

Non-Project-Specific Schedules and Exhibits

Schedule 1 Acronyms, definitions and interpretation

Note that acronyms and defined terms used in formulae in the Compensation Framework are generally not included in the list of acronyms and definitions set out below in this Schedule 1 – they are defined within the text of the Compensation Framework.

1. Acronyms

The following acronyms are used in this Agreement

AOC	Actual Outturn Cost
FA	Financial Auditor
GST	Goods and Services Tax
IDA	Incentivised Delivery Agreement
IDE	Incentivised Delivery Entity
JCT	Joint Coordination Team
KRA	Key Result Area
KPI	Key Performance Indicator
LT	Leadership Team
MP	Management Plan
MT	Management Team
NOP	Non Owner Participant
TAE	Target Adjustment Event
TAG	Target Adjustment Guidelines
TOC	Target Outturn Cost

2. Definitions

Defined terms set out in the Compensation Framework apply in this Agreement (in respect of the relevant Project to which the Compensation Framework relates) and the following definitions apply in this Agreement:

"ABCC" means the Australian Building and Construction Commission referred to in subsection 29(2) of the BCIP Act.

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

"Accepted Project Proposal" means, in respect of each Additional Project (other than Additional Projects that are Ad Hoc Works), the Project Proposal submitted by us in accordance with clause 9 which is accepted by TfNSW via an Election Notice.

"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 (NSW)* (or an exemption from same).

"Acting General Manager" means the person appointed by the LT under clause 5.2(b)(ii).

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"Actual Outturn Cost" or **"AOC"** has, in respect of each Project, the meaning given in the Compensation Framework.

"Ad Hoc Works" means the work, services, activities or tasks notified by TfNSW to us under clause 23.1(a)(i) which are agreed by us under clause 23.1(b).

"Additional Project" means:

- (a) each additional project the subject of a Project Proposal in respect of which TfNSW has issued an Election Notice; and
- (b) each package of Ad Hoc Works which clause 23.1(c)(ii) provides will constitute an Additional Project and which is agreed by us under clause 23.1(b).

"Additional Track Possession or Power Isolation" has the meaning given to that term in clause 15.16(d).

"AFC Design Documentation" means the Design Documentation which either:

- (a) satisfies each of the following conditions:
 - (i) in the Participants' opinion, is sufficiently developed and complete that it can be used for the purpose of constructing the relevant part of the Works and may be submitted for review by the Principal's Representative under clause 16.3;
 - (ii) is submitted by the Participants in accordance with clause 16.3 and in respect of which the preconditions to submission set out in clause 16.3 have been satisfied;
 - (iii) where relevant, has been the subject of CCB Minutes;
 - (iv) is marked by the IDE "AFC" or "Approved for Construction"; and
 - (v) is issued by the Participants to TfNSW for its records; or
- (b) is provided by TfNSW to us in accordance with this Agreement and marked as "AFC" or "Approved for Construction".

"Agreement" means this document and includes its schedules, exhibits, annexures and attachments, as amended in accordance with clause 1, 12.2 or 23.1(c)(iv).

"Agreement Particulars" means:

- (a) the Program Particulars; and
- (b) the Project Particulars.

"AHW Expenditure Limit" means, in respect of each package of Ad Hoc Works, the budget notified by TfNSW to us under clause 23.1(a)(ii) which is agreed by us under clause 23.1(b), as adjusted in accordance with clause 23.3(b).

"Alternative LT Member" means, in respect of an LT Member, a person appointed in accordance with clause 4.2(d) to act as the alternative of that LT Member.

"Approval" means:

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- (a) any consent, approval, acknowledgment, permit, licence, registration, order, permission, determination, certificate or concurrence from any Authority or under any law (including a Statutory Requirement);
- (b) any requirement made under any law (including a Statutory Requirement); and
- (c) any TfNSW condition or approval in connection with the Works (including those under this Agreement),

which must be obtained or satisfied (as the case may be) to carry out the IDE Activities or to occupy, use, operate or maintain the Works, and includes each Planning Approval.

"Approved Aboriginal Participation Plan" means the Aboriginal Participation Plan set out in Exhibit O, subject to any amendments referred to in section 3 of this Schedule 1.

"ASA Authorisation" means an authorisation issued by the ASA to a legal entity which verifies that it has the relevant systems in place to carry out the class of Asset Lifecycle work specified in the authorisation, subject to any conditions of the authorisation.

"ASA Charter" means the document which identifies the ASA's objectives, functions, powers and governance and the duties of Rail Transport Agencies and AEOs in relation to the ASA (as amended from time to time) which is available at <http://www.asa.transport.nsw.gov.au/> or upon request from the Principal's Representative.

"ASA Requirements" has the meaning assigned to it in the ASA Charter.

"Asset Lands" means, in respect of each Project, the lands so identified in the Site Access Schedule.

"Asset Lifecycle" has the meaning assigned to it in the ASA Charter.

"Asset Management Information" means information for asset management required to be developed and provided as detailed in the Works Brief and the TSRs.

"Asset Services" means the aspects of the IDE Activities which relate to the Asset Lifecycle of NSW Rail Assets.

"Asset Standards Authority" or **"ASA"** means the unit within TfNSW which sets, controls, maintains, owns and publishes the network and asset standards for NSW Rail Assets as defined in the ASA Charter. Information about the ASA and the network and asset standards can be found on www.asa.transport.nsw.gov.au.

"Associate" means, in respect of a Participant, any officer, employee, agent, Subcontractor, supplier or consultant of that Participant and their respective officers, employees, agents, subcontractors, suppliers and consultants.

"Authorised Engineering Organisation" or **"AEO"** means a legal entity to whom the ASA has issued an ASA Authorisation.

"Authority" means:

- (a) any governmental or semi-governmental or local government authority, administrative or judicial body or tribunal, department, commission, public authority, agency, minister, statutory corporation or instrumentality; or
- (b) any other person having a right to impose a requirement, or whose consent is required, with respect to any part of the IDE Activities,

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including the ASA and the ONRSR.

"Background Intellectual Property Rights" means any Intellectual Property Rights that any of us possess which are not IDE Intellectual Property Rights.

"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 or any state to carry on banking business.

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

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

"Best For Program" means an approach which is consistent with the aim of ensuring the achievement of an outcome or solution that, in respect of the whole of the work, services activities and tasks undertaken by the IDE or any Other IDE, is fit for its intended purpose and constitutes value for money to the State.

"Best For Project" means an approach, determination, decision, outcome, solution or resolution which is consistent with the aim of ensuring that the Works are fit for their intended purpose and constitute value for money to the State, consistent with the Objectives rather than the achievement of self-serving goals (such as maximising the NOPs' profit).

"Building Code" means the *Code for the Tendering and Performance of Building Work 2016* in force pursuant to section 34 of the BCIIP Act.

"Building Contractor" has the same meaning as in the BCIIP Act.

"Building Industry Participant" has the same meaning as in the BCIIP Act.

"Building Work" has the same meaning as in subsection 3(4) of the Building Code.

"Business Day" means a day that is not:

- (a) a Saturday or Sunday;
- (b) a public holiday in Sydney; or
- (c) 27, 28, 29, 30 or 31 December.

"CCB Minutes" means minutes of the IP Configuration Control Board confirming that the IP Configuration Control Board has not identified any issues in respect of Design Documentation.

"Certificate of Completion" means the certificate completed by the Principal's Representative in accordance with clause 19.3(c).

"Certificate of Final Completion" means the certificate completed by the Principal's Representative in accordance with clause 19.4(c).

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"Change in Law" means, in respect of each Project (if it takes effect after the Reference Date):

- (a) a change in an existing Law (other than a change in an Approval); or
- (b) a new Law (other than a new Approval),

compliance with which:

- (c) has a direct effect on the Participants carrying out the IDE Activities; and
- (d) directly results in an increase or decrease in the Participants' costs of carrying out the IDE Activities,

but excludes:

- (e) a change in an existing Law in respect of Taxes or a new Law in respect of Taxes; and
- (f) a change in an existing Law or a new Law which, as at the Reference Date:
 - (i) was published or of which public notice had been given (even as a possible change in an existing Law or a possible new Law); or
 - (ii) a party experienced and competent in the delivery of works and services similar to the Project Works or the IDE Activities (as applicable) would have reasonably foreseen or anticipated,

in substantially the same form as the change in an existing Law or new Law eventuating after the Reference Date.

"Claim" means any claimed entitlement (including for debt, damages or indemnity) under or arising out of or connected with this Agreement, in contract, in tort including negligence, in equity, under any statute, or otherwise.

"Closing Date and Time" means, in respect of each Proposed Additional Project the subject of an RFP and each part of a Project Proposal, the relevant closing date and time specified in the RFP, as that closing date and time may be amended in accordance with the RFP.

"Commencement Date" means the date of this Agreement.

"Commonwealth" means the Commonwealth of Australia.

"Compensation Audit Plan" means the plan of this name prepared in accordance with the Compensation Framework.

"Compensation Framework" means the compensation framework set out in:

- (a) Schedule 7, including Appendices; and
- (b) Schedule 37.n,

as adjusted in accordance with this Agreement from time to time.

"Completion" means the stage when in respect of the Project Works or a Portion:

- (a) the Project Works are, or the Portion is, complete except for minor Defects:

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- (i) which do not prevent the Project Works or the Portion from being Ready For Operations (despite the fact that Operational Readiness may have previously been achieved or that a notice may have previously been issued under clause 19.2A(c)); and
 - (ii) which can be corrected without prejudicing the convenient use of the Project Works or the Portion;
- (b) the requirements of all relevant certifying Authorities and insurance surveyors have been met and all certificates, authorisations, approvals and consents from Authorities and service providers required for the occupation, use and maintenance of the Project Works or the Portion have been issued;
 - (c) those tests that are required to be carried out before the Project Works reach, or the Portion reaches, Completion have been carried out and passed;
 - (d) all testing, training, documents and other information associated with the Project Works or the Portion and essential for the use, operation and maintenance of the Project Works or the Portion have been supplied to TfNSW including but not limited to all Subcontractors' warranties, operating manuals, licences, access codes, as-built drawings or work-as-executed drawings; and
 - (e) any other things required to be done under this Agreement as part of the Project Works or the Portion (as applicable), or before (or as conditions precedent to) Completion, have been done.

"Condition Survey" has the meaning given in clause 15.11(a).

"Confidentiality Undertaking" means a confidentiality undertaking in the form set out in Schedule 26.

"Configuration Management Framework" means the framework established by the ASA from time to time for configuration management.

"Construction and Site Management Plan" means the plan of that name (or part of an overarching plan relating to construction and site management) described in the TSRs.

"Construction Environmental Management Plan" means the plan of that name (or otherwise named the CEMP) described in the TSRs.

"Construction Plant" means appliances, vehicles and other things (including devices, equipment, instruments and tools) used to carry out the IDE Activities, but not for incorporation in the Project Works.

"Current Program" means the latest IDE's Program submitted in accordance with the TSRs in respect of which:

- (a) the Principal's Representative has issued the notice referred to in clause 16.3(d)(i)C; or
- (b) the relevant period of time in clause 16.3(d)(i) has expired and the Principal's Representative has not rejected it, made comments on it or made a request referred to in clause 16.3(d)(ii)B in respect of it (except, in the case of comments or a request, where the Participants have responded to the comments or the request (as applicable) within the required time period and in a manner satisfactory to the Principal's Representative as referred to in clause 16.3(e)).

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"Current Work Health and Safety Management Plan" means the latest Work Health and Safety Management Plan submitted in accordance with clause 17.10 in respect of which:

- (a) the Principal's Representative has issued the notice referred to in clause 17.10(b)(iii); or
- (b) the relevant period of time in clause 17.10(b) has expired and the Principal's Representative has not rejected it, made comments on it or made a request referred to in clause 17.10(b)(ii) in respect of it (except, in the case of comments or a request, where the Principal Contractor have responded to the comments or the request (as applicable) within the required time period and in a manner satisfactory to the Principal's Representative as referred to in clause 17.10(c)).

"Date for Completion" means the date which is specified in the Agreement Particulars as the Date for Completion, as adjusted in accordance with the Agreement.

"Date for Operational Readiness" means the date which is specified in the Agreement Particulars as the Date for Operational Readiness, as adjusted in accordance with the Agreement.

"Date of Completion" means the date stated or endorsed by the Principal's Representative in a Certificate of Completion as the Date of Completion or the date on which Completion was reached (or such other date as may be determined by an expert pursuant to clause 28).

"Date of Final Completion" means the date stated or endorsed by the Principal's Representative in a Certificate of Final Completion as the Date of Final Completion or the date on which the Project Works reached Final Completion (or such other date as may be determined by an expert pursuant to clause 28).

"Date of Operational Readiness" means the date stated or endorsed by the Principal's Representative in a notice under clause 19.2A(c) as the Date of Operational Readiness or the date on which Operational Readiness was reached (or such other date as may be determined by an expert pursuant to clause 28).

"Declaration of Compliance" means a declaration in substantially the same form as the model declaration of compliance applicable to contractors and subcontractors in relation to the Building Code.

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

"Defaulting Participant" means a Participant that has committed a Wilful Default (or in respect of which a Wilful Default has occurred).

"Defect" means:

- (a) any defect or omission in the Project Works or IDE Activities and includes any damage caused to the Project Works by any one of us in the course of performing the Project Works; or
- (b) any aspect of the Project Works or IDE Activities which is not in accordance with the requirements of this Agreement,

but not including damage (to the extent such damage is caused by persons other than any of us or any of our respective Associates) after Completion or normal wear and tear which occurs after Completion.

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"Defects Notification Period" means the period commencing on the Date of Completion and expiring on the date which is 12 months after the Date of Completion, as extended in accordance with clause 18.3(d).

"Design Documentation" means all design documentation (including design standards, design reports, durability reports, construction descriptions, specifications, models, samples, prototypes, calculations, drawings, digital records, computer software and all other relevant data) in computer readable and written forms, or stored by any means, which is:

- (a) required by this Agreement;
- (b) provided by TfNSW or a Participant in accordance with this Agreement, including any design documentation provided by TfNSW to us for the design and construction of the Works (or any part); or
- (c) necessary to be produced by the Participants or a Designer to design and construct the Works,

and includes:

- (d) the Principal's Design; and
- (e) PDS Documentation.

"Designer" means each Participant that directly undertakes, or Subcontractor engaged by one or more of the Participants to undertake, the design of the Works (or any part) and includes the Detailed Designer and the Signalling Detailed Designer.

"Designers' Certificate of Design Compliance" means the certificate from:

- (a) the most senior member of the Designer's team engaged in the design of the Works (and where there is more than one design discipline involved in the relevant package or element, then the most senior member in each relevant discipline) involved in the design of the relevant package or element; and
- (b) where relevant, each of those members of the Designer's team engaged in the design of the Works who hold AEO status,

in the form set out in Schedule 13.

"Detailed Designer" means the entity specified in the Agreement Particulars.

"Detailed Designer's Certificate of Design Compliance" means a signed certificate of design compliance in the form attached to the professional services contract that has been or will be executed by the Detailed Designer.

"Disagreement" means any difference of opinion or conflict between any one or more of the Participants arising out of or in connection with the IDE Activities, the Works or this Agreement.

"Document" has the meaning given to that term in clause 16.3(a).

"Draft Third Party Agreement" has the meaning given to that term in clause 15.12(b)(i).

"Dual TOC Process" has the meaning given to that term in clause 8.2(b)(ii).

"Early Execution Works" means the work, services, activities and tasks notified by TfNSW to us under clause 13.1(b)(i) which are agreed by us under clause 13.1(c).

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"EEW Expenditure Limit" means, in respect of each package of Early Execution Works, the budget notified by TfNSW to us under clause 13.1(b)(ii) which is agreed by us under clause 13.1(c), as adjusted in accordance with clause 13.3(b).

"Election Notice" means a notice given by TfNSW under clause 12.1(a)(i) accepting a Project Proposal.

"Enterprise Agreement" has the same meaning as in the *Fair Work Act 2009* (Cth).

"Environment" has the same meaning as in the *Environmental Protection and Biodiversity Conservation Act 1999* (Cth).

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

"Environmental Representative" means, in respect of each Project, the person appointed by TfNSW and named in the Agreement Particulars, or such other person appointed by TfNSW as the "Environmental Representative" (including as a replacement) and notified by TfNSW to the NOPs from time to time.

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

"EP&A Act" means the *Environment Planning and Assessment Act 1979* (NSW).

"Exclusion Sanction" has the same meaning as in subsection 3(3) of the Building Code.

"Extra Land" means, in respect of each Project, the land or buildings referred to in clause 15.9(b)(i), excluding Remote Sites.

"Fee", in respect of each Project or relevant type of IDE Activities, has the meaning given in the Compensation Framework, as adjusted in accordance with this Agreement.

"Final Completion" means the stage when:

- (a) all obligations in relation to the Project Works have been completed; and
- (b) without limiting paragraph (a):
 - (i) all Defects required to be rectified by the Agreement have been rectified;
 - (ii) all as built documents and quality assurance documents required to be provided by the IDE under this Agreement have been provided to TfNSW and accepted by TfNSW as complying with the requirements of this Agreement; and
 - (iii) all Gainshare and Painshare payable in respect of the Project has been determined in accordance with this Agreement.

"Final Project Payment Claim" means, in respect of each Project, the Payment Claim made pursuant to clause 21.2(a)(ii).

"Final Project Payment Schedule" means, in respect of each Project, the Payment Schedule issued in connection with the Final Project Payment Claim.

"Financial Auditor" or **"FA"** means the person named in the Agreement Particulars, and such other person or company appointed by TfNSW in accordance with clause 16.15(d).

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"Foreign Legal Opinion" means a legal opinion in favour of TfNSW which is:

- (a) in a form acceptable to TfNSW; and
- (b) from a lawyer acceptable to TfNSW who is authorised to practice in the place of incorporation of the relevant foreign entity to which the legal opinion relates.

"Gainshare" has the meaning given to that term in the Compensation Framework.

"Gainshare/Painshare Regime" has the meaning given to that term in the Compensation Framework.

"General Manager" or **"GM"** means the person appointed by the LT under clause 5.2 and includes any Acting General Manager appointed from time to time.

"GIPA Act" means the *Government Information (Public Access) Act 2009* (NSW).

"Greenhouse Data" means all data, information, records and reports of the type that a registered corporation or any other person may be required or entitled to provide under the NGER Legislation, including as to:

- (a) greenhouse gas emissions, energy production or energy consumption; and
- (b) reduction of greenhouse gas emissions, removal of greenhouse gases or offsets of greenhouse gas emissions from any greenhouse gas project,

relating to any aspect of any Relevant Matters.

"GST Legislation" means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any related legislation imposing such tax or legislation that is enacted to validate, recapture or recoup such tax.

"Head MOU" means the memorandum of understanding titled "National Partnership Agreement on Implementation of Major Infrastructure Projects in New South Wales, 2009-2014" between the Commonwealth and New South Wales, dated 6 March 2009 and as varied on 12 June 2009.

"IDE Activities" means all activities, things and tasks which any Participant is, or may be, required to do to comply with its obligations under this Agreement (including the Works Brief), including the Project Definition Services, the Early Execution Works, the Ad Hoc Works, the Program Management Activities and the design, construction, commissioning, integration, bringing to operational readiness and handover of the Project Works to TfNSW and the provision of Temporary Works and Construction Plant.

"IDE Certificate of Construction Compliance" means a certificate from the Participants in the form set out in Schedule 14 certifying that the procurement and construction of the Works complies with the requirements of this Agreement.

"IDE Certificate of Design Compliance" means a certificate from the Participants in the form set out in Schedule 13 certifying that the Design Documentation complies with the requirements of this Agreement.

"IDE Intellectual Property Rights" means any Intellectual Property Rights that arise as a result of us, any of us, or our Subcontractors creating, producing, discovering or first reducing to practice any concept, product or process (whether or not capable of being patented) as part of the IDE Activities or pursuant to the Proposal Development Deed, but excluding:

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- (a) any new Intellectual Property Rights which are, in substance, a development or enhancement of a pre-existing Intellectual Property Right and the development or enhancement cannot practically be separated from the pre-existing Intellectual Property Right;
- (b) any other Intellectual Property Rights which the LT determines should not be treated as IDE Intellectual Property Rights; and
- (c) any design, documentation and specifications provided by TfNSW under clause 16.1 and all Intellectual Property Rights associated with them.

"IDE's Program" means the program required to be submitted in accordance with the TSRs.

"Impact Request" means a notice from TfNSW to the LT, requesting the LT to make a recommendation under clause 20.2.

"Incentivised Delivery Agreement" or **"IDA"** means the Agreement.

"Incentivised Delivery Entity" or **"IDE"** means the incentivised delivery entity established by the Participants to carry out the IDE Activities.

"Independent Estimator" means a suitably skilled and experienced independent estimator appointed by TfNSW to (whether in conjunction with other functions or not) review and provide an opinion on any proposed TOC, including whether it represents a reasonable estimate of the costs of the relevant proposed IDE Activities (based on the relevant PDS Documentation).

"Information Documents" means:

- (a) those documents listed or set out in Exhibit L.n;
- (b) all documents, core and other samples, exhibits and materials in any format or medium including any electronic form provided to the NOPs unless expressly identified as forming part of this Agreement; and
- (c) anything which is:
 - (i) expressly stated by this Agreement; or
 - (ii) in respect of an Additional Project, expressly stated by the RFP (as may be replaced or amended in accordance with clause 8.4 or any addenda issued pursuant to the RFP) or otherwise expressly agreed under clause 23.1(b),

to form part of the Information Documents.

"Initial Project" means the North Works Package as more particularly described in Exhibit B.1.

"Insolvency Event" means:

- (a) a NOP becomes, is declared to be, is taken under any applicable law to be, admits to or informs TfNSW in writing or its creditors generally that the NOP is insolvent, bankrupt, unable to pay its debts or is unable to proceed with the Agreement for financial reasons;
- (b) execution is levied against the NOP by a creditor;

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- (c) a garnishee order, mareva injunction or similar order, attachment, distress or other process is made, levied or issued against or in relation to any asset of the NOP; or
- (d) where the NOP is a corporation, any one of the following occurs:
 - (i) notice is given of a meeting of creditors with a view to the corporation entering into a deed of company arrangement;
 - (ii) the corporation entering a deed of company arrangement with creditors;
 - (iii) a controller, administrator, receiver, receiver and manager, provisional liquidator or liquidator is appointed to the corporation;
 - (iv) an application is made to a court for the winding up of the corporation and not stayed within 14 days;
 - (v) a winding up order is made in respect of the corporation;
 - (vi) the corporation resolves by special resolution that it be wound up voluntarily (other than for a members' voluntary winding up); or
 - (vii) a mortgagee of any property of the corporation takes possession of that property.

"Intellectual Property" means all rights in copyright, trade marks, patents, designs, circuit layouts, plant varieties, business and domain names, inventions and confidential information, and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields whether or not registrable, registered or patentable.

"Intellectual Property Rights" means all present and future rights conferred by statute, common law or equity in or in relation to Intellectual Property. These rights include:

- (a) all rights in all applications to register these rights;
- (b) all renewals and extensions of these rights; and
- (c) all rights in the nature of these rights, such as Moral Rights.

"Interface Agreement" means, in respect of each Project, each interface agreement between any two or more of TfNSW, RailCorp, Sydney Trains, NSW Trains and Sydney Metro for the purposes of the Rail Safety Legislation, copies of which (as at the Reference Date) are contained in Exhibit J.n.

"Interface Contractor" means an Other Contractor listed in the Agreement Particulars, or otherwise identified by the Principal's Representative, as an Interface Contractor, that is carrying out, or that will carry out, Interface Work.

"Interface Work" means the work to be executed by Interface Contractors, which will interface with or affect or be affected by the IDE Activities and the Works, including that described in the Works Brief.

"Investigative Authority" means any Authority having a statutory right to investigate:

- (a) the IDE Activities, the Works or any Project; or
- (b) any activities of any Participant which are affected by the IDE Activities, the Works or any Project,

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including the Australian Transport Safety Bureau constituted under the *Transport Safety Investigation Act 2003* (Cth), the ONRSR and the Office of Transport Safety Investigations constituted under the *Transport Administration Act 1988* (NSW).

"IP Configuration Control Board" means the board established by TfNSW to manage configuration changes for the Infrastructure & Place Division of TfNSW's programs and projects in accordance with the Configuration Management Framework.

"Joint Coordination Team" or **"JCT"** means the joint coordination team referred to under clause 6.1.

"Key Performance Indicator" or **"KPI"** means, in respect of each Project, each key performance indicator set out in the Project KRA Performance Requirements.

"Key Result Area" or **"KRA"** means, in respect of each Project, each key result area set out in the Project KRA Performance Requirements.

"Key Subcontractors" means in respect of each Project, the Subcontractors specified in the Agreement Particulars, as may be replaced in accordance with clause 17.2(b).

"Last Date of Final Completion" means the date on which:

- (a) a Certificate of Final Completion has been issued in respect of each Project; and
- (b) all obligations in relation to the Project Definition Services, the Early Execution Works, the Ad Hoc Works and the Program Management Activities have been completed.

"Law" means, for the purposes of the definition of Change in Law:

- (a) Commonwealth, New South Wales or local government legislation, including ordinances, instruments, codes of practice, policy and statutory guidance (but excluding the Building Code of Australia, any other building codes, or Standards Australia codes), requirements, regulations, by-laws and other subordinate legislation;
- (b) principles of law or equity established by decisions of courts; and
- (c) Approvals (including any condition or requirement under them).

"Leadership Team" or **"LT"** means the leadership team established under clause 4.1.

"Long Service Levy" means the levy payable under the *Building and Construction Industry Long Service Payments Act 1986* (NSW).

"LT Chairperson" means the chairperson of the LT as referred to in clause 4.3(a) and appointed from time to time under clause 4.3(c).

"LT Member" means, in respect of a Participant, a person appointed by that Participant as a member of the LT, as replaced from time to time in accordance with clause 4.2. Where the context permits, references to an "LT Member" include an Alternative LT Member of that LT Member.

"Management Plan" or **"MP"** means the suite of plans referred to and described in the TSRs.

"Management Team" or **"MT"** means the management team established by the LT under clause 5.1.

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"**Material LT Issue**" means:

- (a) a determination or approval required to be made or given by the LT under clause 17.1, 17.6, 18.3(h), 19.1, 19.2A(b), 19.3(b), 19.4(b), 20.2, 20.3 or 20.4, the definition of Target Adjustment Events, or under the Compensation Framework; and
- (b) any other matter referred to the LT for a decision in respect of which the LT is unable to achieve unanimity following two votes in respect of the matter.

"**Moral Rights**" means any of the rights described in Article 6(b) of the Berne Convention for the Protection of Literary and Artistic Work 1886, being "droit moral" or other analogous rights arising under any Statutory Requirement (including the *Copyright Act 1968* (Cth)) its amendments or any other law of the Commonwealth.

"**MT Member**" means a member of the MT established by the LT under clause 5.1(a).

"**MTMS Program**" means the More Trains More Services program as more particularly described in paragraph F of the Background of this Agreement.

"**National Land Transport Act**" means the *National Land Transport Act 2014* (Cth).

"**New Third Party Agreement**" has the meaning given to that term in clause 15.12(b)(ii).

"**NGER Legislation**" means *National Greenhouse and Energy Reporting Act 2007* (Cth), related regulations and legislative instruments.

"**NGER NOP**" means, in respect of each Project, the NOP referred to in clause 17.15(a) and identified in the Agreement Particulars.

"**Nominated Subcontractor**" means, in respect of each Project, a Subcontractor identified in the Agreement Particulars to whom the Participants must subcontract the relevant Nominated Subcontract Work.

"**Nominated Subcontract Work**" means, in respect of each Nominated Subcontractor, the supply of goods or services specified in the Agreement Particulars in respect of that Nominated Subcontractor.

"**Non Owner Participant**" or "**NOP**" means a Participant with the exception of TfNSW and where the plural is used means all of the Participants with the exception of TfNSW.

"**NOP Safety System**" means a safety management system used by a NOP or any Associates of a NOP to manage safety.

"**NSW Rail Assets**" has the meaning assigned to it in the ASA Charter.

"**NSW Trains**" means the body corporate constituted by Part 3C of the *Transport Administration Act 1988* (NSW) and its successors in title or law.

"**Objectives**" means the objectives set out in Schedule 5 or any other objectives determined by the LT from time to time.

"**ONRSR**" means the Office of the National Rail Safety Regulator established under Part 2 Division 1 of the *Rail Safety National Law* (NSW).

"**Option**" means, in respect of each Project, an option referred to in the Options Schedule.

"**Options Schedule**" means Schedule 32.n.

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"Other Contractor" means RailCorp, Sydney Trains, NSW Trains, Sydney Metro or any contractor, consultant, artist, tradesperson or other person engaged by TfNSW or others to do work, but not including the NOPs and their Subcontractors.

"Other Contractor Work" means, in respect of each Project, the works to be undertaken by an Other Contractor engaged by TfNSW or the IDE on the relevant Site during any period in which the Principal Contractor has been engaged as principal contractor in respect of the relevant Site.

"Other IDE" means any incentivised delivery entity (other than the IDE) engaged, whether at the Commencement Date or in the future, by TfNSW.

"Overpayment Amount" has the meaning given to that term in clause 16.17(a).

"Painshare" has the meaning given to that term in the Compensation Framework.

"Participant" means TfNSW and the other parties identified in the Agreement Particulars.

"Payment Claim" means a claim in such form as the LT determines.

"Payment Schedule" means a payment schedule issued by TfNSW under clause 21.2(e).

"PDS Documentation" means, in respect of each Proposed Additional Project, the documents prepared by us under clauses 8 to 12, including the Project Proposal.

"PDS Expenditure Limit" means, in respect of each Proposed Additional Project, where:

- (a) a Single TOC Process applies, the PDS Expenditure Limit determined in accordance with clause 11.1(a)(ii)A.1) or 11.1(a)(ii)B.2)a); or
- (b) a Dual TOC Process applies and:
 - (i) the RFP sets out for the purposes of clause 8.2(a)(vii) that we will be entitled to payment in respect of the Project Definition Services, the relevant amount set out in the RFP for the purposes of clause 8.2(a)(vii)A (or, if no such PDS Expenditure Limit is set out in the RFP, \$nil); or
 - (ii) the RFP sets out for the purposes of clause 8.2(a)(vii) that we will not be entitled to payment in respect of the Project Definition Services, \$nil,

as may be revised in accordance with clause 11.3(b).

"Planning Approval", in respect of each Project, has the meaning given in the Agreement Particulars.

"Portion" means, in respect of each Project, the following portions of the Project Works comprising part of that Project:

- (a) each of the portions identified in the Agreement Particulars; and
- (b) any other part of the Project Works which the LT or TfNSW determines is a portion pursuant to clause 19.5(a).

"Principal Contractor" has the meaning given in clause 17.9(d)(i)A.

"Principal's Design" means the design documentation contained in the Project Brief.

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"Principal's Representative" means the representative appointed by TfNSW as referred to in clause 3.4(a).

"Principles" means the principles set out in Schedule 3 or any other principles determined by the LT from time to time.

"Procurement Management Plan" means the plan of that name referred to and described in the TSRs.

"Program Brief" means Exhibit B.0.

"Program Key Performance Indicator" or **"Program KPI"** means each key performance indicator set out in the Program KRA Performance Requirements.

"Program Key Result Area" or **"Program KRA"** means each key result area set out in the Program KRA Performance Requirements.

"Program KRA Performance Requirements" means:

- (a) in respect of the initial assessment period referred to in clause S7-5.2.5 of Schedule 7, Exhibit F; and
- (b) in respect of each subsequent assessment period, the relevant revised Program KRA Performance Requirements agreed (if any) in accordance with clause S7-5.2.6(d) of Schedule 7.

"Program Management Activities" means the work, services, activities and tasks notified by TfNSW to us under clause 22.1(a)(i) which are agreed by us under clause 22.1(b).

"Program Management Budget" means, in respect of each package or period of Program Management Activities, the budget notified by TfNSW to us under clause 22.1(a)(ii) which is agreed by us under clause 22.1(b), as adjusted in accordance with clause 22.3(b).

"Program Particulars" means Schedule 2.0.

"Program Target Adjustment Guidelines" means Schedule 20.0.

"Prohibited Subcontractor" means:

- (a) any Subcontractor:
 - (i) who has made an admission to the Independent Commission Against Corruption that it has engaged in; or
 - (ii) in respect of whom the Independent Commission Against Corruption has made a finding that it has engaged in, corrupt conduct as defined in the *Independent Commission Against Corruption Act 1988* (NSW); or
- (b) any Subcontractor employing an employee in respect of whom paragraphs (a)(i) or (a)(ii) apply.

"Project" means the Initial Project and each Additional Project.

"Project Brief" means, in respect of each Project, Exhibit B.n.

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"Project Control Group" or "PCG" means a group formed by the Project Steering Committee as described in clause 3.5(b).

"Project Definition Services" means, in respect of each Proposed Additional Project, all work, services, activities and tasks which we are, or may be, required to do to comply with our obligations under clauses 8 to 12, including participation in any activities contemplated by the RFP.

"Project Documentation" means all documents, records, drawings, reports created by TfNSW or the NOPs in connection with carrying out the IDE Activities under this Agreement.

"Project Execution Phase" means:

- (a) in respect of the Initial Project, the period during which the Initial Project will be fully designed, constructed and commissioned, and handed over to TfNSW, commencing on the Commencement Date; and
- (b) in respect of each Additional Project, the period during which the Additional Project will be fully designed, constructed and commissioned, and handed over to TfNSW, commencing on (as applicable):
 - (i) the date specified in the Election Notice (or, if no date is specified in the Election Notice, the date of the Election Notice); or
 - (ii) the date agreed under clause 23.1(b) (or, if no date is agreed under clause 23.1(b), the date of the agreement under clause 23.1(b)).

"Project Execution Work" means the IDE Activities carried out, or required to be carried out, during the Project Execution Phase, but excluding Program Management Activities and Ad Hoc Works.

"Project KRA Performance Requirements" means, in respect of each Project, Exhibit G.n.

"Project MOU" has the meaning specified in the Agreement Particulars.

"Project Particulars" means Schedule 2.n.

"Project Proposal" is, in respect of each Proposed Additional Project, the proposal to be submitted by the NOPs to TfNSW pursuant to clause 9.1, including an amended proposal submitted under clause 12.1(c)(ii).

"Project Proposal Phase" means, in respect of each Proposed Additional Project the subject of an RFP, the period commencing on the date of issue of the RFP and ending on the date on which TfNSW either issues an Election Notice or a notice under clause 12.1(c)(ii).

"Project Site" means, in respect of each Project:

- (a) the Asset Lands, Temporary Lands and other places described in the Site Access Schedule; and
- (b) any other lands and places made available to the Participants by TfNSW (other than pursuant to clause 15.10(e)) for the purposes of this Agreement relating to that Project.

"Project Site Drawings" means the drawings set out or identified in Exhibit H.n.

"Project-Specific Exhibit" means:

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- (a) Exhibit A.n;
- (b) Exhibit B.n;
- (c) Exhibit E.n;
- (d) Exhibit G.n;
- (e) Exhibit H.n;
- (f) Exhibit I.n;
- (g) Exhibit J.n;
- (h) Exhibit L.n;
- (i) Exhibit M.n; and
- (j) Exhibit P.n.

"Project-Specific Schedule" means:

- (a) Schedule 2.n;
- (b) Schedule 10.n;
- (c) Schedule 11.n;
- (d) Schedule 19.n;
- (e) each Project-Specific Target Adjustment Guidelines;
- (f) Schedule 22.n;
- (g) the Warranties Schedule;
- (h) the Track Possessions Schedule;
- (i) the Options Schedule; and
- (j) Schedule 37.n.

"Project-Specific Target Adjustment Guidelines" means Schedule 20.n.

"Project Steering Committee" means, in respect of each Project, the steering committee established under the Project MOU which consists of the persons specified in the Agreement Particulars.

"Project Works" means the structures, plant and other things to be furnished, fabricated, constructed, installed, erected or commissioned by the combined efforts of the Participants and handed over to TfNSW under this Agreement.

"Proposal Development Deed" means the deed listed in the Agreement Particulars.

"Proposed Additional Project" means a proposed Additional Project the subject of a document issued pursuant to clause 8.2(a).

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"Rail Corridor" means the area containing the Railway Tracks, rail junctions, level crossings, station buildings, platforms, signal boxes, tunnels, bridges and other associated structures, the boundary of which is defined by:

- (a) railway boundary fencing; or
- (b) in the absence of such fencing:
 - (i) by a physical boundary (i.e. tunnel, building or retaining walls); or
 - (ii) the boundary line that is 15 metres from the outermost rails.

"Rail Infrastructure Manager" has the meaning given to that term in the *Rail Safety National Law* (NSW).

"Rail Safety Legislation" means:

- (a) the *Rail Safety National Law* (NSW) as amended or replaced from time to time;
- (b) the *Rail Safety National Law National Regulations 2012* (NSW); and
- (c) any other Regulations under the Rail Safety Legislation.

"Rail Safety Worker Competency" means the level of competence described in section 117 of the *Rail Safety National Law* (NSW).

"Rail Transport Agency" means TfNSW (and each of its divisions), RailCorp, Sydney Trains, NSW Trains and Sydney Metro.

"RailCorp" means Rail Corporation New South Wales, a NSW Government agency constituted by section 4(1) of the *Transport Administration Act 1988* of Level 6, 18 Lee Street, Chippendale, New South Wales and its successors in title or law.

"Railway Operations" has the meaning given to that term in the *Rail Safety National Law* (NSW).

"Railway Track" means the rails fastened on sleepers or transoms and founded on ballast, bridge decking or concrete slab, associated signalling and overhead wiring components (in electrified areas).

"Ready For Operations" or **"Operational Readiness"** means the stage when the Project Works are, or the Portion is, ready for use by customers, staff and train services and ready for handover to the relevant Rail Transport Agency for operation.

"Records" include both electronic and physical versions of records, accounts, ledgers, payroll, correspondence, tenders, minutes of meetings, notes, reports, instructions, plans, drawings, invoices, dockets, receipts, vouchers, computer programs. In relation to Intellectual Property Rights, it includes all plans, designs, drawings, specifications, records but excluding:

- (a) normal internal business records, data reports and other technical information, both electronic and physical versions; and
- (b) any electronic or physical record, including but not limited to correspondence or instruction, that is subject to legal professional privilege.

"Reference Date" means, in respect of:

- (a) the Initial Project, the Commencement Date;

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- (b) each Additional Project (other than Additional Projects that are Ad Hoc Works), the date of the Election Notice for the Additional Project; or
- (c) each Additional Project that are Ad Hoc Works, the date of the relevant agreement under clause 23.1(b).

"Reference Document" means each document set out or listed in Exhibit M or Exhibit M.n.

"Reimbursable Costs", in respect of each Project, has the meaning given in the Compensation Framework.

"Related Entity" has the same meaning as in subsection 3(2) of the Building Code.

"Related Party" means a related body corporate as defined in the *Corporations Act 2001* (Cth) and any other entity determined by the Principal's Representative to be a related party for the purposes of this Agreement.

"Relevant Matters" has the meaning given to that term in clause 17.15(a).

"Remote Sites" means, in respect of each Project, the land referred to in clause 15.9(b)(i), on which any part of the Project Works or Temporary Works must be constructed.

"Remote Works", in respect of each Project, are those parts of the Project Works or Temporary Works that must be constructed on Remote Sites, including:

- (a) minor roadworks;
- (b) landscaping;
- (c) any item of work required by any Approval to be constructed outside the Project Site;
- (d) any item of work required by the Statements of Principles or Third Party Agreements to be constructed outside the Project Site; and
- (e) connections to, augmentation of and construction of any Service on a Remote Site.

"Request for Proposals" or **"RFP"** means:

- (a) in respect of the Initial Project, the request for proposals issued pursuant to the Proposal Development Deed; and
- (b) in respect of each Proposed Additional Project, the relevant document issued pursuant to clause 8.2(a).

"Revised Allocation" has the meaning given to that term in clause 15.12(b)(iii).

"RISI Card" means the card issued to a person after that person has completed a rail industry safety induction.

"RISI Qualification" means the qualification attained by a person after that person has completed a rail industry safety induction.

"Rolling Stock Operator" has the meaning given to that term in the *Rail Safety National Law (NSW)*.

"Service" includes any service, facility or item of public or private infrastructure (including railway systems, pedestrian and vehicular corridors, water, electricity, gas, ethane, fuel,

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telephone, existing drainage, sewerage, industrial waste disposal and electronic communications service).

"Signalling Designer's Certificate of Design Compliance" means a signed certificate of design compliance in the form attached to the professional services contract that has been or will be executed by the relevant Signalling Detailed Designer.

"Signalling Detailed Designer" means the entity specified in the Agreement Particulars.

"Single TOC Process" has the meaning given to that term in clause 8.2(b)(i).

"Site" means, in respect of a Project, the Project Site, the Remote Sites and the Extra Land.

"Site Access Schedule" means Schedule 22.n.

"Stakeholders" includes any of the following:

- (a) members of the community;
- (b) environmental, community and cultural heritage interest groups;
- (c) local businesses;
- (d) utility service providers;
- (e) unions;
- (f) insurance brokers (in relation to Project specific insurances);
- (g) the New South Wales Government (including individual ministries, departments, authorities and other bodies within the New South Wales Government), including all Rail Transport Agencies;
- (h) media; and
- (i) parliament.

"Statements of Principles" means, in respect of:

- (a) the Initial Project, all documents described as such and set out in Exhibit I.1; and
- (b) each Additional Project, all documents described as such and set out in Exhibit I.n.

"Statutory Requirements" means:

- (a) acts, ordinances, regulations, by-laws, orders, awards and proclamations of the jurisdiction where the IDE Activities are being carried out;
- (b) certificates, licences, consents, permits, approvals, and requirements of organisations having jurisdiction in connection with the carrying out of the IDE Activities; and
- (c) fees and charges payable in connection with the matters referred to in paragraphs (a) and (b).

"Subcontract" means any contract or purchase order between a NOP and a Subcontractor in relation to any part of the Works or the IDE Activities.

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"Subcontractor" means any person engaged by a Participant (including a Designer and a supplier or hirer of materials, plant, equipment or testing services) to perform any part of the IDE Activities and includes, where it is not inconsistent with the context, the Subcontractor's officers, employees, agents, consultants and invitees.

"Sydney Metro" means the body corporate constituted by Part 3D of the *Transport Administration Act 1988* (NSW) and its successors in title or law.

"Sydney Trains" means the body corporate constituted by Part 3B of the *Transport Administration Act 1988* (NSW) and its successors in title or law.

"Target Adjustment Event" or **"TAE"** means, in respect of each Project, any of the following occurring after the Reference Date:

- (a) a TfNSW Reserved Power Direction which the LT and the Principal's Representative agree justifies a modification to the Compensation Framework (as determined in accordance with clause 20.4);
- (b) a change to the Works recommended by the LT and accepted by TfNSW pursuant to clause 20.5, which the LT and TfNSW agree justifies a modification to the Compensation Framework (as determined in accordance with clause 20.5); and
- (c) an event or circumstance of a type which the Participants have agreed that the associated risk/opportunity will be borne unilaterally by TfNSW, as specified in the Target Adjustment Guidelines.

