuing a Modification Approval to OpCo; or

- (ii) request OpCo to revise the proposed Modification to reflect the agreement of the parties and resubmit the proposed Modification in accordance with clause 34.1.
- (e) If the Modifications Working Group are unable to reach agreement in accordance with clause 34.2(c), the proposed Modification will be deemed to have been rejected by the Principal (unless otherwise agreed by the parties).
- (f) If the Principal issues a Modification Approval under clauses 34.2(a)(ii)(A) or 34.2(d)(i) 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.
- (g) If the Principal issues a Modification Approval under clauses 34.2(a)(ii)(A) or 34.2(d)(i) with conditions, OpCo may either:
  - (i) give notice to the Principal accepting the conditions attached to the Modification Approval and 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) withdraw the proposed Modification if OpCo, acting reasonably, does not accept any of the conditions attached to the Modification Approval.

### **34.3 Modifications as a result of a Change in Law or Change in Government Policy**

- (a) To the extent that any Modification requested by OpCo is required to ensure that the SSTOM Works, Temporary Works or Sydney Metro – Western Sydney Airport comply with a Change in Law or a Change in Government Policy, the Principal 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 33 to ensure that the SSTOM Works, the Temporary Works or Sydney Metro – Western Sydney Airport comply with the Change in Law or Change in Government Policy; or
  - (iii) take such other action as the Principal considers necessary to ensure the SSTOM Works, the Temporary Works or Sydney Metro – Western Sydney Airport comply with the Change in Law or Change in Government Policy.
- (b) If the Principal approves or directs a Modification in accordance with clause 34.3(a)(i) or clause 34.3(a)(ii):
  - (i) OpCo must proceed to implement the Modification on the basis of OpCo's notice under clause 34.1 or in accordance with clause 33; and
  - (ii) if the Modification is required to ensure that the SSTOM Works, the Temporary Works or Sydney Metro – Western Sydney Airport comply with a Compensable Change in Law or a Compensable Change in Government Policy, clause 20.10 and clause 29 will apply.

### **34.4 OpCo to bear risks and costs**

Unless otherwise agreed in writing by the Principal and subject to clause 34.3(b)(ii), OpCo will:

- (a) bear all risks and costs associated with a Modification proposed by OpCo;
- (b) be responsible for managing the proposed Modification, including with the relevant FIW Contractor where a Modification proposed by OpCo impacts the Foundation Infrastructure Works; and
- (c) not be entitled to make any Claim against the Principal arising out of, or in any way in connection with, a Modification proposed by OpCo,

including where the Principal issues a Modification Approval in relation to such Modification.

## **35. Minor Modifications**

### **35.1 Purpose**

The parties agree that the purposes of this clause 35 are to:

- (a) better facilitate and more efficiently give effect to Minor Modifications; and
- (b) ease the administrative burden on the Principal and OpCo in the implementation of Minor Modifications,

and OpCo must seek to give effect to the purpose stated in this clause 35.1 in complying with its obligations under this clause 35.

### **35.2 Minor Modification Proposal**

Without limiting the Principal's rights under clause 33.11, OpCo or the Principal's Representative may propose a Modification which is a Minor Modification by issuing a notice entitled "Minor Modification Proposal" in which case clauses 33 and 34 will not apply to the Minor Modification unless the Principal's Representative gives notice in accordance with clause 35.10.

### **35.3 Accumulation**

OpCo and the Principal's Representative may agree to accumulate Minor Modifications on a monthly basis (or such other period as is agreed by the parties) by recording the proposed Minor Modifications by agreement on a register and either the Principal's Representative or OpCo (as the case may be) submitting a Minor Modification Proposal for all Minor Modifications on that register at the end of each month (or such other period as is agreed by the parties) and prior to their implementation.

### **35.4 Amount payable**

Subject to clauses 35.6 and 35.8, the Net Financial Impact payable to OpCo or the Principal for any proposed Minor Modification must be:

- (a) prepared on the basis (or bases) requested by the Principal, which may include any of the bases referred to in clauses 33.1(b)(i)(A) to 33.1(b)(i)(C); and
- (b) calculated and determined in accordance with Schedule 6 (*Net Financial Impact*),

and OpCo must provide its claim for such amount (**Minor Modification Cost Proposal**) to the Principal's Representative no later than 7 Business Days after a Minor Modification Proposal is provided to either party.

### **35.5 Election by the Principal**

Within 7 Business Days after the receipt of a Minor Modification Cost Proposal from OpCo, the Principal's Representative must provide OpCo with a notice which:

- (a) directs OpCo to proceed with the Minor Modification;
- (b) in the case of a Minor Modification proposed by OpCo, rejects the Minor Modification Proposal;
- (c) in the case of a Minor Modification proposed by the Principal:
  - (i) withdraws the Minor Modification Proposal; or
  - (ii) sets out reasonable amendments to the Minor Modification Proposal and require OpCo to submit a revised Minor Modification Cost Proposal within 3 Business Days and this clause 35.5 will reapply; or
- (d) that the Principal disagrees with OpCo's assessment of the Net Financial Impact of the Minor Modification in the Minor Modification Cost Proposal and requires the Net Financial Impact to be determined by an Independent Assessor under clause 35.6.

### **35.6 Disagreement as to amount payable**

- (a) If the Principal's Representative issues a notice under clause 35.5(d):

- (i) the Principal's Representative must refer the Minor Modification Cost Proposal to an independent assessor who is a member of Engineers Australia for independent determination (**Independent Assessor**);
- (ii) OpCo must promptly provide the Principal's Representative and Independent Assessor with all information and documents requested by the Principal's Representative or Independent Assessor that are necessary or reasonably required by the Independent Assessor to allow the Independent Assessor to perform its obligations under this clause 35.6;
- (iii) the Principal's Representative must provide the Independent Assessor's assessment of the Net Financial Impact of the Minor Modification Cost Proposal promptly after receipt;
- (iv) the Independent Assessor's assessment of the Net Financial Impact of the Minor Modification Cost Proposal will:
  - (A) be final and binding on the parties and the Net Financial Impact of the Minor Modification for the purposes of Schedule 6 (*Net Financial Impact*); and
  - (B) will not be subject to dispute in accordance with clause 63; and
- (v) the Principal and OpCo will share the costs of the Independent Assessor equally.
- (b) The Principal's Representative must promptly following receipt of the Independent Assessor's assessment of the Minor Modification Cost Proposal under clause 35.6(a), direct OpCo to proceed with the Minor Modification on the basis of the Minor Modification Cost Proposal determined by the Independent Assessor.

### **35.7 Implementation of the Minor Modification**

If the Principal's Representative directs OpCo to proceed with the Minor Modification in accordance with clauses 35.5(a) or 35.6(b):

- (a) OpCo must:
  - (i) implement the Minor Modification in accordance with the Minor Modification Proposal and the requirements of this deed; and
  - (ii) notify the Principal when it believes that the Minor Modification has been completed; and
- (b) OpCo will be entitled to payment of the Net Financial Impact set out in the Modification Cost Proposal submitted by OpCo under clause 35.4 or determined by the Independent Assessor under clause 35.6(a) in accordance with Schedule 6 (*Net Financial Impact*).

### **35.8 No claims**

The parties acknowledge and agree that, as Minor Modifications are intended to be simple to administer, OpCo will not be entitled to make any Claim against the Principal, and the Principal will have no liability to OpCo, for:

- (a) an extension of time to the Date for Completion; or
- (b) additional recurrent costs that may be incurred in performing the Operations Activities, as a consequence of a Minor Modification.

### **35.9 Failure to agree**

If the Principal's Representative does not direct OpCo to proceed with the Minor Modification in accordance with clauses 35.5(a) or 35.6(b):

- (a) the Principal's Representative may:
  - (i) issue a Modification Order in accordance with clause 33.11; or
  - (ii) issue a Modification Impact Request in accordance with clause 33.1,
 in order to implement the Minor Modification as a Modification; or

- (b) OpCo may propose a Modification in respect of the Minor Modification.

### **35.10 Principal direction**

If the Principal considers that the Minor Modification process is not meeting the purposes set out in clause 35.1, the Principal's Representative may, by notice to OpCo, suspend the Minor Modification process set out in this clause 35. If the Principal's Representative issues a notice to OpCo to this effect, all Minor Modifications thereafter will be managed in accordance with the process set out in clauses 33 and 34.

### **35.11 Recommence Minor Modification process**

Following a suspension of the Minor Modification process in accordance with clause 35.10, the Principal's Representative may, by notice to OpCo, recommence that Minor Modification process.

## **36. Future Changes**

### **36.1 Pre-Agreed Options**

- (a) The Principal may at any time prior to the relevant Election Date, in its absolute discretion and without being under any obligation to do so, direct any Pre-Agreed Option by giving notice to OpCo. The parties acknowledge and agree that the Principal is deemed to have directed Pre-Agreed Option 1A on Financial Close without any requirement for further notice or other additional action on the part of the Principal.
- (b) If a notice is given pursuant to clause 36.1(a) in respect of a Pre-Agreed Option by the relevant Election Date:
- (i) OpCo must implement the Pre-Agreed Option with effect from the relevant Effective Date; and
  - (ii) this deed will be deemed to be amended in accordance with the relevant amendments set out in Schedule 5 (*Pre-Agreed Options*) with effect from the relevant Effective Date.
- (c) The Principal will not:
- (i) issue a Modification Impact Request or direct a Modification under clause 33;
  - (ii) issue a Minor Modification Proposal or a direct a Minor Modification under clause 35; or
  - (iii) issue a Notice of Proposed Extension in accordance with Schedule 37 (*Extensions*),
- that involves the same change to the Delivery Activities, SSTOM Works, Sydney Metro – Western Sydney Airport or the Operations Activities as a Pre-Agreed Option, before the Election Date for the relevant Pre-Agreed Option.
- (d) Subject to clause 36.1(c), nothing in this clause 36 prevents the Principal from:
- (i) issuing a Modification Impact Request or directing a Modification under clause 33;
  - (ii) issuing a Minor Modification Proposal or directing a Minor Modification under clause 35;
  - (iii) issuing a Notice of Proposed Extension in accordance with Schedule 37 (*Extensions*);
  - (iv) carrying out Proximate Work Activities under clause 39; or
  - (v) engaging an Other Contractor or the ETS Delivery Partner to carry out any works,
- that involves the same (or similar) changes to the Delivery Activities, SSTOM Works, Sydney Metro – Western Sydney Airport or the Operations Activities as a Pre-Agreed Option, whether before or after the relevant Election Date.

### **36.2 Future Over Station Developments**

- (a) OpCo acknowledges and agrees that:

- (i) the Principal, Western Parkland City Authority or another Authority may undertake, procure or permit an Over Station Development at Aerotropolis Station at any time during the Term or at a later time after the Term;
  - (ii) the OSD Enabling Works are required to facilitate the future construction, operation and maintenance of an Over Station Development at Aerotropolis Station;
  - (iii) it must deliver the OSD Enabling Works in accordance with this deed, including Particular Specification 18 (*Over Station Development Enabling Works*);
  - (iv) as at Financial Close, the OSD Above Ground Enabling Works do not form part of the SSTOM Works or Temporary Works but may be directed by the Principal in accordance with clause 36.1 and Schedule 5 (*Pre-Agreed Options*); and
  - (v) OpCo's Activities may be impacted by an Over Station Development at Aerotropolis Station if undertaken during the Term.
- (b) To the extent that an Over Station Development is undertaken, procured or permitted at Aerotropolis Station during the Term, the parties agree that the Principal will direct a Modification under clause 33 to address the impact of the Over Station Development on OpCo's Activities and the SSTOM PPP.

### **36.3 Scope Deferral**

OpCo acknowledges that the Principal wishes to retain flexibility to consider, and to the extent agreed or directed by the Principal in accordance with this deed, to implement future Scope Deferrals. The provisions of Schedule 38 (*Flexibility for Scope Deferral*) will apply to any and all Scope Deferrals.

## **37. Transport planning**

### **37.1 OpCo acknowledgement**

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.

### **37.2 OpCo participation**

OpCo must participate as reasonably required by the Principal in the development and implementation of transport planning. This participation may involve:

- (a) attending meetings, consultation forums and other similar events;
- (b) reviewing and contributing to the development of proposals and strategies put forward by the State or other transport operators and stakeholders;
- (c) providing comments on the impact of proposals and strategies on Sydney Metro – Western Sydney Airport; and
- (d) cooperating in good faith in the implementation of the Principal's and Transport for NSW's public transport policy objectives, as notified to OpCo.

### **37.3 No claim**

OpCo will have no entitlement to make any Claim against the Principal or the State with respect to any consequence of the State, the Principal 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.

## **38. Extensions**

### **38.1 Flexible process**

Schedule 37 (*Extensions*) sets out a process by which Extensions can be discussed and, potentially, agreed. The parties may agree alternative arrangements for discussing and reaching agreement upon a proposed Extension.

### **38.2 Termination in connection with an Extension**

The Principal may terminate this deed pursuant to clause 49.7 if the parties are unable to reach agreement on any matters that are the subject of Schedule 37 (*Extensions*). This clause does not in any way limit the Principal's right to terminate this deed at any time pursuant to clause 49.5.

### **38.3 No limitation**

This clause 38 and Schedule 37 (*Extensions*) does not limit any of the Principal's other rights under this deed.

## **39. Proximate Work Activities**

### **39.1 Right to carry out Proximate Work Activities**

Subject to this clause 39, the Principal (or its nominees) may carry out Proximate Work Activities, including to:

- (a) build and connect an Extension;
- (b) fit out or alter any Station;
- (c) build an additional connection between Sydney Metro – Western Sydney Airport 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 Sydney Metro – Western Sydney Airport;
- (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 Sydney Metro – Western Sydney Airport; and
- (j) carry out any associated work.

### **39.2 Proposed Proximate Work Activity**

If the Principal (or its nominees) proposes to undertake a Proximate Work Activity:

- (a) the Principal must give OpCo reasonable written notice of its intention to do so; and
- (b) OpCo must co-operate with the Principal (and its nominees) to enable the Principal to plan the undertaking of the Proximate Work Activity.

### **39.3 Carrying out Proximate Work Activities**

If the Principal (or its nominees) carries out any Proximate Work Activity:

- (a) OpCo must:
  - (i) comply with its obligations under clause 10.15;
  - (ii) assist the Principal in ensuring that any works constructed as part of the Proximate Work Activity are compatible with Sydney Metro – Western Sydney Airport and the ETS;



- (iii) subject to and in accordance with clause 33, allow the Principal to adjust the SSTOM Works, the Temporary Works or Sydney Metro – Western Sydney Airport to interface with any works constructed as part of the Proximate Work Activity;
  - (iv) co-operate with the Principal and its nominees to facilitate the undertaking of the Proximate Work Activity, including permitting reasonable temporary closure of parts of the Sydney Metro 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 the Principal reasonably requires in order to give full effect to this clause 39.3(a) (including executing any document or entering into an agreement with a third party on terms which the Principal's Representative considers to be commercially reasonable);
- (b) the Principal 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) the Principal must ensure that the Principal and its nominees:
  - (i) cooperate with OpCo and the Accredited Contractors in relation to OpCo's (or any Accredited Contractor's) compliance with its Accreditation obligations under the Rail Safety National Law and Rail Safety Regulations;
  - (ii) do not put OpCo (or any Accredited 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 Accredited Contractor) in relation to compliance with the Accreditation of OpCo (or any Accredited Contractor); and
  - (iv) do not do anything (or fail to do anything) which jeopardises the Accreditation of OpCo (or any Accredited Contractor) or an application for Accreditation by OpCo (or any Accredited Contractor), including anything that may be grounds for the ONRSR to refuse an application for Accreditation by OpCo (or any Accredited 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 Accredited Contractor).

#### **39.4 No claim**

Subject to paragraph (s) of the definition of Compensation Event, the Principal will not be liable upon any Claim by OpCo arising out of or in any way in connection with any Proximate Work Activities.

#### **39.5 No limitation**

This clause 39 does not limit the Principal's other rights under this deed.

### **40. Pandemics**

#### **40.1 Initial Pandemic Management Plan**

OpCo warrants that:

- (a) the Initial Pandemic Management Plan includes all mitigation measures that OpCo is implementing with respect to COVID-19 (including, but not limited to, supply chain impacts (including supply chain impacts in relation to Critical Domestic Construction Materials and Key Plant and Equipment) and WHS Legislation), and those in response to any and all:

- (i) Legislation in response to COVID-19; and
  - (ii) Pandemic Directions in response to COVID-19;
- (COVID-19 Laws)** that are in place at the date of this deed;
- (b) without limiting any express entitlement of OpCo under this deed, the Financial Model, Service Payments and the Delivery Program contain sufficient allowances for the assumption by OpCo of all risk in relation to the impact of COVID-19 on the performance of OpCo's Activities as at the date of this deed and the assumption of that risk in respect of the period between the date of this deed and the Pandemic Impact Date, including for complying with and implementing the Initial Pandemic Management Plan; and
  - (c) any updated Pandemic Management Plan will include all mitigation measures OpCo is implementing with respect to any Pandemic (including, but not limited to, supply chain impacts (including supply chain impacts in relation to Critical Domestic Construction Materials, Key Plant and Equipment and Critical Overseas Operations Materials and WHS Legislation), and those in response to any and all:
    - (i) Pandemic Change in Law; and
    - (ii) Pandemic Compensation Events,
 which are in place or have occurred at the date of the relevant update.

#### **40.2 No Claims**

Except as stated in clauses 20, 29, 30, 40 or 41, OpCo will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in connection with the impact of any Pandemic.

#### **40.3 Pandemic obligations**

OpCo must:

- (a) without limiting clause 61, upon request, provide the Principal's Representative with a copy of each Subcontract for the supply of Critical Domestic Construction Materials, Key Plant and Equipment and Critical Overseas Operations Materials (which may be redacted to remove any "commercial-in-confidence provisions" as that term is defined in the *Government Information (Public Access) Act 2009 (NSW)*);
- (b) ensure the Project Plans take Pandemics, all Pandemic Changes in Law and Pandemic Compensation Events into account for the period during which the Pandemic Change in Law and Pandemic Compensation Events remain in force or effect and are relevant to OpCo's Activities;
- (c) proactively monitor the potential impacts of any Pandemics and all relevant Pandemic Changes in Law and Pandemic Compensation Events on OpCo's Activities; and
- (d) implement mitigation measures to minimise any potential impact of any Pandemics, any relevant Pandemic Change in Law and any Pandemic Compensation Events on OpCo's Activities, including:
  - (i) as set out in the updated Project Plans and otherwise consistent with Good Industry Practice;
  - (ii) sequencing OpCo's Activities and employing construction, operations and maintenance methodologies and practices that minimise the impacts of any Pandemic, any relevant Pandemic Change in Law and any Pandemic Compensation Events on OpCo's Activities; and
  - (iii) provide, upon request, the Principal's Representative with a monthly report, and any other information reasonably requested by the Principal's Representative (excluding any sensitive pricing information), on the status of procurement of Critical Domestic Construction Materials, Key Plant and Equipment and Critical Overseas Operations Materials and how OpCo is mitigating any risks associated with such procurement.
- (e) The Principal may submit any updated Pandemic Management Plan provided under this deed and any other information provided by OpCo in relation to Pandemic Changes in

Law and Pandemic Compensation Events to an independent expert appointed by the Principal for that expert to determine whether the updated Pandemic Management Plan and any other information provided by OpCo complies with the requirements of this deed.

#### **40.4 Moratorium on Claims**

- (a) Notwithstanding any other clause of this deed, OpCo will not be entitled to make any Claim under clauses 20, 29, or 30 arising out of or in connection with any Pandemic Compensation Event that occurs on or before the date which is [REDACTED] Financial Close (**Pandemic Impact Date**), provided that OpCo will be entitled to make a Claim on or after the Pandemic Impact Date in respect of a Pandemic Compensation Event that occurs prior to that date but that is continuing thereafter.
- (b) In the case of a Claim in respect of a Pandemic Compensation Event that occurred prior to the Pandemic Impact Date but that is continuing thereafter:
  - (i) OpCo's entitlement to any extension of time or Net Financial Impact will be limited as if the Pandemic Compensation Event occurred on (and not prior to) the Pandemic Impact Date; and
  - (ii) OpCo will not be entitled to make any Claim in respect of any increased costs or delay it suffered or incurred prior to the Pandemic Impact Date.

### **41. Change in Law**

#### **41.1 Non-compensable changes in Law**

Subject to clause 41.2, OpCo will be liable for the consequences of, and will have no Claim against the Principal arising out of or in any way in connection with, a change in Law.

#### **41.2 Compensable Change in Law**

Where there is a Compensable Change in Law which results in a negative Net Financial Impact, subject to clauses 20, 29, 34.3, 41.4, OpCo will be entitled to compensation calculated in accordance with Schedule 6 (*Net Financial Impact*).

#### **41.3 Beneficial Change in Law**

Where there is a Change in Law (other than a Pandemic Change in Law) which results in a positive Net Financial Impact, OpCo must pay [REDACTED] of the amount of the Net Financial Impact to the Principal.

#### **41.4 Pandemic Change in Law**

Where there is a Pandemic Change in Law:

- (a) OpCo must provide an amended Pandemic Management Plan detailing any proposed changes to OpCo's Pandemic Management Plan arising from the Pandemic Change in Law including details of the steps that OpCo proposes to take to mitigate and/or resolve the effects of the Pandemic Change in Law; and
- (b) to the extent any measures in the then current Pandemic Management Plan:
  - (i) are required to be changed in order for OpCo to comply with the Pandemic Change in Law;
  - (ii) are no longer necessary following the Pandemic Change in Law in order for OpCo to comply with Legislation; or
  - (iii) can be reduced and still enable OpCo to remain compliant with Legislation, and those changes will result in:
  - (iv) a negative Net Financial Impact, the Pandemic Change in Law will be deemed to be a Compensable Change in Law and OpCo will be entitled to compensation in accordance with clause 41.2; or

- (v) a positive Net Financial Impact, OpCo must pay [REDACTED] of the amount of the Net Financial Impact to the Principal.

#### **41.5 Implementation of Change in Law**

To the extent it is able to do so, on reasonable request, the Principal must use reasonable endeavours (without having to incur additional cost) to avail OpCo of any relief, implementation arrangements or programs which are extended to the Principal in respect of compliance with any Change in Law other than a Compensable Change in Law.

### **42. Government Policy**

#### **42.1 OpCo to comply with Government Policy**

Subject to clauses 42.2 and 42.3, OpCo must comply with all Government Policies, as published from time to time, which apply to OpCo's Activities (unless the Principal directs otherwise).

#### **42.2 OpCo to notify**

OpCo must promptly notify the Principal of any Change in Government Policy which applies to OpCo's Activities.

#### **42.3 Principal's Direction**

- (a) Upon receipt of any notification from OpCo under clause 42.2, the Principal may in its absolute discretion direct OpCo to:
- (i) implement the changes required for OpCo to comply with its obligation under clause 42.1; or
  - (ii) not implement any changes, notwithstanding the Change in Government Policy, provided that if OpCo is required by Law to comply with a Change in Government Policy as a result of the Change in Government Policy not because of a Change in Law, then the Principal must issue a direction under paragraph 42.3(a)(i).
- (b) Notwithstanding any other provisions within this deed, OpCo must not, and is not required to, implement any changes as a result of a Change in Government Policy unless a Direction has been issued by the Principal under clause 42.3(a)(i).

#### **42.4 Compensation for Compensable Change in Government Policy**

Subject to clauses 20 and 29 and Schedule 6 (*Net Financial Impact*), where the Principal has issued a Direction under clause 42.3(a)(i), OpCo will be entitled to compensation for a Compensable Change in Government Policy.

#### **42.5 Beneficial Change in Government Policy**

Where there is a Compensable Change in Government Policy which results in a positive Net Financial Impact and the Principal has issued a Direction under clause 42.3(a)(i), OpCo must pay [REDACTED] of the amount of the Net Financial Impact to the Principal.

