

## **Country Regional Network**

## **Operations and Maintenance Deed**

**Transport for NSW**

and

**Transport Asset Holding Entity of New South Wales**

and

**UGL Regional Linx Pty Ltd**



## Contents

<b>Part A – Introduction</b>	<b>3</b>
<b>1 Definitions and Interpretation</b>	<b>3</b>
1.1 Definitions	3
1.2 Words and headings	42
1.3 Specific references	43
1.4 General interpretive provisions	44
1.5 Incorporation of Standards and Codes	45
1.6 Discrepancies	45
<b>2 Objectives and Relationship</b>	<b>46</b>
2.1 Objectives	46
2.2 Engagement	47
2.3 Ownership of the CRN Assets	47
2.4 Licence to Use the CRN Assets	47
2.5 Conditions of Use	47
2.6 Additional CRN Assets Obligations	48
2.7 Prohibited Uses of the CRN Assets	48
2.8 Principal Supplied Assets	49
2.9 Release of the Principal	49
2.10 Relationship between the parties	49
2.11 The Principal's Representative's Functions	50
2.12 Discretions of the Principal and the Principal's Representative	50
2.13 Appointment of Service Provider's Representative	51
2.14 Subcontracting	51
2.15 Service Provider Responsible for Associates	51
2.16 Other Acknowledgements	52
<b>Part B – Contract Commencement and Term</b>	<b>53</b>
<b>3 Commencement and Term</b>	<b>53</b>
3.1 Conditions Precedent (Mobilisation)	53
3.2 Conditions Precedent (Services Commencement)	53
3.3 Notification, Waiver and Termination	54
3.4 Mobilisation	55
3.5 First Extension of the Term	59
3.6 Second Extension of the Term	60
3.7 Expiry of Term	61
3.8 Provision of Security	62
3.9 Replacement of Security	62
3.10 Recourse to the Security	63
3.11 No Interest	63
3.12 No Trust	63
3.13 Release of the Security	63
3.14 Parent Company Guarantee	64
3.15 No Payment	64
<b>4 Transfer of Previous Service Provider In-Scope Employees</b>	<b>64</b>
4.1 Offers of employment	64
4.2 Accrued entitlements and recognition of prior service	65

**CRN Operations and Maintenance Deed**

4.3	Transfer of business	66
4.4	Indemnity	66
4.5	Unpaid Previous Service Provider In-Scope Employee Allowances	66
4.6	Tax treatment of Previous Service Provider In-Scope Employee entitlements	66
4.7	Redeployment Management Plan	68
<b>Part C – Services</b>		<b>68</b>
<b>5</b>	<b>Service Provider’s Obligations</b>	<b>68</b>
5.1	General Obligations	68
5.2	General Warranty	69
5.3	Services to Comply	70
5.4	Minimise Disruption	70
5.5	Rectification of Non-Compliances	70
5.6	Advancements in Technology and Safety	71
5.7	Relevant Documents	71
5.8	Supply of Records (Including Information Documents) by the Principal	72
5.9	Service Provider’s General Representations and Warranties	73
5.10	Notification of Change	74
5.11	Inquiries	74
<b>Part D – Contract Administration</b>		<b>74</b>
<b>6</b>	<b>Contract Administration</b>	<b>74</b>
6.1	Service Provider’s Associates	74
6.2	Key Personnel	74
6.3	Keeping of Records	75
6.4	Open access principles	75
6.5	Cost of Audit	77
6.6	State Records	78
6.7	Back-up	79
6.8	Submission of Review Documents for review by the Principal’s Representative	79
6.9	Submission of Excluded Documents	81
6.10	No relief	83
6.11	Reporting	84
6.12	KPIs	84
6.13	Governance	86
<b>Part E – Laws and Approvals</b>		<b>86</b>
<b>7</b>	<b>Laws, Approvals and NSW Government Policy</b>	<b>86</b>
7.1	Compliance with Laws	86
7.2	Service Provider to Obtain Approvals	87
7.3	Conditional Approvals	87
7.4	Environment Protection Licences	87
7.5	Division 5.1 Assessments	88
7.6	Preparation of a Division 5.1 Assessment	88
7.7	Taxes, Duties and Charges	88
7.8	NSW Government Policy	89
7.9	DDA Exemption	89
7.10	AMB	89
7.11	Rail Safety Accreditation	90
7.12	Changes to Applicable Rail Safety Law	91

**CRN Operations and Maintenance Deed**

7.13	Rail Safety Work and Investigative Authorities	91
7.14	Priority for Passengers	92
7.15	Safety Interface Agreements	92
7.16	Statutory Requests	92
<b>8</b>	<b>NSW Industrial Relations Guidelines (NSW IR Guidelines)</b>	<b>93</b>
8.1	Definitions and application	93
8.2	Primary obligation	93
8.3	Access and information	94
8.4	Sanctions	94
8.5	Compliance	94
<b>Part F – Safety</b>		<b>95</b>
<b>9</b>	<b>Safety</b>	<b>95</b>
9.1	Service Provider's Compliance	95
9.2	Principal's Activities	95
9.3	Work Health and Safety	95
9.4	Emergencies and Incidents	96
9.5	Preservation of Evidence	96
<b>Part G – Environment</b>		<b>97</b>
<b>10</b>	<b>Environment</b>	<b>97</b>
10.1	General obligations	97
10.2	Ownership of Waste	97
<b>11</b>	<b>Heritage</b>	<b>98</b>
11.1	General Obligation	98
11.2	Compliance with principles and guidelines	98
11.3	Listing Notices	98
11.4	Aboriginal Cultural Heritage	99
<b>12</b>	<b>Climate Change, Clean Energy and NGERs</b>	<b>99</b>
12.1	Climate change policy	99
12.2	Ownership and trading of Carbon Credits	99
12.3	Eligible offsets project	99
12.4	NGER Operational control	99
<b>13</b>	<b>Contamination</b>	<b>100</b>
13.1	Obligation not to cause or exacerbate	100
13.2	Acknowledgement	100
13.3	Release	101
13.4	Notification of Clean-Up Notice	101
13.5	Obligations upon discovering Contamination	101
13.6	Prior Contamination	103
<b>Part H – Variations</b>		<b>103</b>
<b>14</b>	<b>Modifications and Adjustment Events</b>	<b>103</b>
14.1	Principal Initiated Modifications	103
14.2	Options	104
14.3	Service Provider Initiated Modifications	105
14.4	Adjustment Events	106
<b>15</b>	<b>Innovation</b>	<b>106</b>
<b>16</b>	<b>General provisions regarding Modifications or Adjustment Events</b>	<b>107</b>

<b>Part I – Payment</b>		<b>110</b>
<b>17 Payment</b>		<b>110</b>
17.1	Payment Entitlements	110
17.2	Payment Claims	110
17.3	Payment Response	111
17.4	Payments	112
17.5	Set Offs by the Principal	112
17.6	Payment on account	113
17.7	Interest on Overdue Payments	113
17.8	Ownership of Materials	113
17.9	Payment of Subcontractors	113
17.10	Trust Account	114
17.11	Long Service Levy	114
17.12	Notices Under the Security of Payment Act and Contractors Debts Act	114
17.13	Suspension of Work Under the Security of Payment Act	115
17.14	Adjudicator’s Determination	115
17.15	GST	115
17.16	No Carbon price	116
<b>Part J – Risk, Insurance and Liability</b>		<b>117</b>
<b>18 Risk</b>		<b>117</b>
18.1	Risk of the CRN Assets and CRN Assets Conditions	117
18.2	Risk of Principal Supplied Assets	118
<b>19 Insurances</b>		<b>119</b>
19.1	Service Provider Insurances	119
19.1A	Service Provider’s Corporate Policies During Mobilisation	121
19.2	Subcontractor’s Insurances	123
19.3	Periods of Insurance	123
19.4	General Insurance Requirements	124
19.5	Evidence of Insurance	124
19.6	Failure to Produce Evidence of Insurance	126
19.7	Service Provider’s Obligations Not Limited	126
19.8	Assistance	126
19.9	Notices	126
19.10	Notices of Potential Claims	126
19.11	Cross Liability	126
19.12	Miscellaneous Insurance Provisions	126
19.13	Application of Insurance Proceeds	128
█	█	129
█	█	132
<b>20 Liability</b>		<b>134</b>
20.1	Acknowledgment	134
20.2	Indemnities	135
20.3	Deed polls	136
20.4	Provisions Limiting or Excluding Liability	137
█	█	137
█	█	140
█	█	140



█	█	141
█	█	142
█	█	143
█	█	143
<b>Part K – Intellectual Property and Branding</b>		<b>144</b>
<b>21</b>	<b>Intellectual Property</b>	<b>144</b>
21.1	General principle	144
21.2	Service Provider's Background Intellectual Property	144
21.3	Principal's Intellectual Property	145
21.4	Power of Attorney	145
21.5	Service Provider's Warranty	145
21.6	Moral Rights Consent of Authors	145
21.7	Intellectual Property Database	145
21.8	UGL Signalling IP	145
21.9	Ongoing licence to UGL Signalling IP after the Term	146
21.10	Escrow 146	
21.11	Subcontractor Intellectual Property	147
<b>Part L – Step-in, Default and Termination</b>		<b>147</b>
<b>22</b>	<b>Step-in</b>	<b>147</b>
22.1	Exercise of Step-in Rights	147
22.2	Actions Following Step-in	148
22.3	Conclusion of Step-in Rights	149
22.4	Not Liable	150
22.5	Other Rights	150
<b>23</b>	<b>Default and Termination</b>	<b>150</b>
23.1	Preservation of Other Rights	150
23.2	Principal's Right to Terminate by Notice	150
23.3	Default Event and Default Notice	150
23.4	Cure Plan	151
23.5	Extension of Cure Period	151
23.6	Step-in or Termination for Termination Event	152
23.7	Principal's Entitlements after Termination	152
23.8	Principal's Breach of Contract	153
23.9	Termination for Force Majeure	153
23.10	Consequences of Termination	153
23.11	Termination Rights	154
<b>Part M – Transition Out</b>		<b>154</b>
<b>24</b>	<b>End of Term Restrictions</b>	<b>154</b>
24.1	Variation of terms or conditions of Dedicated Employees' employment	154
24.2	Engagement of new Associates	154
<b>25</b>	<b>End of Contract Retendering Provisions</b>	<b>155</b>
25.1	Right to appoint Successor Service Provider	155
25.2	Maintenance as going concern	155
25.3	Handover Information	155
25.4	Preparation for contracting at end of Term	157
25.5	Non frustration of transfer	157
25.6	Assistance in securing continuity	157

**CRN Operations and Maintenance Deed**

25.7	Transfer of Approvals	158
25.8	Access	158
<b>26</b>	<b>Transition Out Requirements</b>	<b>158</b>
26.1	Transition Out Audit	158
26.2	Rectification work	159
26.3	Handback obligations	159
26.4	Final inspection	160
26.5	Service Provider Certification	161
<b>27</b>	<b>Handback</b>	<b>161</b>
27.1	Handback of CRN Assets and Principal Supplied Assets	161
27.2	Indicative Statement	161
27.3	Successor Service Provider may be required to make offers	161
27.4	Transfer Out Agreement	163
27.5	Network Control Centre Lease and Backup Network Control Centre Lease	163
<b>Part N – Claims and Disputes</b>		<b>163</b>
<b>28</b>	<b>Dispute Resolution</b>	<b>163</b>
28.1	Notice of Dispute	163
28.2	Initial Negotiations	163
28.3	Further Negotiations	164
28.4	Final Negotiations	164
28.5	Expert Determination	164
28.6	Litigation	165
28.7	Continuation of Rights and Obligations	166
28.8	Summary Relief	166
28.9	Exchange of Information or Records	166
<b>29</b>	<b>Notification of Claims</b>	<b>166</b>
29.1	Communication of Claims regarding Directions	166
29.2	Communication of Claims	167
29.3	Claim requirements	168
29.4	Liability for failure to communicate	168
29.5	Principal's Representative's decision	168
<b>Part O – General</b>		<b>169</b>
<b>30</b>	<b>General</b>	<b>169</b>
30.1	Assignment and Change in Control	169
30.2	Joint and Several Responsibility	170
30.3	Non-derogation	171
30.4	Principal may act	171
30.5	Transfer of Functions or Assets	171
30.6	Severability	172
30.7	Waiver and Amendments	172
30.8	Governing Law	172
30.9	No Merger	172
30.10	Counterparts	172
30.11	Survival	172
30.12	Conflicts of Interest	173
30.13	Service of Notices	173
30.14	Entire Agreement	173

**CRN Operations and Maintenance Deed**

30.15	Costs	174	
30.16	Further assurances		174
<b>31</b>	<b>Media Releases, Confidentiality and Privacy</b>		<b>174</b>
31.1	Confidential Information		174
31.2	Media Releases		175
31.3	Privacy		175
31.4	Disclosure by the Principal		176
<b>32</b>	<b>Personal Property Securities Act</b>		<b>177</b>
32.1	Further Assurances		177
32.2	Contracting out of PPS Act		177
32.3	Acknowledgments and undertakings		177
32.4	Requests for information		177
<b>33</b>	<b>Compliance with NSW Government Small and Medium Enterprise Policy Framework</b>		<b>178</b>
<b>34</b>	<b>Force Majeure</b>		<b>178</b>
34.1	Notice		178
34.2	Suspension of Affected Obligations		179
<b>35</b>	<b>Specific Relevant Documents</b>		<b>180</b>
<b>36</b>	<b>Option 7</b>		<b>180</b>
	<b>Attachment A – Deed Details</b>		<b>185</b>
	<b>Attachment B – Approved Form of Unconditional Undertaking</b>		<b>186</b>
	<b>Attachment C - Parent Company Deed of Guarantee and Indemnity</b>		<b>188</b>
	<b>[REDACTED]</b>		<b>206</b>
	<b>Attachment E – CRN Land</b>		<b>231</b>
	<b>Attachment F - List of CRN Assets</b>		<b>232</b>
	<b>Attachment G - Form of Payment Claim</b>		<b>233</b>
	<b>Attachment H - Form of Deed of Amendment</b>		<b>238</b>
	<b>Attachment I – Deed Poll</b>		<b>249</b>
	<b>Attachment J – Parent Company Deed Poll</b>		<b>252</b>
	<b>Attachment K – Form of Variation Impacts Statement</b>		<b>266</b>
	<b>[REDACTED]</b>		<b>269</b>
	<b>[REDACTED]</b>		<b>280</b>
	<b>Attachment N – ARA DDA Exemption Application</b>		<b>281</b>
	<b>Schedule 1 – Variations Schedule</b>		<b>282</b>
	<b>Schedule 2 – Payment Schedule</b>		<b>308</b>
	<b>Schedule 3 – Indexation Schedule</b>		<b>345</b>
	<b>Schedule 4 – KPI Schedule</b>		<b>348</b>
	<b>Schedule 5 – Governance Schedule</b>		<b>382</b>
	<b>Schedule 6 – Relevant Documents</b>		<b>389</b>
	<b>Schedule 7 – Expert Determination Agreement</b>		<b>391</b>
	<b>Schedule 8 – Carry-Over Works</b>		<b>401</b>
	<b>Schedule 9 – Statutory Declaration</b>		<b>402</b>
	<b>[REDACTED]</b>		<b>413</b>
	<b>Schedule 11 – Principal Supplied Assets</b>		<b>419</b>
	<b>Schedule 12 – Enhancement Activities Terms and Conditions</b>		<b>420</b>

<b>[REDACTED]</b>	441
<b>Schedule 14 – Renewal Requirement Auditor Deed</b>	448
<b>Schedule 15 - Scope of Works</b>	472



---

# Country Regional Network Deed

**Dated** 16 FEBRUARY 2021

---

## Parties

Name	<b>Transport for NSW (ABN 18 804 239 602)</b>
Address	231 Elizabeth Street, Sydney NSW 2000
Email	[REDACTED]
Contact	Principal's Representative
Short name	<b>TfNSW</b>

Name	<b>Transport Asset Holding Entity of New South Wales (ABN 59 325 778 353)</b>
Address	470 Pitt Street, Haymarket NSW 2000
Email	[REDACTED]
Contact	Chief Financial Officer
Short name	<b>TAHE</b>

Name	<b>UGL Regional Linx Pty Ltd (ACN 646 771 011)</b>
Address	Level 8, 40 Miller Street, North Sydney NSW 2060
Email	[REDACTED]
Contact	[REDACTED]
Short name	<b>Service Provider</b>

---

## Background

A. TAHE is the owner of certain parts of the Country Regional Network and Transport for NSW is the owner of other parts of the Country Regional Network.

CRN Operations and Maintenance Deed

- B. In order to achieve the objectives set out in **clause 2.1**, the Principal wishes to engage the Service Provider to manage, operate, maintain and upgrade the CRN Assets and carry out other associated and ancillary obligations as set out in the terms of this Deed.
- C. This Deed sets out the terms on which the Service Provider agrees to manage, operate, maintain and upgrade the CRN Assets.

## This Deed witnesses

### Part A – Introduction

#### 1 Definitions and Interpretation

##### 1.1 Definitions

In this Deed, the following definitions apply:

**Abandonment** means where the Service Provider has failed to, or has refused to, carry out the whole or a substantial part of the Services for:

- (a) no less than 30 consecutive days; or
- (b) no less than 60 days (whether consecutive or not) in any period of 6 consecutive months, except to the extent the Service Provider is relieved of the obligation to carry out the Services (or such part of the Services) by the express provisions of this Deed.

**Aboriginal Heritage Impact Permit** means:

- (a) a permit under section 90 of the *National Parks and Wildlife Act 1974* (NSW); or
- (b) a permission or approval under Part 10B of the ACT Heritage Act in relation to an Aboriginal place or an Aboriginal object.

**ACT Heritage Act** means the *Heritage Act 2004* (ACT).

**ACT Heritage Council** means the council established under the ACT Heritage Act.

**ACT Heritage Register** means each heritage register kept by the ACT Heritage Council under section 20 of the ACT Heritage Act.

**ACT Licence** means the document titled Deed of Licence between the entity formerly known as the Rail Infrastructure Corporation, the Australian Capital Territory and the entity formerly known as the Planning and Land Authority of the Australian Capital Territory, dated on or about 15 January 2007.

**Act of Prevention** means, in respect of each of the Indemnified Parties:

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

committed by the relevant Indemnified Party.

**Actual Activity Volumes** has the meaning given in the **Payment Schedule**.

**Adjustment Event** means each of the events or circumstances specified as such in column 'A' of the table in **Part 3** of the **Variations Schedule**.

**Affected Obligations** means the non-financial obligations of the Principal or the Service Provider (as applicable) under this Deed that the Principal or the Service Provider (as applicable) is prevented from performing as a result of a Force Majeure Event.

**Agency Services** means:

- (a) those Services set out in **section 3.8 (Manage Revenue Collection and Bank Guarantees)** of the **Scope of Works**; and
- (b) those Services involving the management of leases, licenses, access agreements and other agreements between the Principal and third parties,

as well as any other Services which this Deed expressly provides are required to be carried out, or are otherwise notified by the Principal's Representative in writing from time to time as being required to be carried out, by the Service Provider as agent of the Principal.

**AMB** means the Asset Management Branch (formerly the Asset Standards Authority), being the unit within TfNSW which sets, controls, maintains, owns and publishes the network and asset standards for NSW Rail Assets as defined in the AMB Charter. Information about the AMB and the network and asset standards can be found on [www.asa.transport.nsw.gov.au](http://www.asa.transport.nsw.gov.au).

**AMB Authorisation** means an authorisation issued by the AMB 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.

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

**AMB Requirements** has the meaning assigned to it in the AMB Charter.

**Approval** means:

- (a) any consent, approval, acknowledgment, permit, licence, registration, order, permission, determination, certificate, concurrence or requirement of any Authority or under any Law; or
- (b) any requirement made under any Law.

**ARA DDA Exemption Application** means the application for an exemption under section 55 of the *Disability Discrimination Act 1992* (Cth), section 33A.1 of the *Disability Standards for Accessible Public Transport 2002* (Cth), and section 5.1 of the *Disability (Access to Premises – Buildings) Standards 2010* (Cth) by the members of the Australasian Railway Association submitted in or about 2020 and the supplementary submission for that exemption by the members of the Australasian Railway Association to the Australian Human Rights Commission submitted in or about 2020, copies of which are attached as **Attachment N**.

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

**ARTC Lease** means the deed titled 'Deed of Lease' for the operation, management and maintenance by ARTC of a rail network owned by TfNSW, entered into by TfNSW, the State Rail Authority of NSW and ARTC dated 4 June 2004 as amended from time to time.

**ARTC Lease State Road Overbridge Maintenance Services** means the Asset Management Services and the Asset Maintenance Services in respect of those overbridges specified in the register in **Appendix K** to the **Scope of Works** in respect of which the column titled "Option 3C" is completed "Yes".

**Assessment Works** means work to investigate, assess, characterise and define Contamination and report on those findings in order to fully define and characterise the nature and extent of the Contamination and any remediation work that may be required, but does not include Initial Response Works.

**Asset** includes any land, interchanges, stations, track, buildings, structures, bridges, plant, equipment, embankments, cuttings, rail, ballast, sleepers, services, utilities, culverts, drainage infrastructure, signalling infrastructure, information technology systems, communications systems, turnouts, sidings and other assets and infrastructure.

**Asset Information System** means the asset information system required to be developed and maintained by the Service Provider in accordance with **section 5.3.3** of the **Scope of Works**.



**Asset Lifecycle** has the meaning assigned to it in the AMB Charter.

**Asset Maintenance Services** has the meaning given in the **Scope of Works**.

**Asset Management Planning Documents** has the meaning given in the **Scope of Works**.

**Asset Management Services** has the meaning given in the **Scope of Works**.

**Asset Services** means the aspects of the Services which relate to the Asset Lifecycle of NSW Rail Assets.

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

- (a) the Principal:
  - (i) includes the Principal's Representative; and
  - (ii) excludes the Service Provider, and any counterparty to a Relevant Document; and
- (b) the Service Provider, includes all Subcontractors.

**Assumed AWP** has the meaning given in the **Scope of Works**.

**ATSB** means the Australian Transport Safety Bureau constituted under the *Transport Safety Investigation Act 2003* (Cth).

**Audit Asset** has the meaning given in **Schedule 13**.

**Audit Asset Maintenance Costs** has the meaning given in **Schedule 13**.

**Audit Asset Renewal Costs** has the meaning given in **Schedule 13**.

**Authorised Engineering Organisation** or **AEO** means a legal entity to whom the AMB has issued an AMB 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 private electricity, telecommunications, gas or other utility company or any other person having jurisdiction over, a right to impose a requirement in respect of, or whose consent is required in respect of, any part of the CRN Assets or the Services,

including the AMB, the OTSI and the ONRSR.

**Backup Network Control Centre** means the backup Network Control Centre required to be maintained by the Service Provider in accordance with **section 9** of the **Scope of Works**.

**Baseline GTK** means either:

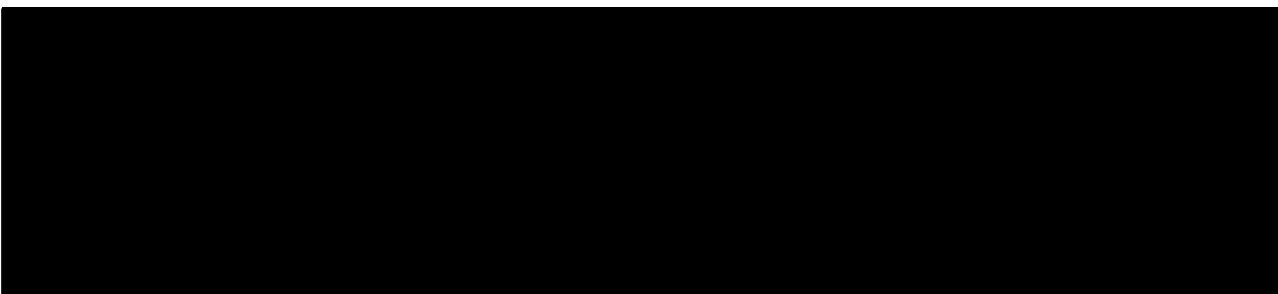
- (a) where, as at the end of the relevant Contract Year, there has been no Significant Change to Operations after the Services Commencement Date, [REDACTED] or
- (b) otherwise, the Selected GTK for the relevant Contract Year in which the last Significant Change to Operations occurred,

provided that where any relevant Contract Year is not a complete Financial Year, the amount determined in accordance with **paragraph (a) or (b)** (as applicable) will be adjusted on a pro rata basis on account of the difference between the number of days in the relevant Contract Year and the number of days in the relevant Financial Year.

**Baseline Reference Asset Costs** has the meaning given in **Schedule 13**.

**Business Day** means a day that is not:

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



**Carbon Credit** means an 'Australian carbon credit unit' under the Carbon Farming Act or any benefit or valuable right or entitlement (including credit, cost abatement, offset or income) under any other Carbon Credit Scheme.

**Carbon Credit Scheme** means any legislated or administrative arrangement or scheme under which a person is entitled to receive any valuable right, credit, certificate, cost abatement, payment or other interest in connection with the abatement of Greenhouse Gas emissions.

**Carbon Farming Act** means the *Carbon Credits (Carbon Farming Initiative) Act 2011* (Cth).

**Carbon Price** means a Tax relating to the existence or abatement of Greenhouse Gas emissions, or fuel or energy use, and includes any financial requirement arising from the *National Greenhouse and Energy Reporting Act 2007* (Cth).

**Carry-Over Works** means any work required to be performed by the Previous Service Provider under the Previous CRN Deed (or any associated or replacement agreement) that has not been completed by the Previous Service Provider by the Services Commencement Date, as notified by the Principal's Representative to the Service Provider, which may include the work specified in **Schedule 8**.

**Change in Control** means, in relation to an entity:

- (a) a change in the shareholding of the entity such that a change in Control of the entity occurs (whether occurring at the one time or through a series of transfers or issues of securities);
- (b) any other event (including a change or alteration in the corporate structure of the entity or the group of companies of which the entity is a member) which results in a person other than the shareholders of the entity at the date of this Deed:
  - (i) Controlling the composition of the board of directors of the entity;
  - (ii) Controlling the voting power of the board of directors or any class of shareholders, or both, of the entity; or
  - (iii) holding more than one half of the issued share capital (either beneficially or otherwise) of the entity; or
- (c) a situation or occurrence where the entity comes under the Control of a person who did not Control that entity at the date of this Deed.

**Change in Law** means a change in an existing, or the introduction or implementation of a new, Law (other than Standards and Codes) after the relevant Reference Date.



**Change in Relevant Documents** means a change in an existing, or the introduction or implementation of a new, Relevant Document after the relevant Reference Date, excluding:

- (a) any such new Relevant Document that replaces a Relevant Document of substantially the same form; or
- (b) any such change in, or new, Relevant Document that is immaterial or that does not result in the Service Provider's obligations under **clause 5.7(b)** being substantially more onerous than they were prior to such change in, or new, Relevant Document.

**Change in Standards and Codes** means a change in existing, or the introduction or implementation of new, Standards and Codes after the relevant Reference Date.

**Claim** includes any claim by the Service Provider, including any claim for, or entitlement of the Service Provider to:

- (a) payment of money, including for any element of the Monthly Services Fee or any other consideration payable by the Principal for the Services or otherwise under this Deed;
- (b) any Variation Impacts;
- (c) any Qualifying Latent CRN Assets Condition Impacts;
- (d) any Losses or other amounts of whatever nature;
- (e) relief from any of the Service Provider's obligations or liabilities under this Deed; or
- (f) any other right, remedy or claim,

whether:

- (g) under, arising out of or in any way in connection with this Deed, including for breach of contract;
- (h) arising out of, or in any way in connection with, the Services, the CRN Assets or either party's conduct, including before the date of this Deed; or
- (i) arising otherwise at law or in equity (including under statute, in tort (including negligence) or for restitution, quantum meruit or unjust enrichment) or on any other basis.

**Clean Energy Legislation** means legislation enacted by the Commonwealth, the State of New South Wales or the Australian Capital Territory whether before, on or after the date of this Deed, which has as one of its purposes (including by the imposition of a Carbon Price) the reduction, offset, management, recording or reporting of Greenhouse Gas emissions, and to avoid doubt includes the NGER Act.

**Clean-Up Notice** means any order, direction, notice or other requirement of any Authority issued under an Environmental Law or any agreement entered into with any Authority under an Environmental Law, in respect of the investigation, assessment or Remediation of any Pollution or Contamination on or from any part of the CRN Assets, as amended, varied, modified or re-issued under an Environmental Law.

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

**Conditions Precedent (Mobilisation)** means:

- (a) the Service Provider producing to the Principal's Representative evidence in accordance with **clause 19.5** of policies of insurance required to be effected under **clause 19** on or prior to the Proposed Mobilisation Date; and
- (b) the Service Provider providing:
  - (i) the Security required by this Deed in accordance with **clause 3.8**;

- (ii) the Parent Company Guarantee in accordance with **clause 3.14**;
- (iii) if required, each Foreign Legal Opinion, in accordance with **clause 3.14 or 20.3**;
- (iv) the Principal with all deed polls required in accordance with **clause 20.3**, to the extent required to be provided by the Proposed Mobilisation Date; and
- (v) the Principal with either:
  - (A) a copy of the approval or no objection notice obtained from the Foreign Investment Review Board in respect of the Service Provider's entry into this Deed and all transactions contemplated by this Deed; or
  - (B) a copy of a letter or other correspondence from the Foreign Investment Review Board to the satisfaction of the Principal confirming that approval from the Foreign Investment Review Board is not required in respect of the Service Provider's entry into this Deed or any transaction contemplated by this Deed.

**Conditions Precedent (Services Commencement)** means:

- (a) each of the Conditions Precedent (Mobilisation) being either satisfied by the Service Provider or waived by the Principal in accordance with **clause 3.3(b)(i)**;
- (b) the Service Provider having achieved each of the Mobilisation Milestones;
- (c) the Service Provider holding Rail Safety Accreditation in respect of the CRN Assets and as otherwise necessary for the carrying out of the Services;
- (d) the Service Provider being an Authorised Engineering Organisation;
- (e) the Service Provider being lawfully entitled to carry out that part of the Services comprising Railway Operations;
- (f) the Service Provider obtaining any Environment Protection Licences necessary to enable it to commence carrying out the Services and demonstrating to the Principal's satisfaction that the Service Provider is capable of obtaining all further Environment Protection Licences necessary to enable it to carry out the Services;
- (g) the Service Provider producing to the Principal's Representative evidence in accordance with **clause 19.5** of policies of insurance required to be effected under **clause 19** on or prior to the Services Commencement Date;
- (h) the Service Provider having entered into all Safety Interface Agreements required to be in place to enable the Services (other than the Mobilisation Activities) to be commenced to be carried out in accordance with this Deed;
- (i) the interface of the Service Provider's information management systems with the Principal's asset management system to the satisfaction of the Principal's Representative;
- (j) the Service Provider has provided a Transition Out Plan in accordance with **clause 6.8** and that Transition Out Plan has not been rejected by the Principal's Representative (and is not otherwise deemed to be rejected) in accordance with **clause 6.8**;
- (k) the Service Provider being licensed as a real estate agent and a stock and station agent pursuant to the *Property, Stock and Business Agents Act 2002* (NSW) (or holds a relevant exemption for such licensing requirements);
- (l) the Service Provider has obtained any other Approval required to be obtained to enable the Services (other than the Mobilisation Activities) to be commenced to be carried out in accordance with this Deed;



- (m) a Transitional Agreement has been executed by both the Service Provider and the Previous Service Provider and a copy of the executed Transitional Agreement provided to the Principal's Representative;
- (n) the Service Provider has provided the Principal's Representative with updated versions of each of the following plans in accordance with **clause 6.9** and each of those updated plans has been approved by the Principal's Representative in accordance with **clause 6.9**:
  - (i) SMEPP;
  - (ii) Regional Employment Plan;
  - (iii) Aboriginal Participation Plan;
  - (iv) WHS Management Plan;
  - (v) Network Operations Plan;
  - (vi) Stakeholder Management Plan;
  - (vii) the Asset Management Planning Documents;
  - (viii) the Asset and Services Plan;
  - (ix) Environmental Management Plan;
  - (x) Heritage Management Plan;
  - (xi) Safety Management Plan;
  - (xii) Third Party Works Management Plan;
  - (xiii) Property Management Services Plan;
  - (xiv) Non-Operational Lines Management Plan;
  - (xv) Transition Out Plan;
  - (xvi) if, as at the date that is 3 months prior to the Proposed Services Commencement Date, the Principal's Representative has already exercised Option 4 in accordance with **clause 14.2(a)** of the General Conditions, Level Crossing Closure Plan;
  - (xvii) Level Crossing Management Plan;
  - (xviii) if, as at the date that is 3 months prior to the Proposed Services Commencement Date, the Principal's Representative has already exercised Option 5 in accordance with **clause 14.2(a)** of the General Conditions, Turnout Rationalisation Plan; and
  - (xix) if, as at the date that is 3 months prior to the Proposed Services Commencement Date, the Principal's Representative has already exercised Option 6 in accordance with **clause 14.2(a)** of the General Conditions, Structures Disposal Plan; and
- (o) the Service Provider producing to the Principal's Representative evidence in accordance with **clause 19.5** of policies of insurance required to be effected under **clause 19** on or prior to the Proposed Services Commencement Date.

**Confidential Information** means:

- (a) this Deed and any other Records supplied by either the Service Provider or the Principal of a confidential nature; and

- (b) without limiting **paragraph (a)**, any information relating to the past, present or future business or operations of a party (or, in respect of the Principal, any NSW Government agency) that comes to the knowledge of the other party and includes:
- (i) financial, budgetary, marketing, research and business plan information;
  - (ii) the position of a party or an officer or employee of that party on any confidential matter;
  - (iii) the terms of any contract, agreement or business arrangement with third parties;
  - (iv) trade secrets, licences, know-how and related information;
  - (v) customer lists and supplier lists;
  - (vi) third party information disclosed in confidence; and
  - (vii) any other information the disclosure or use of which may be detrimental to the interests of a party or of any other person who has provided it to that party on a confidential basis,

but does not include information in the public domain (unless in the public domain due to a breach of confidentiality by any person).

**Conflict of Interest** means, whether at an individual or entity level, any situation, including the engagement in any activity or obtaining of any interest, likely to:

- (a) create a reasonable expectation of direct benefit or loss (whether financial or non-financial) for an individual or entity with a particular interest that could be influenced, or appear to be influenced, in favour of that interest, in the performance of their duties;
- (b) without limiting paragraph (a):
  - (i) result in actual or perceived conflict or likely conflict with the carrying out by the Service Provider or any of its Associates of the Services; or
  - (ii) restrict the Service Provider or any of its Associates in carrying out the Services.

**Consequential or Indirect Loss** means any loss of income, loss of revenue, loss of profit, loss of financial opportunity, loss of business or loss of business opportunity, loss of contract (other than the loss of this Deed), loss of goodwill, loss of use, loss of production or failure to realise anticipated savings (whether the loss is direct or indirect).

**Contamination** means the presence in, on or under land of a substance at a concentration above the concentration at which the substance is normally present in, on or under (respectively) land in the same locality, being a presence that presents a risk of harm to human health or any other aspect of the Environment.

**Contamination Management Works** means Assessment Works and Remediation Works.

**Contract Year** means:

- (a) initially, the period commencing on the Services Commencement Date and ending on the earlier of:
  - (i) the last day of the Financial Year in which the Services Commencement Date falls; and
  - (ii) the Termination Date;
- (b) each full Financial Year thereafter (until the Termination Date); and
- (c) the period commencing at the start of the Financial Year in which the Termination Date falls and ending on the Termination Date.



**Control** has the meaning in s 50AA of the *Corporations Act 2001* (Cth).

**Country Regional Network** or **CRN** means the country regional rail network comprising the CRN Operational Network and the CRN Non-Operational Network, excluding any land or Asset which is leased to ARTC under the ARTC Lease (but including the public overbridges, owned, controlled or managed by TfNSW, over land the subject of the ARTC Lease).

**COVID-19** means the disease known as Coronavirus (COVID-19), which was characterised to be a pandemic by the World Health Organisation on or about 11 March 2020.

**COVID-19 Directive** means a NSW public health order, issued after the relevant Reference Date for that part of the Services impacted by the public health order, but only to the extent the relevant public health order materially differs from any public health order in effect at any time on or prior to the relevant Reference Date.

**CRN Asset Base Change** means, to the extent arising after the date of this Deed, any addition of any Asset to, or omission of any Asset from, the CRN Assets, including in accordance with any Modification or **clause 2.16(b)**, but excluding any such addition or omission arising out of, or in any way in connection with:

- (a) any loss or damage to CRN Assets;
- (b) the carrying out of the Services (other than Enhancement Activities);
- (c) any Carry-Over Works notified by or on behalf of the Principal to the Service Provider prior to the date of this Deed (other than those specified in **Schedule 8**); or
- (d) the CRN Assets referred to in **paragraph (e)** of the definition of 'CRN Assets' in this **clause 1.1**.

**CRN Assets** means:

- (a) the CRN Land;
- (b) all Assets owned or controlled by TAHE:
  - (i) on, under or above the CRN Land (including, as at the date of this Deed, the Assets identified in the documents listed or otherwise set out in **Attachment F**);
  - (ii) not on, under or above the CRN Land but used by TAHE or on behalf of TAHE in connection with the CRN (including, as at the date of this Deed, the Assets identified in the documents listed or otherwise set out in **Attachment F**, but excluding any such Assets forming part of the Metropolitan Rail Network); or
  - (iii) otherwise comprising part of the CRN;
- (c) public road overbridges, owned, controlled or managed by TfNSW, over land the subject of the ARTC Lease;
- (d) Modification Assets; and
- (e) any of the following (progressively as they are affixed to the relevant land owned by TfNSW or TAHE):
  - (i) the Network Control Centre referred to in **clause 3.4(g)(ii)(A)** (as well as any other Network Control Centre constructed on land owned by TfNSW or TAHE);
  - (ii) the Backup Network Control Centre referred to in **clause 3.4(g)(ii)(B)** (as well as any other Backup Network Control Centre constructed on land owned by TfNSW or TAHE); and
  - (iii) any Depot constructed by or on behalf of the Service Provider for use in connection with the Services on land owned by TfNSW or TAHE,

as adjusted from time to time, including pursuant to any Modifications or Adjustment Events, in accordance with **clause 2.16(b)** or pursuant to any arrangement between the Service Provider and TfNSW or TAHE (or their respective successors or assigns) other than this Deed.

**CRN Assets Condition** means any physical conditions of, on, above, below or about the CRN Assets or their surroundings, as they exist from time to time, including:

- (a) natural and artificial conditions, including water, atmospheric and subsurface conditions or characteristics;
- (b) Contamination or the existence of any hazardous substance or thing;
- (c) characteristics and Environment of the CRN Assets or suitability of otherwise of any material on, or comprising part of, the CRN Assets, including the state or repair or disrepair, working condition, residual operational life and fitness for purpose of the CRN Assets;
- (d) geotechnical and subsurface conditions;
- (e) services or facilities; and
- (f) the presence of artefacts on or under the surface of the CRN Assets.

**CRN Land** means all land comprising the CRN, including, as at the date of this Deed, the land specified or referred to in the documents listed or otherwise set out in **Attachment E**, but excluding Lot 9 in DP 1243994, as that land or the CRN exists or may be adjusted (including as notified by the Principal to the Service Provider in writing) from time to time.

**CRN Non-Operational Network** means the network of non-operational rail corridors where Railway Operations are suspended, as classified as “Country Regional Network Non-Operational” in the plan titled Railways of New South Wales (December 2018 Rev 11) and “CRN – Non Operational” in the plan titled Country Regional Network (CRN): Non Operational Lines Year Service Withdrawn (Version 2.3, May 2014), each of which is set out in **Appendix F** of the **Scope of Works**, as that network may be adjusted from time to time.

**CRN Non-Operational Scope of Works** has the meaning given in the **Scope of Works**.

**CRN Operational Network** means the passenger lines, freight lines and grain lines classified as “Country Regional Network Passenger & Freight” or “Country Regional Network Grain” in the plan titled Railways of New South Wales (December 2018 Rev 11) and set out in **Appendix F** of the **Scope of Works**, as that network may be adjusted from time to time.

**Cure Period** means, in respect of a Default Event, a period of time (which must not exceed 6 months in aggregate from the date of the relevant Default Notice) within which the Principal reasonably believes an experienced, prudent and skilled service provider using Good Industry Practice could:

- (a) remedy the relevant Default Event; or
- (b) to the extent the relevant Default Event is not capable of remedy, take such other steps and measures and implement such other arrangements, as may be necessary to address or deal with the Default Event and the consequences of the Default Event, to the Principal's reasonable satisfaction (which may include the payment of money as compensation),

as that period may be extended under **clause 23.5**.

**Cure Plan** means a plan for either:

- (a) remedying the relevant Default Event; or



- (b) to the extent the relevant Default Event is not capable of remedy, taking such other steps and measures and implementing such other arrangements, as may be necessary to address or deal with the Default Event and the consequences of the Default Event, to the Principal's reasonable satisfaction (which may include the payment of money as compensation),

which:

- (c) sets out (as applicable):
- (i) all the measures the Service Provider proposes to take to remedy the relevant Default Event; or
  - (ii) all the measures the Service Provider proposes to take, and arrangements the Service provider proposes to implement, to address or deal with the Default Event and the consequences of the Default Event to the Principal's reasonable satisfaction;
- (d) provides for (as applicable):
- (i) the Default Event to be remedied; or
  - (ii) those measures to be taken and arrangements to be implemented to deal with the Default Event and its consequences to the Principal's reasonable satisfaction, within the Cure Period;
- (e) sets out the measures to be taken by the Service Provider to alleviate the consequences of the relevant Default Event pending the final remedy of the relevant Default Event or the final taking of measures and implementation of arrangements to deal with the Default Event and its consequences to the Principal's reasonable satisfaction;
- (f) includes a work plan setting out each task to be undertaken by the Service Provider and the time for each task to be completed;
- (g) includes details of the form and timing of reports to be provided by the Service Provider to the Principal as to the status of the plan, together with evidence that the Service Provider has diligently pursued and is continuing to diligently pursue the remedy of the relevant Default Event in accordance with the plan;
- (h) sets out the operational arrangements for integrating (as applicable) the remedy of the relevant Default Event, or the taking of measures and implementation of arrangements to deal with the Default Event and its consequences to the Principal's reasonable satisfaction, into the continuing carrying out of the Services; and
- (i) is otherwise acceptable to the Principal.

**DDA Exemption** means an exemption under section 55 of the *Disability Discrimination Act 1992* (Cth), section 33A.1 of the *Disability Standards for Accessible Public Transport 2002* (Cth), and section 5.1 of the *Disability (Access to Premises – Buildings) Standards 2010* (Cth).

**Declaration** means a declaration of an offsets project as an Eligible Offsets Project under section 27 of the *Carbon Farming Act*.

**Dedicated Employees** means employees employed by the Service Provider to carry out the Services during the Term.

**Deed** means this deed, including all schedules, attachments, annexures, exhibits and appendices.

**Default Contamination** means Contamination of or from any Relevant Land (including Pre-existing Contamination or Migrating Contamination) to the extent that the Contamination or its

Migration to or from or within the Relevant Land were caused, exacerbated or contributed to by any act or omission of the Service Provider or any of its Associates at any time after the date of this Deed and (without limiting the application of this definition to Migrating Contamination or Pre-existing Contamination) also includes, in respect of Migrating Contamination, so much of the Migrating Contamination the Migration of which to the Relevant Land would likely have been prevented had the Service Provider complied with all of its relevant obligations under this Deed.

**Default Event** means the Service Provider committing any substantial breach of this Deed, which is deemed to include each of the following:

- (a) the occurrence of a Probity Event;
- (b) a representation or warranty by the Service Provider being materially incorrect;
- (c) failing to prepare or submit (in accordance with the requirements of this Deed, including **clause 6.8**) a 3MWP that meets the requirements of the **Scope of Works** and the other requirements of this Deed;
- (d) materially failing to carry out any part of the Services in accordance with the 3MWP;
- (e) failing to comply with **clause 6.3 (Keeping of Records)** or **6.4 (Open access principles)**;
- (f) failing to comply with **clause 3.8 (Provision of Security)**, **3.9 (Replacement of Security)** or **3.14 (Parent Company Guarantee)** or **clause 2.3 (Unconditional Undertakings)** of the **Enhancement Activities Terms and Conditions**;
- (g) failing to effect and maintain any insurance in accordance with **clause 19 (Insurances)**;
- (h) persistently or materially failing to use the materials or standards of workmanship, or to exercise the degree of skill, care and diligence, required by this Deed;
- (i) persistently or materially failing to carry out the Services in accordance with this Deed;
- (j) where the Service Provider has failed to make a payment under this Deed by the date due for that payment under this Deed, failing to make that payment within 20 Business Days of a written notice from the Principal to do so;
- (k) a breach of, or failure to satisfy or comply with, the same KPI in 4 or more Payment Periods in a rolling 12 month period, where (for the purposes of this **paragraph (k)** only) multiple breaches of, or failures to satisfy or comply with, the same KPI within a single Payment Period will be considered a single breach or failure for that KPI for the relevant Payment Period;
- (l) where the Abatement Adjustment (determined in accordance with the **KPI Schedule**) Deed has reached or exceeded the value of [REDACTED] in respect of any 2 Payment Periods in any rolling 12 month period during the Term;
- (m) failing to comply with **clause 30.1(a) or 30.1(c) (Assignment and Change in Control)**;
- (n) failing to comply with **clause 6.2 (Key Personnel)**;
- (o) failing to remedy a breach of this Deed within 20 Business Days of a written notice (other than a Default Notice) from the Principal's Representative;
- (p) any breach of **clause 7.11(c) or 7.11(d)**; and
- (q) any breach of **clause 9.4 or 9.5**.

**Default Notice** means a notice issued by the Principal under **clause 23.3**.

**Depot** means any depot, office, laydown area, yard (or similar) used by or on behalf of the Service Provider for the performance of the Services.



**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, required by this Deed or as may otherwise be necessary to be produced by, or on behalf of, the Service Provider to design and construct any Modification Assets or to otherwise carry out any Modifications.

**Direction** includes agreement, approval, authorisation, certificate, decision, demand, determination, explanation, instruction, notice, order, permission, rejection, request or requirement from the Principal, the Principal's Representative or any authorised delegate of the Principal or the Principal's Representative.

**Division 5.1 Assessment** means, in relation to an activity, the consideration of all matters affecting or likely to affect the environment by reason of that activity as required by Division 5.1 of the EP&A Act. Note this may require a Review of Environmental Factors or an Environmental Impact Statement.

**Due Diligence Code** means the document titled 'Due Diligence Code of Practice for the Protection of Aboriginal Objects in New South Wales' published by the Department of Environment, Climate Change and Water dated 13 September 2010 or any future code of practice that amends or replaces this document that describes processes to satisfy a defence of due diligence to the offence of harming Aboriginal objects.

**Eligible Offsets Project** has the same meaning as in the Carbon Farming Act.

**Employee Record** has the meaning given to that term in section 6(1) of the Privacy Act.

**End of Contract Period** means the period commencing on the earlier of the following dates:

- (a) the date which is twelve months prior to the expiry of the Term; and
- (b) the date on which the Principal or Principal's Representative (as applicable) notifies the Service Provider that the Principal is terminating this Deed,

and ending on the Termination Date.

**Engineering Standards** means those documents identified in **Appendix B** of the **Scope of Works**.

**Enhancement Activities** means all Modifications required to be carried out by the Service Provider pursuant to a Direction by the Principal's Representative which involve an upgrade, enhancement, addition, change, or expansion to, or augmentation, upgrade or replacement of, the CRN Assets which, for the avoidance of doubt, excludes any upgrade, enhancement, addition, change, or expansion to, or augmentation, upgrade or replacement of, the CRN Assets referred to in, or otherwise required by, the **Scope of Works**, any 3MWP, any 10MSP or any 50AMP or otherwise contemplated by **clause 2.16(c)**.

**Enhancement Activities Liability** means any liability of the Service Provider to the Principal and any other Indemnified Party, whether arising under or in connection with any deed poll executed in accordance with **clause 20.3** or this Deed, and whether by way of indemnity, by statute (to the extent that it is possible to exclude such liability), in tort (for negligence or otherwise) or on any basis in Law, to the extent such liability:

- (a) arises out of or in connection with the performance or non-performance of Enhancement Activities by the Service Provider or any other act or omission of the Service Provider or any of its Associates in connection with the carrying out of the Enhancement Activities; and

- (b) does not arise in respect of the performance or non-performance of any Services (other than the Enhancement Activities) by the Service Provider or any other act or omission of the Service Provider or any of its Associates in connection with the carrying out of such Services (other than the Enhancement Activities), including any Services in respect of completed Modification Assets.

**Enhancement Activities Package** means each package of Enhancement Activities (and associated Modification Assets) the subject of a direction from the Principal's Representative under **clause 14.1(a)** or an approval by the Principal's Representative under **clause 14.3(b)**, excluding any such direction requiring a Modification in respect of:

- (a) a package of Enhancement Activities that has already been directed by the Principal's Representative under **clause 14.1(a)** or approved by the Principal's Representative under **clause 14.3(b)**; or
- (b) any Modification Assets associated with the package of Enhancement Activities referred to in **paragraph (a)**.

**Enhancement Activities Package Cap** means, in respect of each Enhancement Activities Package, [REDACTED] Variation Payments (as referred to in **section 9** of the **Payment Schedule**) for the relevant Enhancement Activities Package.

**Enhancement Activities Particulars** means, in respect of each package of proposed Enhancement Activities:

- (a) the Date for Completion of the Enhancement Activities for the purposes of the **Enhancement Activities Terms and Conditions**;
- (b) the total value of security required for the purposes of **clause 2.3(a)** of the **Enhancement Activities Terms and Conditions**;
- (c) additional events (if any) for which the Service Provider will be entitled to an extension of time to the Date for Completion for the purposes of **clause 7.6(a)** of the **Enhancement Activities Terms and Conditions**;
- (d) the rate of liquidated damages that will apply for the purposes of **clause 8.6(a)** of the **Enhancement Activities Terms and Conditions**;
- (e) the percentage to be applied for the purposes of **clause 8.6(d)(i)** of the **Enhancement Activities Terms and Conditions**; and
- (f) a statement as to whether the Building Code 2016 (and **clause 10** of the **Enhancement Activities Terms and Conditions**) applies and, if yes, whether a Workplace Relations Management Plan is required for the purposes of **clause 10** of the **Enhancement Activities Terms and Conditions**.

**Enhancement Activities Terms and Conditions** means, in respect of each package of Enhancement Activities, **Schedule 12**, as may be particularised and amended in accordance with this Deed, including any amendments proposed by the Principal's Representative under **clause 16(e)(ii)** which are agreed to by the Service Provider.

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

**Environmental Impact Statement** means a document so called for the purposes of Division 5.1 of the EP&A Act or Part 8.2 of the *Planning and Development Act 2007* (ACT).

**Environmental Law** means any Law relating to the Environment, including any Law relating to land use, planning, pollution of air, soil or groundwater, chemicals, Waste, the use of transport,



the storage and handling of dangerous goods, the health or safety of any person, or any other matters relating to but not limited to the protection of the Environment, health or property.

**Environment Protection Licence** means any licence required under:

- (a) Chapter 3 of the *Protection of the Environment Operations Act 1997* (NSW); or
- (b) Part 8 of the *Environment Protection Act 1997* (ACT).

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

**Excluded Claim** means:

- (a) a claim under **clause 17.2** for payment on account of the Monthly Capital Works Payment;
- (b) a claim under **clause 17.2** for payment on account of the Monthly Recurring Expenditure Payment;
- (c) a claim under **clause 17.2** for payment on account of any other element of the Monthly Services Fee, to the extent the amount of such payment has already been determined by the Principal's Representative in accordance with **clause 29.5(a)** or the **Variations Schedule**; and
- (d) a claim for an extension of time to a Date for Completion in accordance with any **Enhancement Activities Terms and Conditions**.

**Excluded Documents** means any document or item to the extent that:

- (a) such document or item is required to be submitted by the Service Provider to the Principal or the Principal's Representative in accordance with the **Scope of Works**; and
- (b) the **Scope of Works** expressly contemplates that such document or item (or any update or change in such document or item) will be approved, or is subject to the approval of, the Principal or the Principal's Representative,

including the 3MWP, the 10MSP and the 50AMP and any updated version of the 3MWP, the 10MSP and the 50AMP.