"Target Adjustment Guidelines" or **"TAG"** means, in respect of each Project, both:

- (a) the Program Target Adjustment Guidelines; and
- (b) the Project-Specific Target Adjustment Guidelines (if any).

"Target Outturn Cost" or **"TOC"** means, in respect of each Project, the target outturn cost specified in Schedule 37.n, as adjusted (if at all) in accordance with this Agreement.

"Taxes" means, for the purposes of the definition of Change in Law, income, stamp, indirect or other taxes, levies, imposts, deductions, charges, duties (including import duty), compulsory loans and withholdings (including financial institutions duty, debits tax or other taxes whether incurred by, payable by return or passed on to another person) together with interest thereon or penalties, if any, and charges, fees or other amounts made on, or in respect thereof.

"Tax Invoice" has the meaning given by GST Legislation.

"Temporary Lands" are, in respect of each Project, the lands so identified in the Site Access Schedule.

"Temporary Works" means, in respect of each Project, works (including processes and other things) used for the purpose of carrying out the IDE Activities, but which do not form part of the Project Works.

"Term" means the period referred to in clause 7.1, as may be extended in accordance with clause 7.2.

"TfNSW Accreditation" means the Accreditation held by TfNSW from time to time pursuant to the Rail Safety Legislation in respect of parts of the IDE Activities.

"TfNSW IDA Costs" means, in respect of each Project or, as applicable, each package of Project Definition Services, Early Execution Works or Program Management Activities, any

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cost incurred directly by TfNSW on the IDE Activities (other than a payment made to an NOP in accordance with this Agreement) and includes any costs for the TfNSW Supplied Items, any insurance deductible in respect of an insurance policy effected by TfNSW in accordance with this Agreement and any costs identified in this Agreement as TfNSW IDA Costs.

"TfNSW Reserved Powers" means those matters as defined in clause 20.1 on which the final decision is reserved for a determination by TfNSW or the Principal's Representative (rather than being decided collectively by the Participants or unanimously by the LT Members on the LT).

"TfNSW Reserved Power Direction" has the meaning given in clause 20.1.

"TfNSW Safety Management System" means:

- (a) the safety management system, as defined in the Rail Safety Legislation, for use by TfNSW for the rail operations for which it is accredited under the Rail Safety Legislation; and
- (b) all or any part of a NOP Safety System which is consistent with the safety management system referred to in paragraph (a) and:
 - (i) is approved for use by TfNSW; or
 - (ii) is required to be used to comply with a Statutory Requirement.

"TfNSW Supplied Items" means, in respect of each Project, the items set out in Schedule 19.n.

"TfNSW's Group Property" means the property group of TfNSW.

"Third Party" means a party to a Third Party Agreement other than TfNSW and the Participants.

"Third Party Agreements" means, in respect of:

- (a) the Initial Project, all deeds, agreements, protocols and other arrangements with other owners, occupiers, tenants or potential tenants of the Site to which TfNSW or the Participants are parties, including:
 - (i) the agreements referred to in Schedule 11.1 in respect of which:
 - A. where the agreement has been executed by all parties to the agreement, a copy (which may be a redacted copy) of the agreement; or
 - B. where the agreement has not been executed, a draft (which may be a redacted draft) of the agreement,appears in Exhibit I.1; and
 - (ii) any such agreements entered into after the Commencement Date which relate to the Initial Project; or
- (b) each Additional Project, all deeds, agreements, protocols and other arrangements with other owners, occupiers, tenants or potential tenants of the Site to which TfNSW or the Participants are parties, including:
 - (i) the agreements referred to Schedule 11.n, in respect of which:

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- A. where the agreement has been executed by all parties to the agreement, a copy (which may be a redacted copy) of the agreement; or
 - B. where the agreement has not been executed, a draft (which may be a redacted draft) of the agreement,
- appears in Exhibit Ln; and
- (ii) any such agreements entered into after the Reference Date which relate to the Additional Project.

"Total AHW Costs" means, in respect of each package of Ad Hoc Works the subject of an AHW Expenditure Limit, the aggregate of:

- (a) any amounts paid or payable by TfNSW to the NOPs, including Reimbursable Costs and the Fee;
- (b) TfNSW IDA Costs; and
- (c) net income received by any of the Participants of the type mentioned in clause S7-2.1f) or S7-2.3.2 of Schedule 7,

in respect of that package of Ad Hoc Works.

"Total EEW Costs" means, in respect of each package of Early Execution Works the subject of an EEW Expenditure Limit, the aggregate of:

- (a) any amounts paid or payable by TfNSW to the NOPs, including Reimbursable Costs and the Fee;
- (b) TfNSW IDA Costs; and
- (c) net income received by any of the Participants of the type mentioned in clause S7-2.1f) or S7-2.3.2 of Schedule 7,

in respect of that package of Early Execution Works.

"Total PDS Costs" means, in respect of each package of Project Definition Services the subject of a PDS Expenditure Limit, the aggregate of:

- (a) any amounts paid or payable by TfNSW to the NOPs;
- (b) TfNSW IDA Costs; and
- (c) net income received by any of the Participants of the type mentioned in clause S7-2.1f) or S7-2.3.2 of Schedule 7,

in respect of that package of Project Definition Services.

"Total PMA Costs" means, in respect of each package or period of Program Management Activities the subject of a Program Management Budget, the aggregate of:

- (a) any amounts paid or payable by TfNSW to the NOPs, including Reimbursable Costs and the Fee;
- (b) TfNSW IDA Costs; and

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- (c) net income received by any of the Participants of the type mentioned in clause S7-2.1f) or S7-2.3.2 of Schedule 7,

in respect of that package or period of Program Management Activities.

"Track Possession" means a period during which the Participants have access to Railway Track for the purpose of carrying out the IDE Activities, including for the purpose of rectifying Defects.

"Track Possession Authority" means Sydney Trains, Sydney Metro, the Australian Rail Track Corporation and any other Authority that has the ability at law to grant Track Possessions or power isolations.

"Track Possessions Schedule" means Schedule 31.n.

"TSRs" or "TfNSW Standard Requirements" means:

- (a) the standard requirements of TfNSW attached to this Agreement as Exhibit A.0; and
- (b) Exhibit A.n.

"Values" means the values set out in Schedule 4 or any other values determined by the LT from time to time.

"VfM Statement" means the Value for Money Statement set out in Exhibit P.n.

"Warranties Schedule" means:

- (a) in respect of the Initial Project, Schedule 24; or
- (b) in respect of each Additional Project, Schedule 24, subject to any amendments referred to in section 3 of this Schedule 1.

"WHS Accreditation Scheme" means the Australian Government Work Health and Safety Accreditation Scheme established by the BCIP Act and the *Building and Construction Industry (Improving Productivity) (Accreditation Scheme) Rules 2019* (Cth).

"WHS Legislation" means:

- (a) the *Work Health and Safety Act 2011* (NSW) 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 Works.

"Wilful Default" means, in respect of a Participant:

- (a) any of the following:
- (i) wilful and intentional repudiation of this Agreement by the Participant;
- (ii) in respect of any duty, obligation or stipulation arising out of this Agreement or the IDE Activities, any intentional or wanton or reckless act or omission of the Participant which:
- A. is a breach of that duty, obligation or stipulation;

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- B. the Participant knows or ought to reasonably to have known would harm another Participant; and
- C. causes harm to another Participant;
- (iii) fraud or dishonesty by a Participant in relation to this Agreement or any aspect of the IDE Activities;
- (iv) an intentional failure by the Participant to make payment which has become due under this Agreement;
- (v) a failure by the Participant to honour an indemnity contained in this Agreement;
- (vi) where the Participant is a NOP, an Insolvency Event occurring in relation to the Participant;
- (vii) a failure by the Participant to comply with clauses 16.9 or 16.10;
- (viii) a failure to comply with clauses 17.9, 17.10 or 17.11, provided that in respect of a failure to comply with:
 - A. clause 17.11(a)(iii), the relevant Statutory Requirement relates to health and safety; or
 - B. clause 17.11(a)(v), the relevant term of the Interface Agreement, Third Party Agreement or Statement of Principles relates to health and safety;
- (ix) an intentional failure by a Participant to effect and maintain an insurance policy that it is required to effect and maintain under this Agreement;
- (x) a Participant refusing reasonable access for an audit which is permitted or required under this Agreement; or
- (xi) any material non-compliance by a Participant with the requirements of the TfNSW Accreditation or any Accreditation referred to in clause 17.23(e),

but not including any error of judgment, mistake, act or omission, whether negligent or not, made in good faith by that Participant; or
- (b) any warranty or undertaking given in accordance with clause 17.20 proving to be untrue or ceasing to be true.

"Work Health and Safety Management Plan" means the plan of that name prepared by the Principal Contractor and developed under clause 17.10.

"Work Product" means, in respect of the Works, any idea, document, work, process, product, result or solution introduced to a Project by a NOP or created by or on behalf of a NOP as part of a Project.

"Workplace Relations Management Plan" means the "Workplace Relations Management Plan" developed by the NOPS for approval by the ABCC in accordance with Part 6 of the Building Code (and includes a "Workplace Relations Management Plan" as approved by the ABCC).

"Works" means the Project Works and the Temporary Works.

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"Worksite", in respect of each Project, has the meaning given to that term in the Site Access Schedule.

"Works Brief" means:

- (a) the Program Brief; and
- (b) the Project Brief.

3. Interpreting this Agreement

Headings are for convenience only, and do not affect interpretation.

The following rules also apply in interpreting this Agreement, unless the context indicates a contrary intention:

- (a) an obligation or a liability assumed by, or a right conferred on, 2 or more persons binds or benefits them jointly and severally;
- (b) "person" includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (c) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation;
- (d) a reference to a document (including this Agreement) is to that document as varied, novated, ratified or replaced from time to time;
- (e) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re enactments and replacements;
- (f) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (g) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this Agreement, and a reference to this Agreement includes all schedules, exhibits, attachments and annexures to it;
- (h) 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;
- (i) "includes" in any form is not a word of limitation;
- (j) a reference to "\$" or "dollar" is to Australian currency;
- (k) TfNSW is a reference to TfNSW in its capacity as the client for the performance of the IDE Activities, except in:
 - (i) the definitions of "Participant" and "Non Owner Participant" in Schedule 1, where it is a reference to TfNSW in its capacity as a Participant in the IDE; or
 - (ii) clause 17.17 or the definitions of "Rail Transport Agency" and "TfNSW IDA Costs" in Schedule 1, where it is a reference to TfNSW in all capacities;

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- (l) the "IDE", "we", "our" or "us" is a reference to the Participants, including TfNSW in its capacity as a Participant in the IDE and not in its capacity as the client for the performance of the IDE Activities;
- (m) "the parties" (or similar) is a reference to each NOP and TfNSW in all capacities; and
- (n) a decision of the LT includes a direction, determination, approval, authorisation, consent, agreement, recommendation or requirement of the LT.

To the extent an RFP (as may be replaced or amended in accordance with clause 8.4 or any addenda issued pursuant to the RFP), an Accepted Project Proposal or an agreement under clause 23.1(b) provides for amendments to:

- (o) the Approved Aboriginal Participation Plan under a section of the RFP, Accepted Project Proposal or agreement (as applicable) expressly titled "Amendments to Approved Aboriginal Participation Plan", such amendments will apply, but will only apply in respect of the relevant Project; or
- (p) Schedule 24 under a section of the RFP, Accepted Project Proposal or agreement (as applicable) expressly titled "Amendments to Warranties Schedule", such amendments will apply, but will only apply in respect of the relevant Project.

4. Order of precedence

- (a) In the event of any inconsistency, ambiguity or discrepancy between the requirements of:
 - (i) the Works Brief and the requirements of the remainder of this Agreement, then to the extent of the inconsistency, ambiguity or discrepancy, the higher, or more onerous, or more rigorous, requirement will apply; or
 - (ii) two or more parts of the Works Brief, then:
 - A. to the extent of the inconsistency, ambiguity or discrepancy, the higher, or more onerous, or more rigorous, requirement will apply; and
 - B. to the extent clause 4(a)(ii)A of this Schedule 1 does not resolve the inconsistency, ambiguity or discrepancy and the inconsistency, ambiguity or discrepancy is capable of being resolved in accordance with the order of precedence set out in the Works Brief, that order of precedence applies.
- (b) Subject to clause 4(a) of this Schedule 1, in the event of any other inconsistency, ambiguity or discrepancy in or between the various documents comprising this Agreement, then:
 - (i) where the inconsistency, ambiguity or discrepancy is between the Program Target Adjustment Guidelines and the Project-Specific Target Adjustment Guidelines, to the extent the Project-Specific Target Adjustment Guidelines expressly state that they modify or supersede the Program Target Adjustment Guidelines, the Project-Specific Target Adjustment Guidelines will apply; and
 - (ii) otherwise, to the extent of the inconsistency, ambiguity or discrepancy, the order of precedence in Schedule 2.0 applies.

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- (c) The Works Brief and the Planning Approval are to be regarded as mutually explanatory and anything contained in one but not in the other will be equally binding as if contained in all, so as to ensure that the Works comply with this Agreement and are fit for their intended purposes as stated in, or reasonably inferred from, the Works Brief and this Agreement.

5. Projects

Except to the extent otherwise provided in clause 19.5(b) and unless the context indicates a contrary intention:

- (a) the interpretations of:
- (i) Accepted Project Proposal;
 - (ii) Agreement Particulars;
 - (iii) Asset Lands;
 - (iv) Certificate of Completion;
 - (v) Certificate of Final Completion;
 - (vi) Compensation Framework;
 - (vii) Completion;
 - (viii) Principal's Design;
 - (ix) Condition Survey;
 - (x) Date for Completion;
 - (xi) Date for Operational Readiness;
 - (xii) Date of Completion;
 - (xiii) Date of Final Completion;
 - (xiv) Date of Operational Readiness;
 - (xv) Defects Notification Period;
 - (xvi) Detailed Designer;
 - (xvii) Election Notice;
 - (xviii) EPL;
 - (xix) EPL NOP;
 - (xx) Extra Land;
 - (xxi) Fee;
 - (xxii) Final Completion;
 - (xxiii) Final Project Payment Claim;

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- (xxiv) Final Project Payment Schedule;
- (xxv) Gainshare;
- (xxvi) Gainshare/Painshare Regime;
- (xxvii) IDE Activities;
- (xxviii) Information Documents;
- (xxix) Interface Agreement;
- (xxx) Interface Contractor;
- (xxxï) Interface Work;
- (xxxii) Key Performance Indicator or KPI;
- (xxxiii) Key Result Area or KRA;
- (xxxiv) Key Subcontractors;
- (xxxv) NGER NOP;
- (xxxvi) Nominated Subcontractor;
- (xxxvii) Nominated Subcontract Work;
- (xxxviii) Operational Readiness;
- (xxxix) Option;
- (xl) Options Schedule;
- (xli) Other Contractor Work;
- (xlii) Painshare;
- (xliii) Planning Approval;
- (xliv) Portion;
- (xlv) Principal Contractor;
- (xlvi) Principal's Design;
- (xlvii) Project Brief;
- (xlviii) Project Execution Phase;
- (xlix) Project KRA Performance Requirements;
- (l) Project MOU;
- (li) Project Particulars;
- (lii) Project Site;
- (liii) Project-Specific Target Adjustment Guidelines;

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- (liv) Project Steering Committee;
- (lv) Project Works;
- (lvi) Ready For Operations;
- (lvii) Reference Date;
- (lviii) Reimbursable Costs;
- (lix) Remote Sites;
- (lx) Remote Works;
- (lxi) Signalling Detailed Designer;
- (lxii) Site;
- (lxiii) Site Access Schedule;
- (lxiv) Statement of Principles;
- (lxv) Target Adjustment Event;
- (lxvi) Target Adjustment Guidelines;
- (lxvii) Target Outturn Cost or TOC;
- (lxviii) Temporary Lands;
- (lxix) Temporary Works;
- (lxx) TfNSW IDA Costs;
- (lxxi) TfNSW Supplied Items;
- (lxxii) Third Party Agreements;
- (lxxiii) Track Possessions Schedule;
- (lxxiv) TSRs or TfNSW Standard Requirements;
- (lxxv) Warranties Schedule;
- (lxxvi) Work Health and Safety Management Plan;
- (lxxvii) Works; and
- (lxxviii) Works Brief,

and clauses 1.4, 3.5, 15.2, 15.6, 15.7, 15.9, 15.11, 15.16, 15.17, 16.22 (other than 16.22(d)), 17.4, 17.8, 17.9, 17.10, 17.15, 17.18, 17.19, 17.20, 19.2A, 19.3, 19.4, 19.5, 20.7, 26.1, 26.2, 26.3, 26.9 and 30.17 will apply separately to each Project and references therein to the Works, the Project Works, the Temporary Works and the IDE Activities will mean so much of the Works, the Project Works, the Temporary Works and the IDE Activities (as applicable) as is comprised in or relates to the relevant Project;

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- (b) a reference to a Project-Specific Exhibit or a Project-Specific Schedule will be taken to be:
 - (i) in respect of the Initial Project, the Project-Specific Exhibit or Project-Specific Schedule (as applicable) forming part of this Agreement as at the Commencement Date; or
 - (ii) in respect of each Additional Project (other than Additional Projects that are Ad Hoc Works), the Project-Specific Exhibit or Project-Specific Schedule (as applicable) contained in, or referred to in (as applicable):
 - A. the RFP (as may be replaced or amended in accordance with clause 8.4 or any addenda issued pursuant to the RFP);
 - B. the Accepted Project Proposal; or
 - C. the notice from TfNSW under clause 23.1(a); and
- (d) in respect of each Project, a reference to:
 - (i) Schedule 2.n will be taken to be a reference to:
 - A. in respect of the Initial Project, Schedule 2.1; or
 - B. in respect of each Additional Project, the document referred to as "Schedule 2.[n]" (where "n" represents the number or identifier of the Additional Project) and contained in, or referred to in (as applicable):
 - 1) the RFP (as may be replaced or amended in accordance with clause 8.4 or any addenda issued pursuant to the RFP);
 - 2) the Accepted Project Proposal; or
 - 3) the notice from TfNSW under clause 23.1(a);
 - (ii) Schedule 10.n will be taken to be a reference to:
 - A. in respect of the Initial Project, Schedule 10.1; or
 - B. in respect of each Additional Project, the document referred to as "Schedule 10.[n]" (where "n" represents the number or identifier of the Additional Project) and contained in, or referred to in (as applicable):
 - 1) the RFP (as may be replaced or amended in accordance with clause 8.4 or any addenda issued pursuant to the RFP);
 - 2) the Accepted Project Proposal; or
 - 3) the notice from TfNSW under clause 23.1(a);
 - (iii) Schedule 11.n will be taken to be a reference to:
 - A. in respect of the Initial Project, Schedule 11.1; or

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- B. in respect of each Additional Project, the document referred to as "Schedule 11.[n]" (where "n" represents the number or identifier of the Additional Project) and contained in, or referred to in (as applicable):
- 1) the RFP (as may be replaced or amended in accordance with clause 8.4 or any addenda issued pursuant to the RFP);
 - 2) the Accepted Project Proposal; or
 - 3) the notice from TfNSW under clause 23.1(a);
- (iv) Schedule 19.n will be taken to be a reference to:
- A. in respect of the Initial Project, Schedule 19.1; or
- B. in respect of each Additional Project, the document referred to as "Schedule 19.[n]" (where "n" represents the number or identifier of the Additional Project) and contained in, or referred to in (as applicable):
- 1) the RFP (as may be replaced or amended in accordance with clause 8.4 or any addenda issued pursuant to the RFP);
 - 2) the Accepted Project Proposal; or
 - 3) the notice from TfNSW under clause 23.1(a);
- (v) Schedule 20.n will be taken to be a reference to:
- A. in respect of the Initial Project, Schedule 20.1; or
- B. in respect of each Additional Project, the document referred to as "Schedule 20.[n]" (where "n" represents the number or identifier of the Additional Project) and contained in, or referred to in (as applicable):
- 1) the RFP (as may be replaced or amended in accordance with clause 8.4 or any addenda issued pursuant to the RFP);
 - 2) the Accepted Project Proposal; or
 - 3) the notice from TfNSW under clause 23.1(a);
- (vi) Schedule 22.n will be taken to be a reference to:
- A. in respect of the Initial Project, Schedule 22.1; or
- B. in respect of each Additional Project, the document referred to as "Schedule 22.[n]" (where "n" represents the number or identifier of the Additional Project) and contained in, or referred to in (as applicable):

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- 1) the RFP (as may be replaced or amended in accordance with clause 8.4 or any addenda issued pursuant to the RFP);
 - 2) the Accepted Project Proposal; or
 - 3) the notice from TfNSW under clause 23.1(a);
- (vii) Schedule 31.n will be taken to be a reference to:
- A. in respect of the Initial Project, Schedule 31.1; or
 - B. in respect of each Additional Project, the document referred to as "Schedule 31.[n]" (where "n" represents the number or identifier of the Additional Project) and contained in, or referred to in (as applicable):
 - 1) the RFP (as may be replaced or amended in accordance with clause 8.4 or any addenda issued pursuant to the RFP);
 - 2) the Accepted Project Proposal; or
 - 3) the notice from TfNSW under clause 23.1(a);
- (viii) Schedule 32.n will be taken to be a reference to:
- A. in respect of the Initial Project, Schedule 32.1; or
 - B. in respect of each Additional Project, the document referred to as "Schedule 32.[n]" (where "n" represents the number or identifier of the Additional Project) and contained in, or referred to in (as applicable):
 - 1) the RFP (as may be replaced or amended in accordance with clause 8.4 or any addenda issued pursuant to the RFP);
 - 2) the Accepted Project Proposal; or
 - 3) the notice from TfNSW under clause 23.1(a);
- (ix) Schedule 37.n will be taken to be a reference to:
- A. in respect of the Initial Project, Schedule 37.1; or
 - B. in respect of each Additional Project, the document referred to as "Schedule 37.[n]" (where "n" represents the number or identifier of the Additional Project) and contained in, or referred to in (as applicable):
 - 1) the RFP (as may be replaced or amended in accordance with clause 8.4 or any addenda issued pursuant to the RFP);
 - 2) the Accepted Project Proposal; or
 - 3) the notice from TfNSW under clause 23.1(a);

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- (x) Exhibit A.n will be taken to be a reference to:
 - A. in respect of the Initial Project, Exhibit A.1; or
 - B. in respect of each Additional Project, the document referred to as “Exhibit A.[n]” (where “n” represents the number or identifier of the Additional Project) and contained in, or referred to in (as applicable):
 - 1) the RFP (as may be replaced or amended in accordance with clause 8.4 or any addenda issued pursuant to the RFP);
 - 2) the Accepted Project Proposal; or
 - 3) the notice from TfNSW under clause 23.1(a);
- (xi) Exhibit B.n will be taken to be a reference to:
 - A. in respect of the Initial Project, Exhibit B.1; or
 - B. in respect of each Additional Project, the document referred to as “Exhibit B.[n]” (where “n” represents the number or identifier of the Additional Project) and contained in, or referred to in (as applicable):
 - 1) the RFP (as may be replaced or amended in accordance with clause 8.4 or any addenda issued pursuant to the RFP);
 - 2) the Accepted Project Proposal; or
 - 3) the notice from TfNSW under clause 23.1(a);
- (xii) Exhibit E.n will be taken to be a reference to:
 - A. in respect of the Initial Project, Exhibit E.1; or
 - B. in respect of each Additional Project, the document referred to as “Exhibit E.[n]” (where “n” represents the number or identifier of the Additional Project) and contained in, or referred to in (as applicable):
 - 1) the RFP (as may be replaced or amended in accordance with clause 8.4 or any addenda issued pursuant to the RFP);
 - 2) the Accepted Project Proposal; or
 - 3) the notice from TfNSW under clause 23.1(a);
- (xiii) Exhibit G.n will be taken to be a reference to:
 - A. in respect of the Initial Project, Exhibit G.1; or
 - B. in respect of each Additional Project, the document referred to as “Exhibit G.[n]” (where “n” represents the number or

Schedule 1 - Acronyms, definitions and interpretation

identifier of the Additional Project) and contained in, or referred to in (as applicable):

- 1) the RFP (as may be replaced or amended in accordance with clause 8.4 or any addenda issued pursuant to the RFP);
- 2) the Accepted Project Proposal; or
- 3) the notice from TfNSW under clause 23.1(a);

(xiv) Exhibit H.n will be taken to be a reference to:

- A. in respect of the Initial Project, Exhibit H.1; or
- B. in respect of each Additional Project, the document referred to as "Exhibit H.[n]" (where "n" represents the number or identifier of the Additional Project) and contained in, or referred to in (as applicable):
 - 1) the RFP (as may be replaced or amended in accordance with clause 8.4 or any addenda issued pursuant to the RFP);
 - 2) the Accepted Project Proposal; or
 - 3) the notice from TfNSW under clause 23.1(a);

(xv) Exhibit I.n will be taken to be a reference to:

- A. in respect of the Initial Project, Exhibit I.1; or
- B. in respect of each Additional Project, the document referred to as "Exhibit I.[n]" (where "n" represents the number or identifier of the Additional Project) and contained in, or referred to in (as applicable):
 - 1) the RFP (as may be replaced or amended in accordance with clause 8.4 or any addenda issued pursuant to the RFP);
 - 2) the Accepted Project Proposal; or
 - 3) the notice from TfNSW under clause 23.1(a);

(xvi) Exhibit J.n will be taken to be a reference to:

- A. in respect of the Initial Project, Exhibit J.1; or
- B. in respect of each Additional Project, the document referred to as "Exhibit J.[n]" (where "n" represents the number or identifier of the Additional Project) and contained in, or referred to in (as applicable):
 - 1) the RFP (as may be replaced or amended in accordance with clause 8.4 or any addenda issued pursuant to the RFP);

Schedule 1 - Acronyms, definitions and interpretation

- 2) the Accepted Project Proposal; or
 - 3) the notice from TfNSW under clause 23.1(a);
- (xvii) Exhibit L.n will be taken to be a reference to:
- A. in respect of the Initial Project, Exhibit L.1; or
 - B. in respect of each Additional Project, the document referred to as "Exhibit L.[n]" (where "n" represents the number or identifier of the Additional Project) and contained in, or referred to in (as applicable):
 - 1) the RFP (as may be replaced or amended in accordance with clause 8.4 or any addenda issued pursuant to the RFP);
 - 2) the Accepted Project Proposal; or
 - 3) the notice from TfNSW under clause 23.1(a);
- (xviii) Exhibit M.n will be taken to be a reference to:
- A. in respect of the Initial Project, Exhibit M.1; or
 - B. in respect of each Additional Project, the document referred to as "Exhibit M.[n]" (where "n" represents the number or identifier of the Additional Project) and contained in, or referred to in (as applicable):
 - 1) the RFP (as may be replaced or amended in accordance with clause 8.4 or any addenda issued pursuant to the RFP);
 - 2) the Accepted Project Proposal; or
 - 3) the notice from TfNSW under clause 23.1(a); and
- (xix) Exhibit P.n will be taken to be a reference to:
- A. in respect of the Initial Project, Exhibit P.1; or
 - B. in respect of each Additional Project, the document referred to as "Exhibit P.[n]" (where "n" represents the number or identifier of the Additional Project) and contained in, or referred to in (as applicable):
 - 1) the RFP (as may be replaced or amended in accordance with clause 8.4 or any addenda issued pursuant to the RFP);
 - 2) the Accepted Project Proposal; or
 - 3) the notice from TfNSW under clause 23.1(a).

Schedule 2.0 – Program Particulars

The other parties to this Agreement (Non Owner Participants or NOPs) (Section 2 of Schedule 1)	Name NOP1: John Holland Pty Ltd ACN: 004 282 268 Address: Level 5, 380 St Kilda Road, Melbourne VIC 3004
	Name NOP2: Jacobs Group (Australia) Pty Ltd ACN: 001 024 095 Address: Level 11, 50 Queen Street, Melbourne, VIC 3000
NOP1 Parent Company (Clause 2.3(a))	Name: [REDACTED] ABN: N/A
NOP2 Parent Company (Clause 2.3(b))	Name: [REDACTED] ACN: [REDACTED]
Principal's Representative (Clause 3.4(a))	Name: [REDACTED] Title: [REDACTED] Phone: [REDACTED] Mobile: [REDACTED]
LT Members (Clause 4.2(b))	Name: [REDACTED] Organisation: TfNSW Email: [REDACTED] Phone: [REDACTED] Mobile: [REDACTED]
	Name: [REDACTED] Organisation: TfNSW Email: [REDACTED] Phone: [REDACTED] Mobile: [REDACTED]
	Name: [REDACTED] Organisation: John Holland Pty Ltd Email: [REDACTED] Phone: [REDACTED] Mobile: [REDACTED]
	Name: [REDACTED]

Schedule 2.0 – Program Particulars

	<p>Organisation: Jacobs Group (Australia) Pty Ltd</p> <p>Email: [REDACTED]</p> <p>Phone: [REDACTED]</p> <p>Mobile: [REDACTED]</p>
LT Chairperson (Clause 4.3(a))	To be agreed by the LT after the Commencement Date
General Manager (Clause 5.2(a))	<p>Name: [REDACTED]</p> <p>Organisation: John Holland Pty Ltd</p> <p>Email: [REDACTED]</p> <p>Phone: [REDACTED]</p> <p>Mobile: [REDACTED]</p>
NOP to obtain and hold EPL (clause 14.1(a))	John Holland Pty Ltd
Management Systems (Clause 30.19)	<ul style="list-style-type: none"> • Cura (or equivalent, for risk control system); • P6 (or the latest Primavera, for scheduling); • Team Binder for document control; and • TfNSW Infrastructure and Services Division Incident Management System (INX)
Addresses for service of notices (Clause 30.1(b))	<p>TfNSW</p> <p>Address: Level 5, Tower A, Zenith Centre, 821 Pacific Highway Chatswood NSW 2067</p>
	<p>Principal's Representative</p> <p>Address: Level 5, Tower A, Zenith Centre, 821 Pacific Highway Chatswood NSW 2067</p>
	<p>NOP1</p> <p>Address: Level 3, 65 Pirrama Road, Pyrmont, NSW 2009</p>
	<p>NOP2</p> <p>Address: Level 11, 452 Flinders Street, Melbourne, VIC 3000</p>
Financial Auditor ("FA") (Section 2 of Schedule 1)	As notified by TfNSW after the Commencement Date
Proposal Development Deed (Section 2 of Schedule 1)	Proposal Development Deed dated 17 September 2019
Order of precedence (Section 4 of Schedule 1)	(a) the general conditions of this Agreement (being clauses 1 to 31); then

Schedule 2.0 – Program Particulars

	(b) the schedules forming part of this Agreement; then
	(c) the TSRs; then
	(d) the Works Brief; then
	(e) the exhibits forming part of this Agreement that are not specifically stated in paragraph (c) or paragraph (d).

- (a) For the Initial Project, also refer to the Project Particulars in Schedule 2.1 in the Project-Specific Schedules and Exhibits (Initial Project) section.
- (b) For each Additional Project, also refer to Schedule 2.n.

Schedule 3 – Principles

- (a) The Participants intend to share all risks and opportunities associated with the IDE Activities and the delivery of the Project Works, regardless of whether or not:
 - i) those risks/opportunities are within the Participants' control; or
 - ii) the Participants could (or should) reasonably have foreseen them; or
 - iii) the Participants made any provision for them in the TOC,except for those types of risks/opportunities that we have specifically agreed and documented in the Target Adjustment Guidelines or this Agreement will be retained solely by TfNSW or a particular NOP.
- (b) Complete transparency in all arrangements.
- (c) We either all win or we all lose - win/lose outcomes are not acceptable.
- (d) Equitable sharing of risk and benefit, so that Gainshare/Painshare is linked to real risks and benefits that TfNSW considers affect the value of the Projects. Note that equitable does not necessarily mean equal or symmetrical.
- (e) The only way for a NOP to earn exceptional returns is for the IDE to deliver exceptional (superior) performance in areas that TfNSW considers to be of additional value.
- (f) TfNSW is committed to the NOPs being able to earn 100% of available Gainshare entitlements through outstanding performance.
- (g) Overall Painshare for each NOP is capped at the value of that NOP's Fee.
- (h) Overall Gainshare for each NOP is capped at the value of that NOP's Fee.
- (i) In the event of a very poor outcome all the NOPs should reach their respective Painshare caps at the same time.
- (j) The Compensation Framework should enable the IDE to make best for IDE resourcing decisions without unfairly penalising the Participant that provides those resources.
- (k) We accept that no Fee will be payable in respect of Reimbursable Costs incurred in substantial breach of agreed governance obligations.

Schedule 4 – Values

Values are to be determined and agreed by the LT after the Commencement Date and formally recorded in LT meeting minutes as required under clause 4.6 of this Agreement.

Schedule 5 – Objectives

The Objectives are as follows:

Areas	Objective
Safety	Comply with WHS Legislation Ensure no harm comes to anyone
Project Delivery	Effective development of capital projects Minimise impact on road and rail users during the delivery of capital projects
Schedule	Completion of key milestones on time Schedule certainty to allow coordination with fleet, digital systems and other deliverables
Cost	Cost of each Project to represent value for money to TfNSW and must be equal to or less than the TOC Ensure value for money delivery through focus on scope, time, and subcontract management
Operations	No unplanned disruption to rail network and operations No unplanned disruption to road network and operations No damage to asset owner’s infrastructure
Quality and Design	Integration of sustainable practices, innovation, safe construction, safe operation and excellence in design Delivery high quality transport infrastructure outcomes Robust processes to provide demonstrated assurance in engineering and construction Design complies with relevant standards Demonstrated assurance in construction
Community	Minimise community disruption Positive engagement with community stakeholders Meeting and exceeding social procurement targets
Environment	Minimise environmental impacts Designs compliance with sustainability guidelines

Schedule 6 – Functions of LT, MT, the General Manager and the JCT

1. Leadership Team

1.1 Competencies

The LT Members are expected to have complementary skills and experience that cover the following competencies:

- (a) capacity for inspirational leadership;
- (b) a collaborative and relationship orientation;
- (c) understanding of and ability to lead outstanding performance (high performance);
- (d) relevant experience and technical expertise;
- (e) commercial focus;
- (f) detailed understanding of the Projects and the Compensation Framework;
- (g) understanding of good governance and relevant experience in good governance; and
- (h) understanding of and experience in collaborative contracts such as alliances and other incentivised delivery contracting arrangements.

1.2 Accountabilities

The accountabilities of the LT are to be agreed with the Participants, but will include:

- (a) creating and articulating the our vision;
- (b) championing the development and maintenance of a safety first and high performance culture;
- (c) leadership oversight of us (noting that the General Manager has management oversight of us);
- (d) ensuring the Principles are adhered to during the delivery of each Project. This particularly applies to the principle of transparency where significantly different behaviour, compared to that in traditional contracting, is required;
- (e) exhibiting behaviours in a way that is consistent with the Principles;
- (f) ensuring the General Manager, the MT and the wider project team meet or exceed the Objectives and obligations under this Agreement and achieve (as applicable) Project and / or Program success;
- (g) effective and efficient decision making, including resolution of differences and disagreements;
- (h) keeping complete records of meetings;
- (i) exercising relevant LT delegations;
- (j) promoting us externally;
- (k) appointing the General Manager and approving each member of the MT;

Schedule 6 – Functions of LT, MT, the General Manager and the JCT

- (l) providing robust governance to us and collectively reporting the progress and performance of us to each of our organisations; and
- (m) approving our organisational structure.

1.3 Responsibilities

The responsibilities of the LT include the following:

- (a) providing strategic guidance and leadership to us;
- (b) establishing a relationship with Sydney Trains senior executives to facilitate coordination and escalation of issues;
- (c) providing appropriate representation in the JCT;
- (d) empowering and supporting the MT;
- (e) establishing and maintaining a strong performance orientation by championing and recognising outstanding results in all Objectives;
- (f) supporting outstanding performance;
- (g) setting the example for our behaviour;
- (h) ensuring corporate management support;
- (i) ensuring that each Participant contributes its best available personnel and other resources to each Project;
- (j) using best endeavours to ensure that the Participants comply with this Agreement;
- (k) co-ordinating and monitoring the performance of the Participants to ensure that:
 - (i) the terms and conditions of this Agreement are complied with;
 - (ii) the IDE Activities are carried out in accordance with this Agreement; and
 - (iii) the Participants, the General Manager and the MT adhere to the Objectives and the Principles;
- (l) ensuring that the General Manager has clear objectives, responsibilities and delegated authority to lead the MT;
- (m) establishing the MT, including the appointment of the MT Members, after appropriate consultation with the Participants;
- (n) ensure that the value for money plan referred to in the TSRs (**VfM Plan**) is implemented by us and in particular that value for money is a regular agenda item at LT meetings. The LT must also ensure that a value for money report referred to in the TSRs (**VfM Report**) is progressively developed throughout the life of the IDE and post completion, in all cases in collaboration with TfNSW;
- (o) ensuring implementation of effective and efficient systems and controls;
- (p) setting, reviewing and revising limits of delegated authority, as appropriate;

Schedule 6 – Functions of LT, MT, the General Manager and the JCT

- (q) monitoring the health and performance of each Project;
- (r) endorsing the Collaborative Contract Management Plan required in accordance with the TSRs (CCMP) and any subsequent modifications to it;
- (s) reviewing and approving appropriate supplements to the insurances set out in this Agreement;
- (t) ensuring that appropriate controls, delegations, systems and procedures are embodied within the detailed Management Plans, comply with the TSRs, and that the requirements of each plan are adhered to;
- (u) monitoring the performance of the General Manager and the MT and implementing appropriate measures (including corrective actions based on the Objectives and the Principles) to correct undesirable trends;
- (v) monitoring the suitability of the Compensation Framework to achieve the Objectives and the consistency of it with the principles of the Compensation Framework, and recommending adjustments where necessary;
- (w) reviewing and approving proposed performance targets (both cost and non-cost) for each Project;
- (x) reviewing and recommending any Target Adjustment Event;
- (y) dealing with any Disagreements;
- (z) initiating and/or approving the commitment of resources to carry out the IDE Activities and providing corporate support where necessary;
- (aa) implementing any directions received from TfNSW in relation to any TfNSW Reserved Power or which are otherwise authorised by this Agreement;
- (bb) ensuring that safety and code of conduct cultures are practiced on a business as usual basis; and
- (cc) discharging such other functions of the LT set out in this Agreement.

1.4 Delegations

TfNSW expects all LT Members to carry out their duties in accordance within the IDE delegation authorities. Each LT Member shall have the necessary authority and delegation to make decisions on behalf of its Participant organisation in relation to the rights and liabilities of such Participant.

1.5 Governance

The primary responsibility for our governance rests with the LT and this includes:

- (a) understanding and administering the IDA;
- (b) compliance with the Management Plans and TSRs and ensuring they are kept up to date;
- (c) ensuring the Objectives are achieved;
- (d) conducting our activities and exhibiting behaviours in a way that is consistent with the Principles;

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- (e) ensuring independent audits and estimates are properly and appropriately conducted in a timely manner and any findings closed out;
- (f) ensuring effective implementation of delegations;
- (g) holding regular scheduled meetings;
- (h) ensuring adequate controls to prevent fraud and corruption are in place and regularly reviewed for effectiveness; and
- (i) requiring and providing as a minimum monthly reporting.

2. General Manager

2.1 Role

- (a) The General Manager is vital to our success. The General Manager needs to provide leadership and put in place the drivers to implement our vision and empower the Management Team to deliver each Project and meet the Objectives. Creating and sustaining an environment which actively encourages a safety first and high performance culture is also a key role of the General Manager.
- (b) The General Manager must also ensure our effective and robust governance. Governance is defined as the act of governing, exercising authority with responsibility for making and enforcing rules and laws and directing or strongly influencing behaviour. There are clear elements of leadership, direction and control in effective governance.

2.2 Competencies

The General Manager is expected to have skills and experience that cover the following competencies:

- (a) capacity for inspirational leadership;
- (b) understanding of and ability to lead outstanding performance (high performance);
- (c) relevant experience and technical expertise;
- (d) commercial focus;
- (e) detailed understanding of each Project and the Compensation Framework;
- (f) understanding of good governance and relevant experience in good governance; and
- (g) understanding of and experience in collaborative contracts such as alliances and other incentivised delivery contracting arrangements.

2.3 Accountabilities

The accountabilities of the General Manager shall typically include the following:

- (a) articulating and delivering our vision;
- (b) championing the development and maintenance of a safety first and high performance culture;
- (c) leading and managing the MT and the wider project team;

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- (d) ensuring the Principles are adhered to during the delivery of each Project;
- (e) establishing a culture that will ensure that the Objectives are exceeded;
- (f) establishing Project budgets and managing Project costs;
- (g) establishing program management budgets (if required) and managing costs for Program Management Activities;
- (h) effective and efficient decision making that is consistent with the Principles, including resolution of differences and disagreements;
- (i) keeping complete records of meetings;
- (j) exercising relevant General Manager delegations;
- (k) promoting us externally;
- (l) submitting any proposed material changes to the CCMP to the LT for consideration and endorsement;
- (m) bringing possible scope changes to the attention of the LT;
- (n) understanding and administering the IDA;
- (o) compliance with the CCMP, including discipline specific plans, and ensuring the CCMP is kept up to date;
- (p) defining the roles and responsibilities of the MT members and other direct reports;
- (q) providing robust governance to us and providing reports on our progress and performance to the LT on a regular basis and as requested by the LT; and
- (r) managing each Project and the IDE Activities.

2.4 Responsibilities

The responsibilities of the General Manager include the following:

- (a) day to day management of the MT;
- (b) recommending the members of the MT for selection by the LT;
- (c) acting as team leader, providing leadership to the Management Team and setting an example of the Objectives and the Principles in action;
- (d) establishing Project budgets and managing Project costs, risks and opportunities;
- (e) acting as a communication conduit to/from the LT and to/from the MT;
- (f) providing early and accurate written and verbal reports on time and budget to the LT, at the times and in the manner required by the LT;
- (g) in conjunction with the MT, implementing the decisions and determinations of the LT;
- (h) undertaking any payment audits or other payment processing functions required of the General Manager under this Agreement;

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- (i) monitoring our performance under the Gainshare/Painshare Regime and advise the LT and TfNSW whenever it appears that:
 - (i) the NOPs may be required to pay TfNSW an amount under the Gainshare/Painshare Regime; or
 - (ii) TfNSW may be required to pay the NOPs an amount under the Gainshare/Painshare Regime;
- (j) presenting MT issues at LT level and making requests of the LT in relation to those issues;
- (k) managing each Project;
- (l) managing all Approvals;
- (m) managing the processes that demonstrate value for money;
- (n) recognising that, in the role, the GM is fully accountable to the LT and not to his or her parent organisation line manager;
- (o) being responsible for all safety issues and ensuring that the MT owns its responsibilities in that regard;
- (p) ensuring all MT Members have clearly defined roles and responsibilities;
- (q) in conjunction with the MT, implementing the decisions and determinations of the LT;
- (r) managing the IDE Activities;
- (s) performing functions as directed from time to time by the LT;
- (t) directing the MT in undertaking the IDE Activities;
- (u) preparing and revising the MP; and
- (v) representing us on the JCT.