### **43. Reinstatement of loss or damage**

#### **43.1 Reinstatement**

- (a) Subject to this clause 43, OpCo bears the risk of loss or damage to the Relevant Infrastructure, during the Term.
- (b) If any part of:
- (i) the SSTOM Works, the Temporary Works and the Construction Site;
  - (ii) a portion of the Foundation Infrastructure Works for which OpCo is responsible in accordance with clause 16.10;

- (iii) Sydney Metro – Western Sydney Airport and the Licensed Maintenance Area after the Date of Completion; or
- (iv) unfixed goods and materials (whether on or off the Sydney Metro Site), including anything brought on to the Sydney Metro Site by an OpCo Contractor, used or to be used in carrying out OpCo's Activities,

**(Relevant Infrastructure)** is lost, damaged or destroyed (other than as a result of Graffiti or Vandalism), OpCo must:

- (v) promptly provide the Principal'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);
  - (vi) within 60 Business Days of the notice referred to in clause 43.1(b)(v), the Principal must notify OpCo whether or not it requires OpCo to reinstate or otherwise make good the loss, or repair the damage; and
  - (vii) if the Principal notifies OpCo that it requires OpCo to reinstate or otherwise make good the loss, or repair the damage:
    - (A) take immediate steps to clear any debris and begin initial repair work;
    - (B) promptly consult with the Principal, and subject to clause 43.2, promptly reinstate or otherwise make good the loss, or repair the damage so that OpCo continues to comply with its obligations under the Project Agreements to the greatest extent possible and the repaired or rebuilt Relevant Infrastructure complies with the requirements of this deed;
    - (C) consult with the Principal's Representative as to the programming of the works needed to effect the relevant reinstatement or repair;
    - (D) ensure:
      - (I) there is minimal disruption to the Relevant Infrastructure, the Sydney Metro Site and the OpCo's Activities; and
      - (II) to the greatest extent possible, continue to comply with its obligations under the Project Agreements;
    - (E) keep the Principal's Representative fully informed of the progress of the reinstatement and repair activities; and
    - (F) subject to clauses 43.1(c)(i) and 43.2, pay for the cost of carrying out the reinstatement or repair work.
- (c) OpCo shall not be obliged to undertake the reinstatement or repair of, or otherwise make good, the loss, damage or destruction of the Relevant Infrastructure to the extent the loss, damage or destruction:
- (i) arises from any of the following events:
    - (A) a breach of any Principal Project Agreement by the Principal; or
    - (B) any fraudulent, reckless, unlawful, negligent or malicious act or omission of the State or the Principal or their Associates,

unless the Principal pays OpCo the reasonable cost of carrying out the reinstatement or repair work (to the extent available Insurance Proceeds, if any, are insufficient); or
  - (ii) is due to:
    - (A) a Day 1 Uninsurable Risk; or
    - (B) an Uninsurable Material Risk and clause 43.1(d)(i) applies,

unless the Principal elects to pay OpCo under clause 43.1(d)(iii).
- (d) If the Principal directs OpCo to reinstate or otherwise make good the loss, or repair the damage to the Relevant Infrastructure pursuant to clause 43.1(b)(vi) in circumstances where the Relevant Infrastructure has been lost, damaged or destroyed as a result of:

- (i) the occurrence of an Uninsurable Risk which, at the date of this deed, is usually covered by the contract works or public and products liability insurance policies contained in Exhibit 12 (Principal's Insurances) or by the insurance specified in clauses 45.3(a) (an **Uninsurable Material Risk**) and, prior to the event of loss, damage or destruction, the parties have not reached agreement in accordance with clause 46.1(d) on how the Uninsurable Risk should be managed; or
  - (ii) a Day 1 Uninsurable Risk,
- the Principal must:
- (iii) pay to OpCo an amount equal to the insurance proceeds that would have been payable under the contract works and public and products liability insurance policies contained in Exhibit 12 (Principal's Insurances) or by the insurance specified in clauses 45.3(a):
    - (A) in the case of an Uninsurable Material Risk, had the insurance under those policies against that risk not become an Uninsurable Risk; and
    - (B) in the case of a Day 1 Uninsurable Risk, had insurance under those policies against that risk been available,
 in each case after deducting any deductibles that would have been deducted.

#### **43.2 Direction by the Principal to reinstate to different specifications**

The Principal may require OpCo to reinstate or repair the Relevant Infrastructure on the basis of different specifications or standards by directing a Modification pursuant to clause 33. 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 and any amount otherwise payable by the Principal under clause 43.1(c)(i) or clause 43.1(d)(iii) will be taken into account in calculating the Net Financial Impact of the Modification.

#### **43.3 Minor damage**

If any loss of, or damage to the Relevant Infrastructure for which the Principal would, but for this clause 43.3, be liable is of such a minor nature (when considered item by item and in aggregate) that it can be remedied by OpCo:

- (a) **(Additional costs)**: without incurring additional costs;
- (b) **(Site-based resources)**: through the use of its site-based resources during normal working hours; and
- (c) **(OpCo's Activities)**: without adversely affecting the ability of OpCo to carry out OpCo's Activities,

then OpCo must rectify that damage (at its own cost).

#### **43.4 Consequences of the Principal's election not to repair or reinstate**

If the Principal notifies OpCo not to reinstate or otherwise make good the loss, or repair the damage to the Relevant Infrastructure in accordance with clause 43.1(b)(vi), the Principal must:

- (a) where there has not been material damage, loss or destruction to a substantial portion of Sydney Metro – Western Sydney Airport, omit the relevant part of the Relevant Infrastructure from the SSTOM PPP and, to the extent necessary to give effect to this clause, must give a direction under clause 43.2; or
- (b) where there has been material damage, loss or destruction to a substantial portion of Sydney Metro – Western Sydney Airport, and the damage, loss or destruction was caused by:
  - (i) any act or omission of OpCo, this will be deemed to be an OpCo Termination Event and the Principal must issue a notice to terminate this deed for default in accordance with clause 49.4;
  - (ii) an act or omission of the Principal or its Associates, the Principal must issue a notice to voluntarily terminate this deed in accordance with clause 49.5;

- (iii) a Force Majeure Event (including a Day 1 Uninsurable Risk) or any other event not listed in clauses 43.4(b)(i), 43.4(b)(ii) or 43.4(b)(iv), the Principal must issue a notice to terminate this deed in accordance with clause 49.6; or
- (iv) an Uninsurable Material Risk, the Principal must issue a notice to terminate this deed in accordance with clause 49.8.

#### 43.5 Damage to third party property

- (a) Without limiting clause 44, but subject to clause 45.13(a), where any interference with, obstruction or 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 any fraudulent, reckless, unlawful, negligent or malicious 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 for the interference, obstruction, damage, loss or destruction.
- (b) If OpCo fails to carry out the repair, replacement or reinstatement work or pay reasonable compensation within a reasonable time, the Principal may carry out the repair, replacement or reinstatement work or pay reasonable compensation and any Loss incurred by the Principal will be a debt due and payable from OpCo to the Principal.

#### 43.6 Principal may repair or reinstate

Without limiting any other provision of this deed, if OpCo does not repair or rebuild the Relevant Infrastructure where required to do so in accordance with this clause 43:

- (a) **(Notification):** the Principal may notify OpCo that the Principal intends to repair or remedy any destruction, loss or damage, or replace or reinstate the Relevant Infrastructure (or procure a third party to do so); and
- (b) **(Failure to comply):** if OpCo does not comply with its obligations under this clause 43 within 14 days after the date of the Principal's notice, the Principal may, without further notice, elect to remedy or repair any destruction, loss or damage or replace or reinstate the Relevant Infrastructure (or procure a third party to do so) in which case, the costs and expenses incurred in doing that work will be a debt due and payable by OpCo to the Principal.

### 44. Indemnity and liability exclusions

#### 44.1 Indemnity from OpCo

OpCo must indemnify the Principal, 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 or access to (whether total or partial), any real or personal property belonging to a State Indemnified Party (other than to the SSTOM Works prior to the Date of Completion); 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, reckless, unlawful, negligent or malicious act or omission by OpCo.

#### **44.2 Exclusions from indemnity**

OpCo's liability to the State Indemnified Parties, the Indemnified IP Parties or to any other person indemnified by OpCo under clause 44.1 or under any Project Agreement (each an **Indemnified Party**) will be reduced to the extent that the Loss arises from:

- (a) any breach by the Principal of any Principal Project Agreements;
- (b) any fraudulent, reckless, unlawful, negligent or malicious act or omission of the Indemnified Party or of a State Indemnified Party or Associates of the Indemnified Party or a State Indemnified Party;
- (c) a third party claim for pure economic loss arising solely as a result of:
  - (i) the decision by the State, Transport for NSW or the Principal to proceed with Sydney Metro – Western Sydney Airport; or
  - (ii) the existence or location of Sydney Metro – Western Sydney Airport;
- (d) OpCo complying strictly with express Directions of the Principal or the Principal's Representative (other than a Direction to comply with a Principal Project Agreement, that is permitted under a Principal Project Agreement or was given as a result of a breach by OpCo or an act or omission of OpCo (other than to the extent such act or omission is expressly permitted under a Principal Project Agreement)), provided that prior to complying with the direction:
  - (i) OpCo notified the Principal or Principal's Representative (as applicable) that, in its opinion, compliance with the direction will directly result in a liability that would otherwise be the subject of an indemnity by OpCo to an Indemnified Party; and
  - (ii) notwithstanding having received the notification referred to in clause 44.2(d)(i), the Principal or Principal's Representative (as applicable) confirms that OpCo should comply or continue to comply with the direction;
- (e) subject to clause 44.2(h), loss of use of or access to (whether total or partial), any real or personal property,  
other than to the extent OpCo or its Associates:
  - (f) recovers insurance proceeds in respect of that liability under any Insurances; or
  - (g) would have recovered under such Insurances in respect of that liability if OpCo and its Associates had:
    - (i) effected and maintained the relevant Insurances as required by this deed;
    - (ii) complied with the relevant Insurances;
    - (iii) submitted a claim where there was a legitimate entitlement to do so; and
    - (iv) diligently pursued the claim.
- (h) Clause 44.2(e) will not reduce OpCo's liability to indemnify an Indemnified Party under clause 44.1 or under any Project Agreement in respect of any claim against a Indemnified Party by a third party (including another Indemnified Party) for loss of use of or access to (whether total or partial) any real or personal property, in respect of which the third party can make or could have made a bona fide claim in respect of which it has a cause of action at Law, or under contract with OpCo or an Associate of OpCo, directly against OpCo or an Associate of OpCo rather than against the Indemnified Party, except to the extent that such liability arises solely pursuant to an obligation contractually assumed by the Indemnified Party.

#### **44.3 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 access, loss of production or failure to realise anticipated savings (whether the loss is direct or indirect).



- (b) Subject to clause 44.3(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 44.1 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 44.3(e), but otherwise despite any other provision of this deed, the Principal has no liability to OpCo (whether in contract, tort or otherwise), nor will OpCo be entitled to make any Claim against the Principal, in respect of Consequential or Indirect Loss incurred or sustained by OpCo as a result of any act or omission of the Principal (whether negligent or otherwise).
- (d) Clause 44.3(b) does not operate to limit or restrict OpCo's liability to an Indemnified Party in respect of Consequential or Indirect Loss:
  - (i) to the extent that OpCo has:
    - (A) recovered from a third party (including any subcontractor and whether by way of indemnity or otherwise); or
    - (B) would have recovered from a third party, had it diligently pursued a claim against the third party (to the extent it was entitled to do so),
 an amount in respect of that liability;
  - (ii) to the extent that OpCo or its Associates:
    - (A) recovers insurance proceeds in respect of that liability under any Insurances; or
    - (B) would have recovered under such Insurances in respect of that liability if OpCo and its Associates had:
      - (I) effected and maintained the relevant Insurances as required under this deed;
      - (II) complied with the relevant Insurances;
      - (III) submitted a claim where there was a legitimate entitlement to do so; and
      - (IV) diligently pursued the claim.
  - (iii) for Loss in respect of any liability of an Indemnified Party to a third party (including to another Indemnified Party), for which the third party can make or could have made a bona fide claim in respect of which it has a cause of action at Law, or under contract with OpCo or an Associate of OpCo, directly against OpCo or an Associate of OpCo rather than against the Indemnified Party, except to the extent that such liability arises solely pursuant to an obligation contractually assumed by the Indemnified Party;
  - (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 any reckless, unlawful or malicious act or omission on the part of OpCo or an Associate of OpCo;
  - (vi) subject to clause 44.3(d)(viii)(C), for Loss arising from damage to, loss or destruction of (whether total or partial) any real or personal property of a third party or injury to, illness or death of any person;
  - (vii) in respect of a deductible or excess under any policy of insurance required under this deed;
  - (viii) for Loss expressly imposed on OpCo or any of its Associates under any of the Project Agreements to pay the Principal any of the following amounts:
    - (A) any amounts payable under clause 28.9 or 48.6;
    - (B) for any interest payable under clause 28.12;

- (C) any amounts payable by OpCo to the Principal or a State Indemnified Party under clause 44.1(a)(ii)(B) provided that in respect of loss of use of or loss of access to real or personal property, such amounts are limited to the extent that OpCo or its Associates recovers insurance proceeds in respect of that liability under any Insurances or would have recovered under such Insurances in respect of that liability if OpCo and its Associates had:
  - (I) effected and maintained the relevant Insurances as required by this deed;
  - (II) complied with the relevant Insurances;
  - (III) submitted a claim where there was a legitimate entitlement to do so; and
  - (IV) diligently pursued the claim;
- (D) any Principal Refinancing Share of Refinancing Gain under clause 56.9;
- (E) any amounts payable under and calculated in accordance with Schedule 2 (*Service Payment calculation*);
- (F) any positive Net Financial Impact payable in accordance with Schedule 6 (*Net Financial Impact*);
- (G) any amounts payable by OpCo to an Indemnified IP Party under Schedule 32 (*Intellectual Property*); or
- (H) any other amounts expressly stated to be payable as a debt due and payable under the Principal Project Agreements (other than solely as a result of the operation of clause 69.14(c));
- (ix) in respect of any statutory fine or civil penalty arising from any breach of Law by OpCo or any of its Associates;
- (x) arising from abandonment of the whole or a substantial part of OpCo's Activities by OpCo or any of its Associates;
- (xi) in respect of amounts payable (including profit and overhead) by the Principal to a third party or consultant engaged in rectifying Defects for which OpCo is liable under this deed; or
- (xii) to the extent, by Law, the parties cannot limit or contract out of that Consequential or Indirect Loss.
- (e) Clause 44.3(c) does not operate to limit or restrict the Principal's liability to OpCo in respect of Consequential or Indirect Loss:
  - (i) in respect of a Compensation Event and any amounts payable under and calculated in accordance with Schedule 6 (*Net Financial Impact*);
  - (ii) for the Capital Contribution, the Final Completion Payment, the CDPD Amount or the Service Payments payable under clause 28;
  - (iii) for any interest payable under clause 28.12;
  - (iv) for any amount payable under clause 43.1(d)(iii) if an Uninsurable Material Risk materialises;
  - (v) for any amount payable under clause 31.5 if the Principal suspends OpCo's right to terminate;
  - (vi) for any Termination Payment payable under clause 49.10;
  - (vii) to the extent that the Principal:
    - (A) recovers insurance proceeds in respect of that liability under any Insurances required under this deed; or
    - (B) would have recovered under such Insurances in respect of that liability if the Principal had:

- (I) effected and maintained the relevant Insurances as required under this deed;
- (II) complied with the relevant Insurances;
- (III) submitted a claim where there was a legitimate entitlement to do so; or
- (IV) diligently pursued the claim;
- (viii) for Loss arising from any criminal acts or fraud on the part of the Principal or an Associate of the Principal;
- (ix) for Loss arising from any fraudulent, reckless, unlawful or malicious act or omission under any Principal Project Agreement on the part of the Principal or an Associate of the Principal;
- (x) for Loss or damage to property or injury to, illness or death of, any person caused or contributed to by the Principal or its Associates;
- (xi) to the extent, by Law, the parties cannot limit or contract out of that Consequential or Indirect Loss; or
- (xii) for any amounts payable in respect of conducting Temporary Repairs in accordance with clause 17.4.

#### 44.4 Liability for events triggering Service Payment Deductions

- (a) Subject to clauses 44.4(b) and 44.4(c), OpCo's liability for Service Payment Deductions will be the only monetary consequence for OpCo as a result of any breach or failing by OpCo in respect of:
  - (i) its obligations under clause 23.2; or
  - (ii) any other obligation under this deed,
 which results in a Service Payment Deduction (**Performance Failure**).
- (b) Clause 44.4(a) does not limit or affect:
  - (i) the application of any Service Payment Deduction;
  - (ii) any other right or remedy under this deed or at Law (other than, subject to this clause 44.1(b), for monetary compensation for a Performance Failure);
  - (iii) the Principal's right to recover in respect of Loss or damage caused by a Performance Failure under clause 44.1(a) to the extent that the Principal has not been fully compensated for that Loss or damage by the applicable Service Payment Deduction;
  - (iv) the Principal's rights under any indemnity in Schedule 32 (*Intellectual Property*);
  - (v) the Principal's entitlement to recover any Loss incurred by the Principal as a consequence of exercising its rights under clause 48;
  - (vi) the Principal's rights under this deed or any other Principal Project Agreement in respect of the event that caused or contributed to the Performance Failure (as opposed to the Performance Failure itself);
  - (vii) any payment on termination of this deed (including a Termination Payment); or
  - (viii) any liability of OpCo to the Principal or its Associates for any Loss suffered or incurred by the Principal or its Associates as a result of any:
    - (A) fraudulent, reckless, unlawful or malicious act or omission; or
    - (B) any wilful breach of a Project Agreement,
 by OpCo or any of its Associates where the Principal has not been completely compensated for that Loss by the application of the Service Payment Deduction.
- (c) If a Service Payment Deduction is held to be legally unenforceable, OpCo will be liable for any Loss incurred by the Principal 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.

#### 44.5 Procedure for Third Party Claims

- (a) If a State Indemnified Party wishes to claim indemnity under clause 44.1 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 44.1 in respect of the Third Party Claim, the State Indemnified Party must:
  - (i) in conducting any proceedings or actions in relation to any such Third Party Claim:
    - (A) act in good faith;
    - (B) liaise with OpCo in relation to the defence of the Third Party Claim;
    - (C) provide OpCo with reasonable access to a copy of any notice, correspondence or other document relating to the Third Party Claim as soon as practicable; and
    - (D) on an ongoing basis, keep OpCo reasonably informed of all material developments in relation to the Third Party Claim; and
  - (ii) subject to clause 44.5(e), 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.
- (c) If, at the request of OpCo, a State Indemnified Party agrees to take certain actions in defending or mitigating the Third Party Claim, OpCo must give reasonable security to the State Indemnified Party for any cost or liability arising out of such request before the State Indemnified is required to take those actions.
- (d) If OpCo unreasonably withholds or delays its consent to a request under clause 44.5(b)(ii), the State Indemnified Party may instruct a King's Counsel or Senior Counsel in accordance with clause 44.6 to provide a legal opinion on whether a proposed settlement or compromise of the Third Party Claim is reasonable.
- (e) The State Indemnified Party may settle or compromise the Third Party Claim without OpCo's consent if, following the procedure outlined in clause 44.5(d), the King's Counsel or Senior Counsel opines that the proposed settlement or compromise of the Third Party Claim is reasonable.

#### 44.6 Counsel's opinion

- (a) If a State Indemnified Party wishes to instruct a King's Counsel or Senior Counsel pursuant to clause 44.5(d) to provide an opinion (**Opinion**), then the State Indemnified Party must appoint a King's Counsel or Senior Counsel agreed by the State Indemnified Party and OpCo in writing (**Counsel**) to provide the Opinion in accordance with clause 44.6(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 King'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.

#### **44.7 Obligations not affected**

- (a) Clause 44.1 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 44.1 by reason of effecting insurance or being an insured party under an insurance policy effected by the Principal.

#### **44.8 Indemnified Parties**

- (a) To the extent that the indemnity in clause 44.1 is of State Indemnified Parties other than the Principal, the Principal has sought and obtained that indemnity as agent on behalf of each State Indemnified Party. The Principal may also enforce that indemnity as agent on behalf of each State Indemnified Party.
- (b) If the Principal does not have authority to act as agent on behalf of a State Indemnified Party other than the Principal, then the Principal 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. the Principal may also enforce that indemnity as trustee for the benefit that State Indemnified Party.
- (c) If the indemnity in clause 44.1 is unenforceable to the extent that it is expressed to be given in favour of a State Indemnified Party other than the Principal, all references in this clause 44 to "the State Indemnified Party" or "a State Indemnified Party" will be read as a reference to "the Principal" only.

#### **44.9 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 any fraudulent, reckless, unlawful, negligent or malicious act or omission of an Indemnified Party or a breach by the Principal of its obligations under a Principal Project Agreement or as otherwise provided for under a Principal Project Agreement.

#### 44.10 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 the Principal, Transport for NSW or the State, other than as provided for under a Principal Project Agreement.

### 45. Insurance

#### 45.1 Principal's Insurances

- (a) The Principal must effect and maintain at all relevant times the insurance policies set out in Exhibit 12 (*Principal's Insurances*) (**Principal's Insurances**).
- (b) OpCo acknowledges that the Principal's Insurances:
  - (i) are subject to the limits, exclusions, conditions, deductibles and excesses noted on the policies set out in Exhibit 12 (*Principal's Insurances*); 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 the Principal'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 the Principal's Insurances.
- (d) Where OpCo:
  - (i) must, under clause 43.1, reinstate or repair at its cost any loss, destruction or damage, or is required to indemnify the Principal or another Indemnified Party under clause 44.1, and makes a claim under any of the Principal'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 the Principal's Insurances,OpCo must bear the cost of any excesses or deductibles in the Principal's Insurances or in any insurance effected by OpCo under this clause 45.1, that may apply in those circumstances, without prejudice to any right OpCo may have under clause 29 to seek reimbursement of such cost.
- (e) OpCo must:
  - (i) comply with the terms and conditions of the Principal's Insurances; and
  - (ii) ensure that OpCo Contractors comply with the terms of the Principal's Insurances.
- (f) The Principal must give OpCo:
  - (i) notice of any claim the Principal makes on the Principal's Insurances;
  - (ii) notice of any fact or circumstance which may prejudice the Principal's Insurances;
  - (iii) certified copies of all:
    - (A) policies (including policy schedules, wordings and any endorsements applicable to the SSTOM PPP);
    - (B) renewal certificates; and
    - (C) slips and cover notes,for the Principal's Insurances, within 10 Business Days after the Principal receives them from the insurer or broker; and
  - (iv) a certificate of currency satisfactory to OpCo's Representative (acting reasonably) to confirm that the Principal's Insurances have been effected and maintained in accordance with the requirements of this clause 45.1, whenever requested by OpCo's Representative.





#### 45.2 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 27 (*Insurances*):

- (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 Contractors) which is used in connection with the carrying out of OpCo's Activities and not otherwise covered by the Principal's Insurances or any Insurances effected by OpCo in compliance with this clause 45.2;
- (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 SSTOM 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 the Principal;
- (c) **(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 the Principal 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 the Principal for the acts or omissions of OpCo);

- (d) **(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 an OpCo Contractor) which are used in connection with OpCo's Activities;
- (e) **(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;
- (f) **(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
- (g) **(terrorism insurance for Trains and Trains manufacturing facility)**: a stand-alone project specific insurance policy covering:
  - (i) the Trains, components of the Trains and Train manufacturing facility against physical damage, loss or destruction; and
  - (ii) loss of Service Payment as a consequence of physical damage, loss or destruction to the Trains, Train components or Train manufacturing facility,

caused by or arising from terrorism, in each case, including where Trains and components of the Trains are manufactured outside of Australia.