**Excluded Support Services** has the meaning given in the **Scope of Works**.

**Failure Report** has the meaning given in the **KPI Schedule**.

**Final Cure Plan** means a Cure Plan that has been submitted to the Principal's Representative under **clause 23.4(a)** and in respect of which the Principal's Representative has not, within 20 Business Days of receipt of that Cure Plan, issued a notice under **clause 23.4(b)** requiring the Service Provider to amend that Cure Plan.

**Final Inspection Auditor** means a person appointed to carry out an inspection and assessment in accordance with **clause 26.4(a)**.

**Financial Year** means a 12 month period commencing 1 July and finishing 30 June.

**First Extended Expiry Date** means:

- (a) if the Principal exercises its right to extend the Term for 1 year under **clause 3.5(a)(i)**, the date that is 11 years after the Services Commencement Date; or
- (b) if the Principal exercises its right to extend the Term for 5 years under **clause 3.5(a)(ii)**, the date that is 15 years after the Services Commencement Date.

**Force Majeure Event** means any of the following events:

CRN Operations and Maintenance Deed

- (a) riot, war, invasion or act of foreign enemies, acts of terrorism (except to the extent that insurance coverage for a terrorist act is available to the Service Provider as a consequence of the *Terrorism Insurance Act 2003* (Cth)), or hostilities;
- (b) ionising radiation or contamination, radio activity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel, radioactive, toxic, explosive or other hazardous properties of any explosive assembly or nuclear component;
- (c) earthquakes, flood, fire or other physical natural disaster; and

[REDACTED]

but only where:

- (e) such events or circumstances and their effects:
  - (i) are beyond the reasonable control of the affected party;
  - (ii) where the affected party is the Service Provider, would not have been able to be prevented or overcome by the exercise of Good Industry Practice by the Service Provider or any of its Associates; and
  - (iii) are not caused or contributed to in whole or in part by any act or omission of the affected party or any of its Associates;

[REDACTED]

[REDACTED]

[REDACTED]

**Foreign Legal Opinion** means a legal opinion in favour of the Principal which is:

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

[REDACTED]

**FW Act** means the *Fair Work Act 2009* (Cth).

**General Conditions** means **clauses 1 to 34** (inclusive) of this Deed.

[REDACTED]

[REDACTED]

[REDACTED]

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

**Good Industry Practice** means the practices, policies, methods and acts that, with the exercise

of skill, diligence, prudence and foresight, would be expected from an experienced and highly competent operator and maintainer and design and construct contractor carrying out activities and work of a similar nature to the Services (including the need to carry out the Services safely).

**Governance Schedule** means **Schedule 5**.

**Grain GTK** means the sum total GTK for all trains consisting of bulk grain wagons both empty and loaded.

**Greenhouse Gas** means one or more of the gases listed in Annex A to the Protocol of the United Nations Framework Convention on Climate Change adopted at the meeting of the parties in Kyoto, Japan on 10 December 1997 as amended or implemented by the conference of the parties to the Protocol.

**Gross Tonne Kilometre** or **GTK** means the gross weight of a train multiplied by kilometres travelled within the CRN.

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

**GST Amount** means, in respect of a supply made under or in connection with this Deed, the amount of GST payable, or notionally payable, on that supply.

**GST Law** has the meaning given in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**Heritage and Conservation Register** has the meaning given in the **Scope of Works**.

**Heritage Asset Management Guidelines** means any guidelines made under section 170A of the NSW Heritage Act.

**Heritage Authority** means:

- (a) the NSW Heritage Council;
- (b) the NSW Heritage Minister; or
- (c) the ACT Heritage Council.

**Heritage Register** means:

- (a) the NSW State Heritage Register; or
- (b) the ACT Heritage Register.

**HVNL** means the Heavy Vehicle National Law as applied as a law of NSW by the *Heavy Vehicle (Adoption of National Law) Act 2013* (NSW) and as a law of the Australian Capital Territory by the *Heavy Vehicle National Law (ACT) Act 2013* (ACT) and any other legislation relating to the safety of a 'heavy vehicle' as defined in the HVNL.

**Identified Contamination** means:

- (a) Pre-existing Contamination that is specified in any Information Document or otherwise disclosed by or on behalf of the Principal to the Service Provider before the date of this Deed; or
- (b) Migrating Contamination where the Contamination of the other land from which the Contamination is Migrating is specified in any Information Document or otherwise disclosed by or on behalf of the Principal to the Service Provider before the date of this Deed.

**Incident** means any:

- (a) notifiable occurrence, as defined in the RSNL;
- (b) notifiable incident, as defined in the WHS Law;



- (c) Emergency Incident, Major Incident or Minor Incident (each as defined in the **KPI Schedule**); or
- (d) other situation, event or occurrence that results (or will result) in a failure to satisfy, or compromises any persons ability to satisfy, any legal, safety or quality requirements (including under any Law or under this Deed or any Relevant Document) in relation to the CRN Assets or the Services or otherwise prevents any part of the CRN Assets from being used for the Intended Purposes.

**Indexation Schedule** means **Schedule 3**.

**Indicative Statement** means the statement prepared, or required to be prepared, by the Service Provider in accordance with **clause 27.2**.

**Industrial Instrument** means any award, enterprise agreement (or any other applicable collective instrument) and any individual flexibility agreements.

**Information Document** means any information, data, representation, statement or document (whether written or otherwise) supplied or made available to the Service Provider or any Related Body Corporate of the Service Provider by or on behalf of the Principal or any Rail Transport Agency on, before or after the date of this Deed, other than documents which comprise part of this Deed, including those listed in **Appendix G** of the **Scope of Works**.

**Infrastructure SEPP** means the *State Environmental Planning Policy (Infrastructure) 2007* (NSW).

**Initial Response Works** means all works necessary to provide initial responses to contain Contamination to prevent or minimise immediate damage or harm to people or the Environment, such as erecting fences and signage, suppressing dust or installing a bund to contain a spill.

**Initial Term** means the period commencing on the Services Commencement Date and expiring 10 years later.

**Innovation Change** means a Modification or proposed Modification which:

- (a) involves or will involve:
  - (i) a change to the Services;
  - (ii) without limiting **paragraph (a)(i)**, any change to the methodology, means or techniques by which the Service Provider is required by this Deed to perform any part of the Services; or
  - (iii) without limiting **paragraph (a)(i)**, any change in the requirements of the **Scope of Works** relating to the organisational structure of the Service Provider in connection with the Services;
- (b) either itself constitutes or will give rise to innovation or efficiencies which exceed that which would be reasonably expected if the Service Provider exercised Good Industry Practice and otherwise complied with its obligations under this Deed, including **clause 5.6**;
- (c) the Principal's Representative agrees in writing constitutes or will constitute an Innovation Change for the purposes of this Deed; and

- (d) relates to matters of engineering, safety, operations, finance, performance, operations or incident management.

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

- (a) the person, being an individual, commits an act of bankruptcy;
- (b) the person becomes insolvent;
- (c) the person assigns any of its property for the benefit of creditors or any class of them;
- (d) a receiver, receiver and manager, administrator, controller, provisional liquidator or liquidator is appointed to the person or the person enters into a scheme of arrangement with its creditors or is wound up;
- (e) the holder of a Security Interest takes any step towards taking possession of or takes possession of any assets of the person or exercises any power of sale;
- (f) a judgment or order is made against the person in an amount exceeding \$10,000 (or the equivalent in any other currency) and that judgment or order is not satisfied, quashed or stayed within 20 Business Days after being made;
- (g) any step is taken to do anything listed in the above paragraphs; and
- (h) any event that is analogous or has a substantially similar effect to any of the events specified in this definition in any jurisdiction.

**Insurable Event** means an event that is not an Uninsurable Event.

**Intellectual Property** means all industrial and intellectual property rights whether created before, on or after the date of this Deed, whether recognised in Australia or overseas, whether or not they are registered or capable of being registered and includes copyright, patents, trade marks, design, semi-conductor or circuit layout rights, trade secrets, know how, trade, business or company names, or other proprietary rights, or any rights to registration of such.

**Intended Purposes** means the purposes for which the Services or the CRN Assets (as applicable) are intended, as stated in, or ascertainable from:

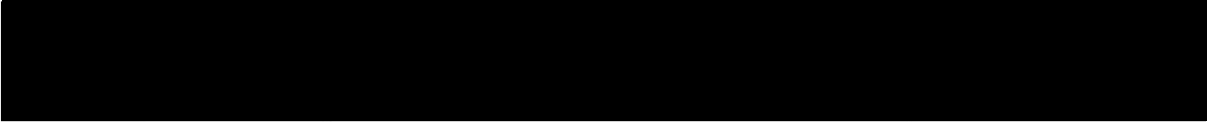
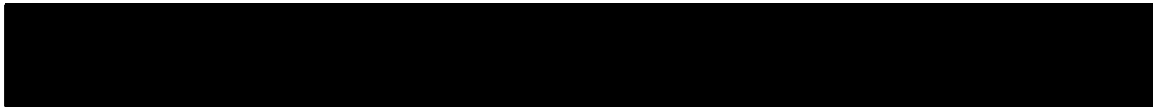
- (a) this Deed;
- (b) the Relevant Documents (other than the Specific Relevant Documents); and
- (c) in respect of Modifications or Modification Assets, (without limiting **paragraphs (a) and (b)**) any relevant Direction under, or in connection with, **clause 14.1 or 14.3** and (if applicable) the relevant Modification Scope,

provided that such purpose may (without limiting the rights and entitlements of the parties arising out of any Modification referred to in **clause 14.1(h)(iii)(D)**, whether the subject of a direction from the Principal's Representative under **clause 14.1(a)** or an approval by the Principal's Representative under **clause 14.3(b)**) change following any change in status of any part of the CRN from the CRN Operational Network to the CRN Non-Operational Network or vice versa.

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

- (a) the Services or the CRN Assets; or
- (b) any activities of the Service Provider which are affected by, or relate to, the Services or the CRN Assets,

including the ATSB, the ONRSR and the OTSI.



**Key Personnel** means the personnel listed as key personnel in the Workforce and Transition Plan, as may be replaced in accordance with **clause 6.2**.

**KPI** means a key performance indicator specified in the **KPI Schedule**.

**KPI Schedule** means **Schedule 4**, as amended from time to time.

**Latent CRN Assets Condition** has the meaning given in **Schedule 13**.

**Law** means:

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

as updated, amended or replaced from time to time.

**Level Crossing Closure Services** has the meaning given in the **Scope of Works**.

**Listing Notice** means:

- (a) a notice from the NSW Heritage Council that it is going to consider whether or not to recommend that an item be listed on or removed from the NSW State Heritage Register under the NSW Heritage Act; or
- (b) a notice that the ACT Heritage Council has provisionally registered a place or object on the ACT Heritage Register or that it is considering a cancellation proposal in respect of a place or object on the ACT Heritage Register.

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

**Loss** includes any damage, loss, cost (including legal costs on a solicitor/own client basis), expense, duty, obligation or liability, including Consequential or Indirect Loss.

**Material** means material in any form, including Design Documentation, data, goods, products, equipment, software and hardware.

**Metropolitan Rail Network** means the network of railway lines bounded by Newcastle Interchange (165.746km), Woodville Junction (163.981 km and 164.045 km), Bomaderry (153.630 km), Unanderra (91.080 km), Macarthur (57.965 km), and Bowenfels (158.800 km), but does not include:

- (a) the South Sydney Freight Line and Metropolitan Freight Network (bound by Marrickville 6.370 km, Flemington South Junction 18.909 km, and Sefton Park East Junction 21.285 km); or
- (b) any light rail networks and/or metro networks.



**Migrate** means in respect of Contamination, a substance or risk moves, flows, relocates, disperses or spreads from one location to another whether or not the original location remains Contaminated.

**Migrating Contamination** means Contamination that Migrates to any Relevant Land from other land whether or not such Migration commenced or occurred prior to the date of this Deed.

**Mobilisation Activities** means:

- (a) all activities and work required to be carried out to achieve each Mobilisation Milestone or as otherwise specified or set out in:
  - (i) the Mobilisation Plan;
  - (ii) **section 19** of the **Scope of Works** (excluding any Transition Out Activities); or
  - (iii) **clause 4**, excluding that part of the Redeployment Activities contemplated by the Redeployment Management Plan as being carried out after the Services Commencement Date; and
- (b) all obligations to be carried out (except to the extent that they relate only to work or activities to be carried out under any 3MWP) by the Service Provider under this Deed during the Mobilisation Stage,

including the preparation of the Transition Out Plan in accordance with this Deed.

**Mobilisation Constructed Assets** means:

- (a) those CRN Assets referred to in **paragraph (e)(i)** and **(e)(ii)** of the definition of "CRN Assets"; and
- (b) any other Assets (including any Depots referred to in **paragraph (e)(iii)** of the definition of "CRN Assets") constructed, or required to be constructed, by the Services Provider prior to the Services Commencement Date in order to carry out the Services or otherwise comply with this Deed.

**Mobilisation Date** means the later of:

- (a) the Proposed Mobilisation Date; and
- (b) the date on which each of the Conditions Precedent (Mobilisation) have either been satisfied by the Service Provider or waived by the Principal in accordance with **clause 3.3(b)(i)**.

**Mobilisation Milestone** means each milestone identified as such in the Mobilisation Plan.

**Mobilisation Milestone Date** means, in respect of each Mobilisation Milestone, the relevant date set out in the Mobilisation Plan, as extended in accordance with this Deed.

**Mobilisation Payment** means, in respect of each Mobilisation Milestone, the amount specified as such in the **Payment Schedule**, as adjusted in accordance with this Deed.

**Mobilisation Plan** has the meaning given in the **Scope of Works**.

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

**Modification** means any change (including any increase, decrease, modification, deletion or omission) in or to the Services, but excludes any Adjustment Event or any Latent CRN Assets Conditions, or any work or activities arising out of, or in any way in connection with, any Adjustment Event or any Latent CRN Assets Conditions.

**Modification Asset** means the Assets to be furnished, fabricated, constructed, installed, erected or commissioned by the Service Provider in the carrying out of Modifications, but excluding any

Plant and Equipment.

**Modification Contamination** means Contamination of Relevant Land the subject of a direction from the Principal's Representative under **clause 14.1(a)** or an approval by the Principal's Representative under **clause 14.3(b)**.

**Modification Scope** means, in respect of a Modification or proposed or alleged Modification, documentation fully setting out:

- (a) the design and specification of the potential Modification; and
- (b) if the Modification is Enhancement Activities:
  - (i) Subcontractor warranty details; and
  - (ii) the boundaries of the site within which the Modification Assets will be constructed.

**Monthly Capital Works Payment** has the meaning given in the **Payment Schedule**.

**Monthly Recurring Expenditure Payment** has the meaning given in the **Payment Schedule**.

**Monthly Report** has the meaning given in the **Scope of Works**.

**Monthly Services Fee** means, in respect of each Payment Period, the amount calculated as such in accordance with **Section 4.1** of the **Payment Schedule**.

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

**Network Control Centre** means a centre for control of network operations for the CRN required for the carrying out of the Services.

**Network Owner** means, in respect of each part of the CRN Assets, the entity that owns that part of the CRN Assets, including any person or entity to whom any part of the CRN Assets are transferred as contemplated by **clause 30.5**.

**NGER Act** means the *National Greenhouse and Energy Reporting Act 2007* (Cth).

**Nominated Assets** means the Assets the subject of a written notice from the Principal's Representative under **clause 27.4(a)**.

**Non-Compliance** means:

- (a) any defect, deficiency, fault or omission in or from any part of the Services or any Record produced by, or on behalf of, the Service Provider in carrying out the Services, including any aspect of any part of the Services or any such Record which is not in accordance with the requirements of this Deed; and
- (b) any defect, deficiency, fault or omission in or from any part of the CRN Assets, to the extent that such defect, deficiency, fault or omission is caused by any act or omission of the Service Provider or any of its Associates.

**NSW Government Policy** means any policy or guideline of the NSW Government, as published from time to time, that is not a Law.

**NSW Heritage Act** means the *Heritage Act 1977* (NSW).

**NSW Heritage Council** means the council established under the NSW Heritage Act.

**NSW Heritage Minister** means the New South Wales Minister responsible for administering the NSW Heritage Act.

**NSW IR Guidelines** means the New South Wales Industrial Relations Guidelines: Building and Construction Procurement (September 2017) as updated from time to time and available at <http://www.industrialrelations.nsw.gov.au>.



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

**NSW State Heritage Register** means the heritage register kept by the NSW Heritage Council under Part 3A of the NSW Heritage Act.

**NSW Trains** means the body corporate with ABN 50 325 560 455 constituted by Part 3C of the *Transport Administration Act 1988* (NSW) and its successors in title or at Law.

**ONRSR** means the Office of the National Rail Safety Regulator established under Part 2 Division 1 of the RSNL.

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

**Option** means each of Option 1, Option 2, Option 3A, Option 3B, Option 3C, Option 4, Option 5, Option 6 and Option 7 (as defined in **clause 36**).

**Option 1** means the removal of the Property Management Services from the Services.

**Option 2** means the removal of the CRN Non-Operational Scope of Works from the Services.

**Option 3A** means the removal of the State Road Overbridge Maintenance Services from the Services.

**Option 3B** means the removal of the Overbridge Maintenance Services from the Services.

**Option 3C** means the removal of the ARTC Lease State Road Overbridge Maintenance Services from the Services.

**Option 4** means the inclusion of the Level Crossing Closure Services as part of the Services.

**Option 5** means the inclusion of the Turnout Rationalisation Services as part of the Services.

**Option 6** means the inclusion of the Structures Disposal Services as part of the Services.

**Original Expiry Date** means the date that is 10 years after the Services Commencement Date.

**Overbridge Maintenance Services** means the Asset Management Services and the Asset Maintenance Services in respect of those overbridges specified in the register in **Appendix K** to the **Scope of Works**.

**OTSI** means the NSW Office of Transport Safety Investigations.

**Parent Company** means the company or companies set out in **Attachment A**.

**Parent Company Guarantee** means the deed of guarantee and indemnity provided by each Parent Company under **clause 3.14** and in the form set out at **Attachment C**.

**Payment Claim** means a written claim for payment from the Service Provider under **clause 17.2**.

**Payment Period** means each of the following:

- (a) the period from the Services Commencement Date up to and including the last day of the month in which the Services Commencement Date occurs;
- (b) each whole month thereafter up to and including the last whole month before the month in which the Termination Date occurs; and
- (c) the period from the first day of the month in which the Termination Date occurs up to and including the Termination Date.

**Payment Response** means a written statement from the Principal in response to a Payment Claim under **clause 17.3**.

**Payment Schedule** means **Schedule 2**.

**Personal Information** means information or an opinion about an identified individual, or an

individual who is reasonably identifiable:

- (a) whether the information or opinion is true or not; and
- (b) whether the information or opinion is recorded in a material form or not.

**Planned Activity** has the meaning given in the **Payment Schedule**.

**Planned Activity Units** has the meaning given in the **Payment Schedule**.

**Planned Activity Unit Cost** has the meaning given in the **Payment Schedule**.

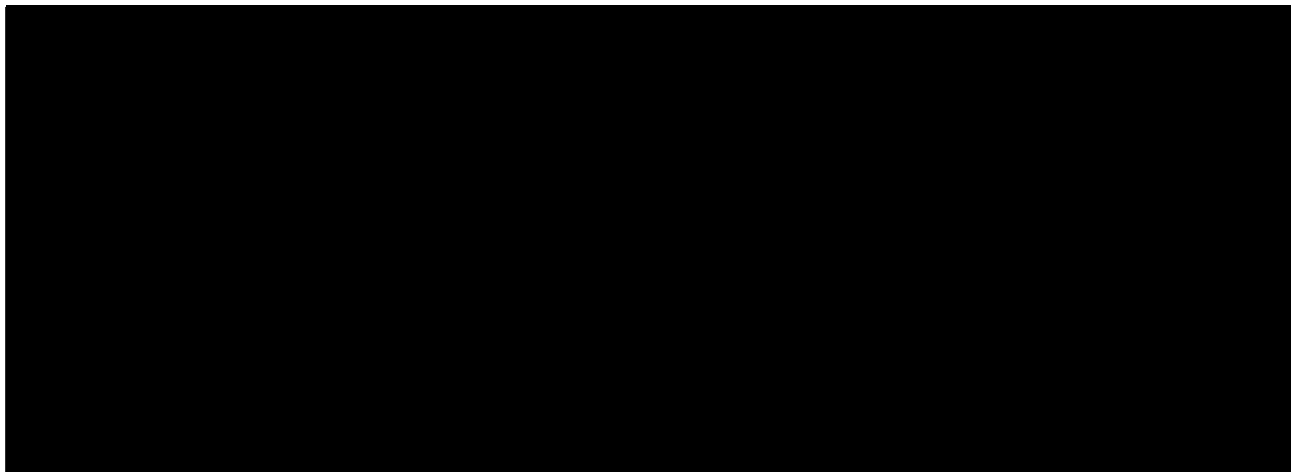
**Planned Activity Volumes** has the meaning given in the **Payment Schedule**.

**Plant and Equipment** means all vehicles, plant, equipment (including hand-held tools), machinery, facilities, apparatus, appliances and things used, or required to be used, by or on behalf of the Service Provider or any of its Associates in the carrying out of the Services but not forming part of the CRN Assets.

**Pollution** means a release, emission or discharge into the Environment (including of a substance) which causes or has the potential to cause (directly or indirectly) damage or harm to any aspect of the Environment, for example:

- (a) pollution of air;
- (b) pollution of waters;
- (c) noise; and
- (d) pollution of land,

which is not authorised by an Environment Protection Licence or other Environmental Law.



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

**PPS Law** means:

- (a) the PPS Act and any regulations made at any time under the PPS Act; and
- (b) any relevant amendment made at any time to any other legislation as a consequence of paragraph (a).

**PPSA Security Interest** means a security interest for the purposes of any PPS Law.

**Pre-existing Contamination** means Contamination of any Relevant Land that exists at the Services Commencement Date.

**Previous CRN Deed** means the deed for the operation and maintenance of the CRN between the Previous Service Provider and TAHE (as successor in title to the Country Rail Infrastructure Authority) and dated 16 December 2010, as amended from time to time.



**Previous Network Control Centre** means the centre being used by the Previous Service Provider as at the date of this Deed for the control of network operations for the CRN, including all associated telecommunications, information, technology and communications systems and technology.

**Previous Service Provider** means John Holland Rail Pty Ltd ACN 009 252 653.

**Previous Service Provider Disengagement Plan** means the disengagement plan listed as an Information Document in **Appendix G** of the **Scope of Works**.

**Previous Service Provider In-Scope Employees** means those employees employed as at 19 January 2021 by the Previous Service Provider to perform work on, or in connection with, the CRN Assets wholly or mainly in connection with the following activities:

- (a) maintenance delivery;
- (b) network operations; and
- (c) project delivery,

as set out in Part 1 of **Attachment L**.

**Previous Service Provider's Rail Safety Accreditation** means the Previous Service Provider's accreditation as a Rail Transport Operator under Part 3 of the RSNL.

**Principal** means TfNSW and TAHE, jointly and severally.

**Principal Named Approvals** means Approvals which are required to be held by or in the name of the Network Owner.

**Principal Supplied Assets** means any materials, plant or equipment in which the ownership, or the relevant interest (such as a leasehold interest or right of use), has been transferred to the Service Provider, by or on behalf of the Principal or any Rail Transport Agency from time to time for the purposes of carrying out the Services, including the Assets referred to in **clause 2.8(a)**, but for the avoidance of doubt, excludes the CRN Assets.

**Principal's Representative** means the person named as such in **Attachment A**, or such other person from time to time appointed by the Principal to be Principal's Representative and notified as such in writing to the Service Provider by the Principal.

**Privacy Act** means the *Privacy Act 1988* (Cth).

**Privacy Commissioner** has the meaning given in the *Privacy and Personal Information Protection Act 1998* (NSW).

**Privacy Laws** means:

- (a) the Privacy Act;
- (b) the *Privacy and Personal Information Protection Act 1998* (NSW);
- (c) the *Health Records and Information Privacy Act 2002* (NSW);
- (d) any legislation (to the extent that such legislation applies to the Principal or the Service Provider or any other recipient of Personal Information) from time to time in force in:
  - (i) any Australian jurisdiction (which includes the Commonwealth of Australia and any State or Territory of Australia); and
  - (ii) any other jurisdiction (to the extent that the Principal or any Personal Information or the Service Provider is subject to the laws of that jurisdiction),affecting privacy or Personal Information; and



- (e) any ancillary rules, guidelines, orders, directions, directives, codes of conduct or other instruments made or issued under any of the legislation referred to in paragraphs (a), (b), (c) and (d), as amended from time to time.

**Privileged Record** means any Record in respect of which the Service Provider is entitled to claim legal professional privilege, other than Records that:

- (a) relate or are relevant to an Incident; or
- (b) relate or are relevant to:
  - (i) compliance with Law (including any Environmental Law);
  - (ii) any insurance cover that the Service Provider is required to obtain under this Deed;
  - (iii) any Agency Services; or
  - (iv) the Service Provider's Intellectual Property,

but, in respect of paragraphs (a) and (b), not to the extent it:

- (c) is legal advice obtained; or
- (d) is created for the dominant purpose of obtaining legal advice,

relating to any liability that the Service Provider may have to the Principal under this Deed.

**Probity Event** means any of the following, whether occurring before, on or after the date of this Deed:

- (a) the Independent Commission Against Corruption or similar Authority determines that the Service Provider has engaged in corrupt conduct, collusive pricing or other similar activity; or
- (b) in the Principal's reasonable opinion, the Service Provider has caused damage or harm to the reputation of any Rail Transport Agency or the State.

**Property Management Services** has the meaning given in the **Scope of Works**.

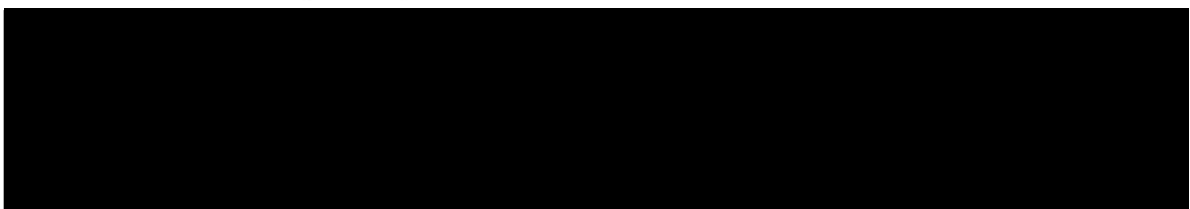
**Proportionate Liability Legislation** means:

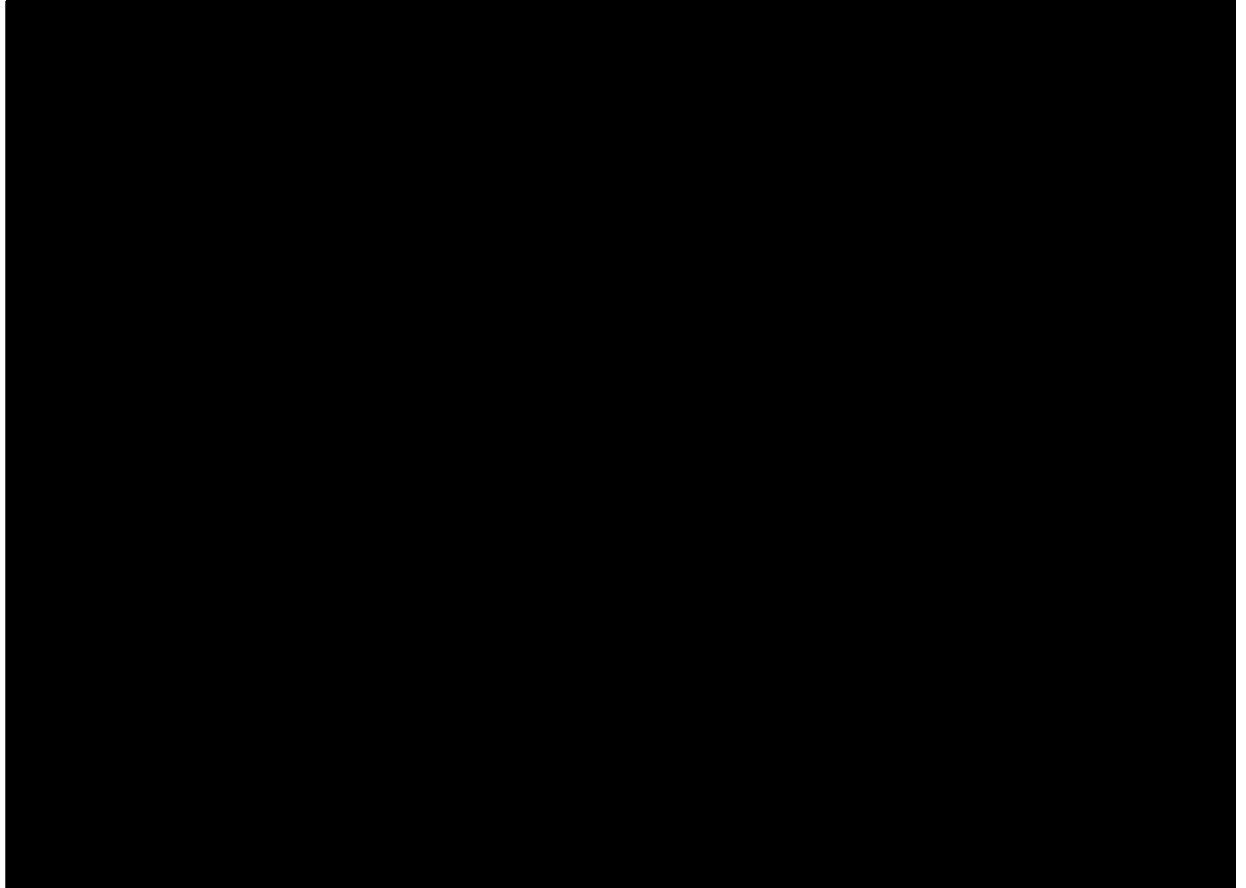
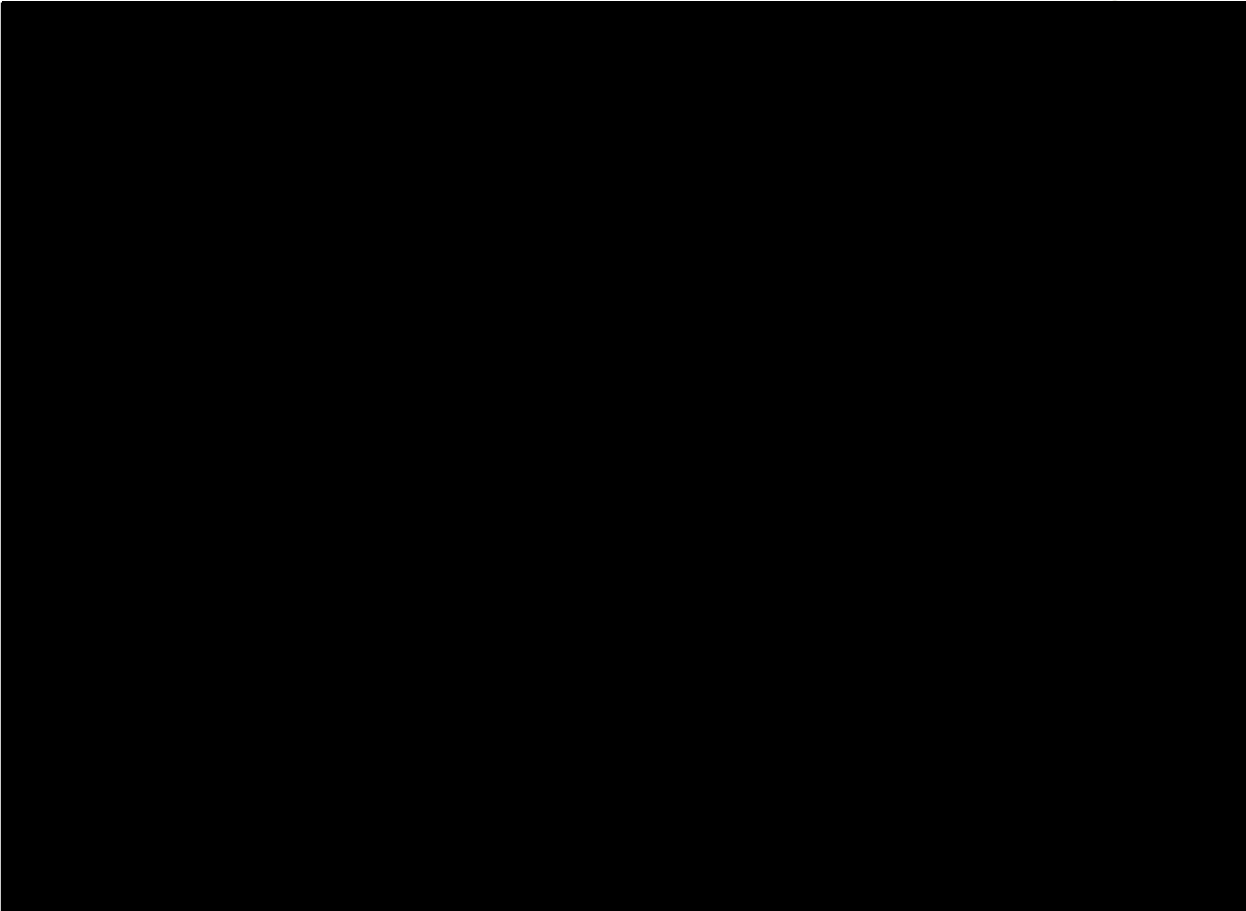
- (a) Part 4 of the *Civil Liability Act 2002* (NSW);
- (b) Chapter 7A of the *Civil Law (Wrongs) Act 2002* (ACT); and
- (c) any Law of any jurisdiction having a purpose or operation similar to the legislation referred to in paragraph (a) or (b).

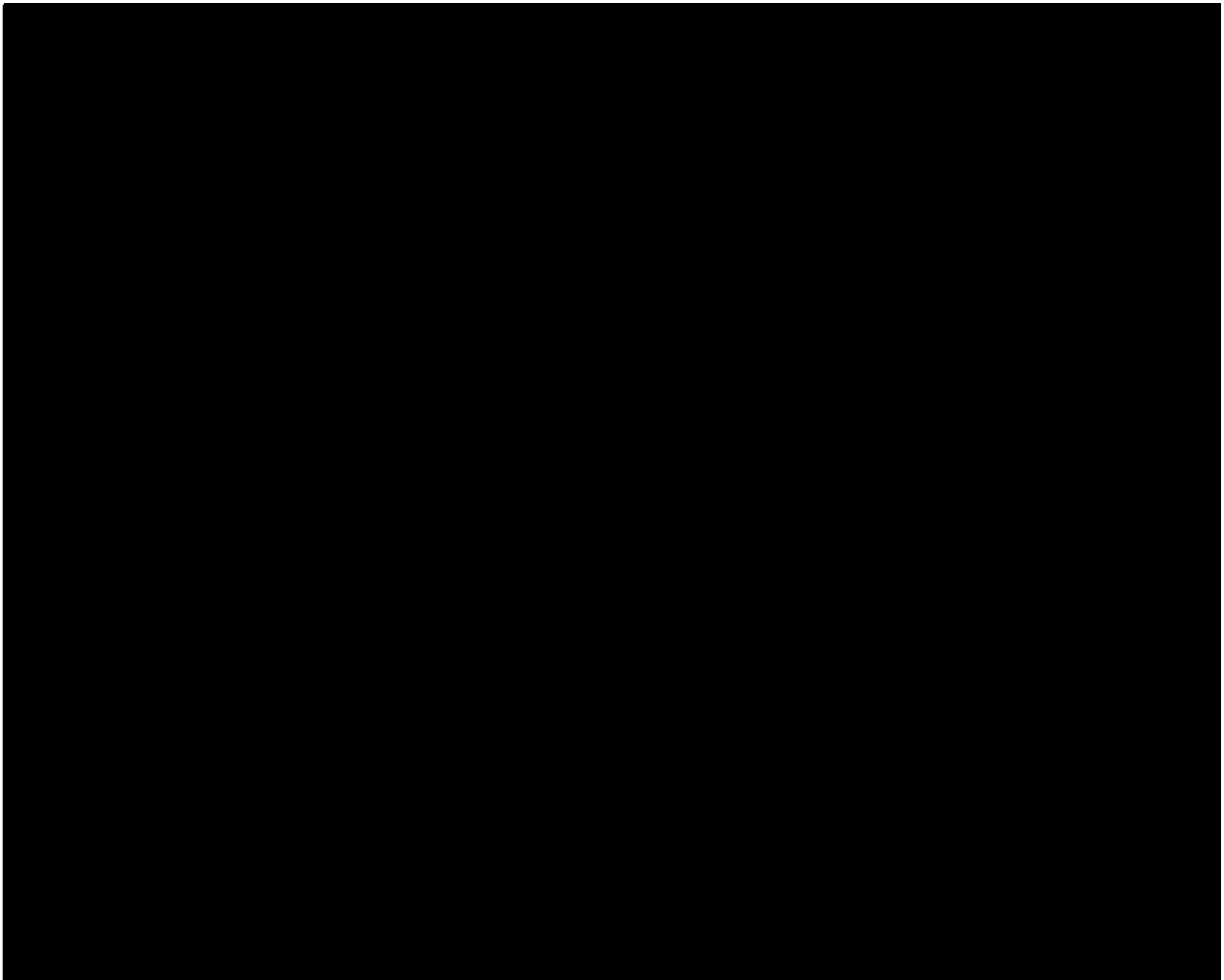
**Proposed Mobilisation Date** means the date specified as such in the Mobilisation Plan, as may be extended by the Principal in accordance with **clause 3.3(b)**.

**Proposed Services Commencement Date** means the date specified in **Attachment A**, as may be extended by the Principal in accordance with **clause 3.3(b)**.

**Prospective Successor Service Provider** means any person who may be invited, or is invited, to submit an expression of interest, tender or proposal for the role of Successor Service Provider, as notified by the Principal's Representative to the Service Provider from time to time.







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

**Rail Safety Accreditation** means, subject to **clause 7.12**:

- (a) accreditation as a Rail Infrastructure Manager under Part 3 of the RSNL; and
- (b) only to the extent necessary to carry out the Services, accreditation as a Rolling Stock Operator under Part 3 of the RSNL.

**Rail Safety Law Change** means any amendment or repeal of the RSNL, or any amendment of the rail safety regime under the RSNL, by regulation or by any other legislative instrument (including being replaced by an alternative state or Commonwealth regime) or in any other way.

**Rail Safety Worker Competency** means the level of competence described in section 117 of the RSNL.

**Rail Transport Agency** means TfNSW (and each of its divisions), TAHE, Sydney Trains, NSW Trains and Sydney Metro and any of their successors and assigns.

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

**Railway Operations** has the meaning given to that term in the RSNL.

**Records** means all Software (in source code and object code), source code material, software tools and software development methodologies, drawings, plans, reports, specifications, samples, models, patterns, certificates, instruments and indicia of title, licences, agreements, documents evidencing Approvals, operating, maintenance and other manuals, books of account,



correspondence, records and other information or data of whatever nature and whether stored by means of paper-writing, magnetic tape, computer disk, cloud-based network or storage system or otherwise that in all cases relate to or are relevant to the CRN Assets or the Services (and, for the avoidance of doubt, includes all Employee Records, State Records and any other document required to be produced by, or on behalf of, the Service Provider in carrying out the Services).

**Rectification Plan** has the meaning given in the **KPI Schedule**.

**Redeployment Activities** means all activities and work referred to in the Redeployment Management Plan.

**Redeployment Management Plan** means a redeployment management plan in respect of particular Previous Service Provider In-Scope Employees, which as at the date of this Deed is that plan set out in **Appendix C20** of the **Scope of Works** (as may be updated in accordance with the Deed).

**Redeployment Costs Payments** has the meaning given in the **Payment Schedule**.

**Reference Asset** has the meaning given in **Schedule 13**.

**Reference Date** means:

- (a) in relation to the Services (excluding Modifications), the date of this Deed; or
- (b) in relation to Modifications, the date of the relevant Direction by the Principal's Representative under **clause 14.1(a)**, **14.2(a)** or (in respect of **clause 14.3(a)**) under **clause 14.3(b)**, pursuant to which the Modifications are required or permitted to be carried out by the Service Provider.

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

**Related Party** means, in respect of an entity, another entity which is a Related Body Corporate or an associate (as defined by sections 10 to 17 of the *Corporations Act 2001* (Cth)) of that first mentioned entity.

**Relevant Documents** means documents and agreements which give rise to (or record) rights or obligations of TfNSW or TAHE or both with respect to third parties or Authorities in relation to the CRN, either in existence as at the date of this Deed or created at any time after the date of this Deed, including:

- (a) those documents and agreements listed or otherwise set out in **Schedule 6**; and
- (b) any access undertaking in respect of all or any part of the CRN prepared for the purposes of Schedule 6AA of the *Transport Administration Act 1988* (NSW).

**Relevant Land** means:

- (a) CRN Land;
- (b) any land on which a CRN Asset is located; and
- (c) any land upon which any part of the Services are carried out or are to be carried out.

**Relevant Leave** means annual leave and extended / long service leave.

**Remaining Work** means that part of the Services remaining to be completed as at the Termination Date following any exercise by the Principal of its rights under **clause 23.6(a)(ii)**.

**Remediation Works** means action to manage, remove, contain or dispose of any substance that is a Contaminant or to reduce, abate, mitigate or eliminate any risk presented by Contamination (or to monitor to validate the outcome of any such works) to the standard required by Law and to

ensure the safe performance of the Services, but does not include Initial Response Works or Assessment Works.

**Renewal Requirement Audit** has the meaning given in **Schedule 13**.

**Renewal Requirement Auditor** has the meaning given in **Schedule 13**.

**Required Rating** means a credit rating of at least 'A-' by Standard and Poor's (Australia) Pty Ltd or 'A2' by Moody's Investors Service, Inc. or, if no rating is provided by Standard and Poor's (Australia) Pty Ltd or by Moody's Investors Service, Inc., an equivalent rating with another suitable reputable rating agency (as the Principal may approve in writing acting reasonably).

**Review Document** means Design Documentation, each Scope of Works Deliverable, any Failure Report, any Rectification Plan and any other Record which is required to be submitted for the review of the Principal or the Principal's Representative under a provision of this Deed (including under the **Scope of Works**), including any Record which this Deed (including the **Scope of Works**) provides will be subject to the application of **clause 6.8**, but excludes any Excluded Document.

**Review of Environmental Factors** means a document that considers to the fullest extent possible all matters likely to effect the environment by reason of the activity as required by section 5.5 of the EP&A Act.

**Rolling Stock Operator** means 'rolling stock operator' as that term is defined in section 4 of the RSNL.

**RSNL** means, subject to **clause 7.12**, the Rail Safety National Law as applied (with modifications) as a law of NSW by the *Rail Safety (Adoption of National Law) Act 2012* (NSW) and as a law of the Australian Capital Territory by the *Rail Safety National Law (ACT) Act 2014* (ACT) and, where the context allows, any other legislation relating to rail safety.

**Safety Interface Agreement** means an 'interface agreement' as that term is defined in section 4 of the RSNL, executed, or to be executed, between the Service Provider and other parties who have a relevant interest in the Services or any CRN Asset.

**Safety Management System** or **SMS** means a 'safety management system' (as referred to in Part 3, Division 6 of the RSNL).

**Schedule of Rates** means **Appendix 4** of the **Payment Schedule**, as amended in accordance with this Deed.

**Scope of Works** means **Schedule 15**.

**Scope of Works Deliverable** has the meaning given in the **Scope of Works**.

**Scope of Works Deliverables Schedule** has the meaning given in the **Scope of Works**.

**Security** means the undertakings provided, or required to be provided, by the Service Provider to the Principal in accordance with **clause 3.8(a)**, as may be replaced in accordance with **clause 3.9** or **3.13(b)**.

**Security Interest** means:

- (a) any mortgage, pledge, lien, charge, encumbrance or other preferential right, trust arrangement, agreement or arrangement of any kind given or created by way of security, including a PPSA Security Interest; and
- (b) any agreement to create or grant any arrangement described in paragraph (a).

**Security of Payment Act (ACT)** means the *Building and Construction Industry (Security of Payment Act) 2009* (ACT).



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

**Selected GTK** means the sum total GTK for all trains across the entire CRN as a whole, less Grain GTK across the entire CRN as a whole, as measured from the beginning of the relevant Contract Year to the end of the relevant Contract Year.

**Service Provider Assets** means any Asset used by the Service Provider in the carrying out of the Services that is not a CRN Asset or a Principal Supplied Asset, including rights under leases, licences and other agreements, but excludes any sum placed on deposit with a bank or other financial institution by the Service Provider.

**Service Provider Default** means:

- (a) any negligent, unlawful or otherwise wrongful act or omission of the Service Provider or any of its Associates; or
- (b) any breach by the Service Provider of this Deed.

**Service Provider Group Company** means any Related Body Corporate of the Service Provider.

**Service Provider's Background Intellectual Property** means Intellectual Property of the Service Provider which existed prior to the earlier of the date of this Deed and the commencement of the Services and which was not created (and did not otherwise come into existence) in any way in connection with this Deed, the Services or the CRN Assets (but excluding the UGL Signalling IP).

**Service Provider's Representative** means the person named as such in **Attachment A**, or such other person from time to time appointed by the Service Provider to be the Service Provider's Representative under **clause 2.13**.

**Services** means:

- (a) all activities and work required to be carried out by the Service Provider; and
- (b) the performance or satisfaction of all obligations to be performed or satisfied by the Service Provider,

under this Deed (including the **Scope of Works**), including:

- (c) Mobilisation Activities;
- (d) without limiting **paragraph (c)**, Redeployment Activities;
- (e) Transition Out Activities;
- (f) Initial Response Works;
- (g) Assessment Works and Remediation Works in respect of Default Contamination;
- (h) Modifications required or permitted under this Deed;
- (i) Support Services; and
- (j) all activities and work necessary to ensure that the CRN Assets (as they exist from time to time) satisfy the requirements of this Deed (as they exist from time to time), including following, or as a result of, any Adjustment Event.

**Services Commencement Date** means the later of:

- (a) the Proposed Services Commencement Date; and
- (b) the date on which each of the Conditions Precedent (Services Commencement) have either been satisfied by the Service Provider or waived by the Principal in accordance with **clause 3.3(b)(ii)**.



**Significant Change to Operations** means a change in Railway Operations on the CRN after the date of this Deed (but excluding any such change arising out of a Modification or other Adjustment Event), but only to the extent to which such change results in a [REDACTED] or greater gross increase or decrease in Selected GTK, where in each case such increase or decrease in Selected GTK is determined:

- (a) as at the end of the relevant Contract Year; and
- (b) by reference to the Baseline GTK.

**SMEPP** means a SME Participation Plan for the purposes of the Small and Medium Enterprise Policy Framework, which as at the date of this Deed is that plan set out in **Appendix C18** of the **Scope of Works** (as may be updated in accordance with this Deed).

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

**Standards and Codes** means:

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

as updated, amended and replaced from time to time.

**State Owned Heritage Management Principles** means any principles approved by the NSW Heritage Minister under section 170A(2) of the NSW Heritage Act.

**State Records** means any Record which is a State record for the purposes of the State Records Act and which has been provided by any Rail Transport Agency to the Service Provider.

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

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

**State Road Overbridge Maintenance Services** means the Asset Management Services and the Asset Maintenance Services in respect of those overbridges specified in the register in **Appendix K** to the **Scope of Works** in respect of which the column titled "Option 3A" is completed "Yes".

**Statutory Requests** means a request to the Principal by another Authority (other than the Principal) under or in connection with a statutory process that the Principal consider information and provide a response and includes:

- (a) a request under the EP&A Act for the Principal to consider a development application or a request for approval of State significant infrastructure and either grant or refuse concurrence in respect of that application or request (including development applications that require access via a level crossing under clause 84 of the Infrastructure SEPP);
- (b) a request in relation to a Division 5.1 Assessment, assessment of State significant development or State significant infrastructure being conducted by that Authority under the EP&A Act for the Principal to provide input on environmental assessment requirements, provide advice during the assessment processes or input on proposed conditions of consent; and
- (c) a request for the Principal to provide input in relation to the preparation of State environmental planning policies, local strategic planning statements, local environmental plans, district strategic plans and regional strategic plans under the EP&A Act.

**Step-in Event** means:

- (a) each Termination Event;
- (b) any breach of **clause 7.11(c) or 7.11(d)**;
- (c) the occurrence of an Incident (or the Principal's Representative anticipating a potential Incident), which in the Principal's Representative's opinion:
  - (i) the Service Provider is or will be unable to overcome in an appropriate manner; and
  - (ii) materially adversely affects, or is likely to materially adversely affect, the CRN Assets or the safety of people or condition of property or the Environment; and
- (d) without limiting **paragraph (a), (b) or (c)**, any event or circumstance which renders the Service Provider, in the Principal's Representative's reasonable opinion, unable to carry out all or any part of the Services in accordance with this Deed and that event or circumstance or inability to carry out all or any part of the Services will materially adversely affect, or is likely to materially adversely affect, the operation or use of all or any part of the CRN Assets for the Intended Purpose.

**Step-in Party** means the Principal or any other person engaged by the Principal to perform, carry out or otherwise exercise Step-in Powers.

**Step-in Rights** means the right to either perform, or appoint a Step-in Party to perform, Step-in Powers.

**Step-in Powers** means:

- (a) the carrying out of all or any part of the Services and the exercise all or any of the Service Provider's powers, rights or obligations under this Deed; and
- (b) the taking of such actions as are otherwise necessary to address or remedy any Step-in Event, or to overcome or mitigate any risk, consequences or potential consequences of the relevant Step-in Event,

including:

- (c) engaging third parties to carry out and complete the whole or any part of the Services;
- (d) entering onto and remain in or on the CRN Land;
- (e) taking over the possession, use and occupation of any part of the CRN Assets;
- (f) taking possession of, and using (and permitting others to use), such of the Plant and Equipment, materials, spares and other things on or in the vicinity of the CRN Assets as were used by the Service Provider or any of the Service Provider's Associates;
- (g) giving directions to the Service Provider and any Associate of the Service Provider;
- (h) contracting with Subcontractors;
- (i) taking possession of, and using (and permitting others to use), such of the Materials in the possession, custody or control of the Service Provider or any of its Associates;
- (j) excluding from the CRN Assets (or any relevant part of the CRN Assets) the Service Provider and any other person (including any Associate of the Service Provider) concerned with the carrying out of the Services;
- (k) acting as the Service Provider's agent under all contracts entered into by the Service Provider; and



- (l) carrying out the obligations of the Service Provider under any contracts entered into by the Service Provider in connection with the Services.

**Structures Disposal Plan** has the meaning given in the **Scope of Works**.

**Structures Disposal Services** means all activities and work necessary to comply with the Structures Disposal Plan, which does not otherwise form part of the Services (other than pursuant to the exercise of an Option).

**Subcontractor** means any person engaged by the Service Provider (including a consultant and a supplier or hirer of materials, plant, equipment or testing services) to carry out any part of the Services and includes, where it is not inconsistent with the context, the Subcontractor's officers, employees, agents, consultants and invitees.

**Subcontractor Intellectual Property** has the meaning given in **clause 21.11(a)(iii)**.

**Successor Service Provider** means a service provider succeeding the Service Provider in the carrying out of all or any part of the Services (or activities and work of a similar nature to all or any part of the Services in respect of all or any part of the CRN Assets) after the Termination Date.

**Support Services** has the meaning given in the **Scope of Works**.

**Sydney Metro** means the body corporate with ABN 12 354 063 515 constituted by Part 3D of the *Transport Administration Act 1988* (NSW) and its successors in title or at Law.

**Sydney Trains** means the body corporate with ABN 38 284 779 682 constituted by Part 3B of the *Transport Administration Act 1988* (NSW) and its successors in title or at Law.

**TAHE** means Transport Asset Holding Entity of New South Wales (ABN 59 325 778 353), a corporation constituted under section 4 of the *Transport Administration Act 1988* (NSW) immediately before its substitution by the *Transport Administration Amendment (Transport Entities) Act 2017* (NSW) and continued by section 4 of the *Transport Administration Act 1988* (NSW), and its successors in title or at Law.

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

**Term** means the Initial Term, as may be extended in accordance with **clause 3.5(a) or 3.6(a)**.

**Termination Date** means the earlier of:

- (a) the last day of the Term; and
- (b) the date of termination of this Deed.