2.5 Value for Money

- (a) In using incentivised delivery arrangements for the delivery of major projects, TfNSW aims to ensure that a value for money outcome is achieved. To ensure and demonstrate a value for money outcome, the GM must have this issue at the forefront in making decisions throughout the life of this Agreement.
- (b) The requirements for a VfM Plan are set out in the TSRs. The GM must ensure that:
 - (i) the VfM Plans are implemented;
 - (ii) the VfM Plan is at the forefront of all decisions made in relation to the IDE Activities;
 - (iii) value for money is a regular agenda item at MT and LT meetings; and

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- (iv) VfM Reports are progressively developed throughout the delivery period for each Project and that we support TfNSW in preparing TfNSW's post Completion value for money report.

3. Management Team

3.1 Competencies

The MT Members are expected to have complementary skills and experience that cover the following competencies:

- (a) capacity for inspirational leadership;
- (b) collaborative nature and a relationship orientation;
- (c) understanding of and ability to lead outstanding performance (high performance);
- (d) relevant experience and technical expertise;
- (e) commercial focus;
- (f) detailed understanding of each Project and the Compensation Framework;
- (g) understanding of good governance and relevant experience in good governance; and
- (h) understanding of alliances and incentivised delivery arrangements.

3.2 Accountabilities

The accountabilities of the MT Members are agreed with the General Manager and reviewed by the LT. Typical accountabilities include:

- (a) articulating and delivering our vision;
- (b) championing the development and maintenance of a safety first and high performance culture;
- (c) leading and managing the wider project team;
- (d) developing and ensuring the Principles are adhered to during the delivery of each Project;
- (e) bringing material changes to the Management Plans to the LT through the GM for endorsement;
- (f) bringing possible scope changes to the attention of the LT through the GM;
- (g) compliance with the Management Plans, including discipline specific plans, and ensuring the Management Plans are kept up to date;
- (h) making decisions on multi-discipline issues;
- (i) reporting on performance against KPI and KRA measurement framework;
- (j) ensure that value for money is a regular agenda item for MT meetings and that a VfM Report is progressively developed throughout the life of the IDE and post Completion;

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- (k) motivating and supporting the wider project team to achieve outstanding outcomes in all aspects of the IDE Activities;
- (l) operating within the IDE delegation of authorities;
- (m) overseeing the GM's activity in ensuring compliance of the safety and code of conduct policies and expectations cultures across the whole of each Project; and
- (n) promoting us externally.

3.3 Responsibilities

The responsibilities of the MT include the following:

- (a) implementing the decisions and determinations of the LT;
- (b) implementing the management and operational processes and systems;
- (c) management of each Project to meet and exceed the Objectives;
- (d) managing Project costs;
- (e) supporting the processes that demonstrate value for money;
- (f) identifying and managing risk and opportunity;
- (g) championing and / or providing leadership focus in individual KRAs;
- (h) developing and coordinating the preparation of the Management Plans and subsequent amendments, including the discipline specific plans, for endorsement by the LT prior to submission to the Principal's Representative for review;
- (i) ensuring that in the preparation of the discipline specific plans included in the Management Plans, the relevant personnel in the functional groups of Infrastructure & Place Division of TfNSW are given the opportunity to be involved in the preparation of the plan and that comments are considered in finalising the plan for submission to the LT;
- (j) establishing and managing effective communication and coordination protocols with the functional groups of Infrastructure & Place Division of TfNSW and external stakeholders;
- (k) providing regular reports to the GM;
- (l) ensuring that short term and long term environmental risks are managed; and
- (m) managing the wider project team in terms of:
 - (i) roles;
 - (ii) responsibilities; and
 - (iii) time requirements.

3.4 Delegations

TfNSW expects all MT Members to carry out their duties in accordance with our delegation authorities as agreed by the LT from time to time. The position, authority or delegation held by

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MT members within their respective NOP organisations do not apply to the MT Members in the performance of the IDE Activities or in connection with any Project.

3.5 Governance

The responsibility for implementing governance practices and procedures for us is with the MT. The MT gives effect to the policies and procedures endorsed by the LT. Key governance areas include:

- (a) administering the IDA;
- (b) compliance with the Management Plan and TSRs and ensuring both are kept up to date;
- (c) ensuring the Objectives are achieved;
- (d) conducting the IDE Activities and exhibiting behaviours in a way that is consistent with the Principles;
- (e) ensuring independent audits and estimates are properly and appropriately conducted in a timely manner and any findings closed out;
- (f) ensuring effective implementations of delegations;
- (g) holding regular scheduled meetings;
- (h) keeping complete records of our activities, including evidence of any decisions made, agreements, actions and issues; and
- (i) requiring and providing minimum monthly reporting.

4. Joint Coordination Team

4.1 Role

The Joint Coordination Team (JCT) will consist of the following members:

- (a) one TfNSW LT Member in respect of the IDE and one TfNSW “Leadership Team” member in respect of each Other IDE;
- (b) TfNSW Project Directors (unless already present as a member referred to in paragraph (a));
- (c) at least one NOP LT Member in respect of the IDE and at least one NOP “Leadership Team” member in respect of each Other IDE;
- (d) the General Manager;
- (e) the “General Manager” of each Other IDE; and
- (f) any other member nominated by TfNSW (in its absolute discretion).

4.2 Responsibility

Without limiting clause 6.3 of this Agreement, the JCT will be responsible for high performance with respect to Program KRAs and Program KPIs, which may include:

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- (a) considering the following and making recommendations to TfNSW from a Best for Program perspective:
 - (i) possession priorities;
 - (ii) guiding deployment of critical resources;
 - (iii) coordinating commissioning schedules across the all work carried out by the IDE and any Other IDE;
 - (iv) development and retainment of critical resources; and
 - (v) configuration control requirements;
- (b) engagement and interfacing with key stakeholders across all work carried out by the IDE and any Other IDE with respect to any of the above matters;
- (c) ensuring lessons learnt and innovation developed by us or the Other IDE are shared with each other and where appropriate facilitating joint implementation of innovation and benefits between us and the Other IDE;
- (d) ensuring the IDE and each Other IDE is fulfilling its obligations in relation to social procurement and where applicable jointly owns and drives outstanding outcomes with each Other IDE; and
- (e) ensuring systems are in place to record Program KRA and Program KPI performance.

4.3 Delegation

Without limiting clause 6.3 of this Agreement:

- (a) the JCT will have nil financial delegations and will not be able to give any direction to the IDE or any Other IDE on any matter; and
- (b) any recommendation by the JCT that may result in a TAE under the IDA or the incentivised delivery agreement to which an Other IDE is a party must be formally advised to the Principal's Representative via the "Leadership Team" and "General Manager" of each of the IDE and any Other IDE for consideration and direction by the Principal's Representative (in its absolute discretion).

4.4 Governance

The JCT will prepare and agree terms of reference in line with this schedule addressing as a minimum the following issues:

- (a) objectives;
- (b) role of the JCT;
- (c) JCT membership and invited guests;
- (d) JCT meetings and minutes;
- (e) duties;

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- (f) annual review; and
- (g) governance and interface structure.

4.5 Secretariat

The IDE and each Other IDE will jointly provide secretariat support to the JCT.

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Schedule 7 – Compensation Framework

Acronyms and definitions

In addition to those identified in Schedule 1, the following acronyms and abbreviations are used in this Schedule 7.

AOC	Actual Outturn Cost
ERO	Employment-related on-costs
FTOC	Final Target Outturn Cost
KPS	KRA Performance Score
LAFHA	Living away from home allowance
MEM	Major Event Modifier
RCAP	Reimbursable Cost Accounting Plan
RC	Reimbursable Costs
TfNSW	Transport for NSW
TFR	Total fixed remuneration
TOC	Target Outturn Cost
TR	Total remuneration

In this Schedule:

"Actual Outturn Cost" or **"AOC"** means the actual outturn cost for the Project Works as calculated in accordance with S7-7.2;

"Final Target Outturn Cost" or **"FTOC"** means the final TOC for the Project Works as calculated in accordance with S7-7.1;

"Jacobs" means NOP2;

"John Holland" means NOP1;

"Target Adjustment" means an adjustment to the TOC, any targets used to determine Gainshare/Painshare or any other change to the Compensation Framework as determined in accordance with clause 20 of this Agreement and this Schedule 7; and

"Target Outturn Cost" or **"TOC"** means the target outturn cost for the Project Works as set out in Schedule 37.n, as adjusted by any Target Adjustments.

S7-1 Overview and general provisions

S7-1.1 Overview of compensation model

Subject to the provisions of this Agreement, the Compensation Framework for the delivery of IDE Activities is based on the following principles:

- a) the Participants intend to share all risks and opportunities associated with the IDE Activities and the delivery of the Project Works, regardless of whether or not:
 - i. those risks/opportunities are within the Participants' control; or
 - ii. the Participants could (or should) reasonably have foreseen them; or
 - iii. the Participants made any provision for them in the TOC,except for those types of risks/opportunities that we have specifically agreed and documented in the Target Adjustment Guidelines or this Agreement which will be retained solely by TfNSW or a particular NOP;
- b) complete transparency in all arrangements;
- c) we either all win or we all lose - win/lose outcomes are not acceptable;
- d) equitable sharing of risk and benefit, so that Gainshare/Painshare is linked to real risks and benefits that TfNSW considers affect the value of the Project, noting that equitable does not necessarily mean equal or symmetrical;
- e) the only way for a NOP to earn exceptional returns is for the IDE to deliver exceptional (superior) performance in areas that TfNSW considers to be of additional value;
- f) TfNSW is committed to the NOPs being able to earn 100% of available Gainshare entitlements through outstanding performance;
- g) overall Painshare for each NOP is capped at the value of that NOP's Fee;
- h) overall Gainshare for each NOP is capped at the value of that NOP's Fee;
- i) in the event of a very poor outcome all the NOPs should reach their respective Painshare caps at the same time;
- j) the Compensation Framework should enable the IDE to make best for IDE resourcing decisions without unfairly penalising the Participant that provides those resources; and
- k) we accept that no Fee will be payable in respect of Reimbursable Costs incurred in substantial breach of agreed governance obligations.

Subject to the provisions of this Agreement, each NOP will be compensated in accordance with the following 3-part compensation model, for carrying out the IDE Activities.

In respect of Project Definition Services for which a Dual TOC Process applies, this Schedule 7 must be read subject to the details provided by TfNSW in the RFP for the purposes of clause 8.2(a)(vii)A of this Agreement.

Schedule 7 – Compensation Framework

Table 1 – Compensation model components

Reimbursable Costs ('RC') (RC are applicable to all IDE Activities)	Each NOP will be paid 100% of the direct costs and project-specific overheads it actually incurs in performing the IDE Activities including costs of rework and rectification of errors and mistakes but not including costs incurred by a Defaulting Participant as a result of, or in committing, remedying or addressing a Wilful Default by that NOP).
Fee (Fee is payable for all IDE Activities)	The Fee is intended to provide each NOP with: a) an appropriate contribution towards recovery of its corporate overheads, and b) an equitable level of profit consistent with the IDE achieving an AOC equal to the FTOC and achieving, but not exceeding, the minimum condition of satisfaction ("MCOS") targets in each Key Result Area ("KRA").
Gainshare/Painshare Regime (Parts of the Gainshare/Painshare Regime only apply to particular types of IDE Activities)	Payments of Gainshare by TfNSW to the NOPs, or payments of Painshare by the NOPs to TfNSW, to reflect an agreed sharing of the gain/pain where the actual performance of the IDE is superior/inferior to agreed MCOS targets in cost and other KRAs, all subject to S7-4.2 for components of the Gainshare/Painshare Regime, as applicable to various IDE Activities.

S7-1.2 All payments subject to validation

All payments to be made pursuant to this Agreement are subject to investigation and validation by the Financial Auditor ("FA") to ensure that they are in accordance with this Agreement, including this Schedule 7. We will adopt procedures and systems as required to enable payments to be made in accordance with this Schedule 7 and to be validated by the FA.

TfNSW will only be liable to reimburse costs to the NOPs to the extent such costs are verified by the FA. Any payment made by TfNSW shall be on account only and subject to a final verification audit by the FA.

S7-1.3 Application of GST

S7-1.3.1 All references to amounts and payments in this Schedule 7 are exclusive of GST unless stated otherwise.

S7-1.4 Renegotiation of compensation parameters

S7-1.4.1 Unless specifically stated otherwise in this Agreement or agreed otherwise by the LT and the Principal's Representative, the Compensation Framework will remain unchanged for the duration of this Agreement.

S7-2 Reimbursable Costs

S7-2.1 Definition of Reimbursable Costs

Reimbursable Costs will be determined in accordance with the following principles:

- a) Reimbursable Costs are costs that are wholly and specifically incurred in performing the obligations of the IDE under this Agreement.
- b) A NOP cannot recover any contribution to its corporate overhead costs or expenses or derive any profit or unreasonable advantage from the utilisation of people, plant, equipment or resources of the NOP or its Related Parties, including the utilisation of internal business units and Related Parties that may operate as their own profit centre.
- c) A NOP cannot recover anything that is not a properly incurred cost or expense directly incurred by the NOP in performing the IDE Activities. A NOP can only recover a maximum of 100% of any specific cost or expense properly incurred by it in performing the IDE Activities. There must not be any duplicate recovery of any cost or expense or allowance for cost or expense (i.e. no double dipping).
- d) In respect of:
 - i. Project Execution Work, a NOP cannot recover any cost incurred by the NOP prior to the relevant Reference Date;
 - ii. Project Definition Services, a NOP cannot recover any cost incurred by the NOP prior to the establishment of the relevant PDS Expenditure Limit under clause 11.1 of this Agreement;
 - iii. Early Execution Works, a NOP cannot recover any cost incurred by the NOP prior to the establishment of the relevant EEW Expenditure Limit under clause 13.1 of this Agreement;
 - iv. Ad Hoc Works, a NOP cannot recover any cost incurred by the NOP prior to the date referred to in clause 23.1(b) of this Agreement; and
 - v. Program Management Activities, a NOP cannot recover any cost incurred by the NOP prior to the establishment of the relevant Program Management Budget under clause 22.1 of this Agreement,unless by written agreement with TfNSW.
- e) Any and all costs, losses, expenses or damages suffered or incurred by a Defaulting Participant arising out of or in connection with (including in committing, remedying or addressing) a Wilful Default will not be Reimbursable Costs.
- f) Other than payment of the Fee and Gainshare/Painshare under this Agreement, funds received or receivable by a NOP which arise from IDE Activities will be credited in the reduction of Reimbursable Costs.
- g) Any item, cost or expense excluded by this Schedule 7 or by a decision of the LT will not be a Reimbursable Cost.

Detailed definitions of what is or is not a Reimbursable Cost, category-specific conditions for each type of cost to be a Reimbursable Cost, and the basis for NOPs to recover each category of Reimbursable Cost are set out in the following appendices to this Schedule 7:

- h) employee-related Reimbursable Cost provisions are set out in Appendix 2; and
- i) non-employee-related Reimbursable Cost provisions are set out in Appendix 3.

For clarity, for a cost to be a Reimbursable Cost, where category-specific conditions apply to a cost category they apply in addition to non-category-specific conditions identified elsewhere in this Agreement.

Schedule 7 – Compensation Framework

In case of any inconsistency between the principles for determining Reimbursable Costs mentioned in this clause S7-2.1 and the detailed definitions mentioned in this clause S7-2.1, the detailed definitions mentioned in this clause S7-2.1 will prevail to the extent of that inconsistency. We acknowledge that:

- j) there may be minor differences between the cost figures which would result from strict application of the overall principles mentioned in this clause S7-2.1 and application of the detailed definitions mentioned in this clause S7-2.1; and
- k) adoption of the detailed definitions mentioned in this clause S7-2.1 enable us to simplify some aspects of determination and recovery arrangements for Reimbursable Costs.

Where there is uncertainty about whether a cost is a Reimbursable Cost, the LT will make a determination having regard to the provisions of this Schedule 7, the recommendations of the FA, the findings of the investigations carried out by the FA prior to the Commencement Date ("Establishment Audits") and any other investigations carried out by the FA and the FA's interpretation of this Schedule 7.

S7-2.2 Arrangements for identification and recovery of Reimbursable Costs

Prior to the Commencement Date, the FA conducted the Establishment Audits on the financial systems of the NOPs to clarify the methods of identifying Reimbursable Costs, and to develop:

- a) a Reimbursable Cost Accounting Plan ("RCAP") for each NOP identifying procedures and parameters to identify Reimbursable Costs in accordance with this Agreement; and
- b) a Compensation Audit Plan ("CAP") outlining the audit process which will be used by the FA to ensure that payments under this Agreement are in accordance with the provisions of this Schedule 7.

The parameters developed via the Establishment Audits enabling recovery of Reimbursable Costs for individual NOPs are set out in the following Appendices:

- c) Reimbursable Cost recovery arrangements for John Holland are set out in Appendix 4 to this Schedule 7; and
- d) Reimbursable Cost recovery arrangements for Jacobs are set out in Appendix 5 to this Schedule 7.

Where a parameter referred to above is identified as being subject to periodic review and adjustment, such adjustment will be identified by the FA via the Compensation Audit Plan process, and notified to the LT. In the absence of LT agreement to the contrary, the adjusted parameter will be adopted for the purposes of Reimbursable Cost recovery in accordance with the FA's recommendations.

S7-2.3 Provisions relating to TfNSW IDA Costs

S7-2.3.1 TfNSW IDA Costs are costs incurred directly by TfNSW (other than a payment made to a NOP in accordance with this Agreement) in relation to the IDE Activities. TfNSW IDA Costs include costs incurred by TfNSW in the following categories:

- a) costs associated with TfNSW staff working on IDE Activities, including wages, salaries and associated EROs;
- b) costs of engaging third parties for the provision of materials, goods, works or services which form part of, or are required to perform, the IDE Activities;
- c) costs in providing or arranging any security to be provided to any Subcontractor;
- d) costs associated with claims from third parties to the extent that such costs are not covered by insurances effected in accordance with clause 26;

Schedule 7 – Compensation Framework

- e) costs paid by TfNSW to Authorities in connection with the IDE Activities or the Works; and
- f) any other cost which is specified in this Agreement to be a TfNSW IDA Cost or which the LT agrees is a TfNSW IDA Cost.

S7-2.3.2 Any funds received or receivable by TfNSW in relation to the IDE Activities will be credited in the reduction of TfNSW IDA Costs to the extent that they are a reimbursement to TfNSW of costs paid by TfNSW which form part of the TfNSW IDA Costs.

Schedule 7 – Compensation Framework

S7-3 Fee

S7-3.1 General

S7-3.1.1 The Fee payable to a NOP under this clause S7-3 will be deemed to fully compensate that NOP for:

- a) all direct and indirect expenditure by that NOP associated with the IDE Activities;
- b) the costs and expense of its corporate overhead structure; and
- c) its corporate profit expectations,

not otherwise covered by Reimbursable Costs (as determined under clause S7-2) or the Gainshare/Painshare Regime (as determined under clause S7-4).

S7-3.1.2 For the avoidance of doubt, the term “Fee” will apply separately to each of the following types of IDE Activities:

- a) Project Execution Works;
- b) Project Definition Services;
- c) Early Execution Works;
- d) Program Management Activities; and
- e) Ad Hoc Works.

S7-3.2 Fee for Program Management Activities, Ad Hoc Works or Early Execution Works

S7-3.2.1 Each NOP will be paid a (limb 2) Fee to cover its corporate overheads and normal profit associated with Program Management Activities (“PMA”), Ad Hoc Works and Early Execution Works (“EEW”) calculated in accordance with the formulae set out in this clause S7-3.2.

S7-3.2.2 John Holland’s Fee for PMA, Ad Hoc Works or EEW ($Fee_{JHH-PMA}$) will be calculated by the following formula:

$$Fee_{JHH-PMA} = \$PMA_{JHH} \times Fee\%_{JHH}; \text{ where}$$

$\$PMA_{JHH}$ = The actual limb 1 Reimbursable Costs for John Holland for PMA, Ad Hoc Works or EEW (as applicable).

$Fee\%_{JHH}$ = The Fee% for John Holland as stated in Appendix 1 (Schedule 7).

S7-3.2.3 Jacobs’ Fee for PMA, Ad Hoc Works or EEW ($Fee_{Jacobs-PMA}$) will be calculated by the following formula:

$$Fee_{Jacobs-PMA} = (\$PMA_{Jacobs} \times Fee\%_{Jacobs}); \text{ where}$$

$\$PMA_{Jacobs}$ = The actual limb 1 Reimbursable Costs for Jacobs for PMA, Ad Hoc Works or EEW (as applicable).

$Fee\%_{Jacobs}$ = The Fee% for Jacobs as stated in Appendix 1 (Schedule 7).

S7-3.2.4 The Fee for PMA, Ad Hoc Works and EEW may be reduced in accordance with clause S7-4.5.

S7-3.3 Fee for Project Definition Services (PDS)

S7-3.3.1 Each NOP will be paid a (limb 2) Fee to cover its corporate overheads and normal profit associated with Project Definition Services (“PDS”) for each Proposed Additional Project which is referred to the IDE in accordance with clause 8.2 for the preparation of a Project Proposal (whether under a Single TOC Process or, subject to the RFP, a Dual TOC Process), calculated in accordance with the formulae set out in this clause S7-3.3.

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S7-3.3.2 John Holland's Fee for PDS ($Fee\$_{JH-PDS}$) will be calculated by the following formula:

$$Fee\$_{JH-PDS} = (\$PDS_{JH} \times Fee\%_{JH}); \text{ where}$$

$\$PDS_{JH}$ = The actual limb 1 Reimbursable Costs for John Holland for PDS relating to the relevant Proposed Additional Project.

$Fee\%_{JH}$ = The Fee% for John Holland as stated in Appendix 1 (Schedule 7).

S7-3.3.3 Jacobs' Fee for PDS ($Fee\$_{Jacobs-PDS}$) will be calculated by the following formula:

$$Fee\$_{Jacobs-PDS} = (\$PDS_{Jacobs} \times Fee\%_{Jacobs}); \text{ where}$$

$\$PDS_{Jacobs}$ = The actual limb 1 Reimbursable Costs for Jacobs for PDS relating to the relevant Proposed Additional Project.

$Fee\%_{Jacobs}$ = The Fee% for Jacobs work as stated in Appendix 1 (Schedule 7).

S7-3.3.4 The Fee for PDS may be reduced in accordance with clause S7-4.5.

S7-3.4 Fee for Project Execution Work (PEW)

S7-3.4.1 Each NOP will be paid a (limb 2) Fee to cover its corporate overheads and normal profit associated with Project Execution Work (PEW) on each Project, calculated in accordance with the formulae set out in this clause S7-3.4.

S7-3.4.2 John Holland's Fee for PEW ($Fee\$_{JH-PEW}$) will be calculated by the following formula:

$$Fee\$_{JH-PEW} = (\$PEW_{JH} \times Fee\%_{JH}); \text{ where}$$

$\$PEW_{JH}$ = The amount allowed within the initial TOC on that Project for PEW limb 1 reimbursement to John Holland.

$Fee\%_{JH}$ = The Fee% for John Holland as stated in Appendix 1 (Schedule 7).

S7-3.4.3 Jacobs' Fee for PEW ($Fee\$_{Jacobs-PEW}$) will be calculated by the following formula:

$$Fee\$_{Jacobs-PEW} = (\$PEW_{Jacobs} \times Fee\%_{Jacobs}); \text{ where}$$

$\$PEW_{Jacobs}$ = The amount allowed within the initial TOC on that Project for PEW limb 1 reimbursement to Jacobs.

$Fee\%_{Jacobs}$ = The Fee% for Jacobs as stated in Appendix 1 (Schedule 7).

S7-3.4.4 The Fee for PEW may be reduced in accordance with clause S7-4.5.

S7-3.5 Worked examples of Fee calculations

S7-3.5.1 The hypothetical TOC in Appendix 7 (Schedule 7) illustrates the calculation of the NOPs' Fees for PDS and PEW for a hypothetical \$300m Project.

S7-3.6 Fixed PEW Fee subject only to Target Adjustments

S7-3.6.1 The Fee for each NOP and all NOPs for PEW is fixed at the dollar amount provided within the initial TOC, and only subject to change in the event of a Target Adjustment.

S7-3.6.2 In the event of a Target Adjustment, the change in each NOP's Fee for PEW will be determined in accordance with clause S7-6 and clause 20 of this Agreement.

S7-3.6.3 In the event of a redistribution of scope between Participants after the Reference Date for a Project, the Fee for each NOP and all NOPs for the relevant PEW will remain fixed at the

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dollar amount provided within the initial TOC, and only subject to change in the event of a Target Adjustment.

S7-4 Project Gainshare/Painshare Regime

S7-4.1 Focus of the Gainshare/Painshare Regime

S7-4.1.1 The Gainshare/Painshare Regime provides a mechanism for aligning the objectives of the Participants with the project objectives set out in the KRA Performance Requirements by sharing ‘gain’ or ‘pain’ depending on how the performance of the IDE compares with pre-agreed targets in cost and non-cost KRAs.

S7-4.1.2 Gainshare/Painshare payments will be determined in accordance with this clause S7-4.

S7-4.2 Components of the Gainshare/Painshare Regime

S7-4.2.1 The Gainshare/Painshare Regime comprises the sum of the five components shown in Table 2 below, subject (in aggregate) to the NOP downside risk cap in accordance with clause S7-4.9 and NOP Gainshare cap in accordance with clause S7-4.10.

Table 2 – Gainshare/Painshare Regime components

1) TOC underrun/overrun	A sharing of cost underrun or overrun if AOC differs from TOC, determined in accordance with clause S7-4.3
2) Performance in non-cost KRAs	Gainshare and/or Painshare if actual IDE performance differs from MCOS targets within non-cost KRAs, determined in accordance with clause S7-4.4
3) Major Event Modifiers (MEMs)	Painshare if specified events occur, determined in accordance with clause S7-4.5
4) Substantial Breach Modifiers (SBM)	Painshare if a Substantial Breach occurs in accordance with clause S7-4.6
5) Fee Modifier	Painshare if failure to provide essential information in a timely manner in accordance with clause S7-4.7

S7-4.3 Gainshare/Painshare for TOC underrun/overrun

S7-4.3.1 TOC underrun/overrun will be determined by comparing the AOC with the FTOC. Gainshare/Painshare where AOC differs from FTOC will operate as follows:

- a) Where AOC is less than FTOC, the underrun will be distributed between TfNSW, the NOPs and the KRA Gainshare Pool in the following proportions:

TfNSW	$U'_{runTfNSW}\%$	}	Where $U'_{runTfNSW}\%$, $U'_{runNOPs}\%$, and $U'_{runKRAs}\%$ are the % figures stated in Appendix 1 (Schedule 7)
NOPs collectively (Gain\$ _{cost})	$U'_{runNOPs}\%$		
KRA Gainshare Pool	$U'_{runKRAs}\%$		
Total	100%		

Distribution to the NOPs of underrun is not of itself payable. Rather, it is included in the overall Project Gainshare/Painshare calculations, as set out in clause S7-4.8. KRA Gainshare Pool distribution is reflected in clause S7-4.4.1b).

- b) Where AOC is greater than FTOC, the overrun will be distributed between TfNSW and the NOPs in the following proportions:

TfNSW	$O'_{runTfNSW}\%$	}	Where $O'_{runTfNSW}\%$ and $O'_{runNOPs}\%$ are the % figures stated
NOPs collectively (Pain\$ _{cost})	$O'_{runNOPs}\%$		
Total	100%		

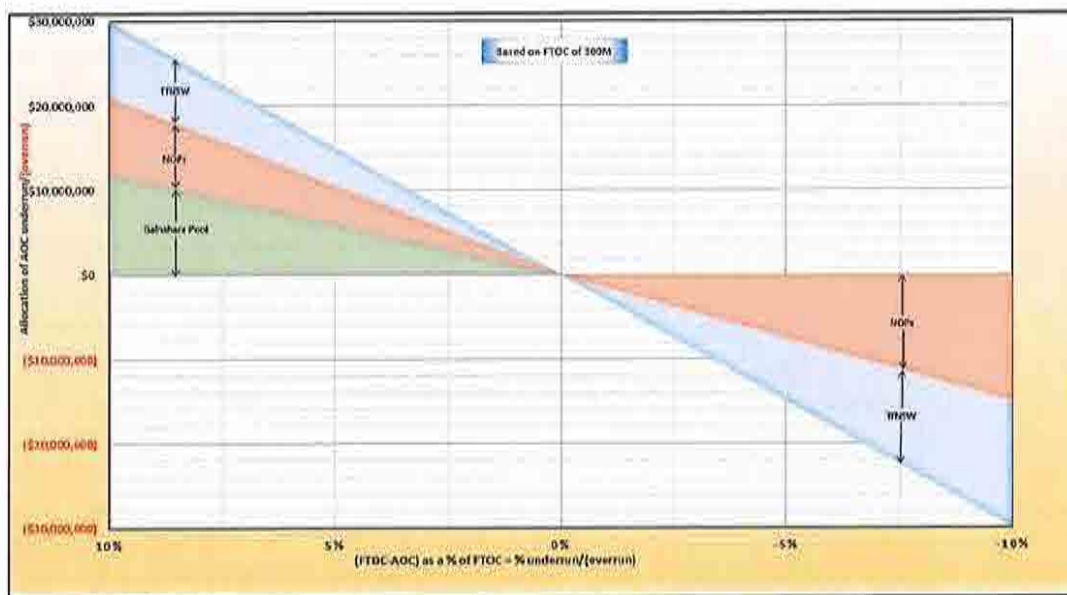
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in Appendix 1
(Schedule 7)

Distribution to the NOPs of overrun is not of itself payable. Rather, it is included in the overall Project Gainshare/Painshare calculations, as set out in clause S7-4.8.

- c) The sharing of TOC under/overrun is illustrated in respect of a hypothetical example in Figure 1 below. This illustration does not show the impact of any other components of the Gainshare/Painshare Regime.

Figure 1 – Hypothetical sharing of TOC underrun/overrun



S7-4.4 Gainshare/Painshare for performance in non-cost Project KRAs

S7-4.4.1 The maximum sum available for Gainshare in relation to non-cost Project KRAs (“KRA Gainshare Pool”) will be calculated as **KRA Gainshare Pool = KRA Seed Fund + KRA Gainshare Top-up** where:

- a) **KRA Seed Fund** = a sum determined by the relationship between FTOC and AOC as follows:
 - i. Where AOC is less than or equal to (FTOC x 1.02):

$$\text{KRA seed fund} = \text{KRA}\%_{\text{Gain}} \times \text{FTOC}; \text{ where}$$

$$\text{KRA}\%_{\text{Gain}} = \text{the figure stated in Appendix 1 (Schedule 7)}$$
 - ii. Where AOC is greater than (FTOC x 1.02) but less than or equal to (FTOC x 1.06):

$$\text{KRA seed fund} = (\text{KRA}\%_{\text{Gain}} \times \text{FTOC}) \times [1.06 - (\text{AOC}/\text{FTOC})]/0.04;$$
 where

$$\text{KRA}\%_{\text{Gain}} = \text{the figure stated in Appendix 1 (Schedule 7)}.$$
 - iii. Where AOC is greater than (FTOC x 1.06), KRA seed fund = zero.
- b) Where AOC is less than FTOC:

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$$\text{KRA Gainshare Top-up} = (\text{FTOC} - \text{AOC}) \times U_{\text{runKRA}}\%$$

$U_{\text{runKRA}}\%$ = The figures stated in appendix 1 (schedule 7)

c) Where AOC is more than or equal to FTOC:

$$\text{KRA Gainshare Top-up} = \text{Zero}$$

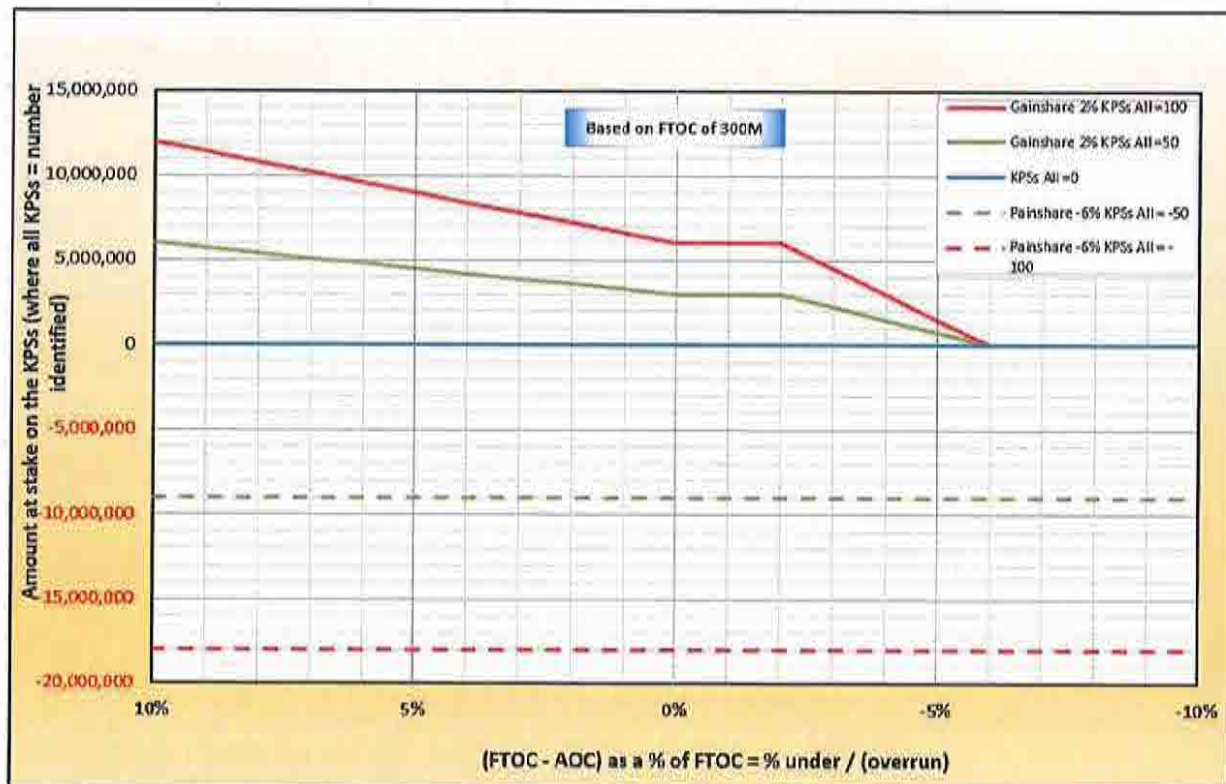
S7-4.4.2 The maximum sum applicable for Painshare in relation to non-cost Project KRAs (“KRA Painshare \$”) will be calculated as:

$$\text{KRA Painshare \$} = (\text{KRA}\%_{\text{Pain}} \times \text{FTOC}); \text{ where}$$

$\text{KRA}\%_{\text{Pain}}$ = the figure stated in Appendix 1 (Schedule 7).

S7-4.4.3 The range of values of the KRA Gainshare Pool and KRA Painshare for a range of AOC values and KPS values is illustrated in Figure 2 below, based on a hypothetical \$300 million FTOC. This illustration does not show the impact of any other components of the Gainshare/Painshare Regime.

Figure 2 – Hypothetical KRA Gainshare Pool and KRA Painshare for various cost and non-cost outcomes



S7-4.4.4 The KRA Gainshare Pool and KRA Painshare will be allocated against the KRAs as set out in the Project KRA Performance Requirements.

S7-4.4.5 One or more KPIs will be used to measure performance in each of the KRAs, with performance measured on a scale of -100 to +100 (both inclusive) using three nodes as applicable (the “Performance Nodes”) as follows:

- a) A score of -100 corresponds to a complete performance failure in that KPI;
- b) A score of zero corresponds to a performance which matches TfNSW’s MCOS;
- c) A score of +100 corresponds to an outstanding performance in that KPI.

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S7-4.4.6 A KRA performance score (“KPS”) in respect of each KRA will be a number between -100 and +100 (both inclusive) calculated as follows:

$$\text{KPS} = \Sigma (\text{KPI weight} \times \text{KPI score})$$

Σ = the total of the bracketed terms for each KPI used to measure performance in the relevant KRA;

KPI weight = the weighting of a KPI used to measure performance in the relevant KRA, being a number between 0 and 100% (with the sum of such KPI weightings applicable to each KRA being 100%);

KPI score = the score between -100 and +100 (both inclusive) determined in accordance with the Project KRA Performance Requirements between the applicable Performance Nodes mentioned in clause S7-4.4.5 (with a score of zero representing MCOS).

S7-4.4.7 Gainshare/Painshare payable for performance in non-cost KRAs will be calculated as follows:

a) Gainshare will be payable to the NOPs (“Gain_{KRA}”) in respect of each KRA for which the KPS is greater than zero and less than or equal to +100, calculated as

$$\text{Gain}_{\text{KRA}} = \text{KRA Gainshare Pool} \times \% \text{ KRA Weight} \times \text{KPS}/100;$$

where

KRA Gainshare Pool = the sum calculated in accordance with clause S7-4.4.1

% KRA Weight = The weighting of the KRA as a %

KPS = the KRA performance score determined for that KRA in accordance with clause S7-4.4.6

b) Painshare will be payable by the NOPs (“Pain_{KRA}”) in respect of each KRA for which the KPS is greater than or equal to -100 and less than zero, calculated as follows:

$$\text{Pain}_{\text{KRA}} = \text{KRA Painshare \$} \times \% \text{ KRA Weight} \times \text{KPS}/100;$$

where

KRA Painshare \$ = the sum calculated in accordance with clause S7-4.4.2

% KRA Weight = The weighting of the KRA as a %

KPS = the KRA performance score determined for that KRA in accordance with clause S7-4.4.6.

c) Subject to clauses S7-4.9 and S7-4.10, total Gainshare/Painshare payable to or by the NOPs in respect of performance in non-cost KRAs (which does not account for MEMs or SBMs or Fee Modifiers, as per clauses S7-4.5 to S7-4.7) will be the aggregate total of Gainshare/Painshare sums in respect of each KRA determined in accordance with this clause S7-4.4.7.

S7-4.4.8 Details of KPIs, their weightings within each KRA, performance measurement methodologies, and performance targets corresponding to each applicable Performance Node are shown in the Project KRA Performance Requirements.

S7-4.5 Major Event Modifiers (MEMs)

S7-4.5.1 The Major Event Modifier (MEM) is a negative modifier only, resulting in Painshare to the NOPs where the IDE causes a high impact event that is totally unacceptable to the IDE.

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- S7-4.5.2 If the IDE causes the occurrence of any of the events listed in the table in Appendix 6 (Schedule 7) then unless the Principal's Representative determines otherwise the corresponding number of (negative) MEM points indicated in the table will be allocated to the relevant Project.
- S7-4.5.3 Subject to clause S7-4.5.4, where multiple MEM points are allocated to a Project the MEM points will accumulate. The MEM score for that Project will be the sum of all the negative points accumulated during the Project.
- S7-4.5.4 If a single event results in multiple events listed in the table in Appendix 6 (Schedule 7), then the MEM points attributed to that single event will be the greatest applicable MEM Points in the table in Appendix 6 (Schedule 7), rather than the aggregate of all MEM points for all relevant events listed in the table in Appendix 6 (Schedule 7).
- S7-4.5.5 Except in respect of Ad Hoc Works, if at the end of the last Defects Notification Period for a Project the MEM score is less than zero, then subject to the overriding downside risk cap as discussed in clause S7-4.9, the MEM Painshare amount (Pain\$MEM) will be calculated as follows:

$$\text{Pain\$MEM} = (((\text{Fee\$NOPs} \times \text{MEM}_{\text{Fee-Pain}}\%) + \text{Gain\$}) \times \left[\frac{\text{MEM}}{-4} \right] \%), \text{ where}$$

Fee\$NOPs = The sum of (Fee\$JHH-PMA + Fee\$Jacobs-PMA) calculated in accordance with clause S7-3.2 for EEW, (Fee\$JHH-PDS + Fee\$Jacobs-PDS) calculated in accordance with clause S7-3.2.4 and (Fee\$JHH-PEW + Fee\$Jacobs-PEW) calculated in accordance with clause S7-3.4 for that Project.

MEM_{Fee-Pain}% = The % figure stated in Appendix 1 (Schedule 7)

$$\text{Gain\$} = \text{Gain/Pain\$}_{\text{Cost}} + \Sigma \text{Gain/Pain\$}_{\text{KRA}}$$

on that Project provided that if this amount is less than zero, it will be taken as zero, where

Gain/Pain\$_{Cost} = Gainshare from cost underrun (Gain\$_{Cost}) pursuant to clause S7-4.3.1a) or Painshare from cost overrun (Pain\$_{Cost}) pursuant to clause S7-4.3.1b) whichever the case may be.

ΣGain/Pain\$_{KRA} = The sum of Gainshare for each KRA (Gain\$_{KRA}) pursuant to clause S7-4.4.7a) plus the sum of Painshare for each KRA (Pain\$_{KRA}) pursuant to clause S7-4.4.7b).

MEM = The sum of the MEM points as defined in Appendix 6 Schedule 7.

- S7-4.5.6 If a MEM occurs in connection with Early Execution Works or Project Development Services, the MEM will be applied:

- a) if an Election Notice is ultimately issued in respect of the Proposed Additional Project, on the Reference Date in accordance with clause S7-4.5.5 as if the EEW or PDS were PEW; or
- b) if an Election Notice is not ultimately issued in respect of the Proposed Additional Project, the Fee%John Holland and Fee%Jacobs will be adjusted as follows for the Early Execution Works and the Project Development Services.

$$\text{Fee\%}_{\text{JEJHMOD}} = \text{Fee\%}_{\text{JHH}} \times \frac{100 + \text{MEM Points}}{100} ; \text{ where}$$

Fee%_{JHH} = The Fee % for John Holland as stated in Appendix 1 (schedule 7)

MEM Points = The (negative) MEM Points shown in Appendix 6 (schedule 7) for the major event which has occurred

$$\text{Fee\%}_{\text{JacobsMOD}} = \text{Fee\%}_{\text{Jacobs}} \times \frac{100 + \text{MEM Points}}{100} ; \text{ where}$$

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$Fee\%_{Jacobs}$ = The Fee % for Jacobs as stated in Appendix 1 (schedule 7)

MEM Points = The (negative) MEM Points shown in Appendix 6 (schedule 7) for the major event which has occurred

S7-4.5.7 If a MEM occurs in connection with Program Management Activities, the MEM will be applied in respect of the Project that:

- a) has the highest value TOC at the date of the relevant MEM; and
- b) in respect of which a Certificate of Completion has not been issued at the date of the relevant MEM,

as if the PMA were PEW.