#### 45.3 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 27 (*Insurances*):

- (a) **(industrial special risks insurance)**: an industrial special risks insurance policy:
  - (i) covering Sydney Metro – Western Sydney Airport;
  - (ii) against physical loss, destruction, or damage and other insurable risks as are reasonably required by the Principal; and
  - (iii) including cover for business interruption arising from such physical loss, destruction 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 an OpCo Contractor) 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 this clause 45.3;
- (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 Contractors (including to the Principal) 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);
  - (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; and
  - (iv) consequential loss arising from (i), (ii) or (iii) above,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 Contractors in respect of any breach of a

duty owed in a professional capacity by OpCo, OpCo Contractors and anyone engaged by them in a professional capacity;

- (e) **(employers' liability and workers' compensation insurance)**: workers' compensation insurance as required by Law (and on the basis that, where permitted under the relevant statutory workers compensation or accident compensation scheme, the insurance shall extend to cover the vicarious liability of the Principal 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 the Principal 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 an OpCo Contractor) which are used in connection with OpCo's Activities;
- (g) **(third party property damage motor vehicle insurance)**: a motor vehicle insurance policy which covers third party property damage related to any motor vehicles which are used in connection with OpCo's Activities;
- (h) **(compulsory third party motor vehicle insurance)**: compulsory third party motor vehicle insurance, in respect of all registrable motor vehicles which are used in connection with OpCo's Activities; and
- (i) **(terrorism insurance for Trains)**: terrorism insurance which covers physical loss, destruction or damage to Trains caused by a terrorist act and including cover for business interruption arising from such loss or damage.

#### 45.4 Periods of OpCo's insurance

OpCo must maintain:

- (a) the insurances referred to in clause 45.2 from the date of Financial Close until the Date of Completion including any associated defects liability period (as applicable);
- (b) the insurances referred to in clause 45.3 (other than the public and products liability insurance referred to in clause 45.3(c) and the professional indemnity insurance policy referred to in clause 45.3(d)) from the Date of Completion until the end of the Term;
- (c) the public and products liability insurance referred to in clause 45.3(c) from the date of First Passenger Service until the end of the Term; and
- (d) the professional indemnity insurance policy referred to in clause 45.3(d) from the Date of Completion until the date which is 7 years after the end of the Term.

#### 45.5 Additional, increased or varied Insurances

- (a) If the Principal at any time reasonably requires OpCo to:
  - (i) insure against a risk not specifically provided for or contemplated under clauses 45.2 or 45.3; or
  - (ii) increase the extent of, or change the terms of, an existing Insurance from that set out in clauses 45.2 or 45.3,it may notify OpCo in writing and request that OpCo give effect to the Principal's requirements.
- (b) OpCo must promptly inform the Principal of the amount of any additional premium payable in giving effect to a requirement of the Principal under clause 45.5(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 the Principal 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 the Principal under clause 45.5(b), as well as any brokerage and Taxes payable in

respect of those premiums, will be reimbursed by the Principal to OpCo within 20 Business Days after OpCo provides evidence satisfactory to the Principal (acting reasonably) that the insurance cover has been so effected and the premium paid.

#### 45.6 Review of Insurance limits and deductibles

- (a) The minimum sums insured and maximum deductibles for the insurances referred to in clause 45.3 (other than the insurances referred to in clauses 45.3(e) and 45.3(h)) will be reviewed by the Principal'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 45.5 will not apply to any increase or decrease in the minimum sums insured or maximum deductibles pursuant to this clause 45.6. Rather, any change in insurance costs due to an increase or decrease in the minimum sums insured or maximum deductibles pursuant to this clause 45.6 will be subject to the benchmarking regime in clause 45.16.

#### 45.7 Joint names

OpCo must ensure that all Insurances effected by OpCo in compliance with this clause 45 other than the Insurances referred to in clauses 45.2(a), 45.2(b) (to the extent it relates to marine advanced consequential loss), 45.2(c), 45.2(d), 45.2(e), 45.2(f), 45.3(b), 45.3(d), 45.3(e), 45.3(f), 45.3(g) and 45.3(h):

- (a) are in the joint names of OpCo, the Principal and the Security Trustee; and
- (b) extend cover to OpCo Contractors and others described in the relevant policy, by specifying them within the definition of "Insured", for their respective rights and interests.

#### 45.8 Insurance requirements generally

All Insurances effected by OpCo in compliance with this clause 45 must be taken out with Reputable Insurers or with insurers approved by the Principal's Representative (such approval not to be unreasonably withheld) and, other than the Insurances referred to in clauses 45.2(c), 45.2(d), 45.2(e), 45.2(f), 45.3(e), 45.3(f), 45.3(g) and 45.3(h):

- (a) **(terms)**: must be on the terms required by this clause 45 or otherwise as approved by the Principal's Representative (such approval not to be unreasonably withheld);
- (b) **(exclusions)**: must not contain any exclusion, endorsement or alteration unless it is first approved in writing by the Principal's Representative (such approval not to be unreasonably withheld);
- (c) **(contractually assumed liability)**: in the case of the Insurances specified in clause 45.3(c), will not expressly exclude liability arising under clause 44.1 solely on the basis that it is a contractually assumed liability;
- (d) **(proportionate liability)**: in the case of the Insurances specified in clause 45.3(d), must:
  - (i) cover any legal liability contractually assumed to the extent that OpCo, the Principal 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 45.8(d)(i), cover OpCo for potential liability to the Principal 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 the Principal under or by reason of this deed;
- (e) **(waiver, non-imputation 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);
  - (iii) that the conduct of one insured shall not be imputed to any other insured; and
  - (iv) other than with respect to a breach of survey/shipping warranty for the Insurance referred to in clause 45.2(b), 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;
- (f) **(notice)**: must contain a term which requires the lead insurer to give:
  - (i) the Principal 30 Business Days' notice prior to the lead insurer cancelling the policy on the request of OpCo; and
  - (ii) OpCo and the Principal 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;
- (g) **(loss payee)**: in the case of the Insurances specified in clause 45.3(a) (other than in respect of the business interruption cover referred to in clause 45.3(a)(iii)), must specify the Principal, OpCo and the Security Trustee as joint loss payees;
- (h) **(reinstatement)**: in the case of the Insurances specified in clauses 45.2(a), 45.2(b), 45.3(a) and 45.3(b) must be endorsed to note and allow OpCo's obligations under clause 43.1, 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
- (i) **(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 rely on general corporate policies of insurance in relation to the Insurances specified in clauses 45.2(c), 45.2(d), 45.2(e), 45.2(f), 45.3(e), 45.3(f), 45.3(g) and 45.3(h) and that implementation of these insurances for other OpCo Contractors may also be on the basis of general corporate policies.

#### 45.9 Premiums

OpCo must punctually pay all premiums and other amounts payable in respect of the Insurances effected by it, and give the Principal evidence of payments for premiums if and when requested by the Principal.

#### 45.10 Evidence of insurance

In respect of the Insurances required to be effected and maintained by OpCo (or a Core Contractor) under this clause 45 (other than clauses 45.2(f) and 45.3(h)), OpCo must give the Principal's Representative:

- (a) (except to the extent a Core Contractor relies on a general corporate policy of insurance or another OpCo Contractor implements insurances through general corporate policies in accordance with clause 45.8) 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 the Principal's Representative (acting reasonably) to confirm that the Insurances which OpCo has (or has caused to be) effected and maintained pursuant to this clause 45 have been effected and maintained in accordance with the requirements of this clause 45, whenever requested by the Principal's Representative.

#### **45.11 Failure to produce proof of insurance**

If OpCo fails to provide evidence satisfactory to the Principal's Representative in accordance with clause 45.10(a) or within 10 Business Days of a request under clause 45.10(b), the Principal may effect and maintain the relevant Insurances and pay the premium. The costs incurred by the Principal in connection with taking such action will be recoverable from OpCo as a debt due and payable from OpCo to the Principal.

#### **45.12 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.

#### **45.13 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 45.2 or 45.3 if it lapses;
- (d) not cancel, vary or allow any Insurance required to be maintained under clauses 45.2 or 45.3 to lapse without the prior written consent of the Principal's Representative;
- (e) immediately notify the Principal of any fact or circumstance or change in circumstances which may prejudice an Insurance;
- (f) without limiting clause 45.14(a), immediately notify the Principal'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.

#### **45.14 Claims under Insurances**

In addition to the obligations to notify the insurer under any Insurance, OpCo must:

- (a) notify the Principal's Representative of any occurrence of which it is aware that may give rise to a claim (other than a claim by the Principal or its Associates) under any Insurance other than statutory insurance;
- (b) keep the Principal's Representative informed of subsequent developments of which it is aware concerning the Claim;
- (c) do everything reasonably required by the Principal (or any other person in whose name the relevant policy is effected) to enable the Principal or such other person to claim, collect or recover money due under an Insurance;
- (d) subject to clause 45.14(e), diligently pursue any material claim which it has under any Insurance in relation to that occurrence; and
- (e) to the extent the Principal is an insured party under an Insurance, not compromise, settle, prosecute or enforce a claim under that Insurance without the prior written consent of the Principal's Representative (which must not be unreasonably withheld or delayed).

#### **45.15 Insurance Proceeds Account**

- (a) **(Insurance Proceeds):** This clause 45.15 applies to the following insurance proceeds:
  - (i) all amounts received under the Insurances referred to in clauses 45.1, 45.2(b), 45.2(g) and 45.3(a); and
  - (ii) any amounts paid by the Principal pursuant to clause 43.1(d)(iii) (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:

- (iii) any amounts received under the construction liability insurance policy referred to in clause 45.1(a); and
  - (iv) 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 the Principal (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 the Principal;
  - (iv) notify the financial institution referred to in clause 45.15(b)(ii) of the charge over the Insurance Proceeds Account in accordance with the Principal Deed of Charge and procure, and provide the Principal 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 45.15(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:
      - (I) any Security Interest, right of set off, combination of accounts or counterclaim in relation to the Insurance Proceeds Account;
      - (II) 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
      - (III) 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 45.15(f), moneys in the Insurance Proceeds Account may only be applied towards the cost of repair or reinstatement.
- (e) **(Records):** OpCo must give the Principal 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 49, 31, 43 or 46, the Principal will be entitled to any moneys remaining in the Insurance Proceeds Account on the date of termination.

#### 45.16 Benchmarking of Insurances

- (a) Three months prior to each Insurance Benchmark Date, OpCo must, where possible:
- (i) obtain separate quotations from three Reputable Insurers in the commercial insurance market at that time, for annual premium costs of obtaining the Benchmarked Insurances; and
  - (ii) obtain the insurance asset valuations for the purposes of the benchmarking of the Benchmarked Insurances and provide the insurance premiums derived from those valuations.

- (b) The Principal'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 the Principal's Representative) are greater or less than the insurance premiums for the Benchmarked Insurances at the commencement of the Operations Phase or the last Insurance Benchmark Date on which an adjustment to the Benchmarked Insurance Component occurred under this clause 45.16 (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 the Principal'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.

## 46. Uninsurable Risks

### 46.1 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.

### 46.2 Relief from obligation to insure

(a) If 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:

- (c) 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; and
- (d) if the risk that has become an Uninsurable Risk is a risk against which OpCo is required to insure in accordance with clause 45.2 or clause 45.3, unless the parties agree otherwise in accordance with clause 46.1(d), each Service Payment will be adjusted by deducting

the amount corresponding to the proportion of the total insurance premium (inclusive of brokerage and all taxes, levies and other statutory charges) for any insurance that was payable by OpCo for the insurance of that risk before it became an Uninsurable Risk.

#### 46.3 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 (and no less 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 46.3(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:
    - (A) OpCo must:
      - (I) obtain separate quotations to cover the risk in accordance with the requirements set out in clause 45 from three Reputable Insurers and provide these quotations to the Principal within 10 Business Days of submission to the Principal of the notice described in clause 46.3(b)(i) together with such other documentation or information as the Principal reasonably requires in connection with those quotations;
      - (II) within 5 Business Days of receipt of confirmation from the Principal that one of the quotations provided under clause 46.3(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 45; and
    - (B) the Benchmarked Insurance Component will be increased by an amount equal to the price of the quotation that is accepted by the Principal.

### 47. Default

#### 47.1 OpCo Events of Default

Each of the following events is an OpCo Event of Default:

- (a) **(failure to progress)**: OpCo fails to expeditiously and diligently progress the Delivery Activities as required under clause 20.1(b);
- (b) **(funding restricted or cancelled)**: any event that would restrict or cancel OpCo's ability to obtain funding under a Debt Financing Document or an Equity Document except to the extent that immediately after the restriction or cancellation, the funding available to OpCo is greater than that required to enable OpCo to fully undertake the Project;
- (c) **(unacceptable availability)**: after the Date of Completion:
  - (i) the number of Missed Train Services in [REDACTED] exceeds [REDACTED] of the total number of Required Train Services for [REDACTED] for any [REDACTED];
  - (ii) the number of Missed Train Services in any rolling [REDACTED] exceeds [REDACTED] of the total number of Required Train Services for that period;
  - (iii) the total number of hours of Platform Closure:
    - (A) for any Platform [REDACTED] exceeds [REDACTED]; or



- (B) across all Platforms [REDACTED] exceeds [REDACTED]
- (iv) the first Train Service of the day in either direction is not delivered [REDACTED] of the scheduled time for the first Required Train Service on more than [REDACTED] occasions in a rolling [REDACTED]; or
- (v) the last Train Service of the day in either direction is not delivered within [REDACTED] of the scheduled time for the last Required Train Service on more than [REDACTED] in a rolling [REDACTED],
- 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 30.5; or
- (vii) excluded from the calculations of Availability Deductions in accordance with clause 17 of Schedule 2 (*Service Payment calculation*);
- (d) **(unacceptable timeliness)**: after the Date of Completion:
- (i) more than [REDACTED] of Train Services in a [REDACTED] exceed the Maximum Train Journey Time by [REDACTED] for each of [REDACTED] or any [REDACTED]; or
- (ii) more than [REDACTED] of Actual Headways in a [REDACTED] exceed the relevant Maximum Headway by more than [REDACTED] for each of [REDACTED] or any [REDACTED]
- 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 30.5; or
- (iv) excluded from the calculations of Timeliness Deductions in accordance with clause 17 of Schedule 2 (*Service Payment calculation*);
- (e) **(unacceptable quality)**: after the Date of Completion, OpCo accrues:
- (i) [REDACTED] or more Service Failure Points over a rolling period of [REDACTED]; or
- (ii) a Service Failure Point for the same Service Quality KPI, Asset Functionality KPI or Reporting KPI in any [REDACTED] in a rolling [REDACTED] period,
- in each case, disregarding any such unacceptable quality which is directly caused by a Relief Event during a period when OpCo's non-financial obligations are suspended under clause 30.5;
- (f) **(failure to pay)**: OpCo fails to pay an amount that is due under any Principal Project Agreement when it is due and the failure is not remedied within 20 Business Days of a written demand from the Principal;
- (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 the Principal or Rail Entity or Customers;
- (i) **(refinancing)**: OpCo fails to inform or obtain the prior consent of the Principal (as the case may be) of a Refinancing or to distribute any Principal Refinancing Share in accordance with clause 56;
- (j) **(subcontracting)**: OpCo breaches its obligations under clauses 61.3(a), 61.3(b), 61.3(e) or 61.3(g);
- (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)**: the ONRSR notifies OpCo or an Accredited Contractor that:
  - (i) it proposes to suspend or revoke OpCo's Accreditation or an Accredited Contractor's Accreditation with respect to OpCo's Activities; or
  - (ii) a failure to take action specified by the ONRSR within a time period specified by the ONRSR may result in the ONRSR suspending or revoking OpCo's Accreditation or an Accredited Contractor's Accreditation with respect to OpCo's Activities;
- (m) **(fraud)**: OpCo or an Associate of OpCo engages in fraud, collusion or dishonest conduct in performing their obligations under the Project Agreements;
- (n) **(representation or warranty)**: a representation or warranty made or given by OpCo in this deed or any other Principal Project Agreement is found to be materially incorrect or misleading or a financial audit report discloses fraudulent, false, misleading or negligent reporting by OpCo in respect of any financial statements or invoices or other books or records of OpCo;
- (o) **(delay)**: OpCo has not achieved Completion by the Date for Completion;
- (p) **(Probity Event)**: OpCo fails to remedy a Probity Event in accordance with 54.5;
- (q) **(Modern Slavery Information)**: OpCo fails to notify the Principal in writing as soon as it becomes aware of either or both of the following:
  - (i) a material change to any of the Modern Slavery Information it has provided to the Principal; and
  - (ii) any actual or suspected occurrence of Modern Slavery in its operations or supply chains (or those of any OpCo Contractor);
- (r) **(Modern Slavery incident)**: OpCo fails to take reasonable steps to respond to and address any actual or suspected occurrence of Modern Slavery in its operations or supply chains (or in those of any OpCo Contractor) in accordance with any applicable policies and guidance;
- (s) **(Modern Slavery material breach)**: OpCo commits a material breach of clause 10.22(a), clause 10.22(b) or clause 10.22(d); and
- (t) **(other breach)**: any other material breach by OpCo of an obligation under this deed or any other Principal Project Agreement.

#### 47.2 Default Notice

If an OpCo Event of Default occurs, the Principal may give OpCo a notice (the **Default Notice**):

- (a) stating that it is a notice under this clause 47.2; and
- (b) specifying the nature of OpCo Event of Default.

#### 47.3 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 the Principal may agree) after receipt of the Default Notice:

  - (iii) Remedy the OpCo Event of Default; or
  - (iv) prepare and submit to the Principal a draft plan describing the actions and measures which OpCo will diligently pursue to Remedy the OpCo Event of Default (**Draft Cure Plan**).
- (b) Any Draft Cure Plan provided to the Principal under clause 47.3(a)(iv) must include:

- (i) the proposed cure period;
  - (ii) each task to be undertaken, whether OpCo or an OpCo Contractor is undertaking the task, the date by which each task is to be completed and the additional resources and personnel (if applicable) to be applied to Remedy the OpCo Event of Default;
  - (iii) confirmation that all notification requirements in the Debt Financing Documents as a result of the OpCo Event of Default have been complied with by OpCo;
  - (iv) any temporary measures that will be undertaken while the OpCo Event of Default is being cured in order to ameliorate the impact of the OpCo Event of Default.
- (c) The parties agree that for the purpose of this clause 47.3, an OpCo Event of Default under clause 47.1(o) will be treated as capable of being Remedied.
- (d) Subject to the Financiers Tripartite Deed and 47.5(a), the maximum period of time which OpCo may be given to cure an OpCo Event of Default (including any extension granted in accordance with clause 47.5(b)) will be:
  - (i) subject to clause 47.3(d)(ii), if the applicable OpCo Event of Default occurs prior to the Date of Completion, 18 months in aggregate from the date of the Default Notice;
  - (ii) if the applicable OpCo Event of Default is the OpCo Event of Default in clause 47.1(o), the period of time commencing on the Date for Completion and ending on the Longstop Date; and
  - (iii) if the applicable OpCo Event of Default occurs after the Date of Completion, 12 months in aggregate from the date of the Default Notice.
- (e) Within 10 Business Days after receipt of the Draft Cure Plan, the Principal 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.
- (f) If the Principal approves a Draft Cure Plan pursuant to clause 47.3(e)(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.
- (g) If the Principal rejects a Draft Cure Plan pursuant to clause 47.3(e)(ii), OpCo, in consultation in good faith with the Principal, must amend the Draft Cure Plan to meet the Principal's reasonable requirements and submit the amended Draft Cure Plan to the Principal for its approval, in which case this clause 47.3 will apply to the amended Draft Cure Plan as if it were originally submitted under clause 47.3(a).
- (h) 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 47.3(a);
    - (B) if the Principal rejects a Draft Cure Plan pursuant to clause 47.3(e)(ii), amend the Draft Cure Plan to meet the Principal's reasonable requirements and submit the amended Draft Cure Plan in accordance with clause 47.3(g); 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 the Principal regarding that failure, an OpCo Termination Event will occur.

#### 47.4 Prevention Plan

- (a) Subject to clause 47.4(c), 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 the Principal 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) Any Draft Prevention Plan provided to the Principal under clause 47.4(a) must include:

- (i) each task to be undertaken, whether OpCo or an OpCo Contractor is undertaking the task, the date by which each task is to be completed and the additional resources and personnel (if applicable) to be applied to prevent the OpCo Event of Default from recurring; and
- (ii) confirmation that all notification requirements in the Debt Financing Documents as a result of the OpCo Event of Default have been complied with by OpCo;

- (c) If:

- (i) a Default Notice is given; and
- (ii) the OpCo Event of Default is not capable of being Remedied and the Principal has formed the view (acting reasonably) that there are no actions and measures that can be diligently pursued by OpCo to overcome the consequences of the OpCo Event of Default, the Principal must give OpCo a statement to that effect along with its reasons for forming that view and:

- (A) if OpCo does not agree with a Default Notice, or any part of it, OpCo must promptly notify the Principal, including the reasons why; and

- (B) the Principal must in good faith consider OpCo's notice under clause 47.4(c)(ii)(A) and (acting reasonably):

- (I) make any changes to the Default Notice that it considers reasonable as a consequence of OpCo's notice; and
- (II) notify OpCo of those changes (if any).

- (iii) after considering OpCo's notice under clause 47.4(c)(ii)(A), the Principal maintains the view (acting reasonably) that there are no actions and measures that can be diligently pursued by OpCo to overcome the consequences of the OpCo Event of Default, the Principal must notify OpCo of this determination and the OpCo Event of Default will be deemed to be an OpCo Termination Event.

- (d) If OpCo is not satisfied with:

- (i) the changes (if any) made by the Principal under clause 47.4(c)(ii)(B)(I); or
- (ii) the Principal's determination under clause 47.4(c)(iii);

then:

- (iii) OpCo may refer the matter to expert determination in accordance with clause 63; and

- (iv) if clause 47.4(c)(iii) applies, the OpCo Event of Default will not be deemed to be an OpCo Termination Event unless and until determined by expert determination in accordance with clause 63,

and OpCo must act in accordance with the Default Notice while the matter is being determined in accordance with clause 63.

- (e) The parties agree that for the purpose of this clause 47.4, an OpCo Event of Default under clause 47.1(o) will be treated as capable of being Remedied.
- (f) Subject to clause 47.4(c)(iii), within 10 Business Days after receipt of the Draft Prevention Plan, the Principal 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.
- (g) If the Principal approves a Draft Prevention Plan pursuant to clause 47.4(f)(i) (the **Approved Prevention Plan**), OpCo must comply with and implement the Approved Prevention Plan.
- (h) If the Principal rejects a Draft Prevention Plan pursuant to clause 47.4(f)(ii), OpCo, in consultation in good faith with the Principal, must amend the Draft Prevention Plan to meet the Principal's reasonable requirements and submit the amended Draft Prevention Plan to the Principal for its approval, in which case this clause 47.4 will apply to the amended Draft Prevention Plan as if it were originally submitted under clause 47.4(a).
- (i) If:
  - (i) a Default Notice is given;
  - (ii) the OpCo Event of Default is not capable of being Remedied and clause 47.4(c) does not apply; and
  - (iii) OpCo fails to:
    - (A) submit a Draft Prevention Plan in accordance with clause 47.4(a);
    - (B) if the Principal rejects a Draft Prevention Plan pursuant to clause 47.4(f)(ii), amend the Draft Prevention Plan to meet the Principal's reasonable requirements and submit the amended Draft Prevention Plan in accordance with clause 47.4(h); 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 the Principal regarding that failure, an OpCo Termination Event will occur.

#### **47.5 Extension during period of suspension**

- (a) The parties acknowledge and agree that an Applicable Cure Period and time permitted to undertake tasks in an Approved Prevention Plan 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 30.5 as a result of a Relief Event.
- (b) If at any time prior to the expiry of an Applicable Cure Period or within the time permitted to undertake tasks in an Approved Prevention Plan OpCo reasonably considers that it requires an extension to the Applicable Cure Period or time permitted to undertake tasks in an Approved Prevention Plan, it may request an extension of time by notifying the Principal in writing setting out the reasons for that belief and the reasonable period of time proposed by OpCo for the extension.
- (c) Subject to clause 47.3(d), if:
  - (i) OpCo gives the Principal a notice under clause 47.5(b); and
  - (ii) the Principal is reasonably satisfied that OpCo has diligently pursued and is continuing to diligently pursue a Remedy or the Approved Prevention Plan (as applicable) (other than in a minor respect) of the applicable OpCo Event of Default but that either, despite such diligence:
    - (A) the OpCo Event of Default cannot, be Remedied within the Applicable Cure Period; or

- (B) the tasks in an Approved Prevention Plan cannot be performed within the time permitted under that plan,

the Principal must grant an extension to the Applicable Cure Period or time permitted to undertake tasks in an Approved Prevention Plan (as applicable) for such period as the Principal considers is reasonably required to Remedy the OpCo Event of Default, provided that the Principal is not required to grant more than one extension to an Applicable Cure Period or time permitted to undertake tasks in an Approved Prevention Plan.