**Termination Event** means any one or more of the following events:

- (a) Abandonment;
- (b) any Wilful Default occurring on the part of the Service Provider or any of its Associates arising out of, or in any way in connection with, this Deed, the CRN Assets or the Services;
- (c) breach of an essential term of this Deed by the Service Provider;
- (d) without limiting **paragraph (a)**, repudiation of this Deed by the Service Provider;
- (e) any breach of **clause 7.11(a), 7.11(b) or 7.11(e) (Rail Safety Accreditation)**;
- (f) any breach of **clause 9.1, 9.2 or 9.3 (Safety)**;



- (g) any serious or material breach of **clause 9.4 or 9.5**;
- (h) any breach of any provision of **clause 9.4 or 9.5 (Relevant Breach)** in circumstances where the Service Provider has breached that same provision on 2 or more other occasions in the 6 month period prior to the date of the Relevant Breach;
- (i) in respect of a Default Event the subject of a Default Notice (as applicable):
  - (i) the relevant Default Event is not remedied in accordance with the Default Notice as contemplated by **clause 23.3(b)(iii) or 23.3(b)(iv)(A)**;
  - (ii) the Service Provider has not commenced to diligently pursue, or is not diligently pursuing, the implementation of a Final Cure Plan; or
  - (iii) the Service Provider has not within the relevant Cure Period (as applicable):
    - (A) remedied the relevant Default Event in accordance with the relevant Final Cure Plan; or
    - (B) taken such other steps and measures and implemented such other arrangements, as may be necessary to address or deal with the Default Event and the consequences of the Default Event in accordance with the relevant Final Cure Plan;
- (j) an Insolvency Event occurs in respect of the Service Provider or a Parent Company;
- (k) the Service Provider or a Parent Company being the subject of a Change in Control without the Principal's prior written consent (in its absolute discretion) pursuant to **clause 30.1(d)(ii)** (other than a Change in Control that is permitted under **clause 30.1(e)**);
- (l) any breach of a provision of the RSNL, any WHS Law, the HVNL or any Environmental Law applicable to the carrying out of the Services; and
- (m) the Service Provider being liable (or the Principal (acting reasonably) forming the view that the Service Provider is or will become liable) to the Principal under, or in any way in connection with, this Deed for an amount in aggregate that is equal to or greater than the limitation of the Service Provider's liability under **clause 20.5**.

**Termination Payments Schedule** means **Schedule 10**.

**TfNSW** means Transport for NSW ABN 18 804 239 602, a NSW Government agency constituted by section 3C(1) of the *Transport Administration Act 1988* (NSW).

**TfNSW Regional and Outer Metropolitan Area** means any area outside the areas specified as "Greater Sydney" as per the map in this link: <https://www.stayinformed.com.au/boundaries>.

**Third Party Constructed Enhancement Assets** means the Assets to be furnished, fabricated, constructed, installed, erected or commissioned by a third party engaged by, or on behalf of, the Principal or any other party as:

- (a) an upgrade, enhancement, addition, change, or expansion to, or augmentation, upgrade or replacement of, the CRN Assets, as notified by the Principal to the Service Provider from time to time; or
- (b) part of Carry-Over Works (other than Carry-Over Works carried out by the Service Provider).

**Track Access Agreement** means an agreement for access onto the CRN between the Principal and one or more RTOs.

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

**Transferee** means the person to whom Nominated Assets are to be transferred as stated in a written notice from the Principal's Representative under **clause 27.4(a)**.

**Transferring Employee** has the meaning given in **clause 4.1(c)**.

**Transfer Out Agreement** means an agreement referred to in **clause 27.4(b)**.

**Transitional Agreement** means an agreement entered into, or to be entered into, between the Principal, the Service Provider and the Previous Service Provider relating to the transfer of Previous Service Provider In-Scope Employees and/or the sale of particular assets substantially in the form set out in **Attachment D**.

**Transition Out Activities** means all activities and work required to be carried out:

- (a) in accordance with the Transition Out Plan, **Part M** of these General Conditions and **section 19** of the **Scope of Works** (excluding any activities and work required during the Mobilisation Stage); or
- (b) to otherwise ensure and facilitate the safe, effective and orderly handover of the CRN Assets and Principal Supplied Assets, and the operation and maintenance of the CRN Assets, to a Successor Service Provider.

**Transition Out Audit** means an audit procured by the Principal in accordance with **clause 26.1(a)**.

**Transition Out Auditor** means a person carrying out a Transition Out Audit.

**Transition Out Audit Assets** means the CRN Assets specified by the Principal as being the subject of a Transition Out Audit in accordance with **clause 26.1(b)(i)**.

**Transition Out Condition** means the condition that the CRN Assets would be in as at the Termination Date if the Service Provider had complied with all of its obligations under this Deed, including by carrying out the Services in accordance with the 3MWP and the 50AMP.

**Transition Out Costs** means, in respect of each Payment Period specified in the **Transition Out Costs Payment Schedule**, the relevant amount specified as such in the **Transition Out Costs Payment Schedule**, as adjusted in accordance with this Deed.

**Transition Out Costs Payment Schedule** means **Appendix 13** of the **Payment Schedule**.

**Transition Out Plan** means the plan of that name prepared in accordance with the **Scope of Works**.

**Turnout Rationalisation Plan** has the meaning given in the **Scope of Works**.

**Turnout Rationalisation Services** means all activities and work necessary to comply with the Turnout Rationalisation Plan, which does not otherwise form part of the Services (other than pursuant to the exercise of an Option).

**UGL Signalling IP** means the Intellectual Property in:

- (a) the Service Provider's (or a Service Provider Group Company's) proprietary Software products which the Service Provider generally makes commercially available to customers under the brand names "UGL SIGVIEW", "UGL SIGMAP" and "UGL INTEGRA";
- (b) any associated systems which are also proprietary or licensed to the Service Provider (or a Service Provider Group Company) and used by or for customers to obtain the full benefits of the products referred to in **paragraph (a)**; and



- (c) all modifications to any of the products or associated systems referred to in **paragraphs (a) or (b)** which are made by or on behalf of the Service Provider (or a Service Provider Group Company), whether in connection with this Deed or otherwise,

which, for clarity, does not and will not include any Subcontractor Intellectual Property.

**Uninsurable Event** means:

- (a) an event referred to in **paragraph (a) or (b)** of the definition of Force Majeure Event, provided that **paragraphs (e)(i), (e)(ii) and (e)(iii)** of the definition of Force Majeure Event are satisfied; or
- (b) an unanticipated physical event which:
- (i) is not in the exercise by the Principal or any other Rail Transport Agency of any of its functions and powers pursuant to any legislation; and
  - (ii) directly results in physical loss of or damage to the CRN Assets,
- in respect of which no insurance is available for that event from an insurer with a Required Rating in the Australian or London insurance markets, except to the extent caused or contributed to by any act or omission of the Service Provider or any of its Associates.

**Unpaid Previous Service Provider In-Scope Employee Allowance** means the sum of:

- (a) the cost of any redundancy payments incurred by the Previous Service Provider in respect of any Previous Service Provider In-Scope Employee in accordance with any statutory or contractual obligations binding on the Previous Service Provider as at the date of this Deed;
- (b) in respect of each Previous Service Provider In-Scope Employee, the greater of ■ and the difference (if positive) between:
- (i) the value of any accrued long service leave (calculated without reference to whether or not the relevant Previous Service Provider In-Scope Employee has satisfied any particular threshold level of service so as to become entitled to take long service leave), annual leave and personal/carer's leave entitlements, determined 1 day prior to the Proposed Services Commencement Date, on the assumption that:
    - (A) the Previous Service Provider In-Scope Employee has maintained employment and service with the Previous Service Provider from 19 January 2021 to the Proposed Services Commencement Date on the same terms and conditions of employment as are applicable as at the date of this Deed; and
    - (B) the Previous Service Provider In-Scope Employee does not use (or obtain any payment in respect of) long service leave, annual leave or personal/carer's leave in respect of the period between the date of this Deed and the Proposed Services Commencement Date; and
  - (ii) any actual liability paid or payable by the Service Provider to that Previous Service Provider In-Scope Employee (or which the Service Provider demonstrates to the reasonable satisfaction of the Principal's Representative will in future become payable by the Service Provider to that Previous Service Provider In-Scope Employee) for long service leave, annual leave and personal/carer's leave entitlements arising in respect of any period of service prior to the Proposed Services Commencement Date; and



- (c) the value of all amounts identified in Part 2 of **Attachment L** as being allowed for in any Mobilisation Payment or the Monthly Services Fee in respect of the cost of redundancy or severance payments, long service leave, annual leave and personal/carer's leave entitlements for or in respect of any role identified as "vacant" in Part 1 of **Attachment L**.

**Unperformed Activity Units** has the meaning given in the **Payment Schedule**.

**Variation** means a Modification or an Adjustment Event.

**Variation Capital Works Milestone Payment** has the meaning given in the **Payment Schedule**.

**Variation Capital Works Monthly Payment** has the meaning given in the **Payment Schedule**.

**Variation Capital Works Progress Payment** has the meaning given in the **Payment Schedule**.

**Variation Capital Works Progress Payment (Lump Sum)** has the meaning given in the **Payment Schedule**.

**Variation Impacts** means:

- (a) in respect of an Adjustment Event, the consequences of such Adjustment Event determined in accordance with **Part 3** of the **Variations Schedule**; and
- (b) in respect of a Modification or potential Modification:
- (i) the consequences of such Modification (or potential Modification, were it to be carried out) determined in accordance with **Part 2** of the **Variations Schedule**; and
  - (ii) where the Modification (or potential Modification, were it to be carried out) will result in Modification Assets (including under **clause 2.16(b)**) and the incorporation of those Modification Assets as part of the CRN Assets will give rise to a CRN Asset Base Change, the consequences of such Adjustment Event determined in accordance with **Part 3** of the **Variations Schedule**.

**Variation Impacts Statement** means, in respect of any Modification or Adjustment Event (or proposed or alleged Modification or Adjustment Event), a notice setting out:

- (a) full details of the relevant Modification or Adjustment Event (or proposed or alleged Modification or Adjustment Event), including reasons why the Service Provider believes that it constitutes a Modification or Adjustment Event and, if the Service Provider has requested approval for the carrying out of a Modification pursuant to **clause 14.3(a)**, reasons why the Service Provider proposes the Modification;
- (b) in respect of Modifications (other than Enhancement Activities) involving capital works, the schedule and expected timeline to commence and complete the capital works;
- (c) all Variation Impacts proposed by the Service Provider in respect of the relevant Modification or Adjustment Event (or proposed or alleged Modification or Adjustment Event), which must:
- (i) be determined in accordance with the relevant part of the **Variations Schedule** (excluding **clause 1.1(a)(i)(C)** of **Part 2** of the **Variations Schedule**, **clause 1.1(a)(ii)(F)** of **Part 2** of the **Variations Schedule**, **clause 1.1(a)(iii)(C)** of **Part 2** of the **Variations Schedule**, **clause 1.2(a)(i)(F)** of **Part 3** of the **Variations Schedule** or **clause 1.2(a)(ii)(C)** of **Part 3** of the **Variations Schedule**);
  - (ii) be supported by full calculations and reasoning; and
  - (iii) clearly specify which Payment Periods each of the Variation Impacts will apply to;
- (d) details of any actual or likely claim under an insurance policy, as well as any actual or likely insurance proceeds, including likely timing of receipt of such proceeds;

- (e) whether the Service Provider proposes the application of Variation Capital Works Milestone Payments or Variation Capital Works Progress Payments and, if Variation Capital Works Milestone Payments are proposed, full details of the relevant proposed milestones, supported by full calculations and reasoning;
- (f) in respect of Modifications (or proposed or alleged Modifications), the Modification Scope, which must:
  - (i) be consistent with and otherwise incorporate (as required by the Principal's Representative) any documentation provided by the Principal's Representative;
  - (ii) comply with any requirements notified by the Principal's Representative; and
  - (iii) be fit for its Intended Purposes and sufficient to enable the potential Modification, if proceeded with, to be carried out in accordance with this Deed;
- (g) in respect of Modifications (or proposed or alleged Modifications) comprising Enhancement Activities, a statement that the Modification comprises Enhancement Activities and the Enhancement Activities Particulars proposed by the Service Provider;
- (h) in respect of Modifications (or proposed or alleged Modifications) comprising Contamination Management Works:
  - (i) all information known by the Service Provider about the type and extent of the Contamination by the Service Provider at the date of the Variation Impacts Statement;
  - (ii) without limiting **clause 16(a)**, a description of any Initial Response Works and Contamination Management Works completed at the date of the Variation Impacts Statement and the costs of performing the Contamination Management Works;
  - (iii) any additional Initial Response Works which the Service Provider intends to perform;
  - (iv) any Contamination Management Works that the Service Provider expects will be necessary;
  - (v) the schedule and expected timeline to commence and complete the Contamination Management Works, including any Contamination Management Works such as monitoring that may be required to continue for a period of longer than 12 months; and
  - (vi) detailed particulars and analysis of the factors to be considered by the Principal's Representative when determining whether the Contamination is in one or more locations for the purposes of the **Variations Schedule**;
- (i) the Service Provider's proposal for obtaining any further Approvals;
- (j) the Service Provider's proposal for community, customer and stakeholder engagement;
- (k) the impact (if any) of the Modification or Adjustment Event (or proposed or alleged Modification or Adjustment Event) on the 3MWP, the 10MSP, the 50AMP and any Organisation Structure;
- (l) if **clause 16(e)(ii)** applies, whether the Service Provider agrees with the amendments (including additions) to the terms and conditions in **Schedule 12** proposed by the Principal's Representative and, if not, to what extent (including any alternatives to those amendments proposed by the Service Provider); and
- (m) any additional information requested by the Principal's Representative,



and which (without limiting paragraphs (a) to (m)) is substantially in the form set out in **Attachment K**.

**Variation Payment** has the meaning given in the **Payment Schedule**.

**Variation Recurring Expenditure Monthly Payment** has the meaning given in the **Payment Schedule**.

**Variations Schedule** means **Schedule 1**.

**Waste** has the same meaning as in the *Protection of the Environment Operations Act 1997* (NSW) and, for the avoidance of doubt, includes any excavated soils, rock or other material, whether Contaminated or not.

**WHS Law** means:

- (a) the *Work Health and Safety Act 2011* (NSW);
- (b) the *Work Health and Safety Regulation 2017* (NSW);
- (c) the *Work Health and Safety Act 2011* (ACT);
- (d) the *Work Health and Safety Regulation 2011* (ACT); and
- (e) any other Law relating to work health and safety.

**Wilful Default** means, in respect of a person:

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

**Workforce and Transition Plan** has the meaning given in the **Scope of Works**.

**3 Year Maintenance Works Plan** or **3MWP** has the meaning given in the **Scope of Works**.

**3 Year Maintenance Works Plan Adjustment Clawback** has the meaning given to it in the **Payment Schedule**.

**3 Year Maintenance Works Plan Adjustment Reimbursement** has the meaning given to it in the **Payment Schedule**.

**3MWP Unit Costs** means those unit costs set out in the column titled "Unit Cost (incl. Margin)" in the 3MWP (current as at the date of this Deed), Average Indexed in accordance with the Indexation Schedule.

**10MSP Reference Costs** has the meaning given in the **Scope of Works**.

**10MSP Unit Costs** means those unit costs set out in the column titled "Unit Cost (incl. Margin)" in the 10MSP (as at the date of this Deed), Average Indexed in accordance with the Indexation Schedule.

**10 Year Maintenance Services Plan** or **10MSP** has the meaning given in the **Scope of Works**.

**50 Year Asset Management Plan** or **50AMP** has the meaning given in the **Scope of Works**.

## 1.2 Words and headings

In this Deed, unless expressed to the contrary:

- (a) words denoting the singular include the plural and vice versa;
- (b) the word 'includes' in any form is not a word of limitation;



- (c) where a word or phrase is defined, another part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (d) headings and sub-headings are for ease of reference only and do not affect the interpretation of this Deed; and
- (e) no rule of construction applies to the disadvantage of the party preparing this Deed on the basis that it prepared or put forward this Deed or any part of it.

### 1.3 Specific references

In this Deed, unless expressed to the contrary, a reference to:

- (a) a gender includes all other genders;
- (b) without limiting **clause 7.12**, any Law, NSW Government Policy or Standards and Codes is to that Law, NSW Government Policy or Standards and Codes as amended, re-enacted or replaced from time to time and, in respect of legislation, includes any subordinate legislation issued under it;
- (c) any document (such as a deed (including this Deed), agreement or other document) is to that document (or, if required by the context, to a part of it) as amended, novated, substituted or supplemented at any time;
- (d) writing includes writing in digital form;
- (e) 'A\$', '\$', 'AUD' or 'dollars' is a reference to Australian dollars;
- (f) a clause, schedule or attachment is a reference to a clause, schedule or attachment in or to this Deed;
- (g) any property or assets of a person includes the legal and beneficial interest of that person of those assets or property, whether as owner, lessee or lessor, licensee or licensor, trustee or beneficiary or otherwise;
- (h) a person includes a firm, partnership, joint venture, association, corporation or other body corporate;
- (i) a person includes the legal personal representatives, successors and permitted assigns of that person, and in the case of a trustee, includes any substituted or additional trustee;
- (j) any person, body or agency which no longer exists or has been reconstituted, renamed, replaced or whose powers or functions have been removed or transferred to another body or agency, is a reference to the person, body or agency which most closely serves the purposes or objects of the original person, body or agency;
- (k) the Minister for Regional Transport and Roads includes any Minister or Ministers that replaces, or whose powers or functions (in whole or in part) have been transferred from, that Minister;
- (l) "shall" will be construed as references to "must";
- (m) any Review Document (whether such reference is to the term 'Review Document' or the relevant title or defined term relating to that Review Document) will be construed as a reference to the most recent version of that Review Document in respect of which:
  - (i) the Principal's Representative has notified the Service Provider under **clause 6.8(b)(iii) or 6.8(d)(i)** that it has no (or has no further) comments to make; or
  - (ii) the relevant period of time in **clause 6.8(b)** has expired and the Principal's Representative has not rejected the Review Document, made any comments on

the Review Document or made a request referred to in **clause 6.8(b)(ii)** in respect of the Review Document and the Review Document is not otherwise deemed to be rejected in accordance with **clause 6.8**;

- (n) any Excluded Document (whether such reference is to the term 'Excluded Document' or the relevant title or defined term relating to that Excluded Document) will be construed as a reference to:
  - (i) subject to **clause 1.3(n)(ii)**, the version of that Excluded Document set out or referred to in the **Scope of Works**; or
  - (ii) the most recent version of that Excluded Document which has been approved in writing by the Principal or the Principal's Representative in accordance with the **Scope of Works**,

in each case subject to any subsequent changes or updates in that Excluded Document which have been approved in writing by the Principal or the Principal's Representative in accordance with the **Scope of Works**;
- (o) a term that is defined in any Schedule has the meaning attributed to it in that Schedule; and
- (p) "overheads" in **Schedule 1** includes on-site and off-site overheads.

#### 1.4 General interpretive provisions

- (a) In the interpretation of this Deed, unless the subject matter or context otherwise requires, the rights of the Principal are cumulative and do not exclude or modify any other rights.
- (b) Where this Deed provides that the Service Provider:
  - (i) is not entitled to make any Claim against the Principal; or
  - (ii) releases the Principal from any Claim,

or similar words are used, the Service Provider is deemed to have released and forever discharged the Indemnified Parties from all Claims which the Service Provider has or at any time may have or, but for the release, would or may have had in connection with the relevant subject matter and the Indemnified Parties have no liability to the Service Provider whatsoever in connection with the relevant subject matter.
- (c) Where this Deed provides that the Service Provider indemnifies the Principal against any claims against, or Losses suffered or incurred by, the Principal (or similar words are used) in respect of a particular fact, matter or thing, the Service Provider indemnifies each of the Indemnified Parties against any claims against, or Losses suffered or incurred by, the relevant Indemnified Party in respect of the particular fact, matter or thing.
- (d) Without limiting the personal rights and entitlements of the Principal, the Principal holds the benefit of:
  - (i) the release provided under **clause 1.4(b)** on trust for each of the Indemnified Parties; and
  - (ii) any indemnity or warranty expressed under this Deed as being for the benefit of any Indemnified Party on trust for each such Indemnified Party,

and the Principal has the authority to (and is entitled to) enforce any such release, indemnity or warranty for the benefit of the Indemnified Party.
- (e) Where:



- (i) an obligation is imposed on any of the Service Provider's Associates under this Deed;
  - (ii) an obligation is imposed on the Service Provider to procure or ensure that any of the Service Provider's Associates complies with the requirements of this Deed; or
  - (iii) in order to discharge its obligations under this Deed the Service Provider is required to, or would need to, ensure or procure that any of the Service Provider's Associates complies with that obligation,
- the Service Provider must ensure or procure that the relevant Service Provider's Associate complies with that obligation.
- (f) If the Principal is required under the terms of this Deed to exercise best or reasonable endeavours, the Service Provider acknowledges that:
    - (i) the Principal will only be obliged to bring about the relevant outcome to the extent that it is reasonably able to do so, having regard to its resources and other responsibilities and other relevant circumstances; and
    - (ii) the Principal does not represent or warrant that the relevant outcome will be achieved and is not under any obligation to bring about the relevant outcome.
  - (g) If, for any reason, a period over which a calculation is required to be made in accordance with the **Payment Schedule** or the **KPI Schedule** is different to:
    - (i) where the period is a Payment Period, a complete calendar month; or
    - (ii) where the period is a Contract Year, a complete Financial Year,

or otherwise where a calculation refers to a period that does not accord with a period for which an amount is stated, the parties will make the necessary pro rata adjustments to ensure that the amounts are referable to the period for which the calculation is being made.
  - (h) For the avoidance of doubt, the Monthly Services Fee will be subject to pro rata adjustment in accordance with **clause 1.4(g)** in respect of any Payment Period that is not a complete calendar month.

## 1.5 Incorporation of Standards and Codes

Where:

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

## 1.6 Discrepancies

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



- (i) where there is a discrepancy between a document forming part of this Deed and any other document forming part of this Deed, the documents must be given the following descending order of precedence:
  - (A) the General Conditions;
  - (B) the **Scope of Works**;
  - (C) **Attachment A**;
  - (D) the **Variations Schedule** and the **Payment Schedule**;
  - (E) the **Enhancement Activities Terms and Conditions**;
  - (F) the other Schedules to this Deed; and
  - (G) the other documents forming part of this Deed; and
- (ii) if **clause 1.6(b)(i)** does not resolve the discrepancy, the Service Provider must comply with any Principal's Representative's Direction as to the interpretation and construction to be followed in respect of the discrepancy.
- (c) Despite any other provision of this Deed, the Service Provider will not be entitled to make, and the Principal will not be liable for, any Claim arising out of, or in any way in connection with, any discrepancy referred to in this **clause 1.6** or any Direction under this **clause 1.6**.

## 2 Objectives and Relationship

### 2.1 Objectives

The objectives of the Principal engaging the Service Provider to carry out the Services include:

- (a) ensuring safe, reliable and sustainable performance of all CRN Assets over the life of the CRN Assets;
- (b) ensuring strong CRN Asset stewardship from a whole of life perspective using Good Industry Practice and evidence-based asset management;
- (c) ensuring that there is a robust and evidence based risk approach in the carrying out of the Services and management of the CRN Assets;
- (d) managing CRN interfaces in a safe and efficient manner;
- (e) fostering a long-term collaborative relationship between the Principal and the Service Provider, who will have effective management and control of the CRN Assets (subject to and in accordance with this Deed);
- (f) delivering and sustaining high levels of customer satisfaction and service delivery for the Term;
- (g) delivering value for money for the Principal, with scope for the Service Provider to realise more efficient and productive approaches applying innovation;
- (h) utilising regional based skills and expertise (with a focus on small and medium sized Subcontractors) and a diverse and inclusive workforce in the carrying out of the Services (including via Aboriginal participation and regional employment requirements);
- (i) working with regional communities to identify and create social and sustainable opportunities by the adaptive repurposing of non-operational CRN Assets; and
- (j) ensuring compliance with environmental and heritage Laws.

## 2.2 Engagement

The Principal engages the Service Provider to carry out the Services in accordance with this Deed and agrees to pay the Service Provider in accordance with **clause 17** and the **Payment Schedule**. The Service Provider accepts that appointment.

## 2.3 Ownership of the CRN Assets

The CRN Assets will, as between TfNSW, TAHE and the Service Provider:

- (a) to the extent in existence as at the date of this Deed, remain the absolute property of TAHE (or, if the Principal's Representative notifies the Service Provider that the relevant CRN Assets are the property of TfNSW, TfNSW); or
- (b) to the extent not in existence as at the date of this Deed, become the absolute property of TAHE (or, if the Principal's Representative notifies the Service Provider that the relevant CRN Assets are to become the property of TfNSW, TfNSW) upon:
  - (i) the earlier of:
    - (A) affixation to the CRN Land, any other land or any other CRN Assets; and
    - (B) payment by the Principal to the Service Provider for such CRN Assets; or
  - (ii) to the extent **clause 2.3(b)(i)** does not apply, creation.

## 2.4 Licence to Use the CRN Assets

- (a) Subject to, and without limiting, **clause 3.4(b)**, the Principal must, from the Mobilisation Date until the Services Commencement Date, subject to the obligations of the Principal or any Rail Transport Agency under any Law, Relevant Document or the ACT Licence, and subject to any restrictions arising in respect of the Previous Service Provider's Rail Safety Accreditation, use reasonable endeavours to procure for the Service Provider permission to use the CRN Assets as the Service Provider reasonably requires for the purposes of carrying out the Mobilisation Activities.
- (b) Subject to, and without limiting, **clause 6.4**, the Principal grants to the Service Provider, from the Services Commencement Date until the Termination Date, a non-exclusive licence to use the CRN Assets (including, subject to **clause 2.5**, reasonable and necessary access to the CRN Assets) for the purposes of carrying out the Services. The Service Provider will be taken to have accepted the licence immediately after the Service Provider or any of its Associates enters upon the CRN Assets for the purposes of carrying out the Services.

## 2.5 Conditions of Use

The rights to use the CRN Assets and the licence referred to in **clause 2.4**:

- (a) terminate immediately upon the Termination Date;
- (b) do not create in the Service Provider any lease, tenancy or other proprietary interest in the CRN Assets;
- (c) are subject to the rights of the parties to, and any conditions or restrictions contained in or imposed by, the Relevant Documents and the ACT Licence; and
- (d) may be revoked by the Principal in whole or in part to the extent that they are not necessary for the purposes of the Service Provider carrying out the Services in accordance with this Deed.



## 2.6 Additional CRN Assets Obligations

- (a) The Service Provider must carry out the Services so as to ensure that the CRN Assets are available and accessible for their Intended Purposes, and otherwise maintained in a safe and reliable state, at all times during the Term.
- (b) The Service Provider and each of its Associates must not enter upon any place reasonably notified by the Principal or the Principal's Representative to the Service Provider in writing as a place to which the Service Provider is not to have access, without the prior written consent of the Principal.
- (c) The Service Provider must:
  - (i) procure access to or over, or use of, or other relevant rights relating to, any site or property which may be required for the carrying out of the Services (not in the ownership or control of the Principal); and
  - (ii) comply with all conditions attaching to such rights, use or access.

## 2.7 Prohibited Uses of the CRN Assets

The Service Provider must not:

- (a) except as provided for in **clause 6.4**, allow a person to access, use or occupy any part of the CRN Assets except:
  - (i) to the extent such access, use or occupation is expressly permitted under any Law; or
  - (ii) without limiting **clause 2.10(c)**, pursuant to an agreement, licence, lease or other appropriate arrangement (including a Track Access Agreement) which either:
    - (A) is in the form of a template or proforma agreement, licence, lease or other arrangement provided or approved by the Principal's Representative in writing, with relevant particulars approved by the Principal's Representative in writing; or
    - (B) has otherwise been negotiated and agreed by or on behalf of the Principal (other than by the Service Provider), or approved by the Principal's Representative in writing;
- (b) use any part of the CRN Assets, or allow any part of the CRN Assets to be used, for a purpose other than its Intended Purpose or for the purpose of carrying out the Services;
- (c) do or allow any illegal or offensive act or omission on or at any part of the CRN Assets;
- (d) do or allow any act or omission which causes a nuisance, disturbance or damage to any other person:
  - (i) using any part of the CRN Assets; or
  - (ii) using or occupying land in the vicinity of the CRN Assets; or
- (e) do or allow any act or omission on or at any part of the CRN Assets which may result in:
  - (i) a breach by the Principal or any Rail Transport Agency of any Law or any obligation of the Principal or any Rail Transport Agency under a Relevant Document or the ACT Licence in respect of the CRN Assets; or
  - (ii) the Principal or any Rail Transport Agency suffering or incurring any Loss or becoming bound by any obligation in respect of the CRN Assets (except to the extent expressly required by this Deed or approved in writing by the Principal).



## 2.8 Principal Supplied Assets

- (a) The Principal must make available to the Service Provider the Assets referred to in **Schedule 11** for the purposes of the Services:
  - (i) at its own cost;
  - (ii) on the terms referred to in **Schedule 11** and otherwise subject to **clause 18.2**;
  - (iii) at the respective places referred to in **Schedule 11**; and
  - (iv) by the respective date referred to in **Schedule 11**.
- (b) The Service Provider must, at its own cost and risk and within the time required by the Principal's Representative, transport each Asset referred to in **Schedule 11** from the respective place referred to in **Schedule 11** to the location required by the Service Provider.

## 2.9 Release of the Principal

The Service Provider releases, to the maximum extent permitted by Law, the Principal from any Claim which the Service Provider may have in respect of any loss of or damage to any property or death of or injury to any person on or about the CRN Assets, except to the extent that the Loss the subject of the Claim is caused by an Act of Prevention of any of the Indemnified Parties or is expressly recoverable by the Service Provider as a Variation Impact arising from an Adjustment Event.

## 2.10 Relationship between the parties

- (a) Subject to **clause 2.10(b)**, in the fulfilment of its obligations under this Deed, the Service Provider will act as the Principal's contractor and not as its agent.
- (b) The Principal appoints the Service Provider as its agent solely for the purposes of, and only to the extent necessary for the carrying out of, the Agency Services. The Service Provider must not act outside the scope of its agency.
- (c) To the extent the Agency Services involve:
  - (i) negotiating, managing or administering any agreement, the Service Provider must communicate to the relevant counterparty that, and ensure that the relevant agreement reflects that, the Service Provider is doing so as agent for the Principal and not in its personal capacity; and
  - (ii) negotiating any agreement, the Service Provider must (unless otherwise agreed in writing by the Principal's Representative) only do so based on template or proforma terms provided by the Principal, and must not agree to terms which differ from any such template or proforma terms without the written approval of the Principal's Representative.
- (d) Subject to **clause 2.10(b)**, the Service Provider must not without the prior written consent of the Principal do, purport to do, or hold itself out as having any authority to do, anything as agent for or on behalf of the Principal, including:
  - (i) waive, settle, compromise, exercise, enforce or otherwise deal with any right of the Principal; or
  - (ii) create any obligation or liability on the part of the Principal.
- (e) In respect of any dispute arising between a third party and the Service Provider that relates to the carrying out by the Service Provider of the Agency Services, the Service Provider agrees that it must:

- (i) notify the Principal immediately of the dispute, and provide any further information or details required by the Principal;
  - (ii) take any action required by the Principal in respect of the dispute; and
  - (iii) not act as the Principal's agent in respect of the dispute unless, and only to the extent, notified in writing by the Principal that it is required to do so.
- (f) Without limiting **clause 2.11**, TAHE has appointed TfNSW as its agent for the purposes of managing its functions under this Deed and any function of TAHE under this Deed may be exercised by TfNSW on its behalf.

## 2.11 The Principal's Representative's Functions

- (a) The Principal must ensure that at all times there is a Principal's Representative.
- (b) The Principal's Representative must carry out its functions under this Deed:
  - (i) as agent and representative of the Principal and not as independent certifier, assessor or valuer; and
  - (ii) except to the extent otherwise expressly provided in this Deed, in accordance with instructions, if any, given to it by the Principal (acting in its absolute discretion) and in a manner consistent with the interests of the Principal.
- (c) If the Principal or the Principal's Representative gives a Direction (whether oral or in writing), the Service Provider must comply with the Direction.
- (d) Except where this Deed otherwise provides, a Direction may be given orally but the Principal or the Principal's Representative (as applicable) must as soon as practicable confirm it in writing.
- (e) The Principal's Representative may:
  - (i) by written notice to the Service Provider appoint persons to exercise any of the Principal's Representative's functions under this Deed, provided however that the Principal's Representative cannot appoint more than one person to exercise the same function of the Principal's Representative at any given time; and
  - (ii) revoke any appointment under this **clause 2.10** by notice in writing to the Service Provider.
- (f) The Principal may authorise the Principal's Representative to exercise any right the Principal has under this Deed.

## 2.12 Discretions of the Principal and the Principal's Representative

The Service Provider agrees that, except to the extent otherwise expressly provided in this Deed:

- (a) the Principal and the Principal's Representative may exercise those discretions, rights and functions given to them under this Deed in whatever manner the Principal or the Principal's Representative decide in their absolute discretion;
- (b) the Principal or the Principal's Representative may grant, refuse or grant subject to conditions any consent required from the Principal or the Principal's Representative in their absolute discretion; and
- (c) the Principal or the Principal's Representative (as applicable) must act reasonably in accordance with this Deed when making determinations under:
  - (i) **clauses 6.8(b)(i), 6.9(b)(iii) and 6.9(e)(i)(B);**
  - (ii) **sections 1.1(a)(i) and 1.1(a)(ii) of Part 2 of Schedule 1;**



- (iii) **sections 1.2(a)(i) and 1.2(a)(ii) of Part 3 of Schedule 1; and**
- (iv) **clauses 7.9, 7.10 and 8.2(d)(i)(A) of Schedule 12.**

### **2.13 Appointment of Service Provider's Representative**

The Service Provider must throughout the Term ensure that it has appointed, and notified the Principal of the identity of, an individual representative of the Service Provider who will be:

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

### **2.14 Subcontracting**

- (a) The Service Provider acknowledges that it has been engaged to carry out the Services on the basis that the Service Provider is capable of directly carrying out most of the work comprising the Services without engaging subcontractors.
- (b) The Service Provider must ensure that:
  - (i) any subcontract it enters into contains such provisions as may be necessary to allow the Service Provider to satisfy its obligations under this Deed (to the extent such obligations relate to the relevant subcontract);
  - (ii) without limiting **clause 2.14(b)(i)**, any subcontract it enters into allows the Service Provider to terminate for convenience in the event that the Principal terminates this Deed under **clause 23.2**, either:
    - (A) without payment; or
    - (B) with payment of amounts no more generous than that provided under **clause 2 of the Termination Payments Schedule**; and
  - (iii) any Subcontractor engaged to carry out any part of the Services holds all appropriate Approvals and insurances required in relation to the part of the Services for which it has been engaged.
- (c) The Service Provider entering into any subcontract will not relieve the Service Provider from any liability or obligation under this Deed.

### **2.15 Service Provider Responsible for Associates**

The Service Provider agrees that:

- (a) any act or omission of any of its Associates will be taken to be an act or omission of the Service Provider, including any:
  - (i) act or omission which constitutes a breach of this Deed; or
  - (ii) negligent act or omission; and
- (b) the Service Provider will remain fully bound by and responsible for the obligations imposed on the Service Provider by this Deed, despite:
  - (i) any consent given by the Principal or the Principal's Representative to the engagement or appointment of any Service Provider's Associate; or



- (ii) the engagement or appointment of any Service Provider's Associate.

## 2.16 Other Acknowledgements

The Service Provider acknowledges and agrees that:

- (a) the CRN Assets will change from time to time after the date of this Deed, including through the incorporation of Third Party Constructed Enhancement Assets, and the Services include all activities and work arising out of, or in any way in connection with, any such change;
- (b) upon the earlier of:
  - (i) the date of completion of Third Party Constructed Enhancement Assets; and
  - (ii) to the extent such Third Party Constructed Enhancement Assets comprise railway track, the date on which such railway track is certified by the Service Provider in its capacity as a Rail Infrastructure Manager (which the Service Provider must promptly undertake in accordance with the RSNL and any requirements of this Deed and in respect of which the Service Provider must not withhold its certification except as expressly required under the RSNL) to be capable of having rolling stock pass over it,such Third Party Constructed Enhancement Assets will be deemed to form part of, or amend, the CRN Assets (as applicable);
- (c) subject to any express term of this Deed to the contrary, the Service Provider must carry out (and the Service Provider is deemed to have made allowance in the Monthly Capital Works Payment and the Monthly Recurring Expenditure Payment for) all activities and work and supply all materials necessary for the carrying out of the Services, whether or not they are expressly mentioned in this Deed, including those which arise out of, or in any way in connection with, any change in the CRN Assets after the date of this Deed or which otherwise should reasonably have been anticipated or inferred by a reasonably competent and experienced service provider at the date of this Deed as being necessary or desirable for the carrying out of the Services had such service provider inspected:
  - (i) all information made available by or on behalf of the Principal to the Service Provider or any Related Body Corporate of the Service Provider for the purpose of tendering, or otherwise in connection with this Deed, including the Information Documents;
  - (ii) all documents forming part of this Deed;
  - (iii) all information relevant to risk allocation under this Deed, including each element of the Monthly Services Fee, which is reasonably obtainable by the making of reasonable enquiries; and
  - (iv) the CRN Assets and their near surrounds;
- (d) notwithstanding any other provision of this Deed to the contrary, to the maximum extent permitted by Law, it will not be entitled to make, and the Principal will not be liable for, any Claim:
  - (i) based on, or arising out of, or in any way in connection with, quantum meruit, unjust enrichment or restitution (or similar Claims), whether arising out of, or in any way in connection with, this Deed or any basis in law or equity;
  - (ii) for carrying out the Services, except to the extent otherwise expressly provided in this Deed; or

- (iii) for any risk, matter or contingency arising out of, or in any way in connection with, the Services (except in connection with any breach of this Deed by the Principal) or the CRN Assets (including all risks associated with the costs of operating, maintaining and repairing the CRN Assets), except to the extent otherwise expressly provided in this Deed;
- (e) nothing in this Deed will in any way unlawfully restrict or otherwise unlawfully affect the unfettered discretion of any Rail Transport Agency or the AMB to exercise any of their respective functions and powers pursuant to any Law;
- (f) there may be Authorities (including the Principal) with jurisdiction over aspects of the CRN Assets or the Services and such Authorities may from time to time exercise their statutory functions and powers in such a way as to disrupt, interfere with or otherwise affect the CRN Assets or the Services;
- (g) without limiting **clauses 2.16(e) and 2.16(f)**, anything which any Rail Transport Agency, the AMB or any Authority do, or fail to do or purport to do, pursuant to their respective functions and powers pursuant to any Law will be deemed not to be an act or omission by the Principal under this Deed; and
- (h) the Service Provider will not be entitled to make, and the Principal will not be liable for, any Claim arising out of, or in any way in connection with, the matters referred to in **clause 2.16(e) and 2.16(f)**, except to the extent otherwise expressly provided in this Deed.

---

## Part B – Contract Commencement and Term

### 3 Commencement and Term

#### 3.1 Conditions Precedent (Mobilisation)

- (a) The rights and obligations of the parties under this Deed (other than the rights and obligations under, or in connection with, **clauses 10 (Environment), 19.1 (Service Provider Insurances), 19.5 (Evidence of Insurance), 20.3 (Deed polls), 21 (Intellectual Property), and 28 (Dispute Resolution) to 32 (Personal Property Securities Act)**, this **clause 3** and the **Termination Payments Schedule**) are subject to the satisfaction by the Service Provider, or waiver by the Principal under **clause 3.3(b)(i)**, of the Conditions Precedent (Mobilisation).
- (b) The Service Provider must:
  - (i) subject to **clause 3.3(b)(i)**, satisfy all Conditions Precedent (Mobilisation) on or before the Proposed Mobilisation Date; and
  - (ii) notwithstanding **clause 3.3(b)(i)**, and as a separate and distinct obligation to that under **clause 3.1(b)(i)**, otherwise satisfy all Conditions Precedent (Mobilisation).

#### 3.2 Conditions Precedent (Services Commencement)

The Service Provider must:

- (a) subject to **clause 3.3(b)(ii)**, satisfy all Conditions Precedent (Services Commencement) on or before the Proposed Services Commencement Date; and
- (b) notwithstanding **clause 3.3(b)(ii)**, and as a separate and distinct obligation to that under **clause 3.2(a)**, otherwise satisfy all Conditions Precedent (Services Commencement).

The Service Provider acknowledges and agrees that:



- (c) initial versions of certain plans listed in paragraph (n) of the definition of “Conditions Precedent (Services Commencement)” may be included in **Appendix C** to the **Scope of Works**; and
- (d) notwithstanding that initial versions of certain plans listed in paragraph (n) of the definition of “Conditions Precedent (Services Commencement)” may be included in **Appendix C** to the **Scope of Works**, and without limiting **clause 6.8**, **clause 6.9** or **clause 6.10**, it will (for the purposes of **clause 2.12(c)**) be reasonable for the Principal’s Representative to reject, comment upon, seek clarification on or additional information in respect of, or otherwise fail or refuse to approve, updated versions of each plan listed in paragraph (n) of the definition of “Conditions Precedent (Services Commencement)” in order to ensure that each such plan complies with, and will ensure compliance with, the requirements of the Deed (including to ensure that each such plan has been prepared in accordance with, and its content reflects, Good Industry Practice).

### 3.3 Notification, Waiver and Termination

- (a) The Service Provider must notify the Principal’s Representative in writing:
  - (i) on the progress of satisfaction of each of the Conditions Precedent (Mobilisation) and each of the Conditions Precedent (Services Commencement) on a weekly basis and when otherwise directed by the Principal’s Representative; and
  - (ii) as and when any of the Conditions Precedent (Mobilisation) or any of the Conditions Precedent (Services Commencement) has been satisfied.
- (b) The Principal may, by notice in writing to the Service Provider:
  - (i) waive the requirement under **clause 3.1(b)(i)** to satisfy any one or more of the Conditions Precedent (Mobilisation) on or before the Proposed Mobilisation Date;
  - (ii) waive the requirement under **clause 3.2(a)** to satisfy any one or more of the Conditions Precedent (Services Commencement), other than paragraph (c) of the definition of Conditions Precedent (Services Commencement), on or before the Proposed Services Commencement Date; and
  - (iii) extend the Proposed Mobilisation Date, the Proposed Services Commencement Date or any Mobilisation Milestone Date,  
  
at any time and for any or no reason, in its absolute discretion, by notice in writing to the Service Provider.
- (c) Despite any other provision of this Deed (including any provision of this Deed entitling the Service Provider to update the Mobilisation Plan), the Proposed Mobilisation Date, the Proposed Services Commencement Date and each Mobilisation Milestone Date may only be adjusted in accordance with **clause 3.3(b)**.
- (d) If the Principal:
  - (i) waives the requirement under **clause 3.1(b)(i)** to satisfy any one or more of the Conditions Precedent (Mobilisation) on or before the Proposed Mobilisation Date, such waiver does not limit or otherwise affect the Service Provider’s obligation under **clause 3.1(b)(ii)** to satisfy any such Conditions Precedent (Mobilisation) after the Proposed Mobilisation Date; or
  - (ii) waives the requirement under **clause 3.2(a)** to satisfy any one or more of the Conditions Precedent (Services Commencement), other than paragraph (c) of the definition of Conditions Precedent (Services Commencement), on or before the Proposed Services Commencement Date, such waiver does not limit or otherwise



affect the Service Provider's obligation under **clause 3.2(b)** to satisfy any such Conditions Precedent (Services Commencement) after the Proposed Services Commencement Date.

- (e) If the Service Provider is of the opinion that each of the Conditions Precedent (Mobilisation) have either been satisfied by the Service Provider or the subject of a waiver by the Principal under **clause 3.3(b)(i)**, the Service Provider must immediately notify the Principal in writing.
- (f) If, prior to the Proposed Services Commencement Date, the Service Provider is of the opinion that each of the Conditions Precedent (Services Commencement) have either been satisfied by the Service Provider or the subject of a waiver by the Principal under **clause 3.3(b)(ii)**, the Service Provider must immediately notify the Principal in writing.
- (g) Following receipt of any notice under **clause 3.3(e)**, the Principal must either:
  - (i) confirm in writing to the Service Provider that each of the Conditions Precedent (Mobilisation) have either been satisfied by the Service Provider or the subject of a waiver by the Principal under **clause 3.3(b)(i)**; or
  - (ii) notify the Service Provider that it does not agree with the Service Provider, in which case **clause 3.3(e)** will reapply.
- (h) Following receipt of any notice under **clause 3.3(f)**, the Principal must either:
  - (i) confirm in writing to the Service Provider that each of the Conditions Precedent (Services Commencement) have either been satisfied by the Service Provider or the subject of a waiver by the Principal under **clause 3.3(b)(ii)**; or
  - (ii) notify the Service Provider that it does not agree with the Service Provider, in which case **clause 3.3(f)** will reapply.
- (i) Without limiting any other right of the Principal under this Deed, if any of the following occur:
  - (i) any of the Conditions Precedent (Mobilisation) are not either:
    - (A) satisfied by the Service Provider; or
    - (B) the subject of a waiver by the Principal under **clause 3.3(b)(i)**, on or before the Proposed Mobilisation Date;
  - (ii) a Mobilisation Milestone does not occur by the relevant Mobilisation Milestone Date and in the Principal's opinion any of the Conditions Precedent (Services Commencement) are unlikely to be satisfied by the Service Provider, or the subject of a waiver by the Principal under **clause 3.3(b)(ii)**, by the Proposed Services Commencement Date; or
  - (iii) any of the Conditions Precedent (Services Commencement) are not either:
    - (A) satisfied by the Service Provider; or
    - (B) the subject of a waiver by the Principal under **clause 3.3(b)(ii)**, by the Proposed Services Commencement Date,then the Principal may terminate this Deed by notice in writing to the Service Provider.

### 3.4 Mobilisation

- (a) During the Mobilisation Stage, the Service Provider must carry out the Mobilisation Activities in accordance with **clause 4**, the Mobilisation Plan, the **Scope of Works**, the Redeployment Management Plan and the other requirements of this Deed.

- (b) The Service Provider acknowledges and agrees that, to the extent it is required to access any part of the CRN Assets during the Mobilisation Stage in order to carry out the Mobilisation Activities:
- (i) the Service Provider will do so under the Previous Service Provider's Rail Safety Accreditation;
  - (ii) the Service Provider must not do, or omit to do, anything that may cause or contribute to any breach by the Previous Service Provider of the Previous Service Provider's Rail Safety Accreditation; and
  - (iii) the Service Provider must comply with the reasonable policies, procedures and requirements of the Previous Service Provider when accessing any part of the CRN Assets, including in relation to safety.
- (c) The Service Provider:
- (i) prior to the Services Commencement Date, must not carry out any Services other than:
    - (A) the Mobilisation Activities;
    - (B) those referred to in **clause 3.1, 3.2, 3.3 or 3.4(a)**; or
    - (C) Modifications relating to the Mobilisation Activities or the Services referred to in **clause 3.1, 3.2, 3.3 or 3.4(a)**; and
  - (ii) will not be entitled to make, and the Principal will not be liable for, any Claim arising out of, or in any way in connection with, the carrying out of any Services prior to the Services Commencement Date other than:
    - (A) payment of each Mobilisation Payment for each Mobilisation Milestone completed in accordance with this Deed;
    - (B) payment amounts to which it is entitled under this Deed for a Modification in respect of Mobilisation Activities; and
    - (C) payment of the relevant Redeployment Costs Payments for the Redeployment Activities which are:
      - (1) contemplated by the Redeployment Management Plan as being carried out prior to the Services Commencement Date; and
      - (2) completed in accordance with this Deed.
- (d) The Service Provider:
- (i) must complete the Mobilisation Activities on or before the Proposed Services Commencement Date; and
  - (ii) warrants that it will be ready, willing and able (including at Law) to commence carrying out all Services in accordance with this Deed on and from the Proposed Services Commencement Date.
- (e) The Service Provider:
- (i) acknowledges and agrees that:
    - (A) it has reviewed the Previous Service Provider Disengagement Plan and warrants that:
      - (1) it will carry out the Mobilisation Activities in a manner consistent with the Previous Service Provider Disengagement Plan;



- (2) it will, as part of the Mobilisation Activities, perform all obligations of the Principal or any other Rail Transport Agency under the Previous Service Provider Disengagement Plan, except those which the Principal's Representative directs are not to be performed by the Service Provider; and
      - (3) without limiting **clause 3.4(e)(iii)**, compliance by the Previous Service Provider with the terms of the Previous Service Provider Disengagement Plan will enable the Service Provider to fulfil its obligations under this Deed in respect of the Mobilisation Activities and satisfy the warranty in **clause 3.4(d)(ii)**; and
    - (B) the Principal does not represent or warrant that any matter or circumstance referred to in the Previous Service Provider Disengagement Plan will occur as set out in the Previous Service Provider Disengagement Plan (including that Previous Service Provider will comply with the terms of the Previous Service Provider Disengagement Plan);
  - (ii) warrants that compliance by the Service Provider with the requirements of the Mobilisation Plan will enable the Service Provider to fulfil its obligations under this Deed in respect of the Mobilisation Activities and satisfy the warranty in **clause 3.4(d)(ii)**; and
  - (iii) will not be entitled to make, and the Principal will not be liable for, any Claim arising out of, or in any way in connection with, the Previous Service Provider Disengagement Plan, including any failure by the Previous Service Provider to comply with the terms or requirements of the Previous Service Provider Disengagement Plan.
- (f) Subject to **clause 3.3(g)**, the Principal will not, prior to the Services Commencement Date, be obliged to perform any obligation under this Deed, except to the extent it arises after the Mobilisation Date and in respect of the Mobilisation Activities.
- (g) Without limiting **clause 2.8**, the Service Provider:
- (i) acknowledges and agrees that:
    - (A) as at the date of this Deed, the Previous Service Provider is operating the Previous Network Control Centre;
    - (B) the Previous Network Control Centre (or certain parts of the Previous Network Control Centre) may not be available for use by Service Provider under this Deed;
    - (C) in respect of any current or future proposal by the Service Provider to:
      - (1) construct a Network Control Centre at [REDACTED] or any land owned by TfNSW or TAHE;
      - (2) construct a Backup Network Control Centre at [REDACTED] or any land owned by TfNSW or TAHE; or
      - (3) construct any Depot for use in connection with the Services on land owned by TfNSW or TAHE,including the implementation of any such proposal:



- (4) the Principal makes no representation or warranty that such proposal is acceptable to the Principal or that the Service Provider will be able to implement any such proposal; and
- (5) the Service Provider bears all risk associated with any such proposal and its implementation, including the risk of:
- (I) TfNSW or TAHE not owning the relevant land;
  - (II) such land not being available due to operational or other reasons;
  - (III) such land, any relevant structures (whether current or proposed) and any proposed use being subject to requirements at Law, including under the NSW Heritage Act, any relevant Local Environmental Plan and the EP&A Act;
  - (IV) the use of any land adjacent to or part of the operational rail corridor needing to be approved by the Rail Infrastructure Manager, including as it may currently or in future be required for operational purposes;
  - (V) access to the relevant land not being available as and when required by the Service Provider or at all; and
  - (VI) any inability of the Service Provider to satisfy the Mobilisation Milestones in accordance with this Deed;
- (D) it will not be entitled to make, and the Principal will not be liable in connection with, any Claim arising out of, or in any way in connection with, any failure by, or inability of, the Service Provider to:
- (1) obtain the usage of, or any other rights in respect of, the Previous Network Control Centre (or any part of the Previous Network Control Centre);
  - (2) construct a Network Control Centre at [REDACTED] or on any land owned by TfNSW or TAHE;
  - (3) construct a Backup Network Control Centre at [REDACTED] or on any land owned by TfNSW or TAHE;  
or
  - (4) construct any Depot for use in connection with the Services on land owned by TfNSW or TAHE,
- or any other matter which **clause 3.4(g)(i)(C)** provides is a risk borne by the Service Provider; and
- (E) nothing in **clause 3.4(g)(i)(C)(5)** limits the Service Provider's entitlements arising out of a Modification directed under **clause 14.1(a)**; and
- (ii) without limiting **clause 3.4(g)(i) or 27.5**, must make such arrangements as are necessary for the Service Provider to establish, operate and maintain a Network Control Centre and a Backup Network Control Centre (each of which must be located in a TfNSW Regional and Outer Metropolitan Area) for the duration of the Term, including by:
- (A) in respect of the initial Network Control Centre, constructing an appropriate facility at [REDACTED];

- (B) in respect of the initial Backup Network Control Centre, constructing an appropriate facility at [REDACTED];
- (C) acquiring, leasing or otherwise obtaining rights of access and use in respect of, relevant premises and facilities;
- (D) acquiring, developing, adapting, establishing or otherwise obtaining necessary rights of usage in respect of, all necessary telecommunications, information, technology and communications systems; and
- (E) entering into or implementing such other arrangements, and carrying out such other activities, as may be contemplated or required by the **Scope of Works**,

whether over or in respect of the Previous Network Control Centre or otherwise.