S7-4.5.8 Where a MEM occurs in connection with Ad Hoc Works, the $Fee\%_{JHJH}$ and $Fee\%_{Jacobs}$ will be adjusted as follows for the entire scope of work (including activities already performed) that was part of the Ad Hoc Works that were being undertaken at the time of the incident which resulted in a MEM.

$$Fee\%_{JHJHMOD} = Fee\%_{JH} \times \frac{100 + MEM\ Points}{100} ; \text{ where}$$

$Fee\%_{JH}$ = The Fee % for John Holland as stated in Appendix 1 (schedule 7)

MEM Points = The (negative) MEM Points shown in Appendix 6 (schedule 7) for the major event which has occurred

$$Fee\%_{JacobsMOD} = Fee\%_{Jacobs} \times \frac{100 + MEM\ Points}{100} ; \text{ where}$$

$Fee\%_{Jacobs}$ = The Fee % for Jacobs as stated in Appendix 1 (schedule 7)

MEM Points = The (negative) MEM Points shown in Appendix 6 (schedule 7) for the major event which has occurred

S7-4.6 Substantial Breach Modifier (SBM)

S7-4.6.1 A substantial breach of agreed governance obligations ('Substantial Breach') is defined as a failure to comply with the requirements of:

- a) the Procurement Management Plan (as referred to in the Collaborative Contracts TSR);
- b) the Cost Management Plan (as referred to in the Collaborative Contracts TSR); or
- c) the financial delegation schedule (as referred to in Annexure D of the Collaborative Contracts TSR).

S7-4.6.2 We acknowledge that where the IDE commits a Substantial Breach TfNSW may suffer significant reputational and/or financial loss.

S7-4.6.3 Where a Substantial Breach occurs that the Principal's Representative determines, following consultation with the LT, has caused or could cause significant reputational and/or financial loss to TfNSW, the NOPs will pay TfNSW a painshare amount in the form of a Substantial Breach Modifier (SBM), calculated as follows:

$$Pain\$_{SBM} = Procured\$_{SB} \times Fee\%_{NOP}; \text{ where}$$

Procured\$_{SB} = The total contract value of the procurement which is the subject of the Substantial Breach; and

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$Fee\%_{NOP}$ = The Fee% as shown in Appendix 1 (Schedule 7) for the NOP which would be the recipient of the Fee\$ associated with the procurement

S7-4.7 Fee Modifier

S7-4.7.1 We acknowledge that failure by the IDE to provide information and reports to TfNSW in a timely manner impacts TfNSW's ability to manage the Agreement and manage stakeholders.

S7-4.7.2 Where the IDE fails to provide information or reports required under this Agreement within the time required under this Agreement, unless otherwise directed by the Principal's Representative, the NOPs will pay TfNSW a Painshare amount in the form of a Fee Modifier (FM), calculated as follows:

$Pain\$_{FeeMod}$ = $\sum(\text{Fee Modifier Event}\$)$; where

Fee Modifier Event\$ = The amount of fee reduction for each instance of failure to provide information or reports as detailed in Appendix 1 (Schedule 7)

S7-4.8 Net Gainshare/Painshare for Projects

S7-4.8.1 The net Gainshare/Painshare to/from the NOPs from all sources on a Project will be calculated as follows (noting that Painshare is treated as a negative amount for the purposes of this formula):

$Gain/Pain\$_$ = $Gain/Pain\$_{Cost} + \sum Gain/Pain\$_{KRA} + Pain\$_{MEM} + Pain\$_{SBM} + Pain\$_{FeeMod}$; where

$Gain/Pain\$_{Cost}$ = Gainshare from cost overrun ($Gain\$_{Cost}$) pursuant to clause S7-4.3.1a) or Painshare from cost overrun ($Pain\$_{Cost}$) pursuant to clause S7-4.3.1b) whichever the case may be.

$\sum Gain/Pain\$_{KRA}$ = The sum of Gainshare for each KRA ($Gain\$_{KRA}$) pursuant to clause S7-4.4.7a) plus the sum of Painshare for each KRA ($Pain\$_{KRA}$) pursuant to clause S7-4.4.7b).

$Pain\$_{MEM}$ = The MEM Painshare amount calculated under clause S7-4.5.5.

$Pain\$_{SBM}$ = The SBM Painshare amount calculated under clause S7-4.6.3.

$Pain\$_{FeeMod}$ = The Fee Modifier Painshare amount calculated under clause S7-4.7.2

S7-4.9 NOP downside risk cap for each Project

S7-4.9.1 Regardless of how poor the actual outcomes are or what figures are derived by the application of the various formulae set out in this clause S7-4, the maximum aggregate Painshare amount for each NOP in respect of a Project will be limited to an amount equal to the total Fee payable to that NOP for that Project (including the Fee for PDS and EEW associated with that Project) in accordance with clause S7-3.

S7-4.10 NOP Gainshare cap for each Project

S7-4.10.1 Regardless of the level of performance the IDE achieves, what the actual outcomes are or what figures are derived by the application of the various formulae set out in this clause S7-4, the maximum aggregate Gainshare amount for each NOP in respect of each Project will be limited to an amount equal to the total Fee payable to that NOP for a Project (including the Fee for PDS and EEW associated with that Project) in accordance with clause S7-3.

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S7-4.11 Sharing of Gainshare/Painshare amongst the NOPs

- S7-4.11.1 The overall net Gainshare or Painshare in respect of a Project will be shared amongst the NOPs in a proportion determined by the NOPs and notified in writing to TfNSW.

S7-5 Program and Non-project Gainshare/Painshare Regime

S7-5.1 Gainshare/Painshare for Program Management Budget cost performance

S7-5.1.1 A Program Management Budget may be agreed in accordance with clause 22.1.

S7-5.1.2 We agree that there is no cost performance Gainshare or Painshare associated with Program Management Budgets.

S7-5.2 Overview of Program KRA Scores

S7-5.2.1 While it is important that the outcomes of each Project meets or exceeds MCOS targets, we agree that the IDE can deliver increased value for money to TfNSW by collectively participating in the Joint Coordination Team (JCT) with any Other IDE (and others) to achieve outcomes that could not be achieved individually, without a joint co-ordination framework.

S7-5.2.2 In consultation with the Joint Coordination Team, TfNSW will (in its absolute discretion) determine the POS_{AP} applicable for each assessment period (which will not exceed the POS_{MAX} as stated in Appendix 1) which will be used to determine the maximum value of the program Gainshare in accordance with clause S7-5.3.1.

S7-5.2.3 We acknowledge and agree that the Program KRA Score will be dependent on the combined performance of the IDE and any Other IDE.

S7-5.2.4 The Program KRA Performance Requirements will apply to both the IDE and any Other IDE. We acknowledge that the Program KRA scores will be identical for both the IDE and any Other IDE regardless of any difference in performance or contribution to achieving Program KRA performance.

S7-5.2.5 The IDE's program performance will be assessed throughout the Term using different time durations. Unless otherwise agreed by the LT and TfNSW (in its absolute discretion), the assessment periods will be timed as follows:

- (a) initial assessment period – Commencement Date until 30 months after the Commencement Date; and
- (b) second assessment period - 30 months after the Commencement Date until 5 years after the Commencement Date.

If the Commencement Date for the IDE is not concurrent with the "Commencement Date" for any Other IDE, the latest of the relevant dates will be used in the determination of the assessment periods above.

If the Term is extended beyond 5 years, the LT and the Principal's Representative will agree further assessment periods (or, failing agreement, the Principal's Representative may determine further assessment periods in its absolute discretion).

S7-5.2.6 For each assessment period, a Program Outcome Score (POS) will be determined using the following general terminology:

- (a) A Program KRA score, a number between 0 and +100 (both inclusive), will be determined by the Principal's Representative utilising evidence provided by the IDE and any Other IDE for each Program KRA where a score of:
 - (i) Zero would reflect MCOS performance; and
 - (ii) +100 would reflect outstanding performance.
- (b) The POS number between 0 and +100 (both inclusive) will be calculated as a weighted average of the Program KRA scores referred to in paragraph (a), using weightings as stated in the agreed Program KRA Performance Requirements.

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- (c) For the initial assessment period, the Program KRAs and associated Program KPIs are as detailed in the Program KRA Performance Requirements.
- (d) For other assessment periods, the JCT, in consultation with the LT must recommend and TfNSW may (in its absolute discretion) agree to a set of Program KRAs and Program KPIs (and revised Program KRA Performance Requirements) that provide additional value in the delivery of the MTMS Program prior to the commencement of the assessment period.

S7-5.3 POS Gainshare

S7-5.3.1 Subject to clause S7-5.3.5, at the completion of the assessment period the POS Pool for that period ($POSS_{POOL}$) will be calculated in aggregate across all completed and partially completed stand-alone Projects for which a TOC applies (which, for the avoidance of doubt, excludes Ad Hoc Works) determined as follows:

$$POSS_{POOL-AP} = \sum(TOC \times EV\%_{AP}) \times POS\%_{AP}; \text{ where}$$

\sum = means the cumulative total of all elements.

TOC = The current adjusted TOC (excluding any forecast TAEs or TAEs not yet formally approved by the Principal's Representative) for a Project.

$EV\%_{AP}$ = The earned value percentage for the assessment period of a Project as calculated by the General Manager and approved by the Principal's Representative.

$POS\%_{AP}$ = For the initial assessment period, the value stated in Appendix 1
For the second and additional assessment periods, a value not exceeding the $POS\%_{MAX}$ as stated in Appendix as determined by TfNSW in its absolute discretion and, if a $POS\%$ has not been determined, Nil%.

S7-5.3.2 Subject to clause S7-5.3.5, at the time of each POS assessment the available POS Pool in respect of the relevant assessment period ($POSS_{POOLPERIOD}$) will be calculated as follows:

$$POSS_{POOLPERIOD} = (\sum TOC \times EV\%_{AP}) - (\sum TOC \times EV\%_{AP-1}); \text{ where}$$

$EV\%_{AP}$ = The earned value % for each Project for the relevant assessment period; and

$EV\%_{AP-1}$ = The earned value % for each Project for the previous assessment period

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S7-5.3.3 Subject to clause S7-5.3.5, for each POS assessment, if the POS is assessed as greater than zero, then subject to the conditions set out in clause S7-5.3.4 below, TfNSW will pay the NOPs a POS Gainshare amount ($\text{Gain}_{\text{POS_AP}}$), calculated as follows:

$$\text{Gain}_{\text{POS_AP}} = \text{POSS}_{\text{POOLPERIOD}} \times \frac{\text{POS}}{100}; \text{ where}$$

$\text{POSS}_{\text{POOLPERIOD}} = \text{POS Pool determined in accordance with clause S7-5.3.2.}$
 $\text{POS} = \text{The POS as assessed in accordance with clause S7-5.2.6 (being a positive number between zero and + 100).}$

S7-5.3.4 If the IDE has accumulated more than 75 MEM (negative) points during the assessment period for any Project, Ad Hoc Works, Project Development Services or Program Management Activities, then the NOPs will lose any entitlement that the NOPs would otherwise have had to POS Gainshare from the POS assessment.

S7-5.3.5 In respect of each Project for which a TOC applies, if:

- a) the Agreement Particulars identifies a Date for Operational Readiness for that Project; and
- b) either (or both):
 - i. the Date of Operational Readiness for that Project does not occur by the Date for Operational Readiness; or
 - ii. if an associated project for the Other IDE and an associated date for operational readiness is identified in the Agreement Particulars for that Project, that associated project does not achieve “operational readiness” (determined in accordance with the terms of engagement of the Other IDE) by the relevant “date for operational readiness” (determined in accordance with the terms of engagement of the Other IDE), as notified by the Principal’s Representative,

then the earned value contribution to the $\text{POSS}_{\text{POOLPERIOD}}$ for that Project will be nil.

S7-5.3.6 The overall POS gainshare will be shared amongst the NOPs in a proportion determined by the NOPs and notified in writing to TfNSW.

S7-5.4 POS Painshare

S7-5.4.1 There is no Painshare associated with Program Outcome Scores (POS).

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S7-6 Adjustments to TOC and other Gainshare/Painshare targets

S7-6.1 Adjustment to Fees for PEW as a result of Target Adjustment Events

S7-6.1.1 A Target Adjustment Event which results in a change to an estimate of a NOP's Reimbursable Costs for PEW will also give rise to a change in that NOP's Fee for PEW.

S7-6.2 Adjustment to KRA Gainshare Pool or KRA Painshare

S7-6.2.1 A Target Adjustment will lead to a change in the dollar value of the KRA Gainshare Pool or KRA Painshare.

S7-7 Calculation of final TOC and AOC

S7-7.1 Final Target Outturn Cost

S7-7.1.1 The final TOC ('FTOC') for a Project will be determined as follows:

$$\mathbf{FTOC} = \mathbf{ITOC} + \Sigma(\mathbf{TA}_{\mathbf{TOC}} + \mathbf{TA}_{\mathbf{Fee}}) \text{ where:}$$

\mathbf{ITOC} = The initial TOC for the relevant Project as at the relevant Reference Date;

Σ = the cumulative total of $(\mathbf{TA}_{\mathbf{TOC}} + \mathbf{TA}_{\mathbf{Fee}})$ for all Target Adjustments for the relevant Project;

$\mathbf{TA}_{\mathbf{TOC}}$ = the adjustment, if any, to the estimate of TfNSW IDA Costs and NOPs' Reimbursable Costs for all Target Adjustments for the relevant Project; and

$\mathbf{TA}_{\mathbf{Fee}}$ = the sum of adjustments to each NOP's Fee for PEW for the relevant Project calculated in accordance with clause S7-6.1.

S7-7.2 Actual Outturn Cost

S7-7.2.1 The Actual Outturn Cost for a Project will be determined as:

$$\mathbf{AOC} = (\Sigma\mathbf{RC} + \Sigma\mathbf{Fee} + \Sigma\mathbf{TfNSWS} - \Sigma\mathbf{in}) \text{ where:}$$

$\Sigma\mathbf{RC}$ = the total Reimbursable Costs payable to the NOPs for the relevant Project;

$\Sigma\mathbf{Fee}$ = the total of all Fees payable to the NOPs for the relevant Project;

$\Sigma\mathbf{TfNSWS}$ = the total aggregate amount of TfNSW IDA Costs for the relevant Project; and

$\Sigma\mathbf{in}$ = the net income received by any of the Participants in respect of the relevant Project, of the type mentioned in clause S7-2.1f) or S7-2.3.2.

S7-8 Quantum of payments

S7-8.1 Overriding principle of cash neutrality

S7-8.1.1 Notwithstanding the various formulae set out below in clause S7-8.2, the amounts allowed for accruals within each progress claim/payment may be adjusted to ensure that the NOPs remain approximately “cash neutral” in respect of the expenditure and reimbursement of Reimbursable Costs for Project Definition Services in respect of which a Single TOC Process applies, Early Execution Works, Project Execution Works, Ad Hoc Works and Program Management Activities.

S7-8.2 Project progress payments prior to Completion

S7-8.2.1 Subject to clause S7-8.2.2, progress payments for a Project in accordance with clause 21.2 prior to the Date of Completion will be calculated for each NOP as $[(RC_{TD} + Fee_{TD}) - \Sigma Paid]$ where:

RC_{TD} = Total to date of the NOP’s Reimbursable Cost for the Project (i.e. to the cut-off date for the progress claim) based on:

- i. actual cost of items which have already been invoiced to and/or paid by the NOP; and
- ii. accruals for the cost for goods and services, and wages where agreed by the LT, that have already been supplied or delivered but which have not yet been invoiced/paid;

Fee_{TD} = a portion of the Fee payable to the NOP for the Project pursuant to clause S7-3 in direct proportion to the % complete (at the progress claim cut-off date) of that NOP’s component of the IDE Activities, based on “earned value” reporting data proposed by the General Manager to the Principal’s Representative and if no proposal is made an assessment by the Principal’s Representative;

$\Sigma Paid$ = the total amount (excluding GST) previously paid (or subject to set off in accordance with clause 21.8 of this Agreement) for the Project up to that time.

S7-8.2.2 On recommendation by the LT, the Principal’s Representative may approve an interim payment of Gainshare or Painshare be made under the Gainshare/Painshare Regime. The LT will take reasonable steps to avoid making a recommendation to make a Gainshare payment in circumstances where it may be likely that a NOP may have to subsequently refund any payments (rather than being able to offset any Gainshare/Painshare against ongoing payments).

S7-8.3 Payment upon Date of Completion of a Project

S7-8.3.1 The first payment for a Project after the Date of Completion will be calculated for each NOP as $[(RC_{TD} + Fee_{TD} + Gain/Pain\$_{Prov}) - \Sigma Paid]$ where:

RC_{TD} , Fee_{TD} , and $\Sigma Paid$ have the same meanings as in clause S7-8.2.1; and

$Gain/Pain\$_{Prov}$ = a provisional estimate of the amount of Gainshare or Painshare under the Gainshare/Painshare Regime, having made a reasonable allowance for the cost and KRA performance implications of attending to Defects up to the Date of Final Completion, and with reasonable provision to avoid a NOP having to refund any payments once the total Gainshare/Painshare payment is determined.

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S7-8.4 Payment upon Date of Final Completion of a Project

S7-8.4.1 The payment for a Project after the Date of Final Completion will be calculated for each NOP as $[(RC\$ + Fee\$ + Gain/Pain\$) - \Sigma Paid]$ where:

$RC\$$ = total Reimbursable Cost payable to that NOP for the IDE Activities in accordance with this Schedule 7;

$Fee\$$ = total Fee payable to that NOP for the IDE Activities in accordance with this Schedule 7;

$Gain/Pain\$$ = The total Gainshare amount payable to the NOP or the total Painshare amount payable by the NOP in accordance with this Schedule 7; and

$\Sigma Paid$ has the same meanings as in clause S7-8.2.1.

S7-8.5 Progress payments for Project Development Services, Early Execution Works, Ad Hoc Works and Program Management Activities

S7-8.5.1 Subject to any caps set out in this Agreement, payments in accordance with clause 21.2 for PMA, AHW or PDS will allow amounts for each NOP calculated as $[(RC_{TD-JH} + Fee\$_{TD-JH} - \Sigma Paid_{JH}) + (RC_{TD-Jacobs} + Fee\$_{TD-Jacobs} - \Sigma Paid_{Jacobs})]$ where:

RC_{TD-JH} = Total to date of John Holland's Reimbursable Cost (i.e. to the cut-off date for the progress claim) based on:

- i. actual cost of items which have already been invoiced to and/or paid by the NOP; and
- ii. accruals for the cost for goods and services, and wages where agreed by the LT, that have already been supplied or delivered but which have not yet been invoiced/paid;

$RC_{TD-Jacobs}$ = Total to date of Jacobs' Reimbursable Cost (i.e. to the cut-off date for the progress claim) based on:

- i. actual cost of items which have already been invoiced to and/or paid by the NOP; and
- ii. accruals for the cost for goods and services, and wages where agreed by the LT, that have already been supplied or delivered but which have not yet been invoiced/paid;

$Fee\$_{TD-JH}$ = Total to date of John Holland's Fee applicable to RC_{TD-JH} ;

$Fee\$_{TD-Jacobs}$ = Total to date of Jacobs's Fee applicable to $RC_{TD-Jacobs}$;

$\Sigma Paid_{JH}$ = the total amount (excluding GST) previously paid to John Holland up to that time; and

$\Sigma Paid_{Jacobs}$ = the total amount (excluding GST) previously paid to Jacobs up to that time.

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Appendix 1 (Schedule 7) – Confidential Parameters

Confidential Information – Not for Distribution

Clause	Area/Item	Information	
	Limb 2 Fees	Refer below Information	
S7-4.3.1a)	Sharing of Cost Underruns	$U'_{TUN_{TINSW}}\%$	30%
		$U'_{TUN_{NOPS}}\%$	30%
		$U'_{TUN_{KRA}}\%$	40%
S7-4.3.1b)	Sharing of Cost Overruns	$O'_{TUN_{TINSW}}\%$	50%
		$O'_{TUN_{NOPS}}\%$	50%
S7-4.4.1	KRA Seed Pool for a Project	$KRA\%_{Gain}$	2%
S7-4.4.2	Maximum KRA Pain for a Project	$KRA\%_{Pain}$	6%
	Portion of Fee at MEM Risk	$MEM_{Fee-Pain}\%$	100%
S7-3.2, S7-3.3, S7-3.4,	John Holland Fee %	$Fee\%_{JH}$	██████████
	Jacobs Fee%	$Fee\%_{Jacobs}$	██████████
S7-4.7	Fee Modifier	Failure to provide any Monthly Progress Report on time as detailed in TSR CC	\$5,000 per occurrence
S7-5.2.2	Maximum Program KRA POS% for an Assessment period	$POS\%_{MAX}$	2%
S7-5.3.1		Initial assessment period $POS\%_{AP}$	1%

Appendix 2 (Schedule 7) – Employee-related Reimbursable Cost provisions

The provisions in Appendix 2 will apply unless noted otherwise in Appendix 4 (Schedule 7) and Appendix 5 (Schedule 7).

Category	Reimbursable Cost?	Definitions, category-specific conditions and basis of cost recovery
1. Salaries and wages	Conditional	Actual costs for personnel employed by a NOP up to and including the General Manager (TFR for salaried staff and TR in accordance with the applicable certified agreements for wages personnel) will be Reimbursable Costs provided that such costs are incurred in respect of work undertaken on IDE Activities as evidenced by records to the satisfaction of the FA.
2. Annual leave including annual leave loading	via ERO	Such costs will be recovered via the ERO applied to salaries and wages costs, calculated on the basis of 20 days or actual annual leave days entitled per year in accordance with the NOP's normal remuneration policy. The actual rate of annual leave used will not be reconciled by the FA.
3. Public holidays	via ERO	Such costs will be recovered via the ERO applied to salaries and wages costs, calculated on the basis of gazetted public holidays in NSW. The actual rate of leave used will not be reconciled by the FA.
4. Sick and personal leave (bereavement, parental, maternity)	via ERO	Where provided as conditions of employment, such costs will be recovered via the ERO applied to salaries and wages costs, at a rate which matches the NOP's historical average actual cost incurred over the last three complete financial years for the applicable business unit, or, where such history is unavailable, determined by the FA having regard to industry norms. The actual historic rate determined by the FA during the Establishment Audit will apply throughout the initial term of the IDE Activities and will not be reconciled against actual cost incurred.
5. Salaried staff long service leave	via ERO	Such costs (which may be lower than statutory or accounting accrual rate due to staff turnover) will be recovered via the ERO applied to salaries and wages costs, at a rate that is equal to the NOP's historical average actual cost incurred over the last three complete financial years for the applicable business unit, or, where such history is unavailable, determined by the FA having regard to industry norms. The accrual rate determined by the FA during the Establishment Audit will apply throughout the initial term of the IDE Activities and will not be reconciled against actual cost incurred.
6. Payroll tax	via ERO	Such costs will be recovered via the ERO at a rate based on the applicable payroll tax rate in accordance with the <i>Payroll Tax Act 2007</i> (NSW).
7. Workers compensation	via ERO	Such costs will be recovered via the ERO at a rate based on the latest annual premium notice for the applicable NOP business unit at the time of the Establishment Audit. Once determined by the FA during the Establishment Audit that rate will apply

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Category	Reimbursable Cost?	Definitions, category-specific conditions and basis of cost recovery
		throughout the initial term of the IDE Activities and will not be reconciled against actual cost incurred.
8. Superannuation	via ERO	Such costs will be recovered via the ERO at a rate based on each employee's statutory entitlement. The superannuation ERO item will apply up to the maximum contribution base noted by the ATO unless the NOP can satisfy the FA that amounts above the maximum contribution base are paid.
9. Other statutory employment-related costs	via ERO	Other statutory employment-related costs properly incurred due to implementation of and compliance with NSW State and Federal Government Statutory Requirements relating to the employment of people will be recovered via the ERO at a rate based on the actual cost/liability as determined by the FA.
10. Salaried staff - overtime	Conditional	Actual cost of salaried staff overtime (including applicable ERO elements determined by the FA during the Establishment Audit) will be a Reimbursable Cost provided such cost is: <ul style="list-style-type: none"> a) incurred in accordance with a policy developed by the General Manager and approved by the LT (covering both overtime payments, special possession payment etc. and taking of time in lieu of payment); and b) specifically directed and pre-approved by the General Manager.
11. Wages personnel - overtime	Conditional	Costs for wages personnel overtime and penalty time paid in accordance with the applicable certified agreements, together with the applicable ERO elements determined by the FA during the Establishment Audit, will be Reimbursable Costs provided such costs are specifically directed and approved by the General Manager. ERO elements will only include items specifically required and paid under the applicable certified agreements.
12. Project or Site allowances salaried staff	Conditional	Such costs will be Reimbursable Costs provided that they are embedded within an employee's TFR as a normal part of the terms and conditions for that role. Unless pre-approved by the LT, such costs will not be reimbursable where applied as a project-specific allowance in addition to the employee's TFR, and no ERO allowance will be made for that cost in such cases.
13. Project or Site allowances – wages personnel	Yes	Such costs paid in accordance with the applicable certified agreements will be Reimbursable Costs together with the applicable ERO elements within each employee's TR.
14. Living away from home allowance	Conditional	Such costs will be Reimbursable Costs recovered within each employee's TFR / TR provided they are incurred in accordance with an HR Management Plan (identifying the type of LAFHA payable and the criteria for eligible employees) endorsed by the LT. If specialist resources are required and approved by the LT any applicable LAFHA allowances will also need pre-approval from the LT prior to being claimed as reimbursable.
15. Tools of the trade (including	Yes	Such costs will be Reimbursable Costs recovered within each employee's TFR / TR.

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Category	Reimbursable Cost?	Definitions, category-specific conditions and basis of cost recovery
company vehicles) provided as part of TFR / TR		
16. Fringe Benefits Tax associated with salary packages	Yes	Such costs will be Reimbursable Costs recovered within each employee's TFR / TR. FBT paid outside of a TFR will not be separately a Reimbursable Cost.
17. Wage and salary increases	Conditional	Wage increases will be Reimbursable Costs provided such costs are in accordance with the industrial agreement. Salary increases will be Reimbursable Costs provided such costs are: a) demonstrably in accordance with the applicable NOP's current remuneration policies; and b) first approved by the LT where the increase is above 12.5% of the approved benchmark.
18. Increase in statutory employment entitlements beyond initial ERO levels	Conditional	Unless otherwise agreed by the LT, additional costs advised by the FA due to statutory increases in employment entitlements recovered by EROs at the levels identified in the FA approved EROs will be Reimbursable Costs.
19. Travel and relocation expenses for existing staff from intrastate, interstate or overseas	Conditional	Where the IDE utilises non-local staff on a Best For Project basis due to requisite specialised skills not being available locally, actual costs of such travel expenses will be Reimbursable Costs provided such costs are: a) incurred in accordance with a policy prepared by the General Manager and approved by the LT; and b) specifically approved by the General Manager.
20. Travel expenses from Site or an IDE office	Conditional	Costs of IDE personnel undertaking IDE-specific travel away from Site or a dedicated IDE office, including transfers, accommodation, meals and reasonable per diems will be Reimbursable Costs provided that such costs are incurred in accordance with an outbound IDE-specific travel policy prepared by the General Manager (after consideration of the NOPs' individual policies and procedures) and approved by the LT.
21. Travel expenses – to/from Participant's office	No	Travel expenses to/from a Participant's office located within the Greater Sydney Metropolitan area will not be Reimbursable Costs. Where a Participant reimburses its staff for local travel expenses these costs will not be Reimbursable Costs.
22. IDE-specific training	Conditional	Actual costs of IDE-specific training (including site inductions and work health & safety inductions) necessarily associated with performing the IDE Activities will be Reimbursable Costs provided such costs are incurred in accordance with the training provisions of the relevant Management Plan (or relevant sub-plan) approved by the LT and the Principal's Representative.

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Category	Reimbursable Cost?	Definitions, category-specific conditions and basis of cost recovery
23. Non IDE-specific training	No	Such costs will not be Reimbursable Costs. This exclusion encompasses: <ul style="list-style-type: none"> a) all non-IDE-specific vocational training, professional development or NOP business development; and b) both the cost of training and the cost of employees' time of attending the training.
24. Recruitment and relocation expenses (new staff)	Conditional	Recruitment and relocation expenses associated with new staff or wages personnel will not be Reimbursable Costs unless they are specialist staff or personnel and separately pre-approved by the LT and where in line with the HR Management Plan.
25. Bonuses and 'reward and recognition' schemes	No	Costs of any bonus, retention payment, individual incentive scheme, 'reward and recognition' scheme and the like whether for staff or wages personnel will not be Reimbursable Costs.
26. Redundancy costs	No	Such costs will not be Reimbursable Costs on the basis that the NOP may utilise the employee elsewhere in its business or engage the employee on a basis which does not incur redundancy liability (e.g. a term contract).
27. LT time and travel expenses	No	Time or salary-related labour costs of a Participant's representative performing LT duties and associated travel and subsistence expenses will not be Reimbursable Costs.
28. Retention costs for key salary personnel	Conditional	Retention costs will only be reimbursable where pre-approved by the LT. The LT may consider the risk associated with non-retention of the key salary personnel including impact on key milestones and KRAs.

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Appendix 3 (Schedule 7) – Non-employee-related Reimbursable Cost provisions

The provisions in Appendix 3 will apply unless noted otherwise in Appendix 4 (Schedule 7) and Appendix 5 (Schedule 7).

Category	Reimbursable Cost?	Definitions, category-specific conditions and basis of cost recovery
1. Subcontracts with unrelated Subcontractors	Conditional	<p>Costs of Subcontractors, purchases of materials, equipment, services, utilities, professional or technical services and the like directly engaged to supply or perform elements of the IDE Activities and/or the Works will be Reimbursable Costs provided that:</p> <ul style="list-style-type: none"> a) the procurement is undertaken in accordance with the Procurement Management Plan approved by the LT and the Principal's Representative; b) all discounts and rebates (including annual or company discounts, bulk discounts, cash or cash-equivalent rebates, inter-company discounts and the like) obtained by a NOP in relation to such as part of the IDE Activities will be credited against Reimbursable Costs; and c) all items so purchased which become surplus to IDE requirements are disposed of at fair market value and the proceeds credited against Reimbursable Costs. This also includes materials and assets that are surplus to a project and transferred to, or utilised on, an Additional Project.
2. Related Party transactions	Conditional	<p>Costs of supply of materials and subcontracts for performance of any aspect of the IDE Activities or the Works by any entity which is a Related Party to a NOP will be Reimbursable Costs provided that:</p> <ul style="list-style-type: none"> a) such costs and associated subcontract arrangements including costing methodology (i.e. basis of unit costing, method of cost calculation, and applicable charging rates for cost recovery) are, in all material respects, explicitly in line with the relevant components of the Accepted Project Proposal and build-up of the TOC; or b) such costs and the terms of the associated subcontract are approved by the LT as being Best For Project prior to commitment to the transaction in accordance with the relevant requirements of the Agreement regarding related entity transactions.
3. NOP's health-checks and organisational coaching	Conditional	<p>Actual costs of such activities will be Reimbursable Costs provided such costs are specifically approved by the General Manager and the LT.</p>
4. NOP- initiated corporate	No	<p>Costs associated with NOP corporate or senior executive reviews of the IDE or corporate governance functions (e.g. risk reviews or internal audit functions and the like) initiated by a</p>

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Category	Reimbursable Cost?	Definitions, category-specific conditions and basis of cost recovery
reviews, internal audits etc.		NOP parent entity will not be Reimbursable Costs. For clarity, where an audit or review activity is initiated by the IDE the costs of that activity will be Reimbursable Costs.
5. Off-Site administration or support functions	No	NOP administrative or support functions which are not Site-based and/or not directly involved in performing the IDE Activities under the immediate control and direction of the General Manager will not be Reimbursable Costs.
6. NOP Finance administration charges	No	NOPs corporate finance, administration and cashflow fees and similar charges will not be Reimbursable Costs.
7. Communication and information technology	Conditional	<p>IDE communication and IT costs in the following categories will be Reimbursable Costs:</p> <ul style="list-style-type: none"> a) IT support for IDE staff on Site, including corporate software and systems and IDE-specific software and hardware; b) Site-based IT system administration; c) use, purchase or upgrade of software and licences including NOP corporate and Site-based software for IDE purposes (e.g. payroll and accounting); d) Site-based IT hardware including desktop computers, printers, LAN/WAN networks, servers, telephones, and the like; e) Site-based IT operating costs, including phone charges, internet charges, consumables, and maintenance; <p>provided that such costs are:</p> <ul style="list-style-type: none"> f) in all material respects, explicitly in line with the relevant components of the Accepted Project Proposal and build-up of the TOC including costing methodology (i.e. basis of unit costing, method of cost calculation, and applicable charging rates for cost recovery); g) incurred on a transparent and auditable basis; h) specifically incurred for the purposes of the IDE, or allocated to the IDE on a fair and proportional basis to the satisfaction of the FA (relative to the other purposes for which such cost is incurred); and i) under the specific control of the General Manager. <p>Such costs will be recovered on the basis of per-item or per-head unit rates determined by the Participants during the proposal development phase for the Initial Project. These rates will be subject to reconciliation by the FA against actual costs.</p>
8. Donations and sponsorship	No	Costs of charitable donations, sponsorships and the like will not be Reimbursable Costs.
9. Entertainment	No	IDE or corporate entertainment costs will not be Reimbursable Costs.
10. Team building events	Conditional	Costs of team building events or similar events are Reimbursable Costs provided they are:

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Category	Reimbursable Cost?	Definitions, category-specific conditions and basis of cost recovery
		a) under the specific control of the General Manager; and b) incurred with specific prior approval of the LT. Any applicable FBT incurred on these events will not be Reimbursable Costs.
11. Insurance premiums and proceeds	Conditional	Costs (or the applicable portion of costs) of insurance premiums for policies required under the agreement (but not effected by TfNSW) will be Reimbursable Costs provided that: <ul style="list-style-type: none"> a) the Reimbursable Cost portion of such an insurance premium will exclude any additional costs due to differences in condition, differences in limit or differences in excess charge required or normally maintained by a NOP over and above the levels required under clause 26 of this Agreement; and b) any proceeds received by a NOP in relation to losses arising out of or in connection with the IDE Activities under an insurance policy required under the Agreement, will, to the extent that such proceeds mitigate costs which have been paid to the NOP as Reimbursable Costs under this Agreement, be credited against the Reimbursable Costs.
12. Insurance - deductibles	Conditional	Costs which would otherwise be Reimbursable Costs under and which are incurred by a NOP in relation to a claim or potential claim under an insurance policy effected by the NOPs in accordance with this Agreement (but which fall below the excess threshold under that insurance and therefore are not recovered by the proceeds of that insurance) will remain Reimbursable Costs.
13. Increase in insurance premiums or deductibles due to claims	No	Where an insurance premium is increased above the increases which are generally made in the insurance market and which is due to an insurance claim or claims arising out of non-IDE Activities, the increased portion of insurance costs due to the insurance claim or claims will not be Reimbursable Costs. Where an insurance deductible is increased above the general increases in deductibles in the insurance market due to an insurance claim arising out of non-IDE Activities, additional costs due to that increase which would otherwise be Reimbursable Costs will not be Reimbursable Costs.
14. Legal costs incurred by the IDE	Conditional	Legal or litigation costs incurred by the IDE or a NOP will be Reimbursable Costs provided that: <ul style="list-style-type: none"> a) such costs are under the specific control of the General Manager, incurred in accordance with procedures and protocols agreed by the LT, and incurred with specific prior approval of the LT; b) such costs exclude costs or expenses incurred defending or appealing any action, fine, penalty, or sanction sought or imposed by a statutory Authority or court (except where the Principal's Representative determines otherwise by notice in writing to the Participants, having regard to

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Category	Reimbursable Cost?	Definitions, category-specific conditions and basis of cost recovery
		<p>the action, fine, penalty or sanction and its effect on the Project, the Works and TfNSW); and</p> <p>c) any sums received by way of judgment, award, settlement, or otherwise as a result of defending or prosecuting civil lawsuits or claims arising out of the IDE Activities will be credited to Reimbursable Costs.</p>
15. Mobilisation and demobilisation	Conditional	<p>Cost of:</p> <p>a) mobilising and demobilising IDE personnel to the Site including all associated Site accommodation (except for costs of the type mentioned in paragraph 24 of Appendix 2);</p> <p>b) mobilising special-purpose heavy plant and equipment to the Site,</p> <p>will be Reimbursable Costs provided such costs are incurred in accordance with a mobilisation plan prepared by the General Manager and approved by the LT and the Principal's Representative.</p>
16. Site and facilities	Yes	<p>Costs of establishment, maintenance and operation of the Site, any Site accommodation, warehousing or other facilities, including all transportation facilities, utilities and consumables and the like necessary to perform the IDE Activities will be Reimbursable Costs.</p>
17. Safety equipment	Yes	<p>Costs of personal protective equipment and site safety equipment, workplace health and safety requirements, and other costs or expenses to provide and maintain a safe working environment in accordance with the relevant Work Health and Safety Management Plan will be Reimbursable Costs, provided that the Work Health and Safety Management Plan is submitted to the Principal's Representative for review under clause 17.10 of this Agreement and:</p> <p>(a) the Principal's Representative has issued the notice referred to in clause 17.10(b)(iii) of this Agreement in respect of it; or</p> <p>(b) the relevant period of time in clause 17.10(b) of this Agreement has expired and the Principal's Representative has not rejected it, made comments on it or made a request referred to in clause 17.10(b)(ii) of this Agreement in respect of it (except, in the case of comments or a request, where the Principal Contractor has responded to the comments or the request (as applicable) within the required time period and in a manner satisfactory to the Principal's Representative as referred to in clause 17.10(c) of this Agreement).</p>
18. Purchase of tools, plant and equipment	Conditional	<p>Costs of consumables, tools, plant and equipment and the like purchased by the IDE or by a NOP specifically for the IDE (where the NOP does not intend to hold the asset on its own books) will be Reimbursable Costs provided that:</p> <p>a) the expenditure is under the specific control of the General Manager;</p>

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Category	Reimbursable Cost?	Definitions, category-specific conditions and basis of cost recovery
		<p>b) the LT approves a specific business case which identifies why the purchase is Best For Project and which identifies ownership or financing arrangements, proposed ownership and depreciation or buy back arrangements, and other costs on an open-book basis;</p> <p>c) the General Manager ensures that an asset register is maintained to record all such assets purchased for the IDE with a cost exceeding \$1,000 (excluding GST); and</p> <p>d) on completion of the IDE Activities or upon becoming surplus to IDE requirements, such assets are disposed of by the IDE as follows:</p> <ul style="list-style-type: none"> (i) where the TOC has a clearly identified line item opportunity value for the re-sale of the asset (including scrap value where applicable), the asset is sold by the IDE for fair market value and the proceeds credited as a deduction to Reimbursable Costs; and (ii) where the TOC does not have a clearly identified line item opportunity value for the re-sale of the asset (including scrap value where applicable), the ownership of the asset is transferred to TfNSW in the first instance (unless TfNSW elects not to take ownership of the asset). Where TfNSW elects not to take or retain ownership of the asset, TfNSW may instruct the IDE to sell the asset for fair market value for which the proceeds will be credited as a deduction to Reimbursable Costs. <p>Purchase costs of consumables, tools, plant and equipment and the like held on a NOP's books will not be Reimbursable Costs even though the items might have been purchased specifically for, and/or used in performing the IDE Activities.</p>
19. Professional journals etc.	No	Costs of professional publications, library memberships, journals, periodicals, books and similar publications will not be Reimbursable Costs.
20. Construction Plant and temporary works	Conditional	<p>Hire costs of Construction Plant, tools and equipment (where supplied or self-performed by a NOP) will be Reimbursable Costs provided that, prior to the cost being committed or the Construction Plant, tools and equipment being used on Site, the LT agrees a method of costing which must be one of the following:</p> <ul style="list-style-type: none"> a) on the basis of actual audited cost to the NOP of owning or operating the plant and equipment to the satisfaction of the FA (i.e. avoiding margin in addition to the agreed Fee); b) on the basis of rates and quantities established via an arms-length tender to identify the best rate currently available in the market; or c) another method approved in advance by the LT as Best For Project.

Schedule 7 – Compensation Framework

Category	Reimbursable Cost?	Definitions, category-specific conditions and basis of cost recovery
21. Statutory Requirements	Conditional	Costs reasonably and properly incurred to meet any Statutory Requirements in relation to the IDE Activities will be Reimbursable Costs. Costs arising out of claims made against a NOP for a breach of a Statutory Requirement will not be Reimbursable Costs.
22. Fines and Penalties	No	Costs incurred in paying any fine, penalty or sanction imposed by a court or other Authority upon a Participant in relation to the IDE Activities will not be a Reimbursement Cost. For clarity where any such fine, penalty or sanction is imposed on TfNSW in relation to IDE Activities such cost will form part of the TfNSW IDA Costs.
23. Distribution of unspent Aboriginal Participation in Construction amounts	No	The full allocation for Aboriginal participation must be distributed to eligible spend types in accordance with the requirements of the NSW Government Aboriginal Participation in Construction Policy (June 2018). Where the IDE is unable to achieve this, the balance must be distributed to the APIC policy's list of approved bodies.
24. IDE bank account	Conditional	In the event that the LT determines that it is Best For Project to open and maintain a joint NOP bank account for the purposes of the IDE then: a) any fees, charges, costs or taxes incurred as a result of the operation of the account will be Reimbursable Costs; and b) any interest earned by the account will be retained by TfNSW.
25. GST where offset by input tax credits	No	Any amount paid or payable by or on behalf of a Participant in respect of GST (to the extent that the Participant is entitled to an input tax credit in respect of that payment) will not be a Reimbursable Cost.
26. Taxes and duties	Conditional	Taxes, duties, excises, levies, assessments or similar charges levied by any Authority on, or in connection with, the IDE Activities will be Reimbursable Costs except for: a) corporate or income tax, GST, or penalties or fines in relation to taxes payable; and b) any other taxes, duties, excises, levies, assessments or similar charges levied by an Authority which are determined by the LT to not be Reimbursable Costs.
27. Industrial Relations	No	Costs to negotiate any industrial agreements will not be Reimbursable Costs.
28. Costs associated with Wilful Default	No	Costs, losses, expenses or damages suffered or incurred by a Defaulting Participant which arise out of or in connection with or are contributed to by a Wilful Default are not Reimbursable Costs. For clarity such costs may include people-related costs.
29. Company vehicles not provided as part of TFR / TR	Conditional	Costs of Site vehicles, pool cars and similar road vehicles which are not provided for the use of specific individuals as part of a TFR/TR package will be Reimbursable Costs provided that such costs are:

Schedule 7 – Compensation Framework

Category	Reimbursable Cost?	Definitions, category-specific conditions and basis of cost recovery
		<ul style="list-style-type: none"> a) in all material respects, explicitly in line with the relevant components of the Accepted Project Proposal and build-up of the TOC including costing methodology (i.e. basis of unit costing, method of cost calculation, and applicable charging rates for cost recovery); b) incurred on a transparent and auditable basis; c) specifically incurred for the purposes of the IDE to the satisfaction of the FA, including being dedicated to the IDE for a significant period of time; and d) under the specific control of the General Manager.
30. Cost of providing bank guarantees to third parties	Conditional	Cost of providing bank guarantees to third parties in relation to IDE Activities will be Reimbursable Costs provided that the cost is pre-approved by the LT.