#### 47.6 Persistent Breach

- (a) The Principal may issue a notice to OpCo (**Persistent Breach Notice**) if a breach of the same OpCo obligation under this deed or any other Principal 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 Persistent 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;
    - (B) a breach which results in a Service Payment Deduction; or
    - (C) a breach in relation to which the Principal has issued a Frequent Breaches Notice under clause 47.7(a) and which OpCo is diligently remedying; and
  - (iv) state that, if the Persistent 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 the Principal becoming entitled to terminate this deed.
- (c) If, following the issue of a Persistent Breach Notice, the Persistent 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 the Principal 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 Persistent Breach;
  - (iii) state that the Persistent 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 Persistent 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, the Principal will become entitled to terminate this deed.

#### 47.7 Frequent Breaches

- (a) The Principal 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 the Principal's ability to fulfil any of its objectives under the Transport Administration Act;
  - (iii) have a material adverse effect on Sydney Metro – Western Sydney Airport, the ETS or Customers; or
  - (iv) in the Principal'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;
    - (B) a breach which results in a Service Payment Deduction; or
    - (C) a breach in relation to which the Principal has issued a Persistent Breach Notice under clause 47.6(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 the Principal 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, the Principal 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, the Principal will become entitled to terminate this deed.

## 48. Step-In

### 48.1 Step-in Events

- (a) Each of the following is a Step-In Event:
  - (i) subject to clause 48.1(b), an OpCo Event of Default,
  - (ii) an OpCo Termination Event;
  - (iii) an event or circumstance which arises out of or in connection with OpCo's Activities or the SSTOM PPP that poses a serious threat to, or causes or will cause material damage or material disruption to:
    - (A) the health or safety of persons;
    - (B) the Environment;
    - (C) any property; or
    - (D) the safe and secure performance of OpCo's Activities; and
  - (iv) any event or circumstance where the Principal is entitled by Law to act to discharge a statutory power or duty.
- (b) Other than when it is exercising its rights in accordance with clauses 48.1(a)(ii) to 48.1(a)(iv), notwithstanding an OpCo Event of Default has occurred, the Principal must not exercise its rights under clause 48.2(a) on the occurrence of the OpCo Event of Default for so long as OpCo is complying with its obligations under clauses 47.3 and 47.4 in respect of that OpCo Event of Default.

## 48.2 Step-in Rights

- (a) If:
  - (i) a Step-in Event occurs; and
  - (ii) the Principal has given notice to OpCo in accordance with clause 48.2(b),then a Step-in Party may exercise all or any of the Step-in Powers set out in clause 48.3 (*Step-in Powers*) in an endeavour to remedy the Step-in Event or overcome the risk or mitigate any consequences resulting from the Step-in Event (**Step-in Right**).
- (b) The notice referred to in clause 48.2(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 the Principal'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 48.2(b)(i), but if given orally must be followed within 24 hours by a written notice under clause 48.2(b)(i).
- (c) The Step-in Right (or the cessation of such exercise):
  - (i) is without prejudice to the Principal's other rights in respect of a Step-in Event, including its rights under clause 49; and
  - (ii) will not affect any other right of the Principal under this deed or any other Principal Project Agreement or under Law, except to the extent that OpCo's obligations are suspended under clause 48.4(d).

## 48.3 Step-in Powers

A Step-in Party may, in performing OpCo's Activities referred to in the notice under clause 48.2(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 and the Sydney Metro Site;
  - (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).**

## 48.4 OpCo's obligations

- (a) OpCo must:
  - (i) cooperate with the Step-in Party in the exercise of the Step-in Powers;



- (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 48.4(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 the 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 the Principal 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 the Principal to exercise its Step-in Rights.

#### **48.5 Principal's obligations**

- (a) The Principal 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) The Principal must ensure that each Step-in Party:
  - (i) cooperates with OpCo and the Accredited Contractors in relation to OpCo's (or any Accredited Contractor's) compliance with its Accreditation obligations under the Rail Safety National Law and Rail Safety Regulations;
  - (ii) does not put OpCo (or any Accredited 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 Accredited Contractor) in relation to compliance with the Accreditation of OpCo (or any Accredited Contractor); and
  - (iv) does not do anything (or fail to do anything) which jeopardises the Accreditation of OpCo (or any Accredited Contractor) or an application for Accreditation by OpCo (or any Accredited Contractor), including anything that may be grounds for the ONRSR to refuse an application for Accreditation by OpCo (or any Accredited 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 Accredited Contractor).

#### 48.6 Payments during step-in

- (a) If, during a period when the Principal 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 (*Service Payment calculation*) based on the actual performance of those obligations during the period when the Principal is exercising its Step-in Rights.
- (b) If, during a period when the Principal 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 (*Service Payment calculation*), but based on the average performance of the relevant obligation by OpCo for the 6 months immediately prior to the Principal 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 the Principal exercising the Step-in Right.
- (c) The Principal will be entitled to deduct the following amounts, without double counting, from any Service Payment payable in respect of a period when the Principal 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 the Principal 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 48.6(c)(i) or 48.6(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 the Principal.
- (e) Where the Principal exercises its rights during the Delivery Phase, any costs incurred by the Principal will be a debt due and payable by OpCo to the Principal in the following amounts:
  - (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 the Principal 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,other than to the extent the costs are incurred as a consequence of any breach of the Principal Project Agreements by the Principal or a negligent act or omission of the Principal.

#### 48.7 No liability

OpCo acknowledges that the Principal will have no liability to OpCo, and OpCo will not be entitled to make any Claim against the Principal, 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) fraudulent, reckless, unlawful or malicious act or omission or gross negligence on the part of the Step-in Party or its Associates; or
- (d) a Compensation Event or a Relief Event.

#### 48.8 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 the Principal; and
  - (ii) the Principal's Representative notifying OpCo in writing that the Step-in Party will no longer exercise the Step-in Powers.
- (b) The Principal 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 the Principal to OpCo a reasonable time prior to the date the Step-in Party proposes to cease to exercise the Step-in Powers).
- (c) The Principal 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's Activities is effected without interruption to OpCo's Activities.
- (d) Upon the Step-in Party ceasing to exercise the Step-in Powers, OpCo must immediately resume the performance of the relevant OpCo's Activities in accordance with this deed (unless this deed has been terminated).

### 49. Termination

#### 49.1 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 [REDACTED] exceeds [REDACTED] of the total number of Required Train Services for [REDACTED] for each of any [REDACTED]; or
  - (ii) the number of Missed Train Services in any rolling [REDACTED] period exceeds [REDACTED] 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 30.5; or
  - (iv) excluded from the calculations of Availability Deductions in accordance with clause 17 of Schedule 2 (*Service Payment calculation*);
- (b) **(unacceptable timeliness)**: after the Date of Completion, more than [REDACTED] of Train Services in [REDACTED] exceed the Maximum Train Journey Time by [REDACTED] for any [REDACTED], 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 30.5; or
  - (ii) excluded from the calculations of Timeliness Deductions in accordance with clause 17 of Schedule 2 (*Service Payment calculation*);
- (c) **(unacceptable quality)**: after the Date of Completion, OpCo accrues [REDACTED] Service Failure Points over a rolling period of [REDACTED], disregarding any such unacceptable quality directly caused by a Relief Event during a period when OpCo's non-financial obligations are suspended under clause 30.5;

- (d) **(Persistent Breach)**: subject to clause 49.2, the Principal 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)**: subject to clause 49.2, the Principal 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 an 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 47.3(h) or 47.4(i);
- (i) **(failure to achieve Completion by Longstop Date)**: a failure by OpCo to achieve Completion by the Longstop Date;
- (j) **(abandonment)**: OpCo wholly or substantially abandons the SSTOM PPP or any material part of OpCo's Activities;
- (k) **(insolvency of OpCo)**: an Insolvency Event occurs in relation to a Project Entity whether or not OpCo has been in breach of this deed;
- (l) **(suspension or revocation of Accreditation)**: the 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 an Accredited 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 the D&C 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 61.3(b); or
  - (iv) is otherwise acceptable to the Principal (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 the Principal directing it to do so;
- (o) **(assignment etc)**: OpCo breaches its obligations under clause 59.3(b);
- (p) **(restriction on Change of Ownership of OpCo)**: OpCo breaches its obligations under clause 60.2;
- (q) **(restriction on Change in Control of D&C Contractor or D&C Restructure Event)**: a Change in Control of the D&C Contractor (or an entity comprising the D&C Contractor) or a D&C Restructure Event occurs without the Principal's consent under clause 60.3(a);
- (r) **(restriction on Change in Control of O&M Contractor)**: a Change in Control of the O&M Contractor (or an entity comprising the O&M Contractor) occurs without the Principal's prior written consent under clause 60.4(a);
- (s) **(restrictions on replacement of a Core Contractor or Significant Contractor)**: a Core Contractor or a Significant Contractor is replaced by OpCo or a Core Contractor without the Principal's approval under clause 61.3(a) and OpCo fails to:

- (i) terminate the Core Contract with the replacement Core Contractor and retender the works or services within 90 days after receipt of a notice from the Principal directing it to do so; or
- (ii) ensure the Core Contractor terminates any Significant Contract with the replacement Significant Contractor and retenders the works or services within 90 days after receipt of a notice from the Principal directing it to do so;
- (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 the Principal, 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 the Principal 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 the Principal, the State, or an FIW Contractor), other than as contemplated by the Project Agreements; or
    - (B) becoming invalid, void or voidable in any material respect other than where the Principal, the State or an FIW 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;
- (u) **(deemed OpCo Termination Event):** any other event which is deemed to be an OpCo Termination Event under clause 43.4(b)(i) or 47.4(c)(iii);
- (v) **(Probity Event):** OpCo fails to comply with clause 54.5(d) in relation to a Probity Event; and
- (w) **(Modern Slavery incident):** the occurrence of either of the following events:
  - (i) OpCo has failed to disclose to the Principal, prior to execution of this deed, that:
    - (A) any Project Entity has been convicted of a Modern Slavery Offence; or
    - (B) any OpCo Contractor has been convicted of a Modern Slavery Offence (of which OpCo was aware, having made all reasonable enquiries); or
  - (ii) any Project Entity or any OpCo Contractor is convicted of a Modern Slavery Offence during the Term (of which OpCo is aware, having made all reasonable enquiries) and, within 30 Business Days of a notice from the Principal indicating that it may exercise its termination rights under this clause is unable to demonstrate to the Principal (acting reasonably) that OpCo has taken (or has procured the other Project Entity or that OpCo Contractor to take) all reasonable steps to respond to and address the Modern Slavery Offence.

## 49.2 Termination for failure to achieve Completion

Without limiting the Principal's other rights or OpCo's other obligations under this deed, where an OpCo Event of Default occurs as a result of an OpCo Event of Default under clause 47.1(o), then any consequential OpCo Termination Event referred to in clauses 49.1(d) and 49.1(e) that may otherwise arise will be deemed to not arise until the Longstop Date.

## 49.3 Notice of OpCo Termination Event

Without limiting the Principal's other rights or OpCo's other obligations under this deed, OpCo must notify the Principal'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.

#### **49.4 Termination for OpCo Termination Event**

Subject to the Financiers Tripartite Deed, if an OpCo Termination Event occurs and is subsisting, the Principal may give a written notice to OpCo immediately terminating this deed. The notice must set out details of the OpCo Termination Event for which the Principal is giving the notice.

#### **49.5 Voluntary termination by the Principal**

- (a) The Principal may, 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).
- (b) If this deed is terminated in accordance with clause 49.5(a), the Principal may thereafter either itself or by third parties carry out some or all of OpCo's Activities (if the Principal elects to do so).

#### **49.6 Termination for Force Majeure Event**

OpCo may terminate this deed in the circumstances described in clause 31.4(a)(iii) and either party may terminate this deed in the circumstances described in clause 31.4(a)(iv).

#### **49.7 Termination in connection with Extensions**

- (a) The Principal may terminate this deed in the circumstances described in clause 38.2 or clause 8.2 of Schedule 37 (*Extensions*).
- (b) If this deed is terminated in accordance with clause 49.7(a), the Principal may thereafter either itself or by third parties carry out some or all of OpCo's Activities (if the Principal elects to do so).

#### **49.8 Termination for Uninsurable Risk**

If clause 43.4(b)(iv) applies, the Principal must give a written notice to OpCo immediately terminating this deed.

#### **49.9 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 69.6.

#### **49.10 Termination Payments**

- (a) Subject to clause 49.10(b), if this deed is terminated under this clause 49, the Principal must pay to OpCo:
  - (i) if this deed is terminated under clause 49.4 (other than as the result of an OpCo Termination Event referred to in clause 49.1(j)), the Termination Payment determined in accordance with clause 3 or clause 7.1 (as applicable) of Schedule 26 (*Termination Payments*);
  - (ii) if this deed is terminated under clause 49.5 or clause 49.7, the Termination Payment calculated in accordance with clause 4 or clause 7.2 (as applicable) of Schedule 26 (*Termination Payments*); or
  - (iii) if this deed is terminated under clause 49.6 or clause 49.8, the Termination Payment calculated in accordance with clause 5 or clause 7.3 (as applicable) of Schedule 26 (*Termination Payments*).
- (b) If this deed is terminated as the result of an OpCo Termination Event referred to in clause 49.1(j), OpCo will receive no compensation.

- (c) In the calculation of Termination Payments under Schedule 26 (*Termination Payments*), there will not be any double counting of any amounts, whether such amounts are referred to in Schedule 26 (*Termination Payments*) or elsewhere in this deed.

#### 49.11 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.

#### 49.12 Option to assume Project Debt

- (a) If:
- (i) this deed is terminated; and
  - (ii) as at the date of termination, an [REDACTED] has any outstanding Financial Indebtedness,
- the Principal may, subject to complying with Law, elect to assume (or have its nominee assume) some or all of that [REDACTED] rights and liabilities under the Debt Financing Documents.
- (b) If the Principal elects to assume (or have its nominee assume) some or all of an [REDACTED] rights and liabilities under clause 49.12(a):
- (i) OpCo must ensure that such rights and liabilities are novated or otherwise transferred to the Principal (or its nominee) on the date of termination of this deed (but subject to clause 49.12(b)(iv));
  - (ii) subject to clause 5.7 of the Financiers Tripartite Deed, the Principal agrees (or shall ensure that the nominee agrees) to meet all relevant further obligations to the Debt Financiers on the same terms and conditions as contained in the Debt Financing Documents;
  - (iii) the Termination Payment which the Principal would otherwise be obliged to pay to OpCo will be reduced by:
    - (A) the principal payable directly to the Debt Financiers by the Principal (or its nominee) following any novation (or other transfer) of the rights and liabilities under the Debt Financing Documents to the Principal (or its nominee) under this clause 49.12; 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 (or other transfer); and
  - (iv) subject to clause 49.12(b)(iii), the Principal must pay the Termination Payment to OpCo prior to the novation becoming effective.
- (c) OpCo must ensure that each [REDACTED]:
- (i) is 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 49.12; and
  - (ii) without prejudice to clause 69.7 of this deed and clause 5.7(c) of the Financiers Tripartite Deed, OpCo must, and must ensure that each [REDACTED] and [REDACTED], promptly does all further acts and executes and delivers 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 clause 49.12.

## **50. Transition out provisions**

### **50.1 Right to appoint Successor OpCo**

- (a) OpCo acknowledges that the Principal 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 50.6; and
  - (ii) clause 50.7.

### **50.2 Transition Out Plan**

- (a) OpCo must prepare, update and submit the Transition Out Plan in accordance with clause 9.
- (b) OpCo must ensure that a Step-In Party, prospective Successor OpCo, Successor OpCo or nominee of the Principal 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 the Principal and in any case on the dates OpCo is required to submit the Transition Out Plan to the Principal in accordance with clause 9.

### **50.3 Preparation for contracting at end of Term**

- (a) OpCo must, to the extent permitted by Law, provide the Principal with reasonable access to the Staff and the information, books and records, kept by or on behalf of OpCo in connection with the SSTOM PPP, for the purpose of the Principal 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 the Principal in the preparation for, and the conduct of, a fair and competitive expression of interest or tendering process.
- (c) Without limiting clause 50.3(b), OpCo must, to the extent permitted by Law, make available to the Principal 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 the Principal that to the best of its belief all information provided under clauses 50.2 and 50.3 will be, at the time it is provided, true and correct in all material respects and will not be misleading, by omission or otherwise.

### **50.4 Continuity of OpCo's Activities**

OpCo must:

- (a) 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 the Principal) is able at any time to immediately take over the performance of OpCo's Activities without interruption; and
- (b) do all other acts and things to enable the Step-in Party or Successor OpCo (or nominee of the Principal) to be in a position to deliver Sydney Metro – Western Sydney Airport to the standards specified in the deed with minimum disruption.

### **50.5 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 the Principal).

### **50.6 Assistance in securing continuity**

OpCo must do everything, both before and after the expiry or termination of the Term, as the Principal may reasonably require to assist and advise any Step-in Party, prospective Successor



OpCo, Successor OpCo or nominee of the Principal in performing OpCo's Activities, including actions set out in clause 24.14 and 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 the Principal in relation to the performance of OpCo's Activities (provided that where OpCo is required to provide training sessions after the expiry or termination of the Term, the Principal will pay OpCo its reasonable costs of doing so, as agreed between the parties).

#### **50.7 Access**

OpCo must ensure that a prospective Successor OpCo, Successor OpCo or nominee of the Principal has access to the Assets, systems, the Stabling and Maintenance Facility and the Required Employees for the purpose of:

- (a) the prospective Successor OpCo, Successor OpCo or nominee of the Principal receiving information in respect of OpCo's Activities; and
- (b) preparations by the prospective Successor OpCo, Successor OpCo or nominee of the Principal to take over the performance of OpCo's Activities following expiry or termination of the Term.

#### **50.8 Required 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 Employee a statement setting out that Required Employee's:
    - (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 the Principal information on the Required Employees, including:
    - (A) the statement provided to each Required Employee pursuant to clause 50.8(a)(i);
    - (B) a list of the names of the Required Employees;
    - (C) each Required Employee's terms and conditions of employment; and
    - (D) each Required Employee's roster.
- (b) In the event that a Required Employee notifies OpCo that he or she disputes any of the information contained in the statement provided to that Required Employee pursuant to clause 50.8(a)(i), OpCo must notify the Principal of such dispute and the Principal shall refer the disputed issue to an actuary.

#### **50.9 Variation of terms and conditions of employment**

OpCo must not, without the prior written consent of the Principal (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 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 Employee of no more than the percentage increase in the index referred to in clause 15.2(b) of Schedule 2 (*Service Payment*)

- calculation) 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 Employee's legal entitlements) which the Required 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 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 Employee performed in the course of his or her employment with OpCo.

#### **50.10 Transfer of employees to Successor OpCo**

- (a) At the end of the Term the Principal may, and at the Expiry Date the Principal must, procure that Successor OpCo (or a nominee of Successor OpCo) makes offers of employment to the Required 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 OpCo Contractor).
- (b) Notwithstanding clause 50.10(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 OpCo Contractor), an amount which:
  - (i) complies with the terms of any relevant employment agreement and applicable Laws; and
  - (ii) is consistent with general standards applicable at that time.
- (c) For the purposes of this clause 50.10, any offer of employment by Successor OpCo (or a nominee 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 relevant OpCo 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) Where the employment of any employees of OpCo (or the relevant OpCo Contractor) is to be transferred to a Successor OpCo (or a nominee of the Successor OpCo), unless otherwise agreed, OpCo (or the relevant OpCo Contractor) will make adjustments and payment to the Principal or its nominee in respect of all actual or contingent liability for annual leave, accrued rostered days off, sick leave, long service leave and all other employee entitlements which are not to be paid out to the relevant transferring employees at the time of transfer of employment.
- (e) This clause 50.10 does not apply if this deed is terminated under clause 49.6 or clause 49.8.

#### **50.11 Asset Information System**

OpCo must commence the transfer of the Asset Information System database to the Principal, as required by clause 24.13(f), at least 12 months prior to the Expiry Date.

## 51. Access, inspections and audits

### 51.1 Principal's right of entry

- (a) The Principal (and any person authorised by the Principal) may, at any time, enter the Sydney Metro 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 Principal Project Agreement; or
  - (iii) exercising any right or performing any obligation which the Principal has under any Principal Project Agreement.
- (b) When exercising this right, the Principal must do so (and must ensure any person authorised by the Principal 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 the Principal of its right of entry; and
  - (ii) provide the Principal with every reasonable facility and other assistance necessary for any inspection by the Principal, 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, the Principal'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 the Principal in relation to the inspection.
- (e) When exercising this right in clause 51.1(a), the Principal must ensure that the Principal and its nominees:
  - (i) cooperate with OpCo and the Accredited Contractors in relation to OpCo's (or any Accredited Contractor's) compliance with its Accreditation obligations under the Rail Safety National Law and Rail Safety Regulations;
  - (ii) do not put OpCo (or any Accredited 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 Accredited Contractor) in relation to compliance with the Accreditation of OpCo (or any Accredited Contractor); and
  - (iv) do not do anything (or fail to do anything) which jeopardises the Accreditation of OpCo (or any Accredited Contractor) or an application for Accreditation by OpCo (or any Accredited Contractor), including anything that may be grounds for the ONRSR to refuse an application for Accreditation by OpCo (or any Accredited 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 Accredited Contractor).

## 51.2 Access to information

Without limiting any other provision of this deed:

- (a) the Principal may at any time notify OpCo that it requires access to any information held by OpCo, a Core Contractor or a Significant Contractor which relates to OpCo's Activities;
- (b) on:
  - (i) receipt of a notice under clause 51.2(a); and
  - (ii) each anniversary of Financial Close in connection with any Claim or Dispute,OpCo must immediately provide the Principal (and any person authorised by the Principal) with access to, or a copy of, the information required by the Principal under clause 51.2(a) or connected with any Claim or Dispute in accordance with clause 51.2(b)(ii) on a Transparent Basis, except to the extent that the information is subject to legal professional privilege; and
- (c) the Principal (and any person authorised by the Principal) 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, the Principal's right to request and OpCo's obligation to provide such information will be limited to the extent set out in clause 4.16 of Schedule 6 (*Net Financial Impact*).

## 51.3 Access to third parties' information

OpCo must:

- (a) ensure that the Principal (and any person authorised by the Principal) has direct access to any information, documents or material that:
  - (i) is maintained by a third party (including OpCo's Associates); and
  - (ii) the Principal 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 Contractors and any third parties acknowledge the Principal's right of access under clause 51.3(a); and
- (c) provide to the Principal on demand written evidence (including copies of any contractual arrangements referred to in clause 51.3(b)) showing compliance by OpCo with its obligations under clause 51.3(b).

## 51.4 OpCo to cooperate

OpCo must cooperate, and must ensure that OpCo Contractors cooperate, with the Principal and any persons authorised by the Principal in the exercise of the Principal's rights under this clause 51.