(h) The Service Provider must, in negotiating any:

- (i) leases or licences required for the Network Control Centre, the Backup Network Control Centre, the proposed Depot at [REDACTED], the proposed office at [REDACTED] or any other Depot; or
- (ii) telecommunications or information and communications technology agreements required for the Network Control Centre, the Backup Network Control Centre, the CRN Assets referred to in **paragraph (e)** of the definition of 'CRN Assets' in **clause 1.1**, the proposed Depot at [REDACTED], the proposed office at [REDACTED] or any other Depot,

ensure that such leases, licences and agreements provide:

- (iii) rights enforceable by the Principal or the Service Provider (in which latter case the Service Provider must exercise that right on the direction of the Principal's Representative) to require the lease, licence or agreement to be novated from the Service Provider to the Principal or its nominee on or after the Termination Date, on terms approved in writing by the Principal's Representative;
- (iv) in respect of any lease or licence, the Service Provider with the right to grant a sub-lease or sub-licence (as applicable) to a Step-in Party for the purpose of exercising Step-in Powers from time to time (which right the Service Provider must exercise if requested in writing by the Principal's Representative following a Step-in Event); and
- (v) options to extend the term of the lease, licence or agreement (including beyond the Term) as required by the Principal (which options the Service Provider must exercise if requested in writing by the Principal's Representative).

### 3.5 First Extension of the Term

- (a) Whether or not the Principal has issued a notice to the Service Provider under **clause 3.5(b)**, and whether or not the parties have reached agreement under **clause 3.5(c)**, the Principal may (in its absolute discretion), by notice in writing to the Service Provider:
  - (i) at any time between the date that is [REDACTED] years prior to the Original Expiry Date and the date that is [REDACTED] months prior to the Original Expiry Date, extend the Term by a period of [REDACTED] year, in which case **clause 3.5(f)(i)** will apply; or



- (ii) at any time between the date that is ■ years prior to the Original Expiry Date and the date that is ■ months prior to the Original Expiry Date, extend the Term by a period of ■ years, in which case **clause 3.5(f)(ii)** will apply.
- (b) Without limiting **clause 3.5(a)**, the Principal may (in its absolute discretion), at any time between the date that is ■ years prior to the Original Expiry Date and the date that is ■ months prior to the Original Expiry Date, notify the Service Provider in writing that:
  - (i) it is considering extending the Term for a period of ■ years under **clause 3.5(a)(ii)**; and
  - (ii) for that purpose it wishes to negotiate potential amendments to the **Payment Schedule** and any other provisions of this Deed that may apply during any such extension of the Term.
- (c) If the Principal issues a notice under **clause 3.5(b)**:
  - (i) subject to **clause 3.5(c)(ii)**, the parties must undertake good faith negotiations for a period of 30 Business Days (as such period may be extended by agreement in writing by the parties) with a view to agreeing any amendments to the **Payment Schedule** and such other provisions of this Deed that would apply in respect of any extension of the Term under **clause 3.5(a)(ii)**; and
  - (ii) the parties will not be obliged to undertake good faith negotiations in accordance with **clause 3.5(c)(i)** after the date that is ■ months prior to the Original Expiry Date.
- (d) The parties acknowledge and agree that, for the purposes of any negotiations referred to in **clause 3.5(c)**, the Service Provider must not propose amendments to the **Payment Schedule** or any other provisions of this Deed that are less favourable to the Principal than those which would apply in the absence of any agreement contemplated by **clause 3.5(c)**.
- (e) For the avoidance of doubt, and without limiting **clause 25.1**, any agreement reached between the parties in respect of the matters referred to in **clause 3.5(c)** will not limit the Principal's absolute discretion in determining whether or not to exercise any of its rights under **clause 3.5(a)**.
- (f) If the Principal has:
  - (i) exercised the right under **clause 3.5(a)(i)** to extend the Term by a period of ■ year, the terms and conditions of this Deed will remain unchanged; or
  - (ii) exercised the right under **clause 3.5(a)(ii)** to extend the Term by a period of ■ years, the terms and conditions of this Deed will remain unchanged, except as otherwise agreed in writing by the parties in accordance with **clause 3.5(c)**, with any such changes taking effect from (but excluding) the Original Expiry Date.
- (g) For the avoidance of doubt, if in accordance with **clause 3.5(c)** the parties are unable to agree any amendments to the **Payment Schedule** and such other provisions of this Deed that would apply in respect of any extension of the Term under **clause 3.5(a)(ii)**, the terms and conditions of this Deed will remain unchanged and the provisions of **paragraph (c) of Appendix 3** of the **Payment Schedule** will apply.

### 3.6 Second Extension of the Term

- (a) If:
  - (i) the Principal has exercised the right under **clause 3.5(a)(ii)** to extend the Term by a period of ■ years;



- (ii) the Principal has issued a notice under **clause 3.6(b)**; and
- (iii) the parties have reached agreement under **clause 3.6(c)**,  
the Principal may (in its absolute discretion), by notice in writing to the Service Provider at any time between the date that is ■ years prior to the First Extended Expiry Date and the First Extended Expiry Date, further extend the Term by a period of up to ■ years.
- (b) Without limiting **clause 3.6(a)**, if the Principal has exercised the right under **clause 3.5(a)(ii)** to extend the Term by a period of ■ years, the Principal may (in its absolute discretion), at any time between the date that is ■ years prior to the First Extended Expiry Date and the First Extended Expiry Date, notify the Service Provider in writing that:
  - (i) it is considering extending the Term under **clause 3.6(a)** (and specifying the period for which it proposes to extend the Term under **clause 3.6(a)**); and
  - (ii) for that purpose it wishes to negotiate potential amendments to the **Payment Schedule** and any other provisions of this Deed that may apply during any such extension of the Term.
- (c) If the Principal issues a notice under **clause 3.6(b)**, the parties must undertake good faith negotiations for a period of 30 Business Days (as such period may be extended by agreement in writing by the parties) with a view to agreeing such amendments to the **Payment Schedule** and other provisions of this Deed that would apply in respect of any extension of the Term under **clause 3.6(a)**.
- (d) The parties acknowledge and agree that, for the purposes of any negotiations referred to in **clause 3.6(c)**, the Service Provider must not propose amendments to the provisions of this Deed (other than the **Payment Schedule**) that are less favourable to the Principal than those which then apply.
- (e) For the avoidance of doubt, and without limiting **clause 25.1**:
  - (i) any agreement reached between the parties in respect of the matters referred to in **clause 3.6(c)** will not limit the Principal's absolute discretion in determining whether or not to exercise its rights under **clause 3.6(a)**; and
  - (ii) the Principal may not extend the Term under **clause 3.6(a)** if the Service Provider has proposed amendments to the **Payment Schedule** during the negotiations referred to in **clause 3.6(c)** and the parties have not reached agreement under **clause 3.6(c)** in respect of those amendments.
- (f) If the Principal has exercised the right under **clause 3.6(a)** to extend the Term, the terms and conditions of this Deed will remain unchanged, except as otherwise agreed in writing by the parties in accordance with **clause 3.6(c)**, with any such changes taking effect from (but excluding) the First Extended Expiry Date.

### 3.7 Expiry of Term

The expiry of the Term will not:

- (a) limit or otherwise affect the rights, obligations and liabilities of the parties which accrue, or relate to events and circumstances which occurred, prior to the expiry of the Term; or
- (b) limit or otherwise affect the rights, obligations and liabilities of the parties in respect of the Enhancement Activities or Support Services which have not been carried out as at the expiry of the Term.

### 3.8 Provision of Security

- (a) The Service Provider must, by the Proposed Mobilisation Date, provide to the Principal an unconditional and irrevocable undertaking, payable on demand, in favour of the Principal for [REDACTED].
- (b) The Security must:
- (i) be in the form set out in **Attachment B** or such other form approved by the Principal (in its absolute discretion);
  - (ii) be at all times from a bank or other financial institution that is satisfactory to the Principal (in its absolute discretion), that maintains the Required Rating;
  - (iii) be transferable to any Rail Transport Agency or transferees or successors of any Rail Transport Agency;
  - (iv) have no restriction on the ability of the Principal to deal with the Security, including that it must be able to be charged; and
  - (v) be payable at an office of the issuer in Sydney (or such other place as the Principal may approve).

### 3.9 Replacement of Security

- (a) If:
- (i) the issuer of the Security ceases to have the Required Rating;
  - (ii) the Principal makes a demand for payment of the whole or any amount of the Security;
  - (iii) the Principal exercises a right under **clause 3.5(a) or 3.6(a)**;
  - (iv) the Security is subject to an expiry date that is less than 12 months after the date upon which the Term is due to expire; or
  - (v) the Security is subject to an expiry date and, as at the Termination Date, that expiry date is less than 12 months after the Termination Date,
- then the Service Provider must, subject to **clause 3.9(c)**:
- (vi) in respect of **clause 3.9(a)(i)**, promptly notify the Principal of that circumstance; and
  - (vii) within:
    - (A) where **clause 3.9(a)(iv)** applies, the earlier of:
      - (1) 10 Business Days of a request by the Principal's Representative (which the Principal's Representative may only give after the date that is 12 months prior to the expiry date of the Security); and
      - (2) 6 months prior to the expiry date of the Security;
    - (B) where **clause 3.9(a)(v)** applies, 10 Business Days of the Termination Date; or
    - (C) where **clause 3.9(a)(i), 3.9(a)(ii) or 3.9(a)(iii)** applies, 10 Business Days of being requested to do so by the Principal's Representative,

procure the issue to the Principal of a replacement undertaking which satisfies the requirements of **clause 3.8** (which replacement undertaking will be the Security for the purposes of this Deed), following receipt of which the Principal must promptly return the Security that has been replaced.



- (b) If the Service Provider fails to comply with **clause 3.9(a)**, without limiting any other rights of the Principal, the Principal may call on and otherwise have recourse to the Security required to be replaced and the proceeds will be the Security for the purposes of this Deed.
- (c) Where:
- (i) **clause 3.9(a)(ii)** applies, the value of the replacement undertaking required to be provided by the Service Provider to the Principal under **clause 3.9(a)** will be the lower of:
- (A) [REDACTED]; and
- (B) [REDACTED] less the aggregate value of all demands by the Principal for payment under the Security to the extent that:
- (1) such demands have been satisfied and paid to the Principal; and
- (2) the proceeds of such demands have not been subsequently returned or otherwise repaid to the Service Provider; and
- (ii) **clause 3.9(a)(i), 3.9(a)(iii), 3.9(a)(iv) or 3.9(a)(v)** applies, the value of the replacement undertaking required to be provided by the Service Provider to the Principal under **clause 3.9(a)** will be the uncalled value of the Security being replaced.

### 3.10 Recourse to the Security

- (a) Despite any other provision of this Deed, the Principal may call on and otherwise have recourse to the Security (including the proceeds of the Security if converted to cash) in respect of:
- (i) any debt or other moneys due from the Service Provider to the Principal, whether under this Deed or pursuant to a judgment, arbitral award, expert determination or otherwise in any way in connection with this Deed, the Services or the CRN Assets; or
- (ii) the amount of any bona fide claim the Principal may have against the Service Provider under, or in any way in connection with, this Deed, the Services or the CRN Assets.
- (b) Nothing in this **clause 3.10** affects the right of the Principal to recover from the Service Provider the whole of the debt, moneys or claim or any balance that remains owing.

### 3.11 No Interest

The Principal is not obliged to pay the Service Provider interest on the Security or the proceeds of the Security.

### 3.12 No Trust

The Principal does not hold the Security or, if the Principal makes a demand under the Security, the proceeds on trust for the Service Provider.

### 3.13 Release of the Security

- (a) Subject to the rights of the Principal to have recourse to the Security, the Principal must release the Security:
- (i) if this Deed is terminated by the Service Provider under **clause 23.8**, within 40 Business Days after the Termination Date; or



- (ii) otherwise, within 12 months after the Termination Date,  
provided that the Principal may continue to hold the Security, to the value of any debt or other moneys due from the Service Provider to the Principal and any bona fide claim the Principal may have against the Service Provider under, or in any way in connection with, this Deed, the Services or the CRN Assets.
- (b) If the Principal continues to hold the Security for any debt or other moneys due or any bona fide claim in accordance with **clause 3.13(a)** and the aggregate value of such debts, other moneys and claims is less than the balance of the Security held by the Principal as at the end of the period referred to in **clause 3.13(a)(i) or 3.13(a)(ii)** (as applicable), the Service Provider may procure the issue to the Principal of a replacement undertaking which satisfies the requirements of **clause 3.8**, but which has a value equal to the aggregate value of such debts, other moneys and claims, following receipt of which the Principal must promptly return the Security that has been replaced. Any replacement undertaking provided by the Service Provider under this **clause 3.13(b)** will be the Security for the purposes of this Deed.

### 3.14 Parent Company Guarantee

The Service Provider must, prior to the Proposed Mobilisation Date, give the Principal:

- (a) a deed of guarantee and indemnity duly executed by each Parent Company in favour of the Principal in the form set out at **Attachment C** and which is, where required by Law, duly stamped; and
- (b) where a Parent Company is incorporated outside of Australia, a Foreign Legal Opinion which confirms that the deed of guarantee and indemnity has been duly executed by, and is binding and enforceable against, that Parent Company.

### 3.15 No Payment

Notwithstanding any other provision of this Deed to the contrary, compliance by the Service Provider with its obligations to provide the Security, the deed of guarantee and indemnity and, if required, each Foreign Legal Opinion, under this **clause 3** will be a precondition to any entitlement of the Service Provider to submit Payment Claims or receive payment.

## 4 Transfer of Previous Service Provider In-Scope Employees

### 4.1 Offers of employment

- (a) No later than [REDACTED] prior to the Proposed Services Commencement Date, the Service Provider must make written offers of employment to each Previous Service Provider In-Scope Employee:
  - (i) with the employment commencement date being the Services Commencement Date, or such earlier date as may be agreed by the Previous Service Provider and the Service Provider;
  - (ii) that are on the same terms and conditions of employment, or substantially similar, but no less favourable, terms and conditions of employment, as those under which the Previous Service Provider In-Scope Employee is employed by the Previous Service Provider immediately prior to the date on which the offer is made by the Service Provider (including in respect of the recognition of all accrued entitlements in accordance with **clause 4.2**);
  - (iii) that are made on the basis that acceptance of the offer by any Previous Service Provider In-Scope Employee will constitute a termination of the Previous Service

- Provider In-Scope Employee's employment with the Previous Service Provider with effect immediately prior to the Services Commencement Date by reason of the Previous Service Provider In-Scope Employee's resignation;
- (iv) for a position which is the same or equivalent position to that occupied by the Previous Service Provider In-Scope Employee with Previous Service Provider immediately prior to the date on which the offer is made by the Service Provider;
  - (v) that are irrevocable prior to the date that is 15 Business Days after being made, or such later date agreed between the Principal and the Service Provider (**Acceptance Date**) (but which automatically lapse if not accepted by the Acceptance Date), or if the Previous Service Provider In-Scope Employee is on authorised leave on the Acceptance Date, prior to the date the Previous Service Provider In-Scope Employee returns from that authorised leave (but which automatically lapse if not accepted by that time), other than in accordance with **clause 4.1(a)(vi)(B)**;
  - (vi) that are conditional upon:
    - (A) the Previous Service Provider In-Scope Employee remaining employed by the Previous Service Provider until, and not having given or been given notice of termination of their employment with the Previous Service Provider prior to, the Services Commencement Date; and
    - (B) this Deed not being terminated before the Services Commencement Date and automatically lapse upon the termination of this Deed; and
  - (vii) that adopt all approvals for paid and unpaid leave given by the Previous Service Provider prior to the Services Commencement Date for absences following the Services Commencement Date.
- (b) The Principal and the Service Provider agree to use reasonable endeavours to ensure that the Previous Service Provider In-Scope Employees offered employment under **clause 4.1(a)** accept the offer of employment.
  - (c) Each Previous Service Provider In-Scope Employee who accepts the offer of employment made by the Service Provider under **clause 4.1(a)** will be a Transferring Employee.

#### **4.2 Accrued entitlements and recognition of prior service**

- (a) The Service Provider must recognise each Transferring Employee's continuous service with Previous Service Provider (including any prior service currently recognised by the Previous Service Provider) for all purposes, including for the purposes of any Industrial Instruments which apply to the Previous Service Provider In-Scope Employees immediately prior to the Services Commencement Date, the FW Act and any other Law applicable to or regulating the employment. However, this does not require the Service Provider to recognise any Transferring Employee's service if the Transferring Employee has already had the benefit of an entitlement, the amount of which was calculated by reference to a period of service with or recognised by the Previous Service Provider.
- (b) The Service Provider must recognise all accrued leave entitlements for Transferring Employees which are currently recognised by the Previous Service Provider to the extent that they are not taken prior to the Services Commencement Date.



#### 4.3 Transfer of business

The Service Provider and the Principal acknowledge and agree that it is intended that, pursuant to the terms of this Deed, when a Transferring Employee becomes employed by the Service Provider, there will be a transfer of business as the requirements of section 311(1)(a) to 311(1)(d) of the FW Act will be satisfied and the Service Provider agrees that it will not seek any orders under Part 2-8, Division 3 of the FW Act (other than an order referred to in section 319(1)(b)).

#### 4.4 Indemnity

The Service Provider indemnifies the Principal from and against all liability (including its full legal costs) suffered, paid or incurred in respect of a Transferring Employee, where such liability relates to any claim by, or on behalf of, a Transferring Employee arising out of, or in any way in connection with, their employment by the Service Provider and where the claim arises on or after the Services Commencement Date.

#### 4.5 Unpaid Previous Service Provider In-Scope Employee Allowances

Without limiting any other right of the Principal, any Unpaid Previous Service Provider In-Scope Employee Allowance will become a debt due and payable by the Service Provider to the Principal on demand by the Principal.

#### 4.6 Tax treatment of Previous Service Provider In-Scope Employee entitlements

The parties acknowledge and agree that:

- (a) the payments to be made by the Principal to the Service Provider under this Deed include an amount of [REDACTED], representing the Service Provider's allowance for its assumed potential liability to the Previous Service Provider In-Scope Employees for employee entitlements (such as redundancy and leave entitlements), which is made up of a base employee entitlement amount of [REDACTED] (**Base Entitlement Amount**) and an amount of [REDACTED] (**Applied Tax Amount**) based on the assumption made by the Service Provider that the Base Entitlement Amount will be assessable income of the Service Provider for the purposes of income tax Laws;
- (b) if directed by the Principal's Representative (at any time), the Service Provider must seek a private binding ruling from the Commissioner of Taxation (**ATO Ruling**) to confirm whether any or all of the Base Entitlement Amount is assessable income of the Service Provider and therefore whether any income tax is payable on receipt of the Base Entitlement Amount by the Service Provider (**Tax Amounts**) on the following basis:
  - (i) the Service Provider must prepare and lodge a comprehensive application for the ATO Ruling, seeking (and with submissions arguing for), as best as possible, a ruling that the Base Entitlement Amount is not assessable income;
  - (ii) the Service Provider must give the Principal the opportunity to review and approve the ATO Ruling application prior to lodgement;
  - (iii) the Principal must provide any amendments to the ATO Ruling application within 25 Business Days of receipt from the Service Provider, and the Service Provider must include any reasonable amendments requested by the Principal;
  - (iv) the Service Provider must not lodge the ATO Ruling application with the Australian Taxation Office unless the prior approval of the Principal has been obtained (which must not be unreasonably withheld);



- (v) the Service Provider must not make any amendments to the ATO Ruling application after it has been approved by the Principal without the Principal's prior approval in writing (which must not be unreasonably withheld);
  - (vi) the Service Provider must keep the Principal informed of the progress of the application for the ATO Ruling and promptly provide the Principal with a copy of any ATO Ruling received; and
  - (vii) the Service Provider must provide the Principal with details of any queries raised or further information requested by the Australian Taxation Office and a copy of any response issued by the Service Provider to the Australian Taxation Office at the same time it is issued to the Australian Taxation Office;
- (c) in the event that the decision of the Commissioner of Taxation in the ATO Ruling is that any or all of the Base Entitlement Amount is assessable income of the Service Provider and therefore Tax Amounts are payable, the Service Provider must (if directed to do so by the Principal in circumstances where the Principal is of the view that an objection has reasonable prospects of success) object to the decision (**Objection**) on the following basis:
- (i) the Service Provider must prepare and lodge a comprehensive Objection and otherwise liaise as required with the Australian Taxation Office, seeking (and with submissions arguing for), as best as possible, a ruling that the Base Entitlement Amount is not assessable income (or a corresponding change in any relevant existing ATO Ruling);
  - (ii) the Service Provider must give the Principal the opportunity to review and approve the Objection application prior to lodgement;
  - (iii) the Principal must provide any amendments to the Objection within 25 Business Days of receipt from the Service Provider, and the Service Provider must include any reasonable amendments requested by the Principal;
  - (iv) the Service Provider must not lodge the Objection with the Australian Taxation Office unless the prior approval of the Principal has been obtained (which must not be unreasonably withheld);
  - (v) the Service Provider must not make any amendments to the Objection after it has been approved by the Principal without the Principal's prior approval in writing (which must not be unreasonably withheld);
  - (vi) the Service Provider must keep the Principal informed of the progress of the Objection and its outcome; and
  - (vii) the Service Provider must provide the Principal with details of any queries raised or further information requested by the Australian Taxation Office and a copy of any response issued by the Service Provider to the Australian Taxation Office at the same time it is issued to the Australian Taxation Office;
- (d) to the extent that:
- (i) the decision of the Commissioner of Taxation in respect of any ATO Ruling is that any or all of the Base Entitlement Amount is not assessable income of the Service Provider;
  - (ii) the outcome or effect of any Objection is that any or all of the Base Entitlement Amount is not assessable income of the Service Provider; or

- (iii) the assumption made by the Service Provider that the Base Entitlement Amount will be assessable income of the Service Provider for the purposes of income tax Laws is otherwise determined to be incorrect or the Service Provider does not treat the Base Entitlement Amount as assessable income in its tax documentation,
- the Applied Tax Amount will:
- (iv) to the extent it has been paid by the Principal, be a debt due from the Service Provider to the Principal, payable on demand; and
  - (v) to the extent it has not been paid by the Principal, be deducted from the next Monthly Services Fee and, to the extent the Applied Tax Amount exceeds the next Monthly Services Fee, each subsequent Monthly Services Fee until the Applied Tax Amount is reduced to \$Nil; and
- (e) the Service Provider will not be entitled to make, and the Principal will not be liable for, any Claim arising out of, or in any way in connection with:
- (i) the Service Provider's obligations under this **clause 4.6**; or
  - (ii) the allowances referred to in **clause 4.6(a)** being insufficient to adequately compensate the Service Provider for its potential liability to the Previous Service Provider In-Scope Employees for employee entitlements (such as redundancy and leave entitlements).

#### 4.7 Redeployment Management Plan

Without limiting any other obligation of the Service Provider under this Deed (including under the other provisions of this **clause 4**) or otherwise at Law, the Service Provider:

- (a) must comply with the Redeployment Management Plan, and otherwise ensure that the outcomes set out in the Redeployment Management Plan are achieved; and
- (b) may submit a revised Redeployment Management Plan to the Principal's Representative for its approval under clause 6.9, which approval the Principal's Representative may withhold in its absolute discretion.

---

## Part C – Services

### 5 Service Provider's Obligations

#### 5.1 General Obligations

The Service Provider must:

- (a) carry out the Services:
  - (i) except as otherwise expressly permitted or required under this Deed, during the Term;
  - (ii) in a diligent, timely, competent, safe, proper and workmanlike manner;
  - (iii) exercising a high standard of skill, diligence and care;
  - (iv) in accordance with Good Industry Practice;
  - (v) in a manner which provides adequate protection to the CRN Assets and which maintains (including by way of preventative maintenance) the CRN Assets in good and substantial repair, order and condition;



- (vi) using workmanship and materials of a high quality which are fit for their Intended Purposes and, if replacement of any worn, failed or defective parts is required in the carrying out of the Services, using replacement parts of equal or better quality to those required under this Deed and that are fit for their Intended Purposes;
  - (vii) so that, at all times during the Term, the CRN Assets will be, and will remain, fit for their Intended Purposes and otherwise comply with this Deed;
  - (viii) so as to meet the objectives referred to in **clause 2.1**; and
  - (ix) in accordance with the requirements of this Deed and all Laws;
- (b) carry out all preventative maintenance, repair, rectification, replacement and restoration work as may be necessary to ensure compliance with its obligations and warranties under this Deed;
- (c) in carrying out any maintenance, repair, replacement, reinstatement or rectification work under this Deed, continue to maintain rail services and the ongoing operation of the CRN and to carry out all other aspects of the Services or, if that is not possible, carry out the relevant maintenance, repair, replacement, reinstatement or rectification work in such a way as to minimise the disruption to rail services, the ongoing operation of the CRN and the carrying out of other aspects of the Services; and
- (d) keep the CRN Assets clean and tidy and free from waste material, rubbish and other surplus material, and store and dispose of waste material, rubbish and other surplus material in appropriate receptacles.

## 5.2 General Warranty

- (a) The Service Provider warrants that:
- (i) all parts of the CRN Assets will be operated, maintained and repaired so as to remain, at all times during the Term, fit for their Intended Purposes;
  - (ii) each plan included in **Appendix C** of the **Scope of Works** or otherwise required to be prepared in accordance with the **Scope of Works** (including each 3MWP, each 10MSP and each 50AMP) will be fit for its Intended Purposes; and
  - (iii) compliance by the Service Provider with each plan included in **Appendix C** of the **Scope of Works** or otherwise prepared in accordance with the **Scope of Works** (including each 3MWP, each 10MSP and each 50AMP) will result in the satisfaction of the warranty under **clause 5.2(a)(i)** and otherwise result in the Service Provider carrying out the Services in accordance with this Deed.
- (b) The Service Provider will not be entitled to make, and the Principal will not be liable for, any Claim arising out of, or in any way in connection with, compliance by the Service Provider with any plan included in **Appendix C** of the **Scope of Works** or otherwise prepared in accordance with the **Scope of Works** (including any 3MWP, any 10MSP or any 50AMP) not resulting in the Service Provider carrying out the Services in accordance with this Deed.
- (c) The Services include any activities and work necessary to:
- (i) ensure that all parts of the CRN Assets will be operated, maintained and repaired so as to remain, at all times during the Term, fit for their Intended Purposes; and
  - (ii) otherwise comply with this Deed,



notwithstanding that such activities and work may not be included in, or contemplated by, any plan included in **Appendix C** of the **Scope of Works** or otherwise prepared in accordance with the **Scope of Works** (including any 3MWP, 10MSP or 50AMP).

### 5.3 Services to Comply

The Service Provider must carry out the Services in accordance with:

- (a) all Laws;
- (b) this Deed;
- (c) all relevant NSW Government Policies; and
- (d) all Standards and Codes.

### 5.4 Minimise Disruption

The Service Provider must:

- (a) ensure that in carrying out the Services it does all things and takes all measures reasonably necessary to protect people and property;
- (b) avoid unnecessary interference with the passage of people and vehicles;
- (c) minimise noise and disturbance to those affected by the Services;
- (d) provide such security measures as are reasonably necessary for the protection and the security of the CRN Assets against theft, vandalism, unauthorised entry and any other unlawful acts; and
- (e) coordinate the carrying out of the Services with, cooperate with, and not interfere with, the Principal and any employees, agents, invitees, consultants, contractors and subcontractors of the Principal (and each of their respective employees and agents) on or in the vicinity of the CRN Assets, including any persons carrying out works or services in respect of any Carry-Over Works or Third Party Constructed Enhancement Assets or works or services which relate to, or interface with, any Services or the CRN Assets.

### 5.5 Rectification of Non-Compliances

- (a) Without limiting the provisions of the **KPI Schedule** or the **Payment Schedule**, if, during the Term, the Principal's Representative discovers or becomes aware of a Non-Compliance, the Principal's Representative may give the Service Provider a Direction:
  - (i) specifying the Non-Compliance; and
  - (ii) either:
    - (A) requiring the Service Provider to correct the Non-Compliance and specifying a reasonable time within which this must occur; or
    - (B) requiring the Service Provider to prepare and submit a Failure Report and Rectification Plan in accordance with the **KPI Schedule**.
- (b) The Service Provider must:
  - (i) comply with any Direction under **clause 5.5(a)**; and
  - (ii) in respect of any Non-Compliances which the Service Provider otherwise discovers or becomes aware of during the Term, rectify those Non-Compliances in accordance with the **KPI Schedule** or, to the extent the provisions of the **KPI Schedule** do not apply, within a reasonable time.

- (c) Without limiting any other right of the Principal, to the extent any Non-Compliance exists at the expiry of the Term (whether or not discovered during the Term), the costs incurred (or anticipated to be incurred) by the Principal in having the Non-Compliance rectified by itself or others (as certified by the Principal's Representative) will become a debt due and payable by the Service Provider to the Principal.
- (d) Except to the extent otherwise expressly provided in this Deed, the Service Provider will not be entitled to make, and the Principal will not be liable for, any Claim arising out of, or in any way in connection with, its obligations under this **clause 5.5**.
- (e) Neither the Principal's rights, nor the Service Provider's liabilities, whether under this Deed or otherwise according to Law, will be in any way affected or limited by:
  - (i) the rights conferred upon the Principal or the Principal's Representative by this **clause 5.5** or any other provision of this Deed;
  - (ii) the exercise of, or the failure by the Principal or the Principal's Representative to exercise, any such rights; or
  - (iii) any notice or direction of the Principal's Representative under **clause 5.5(a)**.

#### 5.6 Advancements in Technology and Safety

The Service Provider acknowledges and agrees that the Services extend to incorporating advancements in technology, safety and maintenance practices to the extent consistent with Good Industry Practice.

#### 5.7 Relevant Documents

- (a) The Service Provider agrees that it has satisfied itself as to, and has obtained and read a copy of and fully understands, the Relevant Documents in existence as at the date of this Deed and has made due allowance in the Monthly Services Fee, each Mobilisation Payment and any rates and prices included in the **Payment Schedule** for the performance and satisfaction its obligations in respect of those Relevant Documents.
- (b) Subject to **clause 5.7(f)(ii)**, the Service Provider must not do, or omit to do, anything that will cause or contribute to TAHE or TfNSW breaching their respective obligations under any of the Relevant Documents, to the extent that they are relevant to, or affect, the Services or the CRN Assets.
- (c) Without limiting the Principal's rights under this Deed, to the extent that the Service Provider breaches **clause 5.7(b)**, the Service Provider must do all things necessary to assist TfNSW or TAHE to remedy the breach.
- (d) Without limiting the above, the Service Provider agrees that:
  - (i) the provisions of the Relevant Documents may affect the ability of the Service Provider to carry out the Services; and
  - (ii) the Service Provider will not be entitled to make, and the Principal will not be liable for, any Claim arising out of, or in any way in connection with, the Relevant Documents, except to the extent otherwise expressly provided in this Deed in respect of a Qualifying Change in Relevant Documents in respect of which the Service Provider has complied with **clause 5.7(f)(i)**.
- (e) The Service Provider acknowledges that:
  - (i) the list of Relevant Documents provided in **Schedule 6** to this Deed may not be complete, and other documents may be in existence at the time of executing this Deed that are Relevant Documents;



- (ii) additional Relevant Documents may come into existence after the date of this Deed; and
  - (iii) the Relevant Documents may be updated, amended or terminated after the date of this Deed.
- (f) Without limiting **clause 29**, where there is a Change in Relevant Documents:
- (i) the Service Provider must give written notice to the Principal's Representative within 5 Business Days after it first becomes aware, or ought reasonably to have first become aware, of the Change in Relevant Documents containing:
    - (A) details of the Change in Relevant Documents; and
    - (B) a Variation Impacts Statement as an attachment; and
  - (ii) if a notice is given by the Service Provider which complies with **clause 5.7(f)(i)**, then within 10 Business Days of the notice being given, the Principal's Representative may direct the Service Provider to disregard the Change in Relevant Documents.

### 5.8 Supply of Records (Including Information Documents) by the Principal

- (a) Records supplied by the Principal to the Service Provider will remain the property of the Principal and the Service Provider must return it to the Principal immediately upon demand in writing, and otherwise within 20 Business Days of the Termination Date. The Service Provider must ensure Records are not, without the prior written approval of the Principal, used, copied or reproduced for any purpose other than the carrying out of the Services.
- (b) The Service Provider acknowledges and agrees that:
  - (i) any Information Document has been or will be provided only for the Service Provider's convenience and does not form part of this Deed;
  - (ii) any Information Document (including the accuracy, adequacy, suitability or completeness of it) has not been in any way, and will not be, relied upon by the Service Provider for any purpose (including entering into this Deed or carrying out the Services);
  - (iii) the Principal does not:
    - (A) assume any responsibility or duty of care in respect of; or
    - (B) warrant, guarantee or make any representation as to, Information Documents (including its accuracy, suitability, completeness or adequacy for the purposes of this Deed);
  - (iv) the Service Provider will not be entitled to make, and the Principal will not be liable for, any Claim arising out of, or in any way in connection with:
    - (A) any inaccuracy, incompleteness or inadequacy of Information Documents;
    - (B) any use of or reliance upon any Information Document by the Service Provider;
    - (C) any other fact, matter or thing arising out of, or in any way in connection with, any Information Document; or
    - (D) the non-provision of any other information by the Principal or any Rail Transport Agency;



- (v) the Service Provider must not rely upon (or allow any other person to rely upon) Information Documents for or in any way in connection with the carrying out of the Services; and
  - (vi) without prejudice to **clause 5.8(b)(i)**, it has by its own independent enquiries satisfied itself as to, and taken into account, any matter or thing relevant to the carrying out of the Services disclosed by any Information Document.
- (c) The Service Provider releases the Principal from any Claim against the Principal arising out of, or in any way in connection with:
- (i) the provision of, or the purported reliance upon, or use of, Information Documents by the Service Provider or any other person to whom any Information Document is disclosed by the Service Provider;
  - (ii) any breach by the Service Provider of this **clause 5.8**; or
  - (iii) Information Documents being relied upon or otherwise used by the Service Provider or any other person to whom any Information Document is disclosed by the Service Provider in the preparation of any document, including any Information Document which is 'misleading or deceptive' or 'false or misleading' (within the meaning of those terms in the Australian Consumer Law (set out in **Schedule 2** of the *Competition and Consumer Act 2010* (Cth)), or any equivalent provision of State or Territory legislation).

### 5.9 Service Provider's General Representations and Warranties

The Service Provider represents and warrants to the Principal that each of the following statements is true and correct:

- (a) it is a corporation duly incorporated and validly existing under the laws of the place of its incorporation specified in this Deed;
- (b) it has the power to enter into and perform its obligations under this Deed, to carry out the transactions contemplated by this Deed and to carry on its business as now conducted or contemplated;
- (c) it has taken all necessary corporate action to authorise the entry into and performance of this Deed and to carry out the transactions contemplated by this Deed;
- (d) this Deed creates valid and binding obligations and is enforceable in accordance with its terms, subject to any necessary stamping and registration;
- (e) the execution and performance by the Service Provider of this Deed and each transaction contemplated under this Deed did not and will not violate in any respect a provision of:
  - (i) a Law or treaty or a judgment, ruling, order or decree of an Authority binding on it;
  - (ii) its memorandum or articles of association or other constituent documents; or
  - (iii) any other document or agreement that is binding on it or its assets;
- (f) no suit, cause of action, proceeding, application, claim or investigation is current, pending, threatened or in prospect against it which would materially affect its ability to comply with its obligations under this Deed;
- (g) no resolution has been passed for its winding up;
- (h) no resolution has been passed for the appointment of an administrator to it;
- (i) there are no facts, matters or circumstances that give any person the right to apply to wind it up or to appoint a controller within the meaning of section 9 of the *Corporations*

*Act 2001 (Cth)* or an administrator or an inspector under the *Corporations Act 2001 (Cth)* in respect of it or any part of its undertaking or assets or income; and

- (j) no Insolvency Event has occurred and is continuing.

### 5.10 Notification of Change

The Service Provider must immediately notify the Principal upon becoming aware that a representation or warranty given under **clause 5.9** has become untrue.

### 5.11 Inquiries

- (a) Without limiting any other obligation of the Service Provider, the Service Provider must, within the timeframe required by the Principal, provide all assistance required by the Principal in respect of any inquiry into or concerning the Services, the CRN Assets or this Deed. For these purposes, an inquiry includes:
  - (i) any administrative or statutory review, audit or inquiry (whether within or external to the Principal); and
  - (ii) without limiting **clause 5.11(a)(i)**:
    - (A) any request for information from the NSW Auditor-General;
    - (B) any Ministerial inquiries;
    - (C) any order for documents pursuant to the Standing Rules and Orders adopted by the Legislative Council of New South Wales;
    - (D) any requests pursuant to the GIPA Act;
    - (E) any subpoenas or notices to produce; and
    - (F) any other ad-hoc request related to the Services made on reasonable grounds.
- (b) Without limiting **clause 5.11(a)**, the assistance to be provided by the Service Provider includes:
  - (i) the provision of requested documents or information relevant to the Services or the CRN Assets; and
  - (ii) answering questions relevant to the Services or the CRN Assets, within the timeframe required by the Principal's Representative.

---

## Part D – Contract Administration

### 6 Contract Administration

#### 6.1 Service Provider's Associates

The Service Provider warrants that each of its Associates engaged in, or in connection with, the carrying out of the Services hold (and will continue to hold) all necessary Approvals and are (and will continue to be) properly authorised, accredited, trained and experienced to carry out:

- (a) the Mobilisation Activities for the duration of the Mobilisation Stage; and
- (b) the Services for the duration of the Term.

#### 6.2 Key Personnel

- (a) The Service Provider:



- (i) must ensure the Key Personnel are engaged in the carrying out of the Services in their respective capacities set out in the Workforce and Transition Plan; and
- (ii) must only replace the Key Personnel:
  - (A) in circumstances of death, serious illness or change of employment to another employer (that is not a Related Body Corporate of the Service Provider) or where otherwise directed or agreed by the Principal; and
  - (B) with others (having equivalent skill and experience) approved by the Principal's Representative acting reasonably.
- (b) The Principal may, at its absolute discretion, direct the Service Provider to remove any Key Personnel. Where directed by the Principal to remove Key Personnel, the Service Provider must replace those Key Personnel as directed by the Principal and in accordance with **clause 6.2(a)(ii)(B)**.

### 6.3 Keeping of Records

- (a) The Service Provider must prepare and maintain up-to-date, comprehensive, true and accurate Records.
- (b) The Records must include:
  - (i) any records provided to the Service Provider by the Principal;
  - (ii) copies of all primary source documents, including invoices and timesheets;
  - (iii) all information necessary to enable the Principal and the Principal's Representative to consider and verify any Claim by the Service Provider; and
  - (iv) copies of all documents or other material in which the Intellectual Property referred to in **clause 21.2** subsists.
- (c) Where the Records referred to in this clause belong to or are within the control of any Related Body Corporate or Associate of the Service Provider, the Service Provider must procure that the Related Body Corporate or Associate maintains those Records and provides access to them for the purposes of any audit or inspection contemplated under this Deed.

### 6.4 Open access principles

- (a) The Service Provider must at all times (including, where applicable, after the expiry of the Term, but subject to **clause 6.4(c)**) give the Principal, the Principal's Representative, each of the Principal's Associates and their respective nominees (including any Step-in Party) access to:
  - (i) the CRN Assets, Plant and Equipment, any other Asset used by or on behalf of the Service Provider or any of its Associates for the purposes of carrying out the Services and any place where the Services have been, or are being, carried out or materials are being prepared or stored (including any premises or land used or occupied by any of the Service Provider's Associates) for any reason, including for the purpose of conducting an audit, subject always to compliance by them with reasonable safety procedures established by the Service Provider or relevant Service Provider's Associate in relation to the CRN Assets or such other place; and
  - (ii) all Records within the custody or control of the Service Provider or any of its Related Bodies Corporate or Associates, other than Records that are Privileged Records, for any reason, including for the purpose of:



- (A) conducting an audit;
  - (B) copying such Records;
  - (C) enabling the Principal and the Principal's Representative to consider and verify any Claim by the Service Provider; or
  - (D) otherwise using such Records in connection with any tender or procurement process relating to the engagement (or potential engagement) of any Successor Service Provider or in connection with the exercise of any Step-in Powers.
- (b) For the avoidance of doubt, the right to inspect or audit under **clause 6.4(a)** includes the right to inspect or audit CRN Assets, Plant and Equipment, Records or other Assets, places or things referred to in **clause 6.4(a)** for the purposes of:
- (i) assessing compliance by the Service Provider or those items with the requirements of this Deed; and
  - (ii) ascertaining the status, content and condition of those items.
- (c) The Service Provider must:
- (i) ensure that the Principal, the Principal's Representative, each of the Principal's Associates and their respective nominees each have remote access to all Records and the information management systems of the Service Provider relevant to this Deed, the Services or the CRN Assets, or, if such Records are not stored electronically or capable of being accessed remotely, provide the necessary access as soon as reasonably practicable after a request from the Principal's Representative; and
  - (ii) in respect of Records (other than Records that are Privileged Records):
    - (A) that are stored on a medium other than in writing, make available on reasonable request by the Principal's Representative such facilities as may be necessary to enable a legible reproduction to be created; and
    - (B) provide the Principal, the Principal's Representative each of the Principal's Associates and their respective nominees with all assistance, working accommodation, facilities and personnel required for the purposes of this **clause 6.4** (including the interpretation and analysis of the Records).
- (d) Without limiting **clauses 6.4(a) and 6.4(c)**, the Service Provider must:
- (i) ensure that the Principal, the Principal's Representative, each of the Principal's Associates and their respective nominees each have direct access to any information, documents or material that:
    - (A) is maintained by a third party (including any of the Service Provider's Related Bodies Corporate or Associates); and
    - (B) the Principal, the Principal's Representative, each of the Principal's Associates and their respective nominees are each entitled to have access to, or have copies of, from the Service Provider under this Deed;
  - (ii) ensure that any contractual arrangements between the Service Provider or any of the Service Provider's Related Bodies Corporate or Associates and any third parties acknowledge and fully facilitate the rights of access under **clause 6.4(d)(i)**; and

- (iii) on demand, provide to the Principal's Representative written evidence (including copies of any contractual arrangements referred to in **clause 6.4(d)(ii)**) showing compliance by the Service Provider with its obligations under **clause 6.4(d)(ii)**.
- (e) The Service Provider must cooperate, and must ensure that each of the Service Provider's Related Bodies Corporate and Associates cooperate, with the Principal and any other person exercising a right under this **clause 6.4**.
- (f) In addition to any other right the Principal has under this Deed, with effect from the Termination Date, where the Principal requires access to any system, Software or other Material (in respect of which the Principal has Intellectual Property rights under this Deed):
  - (i) that has been used by the Service Provider in carrying out the Services; and
  - (ii) that is hosted on a computer server or other computer system owned or controlled by the Service Provider,the Service Provider must provide the Principal with all reasonable:
  - (iii) access to that system, Software or other Material; and
  - (iv) assistance in transferring that system, Software or other Material from that computer server or other computer system, to a computer server or other computer system selected by the Principal (including any server or system of a Successor Service Provider),for a period of 12 months following the Termination Date.

## 6.5 Cost of Audit

- (a) Subject to **clause 6.5(b)**, any audit or inspection undertaken by, or on behalf of, the Principal in accordance with **clause 6.4** will be at the Principal's cost, unless the audit or inspection reveals a Non-Compliance or is undertaken following a Non-Compliance (including an audit or inspection undertaken by or on behalf of the Principal following a failure by the Service Provider to undertake the audit or inspection), in which case the cost of the audit or inspection will become a debt due and payable by the Service Provider to the Principal.
- (b) Without limiting any other right of the Principal and without limiting the **KPI Schedule**:
  - (i) if any two audits or inspections undertaken by, or on behalf of, the Principal in accordance with **clause 6.4** in any 12 month period reveal a Non-Compliance, the Principal may engage an auditor for a reasonable period (per instance in which this **clause 6.5(b)(i)** is triggered) to carry out a follow up audit (and inspections, as necessary) in accordance with **clause 6.4** with respect to each such Non-Compliance, the subject matter of each such Non-Compliance, and the compliance of the Service Provider with requirements of the Deed that are in respect of subject matter substantially similar to the subject matter of any such Non-Compliance; or
  - (ii) if any two audits or inspections undertaken by, or on behalf of, the Principal in accordance with **clause 6.4** in any 12 month period reveal repeated material Non-Compliances, the Principal may engage an auditor to carry out a reasonable number of follow-up audits and inspections in accordance with **clause 6.4** with respect to the material Non-Compliances, the subject matter of the material Non-Compliances, and the compliance of the Service Provider with requirements of



the Deed that are in respect of subject matter substantially similar to the subject matter of any of the material Non-Compliances, until such time as:

- (A) the audits and inspections indicate that the Non-Compliances have been rectified; and
- (B) the Principal's Representative is satisfied (acting reasonably) based on the results of those audits and inspections that there are not any, or are unlikely to be any, systemic failures by the Service Provider to comply with the requirements of this Deed:
  - (1) in connection with the subject matter of any of the material Non-Compliances; or
  - (2) that are in respect of subject matter substantially similar to the subject matter of any of the material Non-Compliances,

and the costs incurred (or anticipated to be incurred) by the Principal in doing so (as certified by the Principal's Representative) will become a debt due and payable by the Service Provider to the Principal.

- (c) Nothing in **clause 6.4** or this **clause 6.5** limits or otherwise affects any obligation of the Service Provider to carry out audits and inspections in accordance with the requirements of the **Scope of Works**.

## 6.6 State Records

In addition to the Service Provider's other obligations under this Deed, from the Mobilisation Date until the expiry of the Term, the Service Provider must:

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



## 6.7 Back-up

To the extent required by the Principal's Representative, the Service Provider must, on and from the date that is three months after the Services Commencement Date, ensure that a copy of:

- (a) all electronic Records or data emanating from the information and document management systems maintained, or required to be maintained, in any way in connection with the Services; and
- (b) any updates or amendments to any software or to the configuration of any software carried out, or undertaken by or on behalf of the Service Provider, in any way in connection with the Services, where that software is:
  - (i) software in respect of which the **Scope of Works** requires a back-up of updates to the software; or
  - (ii) software in respect of which it is reasonably practicable to provide a back-up of such updates,

is backed up (at intervals nominated by the Principal's Representative) to a computer server or other computer or electronic system, or other media approved by the Principal's Representative, in a format that the Principal's Representative can freely access.

## 6.8 Submission of Review Documents for review by the Principal's Representative

- (a) The Service Provider must submit Review Documents to the Principal's Representative:
  - (i) progressively and in a timely manner to ensure that the Services are commenced, carried out and completed by the times required under this Deed, and in any event by the times or within the periods:
    - (A) required by this Deed (including, where applicable, the **Scope of Works** or the **Scope of Works Deliverables Schedule**); and
    - (B) in the absence of a time or period in this Deed, required by the Principal's Representative; and
  - (ii) under cover of a written notice entitled "Submit for Review", which identifies:
    - (A) the Review Document;
    - (B) the provision of this Deed (including, if applicable, the relevant sections of the **Scope of Works** or the **Scope of Works Deliverables Schedule**) under which the Review Document is submitted; and
    - (C) whether the Review Document, or compliance with the Review Document, will result in any Non-Compliance.
- (b) The Principal's Representative may (but is not obliged to) review any Review Document, or any resubmitted Review Document, prepared and submitted by the Service Provider and:
  - (i) reject the Review Document (and state reasons) if:
    - (A) in the Principal's Representative's opinion (acting reasonably) the Review Document (or any part) does not comply with this Deed, or compliance by the Service Provider with the Review Document will result in any Non-Compliance; or
    - (B) this Deed otherwise entitles the Principal's Representative to reject the Review Document;

- (ii) make comments on the Review Document, or request clarification or additional information; or
- (iii) notify the Service Provider that it has no (or has no further) comments to make at the relevant time,  
within relevantly:
  - (iv) where a time or period is stated in this Deed for review of that specific Review Document, that time or the expiry of that period; and
  - (v) for all other Review Documents, 20 Business Days (or such other period agreed between the parties) from submission.
- (c) If any Review Document is:
  - (i) rejected or deemed to be rejected by the Principal's Representative, the Service Provider must submit an amended Review Document to the Principal's Representative within 10 Business Days after the date of such rejection or deemed rejection and this **clause 6.8** will re-apply; or
  - (ii) not rejected by the Principal's Representative and the Principal's Representative responds to the Review Document with comments, or requests clarification or additional information, the Service Provider must respond to the comments or request within 5 Business Days or such other period as may be directed by the Principal's Representative.
- (d) If the Service Provider:
  - (i) responds to the Principal's Representative's comments or request within the period referred to in **clause 6.8(c)(ii)** in a manner satisfactory to the Principal's Representative and **clauses 6.8(b)(i)(A) and 6.8(b)(i)(B)** do not apply, the Principal's Representative will, within 20 Business Days of that response, notify the Service Provider that it has no (or no further) comments to make at the relevant time; or
  - (ii) fails to respond to the Principal's Representative's comments or request within the period referred to in **clause 6.8(c)(ii)** in a manner satisfactory to the Principal's Representative, or the Principal's Representative does not give a notice under **clause 6.8(d)(i)**:
    - (A) the Review Document will be deemed to be rejected; and
    - (B) **clause 6.8(c)(i)** will apply.
- (da) If each of the following is satisfied in respect of the most recently submitted (or resubmitted) version of a particular Review Document:
  - (i) either:
    - (A) the Principal's Representative does not reject that Review Document within the period referred to in **clause 6.8(b)**; or
    - (B) that Review Document is deemed to have been rejected in accordance with **clause 6.8(d)(ii)(A)** (because the Principal's Representative has not given a notice under **clause 6.8(d)(i)** in respect of that Review Document);
  - (ii) the Principal's Representative does not make comments on that Review Document, or request clarification or additional information within the period referred to in **clause 6.8(b)**;



- (iii) the Principal's Representative does not notify the Service Provider that it has no (or has no further) comments on that Review Document within the period referred to in **clause 6.8(b)**; and
- (iv) if **clause 6.8(d)(i)** applies, the Principal's Representative does not notify the Service Provider that it has no (or has no further) comments on that Review Document within the period referred to in **clause 6.8(d)(i)**,

then the Service Provider may perform the Services based on, or otherwise use for the purposes of the Services and this Deed, that Review Document at its own risk, provided that this will not prejudice any rights, powers or discretions of the Principal or the Principal's Representative, whether under the Deed or otherwise according to Law, including the right of the Principal's Representative to subsequently reject any such Review Document if it does not comply with this Deed, or compliance by the Service Provider with such Review Document will result in any Non-Compliance.

- (e) The Service Provider must not amend any Review Document that has been submitted to the Principal's Representative and, in respect of which:
  - (i) the Principal's Representative has given the Service Provider the notice referred to in **clause 6.8(b)(iii) or 6.8(d)(i)**; or
  - (ii) the relevant period of time in **clause 6.8(b)** has expired and the Principal's Representative has not rejected it, made any comments on it or made a request referred to in **clause 6.8(b)(ii)** in respect of it,

unless the Service Provider submits the proposed amendments to the Principal's Representative, in which case this **clause 6.8** will re-apply.

- (f) For the purposes of calculating time under this **clause 6.8**, the days between 24 December and 7 January will not be counted as Business Days.

## 6.9 Submission of Excluded Documents

- (a) The Service Provider must submit Excluded Documents to the Principal's Representative:
  - (i) progressively and in a timely manner to ensure that the Services are commenced, carried out and completed by the times required under this Deed, and in any event by the times or within the periods:
    - (A) required by this Deed (including, where applicable, the **Scope of Works** or the **Scope of Works Deliverables Schedule**); and
    - (B) in the absence of a time or period in this Deed, required by the Principal's Representative; and
  - (ii) under cover of a written notice entitled "Submit for Approval", which identifies:
    - (A) the Excluded Document;
    - (B) the provision of this Deed (including, if applicable, the relevant sections of the **Scope of Works** or the **Scope of Works Deliverables Schedule**) under which the Excluded Document is submitted; and
    - (C) whether the Excluded Document, or compliance with the Excluded Document, will result in any Non-Compliance and, where the Excluded Document is a 3MWP (including a revised 3MWP proposed by the Service Provider), whether any of the matters referred to in **section 5.8.2(c)** of the **Scope of Works** arises or will arise.