Appendix 4 (Schedule 7) – Reimbursable Cost recovery arrangements for John Holland

Confidential Information – Not for Distribution

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Schedule 7 – Compensation Framework

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Appendix 5 (Schedule 7) – Reimbursable Cost recovery arrangements for Jacobs

Confidential Information – Not for Distribution

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Schedule 7 – Compensation Framework

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Schedule 7 – Compensation Framework

Appendix 6 (Schedule 7) – MEM Table

Events that trigger negative points for MEM score. This table must be read in conjunction with the MEM definitions set out on the next page below.

MEM Ref	Major Event	Number of events	MEM Points
1	Any incident related to the IDE Activities which results in an investigation or inquiry under the <i>Rail Safety National Law</i> , the <i>Transport Safety Investigation Act 2003</i> (Cth) or the <i>Passenger Transport Act 1990</i> (NSW), where the IDE or any of the Participants are found to be fully or partially liable in relation to the incident.	First event	-60
		Second or subsequent event	-100
2	Any incident related to the IDE Activities where the IDE or any of the Participants are found to be liable under WHS Legislation or Rail Safety Legislation.	First event	-30
		Second or subsequent event	-50
3	Any incident related to the IDE Activities leading to a Participant being issued with: (a) a prohibition notice or penalty notice under the <i>Work Health and Safety Act 2011</i> (NSW); or (b) a prohibition notice or an infringement notice under the <i>Rail Safety National Law</i> , except where the notice is successfully contested and is withdrawn by the relevant issuing agency or regulator or otherwise annulled.	First event	-5
		Second or subsequent event	-20
4	Prosecution of any of the Participants in relation to any IDE Activities by an environmental regulator by means other than a penalty notice or similar notice where the Participant is found liable.	First event	-30
		Second or subsequent event	-50
5	Issue of a penalty notice or similar notice to any of the Participants in relation to the IDE Activities by an environmental regulator, except where the penalty notice or similar notice is successfully contested and is withdrawn by the relevant issuing agency or regulator or annulled by the State Debt Recovery Office.	First event	-20
		Second or subsequent event	-50
6	Any findings by the Independent Commission Against Corruption of corrupt conduct (as that term is defined under the <i>Independent Commission Against Corruption Act 1989</i> (NSW)) against a person or persons employed by, contracted to or acting as an agent of any of the Participants, where such findings are in connection with the IDE Activities.	Each event	-100
7	An IDE Work Incident that causes Peak Services to be delayed	Level 1 Delay	-100
		Level 2 Delay	-75
		Level 3 Delay	-50

Schedule 7 – Compensation Framework

MEM definitions:

Level 1 Delay	An IDE Works Incident that causes 40 or more Peak Commuter Services to be Delayed.
Level 2 Delay	An IDE Works Incident that causes 25 to 39 Peak Commuter Services to be Delayed.
Level 3 Delay	An IDE Works Incident that causes 15 to 24 Peak Commuter Services to be Delayed.
Delay	A Peak Commuter Service is delayed when: <ul style="list-style-type: none"> • it skips a stop; • is renamed; or • it arrives five or more minutes (for Sydney Train services) or six minutes or more (for NSW Trains services) of its scheduled arrival according to the timetable or if it is cancelled.
Peak Commuter Service	A Peak Commuter Service is a train service that arrives at Central Station between 6:00am and 10:00am or departs Central Station between 3:00pm and 7:00pm or, with respect to train services that do not pass through Central Station, which operate between 6:00am and 10:00am or between 3:00pm and 7:00pm.
IDE Works Incident	An incident related to the IDE Activities.

Schedule 7 – Compensation Framework

Appendix 7 (Schedule 7) – Hypothetical TOC

Below is the build-up of a typical TOC.

Project: Hypothetical TOC

Date: did/mm/yy

	Element	Project Development	Project Execution Works				Total Limb 1	Limb 2 Fee		Total Limb 1 + 2
			\$(Excl R&O)	Spread %	R&O and Escalation	\$(Incl R&O and Esc)		Fee%	Fee\$	
TfNSW	Owner Costs									
John Holland	Reimbursable Costs									
Jacobs	Reimbursable Costs									
Total										

	R&O & Escalation	
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Schedule 8 – Governance

Schedule 8 – Governance

This Schedule describes the typical TfNSW governance requirements within and around the IDE for all Participants. This Schedule should be read in conjunction with:

- (a) the relevant clauses of the IDA; and
- (b) the TSRs:
 - (i) for additional project specific requirements and timing for Collaborative Contract Management Plan submissions; and
 - (ii) which describe the requirements and processes the IDE must develop and implement as a minimum to ensure IDE Activities are appropriately carried out and managed.

1. Importance of good governance in the IDE

1.1 General governance obligations

The IDE collectively shares and manages the risks and opportunities of delivering the Project. The IDE Leadership Team (LT) is accountable to deliver on these objectives and manage the associated risks and opportunities in respect of each objective. The Participants also share some of their individual corporate risks and opportunities in coming together in the IDE.

Delivering on these objectives relies on the IDE to ensure good governance controls are in place. TfNSW has two roles in respect of the Project as both the client for the performance of the IDE Activities and as an IDE "Participant", and hence requires an appropriate governance framework within the IDE (as a Participant) and around the IDE (as the client or owner). The overall governance and leadership within the IDE is provided by the LT made up of two senior representatives from TfNSW and one or two senior representatives from each of the Non Owner Participants (NOPs).

1.2 TfNSW's governance elements around the IDE

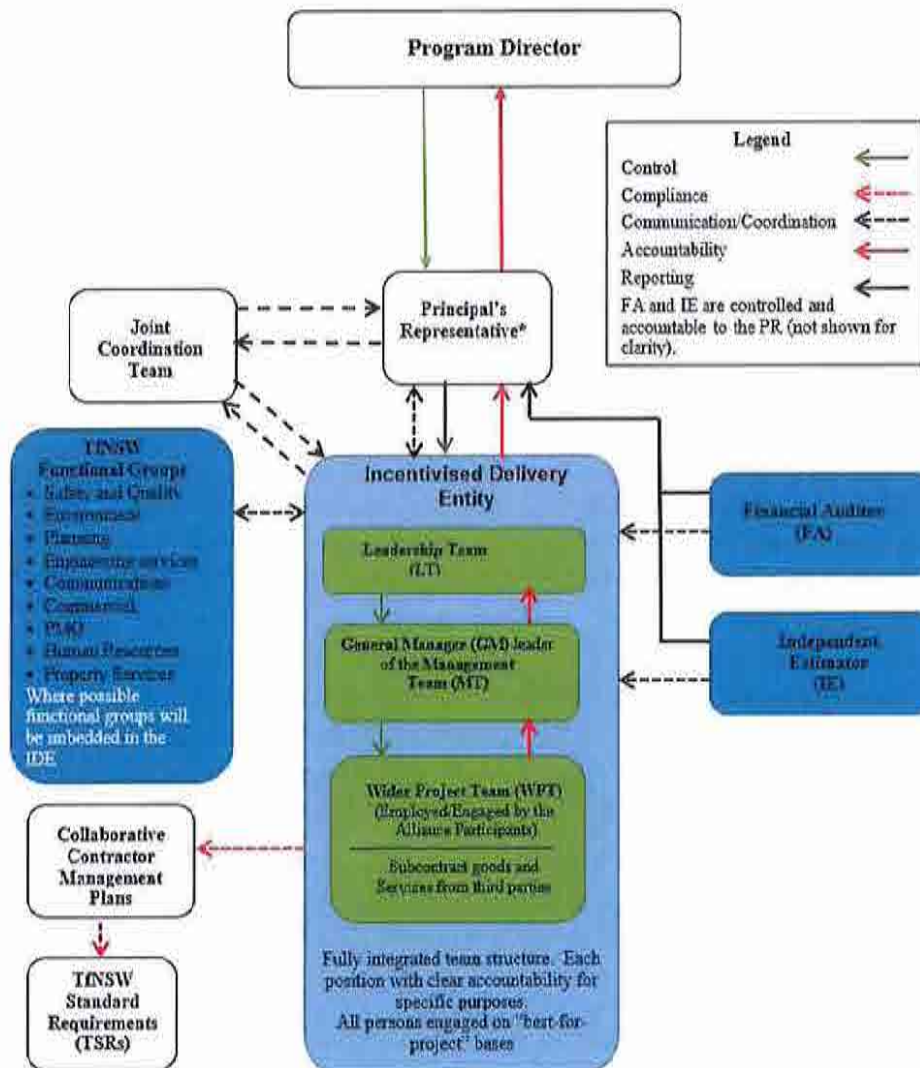
TfNSW has a strong focus on governance around its projects whatever the contract model. The accountability for the project sits with the Deputy Director Route Delivery who reports to the Executive Director, Rail Delivery.

Delegations of authority for TfNSW staff and the various TfNSW functions are derived from and approved by the Secretary of the Department of Transport.

The role of client will be filled by the Executive Director, Rail Delivery, or a senior executive of TfNSW, who is separate from, and has no involvement in, the LT, as delegated by the Executive Director, Rail Delivery to act as Principal's Representative. The role of TfNSW as a "Participant" requires each TfNSW LT representative to act on a Best For Project basis.

Schedule 8 – Governance

Figure 1 below sets out the governance around the IDE.



* Principal's Representative may be the Program Director and may be different for the FA and IE

Schedule 8 – Governance

Table 1 below sets out the governance elements of TfNSW around the IDE:

Table 1: Governance elements of TfNSW around the IDE

Element	Governance Function
IDE Objectives	TfNSW has established clear objectives and Key Results Areas (KRAs) for the IDE and these are documented in the IDA.
IDE Governance Structure	<p>The TfNSW organisational structure to support the governance of the IDE provides:</p> <ul style="list-style-type: none"> • clear lines of accountability and delegation from the Executive Director, Rail Delivery to the Principal’s Representative for IDA administration; • separation of roles that may potentially conflict; • clear roles and responsibilities; and • an appropriate mix of attributes, experience and capabilities of TfNSW staff around and within the IDE.
Separation of Roles	<p>The Principal’s Representative is always a different individual to the TfNSW LT Members.</p> <p>Functions of TfNSW as the client are discharged separate from the IDE.</p> <p>The IDA provides TfNSW Reserved Powers in respect of key areas for TfNSW.</p>
Roles and Responsibilities	TfNSW staff working around the IDE such as senior project managers, project managers and project engineers have the accountabilities as set out in their TfNSW position descriptions.
Attributes and Capabilities of TfNSW Staff	TfNSW staff in key governance roles are project director, principal managers, senior project managers and/or relevant staff in the TfNSW’s commercial function group.
TfNSW Delegations	<p>The key features relating to the implementation of TfNSW’s delegation of authority around the IDE includes:</p> <ul style="list-style-type: none"> • TfNSW staff outside of the IDE remain subject to the TfNSW delegation of authority for their role; • TfNSW staff in the IDE cannot exceed their TfNSW delegation of authority; • senior TfNSW staff will be LT members; and • a relatively low level of delegation set by TfNSW is provided to the General Manager (GM) and the Management Team (MT).
TfNSW Delegations under the IDA	The Executive Director, Rail Delivery delegates specific functions/obligations under the IDA to the Principal’s Representative whose involvement in the IDE is limited to exercising the responsibilities of the Principal’s Representative.
Administration of the IDA	The IDA requires appropriate administration by the Principal’s Representative.
Financial Audits	<p>TfNSW maintains a financial audit regime that features:</p> <ul style="list-style-type: none"> • not less than quarterly progress claim and transaction audits with significant sampling; and

Schedule 8 – Governance

Element	Governance Function
	<ul style="list-style-type: none"> procurement and contract administration sampling. <p>The Financial Auditor (FA) also provides advisory services in order to leverage learnings across TfNSW and other collaborative contracts.</p> <p>The FA is accountable to TfNSW and not to the IDE as set out in clause 16.15 of this Agreement.</p>
Collaborative Contract Management Plan (CCMP)	<p>The requirements for the CCMP are set out in the TfNSW Standard Requirements (TSRs). TfNSW's functional groups are involved with the IDE in the development of the CCMP prior to the formal review of the CCMP by TfNSW. Without limiting section 4 of Schedule 1, any inconsistencies within the TSRs need to be communicated from the IDE to the Principal's Representative who will consult with the discipline specific experts from TfNSW.</p>
Collaborative Audit process	<p>In addition to the audits required by the TSRs, TfNSW's or any NOP may undertake collaborative audits on the IDE and all parts of the CCMP.</p>
Reporting	<p>Requirements for regular reporting are set out in the TSRs (particularly TSR CC – Collaborative Contract FT-301).</p>

1.3 Expected governance elements within the IDE

TfNSW's development of the IDE governance model builds on its earlier experience in collaborative contracting, TfNSW's governance practices, lessons from other client organisations and industry leading practice.

Meeting these accountabilities relies on the IDE ensuring good controls are in place and in particular that TfNSW's minimum requirements as included in the TSRs are met by the IDE.

Schedule 8 – Governance

Figure 2 below sets out the typical governance within the IDE.

Figure 2: IDE Governance Structure



Schedule 8 – Governance

Table 2 below sets out the governance elements within TfNSW's IDE:

Table 2: Governance elements within the IDE

Element	Governance Function
IDE Objectives	The IDE will implement processes to achieve TfNSW's objectives and KRAs as stated in this Agreement and as stated in any future project referred to the IDE by TfNSW.
Organisation and accountabilities	<p>The organisational structure in Figure 2 above supports the governance of the IDE where, as set out in clause 3 of this Agreement:</p> <ul style="list-style-type: none"> • the LT has obligations under this Agreement to TfNSW; • accountability is from the Wider Project Team (WPT) to the Management Team (MT) to the GM to the LT; • each LT Member is accountable to their organisation in accordance with their delegations; • the LT approves the IDE's detailed organisation structure and the appointees to the GM and MT roles; and • all positions within the IDE have clear roles and responsibilities.
Leadership Team (LT)	<p>LT requirements are set out in clause 4 of this Agreement.</p> <p>Overall governance and high-level leadership is provided by the LT made up of one or two senior representatives from each of the Participants.</p> <p>LT Members must have sufficient authority to deal effectively and efficiently with the kind of decisions that the LT will be called upon to make. On those occasions where matters are outside their level of delegated authority, LT Members must be able to secure timely support from higher authorities for proposed LT decisions.</p>
LT Member Attributes and Capabilities	<p>Schedule 6 of this Agreement sets out the competencies and accountabilities of the LT.</p> <p>Collectively, the members of the LT should have complementary skills and experience that demonstrate the following attributes:</p> <ul style="list-style-type: none"> • ability to influence a strong safety culture; • capacity for inspirational leadership; • a relationship orientation; • understanding of and ability to lead outstanding performance (high performance); • relevant experience and technical expertise including where relevant live rail experience; • a commercial focus; • a detailed understanding of the Project and the commercial framework; • an understanding of good governance and relevant governance experience; and • an understanding of and experience in collaborative contracting.
Decision Making	Consistent with the principle of a <i>'peer relationship where all participants have an equal say'</i> , decisions of the LT are required to be unanimous as set out in clause 4.5 of this Agreement. However the final decision on certain matters is

Schedule 8 – Governance

Element	Governance Function
	<p>reserved for unilateral determination by TfNSW (Reserve Powers as set out in clause 20.1 of this Agreement) or a particular NOP where this is necessary to ensure decision-making that is consistent with the IDE framework and statutory requirements. All decisions are made based on formal submissions from the MT and GM. A resolution log of LT decisions is maintained.</p> <p>Decisions made within the IDE are done so on a Best For Project basis.</p>
<p>Delegations of Authority</p>	<p>Within the IDE, the financial and non-financial decision making are set out in the TSRs (particularly TfNSW Standard Requirements: TSR CC – Collaborative Contracts FT-301) and any changes are to be approved by the LT. Delegations need to be consistent with participant organisation delegations and where there is a difference these need to be addressed.</p> <p>TfNSW requires that the TfNSW LT Members exercise their functions as LT members within their TfNSW delegations authority. As such, prior to binding TfNSW as a participant in certain LT unanimous decisions, the TfNSW LT Member is required to obtain the necessary approvals from the relevant TfNSW authority.</p> <p>To improve transparency and control for the LT, the level of delegation provided to the GM is set by TfNSW and is low compared to typical private sector project managers.</p>
<p>Collaborative Contract Management Plan</p>	<p>The CCMP must set out how the IDE will manage and deliver the IDE Objectives. It must be prepared in accordance with the TfNSW’s Standard Requirements (TSRs) and incorporates:</p> <ul style="list-style-type: none"> • the processes for decision making and management within the IDE governance and control framework; • management approach to all delivery areas including procurement, contract administration and cost management; • specific roles and responsibilities; • policies (financial and non-financial); and • audit approach and reporting requirements. <p>The CCMP and any material amendments are endorsed by the LT and then reviewed by the Principal’s Representative.</p>
<p>Reporting</p>	<p>Requirements for regular reporting are set out in the TSRs (particularly TfNSW Standard Requirements: TSR CC – Collaborative Contract FT-301).</p>
<p>Audit</p>	<p>The IDE will facilitate audits in accordance with the requirements of the TSR. TfNSW’s collaborative audit program applies to the IDE and all parts of the CCMP. The financial audits of the IDE transactions by TfNSW as the client are a fundamental part of the full open book element of the IDE model. The FA is accountable to TfNSW and not to the IDE.</p>

1.4 IDE Delegation of Authority

The IDE must set out delegation of authorities (financial and non-financial) to establish the appropriate delegations to authorise staff in identified positions to make management, personnel and commercial decisions.

The LT determines the levels of authority to be delegated to the IDE staff for decision making. These delegations need to be consistent with each of the Participant's organisations and where there is a difference this needs to be addressed. The TfNSW LT members are required to obtain the necessary approvals from TfNSW.

Delegations must be exercised in accordance with the CCMP. The delegations are assigned to individual positions and not to individual personnel. Any amendments to the delegation limits must be submitted for LT approval with a detailed explanation of the change.

TfNSW has set out the expected delegations of authority (financial and non-financial) in the TSRs (particularly TfNSW Standard Requirements: TSR CC – Collaborative Contracts FT-301) for the IDE to adopt when developing its IDE delegations of authority.

2. Governance around Reimbursable Costs

The definition of what is or is not Reimbursable Costs is outlined in the Compensation Framework schedule 7 of the Agreement. As part of the Compensation Framework principles, the Participants agree that Fee will not be payable in respect of Reimbursable Costs incurred in substantial breach of agreed governance obligations.

Substantial breaches of the agreed governance obligations are detailed in Schedule 7 clause S7-4.6 of the Agreement.

3. Governance around Target Adjustment Events

The governance obligations associated with Target Adjustment Events are outlined in clause 20 of this Agreement.

The IDE will prepare and agree with TfNSW a Target Adjustment Event development, review and approval process.

4. Governance around innovation

One of the main opportunities in an IDE is the ability to explore value for money options to achieve reduced costs and/or additional value added benefits for the IDE Activities or the Project Works. The IDE will have the ability to utilise the vast range of skills of its Participants to explore any innovative options that may benefit the IDE.

Any perceived innovation opportunity identified must be clearly communicated by the IDE to the MT. The MT, upon being satisfied that the identified innovation opportunity exists, must notify the LT. If the innovation opportunity results in changing the IDE Activities or the Project Works (as opposed to the methodology for delivering the IDE Activities or the Project Works) the LT must then make a recommendation regarding the proposed innovation opportunity to TfNSW in accordance with clause 20.5(a) of this Agreement. The provisions of clause 20.5 will then apply.

Schedule 9 – Statutory Declaration

<i>Statutory Declaration</i>	<i>Oaths Act (NSW) Ninth Schedule</i>																						
<p>I,</p> <p>of</p> <p>do solemnly and sincerely declare that:</p> <p>1. I am the representative of:</p> <p>.....</p> <p>("NOP")</p> <p>in the Office Bearer capacity of:</p> <p>.....</p> <p>2. The NOP has a contract with TfNSW:</p> <p>.....</p> <p>("the Contract").</p> <p>3. I personally know the facts which I have set out in this declaration.</p> <p>4. All employees who have at any time been engaged by the NOP for work done under the Contract:</p> <p>(a) have been paid all remuneration and benefits to the date of this declaration payable to them by the NOP in respect of their employment on work under the Contract; and</p> <p>(b) have otherwise had accrued to their account all benefits to which they are entitled from the NOP as at the date of this declaration in respect of their employment on work under the Contract pursuant to any award, enterprise agreement, act or regulation,</p> <p>with the exception of the employees and respective amounts unpaid or not accrued for each employee listed below:</p> <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 50%; text-align: left; padding: 2px;"><i>Employee:</i></th> <th style="width: 50%; text-align: left; padding: 2px;"><i>Amount unpaid or not accrued:</i></th> </tr> </thead> <tbody> <tr><td>.....</td><td>.....</td></tr> <tr><td>.....</td><td>.....</td></tr> <tr><td>.....</td><td>.....</td></tr> <tr><td>.....</td><td>.....</td></tr> <tr><td>.....</td><td>.....</td></tr> <tr><td>.....</td><td>.....</td></tr> <tr><td>.....</td><td>.....</td></tr> <tr><td>.....</td><td>.....</td></tr> <tr><td>.....</td><td>.....</td></tr> <tr><td>.....</td><td>.....</td></tr> </tbody> </table> <p>5. Attached to and forming part of this declaration, as Annexure A, is a supporting statement for the purposes of section 13(7) of the Building and Construction Industry Security of Payment Act 1999 (NSW).</p>	<i>Employee:</i>	<i>Amount unpaid or not accrued:</i>	<p><i>insert full name of Declarant</i></p> <p><i>insert address</i></p> <p><i>insert name of NOP, and ACN if applicable</i></p> <p><i>insert position title of Declarant</i></p> <p><i>insert name of Contract</i></p> <p><i>insert names and addresses of the unpaid employees, the amounts unpaid, and whether in respect of wages, allowances, holiday pay, long service leave and payments and superannuation entitlement etc.</i></p> <p><i>insert names and addresses of the</i></p>
<i>Employee:</i>	<i>Amount unpaid or not accrued:</i>																						
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<p><i>the subcontractor, details of the affected employees, suppliers and subcontractors of the subcontractor, and the respective amounts or benefits either unpaid or not accrued are as follows:</i></p> <p><i>Employee, subcontractor or supplier: Amount unpaid or not accrued:</i></p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p>	<p><i>in respect of this claim</i></p>
<p>10. <i>In relation to the statutory declaration provided by each subcontractor to the NOP, I am not aware of anything to the contrary of what is contained therein, and on the basis of the contents of those statutory declarations, I believe that information to be true.</i></p> <p>11. <i>Attached to and forming part of this declaration, as Annexure B, is a 'Subcontractor's Statement' given by the NOP in its capacity as 'subcontractor' (as that term is defined in the Workers Compensation Act 1987 (NSW), Payroll Tax Act 2007 (NSW) and Industrial Relations Act 1996 (NSW) which is a written statement:</i></p> <p>(a) <i>under section 175B of the Workers Compensation Act 1987 in the form and providing the detail required by that legislation;</i></p> <p>(b) <i>under section 18(6) of schedule 2 of part 5 of the Payroll Tax Act 2007 in the form and providing the detail required by that legislation; and</i></p> <p>(c) <i>under section 127 of the Industrial Relations Act 1996 in the form and providing the detail required by that legislation.</i></p> <p>12. <i>I personally know the truth of the matters which are contained in this declaration and the attached Subcontractor's Statement.</i></p> <p>13. <i>All statutory declarations and Subcontractor's Statements received by the NOP from subcontractors were:</i></p> <p>(a) <i>given to the NOP in its capacity as 'principal contractor' as defined in the Workers Compensation Act 1987 (NSW), the Payroll Tax Act 2007 (NSW) and the Industrial Relations Act 1996 (NSW) ("Acts"); and</i></p> <p>(b) <i>given by the subcontractors in their capacity as 'subcontractors' as defined in the Acts.</i></p> <p>14. <i>I am not aware of anything which would contradict the statements made in the statutory declarations or written statements provided to the NOP by its subcontractors, as referred to in this declaration.</i></p>	<p><i>insert names of the subcontractors, the name and addresses of the unpaid employees, subcontractors and suppliers and amounts listed as unpaid or not accrued to them.</i></p>
<p><i>I make this solemn declaration conscientiously believing the same to be true and by virtue of the Oaths Act 1900 (NSW). I am aware that I may be subject to punishment by law if I wilfully make a false statement in this declaration.</i></p>	

Schedule 9 – Statutory Declaration

<p>Declared at on</p> <p style="text-align: center;">(place) (day) (month) (year)</p> <p>.....</p> <p>(Signature of Declarant)</p> <p>Before me:</p> <p>.....</p> <p>(Signature of person before whom the declaration is made)</p> <p>.....</p> <p>(Name of the person before whom the declaration is made)</p> <p>.....</p> <p>(Title* of the person before whom the declaration is made)</p>	
<p>* The declaration must be made before one of the following persons:</p> <ul style="list-style-type: none"> - where the declaration is sworn within the State of New South Wales: <ul style="list-style-type: none"> (i) a justice of the peace of the State of New South Wales; (ii) a solicitor of the Supreme Court of New South Wales with a current practising certificate; or (iii) a notary public. - where the declaration is sworn in a place outside the State of New South Wales: <ul style="list-style-type: none"> (i) a notary public; or (ii) any person having authority to administer an oath in that place. 	
<p>And as a witness, I certify the following matters concerning the person who made this statutory declaration (the declarant):</p> <p>1. I saw the face of the declarant.</p> <p>[OR]</p> <p>I did not see the face of the declarant because the declarant was wearing a face covering, but I am satisfied that the declarant had a special justification for not removing the covering.</p> <p>2. I have known the declarant for at least 12 months.</p> <p>[OR]</p> <p>I have confirmed the declarant's identity using the following identification document:</p> <p>[insert description of ID document]</p> <p>.....</p> <p>(Signature of witness)</p>	

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ANNEXURE A

Supporting statement by head contractor regarding payment to subcontractors

This statement must accompany any payment claim served on a principal to a construction contract by a head contractor.

For the purposes of this statement, the terms “principal”, “head contractor”, “subcontractor”, and “construction contract” have the meanings given in section 4 of the *Building and Construction Industry Security of Payment Act 1999*.

Head contractor: *[business name of head contractor]*

ABN: *[ABN]*

* 1. has entered into a contract with: *[business name of subcontractor]*

ABN: *[ABN]*

Contract number/identifier: *[contract number/identifier]*

OR

* 2. has entered into a contract with the subcontractors listed in the attachment to this statement.

* *[Delete whichever of the above does not apply]*

This statement applies for work between *[start date]* and *[end date]* inclusive (the construction work concerned), subject of the payment claim dated *[date]*.

I, *[full name]*, being the head contractor, a director of the head contractor or a person authorised by the head contractor on whose behalf this declaration is made, hereby declare that I am in a position to know the truth of the matters that are contained in this supporting statement and declare that, to the best of my knowledge and belief, all amounts due and payable to subcontractors have been paid (not including any amount identified in the attachment as an amount in dispute).

Signature: Date:

Full name: Position/Title:

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Attachment

Schedule of subcontractors paid all amounts due and payable				
Subcontractor	ABN	Contract number/ identifier	Date of works (period)	Date of payment claim (head contractor claim)

Schedule of subcontractors for which an amount is in dispute and has not been paid				
Subcontractor	ABN	Contract number/ identifier	Date of works (period)	Date of payment claim (head contractor claim)

ANNEXURE B

SUBCONTRACTOR'S STATEMENT

Note to the parties

For the purpose of this Statement:

- "the subcontractor" is the Non Owner Participant (NOP); and
- "the principal contractor" is Transport for NSW (TfNSW)

REGARDING WORKERS COMPENSATION, PAYROLL TAX AND REMUNERATION (Note 1-see back of form)

For the purposes of this Statement a "subcontractor" is a person (or other legal entity) that has entered into a contract with a "principal contractor" to carry out work.

This Statement must be signed by a "subcontractor" (or by a person who is authorised, or held out as being authorised, to sign the statement by the subcontractor) referred to in any of s175B Workers Compensation Act 1987 (NSW), Schedule 2 Part 5 Payroll Tax Act 2007 (NSW), and s127 Industrial Relations Act 1996 (NSW) where the "subcontractor" has employed or engaged workers or subcontractors during the period of the contract to which the form applies under the relevant Act(s). The signed Statement is to be submitted to the relevant principal contractor.

SUBCONTRACTOR'S STATEMENT (Refer to the back of this form for Notes, period & Statement retention, and Offences under various Acts.

Subcontractor: ABN: (Business name)

of (Address of Subcontractor)

has entered into a contract with ABN: (Business name of principal contractor) (Note 2)

Contract number/identifier (Note 3)

This Statement applies for work between/...../..... and/...../..... inclusive, (Note 4)

subject of the payment claim dated/...../..... (Note 5)

I, a Director or a person authorised by the

Subcontractor on whose behalf this declaration is made, hereby declare that I am in a position to know the truth of the matters which are contained in this Subcontractor's Statement and declare the following to the best of my knowledge and belief:

- (a) The abovementioned Subcontractor has either employed or engaged workers or subcontractors during the above period of this contract. Tick [] if true and comply with (b) to (g) below, as applicable. If it is not the case that workers or subcontractors are involved or you are an

Schedule 9 – Statutory Declaration

exempt employer for workers compensation purposes tick [] and only complete (f) and (g) below. You must tick one box.

(Note 6)

- (b) All workers compensation insurance premiums payable by the Subcontractor in respect of the work done under the contract have been paid. The Certificate of Currency for that insurance is attached and is dated/...../.....

(Note 7)

- (c) All remuneration payable to relevant employees for work under the contract for the above period has been paid.

(Note 8)

- (d) Where the Subcontractor is required to be registered as an employer under the *Payroll Tax Act 2007* (NSW), the Subcontractor has paid all payroll tax due in respect of employees who performed work under the contract, as required at the date of this Subcontractor's Statement.

(Note 9)

- (e) Where the Subcontractor is also a principal contractor in connection with the work, the Subcontractor has in its capacity of principal contractor been given a written Subcontractor's Statement by its subcontractor(s) in connection with that work for the period stated above.

(Note 10)

- (f) Signature Full name

- (g) Position/Title Date/...../.....

NOTE: Where required above, this Statement must be accompanied by the relevant Certificate of Currency to comply with section 175B of the *Workers Compensation Act 1987* (NSW).

Schedule 9 – Statutory Declaration

NOTES

1. This form is prepared for the purpose of section 175B of the *Workers Compensation Act 1987* (NSW), Schedule 2 Part 5 *Payroll Tax Act 2007* (NSW) and section 127 of the *Industrial Relations Act 1996* (NSW). If this form is completed in accordance with these provisions, a principal contractor is relieved of liability for workers compensation premiums, payroll tax and remuneration payable by the subcontractor.

A principal contractor can be generally defined to include any person who has entered into a contract for the carrying out of work by another person (or other legal entity called the **subcontractor**) and where employees of the subcontractor are engaged in carrying out the work which is in connection with the principal contractor's business.

2. For the purpose of this Subcontractor's Statement, a principal contractor is a person (or other legal entity), who has entered into a contract with another person (or other legal entity) referred to as the subcontractor, and employees / workers of that subcontractor will perform the work under contract. The work must be connected to the business undertaking of the principal contractor.

3. Provide the unique contract number, title, or other information that identifies the contract.

4. In order to meet the requirements of section 127 of the *Industrial Relations Act 1996* (NSW), a statement in relation to remuneration must state the period to which the statement relates. For sequential Statements ensure that the dates provide continuous coverage.

Section 127(6) of the *Industrial Relations Act 1996* (NSW) defines remuneration as 'remuneration or other amounts payable to relevant employees by legislation, or under an industrial instrument, in connection with work done by the employees.'

Section 127(11) of the *Industrial Relations Act 1996* (NSW) states 'to avoid doubt, this section extends to a principal contractor who is the owner or occupier of a building for the carrying out of work in connection with the building so long as the building is owned or occupied by the principal contractor in connection with a business undertaking of the principal contractor.'

5. Provide the date of the most recent payment claim.
6. For Workers Compensation purposes an exempt employer is an employer who pays less than \$7500 annually, who does not employ an apprentice or trainee and is not a member of a group.
7. In completing the Subcontractor's Statement, a subcontractor declares that workers compensation insurance premiums payable up to and including the date(s) on the Statement have been paid, and all premiums owing during the term of the contract will be paid.
8. In completing the Subcontractor's Statement, a subcontractor declares that all remuneration payable to relevant employees for work under the contract has been paid.

Schedule 9 – Statutory Declaration

9. In completing the Subcontractor's Statement, a subcontractor declares that all payroll tax payable relating to the work undertaken has been paid.
10. It is important to note that a business could be both a subcontractor and a principal contractor, if a business 'in turn' engages subcontractors to carry out the work. If your business engages a subcontractor you are to also obtain Subcontractor's Statements from your subcontractors.

Statement Retention

The principal contractor receiving a Subcontractor's Statement must keep a copy of the Statement for the periods stated in the respective legislation. This is currently up to seven years.

Offences in respect of a false Statement

In terms of s127(8) of the *Industrial Relations Act 1996*, a person who gives the principal contractor a written statement knowing it to be false is guilty of an offence if:

- (a) the person is the subcontractor;
- (b) the person is authorised by the subcontractor to give the statement on behalf of the subcontractor; or
- (c) the person holds out or represents that the person is authorised by the subcontractor to give the statement on behalf of the subcontractor.

In terms of s175B of the *Workers Compensation Act* and clause 18 of Schedule 2 of the *Payroll Tax Act 2007* a person who gives the principal contractor a written statement knowing it to be false is guilty of an offence.

Further Information

For more information, visit the WorkCover website www.workcover.nsw.gov.au, Office of State Revenue website www.osr.nsw.gov.au, or Office of Industrial Relations, Department of Commerce website www.commerce.nsw.gov.au. Copies of the *Workers Compensation Act 1987*, the *Payroll Tax Act 2007* and the *Industrial Relations Act 1996* can be found at www.legislation.nsw.gov.au.

Schedule 10 – Actions in complying with Planning Approval

- (a) For the Initial Project, refer to Schedule 10.1 in the Project-Specific Schedules and Exhibits (Initial Project) section.
- (b) For each Additional Project, refer to Schedule 10.n.

Schedule 11 – Actions in complying with Third Party Agreements

- (a) For the Initial Project, refer to Schedule 11.1 in the Project-Specific Schedules and Exhibits (Initial Project) section.
- (b) For each Additional Project, refer to Schedule 11.n.

Schedule 12 – Parent Company Guarantee

Schedule 12 – Parent Company Guarantee

Parent Company Guarantee

Transport for NSW

ABN 18 804 239 602

Rail Corporation New South Wales

ABN 59 325 778 353

Sydney Trains

ABN 38 284 779 682

NSW Trains

ABN 50 325 560 455

Sydney Metro

ABN 12 354 063 515

[Guarantor]

ACN [insert ACN]

Schedule 12 – Parent Company Guarantee

Deed of Guarantee and Indemnity made at _____ on _____

- Parties**
- Transport for NSW ABN 18 804 239 602** a NSW Government agency constituted by section 3C(1) of the *Transport Administration Act 1988* (NSW) of Level 5, Tower A, Zenith Centre, 821 Pacific Highway Chatswood NSW 2067 ("**TfNSW**")
- Rail Corporation New South Wales ABN 59 325 778 353** a NSW Government agency constituted by section 4(1) of the *Transport Administration Act 1988* (NSW) of 477 Pitt Street, Sydney NSW 2000 ("**RailCorp**")
- Sydney Trains ABN 38 284 779 682** a NSW Government agency constituted by Part 3B of the *Transport Administration Act 1988* (NSW) of Level 20, 477 Pitt Street, Sydney NSW 2000 ("**Sydney Trains**")
- NSW Trains ABN 50 325 560 455** a NSW Government agency constituted by Part 3C of the *Transport Administration Act 1988* (NSW) of Level 20, 477 Pitt Street, Sydney NSW 2000 ("**NSW Trains**")
- Sydney Metro ABN 12 354 063 515** a NSW Government agency constituted by Part 3D of the *Transport Administration Act 1988* (NSW) of PO Box 588, North Ryde BC NSW 1670 ("**Sydney Metro**")

(and together "**the Beneficiaries**", and each "**a Beneficiary**")

[Guarantor] ACN [insert ACN] of [insert address] ("Guarantor")

Recitals

- A. TfNSW has agreed to enter into the IDA with the NOPs (including the IDA Participant) on the condition that the Guarantor provides this Guarantee.
- B. The Guarantor has agreed on the following terms and conditions to guarantee to the Beneficiaries all of the Obligations (as defined in this deed) and to indemnify the Beneficiaries against any loss arising from any failure by the IDA Participant to perform the Obligations.
- C. The Guarantor considers that by providing this Guarantee there will be a commercial benefit flowing to it.

This deed provides

1. Definitions and interpretation

1.1 Definitions

In this deed:

"Deed Poll" means the deed poll dated on or about the date of the IDA by the IDA Participant in favour of RailCorp, Sydney Trains, NSW Trains and/or Sydney Metro in accordance with clause 17.5 of the IDA.

"GST" means any goods and services tax, consumption tax, value added tax or any similar tax, impost or duty imposed by any law of the Commonwealth of Australia or any State or

Schedule 12 – Parent Company Guarantee

Territory of the Commonwealth of Australia (whether in force before or coming into force after the date of this document).

"Guaranteed Money" means all money the payment or repayment of which from time to time forms part of the Obligations.

"IDA" means the More Trains, More Services Program Incentivised Delivery Agreement dated on or about the date of this deed between TfNSW and the NOPs (including the IDA Participant).

"IDA Participant" means *[insert name, ACN and address of IDA Participant]*

"Insolvency Provision" means any law relating to insolvency, sequestration, liquidation, winding up or bankruptcy (including any law relating to the avoidance of conveyances in fraud of creditors or of preferences and any law under which a liquidator or trustee may set aside or avoid transactions) and any provision of any agreement, arrangement or scheme, formal or informal, relating to the administration of any of the assets of any person.

"LT" has the meaning given in the IDA.

"NOP" has the meaning given in the IDA.

"Obligations" means all the liabilities and obligations of the IDA Participant to the Beneficiary (whether liquidated or not, whether contingent or presently accrued due and whether relating to the payment of money or the performance or omission of any act or thing) that are now in existence, or may hereafter come into existence, under the IDA or the Deed Poll or the work to be carried out or performed by the IDA Participant under the IDA or the Deed Poll.

"Project" has the meaning given in the IDA.

"Project Site" has the meaning given in the IDA.

"Project Works" has the meaning given in the IDA.

"Target Adjustment Event" has the meaning given in the IDA.

1.2 Interpretation

In this deed:

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

and unless the context indicates a contrary intention:

(b) the expression "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 any party includes that party's executors, administrators, successors and permitted assigns, including any person taking by way of novation;

(d) the word **"includes"** in any form is not a word of limitation; and

(e) a word importing the singular includes the plural (and vice versa).

Schedule 12 – Parent Company Guarantee

1.3 No bias against drafting party

No term or provision of this deed will be construed against a party on the basis that the deed or the term or provision in question was put forward or drafted by that party.

2. Guarantee

2.1 Guarantee

The Guarantor irrevocably and unconditionally guarantees to the Beneficiaries the due and punctual performance by the IDA Participant of all the Obligations.

2.2 Perform Obligations

If the IDA Participant does not perform any of the Obligations in accordance with the IDA and the Deed Poll, then the Guarantor must perform those Obligations in accordance with the terms of the IDA and the Deed Poll on demand from the Beneficiaries. A demand may be made by one or more of the Beneficiaries at anytime and from time to time after a failure by the IDA Participant to perform any of the Obligations in accordance with the IDA and the Deed Poll.

3. Indemnity

As a covenant separate and distinct from that contained in clause 2, the Guarantor irrevocably and unconditionally agrees to indemnify the Beneficiaries and at all times to keep the Beneficiaries indemnified against any loss or damage suffered by the Beneficiaries arising out of or in connection with:

- (a) any failure by the IDA Participant to perform the Obligations duly and punctually; or
- (b) any obligation or liability that would otherwise form part of the Obligations being void, voidable or unenforceable against or irrecoverable from the IDA Participant for any reason ("**Unenforceable Obligation**"), and whether or not the Beneficiaries knew or ought to have known of that reason.

A reference in this deed to the obligations or liabilities of the Guarantor is a reference to the Guarantor's obligations or liabilities as either guarantor or indemnifier (or both) under this deed. The use of the expression "Guarantor" in this deed in relation to a party must not be construed as diminishing that party's obligations as an indemnifier under this deed.

4. Nature and preservation of liability

4.1 Absolute liability

The liability of the Guarantor under this deed is absolute and is not subject to the performance of any condition precedent or subsequent by the IDA Participant or the Guarantor. This deed binds each person who has executed it notwithstanding that it may not have been executed by any other person, whether named as a party or not.

4.2 Unconditional liability

The liability of the Guarantor under this deed will not be affected by any act, omission, matter or thing which, but for this clause 4.2, might operate in law or in equity to reduce or release the Guarantor from the Guarantor's liability, including:

Schedule 12 – Parent Company Guarantee

- (a) the Beneficiaries granting time, waiver or other indulgence or concession to, or making any composition or compromise with the IDA Participant or the Guarantor;
- (b) the Beneficiaries not exercising or delaying in the exercise of any remedy or right they have for the enforcement of the IDA or the Deed Poll or any Obligation;
- (c) any laches, acquiescence or other act, neglect, default, omission or mistake by the Beneficiaries;
- (d) any variation to the IDA or the Deed Poll or any Obligation, whether or not that variation imposes any additional liability on the IDA Participant or the Guarantor;
- (e) the transfer, assignment or novation by the Beneficiaries, the IDA Participant or the Guarantor of any of their rights under the IDA or the Deed Poll or under any other Obligation;
- (f) any release of the IDA Participant or the Guarantor from the IDA or the Deed Poll or any Obligation or any security held for the performance of any of the Obligations;
- (g) the loss of any security or any variation in the order of priorities relating to that security;
- (h) any failure by the Beneficiaries to disclose to the Guarantor any fact, circumstance or event relating to the Beneficiaries or the Guarantor at any time before or during the currency of this deed;
- (i) any change in the constitution or nature of the IDA Participant or the Beneficiaries, or any change in any other circumstance relating to the IDA or the Deed Poll; or
- (j) any act, omission or thing done under or in connection with the IDA, including:
 - (i) any decision of the LT;
 - (ii) any decision of an expert under clause 28.2 of the IDA;
 - (iii) any direction by TfNSW including under clause 20.1 of the IDA; and
 - (iv) any Target Adjustment Event.