# 52. Records, reporting obligations and privacy

## 52.1 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 the Principal in accordance with clause 51.2.

## 52.2 Financial reporting

- (a) Not later than 4 months after 31 December 2023 and 31 December of each subsequent year, OpCo must give the Principal:
  - (i) [REDACTED] and

- (ii) [REDACTED];
- (b) For the D&C Contractor:
  - (i) in respect of Siemens Mobility GmbH, Siemens Mobility Austria GmbH and Siemens Mobility Pty Ltd, OpCo must give the Principal until the Date of Final Completion:
    - (A) no later than 28 February of each year, [REDACTED]; and
    - (B) without limiting clause 52.2(b)(i)(A), the information required by [REDACTED] in the form set out in and at the times required by that form; and
  - (ii) in respect of Webuild S.p.A, OpCo must give the Principal until the Date of Final Completion:
    - (A) not later than 30 September of each year, [REDACTED];
    - (B) not later than 31 May of each year, [REDACTED]; and
    - (C) without limiting clauses 52.2(b)(ii)(A) and 52.2(b)(ii)(B), the information required by [REDACTED] in the form set out in and at the times required by that form.
- (c) In respect of each D&C Guarantor, OpCo must give the Principal until the Date of Final Completion:
  - (i) not later than 31 May of each year, [REDACTED];
  - (ii) not later than 31 January of each year, [REDACTED]; and
  - (iii) without limiting clauses 52.2(c)(i) and 52.2(c)(ii), the information required by [REDACTED] in the form set out in and at the times required by that form.
- (d) If requested by the Principal, in respect of a Significant Contractor, OpCo must give the Principal until the Date of Final Completion:
  - (i) in respect of the Siemens Mobility Significant Contractor, not later than 28 February of each year, [REDACTED]; and
  - (ii) in respect of all other Significant Contractors:
    - (A) not later than the end of March each year, [REDACTED]; and
    - (B) not later than 4 months after the end of each Financial Year, [REDACTED].
- (e) If required by the Principal, in respect of the O&M Contractor (including each entity comprising the O&M Contractor) [REDACTED].
- (f) Not later than 10 Business Days after the end of every month in the Delivery Phase, OpCo must provide the Principal with:
  - (i) [REDACTED]
  - (ii) [REDACTED]
  - (iii) [REDACTED]
  - (iv) [REDACTED]

with a level of detail that satisfies the Principal's reporting requirements under the Australian Accounting Standards AASB 1059 Service Concession Arrangements: Grantors.

- (g) If requested by the Principal's Representative, OpCo must promptly give the Principal an [REDACTED], for the upcoming three months.
- (h) Not later than three months prior to the end of each Financial Year, OpCo must give the Principal [REDACTED], by month, for the upcoming Financial Year.
- (i) Each of the documents to be provided to the Principal in accordance with this clause 52.2 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.
- (j) OpCo must prepare (or procure the preparation of) [REDACTED] required under this clause 52.2 in compliance with Law and, without limitation, in accordance with the accounting principles generally accepted in Australia and consistently applied.
- (k) If the Principal becomes aware of a D&C Financial Capacity Event, D&C Financial Reporting Event or D&C Restructure Event in relation to the D&C Contractor (or any entity that comprises the D&C Contractor) or any D&C Guarantor:
  - (i) the Principal may request OpCo to provide information in relation to the D&C Contractor (or any entity that comprises the D&C Contractor) or any D&C Guarantor which is reasonably required by the Principal; and
  - (ii) OpCo must procure that the D&C Contractor (or any entity that comprises the D&C Contractor) or any D&C Guarantor provides the Principal with that information.
- (l) OpCo is not obligated to comply with any requirements of this clause 52.2 that would otherwise put the D&C Contractor (or any entity comprising the D&C Contractor) or any D&C Guarantor, in breach of any applicable laws or the listing rules of any recognised stock exchange, or trigger any reportable event pursuant to any applicable laws or the listing rules of any recognised stock exchange.
- (m) Subject to clauses 54.2(c) and 54.3 or the Principal obtaining the prior written consent of OpCo, the Principal must keep confidential any information provided or communicated by OpCo, the D&C Contractor or D&C Guarantor pursuant to this clause 52.2 and clause 61.10.

### **52.3 Project reporting and Risk Register**

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

- (a) provide the following reports during the Delivery Phase:
  - (i) the Delivery Phase Progress Report;
  - (ii) Test Reports in accordance with clause 21.5;
  - (iii) an Intellectual Property report under clause 22.10(b)(vii);
  - (iv) a report on the effects of OpCo's Activities under section 1.5.16 of Particular Specification 01 (*General*);
  - (v) site investigation reports under section 3.9.1 of the General Specification;
  - (vi) survey reports under section 2.10 of the General Specification;
  - (vii) Assurance and Governance Plan audit reports under section 5.2.4 of the General Specification;
  - (viii) design reports under section 1.5.17.2.2 of Particular Specification 01 (*General*);
  - (ix) durability assessment reports under section 1.5.17.5 of Particular Specification 01 (*General*);

- (x) accident and Incident reports under section 6.3.8 of the General Specification; and
- (xi) any other report required under the SSTOM Specification during the Delivery Phase;
- (b) provide the following reports during the Operations Phase:
  - (i) reports on the Asset Management Activities in accordance with clause 24.10;
  - (ii) the Monthly Operations Performance Report;
  - (iii) the Monthly Service Payment Report;
  - (iv) Asset Condition Assessment reports under section 6.3.5.2 of the General Specification;
  - (v) the configuration management reports, quarterly performance reports, annual performance reports and Special Event reports required by section 6.3 of the General Specification; and
  - (vi) any other report required under the SSTOM Specification during the Operations Phase;
- (c) during the Term, provide written reports of all work health, safety and rehabilitation matters under clause 10.4(e) and any other reports required by OpCo under this deed and the SSTOM Specification;
- (d) without limiting the foregoing paragraphs of this clause 52.3, as part of each Delivery Phase Progress Report and each Monthly Operations Performance Report (as applicable), report on a without prejudice basis on any fact, matter or thing which may give rise to a risk of:
  - (i) a delay in achieving Completion;
  - (ii) a delay in providing the First Passenger Service on Sydney Metro – Western Sydney Airport;
  - (iii) a delay or an adverse effect on the performance of OpCo's Activities or the SSTOM Works;
  - (iv) OpCo being in breach of any term of this deed; or
  - (v) a Claim,

**(an Early Warning Notification)**

in a separate section to the relevant report entitled Early Warning Notification, provided where in the course of a month there is a particularly material issue arising which may have any of the effects in paragraphs (i) to (v) above then OpCo shall give a notice of such a risk prior to the delivery of the relevant report;

- (e) upon receipt of an Early Warning Notification under clause 52.3(d), enter the risk the subject of the Early Warning Notification on the Risk Register (which must include a description of the risk and the actions which are to be taken to avoid or mitigate the risk, including any cost-effective solution to overcome (either in whole or in part) the risk from a whole of life costs point of view); and
- (f) provide the Principal with access to the Risk Register or as otherwise directed by the Principal's Representative,

and agrees:

- (g) a notification, record or action under this clause 52.3 will not relieve OpCo from or alter its liabilities or obligations under this deed, including any and all other notification obligations under this deed; and
- (h) the Principal may in its absolute discretion and without any obligation to do so, provide an early warning in relation to any fact, matter or thing described under clause 52.3(d) by entering the risk the subject of the early warning on the Risk Register.

#### **52.4 Notices under Project Agreements**

OpCo must give the Principal 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.

#### **52.5 Advice on rights of third parties under Project Agreements**

OpCo undertakes to advise the Principal as soon as practicable after an event has occurred which, to OpCo's actual knowledge, could in any way materially prejudice the Principal's rights under the Project Agreements by reason of the exercise of rights available to third parties arising from the Project Agreements.

#### **52.6 Information provided to Debt Financiers**

OpCo must promptly provide to the Principal copies of all documents, financial models, reports, notices and other information which an [REDACTED] provides to any Debt Financier under the Debt Financing Documents.

#### **52.7 ASIC and ASX notices**

OpCo must give the Principal, as soon as practicable, copies of all notices and other documents given or received by a member of the [REDACTED] to or from the Australian Securities and Investments Commission or the ASX Limited.

#### **52.8 Other information**

OpCo must promptly give the Principal such other information relating to the SSTOM PPP or OpCo's Activities as the Principal may reasonably require from time to time.

#### **52.9 Retention of records**

OpCo must retain all records in relation to the SSTOM PPP:

- (a) until they are delivered to the Principal pursuant to clause 24.13(g); or
- (b) if not so delivered to the Principal, for at least 7 years after the end of the Term.

#### **52.10 Privacy**

(a) **(Compliance with Privacy Laws, guidelines, procedures and privacy plans):** OpCo:

- (i) agrees to, and will ensure that its officers, employees, contractors, sub-contractors and agents agree to, be bound by the PPIP Act with respect to any act done, or practice engaged in, by it in connection with this deed, in the same way as the Principal would be bound by the PPIP Act in connection with that act or practice had it been directly done or engaged in by the Principal;
- (ii) must comply (and ensure that its officers, employees, contractors, sub-contractors and agents comply) with:
  - (A) all other applicable Privacy Laws;
  - (B) all privacy guidelines issued by applicable Authorities;
  - (C) the Principal's privacy procedures and/or policies as notified to OpCo in writing from time to time; and
  - (D) OpCo's Privacy Plan; and
- (iii) must provide all reasonable assistance to enable the Principal to comply with its obligations under applicable Privacy Laws.

(b) **(Notifiable Events):** OpCo must promptly notify the Principal of:

- (i) any:
  - (A) unauthorised access to or unauthorised disclosure of any Personal Information; or
  - (B) loss of Personal Information in circumstances where unauthorised access to or unauthorised disclosure of Personal Information is likely to occur,



(whether accidental or otherwise);

- (ii) any use or disclosure of Personal Information by OpCo or any of its officers, employees, contractors, sub-contractors and agents in contravention of this clause 52.10,

or if OpCo or any of its officers, employees, contractors, sub-contractors and agents have reason to believe that any of the events specified in paragraphs (i) and (ii) have occurred (each, a **Notifiable Event**). The Principal's knowledge of, or response to, any such notice, in whatever form that may take, does not affect any other rights of the Principal under this deed.

(c) **(Investigation of Notifiable Events):**

- (i) If:

- (A) the Principal becomes aware, or suspects, that a Notifiable Event has occurred; or
- (B) OpCo has notified the Principal of a Notifiable Event in accordance with clause 52.10(b),

then OpCo must:

- (C) promptly disclose to the Principal all information relevant to that actual or suspected Notifiable Event (including all relevant information about the processes, procedures, protocols, and security practices and procedures, used in undertaking OpCo's Activities);
- (D) co-operate with the Principal in investigating whether a Notifiable Event has occurred and the circumstances surrounding that Notifiable Event; and
- (E) provide the Principal with access to and copies of relevant records relating to the investigation.

- (ii) OpCo must keep the Principal up-to-date and informed about any new information or developments in respect of any investigation conducted by OpCo or otherwise relating to the Notifiable Event.

(d) **(Notification of Notifiable Events):** OpCo:

- (i) acknowledges and agrees that the Principal is solely responsible for determining whether a Notifiable Event results in a real risk of serious harm to any of the individuals to whom the Personal Information relates;
- (ii) must co-operate with the Principal to assist in making the determination referred to in clause 52.10(d)(i); and
- (iii) subject to compliance with any applicable Law, must not disclose to any third party (including the Office of the Australian Information Commissioner or any other Authority) the existence or circumstances surrounding any Notifiable Event without the prior written approval of the Principal (such approval not to be unreasonably withheld). To the extent that OpCo proposes to issue any relevant notification statements to any third party under this clause 52.10(d)(iii), OpCo must provide the Principal with an opportunity to review any draft statements, and OpCo agrees to incorporate any reasonable changes requested by the Principal in relation to such statements.

(e) **(Mitigation of Notifiable Events):** Without limiting OpCo's other obligations under this deed, if OpCo becomes aware of a Notifiable Event, OpCo must:

- (i) take all reasonable steps to contain and remedy the Notifiable Event; and
- (ii) promptly take appropriate remedial action to:
  - (A) mitigate any loss or interference with privacy flowing from the incident;
  - (B) prevent any potential further serious harm to any individuals; and
  - (C) protect the affected Personal Information from further misuse or breach,

as appropriate, having regard to the nature and circumstances of the particular Notifiable Event.

- (f) **(Notification of other events)** OpCo must promptly notify the Principal of any:
  - (i) unauthorised access to or unauthorised disclosure of any OpCo Personal Information; or
  - (ii) loss of OpCo Personal Information in circumstances where unauthorised access to or unauthorised disclosure of OpCo Personal Information is likely to occur, (whether accidental or otherwise) that has, or is likely to have, a material impact on the stability or viability of OpCo, or that impacts, or is likely to impact, operational safety.
- (g) **(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 the Principal'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 applicable Privacy Laws;
  - (ii) are consistent with applicable Privacy Laws as they apply to the Principal; and
  - (iii) are consistent with Good Industry Practice.
- (h) **(Principal's review)**: The Principal'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 the Principal's Representative.
- (i) **(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 the Principal's Representative.
- (j) **(Submission of updated plan)**: OpCo must submit any plan updated in accordance with clause 52.10(i) to the Principal's Representative, in which case clause 52.10(h) will reapply.
- (k) **(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 this clause 52.10.
- (l) **(Audit)**: The Principal may require OpCo and Significant Contractors to have their privacy procedures audited by a qualified nationally recognised firm provided that the Principal 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.

## 53. Data and cyber security

### 53.1 Cyber security

Without in any way limiting OpCo's obligations under Particular Specification 07 (*Security*):

- (a) OpCo must notify the Principal, as soon as possible and in any case, no later than four hours, after becoming aware that:
  - (i) a Cyber Security Incident affecting Sydney Metro – Western Sydney Airport or OpCo's Activities has occurred or is occurring; and
  - (ii) the Cyber Security Incident has had, or is having, a significant impact (whether directly or indirectly) on Sydney Metro – Western Sydney Airport, OpCo's ability to

perform its obligations under any Principal Project Agreement, or the quality of OpCo's Activities,

where **significant impact** means any material disruption on the availability of essential goods or services provided in connection with Sydney Metro – Western Sydney Airport or OpCo's Activities.

- (b) OpCo must notify the Principal, as soon as possible and in any case, no later than 24 hours, after becoming aware that:
  - (i) a Cyber Security Incident affecting Sydney Metro – Western Sydney Airport or OpCo's Activities has occurred, is occurring, or is imminent; and
  - (ii) the Cyber Security Incident has had, is having, or is likely to have, an impact on:
    - (A) the availability, integrity, or reliability of Sydney Metro – Western Sydney Airport;
    - (B) the confidentiality of data or information about Sydney Metro – Western Sydney Airport or data or information stored within Sydney Metro – Western Sydney Airport;
    - (C) OpCo's ability to perform its obligations under this agreement; or
    - (D) the quality of OpCo's Activities.

### **53.2 Security of Critical Infrastructure Laws**

Without limiting clause 7.1, to the extent that the Security of Critical Infrastructure Laws apply to any of the Principal, OpCo or its Associates, OpCo must:

- (a) comply with, and ensure that its Associates comply with, OpCo's and its Associates' respective obligations as a Relevant Entity or a reporting entity (as the case may be) under the Security of Critical Infrastructure Laws and generally; and
- (b) in respect of the Principal's obligations as a Relevant Entity or reporting entity (as the case may be) under the Security of Critical Infrastructure Laws:
  - (i) do all things reasonably necessary to assist the Principal in complying with the Principal's obligations; and
  - (ii) not do anything, and ensure that its Associates do not do anything, which would preclude or prevent the Principal from complying with its obligations.

## **54. Disclosure, confidentiality, publicity and probity**

### **54.1 Disclosure by the Principal**

The Principal may publish or disclose (on the internet or otherwise):

- (a) the terms and conditions of this deed or any other Principal 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 the Principal redacts any Commercially Sensitive Information.

### **54.2 Confidentiality**

- (a) Subject to clause 54.2(c), OpCo must:
  - (i) keep confidential the Project Agreements and information relating to the SSTOM 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 54.2(a)(i).
- (b) The Principal must keep confidential the Commercially Sensitive Information.
- (c) Neither party is obliged to keep confidential any information:

- (i) which is in the public domain through no fault of the disclosing party; or
- (ii) the disclosure of which is:
  - (A) required by Law;
  - (B) required by any recognised stock exchange or a New South Wales or Commonwealth regulator;
  - (C) given with the written consent of the Principal in the case of information described in clause 54.2(a) or with the written consent of OpCo in the case of Commercially Sensitive Information;
  - (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;
  - (F) in the case of the Principal, required by a House of Parliament, a Committee of a House of Parliament or for any legitimate government purpose, including to NSW Treasury; or
  - (G) to any Associate of OpCo to the extent necessary for the purposes of undertaking the Project provided they agree to maintain the confidentiality of any Commercially Sensitive Information.
- (d) If the Principal 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 the Principal.
- (e) On or before the first date that OpCo is required to provide the information required by clauses 52.2(b) and 52.2(c), the Principal will (and must procure NSW Treasury to) enter into a confidentiality deed poll (in a form pre-agreed by the Principal and OpCo in accordance with the Relationship Principles (and in consultation with NSW Treasury) in favour of OpCo, the D&C Contractor and the D&C Guarantor in relation to the information provided by the D&C Contractor and D&C Guarantor pursuant to clause 52.2.

#### **54.3 Public Disclosure Obligations**

- (a) OpCo acknowledges and agrees that disclosures regarding the SSTOM PPP by the Principal, Transport for NSW, 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; or
  - (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 the Principal, Transport for NSW, the State or an Authority in meeting their Public Disclosure Obligations in connection with the SSTOM PPP.

#### **54.4 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 SSTOM PPP (including by posting any information relating to the SSTOM PPP on any website) without the Principal's prior consent;
- (b) use reasonable endeavours to agree with the Principal the wording and timing of all public announcements and statements by it or its Associates relating to the SSTOM PPP before the relevant announcement or statement is made;
- (c) give the Principal a draft of any proposed media release relating to the SSTOM PPP and obtain the Principal's approval of the media release before distributing it;

- (d) give the Principal 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 54.4.

#### **54.5 Probity Event**

- (a) OpCo must give notice to the Principal immediately upon becoming aware that a Probity Event has occurred or is likely to occur.
- (b) The notice under clause 54.5(a), must, at a minimum, describe the Probity Event, when the Probity Event occurred, or is likely to occur, and the circumstances giving rise to the Probity Event.
- (c) Promptly, and in any case no later than 5 Business Days after the Principal:
  - (i) receives a notice under clause 54.5(a); or
  - (ii) becomes aware of a Probity Event,
 the Principal and OpCo must meet to agree a course of action to remedy or otherwise address the Probity Event and the timeframe in which that will occur.
- (d) OpCo must comply with any agreement made in accordance with clause 54.5(c) in the agreed timeframe.
- (e) If the Principal and OpCo fail to agree to a course of action in accordance with clause 54.5(c) (including where OpCo fails to meet with the Principal in accordance with clause 54.5(c)), OpCo must, at its cost, take any action required by the Principal to remedy the Probity Event in accordance with any timeframe determined by the Principal.

#### **54.6 Probity Investigation**

- (a) OpCo agrees that the Principal may, or may require OpCo at any time to, conduct a Probity Investigation in respect of:
  - (i) a Relevant Person, an [REDACTED], an Equity Investor, a Core Contractor or a Core Contractor Guarantor; or
  - (ii) any person who is proposed to become a Relevant Person, an [REDACTED], an Equity Investor, a Core Contractor or a Core Contractor Guarantor.
- (b) Where the Principal requires OpCo to conduct a Probity Investigation in accordance with clause 54.6(a), OpCo must conduct the Probity Investigation promptly.
- (c) OpCo must procure all consents necessary to enable OpCo or the Principal to conduct any Probity Investigation.
- (d) OpCo must not appoint a person to the position of Relevant Person unless the Principal has given approval following any Probity Investigation that it elects to conduct or any other investigation the Principal reasonably requires.

#### **54.7 Principal costs of Probity Events and Probity Investigation**

- (a) Subject to clause 54.7(b), OpCo must bear all costs incurred by the Principal in connection with a Probity Event or Probity Investigation that led to a Probity Event.
- (b) OpCo will not be liable for the Principal's costs of any further Probity Investigation required by the Principal in respect of a Probity Event in relation to which an initial Probity Investigation has been undertaken.

### **55. Intellectual Property**

The parties' rights and obligations in relation to Intellectual Property are set out in Schedule 32 (*Intellectual Property*).

## **56. Financing and Refinancing**

### **56.1 Debt Financing Documents**

OpCo must not, and must ensure that Finance Co does not, without the prior written consent of the Principal'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 the Internal Funding Agreements; 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 56 or an event or circumstance described in paragraphs (d) to (h) of the definition of "Refinancing".

### **56.2 Copies of Debt Financing Documents**

OpCo must deliver to the Principal's Representative a certified complete copy of each financing agreement entered into by an [REDACTED] 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.

### **56.3 General**

- (a) The Financial Indebtedness assumed by an [REDACTED] or [REDACTED] under any Refinancing must be used:
  - (i) solely for the SSTOM PPP; or
  - (ii) for refinancing Financial Indebtedness used solely for the SSTOM PPP and for paying legal, swap break and other costs reasonably and properly incurred in connection with the Refinancing including those costs paid to the Principal in accordance with clause 56.10.
- (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.

### **56.4 OpCo to provide details of Refinancing**

- (a) OpCo must promptly provide the Principal with full details of any proposed Refinancing, including:
  - (i) a copy of the then current Financial Model as adjusted for the proposed Refinancing, showing all of the material changes to each [REDACTED] and [REDACTED] obligations to the Debt Financiers in a format that allows the calculation of the anticipated Refinancing Gain or Refinancing Loss in accordance with clause 56.8;
  - (ii) the basis for assumptions used in the financial model referred to in clause 56.4(a)(i);
  - (iii) a certificate on terms and in a form acceptable to the Principal from the auditors of the financial model referred to in clause 56.4(a)(i), as to its operation and effect;
  - (iv) all information, including terms and conditions, provided by an [REDACTED] or [REDACTED] to its existing and prospective financiers, or by any existing or prospective financiers to that [REDACTED] or [REDACTED], in relation to the proposed Refinancing; and
  - (v) whether OpCo considers that the consent of the Principal under clause 56.5 is required for the proposed Refinancing.

- (b) The Principal may, within 10 Business Days after receiving details of the proposed Refinancing referred to in clause 56.4(a) (or any revised proposed Refinancing submitted under clause 56.6(c)), request any further information which the Principal reasonably requires from OpCo regarding the proposed Refinancing. If such further information is available to an [REDACTED] or [REDACTED], OpCo must (to the extent that further information is available to an [REDACTED]) provide it to the Principal as soon as reasonably practicable but no later than 5 Business Days after the Principal's request.

#### **56.5 Principal 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 Financial Model;
  - (iii) an increase in the amount of outstanding Project Debt beyond that forecast for any future period in the 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 the Principal, which must be provided in accordance with this clause 56.5.
- (b) Prior to the Date for Completion, 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 the Principal exercising its rights under the Equity Purchase Deed;
  - (ii) prohibits, or imposes additional non-market standard fees or costs on an [REDACTED] or [REDACTED] in connection with, an early repayment of the Project Debt; or
  - (iii) involves a bond issue,
- without the prior written consent of the Principal (which may be given or withheld in its absolute discretion).
- (c) The Principal may only withhold its consent to a Refinancing under clause 56.5(a) if the Principal'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 the Principal under any Project Agreement (other than as consented to by the Principal and reflected in the Financial Model) without adequate compensation to the Principal; or
  - (ii) other than as reflected in the Financial Model, the Refinancing, taken as a whole, is materially more onerous or disadvantageous to the relevant [REDACTED] or [REDACTED] than the terms and conditions under the existing Debt Financing Documents and the Principal reasonably considers that the relevant [REDACTED] or [REDACTED] 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 [REDACTED] or [REDACTED] will be unable to perform its obligations under the Project Agreements.
- (d) The Principal must not withhold its consent to a Refinancing under clause 56.5(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 56.5(c)(i) have not or will not arise; and
  - (iii) OpCo has:

- (A) complied with its obligations under clause 56.4;
  - (B) delivered to the Principal the information required under clause 56.4(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 56.5(c)(ii) do not arise in connection with the proposed Refinancing.
- (e) The granting of consent under clause 56.5(a) by the Principal shall be without prejudice to the Principal's rights under this deed, including its right to any Principal Refinancing Share.