- (b) Following submission of any Excluded Document to the Principal's Representative in accordance with **clause 6.9(a)**, the Principal's Representative may (subject to any limitations expressly set out in the **Scope of Works**):
- (i) notify the Service Provider that the Excluded Document is approved;
  - (ii) make comments on the Excluded Document, or request clarification or additional information; or
  - (iii) notify the Service Provider that the Excluded Document is rejected (which notice may state reasons),
- within relevantly, the later of:
- (iv) where a time or period is stated in the **Scope of Works** for a response from the Principal's Representative as to whether the Excluded Document is approved, that time or the expiry of that period; and
  - (v) for all other Excluded Documents, 20 Business Days (or such longer period as the Principal's Representative may reasonably require) from submission.
- (c) If the Principal's Representative does not give a notice under **clause 6.9(b)** within the period referred to in **clause 6.9(b)**:
- (i) the Excluded Document will be deemed to be rejected; and
  - (ii) **clause 6.9(d)(i)** will apply.
- (d) If any Excluded Document is:
- (i) rejected or deemed to be rejected by the Principal's Representative, the Service Provider must (or, in respect of an updated 3MWP submitted in accordance with **section 5.8.2(b)** of the **Scope of Works**, may) submit an amended Excluded Document to the Principal's Representative within 10 Business Days after the date of such rejection or deemed rejection and this **clause 6.9** will re-apply; or
  - (ii) not rejected by the Principal's Representative and the Principal's Representative responds to the Excluded Document with comments, or requests clarification or additional information, the Service Provider must respond to the comments or request within 5 Business Days or such other period as may be directed by the Principal's Representative.
- (e) If the Service Provider:
- (i) responds to the Principal's Representative's comments or request within the period referred to in **clause 6.9(d)(ii)** in a manner satisfactory to the Principal's Representative, the Principal's Representative will (subject to any limitations expressly set out in the **Scope of Works**):
    - (A) notify the Service Provider that the Excluded Document is approved; or
    - (B) notify the Service Provider that the Excluded Document is rejected (which notice may state reasons),

within 20 Business Days of that response (or such longer period as the Principal's Representative may reasonably require); or
  - (ii) fails to respond to the Principal's Representative's comments or request within the period referred to in **clause 6.9(d)(ii)** in a manner satisfactory to the Principal's Representative, or the Principal's Representative does not give a notice under **clause 6.9(e)(i)**:
    - (A) the Excluded Document will be deemed to be rejected; and

- (B) **clause 6.9(d)(i)** will apply.
- (ea) If each of the following is satisfied in respect of the most recently submitted (or resubmitted) version of a particular Excluded Document:
- (i) the Principal's Representative does not make comments on that Excluded Document, or request clarification or additional information within the period referred to in **clause 6.9(b)**; and
  - (ii) either:
    - (A) the Principal's Representative does not reject that Excluded Document within the period referred to in **clause 6.9(b) or 6.9(e)(i)(B)** (as applicable); or
    - (B) that Excluded Document is deemed to have been rejected in accordance with **clause 6.9(e)(ii)(A)** (because the Principal's Representative has not given a notice under **clause 6.9(e)(i)** in respect of that Excluded Document),

then the Service Provider may perform the Services based on, or otherwise use for the purposes of the Services and this Deed, that Excluded Document at its own risk, provided that this will not prejudice the rights, powers or discretions of the Principal or the Principal's Representative, whether under the Deed or otherwise according to Law, including the right of the Principal's Representative to subsequently reject any such Excluded Document and to require the Service Provider to perform the Services in accordance with Excluded Documents referred to in **clause 1.3(n)** (which may involve re-performing the Services already performed).

- (f) Except as expressly required or permitted in the **Scope of Works**, the Service Provider must not amend any Excluded Document that has been submitted to the Principal's Representative and, in respect of which the Principal's Representative has given the Service Provider the notice referred to in **clause 6.9(b)(i) or 6.9(e)(i)(A)**, unless the Service Provider submits the proposed amendments to the Principal's Representative, in which case this **clause 6.9** will re-apply.
- (g) For the purposes of calculating time under this **clause 6.9**, the days between 24 December and 7 January will not be counted as Business Days.
- (h) For the avoidance of doubt, the 3MWP which is binding on the Service Provider at any particular point in time is:
- (i) subject to **clause 6.9(h)(ii)**, the version of the 3MWP set out in **Appendix C3.3** to the **Scope of Works**; or
  - (ii) the most recent version of the 3MWP which has been approved in writing by the Principal or the Principal's Representative in accordance with the **Scope of Works** and this **clause 6.9**,

in each case subject to any subsequent changes or updates in that 3MWP which have been approved in writing by the Principal or the Principal's Representative in accordance with the **Scope of Works** and this **clause 6.9**.

## 6.10 No relief

- (a) The Principal and the Principal's Representative do not assume or owe any duty of care or other responsibility to the Service Provider to review, or in reviewing, a Review Document or Excluded Document submitted by the Service Provider, including for errors, omissions or compliance with this Deed.



- (b) The Service Provider:
- (i) bears the risk of any errors in or omissions from, or non-compliance with the requirements of this Deed of, any Review Document or Excluded Document and that compliance by the Service Provider with any Review Document or Excluded Document will enable the Service Provider to carry out the Services in accordance with this Deed; and
  - (ii) will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of, or in any way in connection with:
    - (A) any error in or omission from, or non-compliance with any requirement of this Deed of, any Review Document or Excluded Document, including the Principal or the Principal's Representative not detecting or notifying the Service Provider of any errors, omissions or non-compliance with the requirements of this Deed in any Review Document or Excluded Document submitted; or
    - (B) compliance by the Service Provider with a Review Document or Excluded Document not resulting in the Service Provider carrying out the Services in accordance with this Deed.
- (c) No review of, comment upon or approval or rejection of, or failure to review or comment upon, approve or reject, a Review Document or Excluded Document, or any other direction by the Principal or the Principal's Representative in connection with the Review Document or Excluded Document, will:
- (i) constitute an Adjustment Event (except to the extent expressly provided in **Part 3** of the **Variations Schedule**) or a Direction to carry out a Modification (except to the extent expressly provided in **clause 14**);
  - (ii) relieve the Service Provider from or limit or otherwise affect its liabilities or obligations, whether under this Deed or otherwise according to any Law; or
  - (iii) limit or otherwise affect the Principal's rights against the Service Provider, whether under this Deed or otherwise according to any Law.

## 6.11 Reporting

The Service Provider must report to the Principal's Representative, and (without limiting **clause 6.8**) otherwise submit documentation to the Principal's Representative, in accordance with the **Scope of Works Deliverables Schedule**.

## 6.12 KPIs

- (a) The Principal's Representative will measure the Service Provider's performance against the KPIs as set out in the **KPI Schedule**.
- (b) The Service Provider must meet or exceed the KPIs from the Services Commencement Date.
- (c) The Service Provider must comply with its obligations relating to the measurement and reporting of KPIs and the remedy of any failure to meet or exceed any of the KPIs, as set out in the **KPI Schedule** or elsewhere in this Deed.
- (d) From time to time prior to the expiry of the Term, the Principal's Representative may notify the Service Provider of proposed amendments to the **KPI Schedule** (including the addition or removal of KPIs or the change in the status of a KPI for the purposes of the **KPI Schedule**).



- (e) Where the Principal's Representative notifies the Service Provider under **clause 6.12(d)** of proposed amendments to the **KPI Schedule** that involve the addition of a KPI, the Principal's Representative will (to the extent the Principal's Representative is reasonably able to do so) procure the measurement of the Service Provider's performance against the proposed KPI over a 3 month period before proposing the additional KPI.
- (f) Promptly (and in any event within 10 Business Days) following receipt of any such notice, the Service Provider must notify the Principal's Representative in writing confirming that either:
  - (i) the proposed changes are agreed, in which case the **KPI Schedule** will be deemed to be amended in accordance with the Principal's Representative's notice; or
  - (ii) the proposed changes are not agreed, in which case the parties must undertake good faith negotiations for a period of 15 Business Days (or such other period agreed in writing by the parties) with a view to agreeing amendments to the **KPI Schedule**.
- (g) If the parties are able to agree amendments to the **KPI Schedule** pursuant to the negotiations referred to in **clause 6.12(f)(ii)**, then the parties must document such agreement in writing and have such documentation counter-signed by their respective representatives and the **KPI Schedule** will be deemed to be amended accordingly on and from the date such documentation is counter-signed by the last representative.

### 6.13 Governance

The Service Provider and the Principal must participate in the governance of this Deed, as described in the Governance Schedule.

---

## Part E – Laws and Approvals

### 7 Laws, Approvals and NSW Government Policy

#### 7.1 Compliance with Laws

(a) The Service Provider must:

- (i) in carrying out the Services, comply with, carry out and fulfil all conditions and requirements of;
- (ii) ensure that each of its Associates, in carrying out the Services, comply with; and
- (iii) carry out the Services so as to ensure that, at all times during the Term, the CRN Assets and the Services comply with,

all applicable Laws (including the HVNL) and Standards and Codes, including (subject to **clause 7.1(b)(ii)**) to the extent arising out of, or in any way in connection with, a Change in Law or Change in Standards and Codes.

In carrying out the Services, the Service Provider must not do, or omit to do, (and ensure that its Associates do not do, or omit to do) anything that will cause or contribute to either TfNSW or TAHE breaching their respective obligations under any Law or any of the Standards and Codes.

(b) Without limiting **clause 29**, where there is a Change in Standards and Codes:

- (i) the Service Provider must give written notice to the Principal's Representative within 5 Business Days after it first becomes aware, or ought reasonably to have first become aware, of the Change in Standards and Codes containing:
  - (A) details of the Change in Standards and Codes; and
  - (B) a Variation Impacts Statement as an attachment; and
- (ii) if a notice is given by the Service Provider which complies with **clause 7.1(b)(i)**, then within 10 Business Days of the notice being given, the Principal's Representative may direct the Service Provider to disregard the Change in Standards and Codes.

(c) The Service Provider will not be entitled to make, and the Principal will not be liable for, any Claim arising out of, or in any way in connection with:

- (i) any Change in Law, except to the extent otherwise expressly provided in this Deed in respect of a Qualifying Change in Law; or

- (ii) any Change in Standards and Codes, except to the extent otherwise expressly provided in this Deed in respect of a Qualifying Change in Standards and Codes in respect of which the Service Provider has complied with **clause 7.1(b)(i)**.

## 7.2 Service Provider to Obtain Approvals

- (a) Subject to **clause 7.2(b)**, the Service Provider must:
  - (i) expeditiously apply for, obtain and maintain, throughout the Term, all Approvals required for the Services to be lawfully carried out or for the CRN Assets to be lawfully occupied, used, operated and maintained for their Intended Purpose, including any Principal Named Approvals, which the Service Provider must obtain and maintain on the Network Owner's behalf, unless the Principal otherwise requires; and
  - (ii) if Associates are used to carry out any part of the Services, ensure that the Associates have obtained all necessary Approvals to perform that part of the Services.
- (b) The Service Provider will not be required to apply for, obtain or maintain any Approvals which:
  - (i) relate to either of TAHE's or TfNSW's ownership of, or right to occupy or use, the CRN Assets;
  - (ii) by Law can only be applied for, obtained and maintained by TAHE or TfNSW (as applicable) as owner, licensee or lessee of, or the beneficiary of rights in respect of, the CRN Assets; and
  - (iii) cannot be applied for, obtained and maintained by the Service Provider on behalf of TAHE or TfNSW.

## 7.3 Conditional Approvals

Where any Approval required for the Services to be lawfully provided or for the CRN Assets to be lawfully occupied, used, operated or maintained:

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

the Service Provider must:

- (c) keep the Principal and the Principal's Representative fully informed;
- (d) consult fully with the Principal and the Principal's Representative; and
- (e) comply with the reasonable Directions of the Principal and the Principal's Representative, with respect to the Approval and the procedures relating to its issue or amendment (including the lodgement of applications, objections or appeals to and negotiations with any relevant Authority).

## 7.4 Environment Protection Licences

Without limiting **clause 7.2**, the Service Provider must:

- (a) obtain and hold all Environment Protection Licences necessary to enable it to carry out the Services; and
- (b) provide the Principal with evidence of compliance with **clause 7.4(a)** upon request.



## 7.5 Division 5.1 Assessments

- (a) The Service Provider acknowledges that TfNSW or TAHE:
  - (i) may be a determining authority for the purposes of Division 5.1 of the EP&A Act; and
  - (ii) may have a duty to perform a Division 5.1 Assessment in considering its activities which includes activities by the Service Provider under this Deed;
- (b) The Service Provider:
  - (i) must not commence an activity that requires a Division 5.1 Assessment unless a Division 5.1 Assessment has been completed in relation to such an activity and resulted in determination that the activities can proceed; and
  - (ii) without limiting **clause 7.2**, must comply with the terms and conditions, mitigation measures or activity changes arising from the Division 5.1 Assessment and any determination made by the determining authority in reliance upon it.

## 7.6 Preparation of a Division 5.1 Assessment

- (a) Where the Service Provider proposes to commence an activity to which Division 5.1 of the EP&A Act applies and the environmental impact for that activity has not already been assessed and considered under Division 5.1, the Service Provider must prepare a draft Division 5.1 Assessment (including, where required, a draft Review of Environmental Factors or Environmental Impact Statement) on behalf of the Principal and submit it to the Principal.
- (b) Following receipt of the draft Division 5.1 Assessment, the Principal may by notice to the Service Provider, request:
  - (i) additional information in relation to the Division 5.1 Assessment; and
  - (ii) that the Service Provider make amendments to or change the draft Division 5.1 Assessment.
- (c) If the Principal gives a notice under **clause 7.6(b)**, the Service Provider must (at its cost):
  - (i) promptly provide the additional information requested in the notice; and
  - (ii) amend or change the draft Division 5.1 Assessment to address the matters identified in the notice and promptly resubmit the amended draft Division 5.1 Assessment to the Principal.
- (d) The provisions of **clauses 7.6(b) and 7.6(c)** will apply to any re-submitted draft Division 5.1 Assessment as if it was the draft Division 5.1 Assessment originally submitted under **clause 7.6(b)**.
- (e) Once the Principal's Representative is satisfied with the draft Division 5.1 Assessment the Principal's Representative may finalise the draft Division 5.1 Assessment and may publicly exhibit the Division 5.1 Assessment and:
  - (i) may by notice to the Service Provider request the Service Provider to make amendments and changes to the Division 5.1 assessment; and
  - (ii) once any the Principal is satisfied with the Division 5.1 Assessment, make any determination it considers appropriate.

## 7.7 Taxes, Duties and Charges

Except to the extent otherwise expressly provided in this Deed, the Service Provider must:

## CRN Operations and Maintenance Deed

- (a) pay all customs duties, stamp duties and other duties, charges, Taxes or imposts payable in any way in connection with this Deed or the carrying out of the Services; and
- (b) without limiting **clauses 7.1 and 7.2**, effect all insurances, provide all security and execute any undertakings or agreements required by any relevant Authority in respect of any Approval or otherwise to comply with any Law.

### 7.8 NSW Government Policy

- (a) Subject to this **clause 7.8**, the Service Provider must comply, and ensure that its Subcontractors comply, with all NSW Government Policies which apply to the Services or the CRN Assets.
- (b) The Service Provider must, within a reasonable time, notify the Principal of any of the following that occurs after the date of this Deed and applies to the Services or the CRN Assets:
  - (i) repeal of or change to a NSW Government Policy; or
  - (ii) the coming into effect or implementation of a new NSW Government Policy.
- (c) Upon receipt of any notification from the Service Provider under **clause 7.8(b)**, the Principal may:
  - (i) direct the Service Provider to implement the changes required for the Service Provider to comply with its obligation under **clause 7.8(a)** as a result of the event referred to in the notice; or
  - (ii) direct the Service Provider to not implement any such changes, despite the event referred to in the notice.
- (d) Without limiting any other provision of this Deed, the Service Provider must not implement any changes as a result of an event referred to in **clause 7.8(b)** unless directed to do so by the Principal under **clause 7.8(c)(i)**.

### 7.9 DDA Exemption

- (a) The Service Provider warrants that:
  - (i) it is a member of the Australasian Railway Association and therefore is subject to the ARA DDA Exemption Application; or
  - (ii) it otherwise has the benefit of a DDA Exemption that is on the same or substantially similar terms to that proposed by the ARA DDA Exemption Application.
- (b) The Service Provider must take all reasonable steps to hold and maintain the benefit of a DDA Exemption on the same or substantially similar terms to that proposed by the ARA DDA Exemption Application.

### 7.10 AMB

- (a) The Service Provider:
  - (i) must hold and maintain AMB Authorisation in respect of all relevant Services for so long as such Services are carried out; and
  - (ii) must (and must ensure that its Subcontractors) comply with the conditions of any such AMB Authorisation.
- (b) The Service Provider must (and must ensure that its Subcontractors):

- (i) implement and comply with the requirements of any AMB Requirements applicable to the Asset Services;
  - (ii) cooperate fully with the AMB in the performance of the AMB's functions;
  - (iii) without limiting **clause 6.4**, provide access to premises and resources as reasonably required by the AMB, including so that it can effectively carry out its review, surveillance and audit functions;
  - (iv) comply with the directions, instructions and requirements issued by the AMB;
  - (v) notify the AMB of any matter that could reasonably be expected to affect the exercise of the AMB's functions;
  - (vi) provide the AMB with any information relating to its activities or any documents or other things reasonably required by the AMB in the exercise of its functions; and
  - (vii) provide the Principal with such assistance as may be reasonably required by the Principal to enable the Principal to cooperate fully with the AMB and to implement and comply with AMB Requirements.
- (c) The Service Provider will not be entitled to make, and the Principal will not be liable for, any Claim arising out of, or in any way in connection with, the requirement to obtain AMB Authorisation or the obligation to comply with the requirements of AMB and the AMB Authorisation.

### 7.11 Rail Safety Accreditation

The Service Provider warrants and agrees that:

- (a) at all times during the Term, it will continuously hold Rail Safety Accreditation in respect of the CRN Assets and as otherwise necessary for the purposes of carrying out the Services under the RSNL or, in the case that the RSNL is amended or repealed, it will continuously hold equivalent accreditation in respect of the CRN Assets and as otherwise necessary for the purposes of carrying out the Services, to the extent required by Law;
- (b) it will discharge its responsibilities as RTO imposed by and in conformity with the RSNL;
- (c) its Rail Safety Accreditation will apply in respect of any work or activities performed (or to be performed) by any third party, including in respect of:
  - (i) Carry-Over Works;
  - (ii) Third Party Constructed Enhancement Assets;
  - (iii) any activities and work carried out by third parties in connection with Carry-Over Works or Third Party Constructed Enhancement Assets; and
  - (iv) the exercise of Step-in Powers; and
- (d) it will do all things necessary to ensure that:
  - (i) all activities and work carried out:
    - (A) by third parties in connection with Carry-Over Works or Third Party Constructed Enhancement Assets; or
    - (B) by, or on behalf of, a Step-in Party (including the exercise of Step-in Powers),

are carried out pursuant to its Rail Safety Accreditation and the Service Provider must obtain any modifications to its Rail Safety Accreditation that may be necessary for the purposes of the carrying out of any such activities and work; and



- (ii) any assets created as part of any work, services or activities referred to in **clause 7.11(d)(i)** will be covered by its Rail Safety Accreditation and the Service Provider must obtain any modifications to its Rail Safety Accreditation that may be necessary as a result of any such assets forming part of the CRN Assets, including by doing all things necessary to satisfy itself that the work, services, activities and assets referred to in this **clause 7.11(d)** can be carried out pursuant to, and can be or will be covered by, the Service Provider's Rail Safety Accreditation, including by:
  - (iii) ensuring the ongoing monitoring by the Service Provider of any relevant person's work;
  - (iv) engaging independent consultants or certifiers as deemed necessary by the Service Provider; and
  - (v) notifying the Principal's Representative of any changes in respect of such work, services, activities and assets that are necessary to ensure that such work, services, activities and assets can be carried out pursuant to, and can be or will be covered by, the Service Provider's Rail Safety Accreditation; and
- (e) it will comply with all ONRSR Rules for the purposes of meeting its obligations under this Deed.

#### 7.12 Changes to Applicable Rail Safety Law

- (a) Subject to **clause 7.11** and without limiting the Service Provider's entitlements in respect of any Qualifying Change in Law, if a Rail Safety Law Change occurs, then to the maximum extent possible:
  - (i) this Deed, and the parties' obligations under it, will remain on foot;
  - (ii) any references in this Deed to:
    - (A) the RSNL will be taken to mean the RSNL as amended or the relevant legislation or other instrument giving effect to any replacement rail safety regime; and
    - (B) Rail Safety Accreditation will be taken to mean the equivalent requirement or requirements (if any) to Rail Safety Accreditation under the RSNL prior to the amendment or repeal of the RSNL, imposed on the owner of, and on any contractor exercising control over, rail networks or rolling stock under the RSNL as amended or the new or varied rail safety regime; and
  - (iii) the Service Provider must take all steps necessary to ensure that the Service Provider continues to have Rail Safety Accreditation in respect of all CRN Assets and as otherwise necessary for the purposes of carrying out the Services.
- (b) If a Rail Safety Law Change occurs and the Principal believes, in its reasonable opinion, that the objectives of this Deed can no longer be achieved in the manner contemplated by the Principal (or that the Principal's exposure to liability as a result of the Rail Safety Law Change is unacceptable), the Principal may terminate this Deed by notice in writing to the Service Provider. Any such termination will take effect from the date specified in that notice.

#### 7.13 Rail Safety Work and Investigative Authorities

The Service Provider must:

- (a) ensure that any person carrying out rail safety work (as defined in section 8 of the RSNL) in relation to the Services has Rail Safety Worker Competency; and
- (b) ensure that the Service Provider and its Associates:
  - (i) without limiting **clause 6.4**, promptly give all Investigative Authorities such access to premises and information as any Investigative Authority lawfully requests, within the time requested;
  - (ii) cooperate with and respond to any lawful requests made by any Investigative Authority, within the time requested; and
  - (iii) do not hinder or delay any Investigative Authority in carrying out its duties.

#### 7.14 Priority for Passengers

The Service Provider must, in carrying out the Services, comply with the requirements of the *Transport Administration Act 1988* (NSW) in relation to priority of passenger services.

#### 7.15 Safety Interface Agreements

- (a) The Service Provider must enter into all Safety Interface Agreements set out in **Attachment A**, as well as any others required to be entered into in accordance with the RSNL or to otherwise enable the Services to be carried out in accordance with this Deed.
- (b) If, prior to the expiry of the Term:
  - (i) the Service Provider is requested by the Principal's Representative; or
  - (ii) it is necessary for the carrying out of the Services in accordance with this Deed, to enter into further Safety Interface Agreements, the Service Provider, acting reasonably, must:
  - (iii) develop and negotiate in good faith with the relevant third parties the necessary terms and conditions for such further Safety Interface Agreements, having regard to the terms and conditions of the Safety Interface Agreements referred to in **clause 7.15(a)**; and
  - (iv) enter into Safety Interface Agreements with the relevant third parties.

#### 7.16 Statutory Requests

- (a) The Service Provider agrees to assist the Principal to respond to Statutory Requests it receives from other Authorities to the extent they relate to the Relevant Land, CRN Assets or the Services in accordance with this **clause 7**.
- (b) Where the Principal receives a Statutory Request that relates to the Relevant Land, CRN Assets or the Services, the Principal may give a notice to the Service Provider's Representative:
  - (i) requesting that the Service Provider prepare a briefing note in respect of the Statutory Request to assist the Principal to respond to the Statutory Request;
  - (ii) listing any specific content or questions the briefing note should address;
  - (iii) attaching a copy of the Statutory Request;
  - (iv) outlining any relevant background information in relation to the Statutory Request; and
  - (v) specifying a date by which the Principal requires a briefing note.



- (c) Within the timeframe specified in **clause 7.16(b)(v)**, the Service Provider must prepare and provide to the Principal's Representative a briefing note that:
- (i) identifies the relevant statutory obligations, guidelines and policies applicable to the Statutory Request and provides information to address those statutory obligations guidelines and policies;
  - (ii) addresses any specific content or questions request in the notice given under **clause 7.16(b)**;
  - (iii) in relation to a Statutory Request made under clause 84 of the Infrastructure SEPP, provide information on:
    - (A) any rail safety or operational issues associated with the aspects of the proposed development the subject of the Statutory Request; and
    - (B) the implications of the proposed development the subject of the Statutory Request for traffic safety including the cost of ensuring an appropriate level of safety, having regard to existing traffic and any likely change in traffic at level crossings as a result of the development; and
  - (iv) in relation to a Statutory Request made under clause 88 of the Infrastructure SEPP provide information on the likely effect of the proposed development the subject of the Statutory Request on:
    - (A) the practicability and cost of carrying out rail expansion projects on the land in the future;
    - (B) without limiting **clause 7.16(c)(iv)(A)**, the structural integrity or safety of, or ability to operate, such a project, and
    - (C) without limiting **clause 7.16(c)(iv)(B)**, the land acquisition costs and the costs of construction, operation or maintenance of such a project.
- (d) If following receipt of a briefing note under **clause 7.16(c)**, the Principal makes a request for further or additional information or clarification, the Service Provider must ensure that the information requested is promptly provided.

## **8 NSW Industrial Relations Guidelines (NSW IR Guidelines)**

### **8.1 Definitions and application**

In this **clause 8**, words and expressions that are defined in the NSW IR Guidelines have, unless the context otherwise indicates, the same meaning as in the NSW IR Guidelines.

### **8.2 Primary obligation**

- (a) The Service Provider must at all times comply with, and meet any obligations imposed by, the NSW IR Guidelines.
- (b) The Service Provider must notify the Construction Compliance Unit and the Principal of any alleged breaches of NSW IR Guidelines and of remedial action taken, within 24 hours of becoming aware of the possible non-compliance. Where the Service Provider is authorised to engage a Subcontractor, and it does so, the Service Provider must ensure that any subcontract imposes on the Subcontractor equivalent obligations to those in this **clause 8** (under a heading "NSW IR Guidelines"), including that the Subcontractor must comply with, and meet any obligations imposed by, the NSW IR Guidelines. The Service Provider must not appoint or engage another party in relation to the Services where that appointment or engagement would breach a sanction imposed on the other party in relation to the NSW IR Guidelines.



### 8.3 Access and information

- (a) Without limiting any other obligations of the Service Provider, the Service Provider must:
- (i) maintain adequate records of compliance with the NSW IR Guidelines by it, its Subcontractors and their respective related entities; and
  - (ii) allow, and take reasonable steps to facilitate, New South Wales Government authorised personnel (including personnel of the Construction Compliance Unit) to:
    - (A) enter and have access to sites and premises controlled by the Service Provider;
    - (B) inspect any work, material, machinery, appliance, article or facility;
    - (C) access information and documents;
    - (D) inspect and copy any record relevant to the Services;
    - (E) have access to personnel; and
    - (F) interview any person,as is necessary for the authorised personnel to monitor and investigate compliance with the NSW IR Guidelines, by the Service Provider, its Subcontractors and their respective related entities.
- (b) The Service Provider, and its related entities, must comply with any request from New South Wales Government authorised personnel (including personnel of the Construction Compliance Unit) for the production of specified documents by a certain date, whether in person, by post or electronic means.

### 8.4 Sanctions

- (a) The Service Provider warrants that at the time of entering into this Deed, neither it, nor any of its related entities, are subject to a sanction in connection with the NSW IR Guidelines that would have precluded it from tendering for work to which the NSW IR Guidelines apply. If the Service Provider does not comply with, or fails to meet any obligation imposed by, the NSW IR Guidelines, a sanction may be imposed against it in connection with the NSW IR Guidelines.
- (b) Where a sanction is imposed:
- (i) it is without prejudice to any rights that would otherwise accrue to the parties; and
  - (ii) the State of New South Wales (through its agencies, Ministers and the Construction Compliance Unit) is entitled to:
    - (A) record and disclose details of non-compliance with the NSW IR Guidelines and the sanction; and
    - (B) take them into account in the evaluation of future expressions of interest or tender responses that may be lodged by the Service Provider, or its related entities, in respect of work to which the NSW IR Guidelines apply.

### 8.5 Compliance

- (a) The Service Provider bears the cost of ensuring its compliance with the NSW IR Guidelines, including in respect of any positive steps it is obliged to take to meet its obligations under the NSW IR Guidelines. The Service Provider is not entitled to make a claim for reimbursement or an extension of time from the Principal or the State of New South Wales, and otherwise is not entitled to make any claim, for such costs or extension

of time. Compliance with the NSW IR Guidelines does not relieve the Service Provider from responsibility to carry out the Services, or from liability for any Non-Compliance or from any other legal liability, whether or not arising from its compliance with the NSW IR Guidelines.

- (b) Where a change in this Deed or the Services is proposed, and that change would, or would be likely to, affect compliance with the NSW IR Guidelines, the Service Provider must immediately notify the Principal of the change, or likely change and specify:
- (i) the circumstances of the proposed change;
  - (ii) the extent to which compliance with the NSW IR Guidelines will, or is likely to be, affected by the change; and
  - (iii) what steps the Service Provider proposes to take to mitigate any adverse impact of the change (including any amendments it proposes to a workplace relations management plan or work health and safety management plan),

and the Principal will direct the Service Provider as to the course it must adopt within 20 Business Days after receiving notice.

---

## Part F – Safety

### 9 Safety

#### 9.1 Service Provider's Compliance

In carrying out the Services, the Service Provider must conduct itself in a manner:

- (a) that is consistent with the SMS maintained by the Service Provider in accordance with the RSNL; and
- (b) that does not, by any act or omission, result in the Principal being in breach of its obligations or procedures under:
  - (i) the SMS maintained by the Principal in accordance with the RSNL; or
  - (ii) the RSNL, WHS Laws or the HVNL.

#### 9.2 Principal's Activities

The Service Provider will provide all reasonable assistance to the Principal for the purpose of enabling the Principal to comply with the SMS maintained by the Principal in accordance with the RSNL.

#### 9.3 Work Health and Safety

- (a) On and from the date of this Deed, to the extent that any construction project (as that term is defined in WHS Law) is carried out by, or on behalf of:
  - (i) the Service Provider on, or in relation to, the CRN Assets, then:
    - (A) the Principal engages the Service Provider as principal contractor for the construction project and the Service Provider accepts that engagement; and
    - (B) the Principal authorises the Service Provider to have management and control of the CRN Assets and other relevant workplaces and to discharge the duties of a principal contractor under any WHS Law; or
  - (ii) the Principal on, or in relation to, the CRN Assets (other than by, or on behalf of, the Service Provider), then:

- (A) the Principal may engage a third party as principal contractor for the construction project and the Service Provider consents to that engagement; and
  - (B) the Service Provider must comply with all lawful directions and requirements of the third party engaged as principal contractor to the extent they are given in its capacity as principal contractor.
- (b) Except as otherwise provided in **clause 1.1**, all terms used in this **clause 9.3** have the meanings given to them under WHS Law.

#### 9.4 Emergencies and Incidents

- (a) The Service Provider acknowledges that the occurrence of any Incident may have consequences for the Principal.
- (b) Without limiting any other obligation of the Service Provider, the Service Provider must, immediately notify the Principal of any Incident and, as soon as reasonably practicable after the Incident, and in any event, within the time required by any other provision of this Deed or by the Principal's Representative:
  - (i) notify the Principal in writing of any Incident which occurs in relation to the CRN Assets or the Services, including details of the Incident, its cause and the consequences;
  - (ii) provide the Principal with any documentation or information requested by the Principal in relation to any such Incident, whether or not the documentation or information is relevant to any current or anticipated investigation;
  - (iii) prepare and provide to the Principal a report into the Incident; and
  - (iv) if the Service Provider procures or undertakes any investigation in respect of, or in response to, any such Incident, or is required by an Investigative Authority to prepare an investigation report under the RSNL, provide the Principal with copies of any such report (whether interim or final), associated interim or final reports and findings.
- (c) Without limiting any other provision of this Deed, the Principal may (by itself or via others) carry out its own investigation of any Incidents.
- (d) With respect to any investigation by or on behalf of the Principal referred to in **clause 9.4(c)**:
  - (i) the Principal may engage any third parties to provide any assistance it requires; and
  - (ii) without limiting any other obligation of the Service Provider, the Service Provider must:
    - (A) provide access to any part of the CRN Assets and Records required by the Principal;
    - (B) cooperate fully with all requests made by the Principal for the purpose of the Principal's investigation; and
    - (C) not prejudice or hinder the investigation.

#### 9.5 Preservation of Evidence

Subject to any contrary requirement at Law, the Service Provider must:



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

---

## Part G – Environment

### 10 Environment

#### 10.1 General obligations

- (a) Without limiting **clause 7.1**, the Service Provider must:
  - (i) comply with all applicable Environmental Laws in connection with the Services and the use of the CRN Assets, including in respect of Pollution or Contamination caused or contributed to by the Service Provider or its Associates;
  - (ii) perform the Services in a proper and efficient manner so as not to harm the Environment;
  - (iii) manage any asbestos encountered during the performance of the Services in accordance with all applicable Laws relating to asbestos management;
  - (iv) not cause or permit unlawful Pollution or damage to the Environment or the Relevant Land;
  - (v) not cause or permit any nuisance or hazard to any member of the public;
  - (vi) handle, manage, transport and dispose of all Waste in accordance with all applicable Laws and requirements of any Authority;
  - (vii) properly manages acid sulphate soils in accordance with all applicable Laws; and
  - (viii) advise the Principal's Representative as soon as reasonably practicable of any Pollution incident occurring on the CRN Assets or that may impact the CRN Assets.
- (b) The Service Provider must promptly notify the Principal's Representative after it becomes aware of:
  - (i) any breach (or suspected breach) of an Environmental Law in respect of the Relevant Land or the Services; or
  - (ii) notice, order, declaration or requirement made under any Environmental Law in respect of the Relevant Land or the Services, whether served on the Principal, the Service Provider or any other person.

#### 10.2 Ownership of Waste

As between the Principal and the Service Provider:

- (a) unless the Principal has issued a written notice specifying in respect of particular Waste that the Principal is the owner of that Waste, the Service Provider is the owner of any Waste which is generated by any activities of the Service Provider or any Subcontractor of any tier of the Service Provider on the Relevant Land; and

- (b) the Service Provider is responsible for ensuring the lawful containment, processing consignment, transport, disposal and management of any Waste and must ensure that all Waste which is generated by any activities of the Service Provider or any Subcontractor of any tier of the Service Provider on the Relevant Land is safely and lawfully contained, processed, consigned, transported, disposed of and managed.

## 11 Heritage

### 11.1 General Obligation

The Service Provider must comply with all Laws relating to European heritage and Aboriginal heritage.

### 11.2 Compliance with principles and guidelines

- (a) The Principal must provide the Service Provider with any State Owned Heritage Management Principles or Heritage Asset Management Guidelines it receives from the NSW Heritage Minister or the NSW Heritage Council under section 170A(2) or (3) of the NSW Heritage Act.
- (b) The Service Provider must manage the items on the Heritage and Conservation Register in a manner that is substantially consistent with any State Owned Heritage Management Principles or Heritage Asset Management Guidelines provided by the Principal to the Service Provider under **clause 11.2(a)**.

### 11.3 Listing Notices

- (a) If either party is served with a Listing Notice, or becomes aware of a Listing Notice, in connection with a CRN Asset:
  - (i) the party who received the Listing Notice or first became aware of the Listing Notice must immediately provide to the other party a copy of the Listing Notice;
  - (ii) the Principal's Representative may by written notice, request the Service Provider to:
    - (A) prepare or assist with the preparation of submissions or comments in relation to the proposed listing, registration, cancellation or removal the subject of the Listing Notice either in the Service Provider's capacity as occupier or on behalf of TfNSW or TAHE as owner of the asset; and
    - (B) submit those submissions or comments either directly to the Heritage Authority in compliance with any requirements in the Listing Notice or to the Principal's Representative in which case the Principal may review and submit the submissions or comments to the Heritage Authority; and
  - (iii) the Service Provider must comply with a notice under **clause 11.3(a)(ii)** within the timeframe specified in such a notice.
- (b) If either party is served with a decision by a Heritage Authority in relation to a Listing Notice in connection with a CRN Asset it must immediately provide to the other party a copy of the decision and any associated correspondence.
- (c) If the NSW Heritage Minister requests a review by the NSW Independent Planning Commission in relation to a Listing Notice in connection with a CRN Asset, the Principal may request the Service Provider to appear at the review either in the Service Provider's capacity as occupier or on behalf of TfNSW or TAHE as owner of the asset and if it does the Service Provider must comply with this request.



#### 11.4 Aboriginal Cultural Heritage

In performing the Services:

- (a) without limiting **clause 7.1**, the Service Provider must comply with the Due Diligence Code where carrying out any part of the Services in New South Wales; and
- (b) without limiting **clause 7.2**, where an Aboriginal Heritage Impact Permit is required for the Service Provider to perform the Services, the Service Provider must apply for an Aboriginal Heritage Impact Permit and comply with the terms and conditions of any Aboriginal Heritage Impact Permit that is granted to the Service Provider.

### 12 Climate Change, Clean Energy and NGERs

#### 12.1 Climate change policy

In performing the Services, the Service Provider must comply with any applicable Laws relating to the management and reduction of Greenhouse Gas emissions.

#### 12.2 Ownership and trading of Carbon Credits

- (a) The rights to and interests in any actual or potential Carbon Credits, if any, arising from any Services or the carrying out of any obligation pursuant to this Deed will, as between the Service Provider and the Principal, vest in the Principal. If the relevant Carbon Credit Scheme provides for the Carbon Credits to vest in the Service Provider, then the Service Provider will hold the Carbon Credits on trust for the benefit of the Principal.
- (b) Nothing in this **clause 12** will be construed so as to prevent the Principal from dealing with any Carbon Credits as it sees fit (including trading them with any person).

#### 12.3 Eligible offsets project

If part or all of the Services or CRN Land form part of an Eligible Offsets Project in respect of which the Principal is the project proponent, then the Service Provider must at its cost provide all reasonable assistance to the Principal to ensure that the Declaration of the Eligible Offsets Project is not revoked. In particular, the Service Provider must:

- (a) ensure that the Services are conducted in a manner that is consistent with the applicable methodology determination for the Eligible Offsets Project; and
- (b) comply with any written notice from the Principal's Representative requesting information in relation to the Services or CRN Land, to enable the Principal to comply with its obligations under the Carbon Farming Act (including to enable the Principal to give a written report in accordance with section 76 of that Act) and maintain the eligible offset project's Declaration, within the timeframe specified in that notice.

#### 12.4 NGER Operational control

The parties acknowledge and agree, to the extent permitted by law, that during the Term:

- (a) the Service Provider has the greatest authority to introduce and implement the policies mentioned in sections 11(1)(a)(i), 11(1)(a)(ii) and 11(1)(a)(iii) of the NGER Act in relation to the CRN Land;
- (b) the Service Provider has operational control of the CRN Land for the purposes of the NGER Act and the Clean Energy Legislation;
- (c) the Service Provider must, in respect of its activities on the CRN Land, comply with the NGER Act and the Clean Energy Legislation including all liabilities, obligations or duties including reporting obligations; and



- (d) in the event that a determination is made to the contrary of **clause 12.4(a), 12.4(b) or 12.4(c)**:
- (i) the Service Provider agrees to (at the election of the Principal):
    - (A) accept the transfer of operational control of the CRN Land under section 22K (if applicable) of the NGER Act;
    - (B) accept the nomination as the nominated person under section 11B of the NGER Act;
    - (C) if the Service Provider does not have operational control and the Principal does have operational control of the CRN Land, take all necessary steps to accept the transfer of liability under the Clean Energy Legislation if such transfer is lawfully permitted; or
    - (D) do any or all of those things;
  - (ii) the parties agree and acknowledge that the Service Provider is taken to have operational control of the CRN Land for the purposes of the NGER Act and the Clean Energy Legislation; and
  - (iii) the Service Provider must comply with the NGER Act and the Clean Energy Legislation including all liabilities, obligations or duties including reporting obligations; and
- (e) the Service Provider must pay on demand to the Principal any cost, expense or liability incurred by the Principal under or in connection with any obligation under the Clean Energy Legislation in connection with any activities on the CRN Land during the Term, including to surrender permits.

### 13 Contamination

#### 13.1 Obligation not to cause or exacerbate

The Service Provider must not cause or exacerbate Contamination of any land or exacerbate the risks presented by the Contamination.

#### 13.2 Acknowledgement

- (a) The Service Provider acknowledges that:
- (i) the Identified Contamination has been disclosed to it and that:
    - (A) where the presence of the Identified Contamination is shown on a plan or diagram the location and extent of the Contamination is typically inferred only from limited sampling points and from the information available at specific dates and times;
    - (B) conditions may change over time such that Contamination may Migrate, change composition or character, abate or increase in concentration or toxicity and this may occur regardless of or independently of or in association with an activity on a property or any remediation or management measures taken in respect of Contamination; and
    - (C) as a result those plans or diagrams may not accurately represent the true depth, location and extent of and characteristics of the Contamination and may not represent the precise location of the Contamination; and
  - (ii) given the nature of past activities on the Relevant Land there is likely to be Pre-existing Contamination of the Relevant Land that is not Identified Contamination,

including that which ought to have been reasonably anticipated by an experienced service provider working in the railway sector at the date of this Deed on the basis that it is typically or usually associated with the types of activities known to have been carried out at the location impacted by the Contamination.

- (b) Subject to this Deed, the Service Provider accepts that it must manage and be responsible for the management of Contamination on the Relevant Land during the Term.

### 13.3 Release

The Service Provider releases the Principal from any Claim against the Principal arising out of, or in any way in connection with, any Default Contamination or, except to the extent otherwise expressly provided in this Deed, Modification Contamination or Pre-existing Contamination.

### 13.4 Notification of Clean-Up Notice

If either party is served with a Clean-Up Notice in connection with the Relevant Land or the Services then the party who received the Clean-Up Notice must:

- (a) immediately provide to the other party a copy of the Clean-up Notice; and
- (b) provide the other party with regular updates regarding the subject matter of the Clean-up Notice and provide copies of any further correspondence to or from the Authority that served the Clean-Up notice.

### 13.5 Obligations upon discovering Contamination

- (a) Where the Service Provider:
- (i) encounters, disturbs, affects, causes or contributes to any Contamination on or in relation to any Relevant Land; or
- (ii) receives a Clean-Up Notice in connection with any Relevant Land (either from an Authority or from the Principal in accordance with **clause 13.4**),
- the Service Provider must, as soon as is reasonably practicable, perform any required Initial Response Works.
- (b) Where the Service Provider, acting reasonably, anticipates the Contamination referred to in **clause 13.5(a)** may require Contamination Management Works:
- (i) the Service Provider must promptly notify the Principal's Representative in writing, which notice must:
- (A) identify the Contamination, its cause (to the extent that the cause could be reasonably ascertained by a competent person with expertise in the assessment and management of Contamination in the position of the Service Provider) and the Contamination Management Works required;
- (B) identify whether **clause 13.5(b)(iii)** or **13.5(b)(iv)(C)** applies; and
- (C) except in respect of Default Contamination or where **clause 13.5(b)(iv)(C)** applies, attach a Variation Impacts Statement for the Variation Impacts that would apply if the Principal's Representative issued a Direction under **clause 14.1(a)** as contemplated by **clause 13.5(b)(ii)(A)**;
- (ii) except in respect of Default Contamination or where **clause 13.5(b)(iv)(C)** applies, the Principal's Representative will respond to the Service Provider within 10 Business Days of a notice under **clause 13.5(b)(i)** by either:



- (A) issuing a Direction under **clause 14.1(a)** requiring the Service Provider to carry out some Contamination Management Works in respect of the Contamination; or
  - (B) directing the Service Provider not to carry out any Contamination Management Works in respect of the Contamination (but without limiting the Service Provider's liabilities or obligations under this Deed or the Principal's Representative's right to issue a Direction under **clause 14.1(a)** requiring the Service Provider to carry out some Contamination Management Works in respect of the Contamination at a later date);
- (iii) to the extent the Contamination is Default Contamination, the Service Provider must perform all required Contamination Management Works to ensure compliance with this Deed or to otherwise reduce, abate, mitigate or eliminate any risk presented by that Contamination to the standard required by Law and to ensure the safe performance of the Services; and
- (iv) to the extent the Contamination is not Default Contamination, the Service Provider must only perform Contamination Management Works:
  - (A) in accordance with a Direction from the Principal's Representative under **clause 14.1(a)**, including any Direction given in accordance with **clause 13.5(b)(ii)(A)**;
  - (B) in accordance with an approval by the Principal's Representative under **clause 14.3(b)**; or
  - (C) to the extent those Contamination Management Works are necessary to urgently comply with the terms of a Clean-up Notice or a lawful requirement from an Authority or the Law and the failure to perform those necessary Contamination Management Works would constitute an offence.
- (c) Within 48 hours after the Service Provider notifying the Principal Representative under **clause 13.5(b)(i)**, the Service Provider must provide a written report to the Principal's Representative giving complete details of the matter, including the details of any Initial Response Works or Contamination Management Works performed as at the date of the report.
- (d) For the avoidance of doubt, in respect of Default Contamination:
  - (i) the Principal's Representative may direct the Service Provider to perform all required Contamination Management Works to ensure compliance with this Deed or to otherwise reduce, abate, mitigate or eliminate any risk presented by that Contamination to the standard required by Law and to ensure the safe performance of the Services and the Service Provider must comply with any such Direction; and
  - (ii) any such Contamination Management Works will not be a Modification (and will not give rise to an Adjustment Event) and the Service Provider will not be entitled to make, and the Principal will not be liable for, any Claim arising out of, or in any way in connection with, Default Contamination or compliance by the Service Provider with its obligations under **clause 13.5(b)(iii)** or **13.5(d)(i)**.



### 13.6 Prior Contamination

To the extent that a person has, prior to the date of this Deed, caused, exacerbated or contributed to any Contamination of Relevant Land and that person is:

- (a) the Service Provider;
- (b) if the Service Provider is a partnership, joint venture or special purpose vehicle, a member (including a shareholder) of the Service Provider; or
- (c) a Related Body Corporate of the Service Provider,

nothing in this Deed and no act or omission by or on behalf of the Service Provider or the Principal under or in connection with this Deed will limit any duty, obligation or liability of that person (if any) in connection with that Contamination.

---

## Part H – Variations

### 14 Modifications and Adjustment Events

#### 14.1 Principal Initiated Modifications

- (a) The Principal's Representative may, by a written notice to the Service Provider, direct the Service Provider to carry out a Modification.
- (b) Only a Direction given by the Principal's Representative in writing, expressly stating that it is a Direction given under **clause 14.1(a)** and complying with the requirements of **clauses 14.1(a) and 16(d)** (as applicable) will constitute a Direction for the purposes of **clause 14.1(a)**.
- (c) If a Modification is directed by the Principal's Representative under **clause 14.1(a)**, then subject to **clauses 14.1(f), 14.2(c), 17.4(c), 29.4 and 29.5**, the Variation Impacts for the Modification will be determined by the Principal's Representative in accordance with **Part 2 of the Variations Schedule**.
- (d) Prior to issuing a Direction under **clause 14.1(a)**, the Principal's Representative may give the Service Provider written notice of a potential Modification it proposes to direct under **clause 14.1(a)**.
- (e) Within 15 Business Days of receipt by the Service Provider of a notice under **clause 14.1(d)** in relation to any potential Modification, the Service Provider must give to the Principal's Representative a Variation Impacts Statement in respect of the potential Modification.
- (f) Following receipt of a Variation Impacts Statement under **clause 14.1(e)** (or further detail or supporting information required under **clause 14.1(f)(iii)**), the Principal's Representative may:
  - (i) direct the relevant potential Modification under **clause 14.1(a)** and accept the Variation Impacts Statement provided by the Service Provider, in which case the Variation Impacts will be as proposed by the Service Provider; or
  - (ii) direct the relevant potential Modification under **clause 14.1(a)** without accepting some or all of the Variation Impacts Statement provided by the Service Provider, in which case:
    - (A) the Variation Impacts will be, to the extent accepted by the Principal's Representative, as proposed by the Service Provider; and

- (B) to the extent not accepted by the Principal's Representative, subject to **clauses 14.2(c), 17.4(c), 29.4 and 29.5**, the Variation Impacts will be determined by the Principal's Representative in accordance with **clause 14.1(c)**; or
- (iii) direct the Service Provider to provide further detail or supporting information in respect of the Variation Impacts Statement under **clause 14.1(e)**, in which case the Service Provider must promptly provide such further detail or supporting information and this **clause 14.1(f)** will re-apply; or
- (iv) decide not to proceed with the potential Modification at that time.
- (g) The Service Provider will not be entitled to make, and the Principal will not be liable for, any Claim arising out of, or in any way in connection with, compliance by the Service Provider with its obligations under **clause 14.1(e) or 14.1(f)**.
- (h) For the avoidance of doubt:
  - (i) the Principal's Representative may issue a notice under **clause 14.1(a)** whether or not the Principal's Representative has issued a notice under **clause 14.1(d)**;
  - (ii) the Principal's Representative will not be obliged to proceed with any potential Modification the subject of a notice under **clause 14.1(d)**; and
  - (iii) the power of the Principal's Representative to direct Modifications is not limited to the matters referred to in **Part 1** of the **Variations Schedule** and includes the power to:
    - (A) direct the Service Provider to carry out Enhancement Activities;
    - (B) reverse the effect of all or any part of a previous Modification, including by directing as a Modification the performance of activities and work that have been omitted from the Services by the exercise of an Option or the removal of activities and work that have been included as part of the Services by the exercise of an Option;
    - (C) omit any part of the Services, including by omitting:
      - (1) Enhancement Activities that have not been completed by the Service Provider at the expiry of the Term; or
      - (2) any part of the Services no longer able to be performed in circumstances where the ACT Licence is terminated;
    - (D) change the Services as required following any change in status of any part of the CRN from the CRN Operational Network to the CRN Non-Operational Network or vice versa;
    - (E) direct the Service Provider not to make good any loss of or damage to the CRN Assets in accordance with **clause 18.1(a)(v)**; and
    - (F) if the Principal's Representative has directed the Service Provider not to make good any loss of or damage to the CRN Assets in accordance with **clause 18.1(a)(v)**, subsequently direct the Service Provider to make good any or all of such loss of or damage to the CRN Assets.

## 14.2 Options

- (a) The Principal's Representative may, by a written notice to the Service Provider, exercise any Option.



- (b) Subject to **clause 36**, only a Direction given by the Principal's Representative in writing, expressly stating that it is a Direction given under **clause 14.2(a)** will constitute a Direction for the purposes of **clause 14.2(a)**.
- (c) If an Option is exercised by the Principal's Representative under **clause 14.2(a)**, subject to **clauses 14.1(f), 17.4(c), 29.4, 29.5 and 36**, the Variation Impacts for the exercise of the Option will be:
  - (i) in respect of Option 1, Option 2, Option 3A, Option 3B or Option 3C, if:
    - (A) the Option is exercised on or before the date that is 2 years after the Services Commencement Date; and
    - (B) in respect of:
      - (1) Option 2, the Principal's Representative has not previously exercised Option 3A or Option 3B;
      - (2) Option 3B, the Principal's Representative has not previously exercised Option 2, Option 3A or Option 3C; or
      - (3) Option 3A, the Principal's Representative has not previously exercised Option 2 or Option 3C,as specified in the relevant part of **Section 9.2** of the **Payment Schedule**;
  - (ii) in respect of Option 4, Option 5 or Option 6, if the Option is exercised on or before the Services Commencement Date, as specified in the relevant part of **Section 9.2** of the **Payment Schedule**; or
  - (iii) if **clauses 14.2(c)(i) and 14.2(c)(ii)** do not apply, determined by the Principal's Representative in accordance with **Part 2** of the **Variations Schedule**.
- (d) Nothing in this **clause 14.2** will limit or otherwise affect the ability of the Principal's Representative to exercise any right under **clause 14.1**.