4.3 Void or voidable transactions

If a claim is made that any payment, receipt or other transaction to or in favour of the Beneficiaries is void, voidable or capable of being set aside under any Insolvency Provision or for any other reasons and that claim is upheld, conceded or compromised, then:

- (a) the Beneficiaries will immediately become entitled as against the Guarantor to all the rights in respect of the Obligations to which it would have been entitled had the payment, receipt or other transaction not occurred; and
- (b) the Guarantor must immediately do all things and execute all documents as the Beneficiaries may reasonably require to resolve those rights.

4.4 Claim on the Guarantor

The Beneficiaries are not required to make any claim or demand on the IDA Participant, or to enforce the IDA or the Deed Poll, or any other right, power or remedy against the IDA Participant, before making any demand or claim on the Guarantor.

Schedule 12 – Parent Company Guarantee

4.5 Insolvency

Until the Obligations have been discharged in full and unless the Beneficiaries otherwise direct, the Guarantor must not lodge any proof of debt or similar claim in insolvency of the IDA Participant in competition with the Beneficiaries. The Guarantor irrevocably appoints the Beneficiaries as its attorneys to prove in the insolvency of the IDA Participant for all money to which the Guarantor may be entitled from the IDA Participant.

4.6 Interests several

The interests of the Beneficiaries under this deed are several. Each obligation from the Guarantor to each Beneficiary is that Beneficiary's separate and independent right and property. Each Beneficiary has the right to protect and enforce its rights arising under or in connection with this deed without joining any other Beneficiary in any proceedings for this purpose.

4.7 Liability Limited

Notwithstanding any other provision of this deed:

- (a) the aggregate liability of the Guarantor to TfNSW under this deed shall not exceed the aggregate liability of the IDA Participant under the IDA;
- (b) the liability of the Guarantor under this deed in connection with a breach of the IDA by the IDA Participant shall not be greater than the liability of the IDA Participant under the IDA in respect of the breach;
- (c) in respect of any liability of the Guarantor under this deed arising out of, or in connection with:
 - (i) the IDA, the Guarantor is entitled to rely on all defences, limitations and exclusions (including set off and counterclaim) available to the IDA Participant under the IDA; or
 - (ii) the Deed Poll, the Guarantor is entitled to rely on all defences, limitations and exclusions (including set off and counterclaim) available to the IDA Participant under the Deed Poll;
- (d) where the Guarantor is performing any Obligation, the Guarantor will not be required to perform any such Obligation in a manner any different than that required by the IDA or the Deed Poll (as applicable);
- (e) payment by one of the IDA Participant or the Guarantor to or in favour of a Beneficiary in respect of a particular liability shall be deemed to be good discharge against that Beneficiary in respect of that particular liability; and
- (f) the liability (including the aggregate liability) of the Guarantor to RailCorp, Sydney Trains, NSW Trains and Sydney Metro under this deed shall not exceed the liability (including the aggregate liability) of the IDA Participant to RailCorp, Sydney Trains, NSW Trains or Sydney Metro (as applicable) under the Deed Poll.

Nothing in this clause shall limit the Guarantor's liability for obligations and liabilities of the IDA Participant which arise from or would have arisen from an Unenforceable Obligation referred to in clause 3(b), subject to such liability not exceeding the liability that the IDA Participant would have had if that obligation or liability had not arisen from an Unenforceable Obligation.

5. No set-off or deduction

Without limiting clause 4.7(c):

- (a) all payments by the Guarantor under this deed must be free of any set-off or counterclaim and without deduction or withholding; and
- (b) if any deduction or withholding must be made by law then the Guarantor must pay to the Beneficiaries any additional amounts as are necessary to ensure that the Beneficiaries receive the full amount of the obligation or liability which the IDA Participant has not paid.

6. Expenses and GST

6.1 Expenses

The Guarantor must on demand reimburse the Beneficiaries for and keep the Beneficiaries indemnified against all expenses, including, without limitation, legal fees, costs and disbursements on a solicitor/own client basis, incurred by the Beneficiaries in connection with the preparation, enforcement, attempted enforcement of, or preservation of any rights under, this deed.

6.2 Goods and Services Tax

If the Beneficiaries are or becomes liable to pay any GST (including any penalty) in respect of any supply it makes under, or in connection with, the IDA or the Deed Poll or this deed ("GST Liability") then:

- (a) to the extent that an amount is payable by the Guarantor to the Beneficiaries under this deed for that supply - the amount will be increased by the full amount of the GST Liability; and
- (b) otherwise - the Guarantor will indemnify and keep the Beneficiaries indemnified for the full amount of the GST Liability.

7. Governing law and jurisdiction

7.1 Governing law

This deed and where applicable, the arbitration reference contained in clause 7.3, is governed by and will be construed according to the laws of New South Wales.

7.2 Jurisdiction

- (a) This clause 7.2 only applies where clauses 7.3 to 7.9 do not apply.
- (b) The Guarantor irrevocably submits to the non-exclusive jurisdiction of the courts and appellate courts of New South Wales, and the courts competent to determine appeals from those courts, with respect to any proceedings which may be brought relating in any way to this deed.
- (c) The Guarantor irrevocably waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceeding has been brought in an inconvenient forum, where that venue falls within paragraph (b) of this clause.

7.3 Reference to arbitration

- (a) Clauses 7.3 to 7.9 will only apply where the Guarantor is a foreign company (as defined in section 9 of the *Corporations Act 2001* (Cth)).
- (b) Any controversy, claim or dispute directly or indirectly based upon, arising out of, relating to or in connection with this deed (including any question relating to the existence, validity or termination of this deed) must be referred to and finally resolved by arbitration in accordance with the arbitration rules of the Australian Centre for International Commercial Arbitration (known as the ACICA Arbitration Rules).
- (c) The seat of the arbitration will be Sydney, Australia.
- (d) The number of arbitrators will be one.
- (e) The language of the arbitration will be English.

7.4 Powers of the arbitrator

The arbitral tribunal has the power to grant all legal, equitable and statutory remedies, except punitive damages.

7.5 Consolidation

The parties agree that section 24 of the *International Arbitration Act 1974* (Cth) will apply in respect of consolidations.

7.6 Joinder

The arbitral tribunal has the power, on the application of any party to this arbitration agreement, to allow a third party who the arbitrator considers has a sufficient interest in the outcome of the arbitration to be joined in the arbitration as a party. Each party to this deed hereby consents to such joinder. In the event of such joinder of parties in the arbitration, the arbitrator has the power to make a single final award, or separate awards, in respect of all parties so joined in the arbitration.

7.7 Award final and binding

Any award will be final and binding upon the parties.

7.8 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 7.
- (b) The arbitral tribunal has no power to make a binding or non-binding determination or any award in respect of any controversy, claim or dispute directly or indirectly based upon, arising out of, relating to or in connection with this deed 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 controversy, claim or dispute directly or indirectly based upon, arising out of, relating to or in connection with this deed referred to the arbitral tribunal.

Schedule 12 – Parent Company Guarantee

7.9 Urgent relief

Nothing in this clause 7 will prejudice the right of a party to seek urgent injunctive or declaratory relief from a court.

8. Notices

Any communication under or in connection with this deed:

- (a) must be in writing;
- (b) must be addressed as shown below:

Name: Transport for NSW

Address: Level 5, Tower A, Zenith Centre, 821 Pacific Highway, Chatswood NSW 2067

For the attention of: As notified by Transport for NSW after the date of this deed

Name: Rail Corporation New South Wales

Address: Level 20, 477 Pitt Street, Sydney NSW 2000

For the attention of: As notified by Rail Corporation New South Wales after the date of this deed

Name: Sydney Trains

Address: Level 20, 477 Pitt Street, Sydney NSW 2000

For the attention of: As notified by Sydney Trains after the date of this deed

Name: NSW Trains

Address: Level 20, 477 Pitt Street, Sydney NSW 2000

For the attention of: As notified by NSW Trains after the date of this deed

Name: Sydney Metro

Address: PO Box 588, North Ryde BC NSW 1670

For the attention of: As notified by Sydney Metro after the date of this deed

Name: []

Address: []

(or as otherwise notified by that party to the other party from time to time);

- (c) will be deemed to be duly given, served or made in relation to a party if it is delivered during business hours to the address of that party set out in this deed; and
- (d) will be deemed to be given, served or made on delivery.

9. Severance

Any provision of this deed which is illegal, void or unenforceable will be ineffective only to the extent of that illegality, voidness or unenforceability without invalidating the remaining provisions of this deed.

10. Counterparts

This deed need not be executed by the Beneficiaries.

11. Confidentiality

- (a) Subject to paragraphs (b) and (c), each party must keep the terms of this deed confidential.
- (b) A party may make any disclosure in relation to this deed:
 - (i) to a professional advisor, financial adviser, insurer, rating agency, financier or auditor, as long as it advises that person of the confidential nature of the terms of this deed and that person is obliged to keep the information disclosed confidential;
 - (ii) to the extent required to comply with any law or requirements of a regulatory body (including any relevant stock exchange);
 - (iii) to any of its employees or officers to whom it is necessary to disclose the information, as long as it advises that person of the confidential nature of the terms of this deed and that person is obliged to keep the information disclosed confidential;
 - (iv) as required in accordance with the *Government Information (Public Access) Act 2009* (NSW);
 - (v) to the extent required in connection with any legal or arbitral proceedings under or in relation to this deed;
 - (vi) to obtain the consent of a third party to a term of, or to act under, this deed, as long as it advises that person of the confidential nature of the terms of this deed and that person is obliged to keep the information disclosed confidential;
 - (vii) to a related body corporate, as defined in section 9 of the *Corporations Act 2001* (Cth), as long as it advises that related body corporate of the confidential nature of the terms of this deed and that related body corporate is obliged to keep the information disclosed confidential;
 - (viii) with the prior consent of the other parties to this deed; or
 - (ix) if the information disclosed has come into the public domain through no fault of the party (or its employees, officers or related bodies corporate) making the disclosure.
- (c) The Beneficiaries may make any disclosure in relation to this deed to any department, office or agency of the NSW Government as required for any Government purpose or process.

Schedule 12 – Parent Company Guarantee

Executed as a deed.

Executed by **[Guarantor]** by or in the presence of:

Signature of Director

Name of Director in full

|

Signature of Secretary/other Director

Name of Secretary/other Director in full

Schedule 13 - Certificates of Design Compliance

1. IDE Certificate of Design Compliance

IDE CERTIFICATE OF DESIGN COMPLIANCE	
Participants: Transport for NSW John Holland Pty Ltd Jacobs Group (Australia) Pty Ltd	
DESIGN PACKAGE (limit of 1 per certificate)	DESCRIPTION:
<p>We certify that the Design Documentation for the package or part thereof described above has been completed to the extent indicated above in accordance with the requirements of the Agreement between TfNSW and _____ (including as required by the TfNSW Standard Requirements where applicable), and complies with the requirements of the Agreement and the Planning Approvals, subject to the register of outstanding minor design non-conformances and unresolved issues attached.</p> <p>We further certify that the attached compliance records as required by the Agreement reflect the true status of the design package.</p>	
NAME: _____ / (Engineering Manager)	SIGNATURE: _____ DATE: /
NAME: _____ / (General Manager)	SIGNATURE: _____ DATE: /

2. Designer's Certificate of Design Compliance

DESIGNER'S CERTIFICATE OF DESIGN COMPLIANCE	
DESIGNER:	
DESIGN PACKAGE (limit of 1 per certificate)	DESCRIPTION:
CONSULTANCY AGREEMENT:	
I certify that the [(delete one) design documentation for the package / design documentation for the design discipline of [*] for the package] or part thereof described above has been completed to the extent indicated above in accordance with the requirements of the Consultancy Agreement referred to above (subject to the register of outstanding minor design non-conformances and unresolved issues attached).	
I further certify that the attached compliance records reflect the true status of the design package.	
NAME: _____	SIGNATURE: _____ DATE: /
/	
(Design Team Member)	

Schedule 14 - Certificate of Construction Compliance

1. IDE Certificate of Construction Compliance

IDE CERTIFICATE OF CONSTRUCTION COMPLIANCE	
Participants: Transport for NSW John Holland Pty Ltd Jacobs Group (Australia) Pty Ltd	
PORTION:	
IDE Activities	DESCRIPTION:
<p>We certify that the procurement and construction of the work package or part thereof described above have been completed to the extent indicated above in accordance with the requirements of the Agreement between TfNSW and _____, and comply with the requirements of the Agreement and the Planning Approvals, subject to the register of outstanding minor construction non-conformance and unresolved issues attached.</p> <p>We further certify that the attached compliance records as required by the Agreement reflect the true status of the work package.</p>	
NAME: _____ (Construction Manager)	SIGNATURE: _____ DATE: / /
NAME: _____ (General Manager)	SIGNATURE: _____ DATE: / /

Schedule 15 – Certificate of Completion

Part 1 <i>(by the GM)</i>	Project/Portion	<input style="width: 95%;" type="text"/>
<p>▶ I consider that the Project Works have no outstanding Defects (except for the Defects listed on any attachment to this certificate) and to the best of my knowledge, having made reasonable enquiry, that the Project Works have reached Completion.</p> <p>▶ I consider the Date of Completion should be declared to be → <input style="width: 150px;" type="text"/></p> <p>▶ I request that the LT Members consider the matter at the next LT meeting pursuant to clause 4.4 and:</p> <p style="margin-left: 20px;">a) sign Part 2 below confirming the date I have nominated above as the Date of Completion or a different date as appropriate, and submit this certificate to the Principal's Representative; or</p> <p style="margin-left: 20px;">b) issue a list of outstanding Project Works the LT consider is required to achieve Completion.</p>		
<input style="width: 300px; height: 20px;" type="text"/>		<input style="width: 150px; height: 20px;" type="text"/>
Signed by the General Manager (GM)		Date
Part 2 <i>(to be completed/signed by all LT Members)</i>		Date <input style="width: 150px;" type="text"/>
<p><input type="checkbox"/> The LT concurs with the GM that the Project Works have reached a stage of Completion.</p> <p><input type="checkbox"/> We concur with the GM that the Project Works reached a stage of Completion on → <input style="width: 150px;" type="text"/></p> <p><input type="checkbox"/> We agree that the Project Works have reached Completion, but have determined that the Date of Completion was → <input style="width: 150px;" type="text"/></p> <p>▶ We request that the Principal's Representative consider the matter and, pursuant to clause 19.3:</p> <p style="margin-left: 20px;">a) sign Part 3 below endorsing this Certificate of Completion;</p> <p style="margin-left: 20px;">b) sign Part 3 below confirming a different Date of Completion; or</p> <p style="margin-left: 20px;">c) issue a list of Defects.</p> <p><input type="checkbox"/> The Project Works have NOT reached Completion. We hereby direct the Participants to rectify the Defects noted on the attached list.</p>		
TfNSW LT Members	NOP1 LT Members	NOP2 LT Members
<input style="width: 250px; height: 40px;" type="text"/>	<input style="width: 250px; height: 40px;" type="text"/>	<input style="width: 250px; height: 40px;" type="text"/>
Part 3 <i>(to be completed / signed by the Principal's Representative)</i>		Date <input style="width: 150px;" type="text"/>
<p><input type="checkbox"/> I endorse this Certificate of Completion.</p> <p><input type="checkbox"/> I agree that the Project Works have reached Completion, but have determined that the Date of Completion was → <input style="width: 150px;" type="text"/></p> <p><input type="checkbox"/> I consider the Project Works have NOT reached Completion. My reasons for rejection are <u>attached</u>. I hereby direct the Participants to rectify the Defects noted on the attached list.</p>		
<input style="width: 300px; height: 20px;" type="text"/>		
Signed by the Principal's Representative		

Part 16 – Certificate of Final Completion

Schedule 16 – Certificate of Final Completion

Part 1 (by the GM)	Project/Portion <input style="width: 90%;" type="text"/>	
<p>▶ The Defects Notification Period has elapsed and I am not aware of any outstanding Defects that are the responsibility of the Participants or any other matter which would prevent Final Completion from being achieved. To the best of my knowledge the Project Works are 100% complete and Final Completion has been achieved.</p> <p>▶ I consider the Date of Final Completion should be declared to be → <input style="width: 150px;" type="text"/></p> <p>▶ I request that the LT Members consider the matter at the next LT meeting and, pursuant to clause 19.4:</p> <p>a) sign Part 2 below confirming the date I have nominated above as the Date of Final Completion or a different date as appropriate, and submit this certificate to the Principal's Representative; or</p> <p>b) issue a list of outstanding Project Works or other items the LT consider is required to achieve Final Completion.</p>		
<input style="width: 300px; height: 20px;" type="text"/>	<input style="width: 150px; height: 20px;" type="text"/>	
Signed by General Manager (GM)	Date	
Part 2 (to be completed/signed by all LT Members)		
	Date	<input style="width: 150px;" type="text"/>
<p><input type="checkbox"/> The LT concurs with the GM that the Project Works are 100% complete and that Final Completion has been achieved.</p> <p><input type="checkbox"/> We concur with the GM that Final Completion was achieved on → <input style="width: 150px;" type="text"/></p> <p><input type="checkbox"/> We agree that the Final Completion was achieved, but have determined that the Date of Final Completion was → <input style="width: 150px;" type="text"/></p> <p>▶ We request that the Principal's Representative consider the matter and, pursuant to clause 19.4, within the next 14 days:</p> <p>a) sign Part 3 below endorsing this Certificate of Final Completion;</p> <p>b) sign Part 3 below confirming a different Date of Final Completion; or</p> <p>c) issue a list of Defects or other items required to achieve Final Completion.</p> <p><input type="checkbox"/> Final Completion has NOT been achieved. We hereby direct the Participants to rectify the Defects and attend to the items noted on the attached list.</p>		
TNSW LT Members	NOP1 LT Members	NOP2 LT Members
<input style="width: 250px; height: 40px;" type="text"/>	<input style="width: 250px; height: 40px;" type="text"/>	<input style="width: 250px; height: 40px;" type="text"/>
Part 3 (to be completed / signed by the Principal's Representative)		
	Date	<input style="width: 150px;" type="text"/>
<p><input type="checkbox"/> I endorse this Certificate of Final Completion.</p> <p><input type="checkbox"/> I agree that Final Completion has been achieved, but have determined that the Date of Final Completion was → <input style="width: 150px;" type="text"/></p> <p><input type="checkbox"/> Final Completion has not been achieved. My reasons for rejection are <u>attached</u>. I hereby direct the Participants to rectify the Defects and other items noted on the attached list.</p>		
<input style="width: 300px; height: 20px;" type="text"/>		
Signed by the Principal's Representative		

Schedule 17 – Payment Certificate

Schedule 17 – Payment Certificate

Schedule 17 – Payment Certificate

Project or Ad Hoc Works Name or PMB Year					
Part 1 – Context		For amounts payable under the IDA up to and including (date)			
Payment claim (submitted to TfNSW on the 5 th Business Day of each calendar month)					
Final Project Payment Claim (submitted to TfNSW within 60 days of the Date of Final Completion of the Project)					
Other circumstance					
Part 2 – Summary of Claim to Date:				AMOUNT (\$)	
Total Reimbursable Costs				(a)	
Total Fee (based on Earned Value)				(b)	
Cash Neutrality				(c)	
Gainshare/Painshare				(d)	
Gross entitlement to date				(e) = (a) + (b) + (c) + (d)	
Less previous gross entitlement				(f)	
Net entitlement (excluding GST)				(g) = (e) – (f)	
GST applicable to net entitlement				(h) = (g) * 10%	
Amount payable this Payment Claim				(j) = (g) + (h)	
Part 3 – General Manager's statements					
The amounts included in this Payment Claim are in accordance with the terms of the IDA.					
I certify that the Payment Claim is in order for payment by TfNSW.					
Pursuant to clause 21.2(i) of the Incentivised Delivery Agreement, TfNSW must pay the NOPs, or the NOPs must pay TfNSW, as the case may be, the amounts shown above.					
I attach Statutory Declarations from each of the NOPs in accordance with clause 21.5 of the Incentivised Delivery Agreement.					
I attach a Tax Invoice for each NOP's share of the Payment Claim prepared in accordance with clause 21.9 of the Incentivised Delivery Agreement.					
I attach a statement by the FA confirming that the amounts shown in this Final Project Payment Claim are in accordance with the terms of the Incentivised Delivery Agreement.					
Signed by the General Manager				Date	

Schedule 18 – Form of Warranty

Schedule 18 - Form of Warranty

This Deed Poll is made the _____ day of 20

To: **Transport for NSW (ABN 18 804 239 602)**, a NSW Government agency constituted by section 3C(1) of the *Transport Administration Act 1988* (NSW) of Level 5, Tower A, Zenith Centre, 821 Pacific Highway Chatswood NSW 2067 (TfNSW);

Rail Corporation New South Wales (ABN 59 325 778 353), a corporation constituted by section 4(1) of the *Transport Administration Act 1988* (NSW), of Level 20, 477 Pitt Street, Sydney NSW 2000 (RailCorp);

Sydney Trains (ABN 38 284 779 682), a NSW Government agency constituted by Part 3B of the *Transport Administration Act 1988* (NSW), of Level 20, 477 Pitt Street, Sydney NSW 2000 (Sydney Trains);

NSW Trains (ABN 50 325 560 455), a NSW Government agency constituted by Part 3C of the *Transport Administration Act 1988* (NSW) of Level 20, 477 Pitt Street, Sydney NSW 2000 (NSW Trains); and

Sydney Metro (ABN 12 354 063 515), a NSW Government agency constituted by Part 3D of the *Transport Administration Act 1988* (NSW), of PO Box 588, North Ryde BC NSW 1670 (Sydney Metro).

By: That person described in Item 1 of the Schedule (**Warrantor**) which expression will include its successors and assigns.

RECITALS

- A. The Warrantor has supplied the items described in Item 2 of the Schedule (**Equipment**) to the person described in Item 3 of the Schedule (**NOPs**) or the person described in Item 4 of the Schedule, a subcontractor of the NOPs (**Subcontractor**), for the works (**Works**) being carried out by the NOPs under the agreement described in Item 5 of the Schedule (**Agreement**) with TfNSW.
- B. It is a requirement of the Agreement that the NOPs procure the Warrantor to give the following warranties in favour of TfNSW, RailCorp, Sydney Trains, NSW Trains and Sydney Metro with respect to the Equipment.

OPERATIVE

1. Quality

The Warrantor:

- (a) warrants to TfNSW, RailCorp, Sydney Trains, NSW Trains and Sydney Metro that the Equipment will be to the quality and standard stipulated by the Agreement and will be of merchantable quality and fit for the purpose for which it is required; and
- (b) gives the warranty more particularly set out in Item 6 of the Schedule with respect to the Equipment.

The above warranties are in addition to and do not derogate from any warranty implied by law in respect of the Equipment.

2. Replacement

The Warrantor warrants to TfNSW, RailCorp, Sydney Trains, NSW Trains and Sydney Metro that it will replace so much of the Equipment as:

- (a) is found to be of a lower quality or standard than that referred to in clause 1; or
- (b) shows deterioration of such extent that in the opinion of TfNSW, RailCorp, Sydney Trains, NSW Trains or Sydney Metro the Equipment ought to be made good or replaced in order to achieve fitness for the purpose for which it is required, whether on account of utility, performance, appearance or otherwise, within the period described in Item 7 of the Schedule.

3. Warrantor to bear cost

The Warrantor covenants to TfNSW, RailCorp, Sydney Trains, NSW Trains and Sydney Metro that it will bear the cost of any work necessary to any part of the Works to enable the requirements of clause 2 to be carried out or to make good the Works afterwards.

4. Principal not liable

The Warrantor acknowledges to TfNSW, RailCorp, Sydney Trains, NSW Trains and Sydney Metro that nothing contained in this Deed Poll is intended to nor will render any of TfNSW, RailCorp, Sydney Trains, NSW Trains or Sydney Metro in any way liable to the Warrantor in relation to any matters arising out of the Agreement or otherwise.

5. This Deed Poll may not be revoked

This Deed Poll may not be revoked or otherwise modified without the prior written consent of TfNSW, RailCorp, Sydney Trains, NSW Trains and Sydney Metro.

6. Governing Law and jurisdiction

- (a) This Deed Poll shall be governed by and construed in accordance with the laws of the State of New South Wales.
- (b) The Warrantor hereby submits to the non-exclusive jurisdiction of the courts of New South Wales and any courts that may hear appeals from any of those courts, for any proceedings in connection with this Deed Poll, and waives any right it might have to claim that those courts are an inconvenient forum.

7. Enforcement of this Deed Poll

For the avoidance of doubt this Deed Poll is enforceable by any of TfNSW, RailCorp, Sydney Trains, NSW Trains and Sydney Metro.

Schedule

Item 1	Name and Address of Warrantor	[#]
Item 2	Equipment (Recital A)	[#]
Item 3	NOPs (Recital A)	[#]
Item 4	Subcontractor (Recital A)	[#]

Schedule 18 – Form of Warranty

- | | | |
|--------|--|--|
| Item 5 | Agreement (Recital A) | [#] |
| Item 6 | Detailed Warranty of Warrantor (Clause 1(b)) | [#] |
| Item 7 | Period of Years (Clause 2) | [#] years from the expiry of the last "Defects Notification Period" as defined in the Agreement. |

EXECUTED AS A DEED POLL

Executed by [insert name of Warrantor] (ABN [insert ABN]) by or in the presence of:

.....
Signature of Director

.....
Signature of Secretary/other Director

.....
Name of Director in full

.....
Name of Secretary/other Director in full

Schedule 19 – TfNSW Supplied Items

- (a) For the Initial Project, refer to Schedule 19.1 in the Project-Specific Schedules and Exhibits (Initial Project) section.
- (b) For each Additional Project, refer to Schedule 19.n.

Schedule 20.0 – Program Target Adjustment Guidelines

- (a) For the Initial Project, also refer to Schedule 20.1 in the Project-Specific Schedules and Exhibits (Initial Project) section.
- (b) For each Additional Project, also refer to Schedule 20.n.

Target Adjustment Guidelines – Schedule 20

No	Scenario	TAE?		Comments
		Yes	No	
1.	A 'force majeure' type event affecting the Project of the following types only: earthquake, act of terrorism, act of a public enemy, war (declared or undeclared) revolution, or bushfire.	1	-	On the basis that the risk is not very likely, it is more economic for TfNSW to take this risk rather than have provision in the TOC. It is expected that these sorts of events will be covered by insurance, with the excess to be paid by the party retaining the risk. An event that is caused by, or under, out of or in connection with an act or omission of the IDE will not be a 'force majeure' type event.
2.	Industrial action by others (and not arising from this Project) leads to delays and additional costs and the IDE can demonstrate it has done everything possible to mitigate those impacts.	1	-	The IDE is not required to bear the risk of 3 rd party related industrial action which directly causes delay and cost to IDE Activities, eg by Sydney Trains.
3.	Union or staff representatives refuse to accept new methods of operation, innovations or value engineering options priced into the TOC, maintenance or locations for carrying out tasks as a result of IDE design and design innovations, resulting in significant design changes, additional costs and delays.	-	1	The IDE is responsible for all works directly related to the IDE Activities.
4.	Subcontractors or supplier equipment is delivered late due to a strike in a factory producing it and extra costs are incurred.	-	1	Shared risk.
5.	Change in Law leads to increased costs to comply with the new	1	-	As per definition of "Change in Law" and "Law" in Schedule 1 of the IDA. NOTE: If an unforeseen Change in

No	Scenario	TAE?		Comments
		Yes	No	
	requirements after relevant Reference Date.			Law occurs in the time between the date of submission of a Project Proposal and the date of the Election Notice and the LT determines that the change is significant it is expected that the Project Proposal would be withdrawn and resubmitted to account for the impacts of the change.
6.	Change in TfNSW Standard Requirements (TSR) leads to a change and the Principal's Representative has directed the IDE to implement that change - generates a net overall saving / increase in cost	1	-	Only if directed by the Principal's Representative. If no direction received from the Principal's Representative, then the IDE should not be proceeding with the change.
7.	An ASA or industry standard is revised following the relevant Reference Date, which (if applied) will result in considerable design rework and/or construction rework and associated cost and delay in that: (i) the IDE could not have reasonably foreseen the revision (including public notice had not been given) and a party experienced and competent in delivery of similar projects would not have reasonably foreseen the revision as at the relevant Reference Date; <u>and</u> (ii) the IDE is directed by the Principal's Representative to apply the revised standard.	1	-	Our intention is as follows: (i) the IDE should foresee and sensibly allow for any relevant likely or impending changes in standards, and the TOC should allow for anticipated changes where TfNSW agrees (during TOC development) that the works should conform with the impending standard. (ii) risks / opportunities associated with minor differences between expected and actual standards will be shared; (iii) if new standards require significant unexpected costs, the IDE should not proceed to implement without the agreement of (or direction from) the Principal's Representative; and (iv) any changes in standards which are not reasonably foreseeable (and which have significant time/cost impact) should be referred to the Principal's Representative, and if TfNSW decides to implement the Principals' Representative will so direct, and will grant entitlement to a TAE .
8.	An ASA or industry standard is revised following the relevant Reference Date, which (if applied) will result in considerable design	-	1	LT may need to consider whether a TAE is justified in cases where despite the Principal's Representative not directing the IDE, failure to

No	Scenario	TAE?		Comments
		Yes	No	
	rework and/or construction rework and associated cost and delay in that: (i) the IDE could have reasonably foreseen the revision (including public notice had not been given) and a party experienced and competent in delivery of similar projects would have reasonably foreseen the revision as at the relevant Reference Date; <u>or</u> (ii) the IDE is not directed by the Principal's Representative to apply the revised standard.			apply the revised standard would be unsafe / unlawful.
9.	Due to a TfNSW issue outside the IDE the Reference Date is delayed beyond the latest date for the Election Notice as stated in the Project Proposal, resulting in additional costs because of restaging of the IDE Activities.	1	-	This is a TfNSW risk. Project Proposal needs to be clear in its offer to TfNSW re validity. The IDE should work to mitigate the impact.
10.	Planning Approval (including heritage approval) is delayed leading to delay in commencement of a portion of the IDE Activities and the IDE has done everything possible to mitigate any potential impacts.	1	-	Planning Approval is a TfNSW risk unless stated otherwise as a shared risk as part of a Project TAG.
11.	The application for the Environment Protection Licence (EPL) is submitted by the IDE and the approval period is delayed by the Environment Protection Authority past the approval period forecast during TOC development. This leads to project start-up and knock on effects to the construction schedule	-	1	No TAE, regardless of whether the delay is in the IDE forming and submitting the application or the Authority issuing the EPL
12.	Suspension of the IDE Activities due to a major incident on the network not related to the Project results in a delay to the IDE Activities and additional costs.	1	-	Assumes that the suspension is under Clause 19.2 of the IDA and that the event is outside both the control and ability of the IDE to manage the risk. The IDE should work to mitigate the impact.
13.	A risk that was contemplated in the TOC risk and opportunity allowance (R&O) eventuates and the cost impact	-	1	All items in the TOC R&O are shared risk.

No	Scenario	TAE?		Comments
		Yes	No	
	is much greater than the original value.			
14.	Additional work is undertaken beyond the scope defined in the TOC without the direction of the Principal's Representative.	-	1	No works beyond the Works Brief are to be completed without Principal's Representative direction. Any works so performed are shared risk, including any requirement by TfNSW to re-instate.
15.	Principal's Representative directs the IDE to change the functional / operational requirements or scope of the Project. The cost of implementing the direction results in a change in costs.	1	-	Change in functional / operational requirements will be directed in writing by the Principal's Representative as an addendum to the Works Brief. This TAE entitlement does not arise from detailed scope adjustments resulting from normal design evolution in implementing original functional / operational requirements. A TAE may be valid regardless of the value of the change in cost.
16.	Extreme weather (wet/heat/cold/wind/lightning strike/flood) impacting on the IDE Activities resulting in delays and additional cost over and above that allowed for in the TOC.	-	1	Shared risk - it is up to the IDE to mitigate as much as possible and pursue recovery from relevant insurance policies. Insurance only responds to damage not delay. IDE should include in contingency.
17.	TfNSW agrees to a set of possessions for the IDE Activities but during the course of the IDE Activities a possession date is moved in either direction (including a deferral beyond a subsequent possession) but not cancelled, in that, the possession is not moved beyond (or unreasonably close to) a KPI milestone or the Date for Completion.	-	1	
18.	TfNSW agrees to a set of possessions for the IDE Activities but during the course of the IDE Activities a possession date is moved beyond (or unreasonably close to) a KPI milestone date or the Date for Completion.	1	-	May lead to adjustment of the KRA target(s) for schedule (subject to LT determination), but not to the TOC. If TfNSW elects to move the Date for Completion, then the impact upon the possession schedule shall be viewed as per the impact of moving the possessions themselves (i.e. in

No	Scenario	TAE?		Comments
		Yes	No	
				accordance with scenario 17, 18 or 19).
19.	TfNSW agrees to a set of possessions for the IDE Activities however during the course of the IDE Activities a possession is cancelled by the network controller impacting on critical path activities. The IDE Activities are rescheduled causing delay and additional costs.	1	-	LT to determine whether a possession is in effect "cancelled" (e.g. track access is provided but isolation is cancelled or the possession configuration is altered). Does not include IDE self-cancelled possessions.
20.	TfNSW agrees to a set of possessions for the IDE Activities, however, during the course of the IDE Activities the IDE advises that additional possessions are required to complete the IDE Activities on time. Additional possession costs are incurred by TfNSW and are passed on to the IDE.	-	1	The 'no TAE' guideline would not apply if the additional possessions were required due to additional works being directed by the Principal's Representative as described in scenario 15
21.	IDE Activities that can be carried out only by Sydney Trains are completed late within a possession. All other IDE Activities were completed within expected duration however the entire possession has ended in late hand back and train delays. Even though the progress of the IDE Activities has not been affected, penalties as a result of the late hand back will be realised.	-	1	Given that these are "IDE Activities", on the basis that the IDE is managing the overall Site this is within the management of the IDE and therefore not a TAE. As with any Subcontractor, IDE is expected to manage work activities. If Sydney Trains is working independently then this would not be "IDE Activities" or late hand-back by the IDE - i.e. no train delay penalties apply
22.	The IDE has decided to source resources externally. Not all resources are available in the external market and Sydney Trains is unable to provide the remaining resources, resulting in cancellation of the commissioning. This results in substantial delay and additional costs to the IDE.	-	1	It is incumbent on the IDE to manage this. Shared risk. Participants should be collectively able to manage this risk. IDE is responsible for sourcing and managing all of its providers.
23.	Sydney Trains or TfNSW costs for undertaking "IDE Activities" are higher than estimated in the TOC.	-	1	Costs which form part of the TOC/AOC (IDE costs) are a shared risk/opportunity - scope and cost need to be managed as with any Subcontractor.

No	Scenario	TAE?		Comments
		Yes	No	
24.	The IDE raises a request for information (RFI) to TfNSW in regard to discrepancies in the information arising from work undertaken outside the IDE. TfNSW was not able to issue information until after the date specified in the RFI at which time rework is required resulting in an increase in design costs and/or a delay in the works schedule.	-	1	This is no different than the IDE interfacing with any 3rd party contractor. Shared risk. Note if the response changed the functional requirements then that would be a different scenario requiring Principal's Representative approval (as per scenario 15). TOC should reasonably allow for whatever uncertainty remains at the date of Project Proposal - including any uncertainties relating to Interface Works
25.	Where the IDE has taken responsibility for obtaining design approvals, late approvals have resulted in inefficient utilisation of resources and delay to design, procurement and construction.	-	1	In this context "design approvals" means Configuration Control Board (CCB) approvals (and stakeholder consultations required for CCB), not heritage approvals etc.
26.	Designs are completed and installation work is underway when the safety certification is removed (or is subject to review) for the critical equipment (previously type approved by ASA) being supplied by a third party supplier (e.g. Interlocking signalling system / substation transformer). Any resultant changes result in delays and extra costs.	1	-	The IDE should generally be able to rely upon existing type approvals. However, in determining entitlement the LT should apply the principles set out in scenario 7/8, i.e. TAE entitlement will not apply where: (i) the IDE commits significant unplanned expenditure without consulting the Principal's Representative; or (ii) that loss of certification was reasonably foreseeable by the IDE or a party experienced and competent in delivery of similar projects.
27.	Design development or changes to work methodology are required to suit construction. This is as a result of either original methodology or the IDE's design being inadequate or that the team develop a better way of working. This has an impact on already ordered or manufactured equipment and will lead to schedule delay and increase of design cost or alternatively create savings through the improved work methodology.	-	1	Design development both shared risk and opportunity.

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No	Scenario	TAE?		Comments
		Yes	No	
28.	Assumptions in the TOC based on interpretations of the available data (survey, studies, earthing and bonding, hydrology) were incorrect. Further information is received after the relevant Reference Date resulting in requirement for additional works and additional costs (e.g. piling works, drainage works).	-	1	TOC assumptions are not grounds for TAE. This scenario contemplates IDE assumption errors (not survey errors) hence shared risk. (IDE will need to decide what additional survey data etc. it needs during the development phase i.e. whether it was correct and complete). NOTE: If the Principal's Representative directs that the IDE Activities will be in accordance with a new power study which is provided after the relevant Reference Date, this will be considered a change in scope and considered under scenario 15.
29.	Designs carried out by the IDE interfaces to parts of the existing Sydney Trains network. The interface design relied heavily on the accuracy of the existing Sydney Trains documentation. Major inaccuracies were found in the existing Sydney Trains documentation resulting in delays to the IDE Activities, and/or incurs extra costs.	-	1	IDE to satisfy itself at all times regarding data/information or documentation supplied. Shared risk.
30.	The IDE conducts a signal sighting survey and it is determined that additional or modified infrastructure is required to satisfy stakeholder inputs (eg, an additional repeater signal is required due to complaints from train drivers about insufficient sighting distance to a signal). This results in the IDE incurring additional costs.	-	1	Unless it leads to a change in the functional requirements and direction from the Principal's Representative, no TAE (assuming this is not caused by 3rd-party works)
31.	Upon an inspection of works at the end of a possession a signal post is found to have been installed foul of the safe clearance to overhead wiring/assemblies deemed to be "alive". Existing overhead wiring (OHW) design was found to be correct. Signalling design was found to be correct and signal sighting process was carried out and signed off. Signal has to be relocated or OHW design modified. Temporary	-	1	Shared risk. (Possibly a result of a design integration issue).

No	Scenario	TAE?		Comments
		Yes	No	
	rectification measures have been taken and urgent rework requiring an additional possession is required to effect a permanent fix. This results in significant additional cost.			
32.	The enabling / early works program (being undertaken outside the IDE) falls behind schedule and as a result there is delay in the progress of the IDE Activities. Despite the IDE taking all reasonable steps to mitigate the delays, possession work that is critical to the schedule is not able to be carried out and the IDE is required to accelerate its remaining works to recover.	1	-	These works are the responsibility of TfNSW. This applies only to enabling and early works directly contracted by TfNSW. Enabling works do not include site investigation works such as additional survey, geotech, detailed site surveys etc. TAE may not be applicable if the enabling or early works contractor is related to a Party in the IDE.
33.	TfNSW agrees with the IDE to undertake additional possession based site investigation work during project development and/or prior to the IDE being able to commence IDE Activities on Site. In spite of best efforts by TfNSW, all additional investigation works are not satisfactorily completed during the possession(s), causing additional delay costs.	-	1	IDE Activities and their performance are a shared risk.
34.	The IDE manages a TfNSW supply contract which is delayed and incurs additional costs over the figures estimated in the TOC.	-	1	Shared risk.
35.	The IDE accepts free issue materials or materials at a cheap or discounted price (e.g. sleepers or turnouts from Sydney Trains or TfNSW) without checking that the items are suitable for their intended purpose. When delivered there is no possibility that they can be installed leading to additional costs and delay.	-	1	Shared risk.
36.	A supplier of a major item goes into administration after an order is placed; the IDE has an effective contract in place and has undertaken due	-	1	IDE Activities – shared risk.

No	Scenario	TAE?		Comments
		Yes	No	
	diligence - despite this, the collapse leads to delays.			
37.	The actual costs for materials, components etc. differ from those allowed for within the TOC, e.g. as a result of changes in foreign exchange rates, commodity prices or general escalation issues.	-	1	IDE Activities – shared risk.
38.	Principal's Representative directs the IDE to use a particular system or piece of equipment (e.g. train stops). Designs and installation are carried out in accordance with applicable standards and equipment suppliers' requirements. During testing, problems are identified that result in additional time and costs to rectify.	-	1	Pre-TOC, this would not be a TAE – Proponents to inform themselves/ allow for risk. Post Reference Date, the change in equipment type would be a TAE. Any risks associated with testing etc would be priced as part of the TAE.
39.	Suppliers procured by the IDE through TfNSW or a NOP fail to deliver materials or services on time or delivers poor quality/defective/damaged equipment resulting in delays and additional costs.	-	1	Shared risk.
40.	Materials are procured through TfNSW and treated as 'TfNSW IDA Costs'. During the Defects Notification Period a batch of these items fail. While attempting to force the supplier to honour the associated warranty on the materials the supplier goes into liquidation leaving the IDE and/or TfNSW with no practical recourse against the supplier. The items have to be replaced with a different brand of an equivalent standard. The extra cost includes re-supply and the attempts to secure recovery from the original supplier.	-	1	Shared risk. May be subject to insurance recovery.
41.	Incident occurs following commissioning resulting in major damage to infrastructure and or damage/delays/disruption to the operational infrastructure and or rolling stock. The IDE has to repair / re - install the Works & the overall knock on effect to IDE is a substantial	1	-	Will be a TAE if the work was instructed by the Principal's Representative or is unrelated to an act or omission of the IDE. The IDE should not undertake such remedial work without such an instruction. Certificate of Final Completion must not be submitted to LT until any

No	Scenario	TAE?		Comments
		Yes	No	
	cost increase. The final incident investigation report is delivered sometime after KRAs signed off, and the cause is determined to be unrelated to the IDE.			outstanding investigations such as this are closed out. Note: notification requirements for potential TAE's under the IDA mean that notification cannot wait until the final incident investigation.
42.	An environmental incident on Site (e.g. fuel leakage from a machine; dust emissions; noise above the licence limits; community complaints) results in the IDE Activities being suspended or delayed for a period. No overall delay to Completion but significant additional costs are incurred.	-	1	This is a shared risk, even if the incident (eg fuel leakage) was not directly related to IDE Activities. Note: costs may be subject to insurance recovery.
43.	Heritage artefacts are discovered during the course of construction as a result of IDE Activities. Construction works forming part of the IDE Activities are suspended (which is likely to trigger Painshare) whilst assessment and transfer of the Site is completed with additional costs. Includes the cost of any recording or protection works.	-	1	TfNSW expects this risk to be shared in order that planning and survey work is thorough in the development stage.
44.	A local resident believes, despite every effort made and through good management by the IDE, that IDE Activities significantly affect them and they become a serial complainant which leads to a serious reputational impact for TfNSW and increased costs and delay.	-	1	Shared risk.
45.	The IDE allowed for the risk of relocating a service in the R&O assumptions. Following detailed design, the service could not be relocated and additional works were required to protect the existing service resulting in a net increase in cost	-	1	Shared risk.
46.	A significant service is encountered which was not identified prior to the works commencing. Additional works are required to relocate the	-	1	Shared risk.