#### **56.6 Review Process**

- (a) If under clause 56.5(a) the Principal is required to provide its consent to a Refinancing, the Principal 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 56.4(a) and ending 20 Business Days after that date (**Review Period**).
- (b) During the Review Period, prior to providing or withholding consent, the Principal may provide comments (and sufficient detail to substantiate those comments) to OpCo in respect of the proposed Refinancing if the Principal has reasonably formed the view that either or both of the events in clauses 56.5(c)(i) or 56.5(c)(ii) will occur as a result of the proposed Refinancing.
- (c) Following receipt of comments from the Principal under clause 56.6(b), OpCo may vary the proposed Refinancing in order to ensure that neither of the events in clauses 56.5(c)(i) or 56.5(c)(ii) will occur as a result of the proposed Refinancing and resubmit the revised proposed Refinancing to the Principal for review during the Review Period.
- (d) Upon receipt of the revised proposed Refinancing the Principal may request further information from OpCo regarding the revised proposed Refinancing in accordance with clause 56.4(b).
- (e) If OpCo resubmits the proposed Refinancing to the Principal in accordance with clause 56.6(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 the Principal) from the date of such resubmission.
- (f) If the Principal does not notify OpCo of its consent or refusal to consent to the Refinancing within the Review Period, the Principal will be deemed to have consented to the proposed Refinancing.
- (g) Any dispute as to whether the Principal's consent is required for a proposed Refinancing or the Principal is entitled to withhold its consent to a proposed Refinancing may be referred by either party for resolution in accordance with clause 63.

#### **56.7 Refinancing documents**

- (a) OpCo must deliver a certified true copy of each amended and amending Debt Financing Documents to the Principal 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 the Principal 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 the Principal to terminate their rights under the Financiers Tripartite Deed.

#### **56.8 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 Financial Model must be calculated in order to establish the extent to which gains may arise that may need to be shared with the Principal in accordance with clause 56.9.



- (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 56.9 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 56.9 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 Financial Model as adjusted to reflect the proposed Refinancing, in a manner consistent with clause 56.11 but without taking into account any adjustment for any sharing with the Principal 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 Financial Model prior to any adjustments to reflect the proposed Refinancing.

#### **56.9 Sharing Refinancing Gains**

- (a) The Principal will be entitled to [REDACTED] of the benefit of any Refinancing Gain that arises from a Refinancing (**Principal Refinancing Share**).
- (b) The Principal may, taking into account the nature and timing of the Refinancing Gain, elect to receive the Principal 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) The Principal and OpCo must act reasonably to agree the manner and timing of payments of the Principal Refinancing Share.

#### **56.10 Costs relating to a Refinancing**

OpCo must pay to the Principal its reasonable costs incurred in relation to considering a proposed Refinancing or consenting to a Refinancing.

#### **56.11 Adjustments to Financial Model upon a Refinancing Gain**

On execution of a Refinancing that results in a Refinancing Gain, the Financial Model will be adjusted in accordance with clause 57.2 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 the Principal in accordance with clause 56.10;
- (e) the Service Payments for the period of the Refinancing will be adjusted and direct payments to the Principal will be recorded to reflect the Principal Refinancing Share in

- accordance with clause 56.9 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 the Principal and OpCo.

## 57. Financial Models

57.1

### 57.2 Updates to the Financial Model

(a) **(When Financial Model must be updated):** The Financial Model must be updated:

- (i) as required by clause 28.4;
- (ii) as required by clause 56.11;
- (iii) to reflect any Modification (other than a Minor Modification) directed by the Principal under clause 33;
- (iv) in relation to Minor Modifications, at the end of each Financial Year to reflect all Minor Modifications which have been implemented in accordance with clause 35 in that Financial Year;
- (v) if the Indexed Availability Fee (as defined in Schedule 2 (*Service Payment calculation*)) or the Indexed Lifecycle Component (as defined in Schedule 2 (*Service Payment calculation*)) is adjusted in accordance with clause 6 of Schedule 6 (*Net Financial Impact*) as a result of a Compensation Event or Proximate Work Activities;
- (vi) if the Capital Contribution, Base Availability Fee (as defined in Schedule 2 (*Service Payment calculation*)), Base Lifecycle Component (as defined in Schedule 2 (*Service Payment calculation*)) or Floating Rate Amount (as defined in Schedule 2 (*Service Payment calculation*)) is adjusted under a Pre-Agreed Option or Scope Deferral;
- (vii) if the Capital Contribution Schedule is amended under clause 28.3(b); and
- (viii) to adjust the Service Payments:
  - (A) at or immediately after the Date of Completion if a Refinancing has not occurred prior to the Date of Completion; or
  - (B) immediately before the date of any Refinancing which occurs prior to the Date of Completion and also at or immediately after the Date of Completion,

to the extent any amount of debt principal and interest (as part of Financing Delay Costs) calculated in accordance with Schedule 6 (*Net Financial Impact*) is required to be paid by the Principal to OpCo in accordance with this deed, to ensure that:

- (C) there is no increase in the Base Case Equity Return as a consequence of the relevant NFI Event;
- (D) there is no financial gain or benefit to OpCo as a consequence of the relevant NFI Event;
- (E) there is not, in the Principal's reasonable opinion, any unintended financial loss or disadvantage to the Principal as a consequence of the relevant NFI Event (which shall not include loss or disadvantage incurred by the Principal in accordance with the Principal Project Agreements or loss or damage to third parties);

- (F) there is no double counting or over recovery in relation to the Service Payments under this deed in respect of payments made by the Principal as a consequence of the relevant NFI Event;
  - (G) there is no increase in the risk as to whether OpCo will:
    - (I) have sufficient amounts (including contingencies) to fund its obligations; or
    - (II) be able to comply with its obligations; and
  - (H) there are no adverse consequences in relation to OpCo's ability to comply with (nor the Principal's rights in relation to) any one or more of the Principal Project Agreements and the Debt Financing Documents.
- (b) **(Information to be submitted):** When an update of the Financial Model is required under clause 57.2(a), OpCo must submit to the Principal's Representative:
- (i) a proposed revised Financial Model (**Proposed 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 Financial Model, which is acceptable to the Principal'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 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 the Principal's Representative confirming that an independent audit of the Proposed Financial Model has been completed and that:
    - (A) calculations in the Proposed Financial Model have been checked and are in all material respects internally consistent and mathematically correct;
    - (B) the Proposed Financial Model allows changes in assumptions to correctly flow through to the results;
    - (C) any macros in the Proposed Financial Model that govern the calculation of the Proposed Financial Model are correct;
    - (D) the input data used in the Proposed 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 Financial Model have been checked and that the Proposed Financial Model correctly reflects the definitions contained in the Debt Financing Documents;
    - (F) the Proposed 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 Financial Model are in accordance with the generally accepted accounting principles in Australia; and
    - (H) the income taxation assumptions and outputs from the Proposed Financial Model are in accordance with the relevant income tax legislation.
- (c) **(Principal's review):** OpCo must:
- (i) allow the Principal's Representative 20 Business Days to either approve or submit proposed amendments to the Proposed Financial Model and the financial close protocol (if applicable); and
  - (ii) if required by the Principal'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 the Principal's Representative reasonably requests, in relation to,  
the Proposed Financial Model and the financial close protocol (if applicable).
- (d) **(Approval):** The Principal's Representative must, within 15 Business Days of receipt of the Proposed Financial Model and the financial close protocol (if applicable), either approve or submit proposed amendments to the Proposed Financial Model and the financial close protocol (if applicable).
- (e) **(Consultation in good faith):** If the Principal's Representative submits amendments to the Proposed Financial Model or the financial close protocol then OpCo and the Principal's Representative must consult in good faith with respect to, and use their reasonable endeavours to agree on, the amendments required to the Proposed Financial Model and the financial close protocol (if applicable).
- (f) **(Dispute resolution):** If the Principal's Representative and OpCo do not agree on the amendments required to be made to the Proposed Financial Model or the financial close protocol (if applicable) within 10 Business Days after the commencement of the consultation pursuant to clause 57.2(e) or if no consultation has been held within 12 Business Days after the date when the Principal's Representative submitted the amendments, then the Principal's Representative and OpCo must refer the dispute for resolution in accordance with clause 63.
- (g) **(Adjustment of Financial Model):** Once the Proposed Financial Model and the financial close protocol (if applicable) has been approved by the Principal's Representative, agreed between the parties or determined under clause 63, the Proposed Financial Model (as adjusted in accordance with the financial close protocol, if applicable) will be the Financial Model for the purposes of this deed.
- (h) **(Further audit):** If the Proposed Financial Model is adjusted under clause 57.2(g) in accordance with the financial close protocol, OpCo must submit to the Principal's Representative a certificate from an auditor acceptable to the Principal's Representative confirming that an independent audit of the Financial Model has been completed in accordance with the requirements of clause 57.2(b)(v).
- (i) **(Model Outputs Schedule):** Whenever the Financial Model is updated, the Model Outputs Schedule must be updated to reflect the updated Financial Model.

57.3

## **58. Ownership of assets and licences to use**

### **58.1 Fixtures**

All fixtures affixed to the Sydney Metro Site will be owned by the owner of the relevant part of the Project Site from the time they are affixed.

### **58.2 Moveable Assets**

- (a) OpCo must acquire title to all Moveable Assets:
  - (i) in the case of chattels forming part of the SSTOM 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) Ownership of the Moveable Assets (excluding the Hired Moveable Assets) transfers to the Principal (free from any Security Interests, other than Permitted Security Interests) in each case by no later than:
  - (i) the date on which OpCo acquires title to the relevant Moveable Asset;
  - (ii) in the case of chattels forming part of the SSTOM Works and without limiting clause 58.2(b)(i), the Date of Completion; and
  - (iii) in the case of any other Moveable Asset (excluding Hired Moveable Assets) and without limiting clause 58.2(b)(i), the Original Expiry Date.
- (c) The Principal grants OpCo an exclusive licence to use and to permit OpCo Contractors, OpCo and OpCo Contractors to use all Moveable Assets then owned by the Principal 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 the Principal 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 the Principal (or its nominee) the end of the Term; and
  - (ii) are approved by the Principal (such approval not to be unreasonably withheld), where the Hired Moveable Asset is a Special Tool or Equipment.

### **58.3 Moveable Asset register**

OpCo must maintain a register of all Moveable Assets and provide it to the Principal upon request.

## **59. Restrictions**

### **59.1 Restrictions on amendment to Project Agreements**

OpCo must not (and must procure Finance Co not to):

- (a) where it may impact the rights or increase the liabilities or obligations of the Principal, 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 the Principal, enter into any agreement or arrangement which affects the operation or interpretation of,

any Project Agreement (other than a Debt Financing Document) to which the Principal is not a party without the Principal's written consent (which consent will not be unreasonably withheld or delayed). For the avoidance of doubt, to the extent that the Internal Funding Agreements are amended, waived, varied, changed or replaced or new intercompany financing agreements are entered between [REDACTED] and [REDACTED], in each case as part of a Refinancing implemented in accordance with clause 56 or an event or circumstance described in paragraphs (d) to (h) of the definition of "Refinancing", the Principal will be deemed to have provided its written consent to those amendments, waivers, variations, changes or replacement of the Internal Funding Agreements or those new intercompany financing agreements (as applicable) pursuant to this clause 59.1.

## **59.2 Restriction on amendment of the Equity Documents**

Notwithstanding clause 59.1, OpCo must not without the Principal'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 and/or the Equity Documents such that:
- (c) a vote, resolution, consent or approval by more than [REDACTED] of the Equity Interests in any [REDACTED] or [REDACTED] is required to permit OpCo to proceed with, or participate in, an Extension in accordance with Schedule 37 (*Extensions*); or
- (d) the meaning of an [REDACTED], as defined under this deed, is affected in any way.

## **59.3 Restrictions on assignment**

- (a) **(Principal):** The Principal may assign, novate, transfer or otherwise deal with its rights or obligations under any Project Agreement without OpCo's prior approval, provided the assignee, novatee or transferee (as applicable) is an authority of the State, a Minister or a government entity (including a State owned corporation or any entity that is wholly owned or controlled by the State) supported by a guarantee from the State on terms no less favourable than those contained in the GSF Act Guarantee.
- (b) **(OpCo):** Except as expressly permitted by this deed, the Financiers Tripartite Deed or the Principal Deed of Charge, OpCo must not (and must procure Finance Co not to) assign, novate, transfer, mortgage, charge or otherwise deal with its rights or obligations under any Project Agreement, without the Principal's prior approval.

## **59.4 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.

## **59.5 Restrictions on dealings with Sydney Metro – Western Sydney Airport**

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,

Sydney Metro – Western Sydney Airport, the ETS, any Project Agreement (in respect of paragraph (a) only), the SSTOM Works or any part of the Sydney Metro Site, except a Permitted Security Interest or as otherwise approved by the Principal.

#### **59.6 Restrictions on business**

OpCo must not conduct any business other than the SSTOM PPP and the performance of its obligations and the exercise of its rights under the Project Agreements without the Principal's prior consent.

#### **59.7 Restrictions on revenue**

- (a) **(OpCo)**: OpCo may only derive revenue or other returns from:
- (i) payments received from the Principal under the Principal 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 45.15(d);
  - (iv) other activities contemplated by this deed or any other Project Agreement; and
  - (v) activities approved by the Principal.
- (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 SSTOM 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 the Principal (such approval not to be unreasonably withheld if the arrangement is on arm's length commercial terms).

#### **59.8 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 the Principal's prior consent.

#### **59.9 Restrictions on related party contracts**

OpCo must not (and must ensure that [REDACTED] and OpCo Contractors do not) enter into any contract with, or assume or permit to subsist any liability in favour of, a Related Body Corporate, an Equity Investor, a Core Contractor, a Core Contractor Guarantor or any of their respective Associates (other than on arm's length commercial terms or as permitted under this deed) without the Principal's prior consent.

#### **59.10 Restriction on Tax consolidation and GST grouping**

OpCo must not:

- (a) become a member of a consolidated group or MEC group for the purposes of the *Income Tax Assessment Act 1997* (Cth); or
  - (b) engage in any GST grouping arrangement contemplated by the GST Act,
- without the Principal's prior consent.

#### **59.11 Restrictions on changes in residency**

OpCo must not cease to be a resident in Australia or transfer its undertaking, business or trade outside Australia without the Principal's prior consent.

### **60. Change of Ownership / Control**

#### **60.1 Initial status of ownership**

OpCo represents and warrants that, at Financial Close, the legal and beneficial ownership of each member of the [REDACTED] and the [REDACTED] will be as set out in Schedule 20 ([REDACTED]).

## 60.2 Change of Ownership of [REDACTED] or [REDACTED]

- (a) **(No change without consent):** Subject to clause 60.2(b) and clause 60.2(d), OpCo must not permit any of the following (each a **Change of Ownership**) to occur without the Principal's prior written consent (which must not be unreasonably withheld or delayed):

- (i) a direct or indirect change to the legal or beneficial ownership of any existing Equity Interest; or
- (ii) the creation of any new Equity Interest.

Without limiting the generality of this clause, if OpCo makes a request for the Principal's consent to an [REDACTED], the Principal will be deemed to have consented to the request if it has not responded within three (3) Business Days of the request.

- (b) **(Exceptions):** The Principal'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 the Principal prior written notice of the transfer; or
- (iii) a Permitted Change of Ownership, provided OpCo gives the Principal prior written notice.

- (c) **(When consent may be withheld):** The Principal will be deemed to be acting reasonably if it withholds its consent to a proposed Change of Ownership where:

- (i) the Change of Ownership is to take effect prior to the date which is 2 years after the Date of Completion and is not an [REDACTED];
- (ii) the Change of Ownership is to take effect before all of the CDPD Conditions are satisfied in accordance with clause 28.4 and is not an Urgent Funding Call; or
- (iii) the Principal is of the reasonable opinion that:
  - (A) OpCo has not provided it with full details of the proposed Change of Ownership including any further information requested by the Principal;
  - (B) in the case of an Urgent Funding Call, provided the Principal has made any reasonable request for further information as soon as reasonably practicable, the Principal has not had a reasonable period of time to consider the additional information having regard to information concerned, the time when OpCo provided it and the timeframe for consent;
  - (C) the new Equity Investor or Equity Investors (or any direct or indirect holding company of the new Equity Investor or Equity Investors):
    - (I) is or are not solvent and reputable;
    - (II) does not have a sufficient level of financial, managerial or technical expertise, experience or capacity to deliver the SSTOM PPP; or
    - (III) has or have an interest or duty which conflicts in a material way with the interests of the SSTOM PPP and is or are involved in a business or activity which is incompatible, or inappropriate, in relation to the SSTOM PPP; or
  - (D) the proposed Change of Ownership:
    - (I) is against the public interest;
    - (II) would adversely affect the ability or capability of OpCo to perform its obligations under any Project Agreement; or
    - (III) would increase the liability of, or risks accepted by, the Principal under the Project Agreements.

- (d) [REDACTED]





- (d) **(When approval may be withheld):** The Principal will be deemed to be acting reasonably if it withholds its consent to a proposed Change in Control of the D&C Contractor (or an entity comprising the D&C Contractor) or a D&C Restructure Event if:
- (i) OpCo has not provided it with full details of the proposed Change in Control or D&C Restructure Event and any further information requested by the Principal;
  - (ii) the person or entity that will exercise Control of the D&C Contractor (or entity comprising the D&C Contractor) following the Change in Control or D&C Restructure Event:
    - (A) is not solvent and reputable;
    - (B) has an interest or duty which conflicts in a material way with the interests of the SSTOM PPP; or
    - (C) is involved in a business or activity which is incompatible, or inappropriate, in relation to the SSTOM PPP; or
  - (iii) the D&C Contractor (or entity comprising the D&C Contractor) or D&C Guarantor (as relevant) will not continue 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 or D&C Guarantor (as relevant) under the relevant Project Agreements.
- (e) **(No relief):** The Principal's consent to a Change in Control of the D&C Contractor (or an entity comprising the D&C Contractor) or to a D&C Restructure Event will not relieve OpCo of any of its obligations under this deed.

#### 60.4 Change in Control of O&M Contractor

- (a) **(No change without consent):** Subject to clause 60.4(b), OpCo must not permit a Change in Control of the O&M Contractor (or an entity comprising the O&M Contractor) to occur without the Principal's prior written consent (which must not be unreasonably withheld).
- (b) **(Exceptions):** The Principal's consent is not required for a Change of Control of the O&M Contractor (or entity comprising the O&M Contractor) 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 the Principal prior written notice of the transfer; or
  - (iii) a Permitted Change in Control, provided OpCo gives the Principal written notice of the Permitted Change in Control.
- (c) **(When approval may be withheld):** The Principal will be deemed to be acting reasonably if it withholds its consent to a proposed Change in Control of the O&M Contractor (or an entity comprising the O&M Contractor) where the Principal 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 the Principal;
  - (ii) the person or entity proposed to exercise Control of the O&M Contractor ((or entity comprising the O&M Contractor):
    - (A) is not solvent and reputable; or
    - (B) has an interest or duty which conflicts in a material way with the interests of the SSTOM PPP; or
    - (C) is involved in a business or activity which is incompatible, or inappropriate, in relation to the SSTOM PPP; or

- (iii) as a result of the proposed Change in Control, the O&M Contractor (or entity comprising the O&M Contractor) will no longer:
  - (A) have sufficient expertise and ability; or
  - (B) be of sufficiently high financial and commercial standing,
 to properly carry out its obligations under the relevant Project Agreements.
- (d) **(No relief):** The Principal's consent to 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.

## 61. Subcontracting

### 61.1 Subcontracting

- (a) OpCo must not subcontract the performance of OpCo's Activities or any part of them except in accordance with this clause 61.
- (b) OpCo will be liable to the Principal for the acts and omissions of OpCo 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 Principal Project Agreements will not relieve OpCo of, or otherwise affect, any obligation or liability it has to the Principal under the Principal Project Agreements.

### 61.2 Core Contracts

Subject to clauses 60.3, 60.4, 61.3 and 62, OpCo may subcontract the performance of its obligations:

- (a) in relation to the design and construction of the SSTOM Works, to the D&C Contractor; and
- (b) in relation to the operation and maintenance of Sydney Metro – Western Sydney Airport and the ETS Equipment, to the O&M Contractor.

### 61.3 Significant Contracts

- (a) **(Principal 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 the Principal, 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 the Principal, enter into any agreement or arrangement which affects the operation or interpretation of,

a Significant Contract without obtaining the Principal's prior consent (which consent must not be unreasonably withheld or delayed).

(aa)

[REDACTED]

[REDACTED]

- [REDACTED]
- (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 SSTOM PPP;
    - (C) is not involved in any business or activity which is incompatible, or inappropriate, in relation to the SSTOM PPP; and
    - (D) 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 61.3(b)(i), use its best endeavours to cause:
    - (A) the Significant Contractor to do whatever is necessary to promptly satisfy the requirements of clause 61.3(b)(i); or
    - (B) subject to clause 61.3(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 10.4(i), 52.10(k) and 67.3;
  - (ii) recognise the Principal's rights under clauses 48, 49.12(c) and 51;
  - (iii) enable OpCo to comply with its novation obligations under clause 24.13(j); and
  - (iv) are consistent with the Principal's rights under Schedule 32 (*Intellectual Property*).
- (d) **(Monitoring of Significant Contracts):** OpCo must:
- (i) use its best endeavours to ensure that each Significant Contractor complies with the terms of its Significant Contract;
  - (ii) notify the Principal of:
    - (A) any material breach of a Significant Contract; or
    - (B) any dispute which is notified as such under a Significant Contract,immediately upon becoming aware of such breach or dispute; and
  - (iii) keep the Principal informed of the status of any such breach or dispute.
- (e) **(Significant Contractor Side Deeds):** OpCo must, if requested by the Principal, ensure that each Significant Contractor (other than Significant Contractors who have entered into the Core Contractor Side Deeds or Significant Contractor Side Deeds (as applicable) with the Principal on or before Financial Close) enters into a side deed with the Principal in the form that is reasonably satisfactory to the Principal and substantially in the form of each Significant Contractor Side Deeds (Day 1).
- (f) **(Extension Supply Direct Deeds):** OpCo must, if requested by the Principal, use best endeavours to procure that any Significant Contractor for the Platform Screen Doors (as that term is defined in the SSTOM Specification) enters into an Extension supply direct

deed with the Principal at the same time as the Significant Contract and in a form that is reasonably satisfactory to the Principal and substantially in the form of the Extension Supply Direct Deed with Siemens Mobility Pty Ltd ACN 625 304 556.

- (g) **(Copy):** OpCo must provide the Principal 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)).

#### **61.4 Nominated Subcontractors**

- (a) OpCo acknowledges that the Principal's existing contracts with the Nominated Subcontractors have been provided to OpCo as Information Documents on or before the date of this deed.
- (b) If the Principal directs OpCo to perform any Nominated Subcontractor Work in accordance with section 7 of the General Specification, OpCo must:
  - (i) enter into, or procure that a Core Contractor enters into, a contract (**Nominated Subcontract**) with the relevant Nominated Subcontractor on terms which are no more onerous to the Nominated Subcontractor than those contained in the existing contract between the Principal and the Nominated Subcontractor;
  - (ii) provide the Principal with a copy of each Nominated Subcontract (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)); and
  - (iii) ensure that Nominated Subcontract Work is carried out by the Nominated Subcontractors pursuant to the relevant Nominated Subcontract.
- (c) OpCo will be liable to the Principal for the acts and omissions of the Nominated Subcontractors in connection with OpCo's Activities as if such acts or omissions were acts or omissions of OpCo.
- (d) Subject to clause 61.4(e), the Principal will have no liability to OpCo and OpCo will not be entitled to make any Claim, arising out of or in connection with any Nominated Subcontractor or Nominated Subcontract Work including:
  - (i) the management of any Nominated Subcontractor by OpCo or a Core Contractor; and
  - (ii) the interface between, and the integration of, the Nominated Subcontract Work and the SSTOM Works and the rest of OpCo's Activities.
- (e) If the Principal directs OpCo to perform any Nominated Subcontractor Work in accordance with section 7 of the General Specification, the Principal must compensate OpCo for any negative Net Financial Impact of the Nominated Subcontractor Work, which will be calculated and paid in accordance with Schedule 6 (*Net Financial Impact*).
- (f) The provisions of clause 61.3(a), clause 61.3(b)(ii)(A), clause 61.3(d) and clause 61.3(g) apply as if each Nominated Subcontract is a Significant Contract.