### 14.3 Service Provider Initiated Modifications

- (a) Without limiting **clause 15(a)**, the Service Provider may, by notice in writing to the Principal's Representative, request approval from the Principal's Representative for the carrying out of a Modification by issuing a Variation Impacts Statement, but only if such Modification is necessary as a result of, or comprises, an eligible potential Modification referred to in **Part 1** of the **Variations Schedule**.
- (b) The Principal's Representative may (in its absolute discretion unless otherwise provided in **section 5.8.10(b)(ii)** of the **Scope of Works**), by a written notice to the Service Provider:
  - (i) approve or reject a Modification proposed by the Service Provider under **clause 14.3(a)**;
  - (ii) impose conditions on any approval; and
  - (iii) direct the Service Provider to provide further detail or supporting information in respect of the Variation Impacts Statement under **clause 14.3(a)**.
- (c) If a Modification is approved by the Principal's Representative under **clause 14.3(b)**, subject to **clauses 14.2(c), 17.4(c), 29.4 and 29.5**, the Variation Impacts for the Modification will be determined by the Principal's Representative in accordance with **Part 2** of the **Variations Schedule**.



- (d) Only an approval given by the Principal's Representative in writing, expressly stating that it is an approval given under **clause 14.3(b)** and complying with the requirements of **clause 14.3(b)**, will constitute an approval for the purposes of **clause 14.3(b)**.

#### 14.4 Adjustment Events

If an Adjustment Event occurs:

- (a) and the Variation Impacts associated with that Adjustment Event are, or may be, beneficial to the Principal, the Service Provider must promptly (and in any event within 10 Business Days of the Adjustment Event occurring) notify the Principal's Representative of the Adjustment Event by issuing a Variation Impacts Statement;
- (b) for the avoidance of doubt, if the Service Provider wishes to make any Claim against the Principal in respect of or relating to the Adjustment Event, the Service Provider must do so in accordance with **clause 29**; and
- (c) subject to **clauses 29.4 and 29.5**, the provisions of the section of **Part 3** of the **Variations Schedule** relevant to the Adjustment Event will apply.

#### 15 Innovation

- (a) The Service Provider may, by notice in writing to the Principal's Representative, propose an Innovation Change for the approval of the Principal's Representative.
- (b) Any notice under **clause 15(a)** must state that it is a notice under **clause 15(a)** and include:
  - (i) full details of:
    - (A) the proposed Innovation Change (including reasons why the Service Provider proposes the Innovation Change);
    - (B) how the Service Provider will ensure that the quality of the Services is maintained at the level required by this Deed (including compliance with the KPIs) if the Innovation Change were implemented; and
    - (C) the benefits of the Innovation Change to the Service Provider and the Principal, in relation to the CRN Assets and the operations of TfNSW and any other NSW Government agency more broadly;
  - (ii) the Service Provider's proposal for any of the following:
    - (A) funding capital costs, including any proposal for the Principal to fund capital costs to the extent that they relate to the overall benefits to TfNSW and any other NSW Government agency of the proposed Innovation Change;
    - (B) preserving the Service Provider's profit margin prior to the implementation of the proposed Innovation Change, whilst reducing the overall payments by the Principal to the Service Provider;
    - (C) sharing a percentage of the estimated potential cost savings if the Innovation Change were to be implemented, particularly where the Innovation Change is beneficial to TfNSW and any other NSW Government agency not only in relation to the CRN Assets but also more broadly; and
    - (D) the Principal purchasing any Intellectual Property developed by the Service Provider in relation to the Innovation Change, where such

Intellectual Property has been clearly defined and appropriately valued;  
and

- (iii) any other matters required in respect of a Variation Impacts Statement.
- (c) Without limiting the Principal's Representative's ability to direct Modifications under **clause 14.1(a)**, the Principal's Representative may (in its absolute discretion):
  - (i) approve or reject an Innovation Change proposed by the Service Provider under **clause 15(a)**;
  - (ii) impose conditions on any approval;
  - (iii) require the Service Provider to participate in good faith negotiations for a period of 30 Business Days (as such period may be extended by agreement in writing by the parties) with a view to agreeing any part of the Service Provider's proposal; and
  - (iv) direct the Service Provider to provide further detail or supporting information in respect of the notice under **clause 15(a)**.
- (d) Despite any other provision of this Deed, the Service Provider will not be entitled to make, and the Principal will not be liable for, any Claim arising out of, or in any way in connection with, any Innovation Change proposed by the Service Provider under **clause 15(a)**, except as expressly approved by the Principal's Representative under **clause 15(c)**.

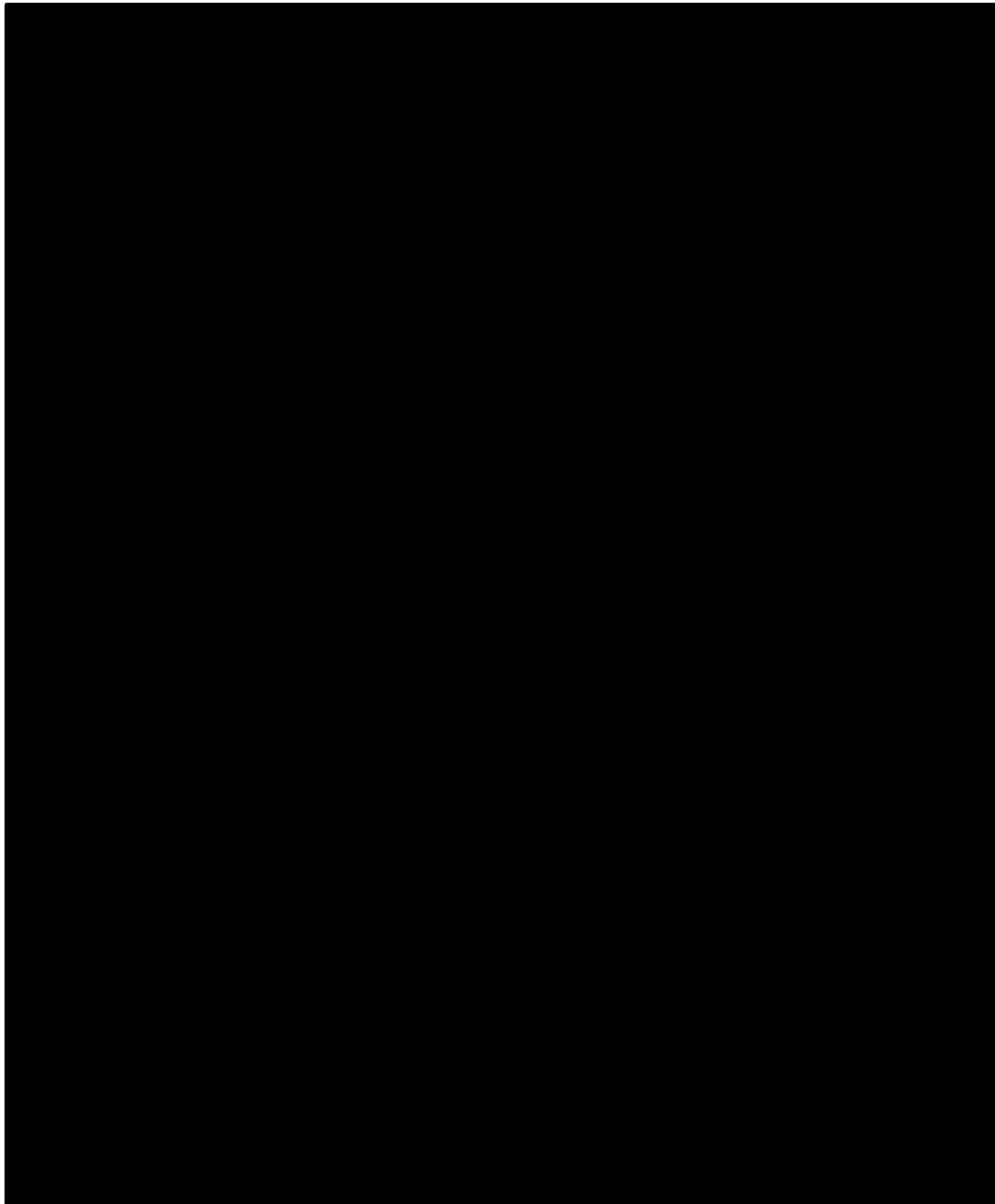
## 16 General provisions regarding Modifications or Adjustment Events

- (a) Without limiting the Service Provider's other obligations under this Deed, the Service Provider:
  - (i) must not carry out any Modification, except as Directed under **clause 14.1(a)**, **14.2(a)**, **14.3(b)** or **15(c)** or as required under **clause 29.1(d)**;
  - (ii) without limiting **clause 16(a)(i)**, must not change the CRN Assets, except as required to carry out the Services in accordance with this Deed; and
  - (iii) must take all reasonable steps to mitigate any Loss suffered or incurred by the Service Provider arising out of, or in any way in connection with, any Modification or Adjustment Event.
- (b) Despite any other provision of this Deed:
  - (i) no Adjustment Event or Modification will invalidate, or amount to a repudiation of, this Deed;
  - (ii) no Modification will entitle the Service Provider to any Claim, except for:
    - (A) Variation Impacts expressly set out in, and determined in accordance with:
      - (1) **Part 2 of the Variations Schedule**; or
      - (2) to the extent the Modification will result in Modification Assets (including under **clause 2.16(b)**) and the incorporation of those Modification Assets as part of the CRN Assets will give rise to a CRN Asset Base Change, **Part 3 of the Variations Schedule**; and

- (B) in respect of Enhancement Activities, Claims which are expressly provided for in the relevant **Enhancement Activities Terms and Conditions**, including extensions of time;
- (iii) no Adjustment Event will entitle the Service Provider to any Claim, except for:
  - (A) Variation Impacts expressly set out in, and determined in accordance with, **Part 3** of the **Variations Schedule**; and
  - (B) in respect of Enhancement Activities, Claims which are expressly provided for in the relevant **Enhancement Activities Terms and Conditions**, including extensions of time;
- (iv) the Service Provider will not be entitled to make, and the Principal will not be liable for, any Claim:
  - (A) for any adjustment to any Mobilisation Payment or any Transition Out Cost arising out of, or in any way in connection with, any Adjustment Event;
  - (B) for a Variation Impact or a Claim referred to in **clause 16(b)(ii)(B) or 16(b)(iii)(B)** if the relevant Modification or Adjustment Event is caused or contributed to by:
    - (1) a Non-Compliance;
    - (2) disruption of, or interference with, the Services as a result of the Service Provider not having a Track Possession;
    - (3) any CRN Assets Condition (except to the extent such CRN Assets Condition comprises, or is caused by, a Modification or an Adjustment Event); or
    - (4) without limiting **clause 16(b)(iv)(B)(1)**, any Service Provider Default; or
  - (C) to the extent such Claim or any Loss the subject of such Claim:
    - (1) is caused or contributed to by any failure by the Service Provider to comply with **clause 16(a)(iii)**; or
    - (2) relates to the CRN Assets referred to in **paragraph (e)** of the definition of 'CRN Assets' in **clause 1.1** and that Claim is not in respect of a Modification directed in respect of those CRN Assets under **clause 14.1(a)**.
- (c) The Principal may carry out itself or engage others to carry out the whole or any part of any Services which are omitted in accordance with, or as a result of, any Variation or the exercise of any Option.
- (d) If a Modification directed under **clause 14.1(a)** is Enhancement Activities, the written notice under **clause 14.1(a)** must specify that the Modification constitutes Enhancement Activities for the purposes of this Deed.
- (e) If a potential Modification notified by the Principal's Representative under **clause 14.1(d)** is Enhancement Activities, the written notice under **clause 14.1(d)**:
  - (i) must specify that the potential Modification constitutes Enhancement Activities for the purposes of this Deed and the Enhancement Activities Particulars proposed by the Principal; and



- (ii) may propose amendments (including additions) to the terms and conditions in **Schedule 12** which will apply for those Enhancement Activities.
- (f) If a Modification directed under **clause 14.1(a)** or approved under **clause 14.3(b)** constitutes Enhancement Activities:
  - (i) the Enhancement Activities Particulars for the Enhancement Activities will be:
    - (A) as agreed in writing by the parties; or
    - (B) to the extent the parties have not agreed the Enhancement Activities Particulars in writing:



- (ii) the relevant **Enhancement Activities Terms and Conditions** apply to that Modification, including all associated Enhancement Activities and Modification Assets.

## Part I – Payment

### 17 Payment

#### 17.1 Payment Entitlements

The Principal agrees to pay the Service Provider:

- (a) in consideration of the Service Provider carrying out:
  - (i) the Mobilisation Activities (other than the Redeployment Activities forming part of the Mobilisation Activities) in accordance with this Deed, the Mobilisation Payments;
  - (ii) the Redeployment Activities in accordance with this Deed, the Redeployment Costs Payments;
  - (iii) the Services (other than the Mobilisation Activities, the Redeployment Activities not forming part of the Mobilisation Activities and the Transition Out Activities) in accordance with this Deed, the Monthly Services Fee, which is a fixed monthly amount (subject to adjustment as set out in the **Payment Schedule**); and
  - (iv) the Transition Out Activities in accordance with this Deed, the Transition Out Costs,  
  
in each case calculated in accordance with the **Payment Schedule**; and
- (b) other amounts expressly payable by the Principal to the Service Provider under this Deed,

subject to and in accordance with the provisions of this Deed, including this **clause 17**.

#### 17.2 Payment Claims

The Service Provider must deliver to the Principal’s Representative within 5 Business Days after the end of each month prior to the Termination Date, and then no later than the date that is 20 Business Days after the Termination Date, a written claim for payment which:

- (a) clearly and separately identifies the amount claimed on account of the following:



- (b) is addressed to TAHE and otherwise in the form set out in **Attachment G**, or such other form required by the Principal's Representative acting reasonably; and
- (c) includes or encloses detailed calculations for, and evidence reasonably acceptable to the Principal's Representative verifying and substantiating amounts used for the purposes of calculating, the amounts referred to in **clause 17.2(a)**.

The Principal's Representative may, from time to time, notify the Service Provider of changes in the reporting requirements for Payment Claims or invoices or request additional material to be provided by the Service Provider for the purposes of presenting or reporting a Payment Claim or invoice, and the Service Provider must comply with its obligations regarding Payment Claim or invoice reporting on the basis of such change and comply with any such request.

### 17.3 Payment Response

- (a) The Principal's Representative may deliver to the Principal and the Service Provider within 10 Business Days after the Principal's Representative's receipt of a Payment Claim (or when otherwise contemplated by this **clause 17.3**) a written statement which:
  - (i) identifies the Payment Claim (if any) to which it relates;
  - (ii) indicates the Principal's Representative's determination of:
    - (A) the moneys due from the Principal to the Service Provider which the Principal proposes to pay, clearly and separately identifying each type of payment; or
    - (B) if the Principal's Representative determines that no moneys are due from the Principal to the Service Provider, the moneys due from the Service Provider to the Principal, including any 3 Year Maintenance Works Plan Adjustment Clawback, abatement or adjustment determined in accordance with the **Payment Schedule** or the **KPI Schedule**; and
  - (iii) includes or encloses:
    - (A) details of the Principal's Representative's calculations of the stated amounts; and
    - (B) to the extent that the amount referred to in **clause 17.3(a)(ii)(A)** differs from the amounts claimed by the Service Provider in the Payment Claim (if any), a statement of the amount of that difference, together with the reasons for that difference and (if the difference is because the Principal is withholding payment for any reason) the Principal's reasons for withholding payment.
- (b) The Principal's Representative may, in its absolute discretion, whether or not the Service Provider submits (or is entitled to submit) a Payment Claim in accordance with **clause 17.2**, at any time issue a Payment Response (including for the purposes of correcting any error in a previous Payment Response).
- (c) Failure by the Principal's Representative to set out in a Payment Response an amount, or the correct amount, which the Principal is entitled to retain, deduct, withhold or set-off from the amount which would otherwise be payable to the Service Provider by the Principal will not prejudice the Principal's right to subsequently exercise its right to retain, deduct, withhold or set-off any amount under this Deed.



#### 17.4 Payments

- (a) The Principal must pay amounts stated as payable by the Principal to the Service Provider in a Payment Response within 15 Business Days after the issue of the relevant Payment Claim or, if there is no relevant Payment Claim, within 15 Business Days after the issue of the relevant Payment Response.
- (b) If any Payment Response shows an amount that is payable by the Service Provider to the Principal, then the Service Provider must pay that amount to the Principal within 10 Business Days of receiving the Payment Response.
- (c) The Service Provider acknowledges and agrees that:
  - (i) particular Modifications may be carried out following the request of a third party to the Principal or the Service Provider, which may then form the basis of a Direction under **clause 14.1(a) or 14.3(b)**; and
  - (ii) any payment by such a third party to the Service Provider for the carrying out of such Modifications or any associated Variation Impact will be deemed to be in satisfaction of the Principal's obligation to pay the Service Provider for such Modifications or associated Variation Impacts under this Deed.
- (d) The Service Provider acknowledges and agrees that payments on account of amounts owed by the Principal to the Service Provider will be made by TAHE and that any payment received by the Service Provider from TAHE under, or in connection with, this Deed will be deemed to be a payment by the Principal under, or in connection with, this Deed.

#### 17.5 Set Offs by the Principal

In addition to the Principal's other rights and despite any Payment Response issued by the Principal's Representative under **clause 17.3**, the Principal may:

- (a) retain, deduct, withhold or set off from moneys otherwise due to the Service Provider in connection with this Deed, the Services or the CRN Assets:
  - (i) any debt or other moneys due from the Service Provider to the Principal, whether under this Deed, pursuant to a judgment, arbitral award or expert determination in connection with this Deed, the Services or the CRN Assets or otherwise in any way in connection with this Deed, the Services or the CRN Assets;
  - (ii) the amount of any bona fide claim the Principal may have against the Service Provider under, or in any way in connection with, this Deed, the Services or the CRN Assets;
  - (iii) without limiting **clauses 17.5(a)(i) and 17.5(a)(ii)**, any 3 Year Maintenance Works Plan Adjustment Clawback or abatement determined in accordance with the **Payment Schedule** or the **KPI Schedule**;
  - (iv) without limiting **clauses 17.5(a)(i) and 17.5(a)(ii)**, any Unpaid Previous Service Provider In-Scope Employee Allowance; or
  - (v) any Applied Tax Amount in accordance with **clause 4.6(d)**;
- (b) without limiting **clause 17.5(a)**, retain, deduct, withhold or set off from moneys otherwise due to the Service Provider any amount that the Principal is obliged to withhold from payment to the Service Provider under any Law, including the Security of Payment Act (NSW); and
- (c) retain, deduct, withhold or set off from moneys otherwise due to the Service Provider:

- (i) in circumstances where the Service Provider has not complied with **clause 17.9** or any other provision or requirement of this Deed (including the **Payment Schedule**) which is expressed to be a precondition to any entitlement of the Service Provider to submit Payment Claims or receive payment (including as referred to in **clause 3.15**), the full amount that would otherwise have been payable by the Principal to the Service Provider in respect of a Payment Claim; or
- (ii) any amount the Principal is entitled to withhold in accordance with any Law, including section 175B of the *Workers Compensation Act 1987* (NSW), Schedule 2 Part 5 of the *Payroll Tax Act 2007* (NSW) and section 127 of the *Industrial Relations Act 1996* (NSW).

Nothing in this **clause 17.5** affects the right of the Principal to recover from the Service Provider the whole of the debt, moneys or claim or any balance that remains owing.

#### **17.6 Payment on account**

The issue of a Payment Response and payment of moneys by the Principal is not:

- (a) an admission or evidence of the value of work or that work has been carried out or completed in accordance with this Deed;
- (b) an admission of liability; or
- (c) approval by the Principal or the Principal's Representative of the Service Provider's performance or compliance with this Deed,

but is only to be taken as payment on account.

#### **17.7 Interest on Overdue Payments**

If any moneys due to either party remain unpaid after their due date, then interest will be payable on the amount due but unpaid from the day after the due date to and including the date on which the moneys are paid. The rate of interest will be an interest rate that is [REDACTED] percentage points above the [REDACTED]

[REDACTED] Interest will be compounded at [REDACTED] intervals.

#### **17.8 Ownership of Materials**

The Service Provider:

- (a) agrees that on payment to the Service Provider of any amount for any Materials, they will be the property of the Principal free of any Security Interest;
- (b) warrants and agrees that ownership of and property in (but not risk in) any Materials will pass to the Principal upon payment being made to the Service Provider in respect of those Materials; and
- (c) must provide such evidence as the Principal's Representative requires to establish that ownership of such Materials will pass to the Principal before the Service Provider is entitled to claim any payment in respect of such Materials.

#### **17.9 Payment of Subcontractors**

With each claim for payment under **clause 17.2**, and as a precondition to any entitlement of the Service Provider to payment in respect of each Payment Claim, the Service Provider must give to the Principal's Representative a duly completed and executed statutory declaration in the form set out in **Schedule 9** (or such other form reasonably required by the Principal's Representative) dated no earlier than the date of submission of the statutory declaration from the Service Provider



(or, where the Service Provider is a corporation, a representative of the Service Provider who is in a position to know the facts declared).

#### **17.10 Trust Account**

If the Service Provider:

- (a) receives any money in any way in connection with any:
  - (i) Relevant Document; or
  - (ii) advertising rights or sale of any assets or equipment (including scrap metal) relating to the CRN Assets or the Services; or
- (b) receives any other money that, but for the Service Provider's role assumed as a result of carrying out of the Services, would have been paid to the Principal or any other Rail Transport Agency, including any money received in the carrying out of the Agency Services or any money received pursuant to any Track Access Agreement or the carrying out of the Property Management Services,

the Service Provider receives that money and will hold that money on behalf of the Principal (or its nominee) and as trustee for the Principal (or its nominee) and must:

- (c) open a dedicated account (with an institution that is an authorised deposit-taking institution (as defined in the *Banking Act 1959* (Cth)));
- (d) deposit that money immediately into the dedicated account;
- (e) hold all money in that account on trust for the Principal (or its nominee);
- (f) not mix any other funds with the funds in that trust account;
- (g) not use those funds for any purpose;
- (h) provide online electronic access to the account to the Principal (or its nominee); and
- (i) provide the Principal (or its nominee) with accounts of those funds and transfer those funds to an account nominated by the Principal (or its nominee) on a weekly basis or as otherwise required by the Principal (or its nominee).

#### **17.11 Long Service Levy**

The Service Provider must pay any applicable Long Service Levy to the Long Service Corporation.

#### **17.12 Notices Under the Security of Payment Act and Contractors Debts Act**

The Service Provider must:

- (a) as soon as practicable give the Principal a copy of any notice the Service Provider:
  - (i) receives from a Subcontractor under section 15, 16 or 24 of the Security of Payment Act (NSW);
  - (ii) receives from a Subcontractor under section 17, 18 or 26 of the Security of Payment Act (ACT); or
  - (iii) has been required to supply to a Subcontractor under section 15(1) of the *Contractors Debts Act 1997* (NSW); and
- (b) promptly notify the Principal if it becomes aware that a Subcontractor intends to exercise a statutory lien, under section 11(3) of the Security of Payment Act (NSW) or section 13(3) of the Security of Payment Act (ACT), over unfixed plant and materials



supplied by the Subcontractor for use in carrying out work forming part of the Services or any trade contract.

### 17.13 Suspension of Work Under the Security of Payment Act

If the Service Provider suspends the whole or part of the Services pursuant to the Security of Payment Act (NSW) or the Security of Payment Act (ACT):

- (a) the Service Provider will not be entitled to make, and the Principal will not be liable for, any Claim arising out of, or in any way in connection with, the suspension; and
- (b) the Principal may direct the Service Provider to omit the whole or part of the suspended Services and thereafter the Principal may engage others to carry out the suspended Services.

### 17.14 Adjudicator's Determination

Where an adjudication occurs under the Security of Payment Act (NSW) or the Security of Payment Act (ACT) and the Principal has paid the adjudicated amount to the Service Provider, if the adjudicator's determination is quashed, overturned or declared to be void, the adjudicated amount will become a debt due and payable by the Service Provider to the Principal.

### 17.15 GST

- (a) Unless the context requires otherwise, words used in this clause that have a specific meaning in the GST Law will have the same meaning in this clause.
- (b) Subject to **clause 17.15(c)**, the parties agree that:
  - (i) all payments of consideration for a supply made under this Deed will be subject to the prior receipt of a tax invoice;
  - (ii) if GST is payable, or notionally payable, on a supply made under or in connection with this Deed, the party providing the consideration for that supply must pay as additional consideration an amount equal to the GST Amount, on that supply, except to the extent that the consideration for the supply is expressly stated to be GST inclusive or the supply is subject to reverse charge;
  - (iii) subject to the prior receipt of a tax invoice, the GST Amount is payable at the same time that the other consideration for the supply is provided;
  - (iv) where any indemnity, reimbursement or similar payment under this Deed is based on any cost, expense or other liability, it will be reduced by any input tax credit entitlement, or notional input tax credit entitlement, in relation to the relevant cost, expense or other liability;
  - (v) for the purposes of calculating the relevant reduction under **clause 17.15(b)(iv)** and unless the relevant party demonstrates otherwise before the payment is made, it must be assumed that a full input tax credit is available;
  - (vi) if an adjustment event occurs in relation to a supply under or in connection with this Deed, the GST Amount will be recalculated to reflect that adjustment and an appropriate payment will be made between the parties; and
  - (vii) any reference in this Deed to a cost, expense or other similar amount (**Cost**) is a reference to that Cost exclusive of GST.
- (c) Further to the requirements of and for the purposes of sub-division 153-B of the *A New Tax System (Goods and Services Tax) Act 1999* (Cth), the parties agree that:
  - (i) both the Principal and the Service Provider are registered for GST;

- (ii) the Service Provider will, on the Principal's behalf:
  - (A) make supplies to third parties;
  - (B) facilitate supplies to third parties (including by issuing invoices relating to, or receiving consideration for, such supplies);
  - (C) make acquisitions from third parties; or
  - (D) facilitate acquisitions from third parties (including by providing consideration for such acquisitions);
- (iii) the kind of supplies or acquisitions to which this sub-division 153-B agreement applies are all supplies and acquisitions made or facilitated by the Service Provider in carrying out the Agency Services;
- (iv) for the purposes of the GST Law:
  - (A) the Service Provider will be treated as making the above supplies to the third parties, or the above acquisitions from the third parties, or both; and
  - (B) the Principal will be treated as making corresponding supplies to the Service Provider, or corresponding acquisitions from the Service Provider, or both;
- (v) in the case of supplies made (or treated as being made) by the Service Provider to third parties:
  - (A) the Service Provider will issue to the third parties, in the Service Provider's own name, all the tax invoices and adjustment notes relating to those supplies; and
  - (B) the Principal will not issue to the third parties any tax invoices and adjustment notes relating to those supplies;
- (vi) in the case of supplies made (or treated as being made) by the Principal to the Service Provider, the Principal will issue to the Service Provider, displaying the Principal's name and ABN, all tax invoices and adjustment notes relating to the deemed supply of the above supplies to the Service Provider;
- (vii) in the case of supplies made (or treated as being made) by the Service Provider to the Principal, the Service Provider will issue to the Principal, displaying the Service Provider's name and ABN, all tax invoices and adjustment notes relating to the deemed supply of the above supplies to the Principal; and
- (viii) either party will inform the other party immediately if they cease to be registered for GST, and this arrangement ceases to have effect from the date that the Principal or the Service Provider or both cease to be registered for GST.

#### 17.16 No Carbon price

- (a) The Service Provider warrants that the Monthly Services Fee is exclusive of:
  - (i) any Carbon Price applicable directly or indirectly to the Services or any input costs of the Services such that in paying the Monthly Services Fee, the Principal is not making any payment whatsoever that is attributable to any Carbon Price; and
  - (ii) any benefit (including a credit or income) under the *Carbon Credits (Carbon Farming Initiative) Act 2011* (Cth) or under any other Carbon Credit Scheme.



- (b) The Principal's Representative may at any time during the Term request that the Service Provider repeat the warranty provided at **clause 17.16(a)** remains true, and the Service Provider must comply with that request.

## Part J – Risk, Insurance and Liability

### 18 Risk

#### 18.1 Risk of the CRN Assets and CRN Assets Conditions

- (a) Subject to the terms of this Deed, the Service Provider agrees:
- (i) the CRN Assets will be in the custody, control and care of the Service Provider at all times during the Term, including for the purposes of all Laws;
  - (ii) the Service Provider must use the CRN Assets at the Service Provider's own risk;
  - (iii) the Service Provider will (at all times during the Term) be responsible for the care of, and bear the risk of loss or damage to, the CRN Assets (including Modification Assets), Plant and Equipment and any other items (including unfixed Materials) in respect of which an amount has been certified as payable in a Payment Response;
  - (iv) the Service Provider must promptly, and in any event prior to incurring any costs associated with its obligations under **clause 18.1(a)(v)**:
    - (A) notify the Principal's Representative in writing of any loss of or damage to the CRN Assets (including Modification Assets), Plant and Equipment and any other items (including unfixed Materials) in respect of which an amount has been certified as payable in a Payment Response, with full details of:
      - (1) the relevant loss or damage;
      - (2) the cause of the relevant loss or damage; and
      - (3) the steps proposed to be taken by the Service Provider to comply with its obligations under **clause 18.1(a)(v)**; and
    - (B) without limiting **clause 29**, if the relevant loss or damage (or the cause of the relevant loss or damage) constitutes an Adjustment Event for which the Service Provider wishes to make a Claim, provide the Principal's Representative with a Variation Impacts Statement in respect of that Adjustment Event;
  - (v) the Service Provider must, except to the extent otherwise directed by the Principal's Representative under **clause 14.1(a)** or approved by the Principal's Representative under **clause 14.3(b)**, make good any loss of or damage to the CRN Assets (including Modification Assets), Plant and Equipment and any other items (including unfixed Materials) in respect of which an amount has been certified as payable in a Payment Response:
    - (A) which arises during, or as a result of any event or circumstance occurring during, the Term; or
    - (B) otherwise to the extent caused or contributed to by an act or omission of the Service Provider or any of its Associates; and
  - (vi) except to the extent otherwise expressly provided in this Deed in respect of Contamination, Adjustment Events or Qualifying Latent CRN Assets Conditions,



the Service Provider assumes the risk of all the CRN Assets Conditions (whether or not they could have reasonably been anticipated at the date of this Deed or have occurred or arisen before, on or after the date of this Deed).

- (b) The Principal makes no representation and gives no warranty to the Service Provider in respect of:
  - (i) the CRN Assets, including the existence, location, condition or availability of any services in respect of the CRN Assets; or
  - (ii) any CRN Assets Condition (whether or not they could have reasonably been anticipated at the date of this Deed or have occurred or arisen before, on or after the date of this Deed).
- (c) Except to the extent otherwise expressly provided in this Deed in respect of Contamination, Adjustment Events or Qualifying Latent CRN Assets Conditions, the Service Provider:
  - (i) accepts the CRN Assets and all CRN Assets Conditions in their existing condition (including when encountered and at all other times); and
  - (ii) agrees that it is responsible for, and assumes the risk of, and it will not be entitled to make, and the Principal will not be liable for, any Claim arising out of, or in any way in connection with, any additional work, increased costs or any Loss or delay it suffers or incurs arising out of, or in any way in connection with:
    - (A) any CRN Assets Condition (whether or not they could have reasonably been anticipated at the date of this Deed or have occurred or arisen before, on or after the date of this Deed); or
    - (B) Non-Compliances.

## 18.2 Risk of Principal Supplied Assets

Without limiting or otherwise affecting **clauses 5.5 and 18.1(c)**:

- (a) the *Sale of Goods Act 1923* (NSW) and the *Sale of Goods Act 1954* (ACT) do not apply to the Principal Supplied Assets and the Principal makes no representation and gives no warranty to the Service Provider in respect of any Principal Supplied Assets, including as to the quality, condition or suitability of any Principal Supplied Assets, including whether the use by the Service Provider of any Principal Supplied Assets will result in the Service Provider complying with its obligations under this Deed;
- (b) the Service Provider agrees that its use of any Principal Supplied Assets will be based on the Service Provider's own assessment of the quality, condition and suitability of the Principal Supplied Assets for the purpose of carrying out the Services; and
- (c) the Service Provider will not be entitled to make, and the Principal will not be liable for, any Claim arising out of, or in any way in connection with:
  - (i) the quality, condition or suitability of any Principal Supplied Assets;
  - (ii) the Service Provider using any Principal Supplied Assets; or
  - (iii) without limiting **clause 18.2(c)(ii)**, the use by the Service Provider complying with its obligations under this Deed.



[REDACTED]

- (d) employers' liability and workers compensation insurance against liability of the Service Provider for death of, or injury to, persons employed by the Service Provider in carrying out the Services, whether under statute or at common law;
- (e) compulsory third party motor vehicle insurance in respect of all registrable motor vehicles which are used in connection with the Services;
- (f) motor vehicle third party insurance:

[REDACTED]

- (g) plant and equipment insurances:

[REDACTED]

- (h) terrorism insurance which covers physical loss or damage to the CRN Assets caused by a 'Terrorist Act' (as defined in section 3 of the *Terrorism Insurance Act 2003* (Cth) as at the date of this Deed) and including cover for business interruption arising from such loss or damage;

- (i) asbestos liability insurance:

[REDACTED]



- █ [REDACTED]

- █ [REDACTED]

(j) cyber security insurance:

- █ [REDACTED]

- █ [REDACTED]

- █ [REDACTED]

- █ [REDACTED]

- █ [REDACTED]

- █ [REDACTED]

- █ [REDACTED]

- █ [REDACTED]

- █ [REDACTED]

(k) any other insurances which the Principal reasonably requires or which would commonly be obtained in the exercise of Good Industry Practice.

**19.1A Service Provider's Corporate Policies During Mobilisation**

Prior to the Proposed Mobilisation Date, the Service Provider must effect and maintain the following insurances:

(a) a public and products liability policy of insurance:

- █ [REDACTED]

- █ [REDACTED]

- █ [REDACTED]



■ [REDACTED]  
[REDACTED]

■ [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

**19.2 Subcontractor's Insurances**

From the Mobilisation Date, the Service Provider must procure that each of its Subcontractors effect and maintain:

(a) motor vehicle third party insurance in the name of the relevant Subcontractor:

■ [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

■ [REDACTED]  
[REDACTED]  
[REDACTED]

(b) if the relevant Subcontractor carries out services in a professional capacity in relation to the Services (including any design work), a professional indemnity insurance:

■ [REDACTED]  
[REDACTED]  
[REDACTED]

■ [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

(c) employers' liability and workers compensation insurance against liability of the Subcontractor for death of, or injury to, persons employed by the Subcontractor in carrying out the Services, whether under statute or at common law.

**19.3 Periods of Insurance**

The Service Provider must:

(a) maintain those insurances referred to in **clause 19.1** or, in the case of insurances referred to in **clause 19.2**, procure that each of its Subcontractors maintains those insurances, until the later of:

- (i) the Termination Date; and
- (ii) the date of completion of all Enhancement Activities,

and in the case of the insurance referred to in **clause 19.1(c) or 19.2(b)**, 6 years thereafter;

(b) maintain the insurance referred to in **clause 19.1A(a)** until the earlier of:



- (i) the Termination Date; and
  - (ii) the date on which the Service Provider has effected the insurance referred to in **clause 19.1(b)**;
- (c) maintain the insurance referred to in **clause 19.1A(b)** until the date that is 6 years after the earlier of:
  - (i) the Termination Date; and
  - (ii) the date on which the Service Provider has effected the insurance referred to in **clause 19.1(c)**; and
- (d) maintain the insurance referred to in **clause 19.1A(c)** until the earlier of:
  - (i) the Termination Date; and
  - (ii) the date that is the later of:
    - (A) the date on which the Service Provider has effected the insurance referred to in **clause 19.1(a)**; and
    - (B) the date on which the construction of the last of the Mobilisation Constructed Assets has been completed in accordance with this Deed.

#### 19.4 General Insurance Requirements

All insurances to be effected by the Service Provider:

- (a) must be on terms and conditions (including as to the amount of any excess or deductible):
  - (i) required by this Deed and (other than insurances required under **clauses 19.1(d) and 19.1A**) otherwise as approved in writing by the Principal (which approval must not be unreasonably withheld); and
  - (ii) without limiting **clause 19.4(a)(i)**, but subject to **clause 19.12(l)**, which (other than for insurances required under **clauses 19.1(b), 19.1(c) and 19.1A**) are in each case the same as those applying in respect of the relevant insurance policy referred to in Part 2 of **Attachment M**;
- (b) under **clause 19.1(d)** must have an amount of excess or deductible approved in writing by the Principal (which approval must not be unreasonably withheld); and
- (c) must not contain any unusual or project specific exclusion, endorsement or alteration, unless it is first approved in writing by the Principal (which approval must not be unreasonably withheld).

#### 19.5 Evidence of Insurance

The Service Provider must give the Principal:

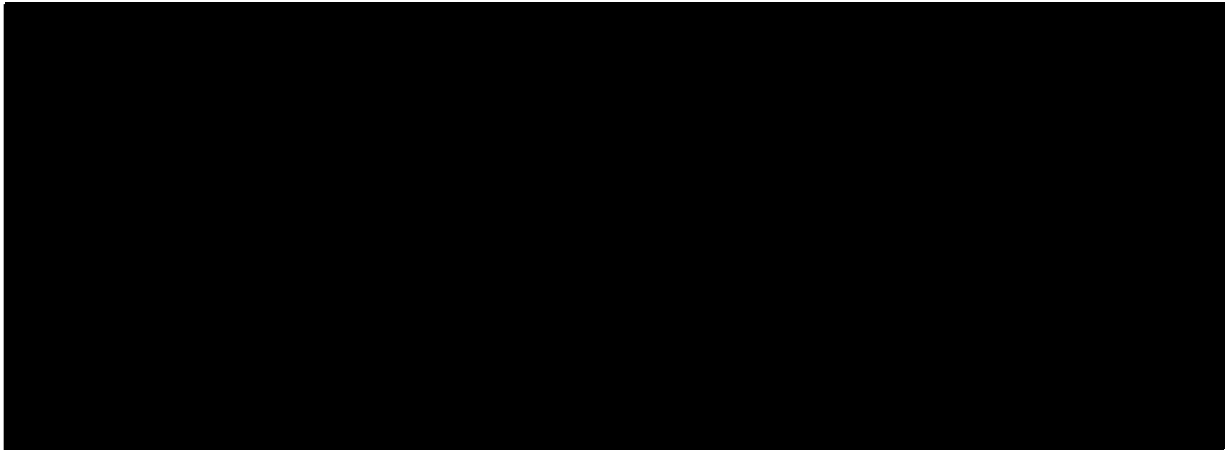
- (a) certified copies of all:
  - (i) policies in accordance with **clause 19.5(c)**;
  - (ii) renewal certificates;
  - (iii) certificates of currency, which include:
    - (A) class of insurance;
    - (B) insurer(s);
    - (C) policy number(s);

## CRN Operations and Maintenance Deed

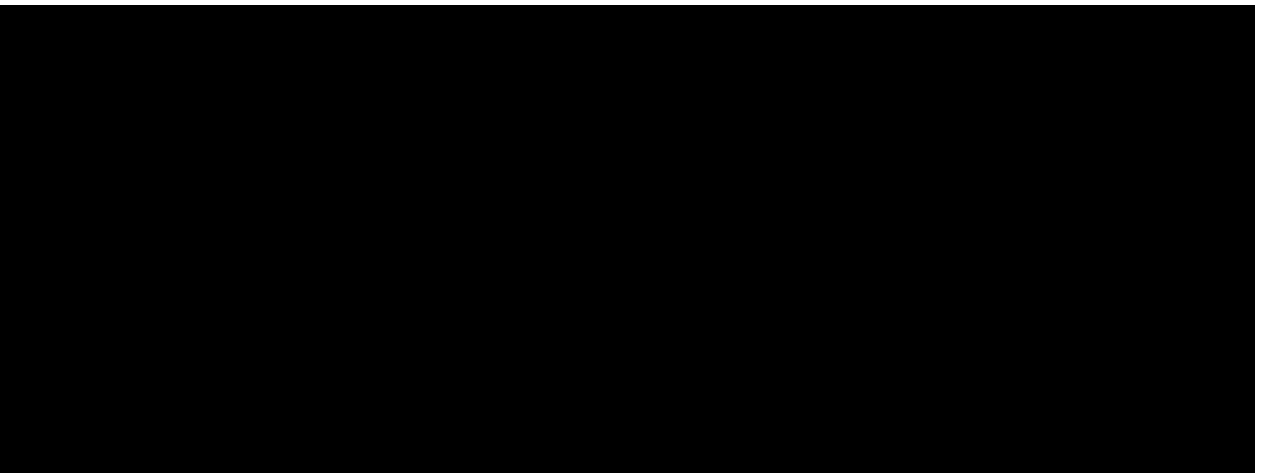
- (D) insured;
  - (E) other interested parties;
  - (F) period of insurance;
  - (G) the business interest insured/property insured;
  - (H) situation and/or premises;
  - (I) geographical limits;
  - (J) limit of liability;
  - (K) sub-limit(s) of liability;
  - (L) deductible(s); and
  - (M) relevant policy exclusions; and
- (iv) endorsements that materially affect the coverage applying under such policies to the Services,

in respect of insurance required to be effected by it under this Deed as soon as possible after it receives them from the insurer and in any event:

- (v) on each anniversary of the Services Commencement Date;
- (vi) upon renewal of each insurance policy during the Term; and
- (vii) within 10 Business Days of a request to do so in writing by the Principal;



- (b) evidence satisfactory to the Principal's Representative that the insurances required to be effected under this Deed have been effected and maintained, within 10 days of a request by the Principal's Representative; and



- (ii) in respect of all other insurances to be effected under this Deed, by providing copies of those insurance policies to the Principal.

**19.6 Failure to Produce Evidence of Insurance**

If the Service Provider fails to comply with **clause 19.5(b)**, the Principal may effect and maintain the relevant insurances and pay the premiums or other amounts payable to the insurer in respect of such insurance. The costs incurred by the Principal in any way in connection with taking such action will be a debt due and payable from the Service Provider to the Principal.

**19.7 Service Provider’s Obligations Not Limited**

The effecting of Insurances and the processes set out in **clauses 19A and 19B** (including any selection by the Principal in accordance with **clause 19A(b) or 19B(b)**) does not limit or otherwise affect the liabilities or obligations of the Service Provider, or the rights and entitlements of the Principal, under, or in any way in connection with, this Deed.

**19.8 Assistance**

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

**19.9 Notices**

The Service Provider must immediately notify the Principal of any cancellation or other material notice concerning any insurance policy relevant to the Services.

**19.10 Notices of Potential Claims**

The Service Provider must:

- (a) as soon as practicable upon becoming so aware, inform the Principal in writing of any occurrence in relation to this Deed that may give rise to a claim under a policy of insurance required by this Deed;
- (b) keep the Principal informed of subsequent developments concerning the claim; and
- (c) ensure that Subcontractors in respect of their operations similarly inform the Principal, except to the extent the Principal has made, or is likely to make, a claim against the Service Provider in respect of the particular occurrence and such action will, or is likely to, prejudice the Service Provider’s right of indemnification under a relevant insurance policy in respect of the particular occurrence.

**19.11 Cross Liability**

Any insurance required to be effected in accordance with this Deed by the Service Provider in joint names must include a cross liability clause, in which the insurer agrees to waive all rights of subrogation or action that it may have or acquire against all or any of the persons comprising the insured, and for the purpose of which, the insurer accepts the term ‘insured’ as applying to each of the persons comprising the insured as if a separate policy of insurance had been issued to each of them (subject always to the overall sum insured not being increased thereby).

**19.12 Miscellaneous Insurance Provisions**

The Service Provider must:

■ [REDACTED]

[REDACTED]

[REDACTED]





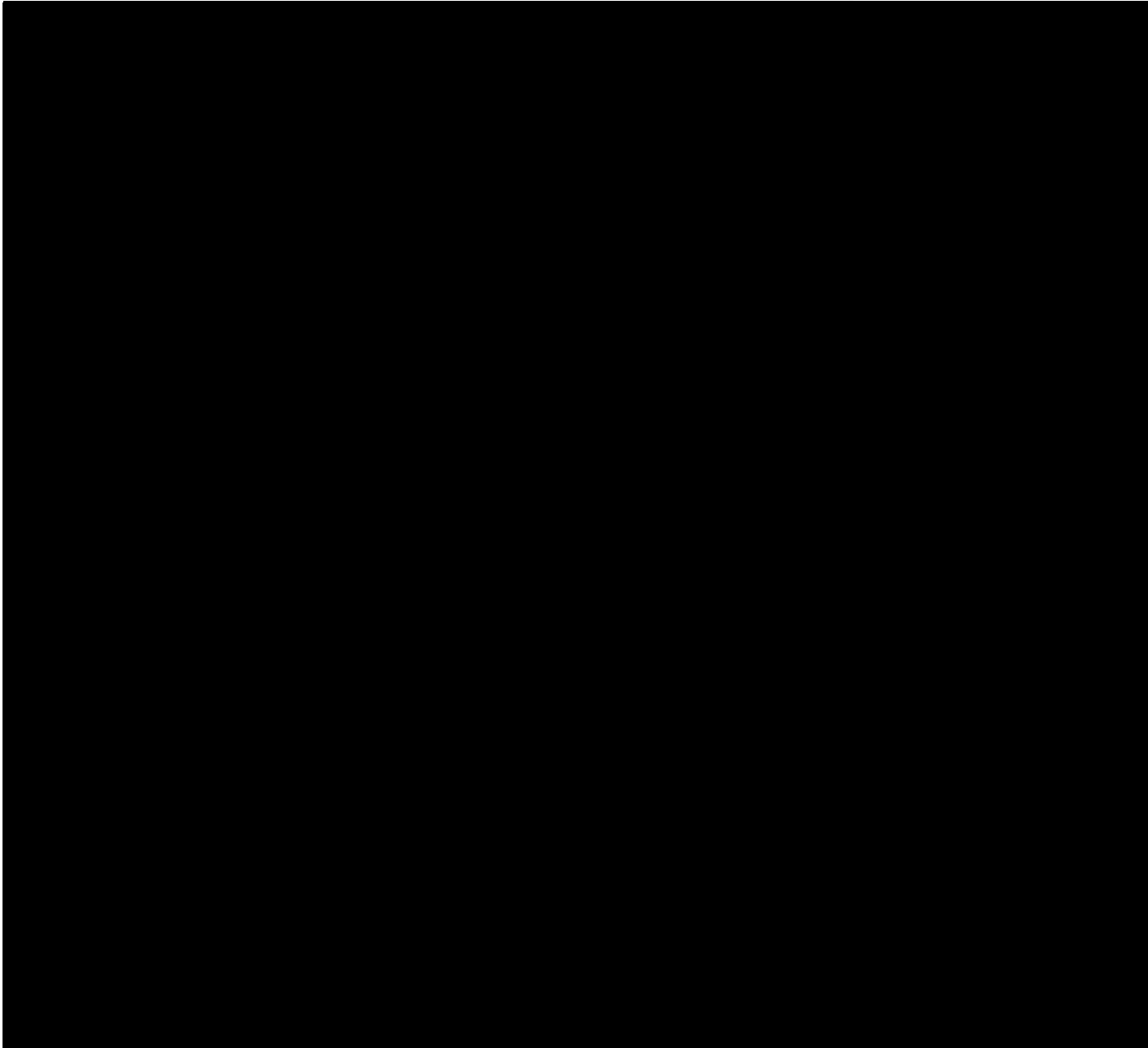
- (i) not do anything which prejudices any insurance in relation to CRN Assets or the Services, or which the Service Provider or the Principal is otherwise required by the Deed to effect and maintain;
- (j) if necessary, rectify anything which might prejudice any such insurance;
- (k) reinstate any insurance policy required to be maintained by the Service Provider if it lapses;
- (l) not cancel, replace (other than by way of renewal without variation in policy terms) or vary any insurance policy, or allow an insurance policy to lapse, without the prior written consent of the Principal's Representative, such consent not to be unreasonably withheld in respect of any proposed replacement or variation of any insurance policy effected, or required to be effected, under **clause 19.1(d), 19.1(e), 19.1(f), 19.1(g)(i)(B), 19.1(i), 19.1(j) or 19.1A** (for which purposes the parties agree that it will be reasonable for the Principal's Representative to withhold consent where such replacement or variation will result in, or is reasonably likely to result in:
  - (i) the insurance policy or the Service Provider not complying with the requirements of this Deed in relation to the relevant insurance policy (other than, in respect of the insurance policies referred to in **clause 19.1A(a)** and **clause 19.1A(b)**, the requirement of this Deed for the relevant policy to be on terms the same as, or substantially similar to, the relevant insurance policy referred to in Part 1 of **Attachment M**); or
  - (ii) a material change in cover, including any change between the previous policy and the varied or replacement policy which either:
    - (A) involves any unusual or non-standard terms or conditions for insurance policies generally effected with reputable insurers in the commercial insurance market with the Required Rating; or
    - (B) when compared with the policy being replaced or varied, is materially prejudicial to (or is reasonably likely to be materially prejudicial to) any right or interest of the Service Provider or the Principal under or in connection with the relevant insurance policy, including in respect of any claim or potential claim under such insurance policy);
- (m) immediately notify the Principal's Representative of any event which may result in an insurance policy lapsing or being cancelled; and
- (n) give full, true and particular information to each insurer of all matters and things the non-disclosure of which might in any way prejudice or affect any policy required to be effected under this Deed or the payment of all or any benefits under such insurance.