No	Scenario	TAE?		Comments
		Yes	No	
	service causing delay and additional costs.			
47.	During construction a service is damaged (e.g. water main; electricity cable) causing delays to IDE Activities and additional costs for repairs and worksite clean-up.	-	1	Shared risk.
48.	Asbestos material is discovered during the IDE Activities. IDE Activities are suspended whilst a specialist contractor is employed to remove the material incurring a delay and additional cost	-	1	Shared risk – likely to occur.
49.	During excavation for IDE Activities, latent conditions (e.g. harder than expected rock, contamination, heritage artefacts) have been identified resulting in substantial delays and additional costs.	-	1	Standard scenario for latent conditions – shared risk. If an issue specific to a project is a concern as part of a TOC development then options for risk mitigation should be evaluated first.
50.	The Principal's Representative forms a view that buried cables installed by the IDE are not compliant and rectification is required. On inspection it is found that the works were compliant. Additional costs and schedule delays have been incurred proving works to be compliant.	1	-	Generic scenario. Assumes the IDE has provided all reasonable supporting evidence of compliance in accordance with agreed quality assurance procedures and the activity is directed by the Principal's Representative.
51.	The Project Works are completed and ready for commissioning but the scheduled start date for the commissioning phase is delayed due to reprioritisation by TfNSW - this leads to additional costs.	1	-	Only if directed by the Principal's Representative.
52.	The sophistication and subtlety of Safety Assurance Statements and Reports changes during the life of the IDE leading to repeat submissions and delays in handover.	-	1	Unless this is a change directed by the Principal's Representative based on a change in requirements/standards.
53.	Concessions identified by the IDE and incorporated into the design are not approved resulting in changes to the design and additional time or costs.	-	1	Shared risk.

No	Scenario	TAE?		Comments
		Yes	No	
54.	A utilities owner / operator insists on additional works to improve their asset as a condition of their approval for changes to their assets as a result of the IDE activities. These improvements are not directly required as part of the Project.	-	1	Unless directed by the Principal's Representative; refer scenario 15. As a point of principle, the TOC may allow for the impact of utility delays but it should NOT allow for asset improvement as a mechanism to appease utility owners/operators.
55.	Work is stopped for a major public event (e.g. G20 leaders summit; visit by the US President; World Youth Day) leading to the need to change the schedule and additional costs and the IDE can demonstrate it has done everything possible to mitigate those impacts.	1	-	Does not apply to protest activities, programmed special events such as Vivid or "brown-out" periods during the introduction of new timetables etc.
56.	Planning Approval is obtained after the Reference Date and the conditions of approval are significantly different to the draft conditions of approval included in the RFP which leads to additional time and/or costs.	1	-	Planning Approval a TfNSW retained risk.
57.	The Reference Date is delayed due to delays in agreeing the TOC / Project Proposal. This results in delays and additional costs to the project	-	1	(TOC not approved / agreed until Election Notice issued). No TAE drives the right behaviour incl. contingency planning for delay in formal approval, extra early works, etc.
58.	Heritage approval under Part 4 Division 3 of the <i>Heritage Act 1977</i> (NSW) turns out to be required after detailed design is complete (due to change of location or design from Principal's Design to AFC Design Documentation).	-	1	(Likely to happen - design will evolve) development phase should cover all necessary investigations to determine "best for project" solution, including trade-off between direct cost and approval requirements.
59.	Asset Lands or easement lands (TfNSW responsibility) not acquired on time.	1	-	Subject to IDE fulfilling its responsibilities to provide the information required to enable timely acquisition of any easement or other rights (e.g. emerging need for any rock anchors that may be required) Acquisition of Temporary Lands or licences are not a TAE.

No	Scenario	TAE?		Comments
		Yes	No	
60.	Additional cost and time required because of a difference in existing asset condition, standard, integrity, performance and design life.	-	1	IDE to investigate during development to reduce risks to acceptable level.
61.	After consultation with the LT and JCT TfNSW alters the Program KRA's/Program KPI's as part of regular KRA reviews.		1	TfNSW direction.
62.	A Program Management Budget is agreed in accordance with CI 22.1. As a result of the Program Management Budget, some activities that were carried out at a Project level are now carried out at as Program Management Activities.	1		TAE applies, direct costs and relevant margin moved between budgets.
63.	The Principal's Representative direct the IDE as to the timing or order of the IDE Activities resulting in additional costs or changes to agreed milestones.	1		There is no TAE due to resequencing of the IDE Activities that may be required from time to time to accommodate Interface Contractors or the resequencing of the IDE Activities as a result of a recommendation from the LT.
64.	The IDE includes costs within the TOC for training for critical resources or training as part of meeting social procurement obligations and the training is not delivered.	1		If the training cost was a 'scope item' within the TOC then this would be a negative TAE. However, if it was simply an approach proposed by the IDE to achieve an outcome, and the outcome was otherwise provided without procuring already trained resources from within the Australian rail industry, then NO TAE.
65.	TfNSW track designs have been completed and provided to the IDE as "AFC". These designs are found to be in error resulting in additional time and cost to the IDE		1	IDE to undertake review and assessment to verify design
66.	TfNSW agrees to power isolations for the IDE Activities but the isolation is moved in either direction, or cancelled. This results in the IDE not being able to complete all or part of the IDE Activities in time to achieve a	1		The IDE is best placed to minimise the impacts of this. A TAE as a result of this will apply to time relief only (modification of relevant KRA/KPI)

No	Scenario	TAE?		Comments
		Yes	No	
	key milestone impacting a schedule KPI outcome			This scenario applies only to TfNSW controlled power systems.
67.	A pandemic declared by the World Health Organisation (WHO), declared after the Commencement Date for the Initial Project or the date of the Election Notice for all other projects, leads to delays and additional costs and the IDE can demonstrate it has done everything possible to mitigate those impacts.	1		Our intention is as follows: (i) Any TAE agreed by the LT and TfNSW may include agreed additional project specific TAGs, the LT and TfNSW will use its best endeavours to agree a further TAE, if required and the IDE can demonstrate it has done everything possible to mitigate those impacts.

Schedule 22 – Site and Site Requirements

- (a) For the Initial Project, refer to Schedule 22.1 in the Project-Specific Schedules and Exhibits (Initial Project) section.
- (b) For each Additional Project, refer to Schedule 22.n.

Schedule 23 – Form of Subcontractor Deed Poll

Schedule 23 - Form of Subcontractor Deed Poll

THIS DEED POLL is made on, 20 by
.....ACN..... of
..... (the **Subcontractor**).

RECITALS:

- A. Transport for NSW (ABN 18 804 239 602), a NSW Government agency constituted by section 3C(1) of the *Transport Administration Act 1988* (NSW) of Level 5, Tower A, Zenith Centre, 821 Pacific Highway Chatswood NSW 2067 (TfNSW) and [insert] (the NOPs) have entered into an Incentivised Delivery Agreement dated [insert] pursuant to which the NOPs have agreed to carry out certain work under the Incentivised Delivery Agreement (**Works**).
- B. The Subcontractor has an agreement (the **Subcontract**) with one of the NOPs (**Relevant NOP**) for the execution and completion and/or supply of the [] (the **Subcontract Works**) for the Works.
- C. It is a condition of the Subcontract that the Subcontractor executes this Deed Poll.

THIS DEED WITNESSES THAT THE SUBCONTRACTOR HEREBY COVENANTS, WARRANTS AND AGREES with and for the benefit of the persons named in the Schedule as follows:

- 1. It will comply with its obligations under the Subcontract and upon completion of the Works, the Subcontract Works will satisfy the requirements of the Subcontract.
- 2. The persons named in the Schedule may assign or charge the benefits and rights accrued under this Deed Poll.
- 3. The Subcontractor:
 - (a) must if required by a written notice by TfNSW sign a deed in the form of the attached Deed of Novation with such substitute contractor as TfNSW may nominate; and
 - (b) for this purpose irrevocably appoints TfNSW to be its attorney with full power and authority to complete the particulars in and sign the attached Deed of Novation.
- 4. This Deed Poll shall be governed by and construed in accordance with the laws of the State of New South Wales.
- 5. The Subcontractor hereby submits to the non-exclusive jurisdiction of the courts of New South Wales and any courts that may hear appeals from any of those courts, for any proceedings in connection with this Deed Poll, and waives any right it might have to claim that those courts are an inconvenient forum.
- 6. This Deed Poll may not be revoked or otherwise modified without the prior written consent of TfNSW.
- 7. The Subcontractor's liability in respect of a breach of a particular obligation under this Deed Poll will be reduced to the extent to which the Subcontractor has already paid money to or performed work for the Relevant NOP in respect of that breach.

Schedule 23 – Form of Subcontractor Deed Poll

PERSONS NAMED IN THE SCHEDULE TO THIS DEED POLL

Transport for NSW (ABN 18 804 239 602)

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

Sydney Trains (ABN 38 284 779 682)

NSW Trains (ABN 50 325 560 455)

Sydney Metro (ABN 12 354 063 515)

EXECUTED AS A DEED POLL.

Executed by *[insert name]* (ACN *[insert ACN]*))

by or in the presence of:)

Signature of Director

Signature of Secretary/other Director

Name of Director in full

Name of Secretary/other Director in full

Schedule 23 – Form of Subcontractor Deed Poll

EXECUTED by the parties as a deed:

Executed by [] in accordance with section 127 of the Corporations Act 2001 (Cth):

Signature of director

Full name of director

Executed by [] in accordance with section 127 of the Corporations Act 2001 (Cth):

Signature of director

Full name of director

Executed by [] in accordance with section 127 of the Corporations Act 2001 (Cth):

Signature of director

Full name of director

Signature of company secretary/director

Full name of company secretary/director

Signature of company secretary/director

Full name of company secretary/director

Signature of company secretary/director

Full name of company secretary/director

Schedule 24 – Warranties required from Subcontractors

Schedule 24 – Warranties required from Subcontractors

Item	Scope of Warranty	Warranty Period (commencing on the Date of Completion)
BUILDING WORKS		
Profiled metal roof sheeting, eave linings and flashings	Against corrosion / perforation, delamination of finish, integrity and non-yellowing	25 years
Paint finishes and coatings on timber, concrete and metal	Adhesion, film integrity and colour retention	10 years
Stainless steel	Resistance to corrosion.	25 years
Galvanised architectural products	Adhesion, film integrity and colour retention	20 years
Clear coatings and graffiti resistant coatings on timber, concrete and paving	Against corrosion / perforation and delamination of finish	10 years
Metal ceilings / soffit systems	Against corrosion / perforation and delamination of finish	20 years
Moisture-resistant wall cladding panels/ Drip Shields	Panel integrity, adhesion of finish to substrate, colour and finish retention	20 years
Architectural concrete finishes	Integrity and colour fastness	20 years
Concrete pavers	Integrity and colour fastness	20 years
PLATFORM WORKS		
Architectural concrete finishes	Integrity and colour fastness	20 years
White Coping Edge Tiles	Integrity and colour fastness	20 years
Yellow Line Tiles	Integrity and colour fastness	20 years
Tactile Tile Indicators	Integrity and colour fastness	20 years
STRUCTURES		
Paint finishes and coatings on timber, concrete and metal (incl. fences and gates)	Adhesion, film integrity and colour retention	10 years
Stainless steel / Rockbolts	Resistance to corrosion	25 years

Schedule 24 – Warranties required from Subcontractors

Item	Scope of Warranty	Warranty Period (commencing on the Date of Completion)
Architectural concrete finishes (eg exposed surfaces of retaining wall cladding panels and bridges)	Integrity and colour fastness	20 years
CIVIL WORKS		
Sealants, expansion joints	Degradation or loss of integrity or performance.	12 years
Waterproof membranes	Degradation or loss of integrity or performance.	20 years
ELECTRICAL		
Signalling track circuit tuning and matching units	Failure of any system component	10 years
Station PA system head-end unit (including amplifier)	Failure of any system component (head end)	1 year
CCTV System	Failure of any system component	1 year
Lighting & Fittings	Failure of any system component	5 years
Cables/ Routes	Failure of cable/failure of route	Cables: 25 years Cable Route: 40 years

Schedule 25 – Deed of Novation

Schedule 25 – Deed of Novation

(Clause 27.9(f) and (h))

Deed of Novation

[
[ABN/ACN] []]

[
[ABN/ACN] []]

[
[ABN/ACN] []]

Schedule 25 – Deed of Novation

Deed of Novation made at

on

Parties [] [ABN/ACN] [] of [] ("Retiring Party")
[] [ABN/ACN] [] of [] ("Continuing Party")
[] [ABN/ACN] [] of [] ("Substitute Party")

Recitals

- A. The Retiring Party and the Continuing Party are parties to the Contract.
- B. The Retiring Party and the Substitute Party have asked the Continuing Party to agree to the novation of the Contract on the terms and conditions of this deed.
- C. The Continuing Party has agreed to the novation of the Contract on the terms and conditions of this deed.

This deed provides

1. Definitions and interpretation

1.1 Definitions

Defined terms in the Contract have the same meanings in this deed, unless the contrary intention appears.

In this deed:

"**Claim**" means any claim, notice, demand, action, proceeding, litigation, investigation or judgment whether based in contract, tort, statute or otherwise.

"**Continuing Party**" means the party identified as the Continuing Party in the Schedule.

"**Contract**" means the agreement between the Retiring Party and the Continuing Party described in the Schedule.

"**Contract Guarantees**" means the guarantees issued or required to be issued under the Contract in respect of the performance by a party to the Contract, by a bank or insurer and, where required by the Contract, by a Related Entity of that party.

"**Effective Date**" means the date identified as the Effective Date in the Schedule.

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

"**Liability**" means all liabilities, losses, Claims, damages, outgoings, costs and expenses of whatever description.

"**Related Entity**" has the meaning ascribed to that term in section 9 of the *Corporations Act 2001* (Cth).

"**Retiring Party**" means the party identified as the Retiring Party in the Schedule.

"**Substitute Party**" means the party identified as the Substitute Party in the Schedule.

1.2 Interpretation

In this deed:

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

and unless the context indicates a contrary intention:

- (b) an obligation or a liability assumed by, or a right conferred on, 2 or more persons binds or benefits them jointly and severally;
- (c) **"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;
- (d) 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;
- (e) a reference to a document (including this deed) is to that document as varied, novated, ratified or replaced from time to time;
- (f) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (g) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (h) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this deed, and a reference to this deed includes all schedules, exhibits, attachments and annexures to it;
- (i) 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;
- (j) **"includes"** in any form is not a word of limitation; and
- (k) a reference to **"\$"** or **"dollar"** is to Australian currency.

2. Condition Precedent to Novation

Clause 3 of this deed shall have no force and effect until the Effective Date.

3. Novation

3.1 Novation

- (a) The parties novate the Contract so that, on and from the Effective Date, the Substitute Party and the Continuing Party are parties to a new agreement on the same terms as the Contract.
- (b) Any reference in the Contract to the Retiring Party shall, on and from the Effective Date, be read as a reference to the Substitute Party.

Schedule 25 – Deed of Novation

3.2 Assumptions of rights and obligations

- (a) On and from the Effective Date, the Substitute Party:
 - (i) will be bound by and shall comply with the terms of the Contract as amended by this deed, and shall enjoy the rights and benefits conferred on the Retiring Party under the terms of the Contract; and
 - (ii) will assume the obligations and Liability of the Retiring Party under the terms of the Contract,which arise on or after the Effective Date.
- (b) The Continuing Party will comply with the terms of the Contract on the basis that on and from the Effective Date the Substitute Party has replaced the Retiring Party under the Contract in accordance with this deed.
- (c) Nothing in this deed affects the rights and obligations of the Continuing Party and Retiring Party which have accrued before the Effective Date.

3.3 Release by Continuing Party

- (a) The Continuing Party releases the Retiring Party from:
 - (i) any obligation or Liability under or in respect of the Contract; and
 - (ii) any action, claim and demand it has against the Retiring Party under or in respect of the Contract,which arise on or after the Effective Date.
- (b) This release does not affect any rights the Continuing Party may have against the Substitute Party as a result of the assumption by the Substitute Party under the terms of this deed of the obligations and Liability of the Retiring Party under the terms of the Contract on and from the Effective Date.

3.4 Release by Retiring Party

The Retiring Party releases the Continuing Party from:

- (a) any obligation or Liability under or in respect of the Contract; and
- (b) any action, Claim and demand it has, or but for this clause would have had against the Continuing Party under or in respect of the Contract,

which arise on or after the Effective Date, except that nothing in this clause affects the obligations of the Continuing Party to the Substitute Party under the Contract which arise on or after the Effective Date.

3.5 Insurance

As from the Effective Date:

- (a) the Substitute Party must replace any insurances effected and maintained by the Retiring Party under the terms of the Contract; and

Schedule 25 – Deed of Novation

- (b) the Continuing Party must take the necessary steps to ensure that, for all insurances required to be effected by the Continuing Party under the terms of the Contract, the Substitute Party is named in place of the Retiring Party as required by the Contract.

3.6 Replacement of Guarantees

The Continuing Party and the Substitute Party must replace or procure the replacement of the Contract Guarantees with guarantees on similar terms in favour of:

- (a) in the case of the Continuing Party, the Substitute Party; and
- (b) in the case of the Substitute Party, the Continuing Party.

4. Overriding effect

The parties agree that the execution and operation of this deed will for all purposes be regarded as due and complete compliance with the terms of the Contract relating to any requirement for consent to assignment of the Contract so far as any such provisions would apply with respect to the novation of the Contract from the Retiring Party to the Substitute Party.

5. Representations and warranties

5.1 Authority

Each party represents and warrants to each other party that it has full power and authority to enter into and perform its obligations under this deed.

5.2 Authorisations

Each party represents and warrants to each other party that it has taken all necessary action to authorise the execution, delivery and performance of this deed in accordance with its terms.

5.3 Binding obligations

Each party represents and warrants to each other party that this deed constitutes its legal, valid and binding obligations and is enforceable in accordance with its terms.

6. Duties, Costs and Expenses

6.1 Stamp Duty

The Substitute Party must pay all stamp duty, duties or other taxes of a similar nature (including but not limited to any fines, penalties and interest) in connection with this deed or any transaction contemplated by this deed (except to the extent the terms of the Contract provide otherwise).

6.2 Costs

The Retiring Party and the Substitute Party must pay the reasonable costs and expenses of the Continuing Party in negotiating, preparing and executing this deed.

6.3 GST

The parties agree that:

Schedule 25 – Deed of Novation

- (a) with any payment of amounts payable under or in connection with this deed including without limitation, by way of indemnity, reimbursement or otherwise, the party paying the amount must also pay any GST in respect of the taxable supply to which the amount relates;
- (b) the party receiving the payment will provide a tax invoice; and
- (c) the payment of any amount referred to in clause 6.3(a) which is a reimbursement or indemnification of a cost, expense, loss or liability will exclude any part of the amount for which the other party can claim an input tax credit.

7. General

7.1 Governing Law

This deed is governed by and must be construed according to the laws of the applicable State or Territory set out in the Schedule.

7.2 Jurisdiction

Each party irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts of the applicable State or Territory set out in the Schedule, and the courts competent to determine appeals from those courts, with respect to any proceedings which may be brought at any time relating to this deed; and
- (b) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 7.2(a).

7.3 Amendments

This deed may only be varied by a document signed by or on behalf of each party.

7.4 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 any other breach of that term or of a breach of any other term of this deed.

7.5 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.

Schedule 25 – Deed of Novation

7.6 Severance

If at any time a provision of this deed is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, that will not affect or impair:

- (a) the legality, validity or enforceability in that jurisdiction of any other provision of this deed; or
- (b) the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of this deed.

7.7 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.

7.8 Assignment

A party cannot assign, novate or otherwise transfer any of its rights or obligations under this deed without the prior consent of each other party.

Schedule 25 – Deed of Novation

Schedule

Item Description	Particulars
Retiring Party (clause 1.1)
Continuing Party (clause 1.1)
Substitute Party (clause 1.1)
Effective Date (clause 1.1)
Contract (clause 1.1)
State or Territory (clause 7.2)

Schedule 25 – Deed of Novation

Executed as a deed.

Executed by **[Retiring Party and ABN/ACN]**
by or in the presence of:

Signature of Director

Name of Director in full

Executed by **[Continuing Party and ABN/ACN]**
by or in the presence of:

Signature of Director

Name of Director in full

Signature of Secretary/other Director

Name of Secretary/other Director in full

Signature of Secretary/other Director

Name of Secretary/other Director in full

Schedule 25 – Deed of Novation

**Executed by [Substitute Party and
ABN/ACN] by or in the presence of:**

Signature of Director

Name of Director in full

Signature of Secretary/other Director

Name of Secretary/other Director in full

Schedule 26 – Form of Confidentiality Undertaking

Schedule 26 - Form of Confidentiality Undertaking

To: []

We the engaged Consultant / Supplier / Contractor / Subcontractor body, undertake to treat as confidential all information received/generated from Transport for NSW (TfNSW) in respect of work performed by TfNSW and all information generated by the Consultant / Supplier / Contractor / Subcontractor body in the course of performing the IDE Activities.

The Consultant / Supplier / Contractor / Subcontractor hereby undertakes:

- (a) to disclose that information to its employees only on a need-to-know basis;
- (b) not to disclose that information to any other person without first obtaining the written consent of TfNSW;
- (c) not to use that information except as necessary in connection with the Consultant / Supplier / Contractor / Subcontractor body's engagement to perform the IDE Activities; and
- (d) to ensure that its employees to whom that information is disclosed will comply with paragraphs (a), (b) and (c) above.

This undertaking will not apply to information about TfNSW which is in the public domain (except where the availability of the information in the public domain is due to any unauthorised disclosure by the Consultant / Supplier / Contractor / Subcontractor, its employees or agents) or which was already known to the Consultant / Supplier / Contractor / Subcontractor.

Any breach of this undertaking by the Consultant / Supplier / Contractor / Subcontractor's employee or agent will constitute a breach of this undertaking by the Consultant / Supplier / Contractor / Subcontractor and at the direction of TfNSW the Consultant / Supplier / Contractor / Subcontractor must institute proceedings or do whatever TfNSW regards as reasonable to prevent or contain the breach.

The Consultant / Supplier / Contractor / Subcontractor undertakes that on request from TfNSW it will forthwith return to TfNSW all originals and copies of the confidential information, however embodied, supplied by TfNSW and destroy all documents containing or prepared using any confidential information however embodied.

The Consultant / Supplier / Contractor / Subcontractor also undertakes to declare to TfNSW any conflict of interests that exists or arises during the course of its engagement which may impinge on the objectivity or probity of the work performed. Such declarations are to be made as soon as the conflict of interests issues arises.

This undertaking will remain in force until each part of the confidential information is released by TfNSW into the public domain.

Dated:

Schedule 26 – Form of Confidentiality Undertaking

SIGNED for and on behalf of:

.....

(Print Company Name)

By:

(Print Name)

.....

(Signature)

in the presence of:

.....

(Print Name)

.....

(Signature)

Schedule 27 - Serious Incident Protocol

1. Application

The purpose of this Protocol is to describe steps which will be taken by Participants in circumstances where:

- (a) a workplace incident occurs in connection with works carried out pursuant to this Agreement (**IDA**) and as a result:
 - (i) the incident is notified to WorkCover Authority of NSW, the Independent Transport Safety Regulator or another similar Authority; and
 - (ii) either:
 - A. the Authority commences or indicates it proposes to commence an investigation into the workplace accident; or
 - B. the Leadership Team (**LT**) decide that this Protocol will apply; or
- (b) an environmental incident occurs in connection with works carried out pursuant to the IDA and as a result:
 - (i) the incident is notified to the Department of Planning, Industry and Environment, the Environment Protection Authority or another similar Authority; and
 - (ii) either:
 - A. the Authority commences or indicates that it proposes to commence an investigation into the environmental incident; or
 - B. the LT decides that this Protocol will apply; or
- (c) another incident or situation arises in connection with works carried out pursuant to the IDA and as a result:
 - (i) there is a possibility of legal proceedings against or involving one or more of the Participants; or
 - (ii) the LT decides that this Protocol will apply,

(**Serious Incident**).

2. Purpose

- (a) The Participants agree that all work being carried out pursuant to the IDA involves the joint undertaking of the Participants and in the event of a Serious Incident occurring, the Participants will have a joint and common interest in the subject matter of the Serious Incident and agree that the response to the Serious Incident will be governed by the terms of this Protocol.
- (b) The purpose of this Protocol is to ensure that the IDE is able to respond to a Serious Incident in a way which:

Schedule 27 – Serious Incident Protocol

- (i) is consistent with the IDA;
 - (ii) protects each Participant's interests;
 - (iii) preserves legal professional privilege over any investigatory report, statements of witnesses, communications and/or documents commissioned by lawyers engaged by the IDE or any advice provided by those lawyers with respect to the Serious Incident; and
 - (iv) enables the Participants to comply with their obligations under work health and safety, environmental and other laws.
- (c) Through this Protocol, it is expected that there will be transparent communication of information regarding the Serious Incident in the mutual interests of all Participants.
- (d) This Protocol provides for an administrative process only, and it does not and is not intended to affect the operation of the IDA including the appointment of, or rights and obligations of, a principal contractor appointed under the IDA for the purposes of the *Work Health and Safety Act 2011* and the *Work Health and Safety Regulation 2017*.
- (e) The word 'cooperate' is used in this Protocol to mean cooperate to the extent that the position of a Participant and its executive officers and employees is not likely to be compromised as between the Participants and as between a Participant and a regulator or other law enforcement body.
- (f) This Protocol forms part of the IDA and the parties agree that clause 25 of the IDA continues to apply to any act or omission of a Participant arising out of or in connection with this Protocol.

3. Immediate communication

Immediately after a Serious Incident occurs which has or might lead to an external investigation or legal proceedings of the type referred to in this Protocol, each Participant must ensure that each other Participant is aware of the Serious Incident, including the time, location, nature of the Serious Incident and details (if known) of persons injured, or exposed to the risk of injury. If the Serious Incident is likely to give rise to a claim under the project insurance policies then notice must also be given to the General Manager as required in Schedule 28 of the IDA.

4. Meetings of LT

The LT will meet as soon as practicable after the Serious Incident to consider the application of this Protocol.

Thereafter, the LT will meet regularly to discuss the Serious Incident, any investigation and other related matters. Each Participant will provide full briefings on actions taken and proposed to be taken by their respective organisations. The LT will discuss and decide any necessary or desirable steps for the IDE to take and how this Protocol will interact with Schedule 28 of the IDA.

5. Joint investigation

5.1 Engagement of lawyer

- (a) The LT has identified a panel of lawyers who may be engaged to jointly represent the Participants in the event of a Serious Incident. In this Protocol, each of these lawyers, when so engaged, is called an IDE lawyer.
- (b) The panel is set out in the Schedule to this Protocol.
- (c) Unless the LT decides otherwise, the LT will select and jointly instruct an IDE lawyer from the panel to:
 - (i) provide advice to the Participants in relation to the legal implications for the Participants arising out of the Serious Incident; and
 - (ii) coordinate the cooperation of the Participants with any inspectorate which may be conducting an investigation of the Serious Incident.
- (d) If the General Manager is concerned that there will be an unacceptable delay if the appointment is to be made by the LT, the General Manager may, with the endorsement of the LT member nominated in the third column of the Schedule to this Protocol for the type of Serious Incident listed in the second column of the Schedule to this Protocol, appoint and instruct an IDE lawyer from the panel.

5.2 Investigation

If it is required, for the legal advice to be provided pursuant to clause 5.1(c)(i), that a factual or technical investigation be carried out, then the IDE lawyer will be instructed to commission that report from an appropriately qualified expert or investigator.

5.3 Separate advice and investigations

- (a) Clauses 5.1 and 5.2 are not intended to prevent a Participant from carrying out its own internal investigation into the Serious Incident. However, where possible, concurrent legal, factual and/or technical investigations which undermine the purpose of this Protocol or result in unnecessary duplication of effort are to be avoided.
- (b) Each Participant retains the right to separately or independently engage a lawyer and/or investigator at its own expense. If a Participant instigates its own investigation (other than the IDE lawyer), prior agreement must be obtained from other Participant(s) before the other Participant's employees are contacted or interviewed by the investigator.
- (c) Each Participant will not compel any other Participant to disclose any confidential legal advice, report or document that such other Participant has independently obtained or commissioned.

6. Receipt and communication of the advice

- (a) The legal advice of the IDE lawyer, including any investigation report and other background materials which attract legal professional privilege, will be made available to each Participant. A Participant may provide a copy of any report or privileged information to an independently appointed lawyer or appropriate members of senior management if the independently appointed lawyer or

Schedule 27 – Serious Incident Protocol

appropriate members of senior management have signed a copy of this Protocol indicating their consent to be bound by the terms of this Protocol.

- (b) Each Participant must not waive legal professional privilege with respect to the legal advice of or the report commissioned by the IDE lawyer without the unanimous written consent of all of the Participants.

7. Cooperation within external investigation

Each Participant will cooperate as required by law with any external investigation into the Serious Incident. So far as each Participant is able and to the extent permissible by law, it will consult with the other Participants prior to responding to requests by Authorities in relation to a Serious Incident.

8. Legal proceedings

If a Participant, or any of a Participant's officers or employees, is prosecuted under the *Work Health and Safety Act 2011*, the *Rail Safety National Law (NSW)*, the *Protection of the Environment Operations Act 1997* or another statute as a result of a Serious Incident, then:

- (a) respondents to any prosecution will be free to defend their position in the best way available to them, including (subject to clause 5.3) claiming any available privilege;
- (b) any respondent may use any factual investigation report gained pursuant to this Protocol in support of the defence to those proceedings;
- (c) in the event that a Participant's officer or employee is individually prosecuted, this Protocol and the information shared within this Protocol will only be made available to that individual if he/she agrees to be bound by the terms of the Protocol.

9. Insurance claims

If, arising out of the Serious Incident, there is a need to make a disclosure to either an individual Participant's insurer or an IDE insurer, these disclosures will be made in a way which, as far as possible, is consistent with this Protocol and which does not lead to the loss of jointly-held legal professional privilege in any advice or investigation report or compromise or waive privilege. Nothing in this Protocol requires any Participant to take or refrain from taking any action which might prejudice its ability to secure indemnity under an insurance policy.

10. Resolution of indemnity issues

The resolution of indemnity issues arising out of the circumstances of a Serious Incident will be dealt with under the provisions of the IDA.

11. Reimbursable Costs

As guidance for the LT:

- (a) the costs of engaging an IDE lawyer are Reimbursable Costs;
- (b) the costs of legal representation incurred by a Participant to defend prosecution or legal proceedings as a result of a Serious Incident are Reimbursable Costs;

Schedule 27 – Serious Incident Protocol

- (c) otherwise, the costs of complying with this Protocol (including those incurred in carrying out a separate investigation or separately engaging lawyers as contemplated in clause 5.3) are not Reimbursable Costs; and
- (d) unless the Target Adjustment Guidelines provide otherwise, the Serious Incident will not be regarded as a Target Adjustment Event.

SIGNED by all members of the Leadership Team:

Date:

..... For and on behalf of Transport for NSW For and on behalf of
..... For and on behalf of For and on behalf of
..... For and on behalf of For and on behalf of

Schedule 27 – Serious Incident Protocol

Schedule – Panel of lawyers

Column 1 Law firm(s)	Column 2 Type of Serious Incident	Column 3 LT Member (refer clause 5.1)
	Rail Safety	
	Work Health & Safety	
	Environmental Law	
	Other law	

Schedule 28 - Insurance Claims Protocol

INSURANCE CLAIMS PROTOCOL

FOR

MORE TRAINS MORE SERVICES PROGRAM

1. Introduction

- 1.1 The purpose of this Insurance Claims Protocol is to facilitate prompt and proper communication between the Participants to ensure efficient claims management. This will assist in providing an immediate response to reported incidents and the prompt resolution of valid claims.

All Participants and any other interested parties should be provided with a copy of this Insurance Claims Protocol and, whilst it does not purport to cover every situation, it should provide sufficient information upon which to act.

If there is doubt concerning any matter in connection with the More Trains More Services insurances, then contact the TfNSW contact [REDACTED] (see the Directory at section 5 of this Insurance Claims Protocol).

2. Claims notification

2.1 Important Notice

It is a requirement of the More Trains More Services insurance policies that insurers are to be advised immediately of any incident that is likely to give rise to a claim under the insurance policies required by clauses 26.1, 26.2, 26.3 or 26.4 of this Agreement. Failure to do so may invalidate cover otherwise provided by the relevant policy.

2.2 Reporting

- 2.2.1 In the event of an incident that may give rise to a claim under the insurance policies, the Participants are to immediately notify the Principal's Representative and the LT.

- 2.2.2 Following receipt of this advice the Principal's Representative must:

For all personal injury claims and all incidents

Notify TfNSW and RailCorp immediately by telephone. Confirmation of this advice must be provided by fax or e-mail **within** 24 hours of the incident.

- 2.2.3 TfNSW will notify insurers of all reported incidents.

- 2.2.4 For any claim expected to exceed the deductible, TfNSW will refer the claim to the loss adjuster appointed for the purposes of this Insurance Claims Protocol (the **Loss Adjuster**) (see the Directory at section 5 of this Insurance Claims Protocol) to investigate and report on the claim. Details on the reporting arrangements and timeframes are set out in section 4.

3. Actions to be taken

Where a claim is to be reported to insurers, the following arrangements are to apply.

3.1 Contract works

3.1.1 Incident Report

The incident report must include as a minimum the following information:

- (a) a complete description of the incident including details on the location of damage as shown on a site plan, parties involved etc;

- (b) a complete description of the extent of all damage caused by the incident;
- (c) photographic evidence of the damage preferably before clearance of debris;
- (d) advice on whether the loss affects Project Works or Temporary Works;
- (e) details on subcontract works affected and specify the Subcontractor(s) affected; and
- (f) details of witnesses and copies of statements obtained from any witnesses or relevant personnel.

3.1.2. **Quantum and Costing**

The Loss Adjuster (in association with the Principal's Representative and the Participants) will prepare estimates of quantum and costs. The following information must be maintained:

- (a) a detailed schedule of proposed reinstatement works identifying the following:
 - (i) debris removal;
 - (ii) materials required;
 - (iii) labour costs;
 - (iv) specialist subcontractors;
 - (v) consultants;
 - (vi) travel and accommodation;
 - (vii) consumables;
 - (viii) alterations;
 - (ix) pre-existing damage; and
 - (x) any other relevant information;
- (b) records to validate utilisation of labour and Construction Plant; and
- (c) secure delivery notes and invoices for materials and services used in reinstatement works.

Overheads are to be separately identified by the Participants.

3.2 **Third party bodily injury or death and/or property loss**

3.2.1 **Important Notice**

The Participants must not admit or accept liability, or make any offer, compromise, payment or settlement without the prior written consent of the insurer and TfNSW.

It is a condition stipulated in the insurance policies and a breach of this condition may prejudice the outcome of the claim.

If a Participant receives any letter of demand or notice of claim from a third party or through their solicitors, any writ, summons, proceedings, impending prosecution or inquest, they are to be immediately provided to TfNSW.

In the event of personal injury or damage, as much evidence as possible should be left available for inspection by the Loss Adjuster, providing this does not cause further damage or danger.

3.2.2 Incident Report

The incident report must include as a minimum the following information:

- (a) a complete description of the incident including details on the location of the incident shown on a site plan, parties involved, causes, etc, and an identification of any potential third party claimants;
- (b) a complete description of the extent of all injuries and/or property damage/loss caused by the incident;
- (c) photographic evidence of the circumstances of the incident including evidence of property damage/loss, preferably before clearance of debris; and
- (d) any relevant details of any witnesses and copies of statements obtained from any witnesses or relevant personnel.

3.2.3 Quantum and Costing

The Loss Adjuster (in association with the Principal's Representative and the Participants) will prepare estimates of quantum and costs. All records and supporting documentation must be maintained by the Participants.

4. Loss Adjuster's reporting procedures

- 4.1 Upon being advised of an incident that may give rise to a claim under the insurance policies, TfNSW will give notice on behalf of all insureds to the Loss Adjuster in relation to the incident and request that the Loss Adjuster attend on site and investigate the incident.
- 4.2 The following reporting arrangements are intended to apply:
 - initial inspection and immediate advice on the same day or within 24 hours of notification;
 - first report within 5 working days; and
 - subsequent reports as required.
- 4.3 The Loss Adjuster's reports will be submitted to TfNSW who will then provide them to the Participants and any other relevant parties.
- 4.4 For all major incidents the Loss Adjuster is appointed on behalf of the insured and insurers. As necessary, TfNSW may appoint solicitors, subject to the receipt of prior approval from the Insurer that they will cover all associated costs incurred, to protect the insured's and insurers' interests in anticipation of or in the event of litigation for major losses.

5. Directory

The Insured

Principal: (Names of parties to reflect the names stated in the Insurance Policy) Transport for NSW and any subsidiary or affiliated companies constituted at the inception of the More Trains, More Services Program insurance or subsequently.

Participants and all other contractors, subcontractors and agents of any tier.

Consultants, suppliers and vendors of any tier whilst engaged in carrying out work associated with a Project on or about a Site.

Other parties (as required and agreed under contract).

Each for their respective rights and interests.

Contacts

TfNSW – Principal Contact

Contact: [REDACTED]
Telephone: [REDACTED]
Fax: [REDACTED]
Mobile: [REDACTED]
E-mail: [REDACTED]

TfNSW – Alternate Contact

Contact: [REDACTED]
Telephone: [REDACTED]
Fax: [REDACTED]
Mobile: [REDACTED]
E-mail: [REDACTED]

RAILCORP - Principal Contact

Contact: [REDACTED]
Telephone: [REDACTED]
Fax: [REDACTED]
Mobile: [REDACTED]
E-mail: [REDACTED]

RAILCORP - Alternate Contact

Contact: [REDACTED]
Telephone: [REDACTED]
Fax: [REDACTED]
Mobile: [REDACTED]
E-mail: [REDACTED]

LOSS ADJUSTER

Technical Assessing

Contact: TfNSW insurer to advise as required
Telephone: TfNSW insurer to advise as required
Fax: TfNSW insurer to advise as required
Mobile: TfNSW insurer to advise as required
E-mail: TfNSW insurer to advise as required

Schedule 29 - Deadlock Resolution Agreement

Transport for NSW

ABN 18 804 239 602

[Insert names and ACNs of NOPs]

[Expert's name]

[Expert's ABN]

Deadlock Resolution Agreement made at _____ on _____

Parties **Transport for NSW ABN 18 804 239 602**, a NSW Government agency constituted by section 3C(1) of the *Transport Administration Act 1988* (NSW) of Level 5, Tower A, Zenith Centre, 821 Pacific Highway Chatswood NSW 2067 ("TfNSW")

[Insert names, ACNs and addresses of NOPs]

(all together referred to as the "Participants")

[Insert name, ABN and address of Expert agreed between the Participants or appointed pursuant to clause 28.2 of the IDA] ("Expert")

Recitals

- A. The Participants are parties to an incentivised delivery agreement (the "IDA") for the Projects.
- B. By written notice dated *[to be inserted]*, the *[insert name of referring Participant]* has required that the deadlock described in Annexure 1 be determined by an Expert appointed under clause 28.2 of the IDA (the "Deadlock").
- C. Under clause 28.2 of the IDA, the Expert has been appointed to determine the Deadlock in accordance with the process set out in this agreement.

Operative provisions

1. Interpretation

In this agreement:

- (a) headings are for convenience only and do not affect interpretation;
- (b) terms defined in the IDA have the same meaning;

and unless the context indicates a contrary intention:

- (c) "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;

Schedule 29 – Deadlock Resolution Agreement

- (d) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation;
- (e) a reference to a document (including this agreement) is to that document as varied, novated, ratified or replaced from time to time;
- (f) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (g) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (h) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this agreement, and a reference to this agreement includes all schedules, exhibits, attachments and annexures to it;
- (i) 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;
- (j) **"includes"** in any form is not a word of limitation; and
- (k) a reference to **"\$"** or **"dollar"** is to Australian currency.

2. Appointment of Expert

- (a) The Participants appoint the Expert to make a determination on the Deadlock in the manner and within the times set out in this agreement and the Expert accepts the appointment on the basis set out in this agreement.
- (b) The Participants agree that:
 - (i) the Expert will act as an expert and not as an arbitrator;
 - (ii) neither the determination of the Deadlock, nor the process required by this agreement is an arbitration and any conference conducted during the determination is not a hearing conducted under any legislation or rules relating to any form of arbitration;
 - (iii) the rules of evidence do not apply to the determination process required by this agreement or to any determination; and
 - (iv) the Expert must conduct the determination of the Deadlock in accordance with:
 - A. the Rules for Deadlock Resolution Process set out in Annexure 2 (**"the Rules"**); and
 - B. the requirements of procedural fairness.
- (c) If, at any time during the determination process, the Expert becomes aware of circumstances that might reasonably be considered to adversely affect the Expert's capacity to act independently or impartially, the Expert must inform the Participants immediately and, unless the Participants agree otherwise, terminate this agreement.

Schedule 29 – Deadlock Resolution Agreement

- (d) The Expert must take all reasonable steps to avoid any conflict of interest, potential conflict of interest or other circumstances that might reasonably be considered to adversely affect the Expert's capacity to act independently or impartially.

3. Confidentiality

All proceedings and submissions relating to the determination process (including the fact that any step in the determination process is occurring), and all documents prepared for the purposes of the determination process (including the Expert's determination), must be kept confidential between the Participants and the Expert. No such proceedings, submissions or documents, nor any other information relating to or arising out of the determination process, may be divulged to any other person, except with the prior written consent of all Participants or as may be required by law or to the extent necessary to give effect to or enforce the Expert's determination.

4. Fees

TfNSW will pay the Expert's fees and disbursements, calculated in accordance with Annexure 3.

5. Exclusion of liability and indemnity

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

6. Co-operation of the Participants

Each Participant agrees to take part in the determination process in good faith and to comply with the reasonable requests and directions of the Expert in relation to the conduct of the determination process. If a Participant does not comply with the Expert's reasonable directions, the Expert may continue with the determination process and determine the Deadlock despite the non-compliance.

7. Governing law

This agreement is governed by and is to be construed according to the law applying in New South Wales.

8. Jurisdiction

The Participants and the Expert irrevocably:

- (a) submit to the non-exclusive jurisdiction of the courts of the State 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 agreement; and
- (b) waive any objection they may now or in the future have to the venue of any proceedings, and any claim they may now or in the future have that any proceeding has been brought in an inconvenient forum, if that venue falls within clause 8(a).

9. GST

9.1 GST payable

Unless otherwise stated, all amounts set out in this agreement are GST exclusive.