#### **61.5 Subcontracting requirements in Schedule 8 (Cost Risk Sharing)**

The requirements of clause 9 of Schedule 8 (*Cost Risk Sharing*) in relation to Subcontracts entered or to be entered with respect to the Delivery Activities for the CRS Scope (other than the Contamination Scope Element) (as those terms are defined in Schedule 8 (*Cost Risk Sharing*)) are in addition to (and are not intended to exclude or vary) the provisions of clauses 61.1 to 61.4 in respect of those Delivery Activities.

#### **61.6 Probity Investigation**

If the Principal requires Probity Investigations to be carried out in respect of an OpCo Contractor, OpCo must not engage that OpCo Contractor, or allow that OpCo Contractor to be engaged, to perform any part of OpCo's Activities, unless the Principal's probity requirements as described in clause 54.6 are satisfied.

#### 61.7 Occurrence of Probity Event

If, following a Probity Investigation in respect of a proposed OpCo Contractor, the Principal:

- (a) determines that a Probity Event has occurred in respect of an OpCo Contractor or a Relevant Person engaged by that OpCo Contractor; and
- (b) is of the opinion that it is consequently not desirable for that Relevant Person to take part in the management or performance of the relevant contract, or for the OpCo Contractor to be engaged to perform any part of OpCo's Activities,

the Principal may (as the case may be):

- (c) direct OpCo that the OpCo Contractor must not be engaged to perform any part of OpCo's Activities; or
- (d) approve the relevant contract on the condition that the Relevant Person:
  - (i) not take part in the management or performance of the relevant contract;
  - (ii) on such other conditions as the Principal considers necessary to quarantine that Relevant Person from the Project; or
  - (iii) not be given confidential information or Personal Information,

or such other conditions as the Principal's Representative considers necessary to quarantine that Relevant Person from the Project and on conditions that the OpCo Contractor provides its written undertaking to the Principal's Representative to comply with such conditions.

#### 61.8 Financial Assessment of D&C Contractor or D&C Guarantor

Without limiting or otherwise restricting clauses 52.2, 60.3 or 61.9, OpCo acknowledges and agrees that:

- (a) the Principal may, in its absolute discretion, either itself, or through the engagement of external service providers, undertake ongoing financial assessments (**Financial Assessment**) of the D&C Contractor (or any entity that comprises the D&C Contractor), any D&C Guarantor and any Significant Contractor;
- (b) the Financial Assessment may be undertaken at six monthly (or longer) intervals from the date of this deed until the Date of Final Completion; and
- (c) if requested by the Principal's Representative, OpCo must, within 10 Business Days of receiving such request, provide any documents, information and evidence as is reasonably required by the Principal's Representative under, out of, or in connection with the Financial Assessment. The Principal's Representative may request such documents, information and evidence in addition to any other documents, information and evidence otherwise required to be provided by OpCo under clause 52.2.

#### 61.9 D&C Financial Reporting Events

Notwithstanding any other provision of this deed, but subject to the requirements of all applicable Law and the listing rules of any recognised stock exchange, OpCo must notify the Principal as soon as any D&C Financial Reporting Event occurs in respect of the D&C Contractor (or any entity that comprises the D&C Contractor), a D&C Guarantor or any Significant Contractor.

#### 61.10 Financial Mitigation Plan

- (a) Subject to the requirements of all applicable Law, the Principal may notify OpCo if the Principal becomes aware that a [REDACTED] has occurred. In determining if a [REDACTED] has occurred, the Principal may have regard to the documents, information, evidence and notifications provided by OpCo under clause 61.8 or clause 61.9 and any other information the Principal considers relevant in its absolute discretion.
- (b) Following the occurrence of a [REDACTED], OpCo must meet with the Principal within 5 Business Days of the date of the notice provided pursuant to clause 61.10(a) (or such longer period as the Principal's Representative may agree) to discuss [REDACTED]



- (ii) it has not been the subject of a notice under clause 61.10(e)(ii) within the 10 Business Day time period; or
- (iii) the content of the [REDACTED] has been determined by the Principal's Representative in accordance with clause 61.10(f),

OpCo must regularly and diligently progress the [REDACTED] (or to the extent that only a part or component of the [REDACTED] has been approved or has not been the subject of a notice under clause 61.10(e)(ii) within the 10 Business Day time period, the relevant part or component).

- (h) OpCo:
  - (i) must continue to develop and promptly amend or update the [REDACTED] in consultation with the Principal in order to take into account any events or circumstances, including any additional [REDACTED] or [REDACTED], which occurs or comes into existence and which has, or may have, [REDACTED]; and
  - (ii) must promptly submit each further [REDACTED] to the Principal's Representative as it is further developed, amended or updated, in which case clause 61.10(e) and clause 61.10(f), will reapply. Until such time as any updated [REDACTED] is approved, OpCo must comply with the then current approved [REDACTED].
- (i) OpCo may notify the Principal's Representative at any time if OpCo reasonably believes that a [REDACTED] that is the subject of the [REDACTED] has been [REDACTED] in accordance with the [REDACTED] or no longer subsists.
- (j) If OpCo gives a notice under clause 61.10(i) and the Principal's Representative (acting reasonably) agrees that the [REDACTED] has been [REDACTED]:
  - (i) the Principal's Representative must promptly provide written notice to OpCo confirming this; and
  - (ii) OpCo will be relieved of its obligation to continue to comply with the relevant [REDACTED] under this deed from the date of such notice.
- (k) This clause 61.10 is without prejudice to and will not lessen or otherwise affect:
  - (i) OpCo's obligations or liabilities under this deed or otherwise according to Law; or
  - (ii) any of the Principal's rights against OpCo, whether under this deed or otherwise according to Law, which arise as a result of or in connection with any of the matters dealt with in clause 61.8 or clause 61.10, including any rights arising under clause 47, clause 48 or clause 49.
- (l) OpCo will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in any way in connection with the performance of any of OpCo's obligations under this clause 61.10.

## 62. Representations, warranties and undertakings

### 62.1 Principal representations and warranties

The Principal represents and warrants for the benefit of OpCo that:

- (a) it is a NSW Government agency 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 Principal Project Agreement (or will have them in full force and effect at the time the obligation is to be performed);



- (c) each Principal 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 Principal 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.

## 62.2 OpCo representations and warranties

OpCo represents and warrants for the benefit of the Principal 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 OpCo 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 the Principal prior to the date of this deed, it is not a member of any consolidated group or MEC group for the 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 Principal 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 Principal Deed of Charge will rank ahead of, and its obligations under each Principal Project Agreement (other than the Principal 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) all information provided by it to the Principal is true and correct at the time it was provided to the Principal;
- (o) there has been no material change in the financial condition of OpCo (since its incorporation) or the Equity Investors or Core Contractors (since the date of their last audited accounts) which would prejudice the ability of OpCo to perform its obligations under the Project Agreements or to consent to its entry into a Project Agreement;
- (p) the most recently published financial statements of the Equity Investors and Core Contractors have been prepared on a basis consistently applied and using accounting principles which are generally accepted and give a true and fair view of the financial condition of the Equity Investors and Core Contractors and are unqualified for the period in question;
- (q) OpCo is not aware of any material facts or circumstances that have not been disclosed to the Principal 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;

- (r) it has provided to the Principal all material documents relating to the financing of the SSTOM PPP;
- (s) none of OpCo, the OpCo Entities, the Core Contractors, the D&C Guarantor, the O&M Guarantor (RATP Developpement S.A.), the Significant Contractors or the Significant Contractor Guarantors are a 'foreign entity' as defined under section 8(1) of the *Australian Foreign Relations (State and Territory Arrangements) Act 2020* (Cth)]; and
- (t) 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.

### 62.3 Trust representations

OpCo represents and warrants for the benefit of the Principal, in its personal capacity and in its capacity as trustee of the OpCo Trust, that:

- (a) it is empowered by the OpCo 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 OpCo Trust as now conducted or contemplated and to own the assets of the OpCo 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 OpCo 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 OpCo 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 OpCo Trust;
- (e) it is the sole trustee of the OpCo Trust;
- (f) it has not given notice of its intention to retire as trustee of the OpCo Trust;
- (g) no action has been taken or threatened to remove it as trustee of the OpCo Trust or appoint an additional trustee of the OpCo 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 OpCo Trust or on its trusteeship of the OpCo Trust;
- (i) no property of the OpCo 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 OpCo 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 OpCo Trust; and
  - (ii) charge the property of the OpCo Trust as provided in those Project Agreements;
- (k) the OpCo Trust is duly constituted in accordance with the OpCo Trust Deed and all applicable Laws, has not been terminated, nor has any event for the vesting of the assets of the OpCo Trust occurred;
- (l) it has the right to be fully indemnified out of the assets of the OpCo 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 OpCo Trust have not been limited or released in any way and the assets of the OpCo 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 OpCo Trust Deed and at law in all material respects;
- (n) the OpCo Trust is solely constituted by the OpCo Trust Deed, the copy of which provided to the Principal 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 OpCo Trust are subject to the prior rights and interests of:
  - (i) the Principal under the Principal Deed of Charge; and
  - (ii) OpCo in the property of the OpCo Trust pursuant to its Trustee's Indemnity.

#### **62.4 Repetition of representation and warranties**

The representations and warranties contained in clauses 62.2(h), 62.2(i), 62.2(j), 62.2(k), 62.2(o), 62.2(p), 62.2(q) and 62.2(s) are made on the date of this deed. Each other representation and warranty contained in this clause 62:

- (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.

#### **62.5 Trust undertakings**

OpCo must:

- (a) comply fully with all of its obligations as trustee of the OpCo Trust, whether imposed under the OpCo Trust Deed or, in all material aspects, at law;
- (b) ensure that no waiver or revocation of the OpCo Trust Deed is made, whether formally or by conduct;
- (c) not amend, or agree to amend, or permit or allow to be amended, its OpCo 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 OpCo Trust without the prior written consent of the Principal;
- (e) not do anything which would cause or enable its removal, nor retire, as trustee of the OpCo Trust except in favour of a new trustee approved by the Principal;
- (f) ensure that the vesting date is not determined, and will not otherwise alter, shorten or fix the vesting date under the OpCo Trust Deed or allow the early determination of the OpCo Trust;
- (g) not exercise in its own favour its Trustee's Indemnity under the OpCo Trust against any beneficiary of the OpCo Trust or against any OpCo 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 OpCo 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 OpCo Trust or the termination, rescission or revocation of the OpCo Trust Deed;
  - (ii) the resettlement of any OpCo Trust Property; or
  - (iii) the resignation, retirement, removal or replacement of it as trustee of the OpCo Trust or the appointment of an additional trustee of the OpCo 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 OpCo Trust Deed); and
  - (ii) the rights of any beneficiaries relating to, and their interests in, the property of the OpCo Trust are subject to the prior rights and interests of:
    - (A) the Principal under the Principal Deed of Charge; and
    - (B) OpCo in the property of the OpCo 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 OpCo Trust to use, occupy, or enjoy or possess any of the OpCo Trust Property or title documents in respect of the OpCo Trust Property or relinquish management powers which might entitle any beneficiary of the OpCo Trust to possession;
- (m) not blend or mix the OpCo Trust Property with any other property in respect of which it has been appointed trustee;
- (n) not acquire any OpCo Trust Property other than in the name of OpCo as trustee of the OpCo Trust;
- (o) not allow any redemption, cancellation or repurchase of any units in the OpCo Trust other than as permitted by the Project Agreements;
- (p) not take any step to release a unit holder of the OpCo 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 OpCo Trust as a managed investment scheme under Part 5C.1 of the Corporations Act; or
  - (ii) restricts or limits or may restrict or limit the Principal's rights of subrogation to the Trustee's Indemnity.

## 63. Dispute resolution

### 63.1 Disputes generally

Subject to clause 63.15, any dispute, difference or controversy directly or indirectly based upon, arising out of, relating to or in connection with the SSTOM PPP, the SSTOM Works, the Temporary Works, OpCo's Activities, Sydney Metro – Western Sydney Airport, 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, but excluding a failure by a party to comply with a final and binding decision by an Expert (**Dispute**) must be resolved in accordance with this clause 63.

### 63.2 Independent Dispute Avoidance and Resolution Panel

- (a) The IDAR Panel has been (or will be) constituted under the IDAR Panel Agreement.
- (b) OpCo must, within 5 Business Days of receipt of a request from the Principal, execute the IDAR Panel Agreement Accession Deed Poll.

- (c) Following execution of the IDAR Panel Agreement by the Principal and the members of the IDAR Panel and execution by OpCo of the IDAR Panel Agreement Accession Deed Poll, each party must:
  - (i) at all times comply with the terms of the IDAR Panel Agreement;
  - (ii) attend meetings with the IDAR Panel as required pursuant to the IDAR Panel Agreement or this deed; and
  - (iii) provide all reasonable assistance to the IDAR Panel in fulfilling its function(s) in respect of OpCo's Activities including providing all information the IDAR Panel or an individual Member of the IDAR Panel reasonably requests.
- (d) If OpCo and the IDAR Panel are unable to agree a schedule of meetings and site visits as contemplated in clause 2.1 of Schedule 2 to the IDAR Panel Agreement, the Principal will:
  - (i) consult with OpCo in relation to convenient times for meetings and site visits; and
  - (ii) take into account OpCo's reasonable requests,
 when scheduling meetings and site visits.
- (e) The Principal may, having regard to the proposed agenda for a Project Briefing and in its absolute discretion, invite OpCo, the D&C Contractor and/or the O&M Contractor to attend a Project Briefing.
- (f) If requested by the Principal pursuant to clause 63.2(e), OpCo must, or must procure that the D&C Contractor and/or the O&M Contractor (as applicable), attend the relevant Project Briefing.
- (g) Notwithstanding anything to the contrary in this deed, the parties acknowledge and agree that clauses 63.5 and 63.16 only apply from the date on which all of the following have occurred:
  - (i) at least one Member of the IDAR Panel has executed the IDAR Panel Agreement;
  - (ii) the Principal has executed the IDAR Panel Agreement;
  - (iii) the IDAR Panel Agreement has come into effect in accordance with its terms; and
  - (iv) OpCo has executed the IDAR Panel Agreement Accession Deed Poll.

### 63.3 Notice of Dispute

- (a) Where a Dispute arises, the Dispute must be notified by the dissatisfied party (**Party A**) to the other party (**Party B**) by written notice of the issues in Dispute (**Notice of Dispute**). The Notice of Dispute must:
  - (i) provide particulars of the Dispute; and
  - (ii) be issued as soon as is reasonably practicable after Party A first became aware of the fact, matter or thing on which the Dispute is based.
- (b) If the Dispute is in respect of facts and matters to which clause 64.6 applies:
  - (i) OpCo must not issue a Notice of Dispute under clause 63.3(a) unless OpCo has:
    - (A) complied with its obligations in clause 64.6(a)(i); and
    - (B) to the extent required by the Principal under clause 64.6(b), procured (at OpCo's cost) a certificate or other form of legal confirmation (on a non-reliance basis) from an independent legal adviser that the Claim the subject of the Dispute is bona fide, including that on the basis of provable facts and a reasonably arguable view of the Law, the Claim the subject of the Dispute has reasonable prospects of success; and
  - (ii) the certificate or legal confirmation referred to in clause 63.3(b) must be provided to the Principal with the Notice of Dispute.

### 63.4 Executive Negotiation

- (a) Where a Notice of Dispute is given under clause 63.3, the Dispute must be referred to the Executive Negotiators and the Executive Negotiators must, within 5 Business Days of the

date the Notice of Dispute was given under clause 63.3, meet and negotiate with a view to resolving the Dispute.

(b) If the Executive Negotiators have not resolved the Dispute within 20 Business Days after:

- (i) the date the Notice of Dispute was given under clause 63.3; or
- (ii) 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, those parts of the Dispute that remain unresolved must be:

- (iii) where the Notice of Dispute is given under clause 63.3 before the Date of Final Completion, determined by expert determination in accordance with clause 63.6 (provided that the Executive Negotiators may instead agree at any time before the end of the period referred to in this clause 63.4(b) and before commencing expert determination under clause 63.6 to have the disputed issues determined in accordance with clause 63.9); or
- (iv) where the Notice of Issue is given under clause 63.3 after the Date of Final Completion, determined in accordance with clause 63.9 (provided that the Executive Negotiators may instead agree at any time before the end of the period referred to in this clause 63.4(b) to first refer the disputed issues to expert determination in accordance with clause 63.6).

### **63.5 Role of IDAR Panel – Dispute Resolution Process**

(a) Following the issue of a Notice of Dispute, subject to clause 63.5(d), at any time before the end of the period referred to in clause 63.4(b), either party may by written notice to the other party (**IDAR Panel - Dispute Referral Notice**) notify the other party that it wishes to engage the IDAR Panel to assist with the resolution of the relevant Dispute in accordance with the IDAR Panel Agreement.

(b) If a party issues an IDAR Panel – Dispute Referral Notice under clause 63.5(a):

- (i) the parties must seek to agree the identity of the Member who will act as the Nominated Member under the IDAR Panel Agreement for the purposes of assisting with the resolution of the Dispute, provided that if the parties are unable to reach agreement within 5 Business Days following the date of receipt by the relevant party of the IDAR Panel – Dispute Referral Notice, the parties must request the Chair to nominate the Nominated Member in accordance with clause 9 of the IDAR Panel Agreement;
- (ii) within 5 Business Days following the selection of the Nominated Member in accordance with clause 63.5(b)(i), the parties must:
  - (A) provide detailed particulars of the Dispute to the Nominated Member including:
    - (I) reference to any relevant provisions of this deed;
    - (II) details of any circumstances and acts or omissions of any person relevant to the Dispute;
    - (III) details of any relief or compensation sought and the basis for claiming such relief or compensation; and
    - (IV) copies of, or relevant extracts from, any documents relevant to the Dispute; and
  - (B) request the Nominated Member to assist the parties to resolve the Dispute in accordance with clause 7B of the IDAR Panel Agreement;
- (iii) subject to clause 63.5(e), the parties must participate in the Dispute Resolution Process in accordance with clause 7B of the IDAR Panel Agreement; and
- (iv) the parties acknowledge and agree that the Nominated Member's role under the IDAR Panel Agreement in relation to the Dispute is purely consultative and

advisory, and no advice, view, direction, statement or comment by the Nominated Member in connection with the Dispute shall be binding on the parties unless and until it is incorporated into a written agreement between the parties.

- (c) Nothing in this clause 63.5 shall in any way affect the operation of any other provision of this clause 63 or the respective rights or obligations of the parties under any other provision of this clause 63.
- (d) For the avoidance of doubt, the giving of an IDAR Panel – Dispute Referral Notice in respect of a Dispute and the engagement of a Member to assist in the resolution of a Dispute under the IDAR Panel Agreement as contemplated by this clause 63.5:
  - (i) is not a precondition to the issue of a Notice of Dispute or to the commencement of any discussions, negotiations, expert determination, litigation or arbitration in accordance with this clause 63 in respect of that Dispute; and
  - (ii) shall not postpone, delay, suspend or otherwise impact the progress or resolution of any Dispute under clause 63.
- (e) The parties acknowledge and agree that unless they otherwise agree in writing:
  - (i) an IDAR Panel – Dispute Referral Notice cannot be issued in respect of a Dispute at any time after the end of the period referred to in clause 63.4(b); and
  - (ii) the Dispute Resolution Process in respect of a Dispute will cease with effect from the date on which the executive negotiation process under clause 63.4 is concluded in respect of that Dispute,

in each case irrespective of whether the Dispute remains unresolved at the conclusion of the Executive negotiation process under clause 63.4.

### 63.6 Expert determination

- (a) Subject to clause 63.4(b), Party A may refer the Dispute to an expert for determination by serving a written notice (**Notice of Referral of Dispute to Expert Determination**) on Party B which must:
  - (i) include or be accompanied by reasonable particulars of those matters still in Dispute including:
    - (A) references to any:
      - (I) provisions of this deed; and
      - (II) acts or omissions of any person, relevant to the Dispute;
    - (B) state the relief sought and the basis for claiming the relief sought; and
    - (C) include copies of, or relevant extracts from, any documents in support of the Claim; and
  - (ii) suggest up to three independent experts who have the appropriate knowledge and experience to opine on the Dispute.
- (b) Any Dispute which is referred to expert determination by a Notice of Referral of Dispute to Expert Determination will be conducted in accordance with the Resolution Institute's Expert Determination Rules, as modified by Schedule 33 (*Modification to the Expert Determination Rules*) to this deed.
- (c) Both parties must promptly make available to the Expert all such additional information, access to the Sydney Metro Site and other relevant places and all appropriate facilities as the Expert may require for the purposes of making a determination on the Dispute.
- (d) At the Principal's request, OpCo must procure the attendance of representatives of any Core Contractor, Significant Contractor, Equity Investors or the Debt Financiers at any expert determination proceedings under this clause 63.6 as observers.
- (e) OpCo may, with the Principal's consent, have a representative of any Core Contractor attend any expert determination proceedings under this clause 63.6 as an observer.

- (f) 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.
- (g) Within 50 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 63.6. 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 by written agreement between the parties or a court judgment or an arbitral award made in court proceedings or an arbitration pursuant to this clause 63.

### **63.7 Notice of dissatisfaction**

- (a) If:
  - (i) either party is dissatisfied with a determination made by an Expert under clause 63.6 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 50 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 63.7 must:
  - (i) state that it is given under this clause 63.7; and
  - (ii) set out the matter in Dispute and the reason(s) for dissatisfaction.
- (c) Except as stated in clause 63.9, 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 63.7.

### **63.8 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 63.7 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 63.8(a), neither party will be entitled to challenge the determination on any basis.

### **63.9 Litigation or arbitration**

Where this clause applies, the Principal may, in its absolute discretion, within 5 Business Days after:

- (a) issuing or receiving a Notice of Dissatisfaction under clause 63.7(a); or
- (b) to the extent that:
  - (i) the Executive Negotiators agree to have the Dispute determined in accordance with this clause 63.9; or
  - (ii) clause 63.4(b)(iv) applies,

the end of the period referred to in clause 63.4(b),



issue a notice to OpCo stating that the Dispute is to be determined by litigation pursuant to court proceedings. If the Principal does not issue such a notice within the 5 Business Day period, either party may refer the Dispute to arbitration.

#### **63.10 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 and location of the arbitration will be Sydney, Australia.
- (c) The language of the arbitration will be English.
- (d) The parties agree:
  - (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 63.10 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 63.11, 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 is governed by and must be construed according to the Laws applying in New South Wales.

#### **63.11 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 63.
- (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.

### 63.12 Payments

The Principal may withhold payment of that part of any amount which is the subject of a Dispute.

### 63.13 Parties to continue performing obligations

Subject to clause 63.12, despite the existence of any Dispute, the Principal and OpCo must continue to perform their obligations under this deed.

### 63.14 Urgent relief

Nothing in this clause 63 will prejudice the right of a party to seek urgent injunctive or declaratory relief from a court.

### 63.15 Dispute under related contracts

The parties acknowledge and agree that:

- (a) the provisions of this clause 63 will not apply to any dispute, difference, controversy or claim between one or both of the parties and the Independent Certifier which is to be resolved under the SSTOM Independent Certifier Deed;
- (b) the parties will be bound by the outcome of any dispute, difference, controversy or claim between the parties which is resolved pursuant to the SSTOM Independent Certifier Deed; and
- (c) where the Dispute is a Common Dispute, as that term is defined in clause 3 of Schedule 18 (*Requirements of Third Party Agreements*), then this clause 63 will apply subject to the provisions of clause 3 of Schedule 18 (*Requirements of Third Party Agreements*).