### 19.13 Application of Insurance Proceeds

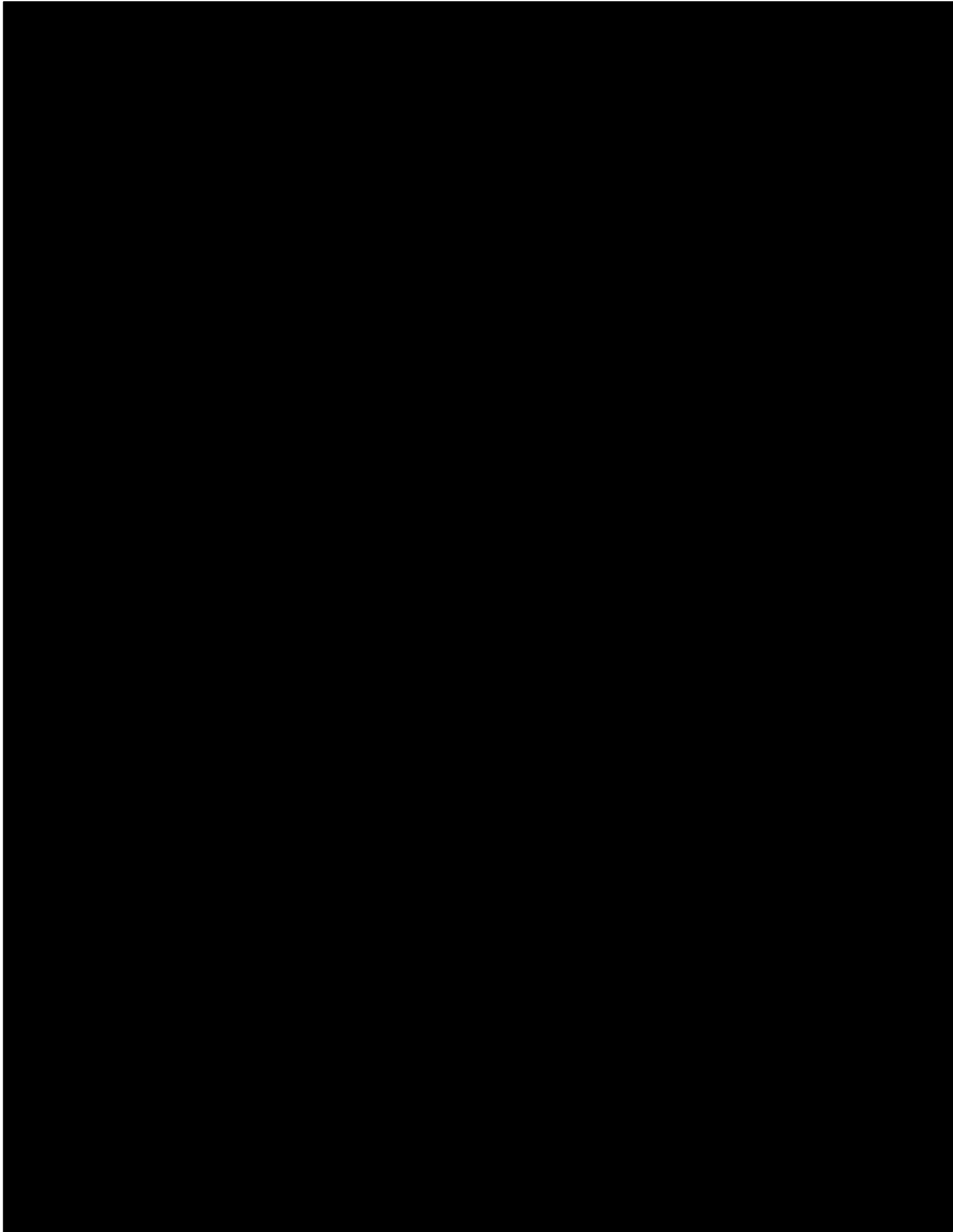
- (a) To the extent that any proceeds received from any insurance claim under any insurance policy obtained in accordance with **clause 19.1(a), 19.1(g)(i)(A) or 19.1A(c)** or **clause 9.1 of Schedule 12** are received by the Service Provider, the Service Provider must ensure that those proceeds are:
  - (i) except to the extent the Principal's Representative directs the Service Provider not to make good the relevant loss of or damage to the CRN Assets (excluding CRN Land) in accordance with **clause 18.1(a)(v)**, applied to the cost of reinstating or replacing the relevant CRN Assets, and, if applicable, plant and equipment, and any excess proceeds after application in accordance with this **clause 19.13(a)** must be paid, in priority to any other payments, to compensate

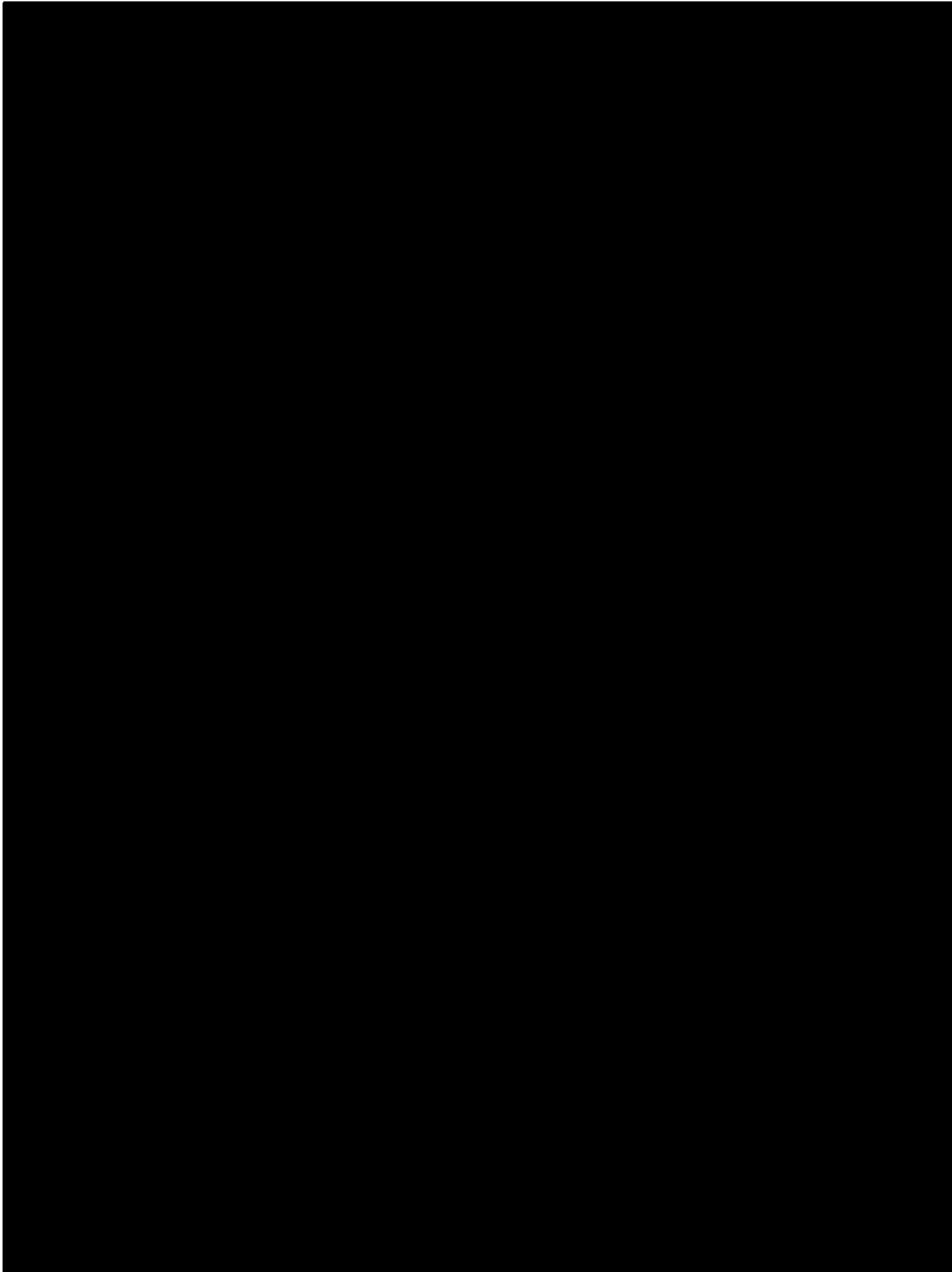
the Principal as fully as possible for any Loss of the Principal covered by the relevant policy; or

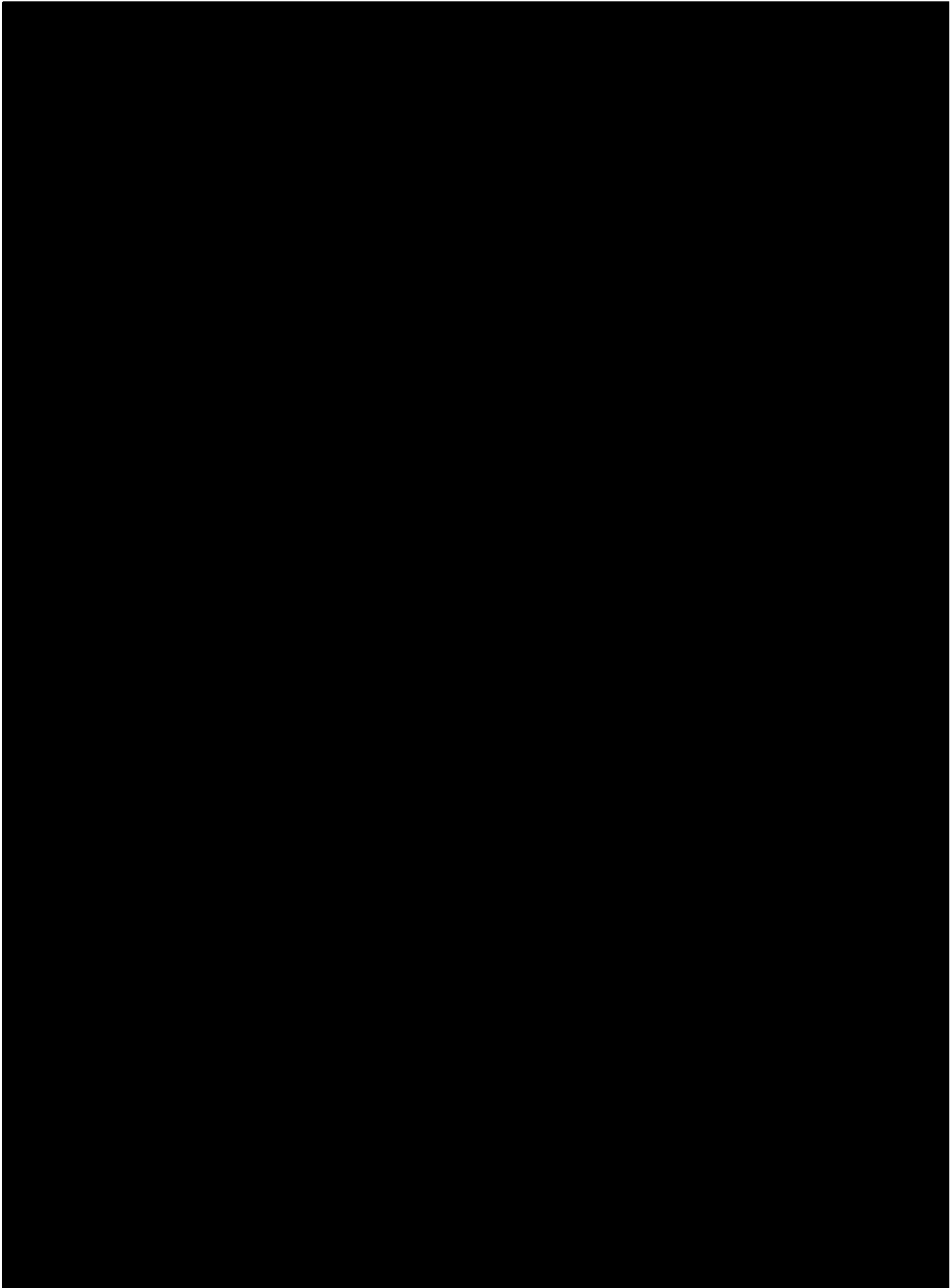
- (ii) to the extent the Principal's Representative directs the Service Provider not to make good the relevant loss of or damage to the CRN Assets in accordance with **clause 18.1(a)(v)**, paid, in priority to any other payments, to compensate the Principal as fully as possible for any Loss of the Principal covered by the relevant policy.
- (b) To the extent that the amount of insurance proceeds received by the Service Provider (or which would have been received by the Service Provider had the Service Provider properly prosecuted the insurance claim and complied with all of its obligations under this Deed and the relevant insurance policy) relates to a claim in respect of an event which entitles the Service Provider to payment in respect of loss of or damage to the CRN Assets (including pursuant to an Adjustment Event), that amount will be deemed to be a payment made by the Principal to the Service Provider under this Deed in respect of such entitlement.



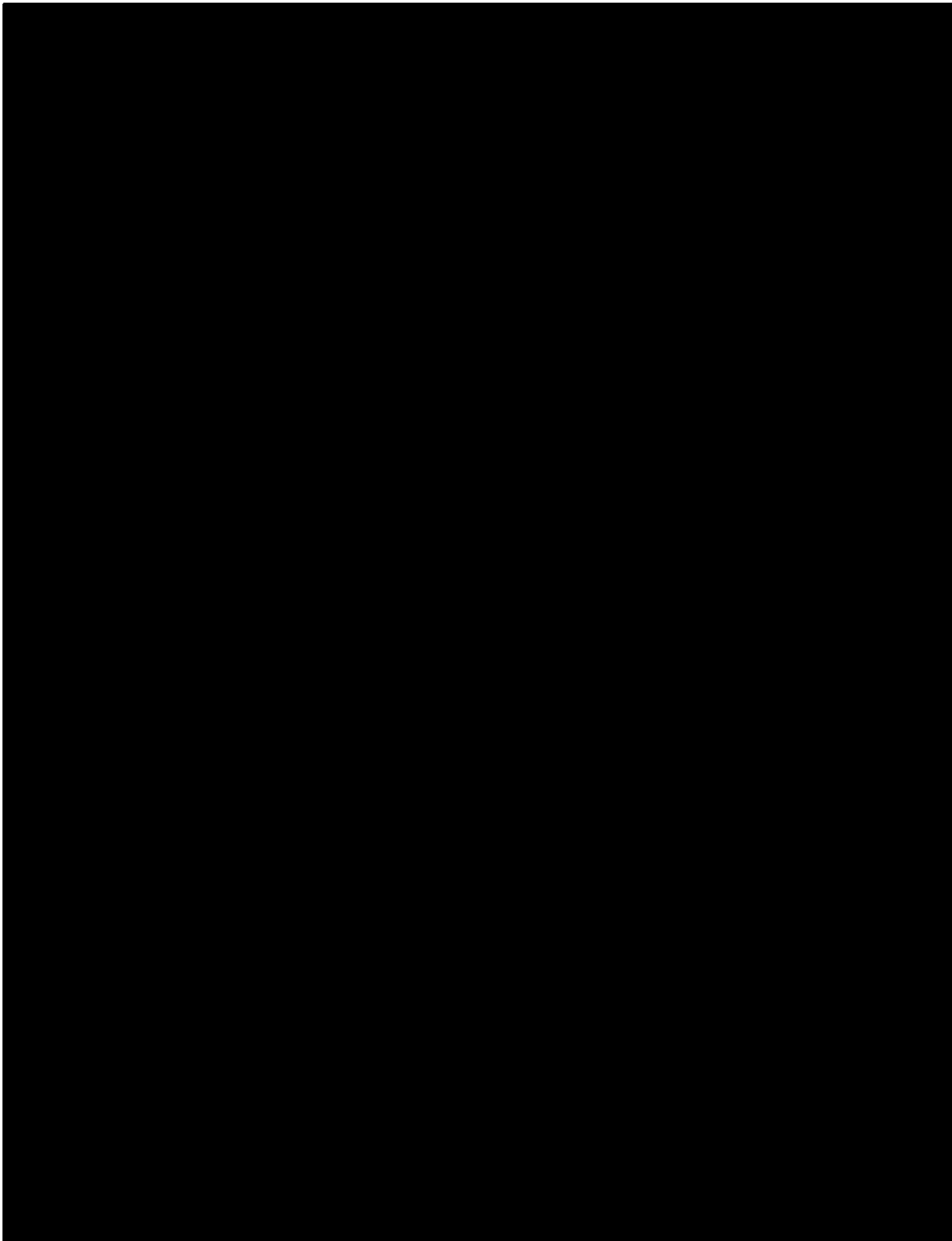


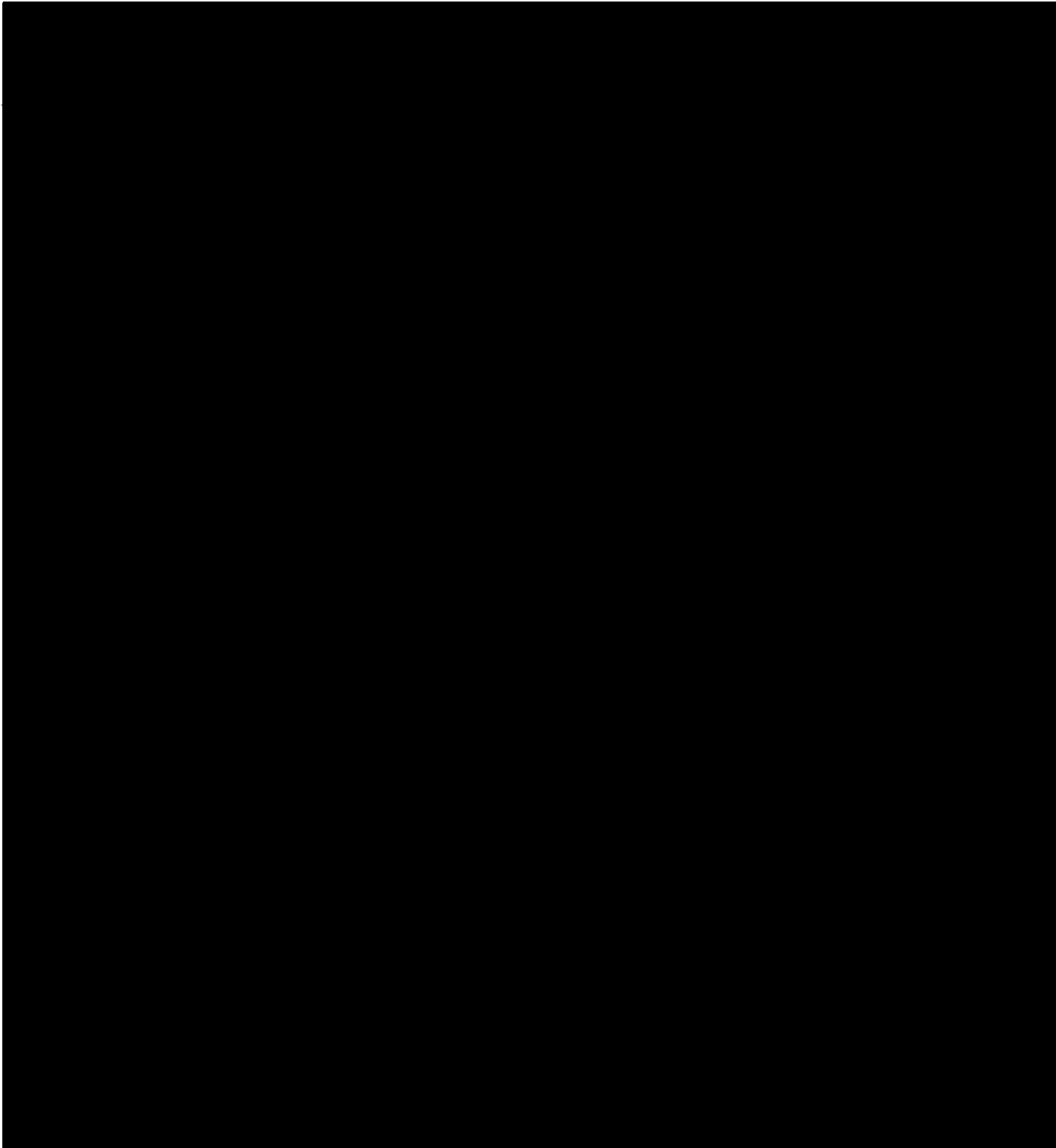












## 20 Liability

### 20.1 Acknowledgment

The Service Provider acknowledges that the CRN Assets:

- (a) are comprised of significant Assets;
- (b) have a large number of users; and
- (c) have the potential, if not managed by the Service Provider properly, to cause significant injury or Loss, including:
  - (i) injury to persons;

- (ii) damage to Assets (including those comprising the CRN Assets); and
  - (iii) Contamination or other damage to the Environment,
- and accordingly offers the indemnities to the Principal set out in **clause 20.2** and elsewhere in this Deed.

## 20.2 Indemnities

- (a) Subject to **clause 20.2(b)**, the Service Provider indemnifies each of the Indemnified Parties against any claims against, or Losses suffered or incurred by, the relevant Indemnified Party arising out of, or in any way in connection with:
  - (i) any:
    - (A) loss of, loss of use of, destruction or damage to any real or personal property (including any property of the Principal); and
    - (B) any injury to or disease or death of any person (including any Associate of the Service Provider or the Principal),

which arises out of, or in any way in connection with, the carrying out of the Services or any other act or omission of the Service Provider or any of its Associates;
  - (ii) any breach by the Service Provider of:
    - (A) **clause 2.6(c)(ii) (Additional CRN Assets Obligations)**;
    - (B) **clause 2.10 (Relationship between the parties)**;
    - (C) **clause 5.7 (Relevant Documents)** or **clause 35(e) (Specific Relevant Documents)**;
    - (D) **clause 10.1 (General obligations)**;
    - (E) **clause 17.12 (Notices Under the Security of Payment Act and Contractors Debts Act)**;
    - (F) **clause 21 (Intellectual Property)**; or
    - (G) **clause 31.3 (Privacy)**;
  - (iii) the Service Provider's access to or over, or use of, any site or property referred to in **clause 2.6(c)(i)**;
  - (iv) the Service Provider acting outside the scope of its agency under **clause 2.10**;
  - (v) the matters referred to in **clause 5.8(c)**;
  - (vi) an Incident (excluding any Incident referred to in **paragraph (c) or (d)** of the definition of 'Incident' in **clause 1.1** which does not comprise and does not involve a situation, event, circumstance or occurrence that results (or will result) in a failure to satisfy, or compromises any person's ability to satisfy, any safety requirements (including under any Law or under this Deed or any Relevant Document)), irrespective of whether the Service Provider:
    - (A) was responsible for causing (directly or indirectly) the Incident; or
    - (B) was in breach of this Deed at the time of the Incident;
  - (vii) a suspension by a Subcontractor of work, which forms part of the Services, under section 27 of the Security of Payment Act (NSW) or section 29 of the Security of Payment Act (ACT);



- (viii) a notice of claim being served on the Principal (in respect of the Services) under Part 2 of the *Contractors Debts Act 1997* (NSW);
  - (ix) a Subcontractor intending to exercise (or exercising) a statutory lien, under section 11(3) of the *Security of Payment Act* (NSW) or section 13(3) of the *Security of Payment Act* (ACT), over unfixed plant and materials supplied by the Subcontractor for use in carrying out the Services;
  - (x) any actual or threatened Environmental damage, destruction or harm arising out of, or in any way in connection with, the Services, except to the extent caused by any:
    - (A) negligent or unlawful act or omission;
    - (B) breach of the Deed; or
    - (C) Wilful Default,committed by the Principal or its Associates;
  - (xi) any Default Contamination;
  - (xii) any breach by the Service Provider of any of its obligations under this Deed or otherwise at Law in relation to safety, including under **clause 9**;
  - (xiii) if, despite **clauses 20.10(a)(i) to 20.10(a)(iii)**, the provisions of any Proportionate Liability Legislation are applied in relation to any claim by the Principal against the Service Provider under, or in any way in connection with, this Deed, the Services or the CRN Assets, any Loss the Principal is not able to recover from the Service Provider because of the operation of those provisions;
  - (xiv) any Material (or use, possession or receipt of Material) prepared in any way in connection with the Services or any other Material (or use, possession or receipt of Material) provided by or on behalf of the Service Provider infringing any Intellectual Property or Moral Rights; or
  - (xv) any cyber incident or data breach, except to the extent that such cyber incident or data breach:
    - (A) occurred despite the Service Provider and its Associates implementing and maintaining suitable security measures and procedures consistent with Good Industry Practice; and
    - (B) was not otherwise caused or contributed to by any act or omission of the Service Provider or any of its Associates.
- (b) The Service Provider's obligation to indemnify each of the Indemnified Parties under **clause 20.2(a)** will be reduced to the extent that the event otherwise giving rise to the obligation to indemnify is caused by an Act of Prevention of the relevant Indemnified Party.

### 20.3 Deed polls

The Service Provider must:

- (a) provide the Principal with an executed deed poll in favour of the persons named in **Attachment A** in the form set out in **Attachment I** within:
  - (i) in respect of those persons named in **Attachment A** which are identifiable by the Service Provider as at the date of this Deed, within 5 Business Days of the date of this Deed; and



[REDACTED]

- [REDACTED]

- [REDACTED]

- [REDACTED]

- [REDACTED]

- [REDACTED]

- [REDACTED]

- [REDACTED]

- [REDACTED]

- [REDACTED]

- [REDACTED]















- under or in connection with each contract or subcontract, whether such obligations or liabilities are sought to be enforced as a breach of contract or claim in tort (including negligence), in equity, under statute or otherwise at law; and
- (ii) each Subcontractor complies with the provisions of **clause 20.10(b)(i)** in respect of any contracts or subcontracts entered into by the Subcontractor in respect of the Services.
  - (c) The Service Provider must ensure that all policies of insurance which the Service Provider is required by this Deed to effect or maintain provide the full extent of cover required by this Deed notwithstanding the exclusion of the Proportionate Liability Legislation.

---

## Part K – Intellectual Property and Branding

### 21 Intellectual Property

#### 21.1 General principle

- (a) The Service Provider acknowledges that the Principal endorses open government principles and that any and all Material prepared, procured, used or provided by, on behalf of, or for, the Service Provider in relation to the Services (including those prepared by Subcontractors) may be shared by the Principal with other persons or made publicly available (including online) and that the Principal may grant such other persons or members of the public broad licences to use and sub-licence the Material (other than the Service Provider's Background Intellectual Property and the UGL Signalling IP) either on a fee or fee free basis. The Service Provider acknowledges that the Material may be branded by the Principal or a sub- licensee of the Principal with TAHE's or the licensee's branding with no acknowledgement of the input, Intellectual Property or Moral Rights of the Service Provider or any of its Associates.
- (b) Ownership of, and all Intellectual Property (other than Service Provider's Background Intellectual Property and UGL Signalling IP) in, any Material prepared, procured, used or provided by, on behalf of, or for, the Service Provider in relation to the Services (including those prepared by Subcontractors) vests in the Crown in right of the State of New South Wales acting through the Principal upon creation, without the need for further assurance.
- (c) If requested by the Principal, the Service Provider must do everything necessary (and ensure that any third party that creates any Material does everything necessary) to perfect such vesting, including the execution of documents required by the Principal.

#### 21.2 Service Provider's Background Intellectual Property

- (a) The Service Provider grants to the Principal for all time (and despite any termination of this Deed for any reason) a non-exclusive, perpetual and irrevocable licence to use the Service Provider's Background Intellectual Property for all purposes associated with the CRN Assets (including the purposes of completing the carrying out of the Services, completing the construction of, using, maintaining, operating, repairing, modifying, extending, upgrading, altering or otherwise dealing with the CRN Assets or any purpose associated with further development or improvements of the CRN Assets) which:
  - (i) is fully paid up and granted from the Mobilisation Date; and
  - (ii) may be assigned or sub licensed (in whole or in part) to any other person.
- (b) The Service Provider must do everything necessary to perfect such licence.



### 21.3 Principal's Intellectual Property

To the extent that the carrying out of the Services from time to time involves the use of any Intellectual Property of the Principal (or the adaptation or modification of any Material in respect of which such Intellectual Property applies or subsists), the Principal grants to the Service Provider a non-exclusive licence to use the Intellectual Property for the purposes of carrying out the Services in accordance with this Deed which:

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

### 21.4 Power of Attorney

For the purpose of performing the Service Provider's obligations under this **clause 21**, the Service Provider hereby irrevocably appoints the Principal's Representative to be the Service Provider's attorney with authority to execute such documents and do such things as are necessary to give effect to the matters set out in this clause and to bind the Service Provider accordingly.

### 21.5 Service Provider's Warranty

The Service Provider:

- (a) warrants that it has, or will at all relevant times have, title to and owns, or will at all relevant times own (or, in the case of Subcontractor Intellectual Property, have a right to use, and license the Principal in accordance with **clause 21.8(b)** to use), the Intellectual Property in the Material prepared in any way in connection with the Services and in any other Material provided or used by or on behalf of the Service Provider; and
- (b) warrants that there is no breach of any person's Intellectual Property or Moral Rights in such Material or any use of such Material.

### 21.6 Moral Rights Consent of Authors

The Service Provider warrants that the Principal, or any person authorised by the Principal, may do any act, or refrain from doing any act, arising from or in any way in connection with the exercise by the Principal of its rights of ownership or use of any materials, in which copyright subsists, provided to the Principal by the Service Provider in the course of carrying out the Services without infringing the Moral Rights of any third party.

### 21.7 Intellectual Property Database

The Service Provider must develop and maintain a database of Intellectual Property in accordance with **section 3.16** of the **Scope of Works**.

### 21.8 UGL Signalling IP

- (a) The Service Provider grants to the Principal a non-exclusive and irrevocable licence to use the UGL Signalling IP for all purposes associated with the CRN Assets (including the purposes of completing the carrying out of the Services, completing the construction of, using, maintaining, operating, repairing, modifying, extending, upgrading, altering or otherwise dealing with the CRN Assets or any purpose associated with further development or improvements of the CRN Assets) which:

- (i) is fully paid up and granted for the period commencing on the Mobilisation Date and ending on the expiry of the Term;
  - (ii) if taken up by the Principal at its sole discretion for the period commencing on the expiry of the Term and ending 12 months later, is subject to a one-off payment to the Service Provider of [REDACTED] but is otherwise royalty free (i.e. at no cost to the Principal) (except where the Principal terminates this Deed under **clause 23.2**, in which case the Service Provider is not required to grant a licence under this **clause 21.8(a)(ii)**);
  - (iii) includes, at no additional cost or fees to the Principal, the provision by the Service Provider of full maintenance and support, all necessary licences to operate the relevant systems, support services including 24/7 on-call support, preventative maintenance activities, training, system monitoring, system and cyber security audits and reporting, obsolescence management and regular critical system patching, as well as management of the preceding activities, access to the Service Provider's development and testing facilities and authorised resources for modifications or updates to the system as and when required; and
  - (iv) may be assigned or sub licensed (in whole or in part) to any other person.
- (b) The Service Provider must do everything necessary to perfect such licence.

### 21.9 Ongoing licence to UGL Signalling IP after the Term

At its option, the Principal may continue to receive a licence (or require the Service Provider to provide a licence to the Principal's nominee) to use the UGL Signalling IP immediately following the expiration of the period applicable under **clause 21.8(a)(ii)** (if applicable, or otherwise under **clause 21.8(a)(i)**). The terms for such further licence will be agreed by the parties (acting reasonably) and will include the following aspects:

- (a) the Principal will be licensed to use the UGL Signalling IP for all purposes associated with the CRN Assets (including the purposes of completing the carrying out of services similar to the Services, completing the construction of, using, maintaining, operating, repairing, modifying, extending, upgrading, altering or otherwise dealing with the CRN Assets or any purpose associated with further development or improvements of the CRN Assets);
- (b) the right for the Principal to obtain at its option, the aspects specified in **clause 21.8(a)(iii)**;
- (c) the licence may be assigned or sub licensed (in whole or in part) to any other person; and
- (d) the annual licence fee and the fees for the aspects specified in **clause 21.8(a)(iii)** will be:
  - (i) agreed by the parties acting reasonably; and
  - (ii) no greater than the amounts the Service Provider has agreed with customers with broadly similar requirements to the Principal and which have selected the Service Provider in a tender or other competitive situation.

### 21.10 Escrow

At any time prior to the expiry of the Term, the Principal may require the Service Provider to enter into an escrow agreement with a reputable escrow provider on standard terms and deposit, maintain and regularly update a complete and reproducible copy of all source code relating to the Service Provider's Background Intellectual Property and the UGL Signalling IP with the escrow agent in accordance with that escrow agreement. The only applicable release events for any information that may be required to be held in escrow will be where **clause 23.6** applies.



### 21.11 Subcontractor Intellectual Property

Without limiting **clause 2.14**, if at any stage during the Term the Service Provider is contemplating using a Subcontractor to carry out any part of the Services (including using a Subcontractor's software to perform any part of the Services) and the proposed agreement with such Subcontractor will not enable the Service Provider to comply with the provisions of **clause 21.1** and **clause 21.2**:

- (a) the Service Provider must give the Principal as much written notice as reasonably possible (and in any event not less than 30 days' notice) in advance of so using such Subcontractor, providing relevant details to the Principal such as:
  - (i) the identity of the proposed Subcontractor;
  - (ii) information regarding the Subcontractor's relevant solution, software and/or services;
  - (iii) the Subcontractor's proposed position regarding the ownership and use of its relevant Intellectual Property (the **Subcontractor Intellectual Property**); and
  - (iv) any other information the Principal reasonably requests;
- (b) in consultation with the Principal, the Service Provider will use all reasonable endeavours to negotiate a position with the relevant Subcontractor that does enable the Service Provider to comply with the provisions of **clause 21.1** and **clause 21.2** or, failing that:
  - (i) enables the Service Provider to come as close as possible to achieving such compliance; and
  - (ii) incorporates any other protections for the Principal as the Principal may reasonably request, such as entry into an escrow arrangement regarding the source code for the Subcontractor Intellectual Property in favour of the Principal and/or the ability for the Principal to obtain a novation of the relevant licensing agreement with the Subcontractor for example; and

following the conclusion of the negotiations required under **clause 21.11(b)** (which are not required to extend further than 10 days after the Service Provider provides notice under **clause 21.11(a)**), the Service Provider may engage the relevant Subcontractor to perform part of the Services if it obtains the prior written consent of the Principal (not to be unreasonably withheld), in which case the Subcontractor Intellectual Property will be licensed by the Service Provider to the Principal on such terms as:

- (iii) the Service Provider has agreed with the Subcontractor, having complied with this **clause 21.11**; and
- (iv) the Principal has consented to in writing.

---

## Part L – Step-in, Default and Termination

### 22 Step-in

#### 22.1 Exercise of Step-in Rights

- (a) If a Step-in Event occurs, the Principal may, following notice to the Service Provider, either itself or by engaging others, perform, carry out or otherwise exercise Step-in Powers.
- (b) The Principal's notice under **clause 22.1(a)**:
  - (i) must specify:



- (A) if the Principal has engaged, or intends to engage, others to exercise the Step-in Powers, the identity of that person; and
  - (B) the date on which the Principal proposes that the exercise of the Step-in Powers will commence; and
- (ii) may be given orally if the Principal considers that the Step-in Event requires urgent remedy or other action and there is insufficient time to serve the notice in writing, provided however that any such oral notice must be followed within 20 Business Days by a written notice to the same effect.

## 22.2 Actions Following Step-in

- (a) If a Step-in Party exercises Step-in Powers:
- (i) the Principal is not obliged to make any payments to the Service Provider for the Services in respect of which a Step-in Party has exercised, or is exercising, Step-in Powers, except that the Service Provider will be entitled to recover the amounts payable under this Deed in respect of the Services carried out by the Service Provider at the direction of the Step-in Party during the period it is exercising Step-in Powers;
  - (ii) the Service Provider must:
    - (A) cooperate with, and assist, the Step-in Party in the exercise of the Step-in Powers;
    - (B) take any step which the Step-in Party considers necessary or desirable to remedy the Step-in Event or overcome or mitigate the risks or consequences resulting from the Step-in Event;
    - (C) give the Step-in Party access to and usage of, or procure for the Step-in Party access to and usage of, the CRN Land, the CRN Assets and any other site, property or premises (including the Network Control Centre, the Backup Network Control Centre and all associated technology networks and systems) used by the Service Provider or any of its Associates in connection with the Services to enable the Step-in Party to exercise the Step-in Powers;
    - (D) provide the Step-in Party with all Records necessary to exercise the Step-in Powers;
    - (E) provide to the Step-in Party the non-exclusive use of all rights and information available to the Service Provider or any Related Body Corporate of the Service Provider; and
    - (F) without limiting **clause 22.2(a)(ii)(B)**, comply with all directions given by the Step-in Party to enable the Step-in Party to exercise the Step-in Powers;
  - (iii) the parties acknowledge and agree that, for the purposes of section 62(1)(b) of the RSNL, the Step-in Party will exercise the Step-in Powers under the Service Provider's Rail Safety Accreditation; and
  - (iv) without limiting **clause 22.2(a)(ii) or 22.2(a)(iii)**, the Service Provider must ensure the Step-in Party has the right to exercise the Step-in Powers under or pursuant to any Approval as may be necessary to exercise the Step-in Powers.
- (b) If the Step-in Party takes possession of any Plant and Equipment, the Step-in Party must maintain them in good working order and, subject to **clauses 22.2(a) and 22.3**, on

ceasing to exercise of the Step-in Rights under **clause 22.3(a)**, the Step-in Party must return to the Service Provider the Plant and Equipment that are surplus.

### 22.3 Conclusion of Step-in Rights

- (a) A Step-in Party:
- (i) may cease to exercise Step-in Powers at any time; and
  - (ii) in any event, will cease to exercise Step-in Powers as soon as practicable after:
    - (A) the relevant Step-in Event has been remedied (whether by the Step-in Party or otherwise) or has ceased; and
    - (B) the Principal (acting reasonably) is satisfied that the Service Provider is in a position to perform all its obligations under this Deed,
- in each case by notice in writing from the Principal to the Service Provider, with effect on and from the date stated in that notice or (if no such date is stated in that notice) the date of that notice (as applicable).
- (b) The parties agree that:
- (i) when the Step-in Party has ceased to exercise Step-in Powers (as contemplated by **clause 22.3(a)**):
    - (A) the Service Provider and the Principal must consult with each other with the intention of ensuring the transition from the Step-in Party ceasing to exercise the Step-in Powers to the Service Provider resuming the performance of any relevant Services is effected without interruption to the Services;
    - (B) the Service Provider must (subject to **clause 23**) immediately resume the performance of the Services in accordance with this Deed;
    - (C) except where the Step-in Powers are exercised in respect of **paragraph (b)** of the definition of 'Step-in Event' in **clause 1.1**, the Principal's Representative must assess:
      - (1) the costs reasonably incurred and the Losses reasonably suffered by the Principal and the Step-in Party in and for the purpose of exercising those Step-in Rights (including, where the Principal is not the Step-in Party, any amounts paid or payable by the Principal to the Step-in Party for the purposes of the Step-in Party exercising those Step-in Rights); and
      - (2) the amount which would otherwise have been paid to the Service Provider under this Deed if the Services the subject of those Step-in Rights had been completed by the Service Provider in accordance with this Deed; and
    - (D) except where the Step-in Powers are exercised in respect of **paragraph (b)** of the definition of 'Step-in Event' in **clause 1.1**, if the costs and Losses assessed pursuant to **clause 22.3(b)(i)(C)(1)** exceed the amount assessed pursuant to **clause 22.3(b)(i)(C)(2)**, the difference will be a debt due and payable from the Service Provider to the Principal;
  - (ii) if the Service Provider is indebted to the Principal under **clause 22.3(b)(i)(D)**:
    - (A) the Principal may retain Plant and Equipment or other things taken under **clause 22.2(a)** until the debt is satisfied; and



- (B) if after reasonable notice, the Service Provider fails to pay the debt, then the Principal may sell the Plant and Equipment or other things and apply the proceeds to the satisfaction of the debt and the costs of sale, and any excess proceeds from such sale must be paid to the Service Provider; and
- (iii) the Service Provider must do all things (including executing all documents) reasonably required by the Principal to enable the Principal to lawfully register any Security Interest in the Plant and Equipment or other things taken under **clause 22.2(a)** so as to ensure the Principal's rights under this **clause 22** are not adversely affected.

#### 22.4 Not Liable

The exercise of any Step-in Powers by a Step-in Party:

- (a) is without prejudice to the Principal's other rights, powers and entitlements in respect of the Step-in Event (including under **clause 23**); and
- (b) will not impose on the Step-in Party any obligation or duty to remedy, address, resolve, deal with or otherwise overcome, or overcome or mitigate any risk or consequences of, the Step-in Event giving rise to the exercise of those Step-in Rights.

The Principal will not be liable for, and the Service Provider will not be entitled to make, any Claim arising out of, or in any way in connection with, the exercise or purported exercise of any Step-in Powers by a Step-in Party or any other act or omission of a Step-in Party relating to or in connection with the exercise or purported exercise of any Step-in Powers by a Step-in Party.

#### 22.5 Other Rights

Nothing in this **clause 22** will prejudice the right of the Principal to recover damages or exercise any other rights or remedy (including the rights under **clause 23**).

### 23 Default and Termination

#### 23.1 Preservation of Other Rights

- (a) This **clause 23** will operate exclusively to regulate the entitlement of the Service Provider to exercise any right to terminate this Deed (including acceptance of repudiation) for breach or repudiation by the Principal.
- (b) If the Service Provider breaches (including repudiates) this Deed, nothing in this **clause 23** will prejudice the right of the Principal to recover damages or exercise any other right or remedy (including a right of termination, including acceptance of repudiation).

#### 23.2 Principal's Right to Terminate by Notice

The Principal may terminate this Deed at any time, for any or no reason, in its absolute discretion, by giving to the Service Provider not less than 6 months' written notice of termination.

#### 23.3 Default Event and Default Notice

- (a) If a Default Event occurs, the Principal may give the Service Provider written notice thereof.
- (b) A Default Notice must:
  - (i) state that it is a notice given under **clause 23.3**;
  - (ii) set out details of the relevant Default Event;



- (iii) in the case of a Default Event comprising the non-payment of moneys, notify the Service Provider that it must remedy that Default Event by paying those moneys (together with any interest payable under this Deed) within 10 Business Days of receipt of the Default Notice by the Service Provider; and
- (iv) in the case of any other Default Event, state that the Principal requires the Service Provider to:
  - (A) remedy the Default Event, and specifying the period in which the Default Event must be remedied (which period must be no less than 10 Business Days after the receipt of the Default Notice by the Service Provider); or
  - (B) prepare a Cure Plan in respect of the Default Event, and specifying the relevant Cure Period.

### 23.4 Cure Plan

- (a) If, in a Default Notice, the Principal requires the Service Provider to prepare a Cure Plan, the Service Provider must prepare a Cure Plan and submit it to the Principal's Representative within 5 Business Days of the receipt of the Default Notice by the Service Provider.
- (b) The Principal's Representative may, within 20 Business Days of receipt of a Cure Plan (including any amended Cure Plan referred to in **clause 23.4(d) or 23.5(d)**), require the Service Provider to amend the Cure Plan if the Principal's Representative believes (acting reasonably) that:
  - (i) the Service Provider's implementation of, and compliance with, the Cure Plan is not likely to (as applicable):
    - (A) result in the relevant Default Event being remedied within the relevant Cure Period; or
    - (B) address or deal with the Default Event and the consequences of the Default Event to the Principal's reasonable satisfaction within the relevant Cure Period; or
  - (ii) the Cure Plan otherwise does not comply with this Deed.
- (c) A notice under **clause 23.4(b)** may include details of any amendments to the Cure Plan required by the Principal's Representative.
- (d) If the Principal's Representative requires the Service Provider to amend a Cure Plan, the Service Provider must amend that Cure Plan (including as notified by the Principal's Representative) and resubmit the amended Cure Plan to the Principal's Representative, in which case **clauses 23.4(b) to 23.4(d)** will re-apply.
- (e) The Service Provider must:
  - (i) immediately commence to, and continue to, diligently pursue the implementation of a Final Cure Plan; and
  - (ii) otherwise implement and comply with a Final Cure Plan.

### 23.5 Extension of Cure Period

- (a) The Service Provider may, by notice in writing, request the Principal's Representative to extend a Cure Period. The Service Provider:
  - (i) must specify in that notice the period by which the Service Provider requests the relevant Cure Period to be extended;

- (ii) must not request an extension of the relevant Cure Period to the extent such extension would result in the Cure Period extending beyond the date that is 6 months from the date of the relevant Default Notice; and
  - (iii) may only make one request for the extension of a Cure Period under this **clause 23.5(a)**.
- (b) The Principal's Representative must, within 20 Business Days of receipt of a notice under **clause 23.5(a)**, notify the Service Provider in writing whether it agrees to extend the relevant Cure Period.
- (c) The Principal's Representative must not unreasonably refuse to agree to the extension of a Cure Period. The parties acknowledge and agree that (without limiting the generality of the foregoing) it will be reasonable for the Principal's Representative to refuse to agree to the extension of a Cure Period if:
  - (i) the Service Provider has not requested the extension in accordance with **clause 23.5(a)**;
  - (ii) such extension would result in the Cure Period extending beyond the date that is 6 months from the date of the relevant Default Notice; or
  - (iii) the Service Provider at any time has not been diligently pursuing, or is not at that time diligently pursuing, the implementation of the Final Cure Plan to which the relevant Cure Period applies.
- (d) If the Principal's Representative agrees to extend the relevant Cure Period, the Service Provider must amend the relevant Cure Plan as appropriate, and **clause 23.4(b)** will apply.

### 23.6 Step-in or Termination for Termination Event

- (a) If a Termination Event has occurred then the Principal may, by written notice to the Service Provider:
  - (i) exercise Step-in Powers in accordance with **clause 22**; or
  - (ii) terminate this Deed from the date stated in the notice.
- (b) The Service Provider agrees that the Principal may determine in its absolute discretion how to exercise its rights under this **clause 23.6**.

### 23.7 Principal's Entitlements after Termination

- (a) If the Principal exercises its rights under **clause 23.6(a)(ii)**, the Principal may, without payment of compensation to the Service Provider (and without limiting the Principal's entitlements under **clause 23.10** and the **Termination Payments Schedule**):
  - (i) take possession of, and use (and permit others to use), the Plant and Equipment, materials, spares and other things on or in the vicinity of the CRN Assets as were used by the Service Provider;
  - (ii) contract with such of the Subcontractors;
  - (iii) take possession of, and use (and permit others to use), the Materials and other information in the possession of the Service Provider; and
  - (iv) require the Service Provider to comply with all or any of its obligations under the Transition Out Plan,



as reasonably required by the Principal to facilitate completion of the Remaining Work and facilitate any transfer of the Service Provider's role to an alternative contractor or service provider, and:

- (v) may engage third parties to carry out and complete the whole or any part of the Remaining Work;
  - (vi) may exclude from the CRN Assets the Service Provider and any other person concerned with the carrying out and completion of the Services (as the case may be); and
  - (vii) is entitled to have recourse to the Security for any amounts the Principal is entitled to recover from the Service Provider in accordance with the Termination Payments Schedule.
- (b) If the Principal takes possession of Plant and Equipment, the Principal must maintain them in good working order and, subject to **clause 23.7(c)**, on completion of the Remaining Work, the Principal must return the Plant and Equipment that is not owned by the Principal.
- (c) If the Service Provider is indebted to the Principal, the Principal may retain Plant and Equipment or other things taken under **clause 23.7(a)** not owned by the Principal until the debt is satisfied. If after reasonable notice, the Service Provider fails to pay the debt, then the Principal may sell the Plant and Equipment or other things and apply the proceeds to the satisfaction of the debt and the costs of sale. Any excess proceeds from such sale must be paid to the Service Provider.
- (d) The Service Provider must do all things (including executing all documents) reasonably required by the Principal to enable the Principal to lawfully register any charge or other Security Interest (including any interest under the PPSA) in the Plant and Equipment or other things taken under **clause 23.7(a)** so as to ensure the Principal's rights under this **clause 23.7** are not adversely affected.

### **23.8 Principal's Breach of Contract**

- (a) If the Principal commits a substantial breach of this Deed, the Service Provider may give the Principal a notice to show cause.
- (b) A substantial breach of this Deed by the Principal is limited to failing to make a payment due under this Deed (and which is not the subject of a bona fide dispute) within 50 Business Days of a written request from the Service Provider to do so.
- (c) If within 40 Business Days after receipt of a notice to show cause, the Principal has not shown cause why the Service Provider may not terminate this Deed, and the breach has not been remedied, the Service Provider may terminate this Deed by issuing a further notice in writing.

### **23.9 Termination for Force Majeure**

Without limiting **clause 34**, if a Force Majeure Event prevents either party's performance of its material obligations (other than the performance of the Enhancement Activities by the Service Provider) for no less than 6 consecutive months or such other period as may be agreed in writing by the parties, this Deed may be immediately terminated by the Principal by written notice to the Service Provider.

### **23.10 Consequences of Termination**

If either party terminates this Deed, the relevant provisions of the **Termination Payments Schedule** will apply.



### 23.11 Termination Rights

The Service Provider's only rights to terminate this Deed are as set out in this **clause 23** or as otherwise expressly provided in this Deed and the Service Provider waives all other rights it may have to terminate this Deed, including rights at common law.

---

## Part M – Transition Out

### 24 End of Term Restrictions

#### 24.1 Variation of terms or conditions of Dedicated Employees' employment

The Service Provider must not, without the consent of the Principal (which may not be unreasonably withheld or delayed), vary, or purport or promise to vary, the terms or conditions of employment (including superannuation entitlements and/or the terms of any Industrial Instrument) of or applicable to any Dedicated Employee where:

- (a) the variation takes effect, or will take effect, during the End of Contract Period, unless:
  - (i) it is in the ordinary course of business and, when aggregated with any other variation which takes effect during that period, represents a percentage increase in the remuneration of the Dedicated Employee of no more than that which would apply if the remuneration were LPI Indexed in accordance with **Schedule 3**; or
  - (ii) it is a variation imposed by a determination of the Fair Work Commission, the New South Wales Industrial Relations Commission or Law;
- (b) all or part of the variation first takes effect, or will first take effect, after the Termination Date;
- (c) the variation results, or will result, in the employment being for a fixed term, the expiry of which is more than six months after the Termination Date;
- (d) the variation relates, or will relate, to a payment or the provision of a benefit triggered by termination of employment (other than the employee's entitlements at Law);
- (e) the variation relates, or will relate, to the provision of a benefit (but excluding base salary and the Dedicated Employee's legal entitlements) which the Dedicated Employee will or may have a contractual right to receive after the Termination Date; or
- (f) the variation prevents, restricts or hinders the Dedicated Employee from working for a Successor Service Provider, or from performing the duties the Dedicated Employee performed in respect of the Services.

#### 24.2 Engagement of new Associates

In the End of Contract Period, the Service Provider must not engage new Associates for or in connection with the carrying out of the Services (other than to replace existing Associates, on terms that are no more favourable than those in place between the Service Provider and the existing Associates) without the consent of the Principal's Representative (which consent must not be unreasonably withheld or delayed where the Service Provider can demonstrate to the reasonable satisfaction of the Principal's Representative that new Associates are necessary for the carrying out of the Services).

## **25 End of Contract Retendering Provisions**

### **25.1 Right to appoint Successor Service Provider**

The Service Provider acknowledges and agrees that the Principal may, at any time (including before the Termination Date), invite any person (which may include the Service Provider) to tender or submit a proposal for the role of Successor Service Provider.

### **25.2 Maintenance as going concern**

The Service Provider must maintain the CRN Assets and manage the Services in such a way that a Step-in Party or Successor Service Provider (or nominee of the Principal) is able at any time to immediately take over all or any part of the Services, as determined by the Principal's Representative, as a going concern.

### **25.3 Handover Information**

- (a) Notwithstanding the obligation to develop and maintain a Transition Out Plan, the Service Provider must, as soon as practicable and in any event no later than six months after the Services Commencement Date, prepare information on:
- (i) all premises from which the Services are carried out;
  - (ii) material contracts relating to the Services;
  - (iii) computer and other information systems;
  - (iv) an asset register for assets used in relation to the Services (including an inventory of spares and special tools and equipment);
  - (v) Dedicated Employee details (including a list of names, terms of employment, rosters and all other information required to be provided to any person invited to carry out all or any part of the Services for the period commencing after the Termination Date pursuant to **clause 25.1**);
  - (vi) its organisational structure;
  - (vii) an up to date and complete copy of the Asset Information System; and
  - (viii) such other information as is reasonably requested by the Principal to facilitate smooth handover of the Services to a Step-in Party or Successor Service Provider (or nominee of the Principal).
- (b) The Service Provider must, upon request by the Principal, provide to the Principal (or, at the Direction of the Principal, to any person invited to carry out all or any part of the Services for the period commencing after the Termination Date pursuant to **clause 25.1**) all information relating to the following aspects of the terms of each Dedicated Employee's employment (at an aggregate and at an individual level):
- (i) date of commencement of continuous service;
  - (ii) job title (or role, position or similar);
  - (iii) duties;
  - (iv) hours of employment;
  - (v) days of employment;
  - (vi) location of employment;
  - (vii) training records;

- (viii) remuneration and all other payments and benefits accrued and, separately, received (i.e. not limited to salary or wages and including allowances, agreed reimbursements such as car running costs, telephones, computers or car parking, overtime and penalties);
  - (ix) general information on absenteeism, sick leave and industrial relations issues;
  - (x) arrangements regarding termination of employment;
  - (xi) post-employment restraints;
  - (xii) known trade union membership (or membership of any professional or trade association) and associated arrangements, such as union membership fee deductions;
  - (xiii) the application of any Industrial Instrument (and copies of any such instrument(s)) and details of grading (if applicable);
  - (xiv) accrued annual, long service, sick, personal, maternity, paternity or other leave; and
  - (xv) template employment agreements for each class or category of any Dedicated Employee and actual employment agreements where template agreements do not apply,  
  
in such form as the Principal's Representative may require.
- (c) The Service Provider must keep the information referred to in **clauses 25.3(a) and 25.3(b)** up to date and provide copies to the Principal on reasonable notice, and in any case on the earliest of:
- (i) the Principal issuing a notice terminating this Deed;
  - (ii) the date that is six months prior to the expiry of the Term; and
  - (iii) one week after the commencement of the End of Contract Period.
- (d) The Service Provider must ensure that a Step-in Party, Prospective Successor Service Provider, Successor Service Provider or nominee of the Principal has, to the extent permitted by Law, immediate access to the information referred to in **clauses 25.3(a) and 25.3(b)** on reasonable notice from the Principal, and in any case on the earliest of:
- (i) the exercise of the Step-in Rights;
  - (ii) the Principal issuing a notice terminating this Deed;
  - (iii) the date that is six months prior to the expiry of the Term; and
  - (iv) one week after the commencement of the End of Contract Period.
- (e) No later than 30 Business Days prior to the expiry of the Term or, in the event that the Principal gives a notice terminating this Deed, within 7 Business Days after the notice, the Service Provider must provide to each Dedicated Employee a statement setting out that Dedicated Employee's:
- (i) grade/classification;
  - (ii) rate of pay;
  - (iii) date of commencement of employment; and
  - (iv) estimated accrued entitlements (including annual leave, long-service leave, sick/personal/carers leave and rostered days off) as at the Termination Date.



- (f) In the event that a Dedicated Employee notifies the Service Provider that he or she disputes any of the information contained in the statement provided to that Dedicated Employee pursuant to **clause 25.3(e)**, the Service Provider must notify the Principal of such dispute and the Principal may refer the disputed issue to an actuary.