Notwithstanding any other provision in this agreement, if any party to this agreement ("**Supplier**") is or becomes liable to pay GST in connection with any supplies made pursuant to this agreement ("**the affected supplies**") for which GST is not otherwise included in the consideration:

- (a) the Supplier may, subject to clause 9.1(d), add to the price of all affected Supplies an additional amount equal to the amount of GST for which the Supplier is or becomes liable in respect of those affected supplies, as calculated by Supplier in accordance with the GST law;
- (b) the party providing consideration for the affected supplies ("**Recipient**") will pay the amounts or provide any other consideration required to be provided under other provisions of this agreement for the affected supplies (in this clause "the price") plus the additional amount on account of GST in accordance with this clause;
- (c) the additional amount or amounts will be payable at the same time or times as the price is required to be provided to Supplier under the other provisions of this agreement; and
- (d) the Supplier is only entitled to the additional amount payable under clause 9.1(a) where the Supplier has issued a tax invoice to the Recipient in respect of the relevant supply.

9.2 Necessary adjustments

If the additional amount on account of GST recovered by the Supplier from the Recipient on any supply made under this agreement differs for any reason from the amount of GST paid or payable by the Supplier to the Commissioner of Taxation, including by reason of:

- (a) an amendment to the GST law;
- (b) the issue of or an alteration in a ruling or advice of the Commissioner of Taxation;
- (c) a decision of any tribunal or court; and
- (d) any adjustment to the consideration under this agreement,

then the difference between the two said amounts will be payable by the Supplier or the Recipient as appropriate. Where an adjustment event (as defined in the GST law) has occurred in relation to any supply under this agreement, the Supplier will provide an adjustment note to the Recipient within 14 days of the date of the adjustment event.

9.3 Reimbursements and similar payments

Any payment or reimbursement required to be made under this agreement for 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.

Schedule 29 – Deadlock Resolution Agreement

9.4 Definitions

"GST", "GST law" and other terms used in this clause 9 have the meanings used in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth), except that "GST law" includes any applicable rulings issued by the Commissioner of Taxation.

10. General

10.1 Notices

- (a) Any notice or other written communication given by one Participant to another Participant or to the Expert, unless the contrary intention appears, will only be effective if it is in writing and signed on behalf of the Participant giving the notice.
- (b) To be valid, a written notice or other written communication under this agreement must be delivered by hand or registered mail, and addressed:
- (i) in the case of a notice or other written communication to a Participant, in accordance with the contact details for the receiving Participant stated in the Agreement Particulars; and
 - (ii) in the case of a notice or other written communication to the Expert, as follows:

Name:	[Name of Expert]
Address:	[Address for service on Expert]
For the attention of:	[Person's name to whom correspondence is directed]
- (c) A notice, consent or other communication that complies with this clause is regarded as given and received, if it is sent by mail:
- (i) within Australia - 3 Business Days after posting; or
 - (ii) to or from a place outside Australia - 7 Business Days after posting.
- (d) Electronic communication by email will not constitute a valid notice under this agreement, but a hard copy of an email may be issued as a valid notice using any of the means listed in clause 30.1(a) of the IDA.
- (e) A Participant or the Expert may change the address to which notices and other communication can be sent to it by giving the other Participants and the Expert (as relevant) notice of the change in accordance with this clause.

10.2 Further acts and documents

Each Participant and the Expert must promptly do all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to that Participant or the Expert) required by law or reasonably requested by another Participant or the Expert to give effect to this agreement.

Schedule 29 – Deadlock Resolution Agreement

10.3 Counterparts

This agreement may be executed in any number of counterparts and by each of the Participants and the Expert on separate counterparts. Each counterpart constitutes an original of this agreement, and all together constitute one agreement.

Schedule 29 – Deadlock Resolution Agreement

**Annexure 1
The Deadlock**

[To be inserted when it comes time for deadlock resolution]

Schedule 29 – Deadlock Resolution Agreement

Annexure 2

Rules for Deadlock Resolution Process

1. Commencement

The determination process begins when the Participants and the Expert enter into the agreement to which these Rules are annexed.

2. Written Submissions

- 2.1 Within 7 days after the date this determination process begins, each Participant that wishes to be involved in the determination process must give the Expert a draft written submission setting out the Participant's position as to how the Deadlock should be determined. Two or more Participants may make a joint submission under this clause 2.1.
- 2.2 Within 14 days after the expiry of the 7 day period referred to in clause 2.1, the Expert must meet separately with each Participant which made a draft written submission to discuss the Participant's draft written submission and the Expert's preliminary view on the Participant's draft written submission.
- 2.3 If, within 7 days after the last of the meetings referred to in clause 2.2, the Participants are able to reach unanimity in respect of the Deadlock, the determination process will terminate immediately.
- 2.4 If, after 7 days after the last of the meetings referred to in clause 2.2, the Participants are still unable to achieve unanimity in respect of the Deadlock, each Participant that made a draft written submission under clause 2.1 must give the Expert a final written submission setting out the Participant's position as to how the Deadlock should be determined. The Participants may, in their final written submissions, change any aspect of their draft written submission provided under clause 2.1. Two or more Participants, irrespective of whether they made a joint draft written submission under clause 2.1, may make a joint submission under this clause 2.4.
- 2.5 At all times before the Expert has received all final written submissions under clause 2.1, the Expert:
- (a) must not disclose to any other Participant (including at any meeting under clause 2.2); and
 - (b) must take all reasonable steps to ensure the confidentiality of,
- each Participant's draft written submission under clause 2.1 and final written submission under clause 2.4 (including any part of the Participant's position as to how the Deadlock should be determined).
- 2.6 Following the receipt of all final written submissions under clause 2.4, the Expert must disclose to all Participants (including any Participants that have not made any submissions under clauses 2.1 or 2.4) all written submissions, information and documents received by the Expert.
- 2.7 If a Participant fails to make a written submission within the time prescribed, the Expert may continue with the determination process and the failure of the Participant to make the written submission within the time prescribed will not terminate or discontinue the determination process. This will be the case even if only one Participant provides a draft written submission under clause 2.1 or final written submission under clause 2.4.

Schedule 29 – Deadlock Resolution Agreement

3. View

- 3.1 Upon the application of a Participant or at the Expert's own volition, the Expert may at any time before the Expert has received a final written submission of any Participant under clause 2.4 direct that a view be conducted of any place or thing relevant to the Deadlock by the Expert in the presence of the Participants.
- 3.2 The Expert may draw any reasonable inference from what the Expert sees, hears or otherwise observes during a view.
- 3.3 If a Participant fails to attend a view, the Expert may nevertheless proceed with the view and the absence of that Participant will not terminate or discontinue the determination process.

4. General

- 4.1 In making a determination or conducting the determination process, the Expert must proceed in accordance with:
- (a) the agreement between the Expert and the Participants to which these Rules are annexed;
 - (b) these Rules; and
 - (c) the IDA.
- 4.2 Except where otherwise required by these Rules, the Expert may receive information in any way the Expert thinks fit (including as inquisitor).
- 4.3 The Expert must:
- (a) inform the Participants of:
 - (i) any relationship or interest which the Expert has with a Participant or its officers, employees, consultants or agents;
 - (ii) any interest the Expert has in the matters in dispute; and
 - (iii) any circumstance which might reasonably be considered to adversely affect the capacity of the Expert to act independently or impartially in relation to the Deadlock which has been referred to the Expert,immediately upon becoming aware of any such circumstances; and
 - (b) upon making any disclosure under this clause 4.3, unless and until the Participants agree otherwise, terminate the proceedings.
- 4.4 The determination process for a Deadlock may be terminated at any time prior to the issue of the Expert's determination by the Participants giving joint written notice to the Expert terminating the determination process.

5. The Determination

- 5.1 Within 7 days of the receipt of the final written submissions under clause 2.4 (or such other period as the Expert and the Participants may agree), the Expert must:
- (a) determine the Deadlock between the Participants by selecting the final written submission received under clause 2.4 which in the Expert's opinion is most closely aligned with the Principles; and

Schedule 29 – Deadlock Resolution Agreement

(b) notify the Participants of that determination.

5.2 The Expert must not, in its determination, impose upon the parties any position other than the position set out in the final written submission which the Expert selects under clause 5.1(a).

In making his or her determination the Expert will do so on a de novo basis and will not be constrained by any agreement or decision by the LT or any rejection, refusal or failure to agree by the Principal's Representative, on the relevant Deadlock.

5.3 The determination of the Expert must:

- (a) be in writing stating the Expert's determination and giving reasons;
- (b) be made on the basis of the submissions (if any) of the Participants (subject to clause 2.7), the view (if any) and the Expert's own expertise; and
- (c) meet the requirements of the IDA.

5.4 Subject to clause 5.5, to the extent permitted by law, the Expert's determination will be final and binding on the Participants and for the purposes of the IDA will be treated as a unanimous decision of:

- (a) the LT in respect of the relevant Material LT Issue to which the Deadlock relates; or
- (b) the LT and the Principal's Representative in respect of a disagreement under clause 18.3(b), 19.2A(e), 19.3(e), 19.4(e) or 20.4(d) of the IDA.

5.5 If the Expert's determination contains a clerical mistake, an error arising from an accidental slip or omission, a material miscalculation of figures, a material mistake in the description of any person, matter or thing, or a defect of form, then the Expert must correct the determination.

6. Modification

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

Schedule 29 – Deadlock Resolution Agreement

Annexure 3

The Expert's Fees and Disbursements

[To be inserted when it comes time for deadlock resolution]

Schedule 29 – Deadlock Resolution Agreement

Signed as an agreement.

[Insert the appropriate execution clauses for each Participant and the Expert]

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

[Signature]

[Name of witness]

[Signature of witness]

Schedule 30 – Consultant Deed of Covenant

Schedule 30 - Consultant Deed of Covenant

This deed poll is made the day of 20

To: Transport for NSW (ABN 18 804 239 602), a NSW Government agency constituted by section 3C(1) of the *Transport Administration Act 1988* (NSW) of Level 5, Tower A, Zenith Centre, 821 Pacific Highway Chatswood NSW 2067 (**TfNSW**);

Rail Corporation New South Wales (ABN 59 325 778 353) a NSW Government agency constituted by section 4(1) of the *Transport Administration Act 1988* (NSW) of Level 20, 477 Pitt Street, Sydney NSW 2000 (**RailCorp**);

Sydney Trains (ABN 38 284 779 682), a NSW Government agency constituted by Part 3B of the *Transport Administration Act 1988* (NSW), of Level 20, 477 Pitt Street, Sydney NSW 2000 (**Sydney Trains**);

NSW Trains (ABN 50 325 560 455), a NSW Government agency constituted by Part 3C of the *Transport Administration Act 1988* (NSW) of Level 20, 477 Pitt Street, Sydney NSW 2000 (**NSW Trains**); and

Sydney Metro (ABN 12 354 063 515), a NSW Government agency constituted by Part 3D of the *Transport Administration Act 1988* (NSW), of PO Box 588, North Ryde BC NSW 1670 (**Sydney Metro**).

By: [] (**Consultant**)

RECITALS

- A. TfNSW and John Holland Pty Ltd (NOP1) and Jacobs Group (Australia) Pty Ltd (NOP2) have entered into an incentivised delivery agreement dated [] (**Agreement**) to carry out certain works.
- B. The NOPs have engaged the Consultant by agreement dated [] (**Subcontract**) to carry out the professional services to be performed under the Subcontract (**Professional Services**) for the purposes of the performance of the NOPs' obligations under the Agreement as they relate to those design services.
- C. Under the Agreement, the NOPs are required to procure the Consultant to execute this deed poll in favour of TfNSW, RailCorp, Sydney Trains, NSW Trains and Sydney Metro.

OPERATIVE PROVISIONS

1. Duty of Care

(a) The Consultant:

(i) warrants to TfNSW, RailCorp, Sydney Trains, NSW Trains and Sydney Metro that:

- A. in performing the Professional Services, it will exercise the standard of skill, care and diligence that would be expected of a consultant experienced in and expert in the provision of the type of professional services required by TfNSW, RailCorp, Sydney Trains, NSW Trains and Sydney Metro;

Schedule 30 – Consultant Deed of Covenant

- B. the Professional Services will be fit for the intended purposes disclosed in or reasonably able to be inferred from the Works Brief, which is an exhibit to the Agreement; and
 - C. the Professional Services do not and will not infringe any patent, registered design, trademark or name, copyright or other protected right;
- (ii) acknowledges that:
- A. in performing the Professional Services it will owe a duty of care to TfNSW, RailCorp, Sydney Trains, NSW Trains and Sydney Metro; and
 - B. it is aware that TfNSW, RailCorp, Sydney Trains, NSW Trains and Sydney Metro will be relying upon the skill and judgment of the Consultant in performing the Professional Services and the warranties given by the Consultant in this deed poll; and
- (iii) must act in good faith and in the best interests of TfNSW, RailCorp, Sydney Trains, NSW Trains and Sydney Metro and promptly advise TfNSW, RailCorp, Sydney Trains, NSW Trains and Sydney Metro about any matter in which the Consultant has been instructed by the NOPS to provide the Professional Services in a manner which is, or may result in an outcome which is, not in accordance with the requirements of the Agreement, including without limitation:
- A. where the NOPS' instructions in relation to design are not consistent with the Agreement or may result in the Works not being fit for their intended purpose; or
 - B. where the NOPS' instructions require the Consultant to issue a certificate where the conditions for the issue of that certificate under the Agreement have not been satisfied.
- (b) The Consultant must:
- (i) fully cooperate with each other consultant and contractor engaged by TfNSW or the NOPS (**Other Contractor**);
 - (ii) carefully coordinate and integrate the Professional Services with the services and work carried out by each Other Contractor;
 - (iii) carry out the Professional Services so as to minimise any interfering with, disrupting or delaying, the services and work carried out by each Other Contractor;
 - (iv) without limitation, provide whatever advice, support and cooperation is reasonable to facilitate the due carrying out of the services and work being provided by each Other Contractor;
 - (v) ensure title to and Intellectual Property (including any patent, registered design, trademark or name, copyright or other protected right) in or in relation to the Professional Services will vest upon its creation for the purposes of the Agreement in TfNSW;

Schedule 30 – Consultant Deed of Covenant

- (vi) obtain an assignment to TfNSW from any third party who owns any Intellectual Property in the Professional Services;
 - (vii) if any Intellectual Property in or in relation to documents, designs and computer programs created for the purposes of the Agreement is not capable of being vested in TfNSW because the Consultant itself does not own, and is unable at a reasonable cost to obtain ownership of, those rights, provide to TfNSW an irrevocable licence to use that Intellectual Property, by sublicense from the Consultant or direct licence from a third party; and
 - (viii) ensure that the Intellectual Property created for the purposes of the Agreement is not used, adapted or reproduced other than for the purposes of the Agreement without the prior written approval of TfNSW (which will not be unreasonably withheld, but may be given subject to terms and conditions).
- (c) The Consultant must indemnify TfNSW, RailCorp, Sydney Trains, NSW Trains and Sydney Metro from and against:
- (i) any liability to or claim by any other person; and
 - (ii) all claims against, and costs, expenses, losses and damages,
 - (iii) suffered or incurred by TfNSW, RailCorp, Sydney Trains, NSW Trains and Sydney Metro arising out of, or in any way in connection with:
 - A. the Consultant's breach of a term of, or warranty under, this deed poll; or
 - B. any actual or alleged infringement of any patent, registered design, trademark or name, copyright or other protected right.

2. Notices

- (a) Any notices contemplated by, or arising out of or in any way in connection with, this deed poll must be in writing and delivered to the relevant address shown below (or to a party's new address which that party notifies to the others):
- (i) to TfNSW: Level 5, Tower A
Zenith Centre
821 Pacific Highway
CHATSWOOD NSW 2067
 - (ii) to RailCorp: Level 20, 477 Pitt Street
SYDNEY NSW 2000
 - (iii) to Sydney Trains: Level 20, 477 Pitt Street
SYDNEY NSW 2000
 - (iv) to NSW Trains: Level 20, 477 Pitt Street
SYDNEY NSW 2000

Schedule 30 – Consultant Deed of Covenant

- (v) to Sydney Metro: PO Box 588, North Ryde BC NSW 1670
- (vi) to the Consultant: [to be completed]
- (b) A notice sent by post will be taken to have been received at the time when, in due course of the post, it would have been delivered at the address to which it is sent.
- (c) If the Consultant is a foreign company (as defined in the *Corporations Act 2001* (Cth)), the Consultant must within 14 days of the date of this deed poll:
 - (i) appoint a local process agent acceptable to TfNSW as its agent to accept service of process under or in any way in connection with this deed poll; and
 - (ii) obtain the process agent's consent to the appointment.

The appointment must be in a form acceptable to TfNSW and may not be revoked without TfNSW's consent.

3. Miscellaneous

- (a) This deed poll shall be governed by and construed in accordance with the laws of the State of New South Wales.
- (b) The Consultant hereby submits to the non-exclusive jurisdiction of the courts of New South Wales and any courts that may hear appeals from any of those courts, for any proceedings in connection with this deed poll, and waives any right it might have to claim that those courts are an inconvenient forum.
- (c) This deed poll may not be revoked or otherwise modified without the prior written consent of TfNSW, RailCorp, Sydney Trains, NSW Trains and Sydney Metro.
- (d) Terms used in this deed poll which are otherwise not defined will have the meaning given to them in the Agreement.

Schedule

[INSERT DESCRIPTION OF PROFESSIONAL SERVICES] as more particularly described in the Subcontract.

Executed as a deed poll.

Signed sealed and delivered by the
Consultant [] by or in the presence
of:

Signature of witness

Signature

Full name of witness

Schedule 31 – Track Possessions

- (a) For the Initial Project, refer to Schedule 31.1 in the Project-Specific Schedules and Exhibits (Initial Project) section.
- (b) For each Additional Project, refer to Schedule 31.n.

Schedule 32 – Options

- (a) For the Initial Project, refer to Schedule 32.1 in the Project-Specific Schedules and Exhibits (Initial Project) section.
- (b) For each Additional Project, refer to Schedule 32.n.

Schedule 33 – Form of Other Contractor Deed Poll

Schedule 33 - Form of Other Contractor Deed Poll

This Deed Poll made the day of 20

In favour of: **[insert details] (ACN [insert details]) of [insert details]**

(Principal Contractor)

Transport for NSW (ABN 18 804 239 602) of Level 5, Tower A, Zenith Centre,
821 Pacific Highway Chatswood NSW 2067

(TfNSW)

Given by: **[insert details] (ACN [insert details]) of [insert details]**

(Other Contractor)

Recitals

- A. By a contract dated **[insert date] (Contract)** between TfNSW, the Principal Contractor and other contractors, the Principal Contractor and the other contractors agreed to design and construct certain works (**Works**), on the land more particularly described in the Contract (the **Site**).
- B. The Other Contractor has been appointed under a Contract (**Other Contract**) to undertake certain works on the Site (**Other Contractor Works**).
- C. For the purposes of the *Work Health and Safety Act 2011* (NSW) and the *Work Health and Safety Regulation 2017* (NSW) (together, the **WHS Legislation**), the Works and the Other Contractor Works are a 'construction project' within the meaning of the WHS Legislation.
- D. Under the Contract, TfNSW engaged the Principal Contractor as principal contractor and authorised the Principal Contractor to have management and control of the workplace for the purpose of discharging the duties imposed on a principal contractor for the construction project.
- E. Under the provisions of the Contract, TfNSW is required to procure the provision of this Deed Poll from each Other Contractor (as that term is defined in the Contract) that undertakes Other Contractor Works (as that term is defined in the Contract).

This Deed Poll Provides

- 1. In consideration of the Principal Contractor accepting this Deed Poll, the Other Contractor agrees that:
 - (a) the Other Contractor, its subcontractors and their respective personnel while they are on the Site, will comply with Site safety regulations, any Site rules or regulations and with all directions of the Principal Contractor with respect to work health and safety;
 - (b) the Other Contractor, its subcontractors and their respective personnel will comply in a timely manner with directions of the Principal Contractor so that the Principal Contractor discharges its obligations as principal contractor;
 - (c) the Other Contractor, its subcontractors and their respective personnel will consult, cooperate and coordinate activities with the Principal Contractor, TfNSW and all other persons who have a work health and safety duty in relation to the same matter;
 - (d) the Other Contractor, its subcontractors and their respective personnel will comply with the work health and safety plan(s) prepared by the Principal Contractor while on Site;
 - (e) the Principal Contractor may exclude the Other Contractor, any of its subcontractors and their respective personnel from the Site for work health and safety reasons;


TfNSW

Schedule 33 – Form of Other Contractor Deed Poll

- (f) the Principal Contractor may direct the Other Contractor, any of its subcontractors and their respective personnel to perform or not perform certain acts for work health and safety reasons;
 - (g) where high risk construction work is to be carried out in the performance of the Other Contractor Works, the Other Contractor must:
 - (i) prepare a safe work method statement that complies with all requirements of the WHS Legislation;
 - (ii) provide a copy of the safe work method statement to TfNSW and the Principal Contractor prior to the commencement of high risk construction work;
 - (iii) review and revise the safe work method statement in accordance with the WHS Legislation;
 - (iv) ensure that the high risk construction work is carried out in compliance with the safe work method statement; and
 - (v) where so directed by the Principal Contractor, suspend the performance of any high risk construction work;
 - (h) the Other Contractor shall in carrying out the work under the Other Contract, comply with, and ensure that all subcontractors and personnel comply with the WHS Legislation; and
 - (i) in its contracts with subcontractors, the Other Contractor will ensure that the subcontractor is obliged to give the same obligations and rights as required of the Other Contractor under this Deed Poll.
2. The Other Contractor indemnifies the Principal Contractor against any delay, damage, expense, loss, penalty or liability suffered or incurred by the Principal Contractor as a result of:
- (a) any failure by the Other Contractor to comply with any direction given by the Principal Contractor in accordance with this Deed Poll; or
 - (b) any breach by the Other Contractor, any of its subcontractors or their respective personnel of:
 - (i) their respective contractual or legislative work health and safety obligations; or
 - (ii) the provisions of this Deed Poll.
3. This Deed Poll will be governed by and construed in accordance with the laws of New South Wales.

Schedule 33 – Form of Other Contractor Deed Poll

Executed as a deed poll

Executed by **[Other Contractor]** by or in the presence:

Signature of director

Signature of secretary/other director

Full name of director

Full name of secretary/other director

Schedule 34 – Deed Poll – Interface Agreement

Schedule 34 – Deed Poll - Interface Agreement

Form of NOP Deed Poll in favour of Rail Transport Agency and Transport for NSW

This deed poll ("Deed Poll") made the _____ day of _____ 20____

By: **John Holland Pty Ltd (ACN 004 282 268)** of Level 5, 380 St Kilda Road, Melbourne VIC 3004;

and **Jacobs Group (Australia) Pty Ltd (ACN 001 024 095)** of Level 11, 50 Queen Street, Melbourne, VIC 3000

(the "**NOPs**"),

in favour of: **[insert name(s) of Rail Transport Agency] (ABN [insert])** of [insert address] ("**Rail Transport Agency**");

and **Transport for NSW (ABN 18 804 239 602)** a NSW Government agency constituted by section 3C(1) of the *Transport Administration Act 1988* (NSW), of Level 5, Tower A, Zenith Centre, 821 Pacific Highway Chatswood NSW 2067 ("**TfNSW**").

Recitals

- A. TfNSW is responsible for developing certain major railway systems and other major transport projects.
- B. TfNSW is responsible for procuring the execution and completion of certain works on the Projects (the "**Works**") on behalf of Rail Transport Agency and the New South Wales Government, and has entered into an agreement ("**IDA**") to achieve this.
- C. Rail Transport Agency is relying on TfNSW to procure the NOPs (with others) to execute and complete the Works in accordance with the IDA to ensure that Rail Transport Agency will satisfy, among other things, its obligations under the *Transport Administration Act 1988* (NSW).
- D. Rail Transport Agency will suffer loss if TfNSW does not procure the NOPs to execute and complete the Works in accordance with the IDA and the Interface Agreement.
- E. Rail Transport Agency and TfNSW have entered into an Interface Agreement, which applies to the Works and the IDA (the "**Interface Agreement**").
- F. It is a condition of clause 15.2(f) of the IDA that the NOPs enter into a Deed Poll in favour of TfNSW and Rail Transport Agency. This Deed Poll binds the NOPs to the executed Interface Agreement between TfNSW and Rail Transport Agency dated [*insert date*].

Operative Provisions

This deed witnesses that the NOPs hereby covenant, warrant and agree with and for the benefit of Rail Transport Agency and TfNSW as follows:

1. They will comply with all of the obligations of TfNSW under the Interface Agreement.
2. This Deed Poll is governed by the laws of the State of New South Wales.
3. This Deed Poll may not be revoked or otherwise modified without the prior written consent of Rail Transport Agency and TfNSW.
4. Where terms used in this Deed Poll are defined in the IDA or the Interface Agreement, those terms have the meaning given to them in the IDA or Interface Agreement.

 TfNSW

Schedule 34 – Deed Poll – Interface Agreement

Executed as a deed poll.

Signed, sealed and delivered by John Holland Pty Ltd (ACN 004 282 268) by its Attorney under a Standing Power of Attorney dated 16 April 2018 (and the Attorney hereby certifies that at the date of signature the Attorney has no notice of the revocation of the Standing Power of Attorney dated 16 April 2018) in the presence of:

Signature of Witness

Full name of Witness

Executed by Jacobs Group (Australia) Pty Ltd (ACN 001 024 095) in accordance with section 127 of the Corporations Act 2001 (Cth):

Signature of director

Full name of director

Signature of Attorney

Full name of Attorney

Signature of company secretary/director

Full name of company secretary/director

Schedule 35 – Form of NOP Deed Poll in favour of Rail Transport Agency

This deed poll ("Deed Poll") made the day of 20

By: **[insert name of NOP] (ACN [insert NOP's ACN])** of [insert NOP's address]
("NOP")

in favour of: **[insert details of relevant Rail Transport Agency] ("Rail Transport Agency")**

Recitals

- A. Rail Transport Agency operates the commuter rail system in [insert], including *[insert description of project site]* where the Works are to be undertaken by the NOP and others.
- B. Transport for NSW (ABN 18 804 239 602) a NSW Government agency constituted by section 3C of the *Transport Administration Act 1988* (NSW), of Level 5, Tower A, Zenith Centre, 821 Pacific Highway Chatswood NSW 2067, is responsible for developing certain major railway systems and other major transport projects ("TfNSW").
- C. TfNSW is responsible for procuring the execution and completion of certain works to complete the *[insert description of works]* (the "Works") on behalf of Rail Transport Agency and the New South Wales Government, and has entered into an agreement ("IDA") with the NOP and others to achieve this.
- D. Rail Transport Agency is relying on TfNSW to procure the NOP (with others) to execute and complete the Works in accordance with the IDA to ensure that Rail Transport Agency will satisfy, among other things, its obligation to provide an operating commuter rail system.
- E. Rail Transport Agency will suffer loss if TfNSW does not procure the NOP to execute and complete the Works in accordance with the IDA.
- F. It is a condition of the IDA that the NOP executes this Deed Poll.

This deed witnesses that the NOP hereby covenants, warrants and agrees with and for the benefit of Rail Transport Agency as follows:

- 1. It will comply with its obligations under the IDA.
- 2. Upon Completion of the Works, the Works will satisfy the requirements of the IDA.
- 3. The NOP's liability to Rail Transport Agency under this Deed Poll is limited to claims by Rail Transport Agency (including but not limited to any claim against Rail Transport Agency by any third party) in respect of:
 - (a) loss of or damage to any property; or
 - (b) personal injury (including mental as well as bodily injury), disease, illness or death, arising out of or in connection with any act or omission of the NOP or its officers, employees, agents, subcontractors, suppliers or consultants, in carrying out the Works, whatever the cause, including breach of the IDA, tort (including negligence) or breach of statute or otherwise.
- 4. The aggregate of the NOP's liability to Rail Transport Agency under this Deed Poll and the NOP's liability to TfNSW under the IDA:
 - (a) will not exceed the liability which the NOP would have had under the IDA if the IDA had named, in place of TfNSW, Rail Transport Agency and TfNSW jointly and severally; and



Schedule 35 – Form of NOP Deed Poll in favour of Rail Transport Agency

- (b) is subject to the same limitations of liability, and qualifications on such limitations of liability, as are specified in the IDA.
- 5. Any provision of this Deed Poll which seeks to limit or exclude a liability of the NOP is to be construed as doing so only to the extent permitted by law.
- 6. Rail Transport Agency may assign or charge the benefits and rights accrued under this Deed Poll.
- 7. This Deed Poll is governed by the laws of the State of New South Wales.
- 8. This Deed Poll may not be revoked or otherwise modified without the prior written consent of Rail Transport Agency.
- 9. Where terms used in this Deed Poll are defined in the IDA, those terms have the meaning given to them in the IDA.

Executed as a deed poll.

Executed by [insert NOP's name] [Insert NOP's ACN] in accordance with section 127 of the Corporations Act 2001 (Cth):

Signature of director

Signature of company secretary/director

Full name of director

Full name of company secretary/director

Schedule 36 – Target Adjustment Event Notice Form & Target Adjustment Event Approval Form

Target Adjustment Event Notification Form			
Incentivised Delivery Entity Name:			
Project Name:			
Part 1 <i>(Completed by the GM)</i>		TAE No.	TAE Title
<input type="checkbox"/>	Having consulted with the other MT members, I am of the view that the circumstances described below may constitute a TAE (or may become a TAE in the future).		
<input type="checkbox"/>	One of the Participants has advised me that it believes the circumstances described below may constitute a TAE (or may become a TAE in the future) and has asked me to submit this proposal to the LT and the Principal's Representative.		
Date of TAE:	The date the MT (or Participant) became aware of (or should have become aware of) the circumstances which it considers may constitute a TAE: dd/mm/yy		
Summary of the circumstances:			
Relevant TAG	Note: The full wording of the (most) relevant TAG as stated in the Agreement.		
TAG #	Scenario	Comment	
	[Add TAG Scenario Wording]	[Add TAG Comment Wording]	
Likely Impact	<input type="checkbox"/> TOC Increase	<input type="checkbox"/> TOC Decrease	<input type="checkbox"/> Change in KRA/KPI Target
Signed by GM:		Date	
Part 2 <i>(to be completed / signed by nominated LT Member)</i>			
The LT has been advised by the GM of circumstances which may constitute a TAE:			
<input type="checkbox"/> we agree the circumstances may constitute a TAE and hereby notify the Principal's Representative. (Note: For a notification to be valid, the notification must be made within the period stated in clause 20.3(a)).			
<input type="checkbox"/> we do not agree the circumstances may constitute a TAE and hereby advise the MT not to further pursue this TAE.			
Name: (Nominated LT Member)	Signature:	Date:	

Copy to: Principal's Representative; TfNSW Senior Project Manager; (add others as required)

Target Adjustment Event Approval Form			
Incentivised Delivery Entity Name:			
Project Name:			
Part 1 <i>(Completed by the GM)</i>	TAE No.	TAE Title	
The Principal's Representative was advised on [dd/mm/yy/Ref] of circumstances which the LT considered may give rise to a TAE.			
The MT has further considered the circumstances and considers a TAE is due. The TfNSW Senior Project Manager concurs/does not concur that a TAE is due. The TfNSW Senior Project Manager has/has not aligned with the MT on the value of the TAE. (Refer attachment for details and reasons for alignment or non-alignment)			
Summary of the circumstances <small>(Refer attachment for details assessment/alignment)</small>			
Relevant TAG	Note: The full wording of the (most) relevant TAG as stated in the Agreement is repeated below.		
TAG #	Scenario	Comment	
	[Add TAG Scenario Wording]	[Add TAG Comment Wording]	
Impact <small>(Details of impacts to be included in attachment)</small>	<input type="checkbox"/> TOC Increase	<input type="checkbox"/> TOC Decrease	<input type="checkbox"/> Change in KRA/KPI Target
Signed by GM:		Date	
Part 2 <i>(to be completed / signed by all LT Members)</i>			
We have reviewed the information provided by the GM and:			
<input type="checkbox"/> we agree the circumstances constitute or justify a TAE as detailed in the attachment.			
We request that the Principal's Representative consider the matter and pursuant to clause 20.4(b):			
a) sign Part 3 below approving our recommendation; or			
b) provide notice to us in writing providing reasons why our recommendation is not approved.			
<input type="checkbox"/> we do not agree the circumstances constitute or justify a TAE and will not proceed further with a TAE and hereby provide a copy of the TAE Approval Form to the Principal's Representative for information.			

Schedule 36 – Target Adjustment Event Notice Form and Target Adjustment Event Approval Form

TfNSW LT Member	Name:	Signature:	Date:
TfNSW LT Member	Name:	Signature:	Date:
NOP1 LT Member	Name:	Signature:	Date:
NOP1 LT Member	Name:	Signature:	Date:
NOP2 LT Member	Name:	Signature:	Date:
NOP2 LT Member	Name:	Signature:	Date:
Part 3 (to be completed / signed by the Principal's Representative)			
<p>I have reviewed the information provided by the LT and I:</p> <p><input type="checkbox"/> approve</p> <p><input type="checkbox"/> do not approve</p> <p>the recommendation made by the LT.</p> <p>I attach reasons why I do not approve the LT's recommendation. [<i>Delete if not applicable</i>]</p>			
Name:		Signature:	Date:
Signed by Principal's Representative			

Schedule 37 – TOC

- (a) For the Initial Project, refer to Schedule 37.1 in the Project-Specific Schedules and Exhibits (Initial Project) section.
- (b) For each Additional Project, refer to Schedule 37.n.

Schedule 38 – Deed of Novation

Schedule 38 – Deed of Novation

(Clause 17.4(a))

Deed of Novation

[]
[ABN/ACN] []

[]
[ABN/ACN] []

[]
[ABN/ACN] []

Schedule 38 – Deed of Novation

Deed of Novation made at _____ on _____

Parties *[insert name]* [ABN/ACN] *[insert]* of *[insert]* (Retiring Party)
 [Insert name] [ABN/ACN] *[insert]* of *[insert]* (Continuing Party)
 [Insert name] [ABN/ACN] *[insert]* of *[insert]* (Substitute Party)

Recitals

- A The Retiring Party and the Continuing Party are parties to the Contract.
- B The Retiring Party and the Substitute Party have asked the Continuing Party to agree to the novation of the Contract on the terms and conditions of this deed.
- C The Continuing Party has agreed to the novation of the Contract on the terms and conditions of this deed.

This deed provides

1. Definitions and interpretation

1.1 Definitions

Defined terms in the Contract have the same meanings in this deed, unless the contrary intention appears.

In this deed:

"**Claim**" means any claim, notice, demand, action, proceeding, litigation, investigation or judgment whether based in contract, tort, statute or otherwise.

"**Contract**" means the agreement between the Retiring Party and the Continuing Party described in the Schedule.

"**Effective Date**" means *[insert date]*.

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

"**Liability**" means all liabilities, losses, Claims, damages, outgoings, costs and expenses of whatever description.

"**Related Entity**" has the meaning ascribed to that term in section 9 of the Corporations Act 2001 (Cth).

1.2 Interpretation

In this deed:

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

and unless the context indicates a contrary intention:

Schedule 38 – Deed of Novation

- (b) an obligation or a liability assumed by, or a right conferred on, 2 or more persons binds or benefits them jointly and severally;
- (c) **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;
- (d) 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;
- (e) a reference to a document (including this deed) is to that document as varied, novated, ratified or replaced from time to time;
- (f) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (g) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (h) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this deed, and a reference to this deed includes all schedules, exhibits, attachments and annexures to it;
- (i) 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;
- (j) **includes** in any form is not a word of limitation; and
- (k) a reference to \$ or **dollar** is to Australian currency.

2. Condition Precedent to Novation

Clause 3 of this deed will have no force and effect until the Effective Date.

3. Novation

3.1 Novation

- (a) The parties novate the Contract so that the Substitute Party and the Continuing Party are parties to a new agreement on the same terms as the Contract.
- (b) Any reference in the Contract to the Retiring Party will be read as a reference to the Substitute Party.

3.2 Assumptions of rights and obligations

- (a) The Substitute Party:
 - (i) will be bound by and must comply with the terms of the Contract and will enjoy the rights and benefits conferred on the Retiring Party under the Contract; and
 - (ii) will assume the obligations and Liability of the Retiring Party under the Contract,

Schedule 38 – Deed of Novation

in all respects as if the Substitute Party had originally been named in the Contract as a party instead of the Retiring Party.

- (b) The Continuing Party will comply with the terms of the Contract on the basis that the Substitute Party has replaced the Retiring Party under the Contract in accordance with this deed.

3.3 Release by Continuing Party

- (a) The Continuing Party releases the Retiring Party from:
 - (i) any obligation or Liability under or in respect of the Contract; and
 - (ii) any action, claim and demand it has against the Retiring Party under or in respect of the Contract.
- (b) This release does not affect any rights the Continuing Party may have against the Substitute Party as a result of the assumption by the Substitute Party under the terms of this deed of the obligations and Liability of the Retiring Party under the Contract.

3.4 Insurance

As from the Effective Date:

- (a) the Substitute Party must replace any insurances effected and maintained by the Retiring Party under the terms of the Contract; and
- (b) the Continuing Party will take the necessary steps to ensure that, for all insurances required to be effected by the Continuing Party under of the terms of the Contract, the Substitute Party is named in place of the Retiring Party as required by the Contract.

4. Ongoing Rights of Retiring Party

4.1 Direct Enquiries

In addition to any other rights which the Retiring Party may have, the Continuing Party and the Substitute Party each agree that the Retiring Party may make enquiries directly of the Continuing Party for the purpose of establishing whether the Continuing Party is complying with its obligations under the Contract.

4.2 Retiring Party to have benefit of Promises

- (a) The Continuing Party warrants in favour of the Retiring Party that in performing the Services it will comply with its obligations under the Contract and that the Retiring Party will continue to have the benefit of all promises, undertakings, covenants and warranties made or given by the Continuing Party under the Contract as if the Retiring Party remained a party to the Contract
- (b) Without limiting the above, the Continuing Party undertakes to the Retiring Party that it will exercise all reasonable skill, care and diligence in performing the Services including in issuing any certificates it is required to issue under the Contract and further acknowledges that the Retiring Party will be relying upon the skill and judgment of the Continuing Party in issuing those certificates and acknowledges that:
 - (i) in performing the Services it will owe a duty of care to the Retiring Party; and

Schedule 38 – Deed of Novation

- (ii) it is aware that the Retiring Party will be relying upon the skill and judgment of the Continuing Party in performing the Services and the warranties given by the Continuing Party in this deed.

4.3 Report by Continuing Party

The Continuing Party undertakes to the Retiring Party that it will exercise all reasonable skill, care and diligence to ensure that the design intent of the Works as contained in the Design Documentation in existence at the date of execution of this deed, is reflected in the completion of the Design Documentation and in the execution of the Works.

Without limiting the above, the Continuing Party must conduct such inspections of the Works at such times and in such detail as may reasonably be expected of a consultant engaged in a project of the size and complexity of the Works.

The Continuing Party must act in good faith and in the best interests of the Retiring Party and promptly advise the Retiring Party about any matter in which the Continuing Party has been instructed by the Substitute Party to provide the Services in a manner which is, or may result in an outcome which is, not in accordance with the requirements of the Contract, including:

- (a) any instruction or direction which it receives, or any work or services it becomes aware of, which in the reasonable opinion of the Continuing Party, is not in accordance with any provision of the Contract including where the Substitute Party's instructions:
 - (i) in relation to design are not consistent with the Contract or may result in the Works to be constructed not being fit for their intended purpose; or
 - (ii) require the Continuing Party to issue a certificate under the Contract where the conditions for the issue of that certificate under the Contract have not been satisfied; and
- (b) any non-conformity of any Design Documentation produced pursuant to the Contract, or to the Design Documentation in existence at the date of this deed, upon becoming aware of the non-conformity.

5. Overriding effect

The parties agree that the execution and operation of this deed will for all purposes be regarded as due and complete compliance with the terms of the Contract relating to any requirement for consent to assignment of the Contract so far as any such provisions would apply with respect to the novation of the Contract to the Substitute Party.

6. Representations and warranties

6.1 Authority

Each party represents and warrants to each other party that it has full power and authority to enter into and perform its obligations under this deed.

6.2 Authorisations

Each party represents and warrants to each other party that it has taken all necessary action to authorise the execution, delivery and performance of this deed in accordance with its terms.

6.3 Binding obligations

Each party represents and warrants to each other party that this deed constitutes its legal, valid and binding obligations and is enforceable in accordance with its terms.

7. Duties, costs and expenses

7.1 Stamp duty

The Substitute Party must pay all stamp duty, duties or other taxes of a similar nature (including but not limited to any fines, penalties and interest) in connection with this deed or any transaction contemplated by this deed (except to the extent the terms of the Contract provide otherwise).

7.2 Costs

Each Party must pay its own legal costs and expenses in negotiating, preparing and executing this deed.

7.3 GST

The parties agree that:

- (a) with any payment of amounts payable under or in connection with this deed including without limitation, by way of indemnity, reimbursement or otherwise, the party paying the amount must also pay any GST in respect of the taxable supply to which the amount relates;
- (b) the party receiving the payment will provide a tax invoice; and
- (c) the payment of any amount referred to in paragraph (a) which is a reimbursement or indemnification of a cost, expense, loss or liability will exclude any part of the amount for which the other party can claim an input tax credit.

8. General

8.1 Governing law

This deed is governed by and must be construed according to the laws of the State or Territory stated in Schedule 1.

8.2 Jurisdiction

Each party irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts of the State or Territory stated in Schedule 1, and the courts competent to determine appeals from those courts, with respect to any proceedings which may be brought at any time relating to this deed; and
- (b) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 8.2(a)

8.3 Amendments

This deed may only be varied by a document signed by or on behalf of each party.

Schedule 38 – Deed of Novation

8.4 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 any other breach of that term or of a breach of any other term of this deed.

8.5 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.

8.6 Severance

If at any time a provision of this deed is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, that will not affect or impair:

- (a) the legality, validity or enforceability in that jurisdiction of any other provision of this deed; or
- (b) the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of this deed.

8.7 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.

8.8 Assignment

A party cannot assign, novate or otherwise transfer any of its rights or obligations under this deed without the prior consent of each other party.

Schedule 38 – Deed of Novation

Schedule 1

Contract
(Clause 1.1)

.....
.....

Governing Law and Jurisdiction
(Clause 1.1 and 8.1)

.....
.....

Schedule 38 – Deed of Novation

Executed as a deed.

**Executed by [Retiring Party and ABN/ACN] by
or in the presence of:**

Signature of Director

Name of Director in full

**Executed by [Continuing Party and ABN/ACN]
by or in the presence of:**

Signature of Director

Name of Director in full

**Executed by [Substitute Party and ABN/ACN]
by or in the presence of:**

Signature of Secretary/other Director

Name of Secretary/other Director in full

Signature of Secretary/other Director

Name of Secretary/other Director in full

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Signature of Director

Signature of Secretary/other Director

Name of Director in full

Name of Secretary/other Director in full