### 63.16 Role of IDAR Panel – Dispute Avoidance Process

- (a) The parties acknowledge and agree that they will seek to minimise the incidence of Disputes.
- (b) Subject to clause 63.16(d), if a party becomes aware of a Potential Matter it may, provided that a Notice of Dispute has not already been issued by either party in respect of the Potential Matter:
  - (i) notify the other party in writing of the Potential Matter (giving brief particulars of the Potential Matter); and
  - (ii) request the other party to confirm whether it wishes to participate in the Dispute Avoidance Process under the IDAR Panel Agreement in respect of the Potential Matter, with the aim of attempting to avoid a Dispute arising from or in connection with the Potential Matter.
- (c) If a party receives a notice under clause 63.16(b), it must, within 5 Business Days following receipt of such notice, confirm in writing to the other party whether or not it wishes to participate in the Dispute Avoidance Process in respect of the Potential Matter.
- (d) If a party issues a notice under clause 63.16(c) confirming that it does wish to participate in the Dispute Avoidance Process in respect of the Potential Matter (**Notice Confirming Participation**):
  - (i) the parties will seek to agree the identity of the Member who will act as the Nominated Member under the IDAR Panel Agreement for the purposes of the Dispute Avoidance Process in respect of the Potential Matter, provided that if the parties are unable to reach agreement within 5 Business Days following the date of receipt by the relevant party of the Notice Confirming Participation, the parties must request the Chair to nominate the Nominated Member in accordance with clause 9 of the IDAR Panel Agreement;
  - (ii) within 5 Business Days following the selection of the Nominated Member in accordance with clause 63.16(d)(i), the parties must:
    - (A) provide detailed particulars of the Potential Matter to the Nominated Member in writing; and

- (B) confirm to the Chair in writing that they each wish to participate in the Dispute Avoidance Process in respect of the Potential Matter; and
  - (iii) subject to clause 63.16(e), participate in the Dispute Avoidance Process in accordance with clause 7A of the IDAR Panel Agreement.
- (e) If the Dispute Avoidance Process has been commenced in respect of a Potential Matter and either party subsequently issues a Notice of Dispute in connection with that Potential Matter, then unless the parties otherwise agree in writing, the Dispute Avoidance Process will cease in respect of that Potential Matter with effect from the date of receipt by the other party of the Notice of Dispute.
- (f) The parties acknowledge and agree that the Dispute Avoidance Process is purely consultative and advisory, and no advice, view, direction, statement or comment by a Nominated Member as part of the Dispute Avoidance Process shall be binding on the parties unless and until it is incorporated into a written agreement between the parties for the purpose of avoiding the occurrence of a Dispute.
- (g) Nothing in this clause 63.16 shall in any way affect the operation of any other provision in this clause 63 or the respective rights or obligations of the parties under any other provision of this clause 63.
- (h) For the avoidance of doubt, the giving of a notice under clause 63.16(b) and the participation in the Dispute Avoidance Process in respect of a Potential Matter as contemplated by this clause 63.16:
  - (i) is voluntary;
  - (ii) is not a precondition to the issue of a Notice of Dispute or to the commencement of discussions, executive negotiations, expert determination, litigation or arbitration in accordance with this clause 63 in respect of a Dispute; and
  - (iii) shall not postpone, delay, suspend or otherwise impact the progress or resolution of any Dispute under this clause 63.
- (i) Notwithstanding clauses 63.16(g) and 63.16(h), with respect to a Potential Matter notified under this clause 63.16, where a party:
  - (i) elects not to participate in the Dispute Avoidance Process; or
  - (ii) elects to participate in the Dispute Avoidance Process but fails to participate in the Dispute Avoidance Process in good faith,
 and the Potential Matter subsequently becomes a Dispute, the other party may disclose these matters to the IDAR Panel, an Expert, an arbitral tribunal, a court or other tribunal (as applicable) that is involved from time to time in the resolution of such Dispute in accordance with this clause 63.

#### **63.17 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 the Principal and OpCo under this deed.
- (b) Without limiting clauses 52.4 or 52.5, OpCo must inform the Principal's Representative immediately of any formal disputes and differences under any Core Contracts and the consequences (if any) on the operation of this deed.

#### **63.18 Survive termination**

This clause 63 will survive termination of this deed.

## 64. Notice of Claims

### 64.1 Notice of Modification

- (a) Subject to clause 64.9, if a Direction of the Principal, other than a Modification Order, constitutes or involves a Modification, OpCo must, if it wishes to make a Claim against the Principal 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 the Principal'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 64.1(a)(i), submit a written claim to the Principal's Representative which includes the details required by clause 64.3(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 64.1.
- (b) If OpCo issues a notice under clause 64.1(a)(i), the Principal 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 64.1(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 64.1(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 63.3; and
    - (B) unless otherwise directed by the Principal'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 64.1(b)(iii) provided that the Principal must compensate OpCo for its reasonable costs incurred in compliance with such withdrawn Direction pursuant to clause 64.1(a)(iii).
- (c) If within 20 Business Days after first receipt of the notice under clause 64.1(a)(i), the Principal's Representative has not taken any action under clause 64.1(b), the Principal's Representative will be deemed to have given a notice under clause 64.1(b)(ii).

### 64.2 Notices of other Claims

- (a) Subject to clause 64.9 and clause 64.2(b), OpCo must give the Principal the notices required by clause 64.3 if it wishes to make a Claim against the Principal in respect of any Direction or any other fact, matter or thing (including a breach of this deed by the Principal) 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 64.2(a) does not apply to the following claims:
  - (i) a Claim for an extension of time to the Date for Completion under clause 20.8;
  - (ii) a Claim in respect of a Compensation Event under clause 29.2;
  - (iii) a Claim in respect of a Relief Event under clause 30;
  - (iv) a Claim in respect of:
    - (A) a Modification directed or approved by the Principal in accordance with clauses 33, 34 or 35 or to which clause 64.1 applies; or

- (B) a Pre-Agreed Option directed by the Principal under clause 36; and
- (v) a Claim for payment under clause 28 of:
  - (A) a Capital Contribution;
  - (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 Extension in accordance with Schedule 37 (*Extensions*); or
  - (G) a Termination Payment in accordance with clause 49.10(a).

#### 64.3 Prescribed notices

The notices referred to in clause 64.2 are:

- (a) a written notice within 25 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 64.3(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.

#### 64.4 Notification of OpCo Contractor defaults, claims and disputes

OpCo must notify the Principal:

- (a) **(existence of defaults, claims and disputes):** of the existence of any defaults, claims or disputes of which it is aware that have arisen under any Core Contract or Significant Contract (regardless of whether OpCo is a party to that Core Contract or Significant Contract) if a notice of default has been issued under that Core Contract or Significant Contract or the claims process or dispute resolution process under that Core Contract or Significant Contract has been activated by any party to it; and
- (b) **(resolution of defaults, claims and disputes):** when and how any such defaults, claims or disputes have been resolved.

#### 64.5 Notification of disputes generally

Without limiting clause 64.4, OpCo must immediately upon becoming aware that any litigation, arbitration, administration, adjudication or mediation proceedings, which may adversely affect the SSTOM PPP or OpCo's, a Core Contractor's or a Significant Contractor's ability to perform its obligations under the Project Agreements, have been commenced or threatened, give the Principal written notice of such litigation, arbitration, administrative, adjudication or mediation proceedings.

#### 64.6 Obligations as to Claims made on pass-through basis

- (a) OpCo must, in circumstances where it makes any Claim against the Principal as a consequence of a Claim that has been made by an OpCo Contractor against OpCo:
  - (i) **(ensure Claim is bona fide)**: take reasonable steps to ensure that any such Claim made by the OpCo Contractor is bona fide, including that the Claim:
    - (A) is made in good faith;
    - (B) has a proper legal, technical or factual basis; and
    - (C) if it is for an amount of compensation or time, is not grossly in excess of the amount that the OpCo Contractor can reasonably expect to recover, prior to making any related Claim against the Principal;
  - (ii) **(notice of steps taken by OpCo)**: notify the Principal of the steps it has taken, including in accordance with clause 64.6(a)(i), prior to or at the same time it makes the Claim against the Principal; and
  - (iii) **(notice of resolution of OpCo Contractor Claim against OpCo)**: notify the Principal when and how the Claim made by the OpCo Contractor against OpCo has been resolved.
- (b) **(Independent Advice)**: Where the Principal determines (acting reasonably) that OpCo has not taken all of the steps required in accordance with clause 64.6(a)(i), the Principal may require OpCo to procure (at OpCo's cost) a certificate or other form of legal confirmation (on a non-reliance basis) from an independent legal adviser that the Claim is bona fide, including that on the basis of provable facts and a reasonably arguable view of the Law, the Claim has reasonable prospects of success prior to issuing a Notice of Dispute under clause 63.3.

#### 64.7 Continuing events

If the Direction or any other fact, matter or thing upon which the Claim under clause 64.3(b) is based or the consequences of the events are continuing, OpCo must continue to give information required by clause 64.3(b) within 14 Business Days after the end of each calendar month after the written claim under clauses 64.1(a)(ii) or 64.3(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.

#### 64.8 Time bar

If OpCo fails to comply with clauses 64.1, 64.2, 64.3, 64.7 or 64.9(e):

- (a) the Principal 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 the Principal, 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 64.1 or 64.3 applies.

#### 64.9 Temporary waiver of notification requirements

- (a) Within 5 Business Days after receipt of a written notice referred to in clauses 20.8(a)(i), 29.2(a), 30.2(a), 64.1(a)(i) or 64.3(a) (as applicable), the Principal's Representative may notify OpCo in writing that the Principal wishes to temporarily waive the requirements of clauses 20.8(a)(ii), 29.2(b), 30.2(b), 64.1(a)(ii) or 64.3(b) (as applicable) (**Claims Clause**) in relation to the proposed Claim that is the subject of OpCo's notice.
- (b) If the Principal's Representative issues a notice under clause 64.9(a), the parties must within 2 Business Days (or such longer period agreed between the parties) meet to discuss the proposed Claim and seek to agree:
  - (i) the period for which the requirements of the relevant Claims Clause will not apply in relation to the proposed Claim; and
  - (ii) the next steps (if any) that the parties wish to take in relation to the proposed Claim.

- (c) If, at a meeting under clause 64.9(b), the parties agree a period for which the requirements of the relevant Claims Clause will not apply, the Principal's Representative will promptly confirm such period by notice in writing to OpCo.
- (d) A meeting under clause 64.9(b) may be held in person, by phone, by video conference or by any other means of instantaneous communication agreed between the parties.
- (e) Where the Principal's Representative has given a written notice under clause 64.9(a) and with respect to the requirements of the relevant Claims Clause, if the parties:
  - (i) agree a period for which the requirements of the relevant Claims Clause will not apply, OpCo must provide a written Claim including the details required by the Claims Clause no later than 25 Business Days after the expiry of that period as stated in a notice issued by the Principal's Representative under clause 64.9(c) (or such longer period as the parties may subsequently agree in writing); or
  - (ii) fail to agree a period for which the requirements of the relevant Claims Clause will not apply, OpCo must provide a written Claim including the details required by the relevant Claims Clause no later than 25 Business Days after the date of the meeting held under clause 64.9(b).
- (f) OpCo must maintain and keep an updated register of potential Claims that have been the subject of a notice issued by the Principal's Representative under clause 64.9(a) and provide a copy of this register to the Principal's Representative at least 3 Business Days in advance of each meeting of the Senior Project Group.
- (g) The register of potential claims under clause 64.9(f) must include:
  - (i) the Claim number;
  - (ii) the Claim description;
  - (iii) the date the initial notice of Claim was received;
  - (iv) the clause(s) under which the notice was given;
  - (v) the date of the notice issued by the Principal's Representative under clause 64.9(a);
  - (vi) the date of the meeting under clause 64.9(b);
  - (vii) the date on which the Claim is required (as agreed or as per clause 64.9(e)(ii));
  - (viii) any next steps agreed at the meeting under clause 64.9(b); and
  - (ix) the status of those next steps.
- (h) Nothing done by the Principal or the Principal's Representative under this clause 64.9:
  - (i) constitutes acceptance by the Principal that the relevant notice under clauses 29.2, 30.2, 64.1 or 64.2 (as the case may be) is valid; or
  - (ii) prejudices in any way the Principal's right to later assert a time bar in respect of such notice provided that for the purposes of any such subsequent assertion, the calculation of the time bar must not include any time period the subject of a waiver granted under this clause 64.9.

#### **64.10 Other provisions unaffected**

Nothing in clauses 64.1 to 64.8 will limit the operation or effect of any other provision of this deed which requires OpCo to give notice to the Principal or the Principal's Representative in order to preserve an entitlement to make a Claim against the Principal.

### **65. 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 the Principal's Representative may notify OpCo that a PDCS will be used for giving Notices under or in connection with this deed. The Principal'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;
  - (iv) any requirements for specific notices (e.g. notices of Claims);
  - (v) the name and contact details of any additional person which the Principal's Representative nominates for receipt of Notices under this deed; and
  - (vi) any other information reasonably necessary for the use and service of Notices via the PDCS.
- (c) At any time and from time to time the Principal's Representative may notify OpCo that a PDCS will not be used for giving certain Notices under or in connection with this deed. The Principal's Representative's notice will state that such Notices will be given in accordance with clause 65(d)(i).
- (d) Each Notice must:
- (i) before the date referred to in clause 65(b)(ii) or where clause 65(c) applies:
    - (A) be in writing;
    - (B) be addressed:
      - (I) in the case of a Notice from OpCo, be addressed to the Principal's Representative and any additional person notified by the Principal in writing; or
      - (II) in the case of a Notice from the Principal, be addressed to OpCo's Representative; or
    - (C) comply with any requirements for specific notices (e.g. notices of Claims) specified by the Principal in writing;
    - (D) 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
    - (E) be delivered or posted to the relevant address or sent to the email address shown below (or to any new address or email address notified by the intended recipient):

**Principal**

Name: Sydney Metro

Address: Level 43, 680 George Street  
Sydney NSW 2000

Email: [REDACTED]

For the attention of: The Principal's Representative and any additional person notified by the Principal in writing

Any Notice in relation to a Claim or a Dispute must also be addressed to the

[REDACTED]

**OpCo**

Name: Parklife Metro Pty Ltd

Address: Level 23, 126 Phillip Street, Sydney NSW Australia 2000

Email: [REDACTED]



and

For the attention of: OpCo's Representative and Company Secretary

- (ii) from the commencement date for use of the PDCS referred to in clause 65(b)(ii) and other than where clause 65(c) applies:
  - (A) be sent through the PDCS in accordance with the requirements set out in clause 65(f) and:
    - (I) in the case of a Notice from OpCo, be addressed to the Principal's Representative and any additional person notified in accordance with clause 65(b)(v) and comply with any requirements notified in accordance with clause 65(b)(vi); or
    - (II) in the case of a Notice from the Principal, 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 65(d)(i).
- (e) 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, provided that if the communication is 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; and
  - (v) (in the case of email):
    - (A) if it is transmitted by 5:00pm (Sydney time) on a Business Day – on that Business Day; or
    - (B) if it is transmitted after 5:00pm (Sydney time) on a Business Day, or on a day that is not a Business Day – on the next Business Day.
- (f) 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 65(f)(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.
- (g) 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) comply with any user guide and protocol with respect to the PDCS and check whether Notices have been received on each Business Day;
  - (iv) ensure all relevant personnel attend all necessary training required by the Principal's Representative;
  - (v) advise the Principal's Representatives of which personnel require access to the PDCS;
  - (vi) 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
  - (vii) 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 65(d)(ii)(B) to the Principal's Representative through the PDCS.
- (h) The Principal 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 the Principal will not be liable upon, any Claim against the Principal arising out of or in connection with OpCo's access to or use of the PDCS or any failure of the PDCS.

## 66. Transfer of functions

### 66.1 Transfer of Functions or NSW Public Transport Assets

- (a) The parties acknowledge that:
- (i) a Public Transport Agency may be reconstituted, renamed, dissolved, replaced or restructured and that some or all of the powers, functions, assets, rights, liabilities or responsibilities of a Public Transport Agency may be transferred to or vested in Another Entity;
  - (ii) if a Public Transport Agency is reconstituted, renamed, dissolved, replaced or restructured and/or some or all of that Public Transport Agency's powers, functions, rights or responsibilities are transferred to or vested in Another Entity, then unless otherwise notified by the Public Transport Agency, references in this deed to that Public Transport Agency must, subject to any facilitative legislation, be deemed to refer, as applicable, to the reconstituted, renamed, restructured or new entity or entity replacing that Public Transport Agency to the extent that such entity has assumed or has had transferred to it or vested in it those powers, functions, rights or responsibilities; and
  - (iii) a Public Transport Agency may be required to or may, at its absolute discretion, elect to (including as a result of changes to New South Wales Government policy or directions) acquire, or dispose of, any property or assets.
- (b) OpCo acknowledges and agrees that it must, to the extent required by a Public Transport Agency and without limiting any facilitative legislation, negotiate in good faith any variations required to this deed, or any replacement agreement or agreements for this deed to give effect to a Public Transport Agency being reconstituted, renamed, dissolved, replaced or restructured.
- (c) OpCo will be taken for all purposes to have consented to, and will not have, and no Public Transport Agency will be liable for, any Claim as a result of any action, matter or circumstance referred to in, or contemplated by this clause 66.

## 67. Proportionate liability

### 67.1 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 the Principal 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.

### 67.2 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 the Principal 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 the Principal against OpCo (whether in contract, tort or otherwise), OpCo will indemnify the Principal against any loss, damage, cost or expense that forms part of a claim by the Principal against OpCo which the Principal cannot recover from OpCo because of the operation of Part 4 of the *Civil Liability Act 2002* (NSW).

### 67.3 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 (other than the Hassell Significant 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.

## 68. Taxes

### 68.1 Liability for Taxes

- (a) Subject to clause 68.2, OpCo must indemnify the Principal against, and must pay the Principal 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 Principal Project Agreements and the Debt Financing Documents within the period for lodgement prescribed by Law;

- (ii) give the Principal reasonable opportunity to review and comment on all submissions, correspondence and other materials before they are provided to Revenue NSW and give due consideration to such comments; and
  - (iii) give the Principal a copy of each assessment issued by Revenue NSW as to the amount of stamp duty payable in respect of the Principal Project Agreements, the Debt Financing Documents or any transaction contemplated by any of them, within 2 Business Days after OpCo receives the assessment.
- (c) The Principal must pay the amount of stamp duty assessed by the Revenue NSW as payable in respect of the Principal 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 the Principal receives the Revenue NSW assessment.
- (d) The Principal is not required to pay any penalty, fine, charge or interest payable in respect of any stamp duty which results from:
- (i) any failure by OpCo to comply with its obligation under clause 68.1(b)(i); or
  - (ii) any Refinancing, a change to financiers or any change in ownership or allocation of Equity Interests in any [REDACTED] or [REDACTED]

OpCo must pay all such amounts. The Principal must, however, pay any interest payable to Revenue NSW to the extent such interest is payable as a result of a breach by the Principal of its obligation under clause 68.1(c).

- (e) The Principal must indemnify OpCo and each other Transaction Party for any liability incurred by that Transaction Party as a result of a breach by the Principal of its obligations under clause 68.1(c) and clause 68.1(d).
- (f) The Principal 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 Sydney Metro Site until the end of the Term.
- (g) To the extent that the indemnity in clause 68.1(e) and clause 68.1(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.

## 68.2 GST

- (a) **(Interpretation):**
- (i) Except where the context suggests otherwise, terms used in this clause 68.2 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 68.2.
  - (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 68.2.
  - (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 68.2(e), if GST is or 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 68.2), 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) subject to clause 28.5(a), 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 68.2(c)(ii).
- (d) **(Variation of GST):**
  - (i) If the GST Amount properly payable in relation to a supply (as determined in accordance with clause 68.2(c) and clause 68.2(e)), varies from the additional amount paid by the Recipient under clause 68.2(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 68.2(d) is deemed to be a payment, credit or refund of the GST Amount payable under clause 68.2(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 68.2(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 68.2(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 68.2(c) (or the time at which such GST Amount would have been payable in accordance with clause 68.2(c) but for the operation of clause 68.2(e)).
- (f) **(No merger):** This clause will not merge on completion or termination of this deed.

## 69. General

### 69.1 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.

### 69.2 Cost of performing obligations

Each party must perform its obligations under this deed at its own cost, unless expressly provided otherwise.

### 69.3 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 63, 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.

#### **69.4 Amendments**

This deed may only be varied by a deed executed by or on behalf of each party.

#### **69.5 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.

#### **69.6 Survival of certain provisions; no merger**

- (a) Without limiting clause 69.14(a):
  - (i) clauses 1, 6.1, 11.2, 14.5(b), 24.16, 25, 28.12, 28.13, 44, 49.9, 49.10, 49.12, 50, 52.1, 54, 54.5, 59, 63, 64, 65, 67, 68, 69, 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.

#### **69.7 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.

#### **69.8 Consents**

- (a) A consent required under this deed from the Principal may be given or withheld, or may be given subject to any conditions, as the Principal (in its absolute discretion) thinks fit, unless this deed expressly provides otherwise.
- (b) A consent or approval required in accordance with this deed from OpCo may not be unreasonably withheld or delayed, unless otherwise expressly provided in this deed.

#### **69.9 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.

#### **69.10 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.

#### **69.11 Exercise of remedies**

- (a) If OpCo breaches any of its obligations under this deed or any other Project Agreement, the Principal may exercise any or all of the rights and powers and pursue any or all of the remedies available to the Principal 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 the Principal 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 the Principal 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 the Principal in the exercise of any right, power or remedy shall impair such right, power or remedy or constitute a waiver of the relevant breach.

#### **69.12 Moratorium legislation**

To the extent permitted by Law, OpCo waives any right or remedy it may have under any Law which comes into effect after the date of this deed if the exercise of such right or remedy would:

- (a) lessen any obligation or liability of OpCo;
  - (b) increase or improve any rights, powers or remedies of OpCo; or
  - (c) prejudicially affect the rights, powers or remedies of the Principal,
- under a Principal Project Agreement to which OpCo is a party.

#### **69.13 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.

#### **69.14 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. The Principal 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 the Principal is liable to OpCo for any Claim arising under this deed, the Principal 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 the Principal, OpCo or other subcontractor or is dependent upon determination of that entitlement.



#### **69.15 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.

#### **69.16 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.

#### **69.17 Relationship between the Principal and OpCo**

Nothing in, or contemplated by, this deed or any other Principal Project Agreement will be construed or interpreted as:

- (a) constituting a relationship between the Principal 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 the Principal 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 the Principal under this deed or any other Principal Project Agreement on a good faith basis.

#### **69.18 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 the Principal, must be written in the English language.

#### **69.19 Vienna convention**

The UN Convention on Contracts for the International Sale of Goods (1980) does not apply to this Contract.

#### **69.20 Performance Standards and civil penalty provisions**

- (a) OpCo acknowledges that it is required by this deed to observe performance standards (**Performance Standards**), including:
  - (i) compliance with the Maintenance Works Program in accordance with clause 24.8; and
  - (ii) the standards of performance in Schedule 2 (*Service Payment calculation*);
- (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 the Principal to achieve the objectives referred to in clauses 4.1 and 4.2 to the detriment of the Principal and those on whose behalf the objectives are pursued;
  - (iii) the loss arising from the failure of the Principal 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 Act 2014* (NSW), Performance Standards may be enforced by civil penalty provisions.
- (c) Clause 24.8 and Schedule 2 (*Service Payment calculation*) are civil penalty provisions for the purposes of section 38 of the *Passenger Transport Act 2014* (NSW).

#### **69.21 Assumptions**

Except as stated in this deed, OpCo bears the risk that any assumptions contained in the Project Agreements, the Delivery Program, the Proposal Design or any Project Plans are incorrect and will not be entitled to make any Claim against the Principal arising out of or in connection with such assumptions.



## Signing page