#### **25.4 Preparation for contracting at end of Term**

- (a) Without limiting **clause 6.4**, the Service Provider must, to the extent permitted by Law, provide the Principal with reasonable access to each of the Service Provider's Associates engaged in or in connection with the carrying out of the Services and the information, books and Records kept by or on behalf of the Service Provider in connection with the Services for the purpose of the Principal preparing reports and documents in connection with any procurement process for the carrying out of all or part of the Services or any other associated services.
- (b) The Service Provider must use reasonable endeavours to assist the Principal in the preparation for, and the conduct of, the procurement process, including, where required by the Principal, a fair and competitive expression of interest or tendering process.
- (c) Without limiting **clause 25.4(b)**, the Service Provider must, to the extent permitted by Law, make available to the Principal any information, and assist in the verification of any information (including the provision of answers to verification questions), as the Principal reasonably requires in connection with the procurement process for the Services or any other associated services.
- (d) The Service Provider warrants to the Principal that to the best of its belief, all information provided under **clauses 25.3(a), 25.3(b) and 25.4(c)** will be, at the time it is provided, true and correct in all material respects and will not be misleading by omission or otherwise.
- (e) The Service Provider must warrant to a Successor Service Provider that to the best of its belief, any other information made available to the Successor Service Provider by the Service Provider or any of its Associates is true and correct and execute such documents as the Principal may require to give effect to such warranty (including a deed poll in favour of the Successor Service Provider).

#### **25.5 Non frustration of transfer**

The Service Provider must not do anything that directly or indirectly avoids or materially prejudices or frustrates the transfer as a going concern of the Services at the Termination Date to a Successor Service Provider (or nominee of the Principal) and any procurement process in connection with such transfer.

#### **25.6 Assistance in securing continuity**

The Service Provider must do everything, whether before, on or after the Termination Date, as the Principal may reasonably require to assist and advise any Step-in Party, Prospective Successor Service Provider, Successor Service Provider or nominee of the Principal in carrying out the Services (or activities and work of a similar nature to the Services), including, without limiting the Service Provider's other obligations under this Deed, the provision of information and Records related to the carrying out of the Services (excluding confidential financial information, but including all records relating to any of the Service Provider's Associates engaged in or in connection with the carrying out of the Services).

## 25.7 Transfer of Approvals

The Service Provider must do everything, whether before, on or after the Termination Date, as the Principal may reasonably require to transfer all Approvals held by the Service Provider to a Successor Service Provider including:

- (a) signing all documents required to affect the transfer of such an Approval;
- (b) making any application to an Authority for consent to transfer such an Approval; and
- (c) registering the transfer of such an Approval with an Authority or on a data base or register maintained by an Authority.

## 25.8 Access

Without limiting the Service Provider's other obligations under this Deed, the Service Provider must ensure that a Prospective Successor Service Provider, Successor Service Provider or nominee of the Principal has access to each of the Service Provider's Associates, the CRN Assets, the Principal Supplied Assets and Service Provider Assets for the purposes of:

- (a) the Prospective Successor Service Provider, Successor Service Provider or nominee of the Principal receiving information in respect of:
  - (i) the Services or activities and work of a similar nature to the Services;
  - (ii) the CRN Assets, including operations and maintenance activities in respect of the CRN Assets;
  - (iii) the Principal Supplied Assets; and
  - (iv) the Service Provider Assets; and
- (b) preparations by the Prospective Successor Service Provider, Successor Service Provider or nominee of the Principal to take over the Services or carry out activities and work of a similar nature to the Services on the Termination Date,

but only to the extent that any of the above does not unduly interfere with the carrying out of the Services.

## 26 Transition Out Requirements

### 26.1 Transition Out Audit

- (a) No earlier than 36 months prior to the Original Expiry Date, the First Extended Expiry Date and (if different) the expiry of the Term and then again no earlier than 12 months prior to the Original Expiry Date, the First Extended Expiry Date and (if different) the expiry of the Term, the Principal may procure the carrying out of an audit of the CRN Assets by an expert:
  - (i) nominated by agreement between the Principal and the Service Provider; or
  - (ii) failing agreement within 10 Business Days after a request for agreement is made in writing by the Principal's Representative, nominated by the President of Engineers Australia.
- (b) The Principal must:
  - (i) notify the Service Provider at least 10 Business Days in advance of the date it wishes to procure the carrying out of a Transition Out Audit and specify the CRN Assets that will be the subject of the Transition Out Audit; and
  - (ii) consider in good faith any reasonable request by the Service Provider for the Transition Out Audit to be carried out on a different date.



- (c) The Transition Out Auditor will inspect and assess the Transition Out Audit Assets and will independently assess through a desktop review and targeted site visits:
- (i) whether the Service Provider has complied with its obligations under the **Scope of Works**; and
  - (ii) the outcome of the Services carried out by the Service Provider against the 3MWP, 10MSP and the 50AMP.
- (d) Upon completion of each audit referred to in **clause 26.1(a)**, the Transition Out Auditor will notify the Principal and the Service Provider in writing of:
- (i) whether the Transition Out Audit Assets have been and are being maintained by the Service Provider in accordance with this Deed;
  - (ii) any rectification, maintenance or remediation works required to be carried out by the Service Provider to bring the condition of the Transition Out Audit Assets to the condition they would have been in had the Service Provider complied with its obligations under this Deed;
  - (iii) any rectification, maintenance or remediation works required to be carried out by the Service Provider to bring the condition of the Transition Out Audit Assets to the Transition Out Condition at the Termination Date; and
  - (iv) the Transition Out Auditor's estimate of the value of the rectification, maintenance and remediation works referred to in **clauses 26.1(d)(ii) and 26.1(d)(iii)**.
- (e) The Service Provider must cooperate with the Transition Out Auditor and provide the Transition Out Auditor with any reasonable assistance required by the Transition Out Auditor.
- (f) The Principal must use its reasonable endeavours to procure that the Transition Out Auditor minimises any disruption caused to the Services by the Transition Out Audit.
- (g) The costs of performing the Transition Out Audit incurred by the Principal will be borne by the Principal, except where the results of the Transition Out Audit show that the Service Provider has not complied with its obligations under this Deed in relation to the maintenance of the CRN Assets, in which case the cost of the Transition Out Audit will be a debt due and payable by the Service Provider to the Principal.

## 26.2 Rectification work

The Service Provider must carry out any required rectification, maintenance or remediation work notified pursuant to **clauses 26.1(d)(ii) and 26.1(d)(iii)**:

- (a) to the satisfaction of the Transition Out Auditor; and
- (b) so as to satisfy the standards and other requirements applicable to the CRN Assets under this Deed,

prior to the expiry of the Term and the Service Provider will not be entitled to make, and the Principal will not be liable for, any Claim arising out of, or in any way in connection with, such rectification, maintenance or remediation work.

## 26.3 Handback obligations

At the Termination Date, the Service Provider must:

- (a) surrender, hand back and return access to, and custody, control and care of, the CRN Assets and, unless otherwise directed by the Principal's Representative, the Principal Supplied Assets, in accordance with **clause 27**;



- (b) ensure that any Security Interest in respect of any part of the CRN Assets or such Principal Supplied Assets consented to by the Principal under **clause 30.1(a)** is removed;
- (c) ensure that the CRN Assets are in a state and condition which complies with the requirements of this Deed, including the Transition Out Condition;
- (d) have completed all works scheduled to be carried out under the 3MWP;
- (e) have completed the transfer of the Asset Information System database to the Principal or the Principal's nominee such that:
  - (i) all data has the capability of being processed, evaluated and viewed using standard commercially available systems;
  - (ii) the Asset Information System database remains fully functional and retains interface capabilities;
  - (iii) all data entry is fully up to date;
  - (iv) all data archives are included; and
  - (v) all supporting documentation is included; and
- (f) in respect of any lease, licence or agreement referred to in **clause 3.4(h)** which the Principal requires to be novated from the Service Provider to the Principal or its nominee, have complied with any end of term obligations of the Service Provider (including any make good obligations) under that lease, licence or agreement (except to the extent the Principal's Representative notifies the Service Provider in writing that such end of term obligations will be satisfied by or on behalf of the Principal or its nominee after the Termination Date).

#### 26.4 Final inspection

- (a) The Principal's Representative may (either prior to or a reasonable time following the Termination Date), procure an expert:
  - (i) nominated by agreement between the Principal and the Service Provider; or
  - (ii) failing agreement within 10 Business Days after a request for agreement is made in writing by the Principal's Representative, nominated by the President of Engineers Australia,to inspect and assess that part of the CRN Assets nominated by the Principal and notify the Principal and the Service Provider in writing of the estimated cost (without double counting) of:
  - (iii) any rectification, maintenance or remediation works required to be carried out to bring the condition of the relevant CRN Assets to the condition they would have been in had the Service Provider complied with its obligations under this Deed; and
  - (iv) making good or rectifying any failure by the Service Provider to carry out the Service Provider's obligations under **clause 26.3**.
- (b) The Service Provider must cooperate with the Final Inspection Auditor and provide the Final Inspection Auditor with any reasonable assistance required by the Final Inspection Auditor.
- (c) The costs incurred by the Principal of engaging the Final Inspection Auditor to perform the inspection and assessment in accordance with **clause 26.4(a)** will be borne by the Principal, except where the results of the inspection and assessment show that the Service Provider has not complied with its obligations under this Deed in relation to the

maintenance of the CRN Assets, in which case such costs will be a debt due and payable by the Service Provider to the Principal.

- (d) The amount notified by the Final Inspection Auditor under **clause 26.4(a)** will be a debt due and payable from the Service Provider to the Principal, except to the extent that:
- (i) the inspection by the Final Inspection Auditor occurs prior to the Termination Date; and
  - (ii) the Service Provider demonstrates to the reasonable satisfaction of the Principal's Representative that the costs notified by the Final Inspection Auditor under **clause 26.4(a)** relate to matters which have been rectified in accordance with this Deed between the date of the inspection by the Final Inspection Auditor and the Termination Date.

## **26.5 Service Provider Certification**

No later than 10 Business Days prior to the Termination Date, the Service Provider must provide the Principal with a written certificate signed by two directors of the Service Provider confirming that the CRN Assets have been maintained and operated in accordance with this Deed and are in the condition required by this Deed.

## **27 Handback**

### **27.1 Handback of CRN Assets and Principal Supplied Assets**

Except where the Service Provider is the Successor Service Provider, the Service Provider must surrender, hand back and return access to, and custody, control and care of, the CRN Assets and, unless otherwise directed by the Principal's Representative, the Principal Supplied Assets, to the Principal or the Principal's nominee:

- (a) in accordance with the requirements of this Deed; and
- (b) immediately after the Termination Date.

### **27.2 Indicative Statement**

Except where the Service Provider is the Successor Service Provider, the Principal may, by notice to the Service Provider given a reasonable time before the Termination Date, require the Service Provider to prepare an indicative statement for all CRN Assets held by the Service Provider as at the date of the Principal's notice, setting out the current value of each of those CRN Assets (calculated on the basis of generally accepted accounting standards). The Service Provider must provide the Indicative Statement to the Principal within one month after the date of the Principal's notice.

### **27.3 Successor Service Provider may be required to make offers**

- (a) The Principal may, in its sole and absolute discretion, require that any Successor Service Provider makes offers of employment to any or all of the Dedicated Employees employed by the Service Provider immediately before the Termination Date:
  - (i) on the same terms and conditions or substantially similar terms and conditions which (considered on an overall basis) are no less favourable than, the relevant Dedicated Employee's terms and conditions of employment with the Service Provider immediately before the Termination Date;
  - (ii) which recognises all accrued but untaken leave entitlements;
  - (iii) which recognises service by the Service Provider immediately prior to the Termination Date for all purposes; and





- (f) The cost of appointing an actuary in accordance with this **clause 27.3** will be shared equally between the Service Provider and the Successor Service Provider.
- (g) For the avoidance of doubt, if the amount calculated under this **clause 27.3** is a negative amount then no payment is required to be made by the Service Provider to the Principal.

#### **27.4 Transfer Out Agreement**

- (a) No later than 60 Business Days prior to the expiry of the Term, or if this Deed is terminated earlier than that date in accordance with **clause 23** or otherwise, no later than 20 Business Days after the Termination Date, the Principal's Representative may, in its absolute discretion, provide written notice to the Service Provider identifying any Service Provider Assets that the Principal requires the Service Provider to transfer to the Principal or its nominee.
- (b) The Service Provider must negotiate in good faith with the Transferee to agree and execute an agreement setting out the terms and conditions (including the price) on which the Nominated Assets will be transferred to the Transferee, which terms must include that the Nominated Assets will be transferred free of any Security Interest or claim by any person as at the date of transfer of the Nominated Assets.
- (c) If the Transferee and the Service Provider are unable to agree the terms of the Transfer Out Agreement within 20 Business Days of the commencement of the negotiations referred to in **clause 27.4(b)**, then the Service Provider may cease those negotiations and the Service Provider will have no Claim against the Principal in respect of the transfer of the Nominated Assets.

#### **27.5 Network Control Centre Lease and Backup Network Control Centre Lease**

Except where the Service Provider is the Successor Service Provider, the Service Provider must, where requested to do so by the Principal at any time within 25 Business Days after the Termination Date, novate any leases, licences and agreements for, or in connection with, the Network Control Centre, the Backup Network Control Centre and any other Depot referred to in **clause 3.4(h)(i)** to the Principal (or its nominee).

---

## **Part N – Claims and Disputes**

### **28 Dispute Resolution**

#### **28.1 Notice of Dispute**

- (a) If a dispute or difference (hereafter called a dispute) between the Service Provider and the Principal arises in connection with this Deed, then either party must deliver to the other party and to the Principal's Representative a notice of dispute in writing adequately identifying and providing details of the dispute.
- (b) Notwithstanding the existence of a dispute, the Principal and the Service Provider must continue to perform this Deed and, subject to **clauses 23 and 22**, the Service Provider must continue to carry out the Services and the Principal and the Service Provider must continue to comply with **clause 17**.

#### **28.2 Initial Negotiations**

Within 20 Business Days of service of a notice of dispute (or such longer period agreed in writing by the parties), the Principal's Representative and the Service Provider's Representative must confer, in good faith, at least once to attempt to resolve the dispute or to agree on methods of resolving the dispute by other means. If they are unable to settle the dispute within that period,

then either party may by notice in writing delivered by hand or sent by registered mail to the other party, refer such dispute to senior representatives of the parties (being an Executive Director of TfNSW and an officer of similar standing of the Service Provider, or such other senior representatives of the parties with authority to resolve the dispute) for negotiation in accordance with **clause 28.3**.

### 28.3 Further Negotiations

The senior representatives must negotiate in good faith with a view to resolving the dispute within 20 Business Days of the dispute being referred to them (or such longer period agreed in writing by the parties). If they are unable to settle the dispute within that period, then either party may by notice in writing delivered by hand or sent by registered mail to the other party, refer such dispute to the Deputy Secretary of TfNSW with responsibility for the CRN and an officer of similar standing for the Service Provider, or such other similarly senior representatives of the parties with authority to resolve the dispute, for negotiation in accordance with **clause 28.4**.

### 28.4 Final Negotiations

The senior officers to which the dispute is referred to in accordance with **clause 28.3** must negotiate in good faith with a view to resolving the dispute within 20 Business Days of the dispute being referred to them (or such longer period agreed in writing by the parties).

### 28.5 Expert Determination

- (a) If a dispute which has been referred to senior officers of the parties for resolution pursuant to **clause 28.3** remains unresolved (in whole or in part) after the expiration of the period for negotiation referred to in **clause 28.3**, then either party may, by giving notice to the other party, require that those parts of the dispute which remain unresolved be referred to an expert for determination in accordance with this **clause 28.5**.
- (b) The expert will be:
- (i) an independent expert agreed between the parties; or
  - (ii) if:
    - (A) the parties are unable to agree on the identity of the expert within 20 Business Days after the notice under **clause 28.5(a)**; or
    - (B) the expert otherwise agreed or appointed in accordance with this **clause 28.5(b)**:
      - (1) is unavailable;
      - (2) declines to act;
      - (3) does not respond within 10 Business Days to a request by one or both parties for advice as to whether he or she is able to conduct the determination; or
      - (4) does not make a determination within the time required by **clause 28.5(f)(i)**,  
appointed on the application of any party by (unless otherwise agreed) the chairperson or other senior office bearer for the time being of the New South Wales Chapter of the Resolution Institute.
- (c) The Principal and the Service Provider must enter into an agreement with the expert on the terms of **Schedule 7** of this Deed or such other reasonable terms as the expert may require.



- (d) The expert:
- (i) acts as an expert and not as an arbitrator;
  - (ii) may reach a decision from his or her own knowledge and expertise; and
  - (iii) may proceed in any manner he or she thinks fit but must observe the rules of natural justice;
  - (iv) may conduct any investigation which he or she considers necessary to resolve the dispute;
  - (v) may examine such documents, and interview such persons, as he or she may require;
  - (vi) notwithstanding anything else, to the extent permissible by law, will have no power to apply or have regard to the provisions of Proportionate Liability Legislation;
  - (vii) may make such directions for the conduct of the determination as he or she considers necessary;
  - (viii) must disclose to the parties any interest he or she has in the outcome of the determination; and
  - (ix) must not communicate with one party to the determination without the knowledge of the other.
- (e) Unless otherwise stated in this Deed, the costs of the expert must be borne in equal shares by the parties.
- (f) The expert's decision:
- (i) must be notified to the parties within 20 Business Days after the date of acceptance by the expert of his or her appointment (or such longer period agreed by the parties); and
  - (ii) is final and binding on the parties, except to the extent:
    - (A) of fraud, gross negligence or a manifest error; or
    - (B) either party gives notice of appeal to the other party within 20 Business Days after the determination.
- (g) The provisions of the *Commercial Arbitration Act 2010* (NSW) and the *Commercial Arbitration Act 2017* (ACT) will not apply to the dispute resolution proceedings under this **clause 28.5**.

## 28.6 Litigation

- (a) If:
- (i) the dispute is submitted to expert determination in accordance with **clause 28.5** and the circumstances in **clause 28.5(f)(ii)(A)** apply or a notice of appeal is given under **clause 28.5(f)(ii)(B)**; or
  - (ii) not used,
- then either party may commence proceedings in relation to the dispute.
- (b) Subject to **clause 28.8**, the parties must follow the dispute resolution procedures set out in this **clause 28** before either commences litigation or takes similar action.



## 28.7 Continuation of Rights and Obligations

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

## 28.8 Summary Relief

Nothing herein will prejudice the right of a party to seek injunctive or urgent declaratory relief in respect of a dispute of the kind referred to in this **clause 28**.

## 28.9 Exchange of Information or Records

- (a) The parties acknowledge that the purpose of any exchange of information or Records or the making of any offer of settlement pursuant to this **clause 28** is to attempt to resolve the dispute between the parties.
- (b) No party may use any discussions, information or Records obtained through the above dispute resolution procedures for any purpose other than an attempt to resolve a dispute under this Deed, except to the extent required by any Law.

## 29 Notification of Claims

### 29.1 Communication of Claims regarding Directions

- (a) Where the Service Provider considers that a Direction given by the Principal or the Principal's Representative:
  - (i) requires the Service Provider to carry out a Modification; and
  - (ii) does not satisfy the requirements of **clause 14.1(b), 14.2(b) or 14.3(d)** (as applicable),then the Service Provider must, prior to commencing to comply with the Direction and in any event within 5 Business Days of the date of the Direction (whichever is earlier), notify the Principal's Representative in writing that the Service Provider considers it to be a Direction requiring the Service Provider to carry out a Modification.
- (b) Within 20 Business Days of receiving the Service Provider's notice under **clause 29.1(a)**, the Principal's Representative may:
  - (i) notify the Service Provider that the Direction is withdrawn;
  - (ii) notify the Service Provider that the Principal's Representative is of the view that the Direction does not require the Service Provider to carry out a Modification; or
  - (iii) confirm that the Direction is a Direction under **clause 14.1(a), 14.2(a) or 14.3(d)** (as applicable) for the Service Provider to carry out a Modification by issuing a Direction that satisfies the requirements of **clause 14.1(b), 14.2(b) or 14.3(d)** (as applicable).
- (c) If, within 20 Business Days of receiving the Service Provider's notice under **clause 29.1(a)**, the Principal's Representative does not take action referred to in **clause 29.1(b)(i), 29.1(b)(ii) or 29.1(b)(iii)**, the Principal's Representative will be deemed to have issued a notice under **clause 29.1(b)(ii)**.
- (d) Where the Principal's Representative:
  - (i) issues a notice under **clause 29.1(b)(i)**, the Service Provider must not comply with, or must cease to comply with, the Direction;
  - (ii) issues a notice, or is deemed to have issued a notice, under **clause 29.1(b)(ii)**, the Service Provider:

- (A) must comply with, or continue to comply with, the Direction; and
- (B) may, within a further 15 Business Days of the Principal's Representative having issued, or being deemed to have issued, the notice under **clause 29.1(b)(ii)**, submit a notice of dispute under **clause 28.1(a)**, in which case, to the extent it is subsequently agreed or determined under **clause 28** that the relevant Direction did require the Service Provider to carry out a Modification, the Service Provider will be entitled to:
  - (1) if:
    - (a) the Modification is an Option (other than Option 7);
    - (b) in respect of:
      - (i) Option 1, Option 2, Option 3A, Option 3B or Option 3C, the Direction was issued on or before the date that is 2 years after the Services Commencement Date; or
      - (ii) Option 4, Option 5 or Option 6, the Direction was issued on or before the Services Commencement Date; and
    - (c) in respect of:
      - (i) Option 2, the Principal's Representative has not previously exercised Option 3A or Option 3B;
      - (ii) Option 3B, the Principal's Representative has not previously exercised Option 2, Option 3A or Option 3C; or
      - (iii) Option 3A, the Principal's Representative has not previously exercised Option 2 or Option 3C,
  - Variation Impacts as specified in the relevant part of **Section 9.2** of the **Payment Schedule**; or
  - (2) if **clause 29.1(d)(ii)(B)(1)** does not apply, subject to **clause 36**, Variation Impacts for such Modification, determined in accordance with **Part 2** of the **Variations Schedule** and, to the extent the Modification will result in Modification Assets (including under **clause 2.16(b)**) and the incorporation of those Modification Assets as part of the CRN Assets will give rise to a CRN Asset Base Change, Variation Impacts expressly set out in, and determined in accordance with, **Part 3** of the **Variations Schedule**; or
  - (iii) takes the action referred to in **clause 29.1(b)(iii)**, **clause 14.1(c)**, **14.2(c)** or **14.3(c)** (as applicable) will apply.

## 29.2 Communication of Claims

If the Service Provider wishes to make any Claim (other than an Excluded Claim) against the Principal in respect of or relating to any Direction of the Principal or the Principal's Representative (including any Direction under **clause 14.1(a)**) or any other fact, matter or thing (including an Adjustment Event, any Qualifying Latent CRN Assets Condition or a breach of this Deed by the Principal) under, arising out of, or in any way in connection with, this Deed, the Services or the CRN Assets, the Service Provider must:

- (a) in respect of any Claim for Qualifying Latent CRN Assets Condition Impacts, within 10 Business Days after the commencement of the Contract Year in which the relevant renewal is required to be completed in accordance with **Schedule 13**; or
- (b) in respect of any other Claim, within 10 Business Days after receiving the Direction or the first day on which the Service Provider could reasonably have been aware of the fact,



matter or thing upon which the Claim is or will be based (as applicable), submit a written Claim to the Principal's Representative.

### 29.3 Claim requirements

Any written Claim referred to in **clause 29.2** must include:

- (a) detailed particulars, including the date or dates, of the Direction, fact, matter or thing upon which the Claim is based;
- (b) the provisions of this Deed or other legal basis upon which the Claim is based;
- (c) in respect of Claims associated with Modifications or Adjustment Events, a Variation Impacts Statement as an attachment;
- (d) in respect of Claims associated with any Qualifying Latent CRN Assets Condition, a Qualifying Latent CRN Assets Condition Impacts Statement as an attachment; and
- (e) except to the extent **clause 29.3(c)** applies and the information is already included in the Variation Impacts Statement or **clause 29.3(d)** applies and the information is already included in the Qualifying Latent CRN Assets Condition Impacts Statement, details of the amount or other item claimed and how it has been calculated, with full supporting documentation and reasoning.

### 29.4 Liability for failure to communicate

- (a) If the Service Provider fails to strictly comply with **clause 29.1(a), 29.2 or 29.3**:
  - (i) the Service Provider will not be entitled to make, and the Principal will not be liable for, any Claim; and
  - (ii) the Service Provider releases the Principal from any Claim, arising out of, or in any way in connection with, the relevant Direction, fact, matter or thing (as the case may be) to which **clause 29.1(a) or 29.2** (as applicable) applies.
- (b) Nothing in this **clause 29** limits or otherwise affects the operation or effect of any other provision of this Deed which requires the Service Provider to give notice to the Principal or the Principal's Representative in order to preserve an entitlement to make a Claim against the Principal.

### 29.5 Principal's Representative's decision

- (a) Within 40 Business Days after receipt of a Claim under **clause 29.2**, the Principal's Representative must assess the Claim and notify the parties in writing of its decision, including any determination as to:
  - (i) in respect of any Variation, the Variation Impacts; and
  - (ii) in respect of any Qualifying Latent CRN Assets Condition, the Qualifying Latent CRN Assets Condition Impacts.
- (b) Unless a party within a further 20 Business Days after such notification gives a notice of dispute under **clause 28.1(a)**, the Principal's Representative's assessment will be final and binding.
- (c) Without limiting the Service Provider's entitlement to pursue the relevant Claim, failure by the Principal's Representative to assess a Claim within the time referred to in **clause 29.5(a)** will not constitute a breach of this Deed by the Principal.



## Part O – General

### 30 General

#### 30.1 Assignment and Change in Control

- (a) The Service Provider must not:
- (i) assign, novate, mortgage, charge, encumber or otherwise deal with or grant a Security Interest in respect of this Deed or any of its interests, rights and obligations under or in connection with this Deed; or
  - (ii) mortgage, charge, encumber or otherwise deal with or grant a Security Interest in any part of the CRN Assets or the Principal Supplied Assets,
- without the prior written consent of the Principal (which consent may be withheld or given (unconditionally or subject to conditions) in the Principal's absolute discretion).
- (b) Without limiting **clause 30.5** or any facilitative legislation, the Principal:
- (i) subject to **clause 30.1(b)(ii)**, may assign, novate, mortgage, charge, encumber or otherwise deal with this Deed or any of its interests, rights and obligations under or in connection with this Deed at any time with the prior written consent from the Service Provider (such consent not to be unreasonably withheld or delayed and not to be withheld if the Principal will continue to have (or the party taking the benefit of the assignment, novation or other dealing has) the financial capacity to perform the Principal's remaining obligations); and
  - (ii) may, in its absolute discretion and without any consent from the Service Provider, assign, novate, mortgage, charge, encumber or otherwise deal with this Deed, any security or any of its interests, rights and obligations under or in connection with this Deed at any time to any party or parties that the New South Wales Government nominates to assume some or all of the Principal's functions, rights or obligations (including as set out in **clause 30.5**).
- (c) The Service Provider must, if requested by the Principal, execute a deed on terms required by the Principal giving effect to the assignment, novation, charge, mortgage, encumbrance or other dealing.
- (d) Subject to **clause 30.1(e)**, the Service Provider must:
- (i) notify the Principal's Representative in writing of any potential Change in Control in respect of the Service Provider or a Parent Company as soon as the Service Provider becomes aware of the potential Change in Control; and
  - (ii) ensure that it is not, and a Parent Company is not, the subject of a Change in Control without the Principal's prior written consent (in its absolute discretion).
- (e) The Principal's approval is not required for a Change in Control arising from:
- (i) a transfer of any share or unit or other interest in the nature of equity which is listed on a recognised stock exchange and where that transfer is actually effected via the stock exchange in the ordinary course; or
  - (ii) any transfer of a share or unit or other interest in the nature of equity between Related Bodies Corporate of the Services Provider (excluding CIMIC Group Limited), provided the Service Provider gives the Principal prior written notice of the transfer.

However, subclause (e)(i) will not apply to a transfer that adversely affects either the Service Provider's or the Parent Company's financial capacity or ability to perform its obligations or satisfy its liabilities under, or in connection with, this Deed or the Parent Company Guarantee (as appropriate) or any deed poll required in accordance with **clause 20.3**.

Where any potential or actual Change in Control under **clause 30.1(d)** or transfer contemplated under **clause 30.1(e)** will result in a new holding company (as defined in the *Corporations Act 2001* (Cth) of the Service Provider, the Service Provider must provide the following financial information for the Service Provider and that holding company as part of its notice to the Principal under either **clause 30.1(d) or (e)**:

- (iii) audited financial statements for the past three complete financial years;
- (iv) published interim accounts for the current financial year (audited if applicable);
- (v) any material post financial statements events;
- (vi) (if applicable) the latest credit rating reports done by any internationally recognised rating agency;
- (vii) details of any loans, cross guarantees or other commercial relationships between group entities or with other Related Parties;
- (viii) details regarding any litigation, arbitration or administrative proceeding of or before any court, arbitral body or agency which:
  - (A) have been started or threatened against the Service Provider, any such holding company or any of their respective subsidiaries; and
  - (B) if adversely determined, would result in the Service Provider or any such holding company being liable for judgement in excess of \$1,000,000, including pursuant to any legislation, including relating to construction industry payment or security of payment;
- (ix) Foreign Investment Review Board (FIRB) Statement covering either:
  - (A) a summary of its discussions with FIRB together with a statement from FIRB confirming that there is no objection to the Service Provider being a party to this Deed; or
  - (B) a statement that no such discussions with FIRB are required as entry by the Service Provider into this Deed does not fall under the *Foreign Acquisitions and Takeovers Act 1975* (Cth); and
- (x) any other information the Service Provider feels it needs to provide to demonstrate its financial capacity to undertake the Services or to demonstrate a holding company's capacity to satisfy its obligations under any Parent Company Guarantee (as applicable).

### **30.2 Joint and Several Responsibility**

- (a) If the Service Provider is made up of more than one party, this **clause 30.2** will apply to the Service Provider and each of those parties.
- (b) The parties comprising the Service Provider are jointly and severally responsible for the obligations and performance of this Deed and are jointly and severally liable for any liabilities, damages, penalties or recourse under this Deed.
- (c) Any reference in this Deed to the Service Provider is to be read as a reference to each person comprising the Service Provider. For example, a Change in Control or Insolvency



Event affecting one person comprising the Service Provider is to be read as a 'Change in Control' or 'Insolvency Event' affecting the Service Provider.

### 30.3 Non-derogation

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

### 30.4 Principal may act

Without limiting any other provision of this Deed, the Principal may, either itself or by a third party, carry out an obligation under this Deed which the Service Provider was obliged to carry out but which it failed to carry out within the time required in accordance with this Deed (or, where no time for performance is prescribed in this Deed, within a reasonable time). The Losses suffered or incurred by the Principal in so carrying out such an obligation will be a debt due and payable from the Service Provider to the Principal.

### 30.5 Transfer of Functions or Assets

The Service Provider acknowledges and agrees that:

- (a) TfNSW or TAHE may be reconstituted, renamed, dissolved, replaced or restructured and that some or all of the powers, functions, assets, liabilities or responsibilities of TfNSW or TAHE may be transferred to or vested in another entity;
- (b) if TfNSW or TAHE is reconstituted, renamed, dissolved, replaced or restructured or if some or all of the powers, functions, assets, liabilities or responsibilities of TfNSW or TAHE are transferred to or vested in another entity, references in this Deed to TfNSW or TAHE (as applicable) will, subject to any facilitative legislation, be deemed to refer, as applicable, to that reconstituted, renamed, restructured or new entity to the extent that the entity has assumed or has had transferred to it or vested in it those powers, functions, assets, liabilities or responsibilities;
- (c) the Principal may, or may be required to (including as a result of changes to New South Wales Government policy or directions) acquire or dispose of, any property or assets forming part of the CRN Assets at its absolute discretion;
- (d) any such change to the CRN Assets may involve amendment to the Service Provider's rights and obligations under this Deed, and may, to the extent it constitutes an Adjustment Event, entitle the Service Provider to Variation Impacts in accordance with **Part 3 of the Variations Schedule**;
- (e) the Service Provider will be taken for all purposes to have consented to any matter referred to in this **clause 30.5** and must, to the extent required by the Principal and without limiting any facilitative legislation, negotiate in good faith any amendments required to this Deed, or any replacement agreement or agreements for this Deed to give effect to TfNSW or TAHE being reconstituted, renamed, dissolved, replaced or restructured; and
- (f) the Service Provider:
  - (i) will not be entitled to make, and the Principal will not be liable for, any Claim; and
  - (ii) releases the Principal from any Claim,arising out of, or in any way in connection with, any matter referred to in this **clause 30.5**, except for any Claim expressly referred to in **clause 30.5(d)**.



### 30.6 Severability

To the extent any provision of this Deed is (or would be, but for the operation of this **clause 30.6**) found to be void, voidable or unenforceable under any Law (including under the Security of Payment Act (NSW) or the Security of Payment Act (ACT)), the provision will be construed or severed from this Deed in a manner which:

- (a) avoids the provision or any other provision of this Deed being void, voidable or unenforceable; and
- (b) subject to **clause 30.6(a)**, preserves to the maximum possible extent:
  - (i) the enforceability of the provision and the other provisions of this Deed; and
  - (ii) the original effect and intent of this Deed.

### 30.7 Waiver and Amendments

- (a) Except as provided at Law or in equity or elsewhere in this Deed, none of the terms of this Deed will be varied, waived, discharged or released (in whole or in part), except with the express prior written consent by the Principal in each instance.
- (b) No waiver or release by the Principal of any term will operate as a waiver or release of any other term of this Deed or any subsequent breach of the relevant term.
- (c) Failure by the Principal, or by the Principal's Representative, acting on behalf of the Principal, at any time, or from time to time, to enforce or require strict compliance with, or performance of, any terms or conditions of this Deed will not constitute a waiver of, or affect, or impair such terms or conditions in any way, nor will such failure affect the right of the Principal to avail itself at any time of such remedies it may have for any subsequent breach of the terms and conditions by the Service Provider.
- (d) Except to the extent otherwise agreed between the parties (including as set out in this Deed), any variation or amendment of the terms of this Deed will be effected via a deed of amendment in the form set out in **Attachment H**.

### 30.8 Governing Law

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

### 30.9 No Merger

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

### 30.10 Counterparts

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

### 30.11 Survival

All representations, warranties and indemnities, **clauses 2.9, 2.15, 2.16, 3.4(h), 3.7, 3.9, 3.10, 3.13, 5.5, 5.8, 5.11, 6.3, 6.4, 6.6, 6.7, 17.3(b), 17.5, 17.15, 19.1(c), 20.2, 20.4, 20.5, 20.5A, 20.6, 20.6A, 20.7, 20.8, 20.9, 20.10, 21.5, 23, 24, 25, 26, 27, 28, 29.4, 30.2 and 31**, this **clause 30.11**, **section 4.1(c) of the Payment Schedule**, the **Termination Payments Schedule**, **clause 8.6(d) of the Enhancement Activities Terms and Conditions** and any other provision of this Deed which, by its nature, is intended to survive the termination of this Deed or the expiry of the Term, will survive the termination of this Deed or the expiry of the Term (as applicable).

### 30.12 Conflicts of Interest

- (a) The Service Provider warrants that, to the best of its knowledge, no Conflict of Interest of the Service Provider or any of its Associates exists or is likely to arise in the carrying out of the Services.
- (b) The Service Provider must:
  - (i) notify in writing, and consult with, the Principal immediately upon becoming aware of the existence, or possibility, of a Conflict of Interest of the Service Provider or any of its Associates; and
  - (ii) comply with any Direction given by the Principal in relation to the circumstances giving rise to the Conflict of Interest, or possible Conflict of Interest, designed to manage that Conflict of Interest, or possible Conflict of Interest.

### 30.13 Service of Notices

- (a) A notice to be given under this Deed:
  - (i) must be delivered or posted by pre-paid post to the address or sent by email to the email address of the addressee stated in **Attachment A** (or such last communicated address or email address notified in writing pursuant to this clause); and
  - (ii) will be deemed to have been received by the addressee, if using:
    - (A) regular prepaid post or registered post, 6 Business Days after the date of posting;
    - (B) priority prepaid post or priority registered post, 4 Business Days after the date of posting;
    - (C) express post, 2 Business Days after the date of posting; or
    - (D) email, on the first to occur of:
      - (1) receipt by the sender of an email acknowledgement from the recipient's information system showing that the notice has been delivered to the email address stated above;
      - (2) the time that the notice enters an information system which is under the control of the recipient; and
      - (3) the time that the notice is first opened or read by an employee or officer of the recipient,but if the result is that a notice would be taken to be given or made on a day that is not a Business Day or is later than 4.00 pm (Sydney time) it will be taken to have been duly given or made at the start of business on the next Business Day.
- (b) The Principal, the Principal's Representative and the Service Provider must each notify the others promptly in writing of a change of address or other contact details.
- (c) Without limiting the generality of 'notice', it includes a document.
- (d) Any notice given to the Service Provider's Representative will be deemed to have been given to the Service Provider.

### 30.14 Entire Agreement

- (a) This Deed:

- (i) constitutes the entire agreement between the parties about the subject matter contained in it; and
  - (ii) supersedes any contract, deed, arrangement, related condition, collateral arrangement, condition, warranty, indemnity or representation relating to the subject matter contained in it, that was imposed, given or made by a party (or an agent of a party) prior to entering into this Deed.
- (b) The Service Provider acknowledges that in entering into this Deed the Service Provider has made its own enquiries and has not relied on any representations made by or on behalf of the Principal (or its agents or employees) in respect of this Deed, the CRN Assets or the Services.

### 30.15 Costs

- (a) Each party will pay its own costs of negotiation, preparation and execution of this Deed.
- (b) The Principal may (in its absolute discretion) require the Service Provider to pay the reasonable costs of any amendments to this Deed sought by the Service Provider.

### 30.16 Further assurances

Each party must promptly execute and deliver all documents and take all other action necessary or desirable to effect, perfect or complete the transactions contemplated by this Deed.

## 31 Media Releases, Confidentiality and Privacy

### 31.1 Confidential Information

- (a) Confidential Information must be kept confidential and not disclosed to a third party except with the prior agreement of the other party to this Deed or as permitted pursuant to this **clause 31.1 or 31.4**.
- (b) Each party must ensure that each of its Associates complies with the terms of this **clause 31.1**.
- (c) Without limiting its other obligations under this **clause 31.1**, neither party may:
  - (i) disclose to any person; or
  - (ii) in the case of the Service Provider, use for any purpose other than the carrying out of the Services,the Confidential Information referred to in **clause 31.1(a)** unless:
  - (iii) the other party has given its prior consent in writing; or
  - (iv) it is permitted to do so pursuant to this **clause 31.1 or 31.4**.
- (d) A party (the Disclosing Party) may disclose Confidential Information:
  - (i) which is in the public domain through no default of the Disclosing Party;
  - (ii) if the disclosure is:
    - (A) required by Law;
    - (B) given with the written consent of the other party;
    - (C) given to a court in the course of proceedings for which the Disclosing Party is a party or to an expert or mediator agreed or nominated under this Deed; or



- (D) to any of its financial, technical, legal or other advisers who agree to keep the Confidential Information confidential in accordance with this **clause 31.1**; or
- (iii) if:
  - (A) the Disclosing Party has obtained a confidentiality deed relating to the Confidential Information from the party whom it intends to disclose in favour of the other party to this Deed; and
  - (B) the information is for the purposes of assigning or transferring the Disclosing Party's rights, interests and obligations under this Deed.
- (e) The Principal may also disclose Confidential Information:
  - (i) to the Director General, the Principal's shareholding or responsible Ministers and the New South Wales Government;
  - (ii) where the Principal is engaging, or is seeking to engage, a new contractor to carry out activities and work of a similar nature to the Services (in whole or in part):
    - (A) for the purpose of any data room or equivalent; and
    - (B) to any party the Principal proposes to seek an offer, tender or proposal from, or negotiate with or enter into a contract with for those activities or work (whether or not any contract is entered into),  
provided the Principal has in place reasonable confidentiality arrangements with the parties to whom such Confidential Information is disclosed; and
  - (iii) where the Principal is exercising a right under **clause 6.4**, provided that the Principal has in place reasonable confidentiality arrangements with the parties to whom such Confidential Information is disclosed.
- (f) Subject to **clause 31.1(b)**, each party may disclose Confidential Information to its Associates (and, in the case of the Principal, to any counterparty to a Relevant Document) to the extent necessary to enable the party to perform its obligations under this Deed (or, in the case of the Principal, under the Relevant Document).

### 31.2 Media Releases

- (a) The Service Provider must not issue any information, publication, document or article for publication concerning the CRN Assets or the Services in any media:
  - (i) without the prior express written approval of the Principal's Representative, which approval must not be unreasonably withheld; and
  - (ii) without limiting **clause 31.2(a)(i)**, except in accordance with the requirements of the **Scope of Works**.
- (b) The Service Provider must refer to the Principal any enquiries concerning the CRN Assets or the Services from any media.

### 31.3 Privacy

The Service Provider must when it collects, uses, discloses or holds Personal Information in the course of performing its obligations under or in connection with this Deed:

- (a) collect, use, access, disclose or hold such Personal Information obtained in connection with this Deed only for the purposes of performing its obligations under this Deed;
- (b) comply with all applicable Privacy Laws as if it were a person subject to the Privacy Laws;

- (c) not do any act or engage in any practice that would breach the Privacy Laws, or which if done or engaged in by the Principal, would be a breach of any Privacy Laws;
- (d) not disclose Personal Information to any other person without the prior written consent of the Principal;
- (e) notify the Principal immediately upon becoming aware of a breach or possible breach of any of the obligations in this **clause 31.3**, whether by the Service Provider, or its Associates, and comply with any reasonable direction from the Principal with respect to remedying that breach;
- (f) notify any individual that makes a complaint to the Service Provider regarding the Service Provider's acts or practices in relation to such individual's Personal Information, that the complaint may be investigated by the Privacy Commissioner;
- (g) comply with all reasonable directions of the Principal in relation to the care and protection of Personal Information held in connection with this Deed or the rights of individuals to access and correct such Personal Information, and take all technical, organisational and other security measures reasonably within the Service Provider's power to protect the Personal Information from misuse, interference and loss and from unauthorised access or use, modification or disclosure;
- (h) not allow, or permit access to, or transfer any Personal Information that belongs to the Principal, has been provided by the Principal or has been collected, accessed or used by the Service Provider with the consent of the Principal, outside of New South Wales, Australia, unless it has first obtained the Principal's prior approval in writing;
- (i) ensure that any of the Service Provider's Associates who are required to deal with the Personal Information for the purposes of this Deed are made aware of the obligations of the Service Provider under this **clause 31.3** and comply with this **clause 31.3**; and
- (j) ensure that any agreement with any of the Service Provider's Associates who may be fulfilling a requirement in relation to this Deed which includes the handling of Personal Information contains the same or equivalent obligations to this **clause 31.3** which are enforceable by the Service Provider against the Associate.

#### **31.4 Disclosure by the Principal**

- (a) The Service Provider acknowledges and agrees that:
  - (i) the Principal may publish or otherwise disclose parts of this Deed and information concerning the terms of this Deed to NSW Government departments or agencies or as otherwise required by Law; and
  - (ii) the Principal may be required to publish information concerning this Deed:
    - (A) in accordance with the GIPA Act in response to an access application under Part 4 of the GIPA Act or as part of its disclosure obligations for government contracts in the government contracts register under Part 3, Division 5 of the GIPA Act;
    - (B) under any similar or replacement legislation to the GIPA Act; or
    - (C) by the Auditor-General or Parliament.
- (b) The Service Provider authorises the Principal, its employees and agents to make information concerning the Service Provider available to NSW government departments or agencies. Such information may include any information provided by the Service Provider to the Principal and any information relating to the Service Provider's performance under this Deed.



- (c) The Service Provider acknowledges that any information about the Service Provider from any source, including substantiated reports of unsatisfactory performance, may be taken into account by the Principal and NSW government departments and agencies in considering whether to offer the Service Provider future opportunities for NSW government work.
- (d) The Service Provider also acknowledges that the Principal has in place processes for assessing the performance of its contractors, that these processes will apply to the Service Provider's performance under this Deed and that it will participate in the Principal's "Contractor Performance Reporting" process.

## **32 Personal Property Securities Act**

### **32.1 Further Assurances**

By signing this Deed, the Service Provider acknowledges and agrees that if this Deed and the transactions contemplated by it, operate as, or give rise to, a PPSA Security Interest, the Service Provider must do anything (including amending this Deed or any other document, executing any new terms and conditions or any other document, obtaining consents, getting documents completed and signed and supplying information) that the Principal considers necessary under or as a result of the PPS Law for the purposes of:

- (a) ensuring that the PPSA Security Interest is enforceable, perfected or otherwise effective and has the highest priority possible under PPS Law;
- (b) enabling the Principal to apply for any registration, or give any notification, in connection with the PPSA Security Interest, including the registration of a financing statement or financing change statement; or
- (c) enabling the Principal to exercise rights in connection with the PPSA Security Interest and this Deed.

### **32.2 Contracting out of PPS Act**

If Chapter 4 of the PPS Act applies to the enforcement of the PPSA Security Interest, the Service Provider agrees that sections 95, 120, 121(4), 125, 130, 132(3)(d), 132(4), 135, 142 and 143 of the PPS Act will not apply to the enforcement of the PPSA Security Interest.

### **32.3 Acknowledgments and undertakings**

The Service Provider:

- (a) acknowledges that the PPSA Security Interests created under this Deed relate to collateral and all proceeds in respect of that collateral (until the Principal is paid in full for the collateral);
- (b) acknowledges that to the maximum extent permitted by law, it waives any right to receive a verification statement under the PPS Law in respect of the PPSA Security Interest; and
- (c) undertakes it will not register a financing change statement without the prior written consent of the Principal.

### **32.4 Requests for information**

- (a) The parties agree that neither of them will disclose information of the kind referred to in section 275(1) of the PPS Act and that this clause constitutes a confidentiality agreement within the meaning of the PPS Law.



- (b) The Service Provider agrees to waive any right it may have, or but for this clause may have had, under section 275(7)(c) of the PPS Act to authorise the disclosure of the above information.

### **33 Compliance with NSW Government Small and Medium Enterprise Policy Framework**

To the extent that the Small and Medium Enterprise Policy Framework applies to the carrying out of the Services, the Service Provider must comply with the requirements of the Small and Medium Enterprise Policy Framework as follows:

- (a) the Service Provider acknowledges that the Principal has relied upon the SMEPP set out in **Appendix C** to the **Scope of Works** in the evaluation of the tender submitted by the Service Provider or any Related Body Corporate of the Service Provider and in deciding to enter into this Deed;
- (b) the Service Provider must comply with the requirements and commitments provided for in the SMEPP and must take all steps reasonably required to enable the Principal to monitor compliance by the Service Provider with the SMEPP; and
- (c) the Service Provider and the Principal agree that the Principal may establish mechanisms to monitor compliance by the Service Provider with the requirements of, and its commitments under, the SMEPP. The Service Provider agrees that the Principal may take into consideration non-compliance by the Service Provider with the SMEPP when evaluating tenders submitted by the Service Provider in the future for other agreements.

### **34 Force Majeure**

#### **34.1 Notice**

If a Force Majeure Event occurs and prevents, or will prevent, the Service Provider from performing some or all of its non-financial obligations under this Deed, the Service Provider must:

- (a) within 2 Business Days after it becomes aware, or ought reasonably to have become aware, that a Force Majeure Event is likely to prevent the Service Provider from performing some or all of its non-financial obligations under this Deed, give to the Principal's Representative a written notice:
  - (i) stating that a Force Majeure Event has occurred; and
  - (ii) stating whether the Service Provider proposes to seek suspension under **clause 34.2** of its non-financial obligations arising directly out of that Force Majeure Event;
- (b) within 10 Business Days after giving the notice under **clause 34.1(a)**, give the Principal's Representative full particulars of the Force Majeure Event, including:
  - (i) detailed particulars concerning the Force Majeure Event;
  - (ii) details of the non-financial obligations which have been (or will be) prevented from being complied with by the Service Provider as a result of the Force Majeure Event; and
  - (iii) details of the steps which the Service Provider has taken (and proposes to take) to mitigate the effects of the relevant Force Majeure Event; and
- (c) if the Force Majeure Event (or its effects) is continuing, continue to give the information required by **clause 34.1(b)** every 20 Business Days after the notice under **clause 34.1(a)**

was provided to the Principal's Representative until the date that is 20 Business Days after the Force Majeure Event (and its effects) has ceased.

### 34.2 Suspension of Affected Obligations

- (a) Without limiting **clause 23.9** or the Variation Impacts associated with any Adjustment Event, but subject to **clause 34.2(c)**, if:
- (i) a Force Majeure Event prevents the Principal or the Service Provider from performing some or all of its non-financial obligations under this Deed; and
  - (ii) where the affected party is the Service Provider, the Service Provider has complied with the requirements of **clauses 34.1 and 34.2(c)**,
- then:
- (iii) the requirement to perform the Affected Obligations is, to the extent such Affected Obligations are prevented from being performed as a result of the relevant Force Majeure Event, suspended from the date the Force Majeure Event starts preventing such performance until the date on which the Principal or Service Provider (as applicable) ceases to be prevented from such performance by the relevant Force Majeure Event;
  - (iv) a failure by the Principal or the Service Provider (as applicable) to perform the Affected Obligations during the period of suspension referred to in **clause 34.2(a)(iii)** is not a breach of this Deed; and
  - (v) the Service Provider will not be entitled to make, and the Principal will not be liable for, any Claim arising out of, or in any way in connection with, the suspension referred to in **clause 34.2(a)(iii)** or any failure by the Principal to perform the Affected Obligations during the period of suspension referred to in **clause 34.2(a)(iii)**.
- (b) The Principal or the Service Provider (as applicable) must recommence the performance of any Affected Obligations suspended under **clause 34.2(a)** as soon as reasonably practicable after the relevant Force Majeure Event ceases to prevent its performance.
- (c) The Service Provider:
- (i) must:
    - (A) remedy or minimise the effects of the Force Majeure Event to the extent reasonably practicable; and
    - (B) take all action reasonably practicable to mitigate any Loss suffered by the Principal or any users of the CRN Assets as a result of the suspension of the requirement to perform the Affected Obligations; and
  - (ii) acknowledges and agrees that the suspension of Affected Obligations under **clause 34.2(a)** will not affect any of the KPIs or how the Service Provider's performance in respect of them is determined, but the Force Majeure Event resulting in the suspension of Affected Obligations may be taken into account for the purposes of **section 2.2(d)** of the **KPI Schedule**.
- (d) The Term will not be extended due to the operation of this **clause 34**.



### 35 Specific Relevant Documents

The parties acknowledge and agree that:

- (a) notwithstanding **clause 5.7(a)**, as at the date of this Deed the Service Provider has not obtained or read those of the Relevant Documents which are classified as “No” under the “Agreement Available” heading in the tenancy schedule referred to in **Schedule 6 (Specific Relevant Documents)** and **clause 5.7(a)** will be construed accordingly;
- (b) notwithstanding **clause 35(a)**, the Service Provider has made due allowance in the Monthly Services Fee, each Mobilisation Payment and any rates and prices included in the **Payment Schedule** for the performance and satisfaction of its obligations in respect of the Specific Relevant Documents;
- (c) **clause 2.7(e)(i)**, **clause 5.7(b)** and **clause 5.7(c)** will not apply to the Specific Relevant Documents;
- (d) notwithstanding that, as at the date of this Deed, the Service Provider has not obtained or read the Specific Relevant Documents, the Service Provider is aware (to the extent disclosed in, or reasonably inferable from, **Schedule 6**) of the general nature of the Specific Relevant Documents, including that the Specific Relevant Documents may involve the granting of a licence in respect of certain infrastructure or other rights of access on, under, over or in respect of parts of the CRN Land, and the payment of associated rental or licence fees to the Principal;
- (e) subject to **clause 5.7(f)(ii)**, the Service Provider must perform the Services, and otherwise act, in a manner that is consistent with the Principal’s rights (including rights to payment of rental or licence fees) and obligations under a licence granted in respect of certain infrastructure or other rights of access on, under, over or in respect of parts of the CRN Land, to the extent that such rights and obligations could reasonably be expected to arise under the Specific Relevant Documents, based on the general nature of the Specific Relevant Documents (to the extent disclosed in, or reasonably inferable from, **Schedule 6**);
- (f) **clause 17.10** applies in respect of the Specific Relevant Documents; and
- (g) **clause 20.2(a)(vi)** does not apply in respect of any Incident referred to in **paragraph (c) or (d)** of the definition of ‘Incident’ in **clause 1.1** to the extent it results (or will result) in a failure to satisfy, or compromises any person’s ability to satisfy, any requirements of a Specific Relevant Document.

### 36 Option 7

The parties agree that, for the purposes of this Deed, “Option 7” [REDACTED]

On and from the date of this Deed, the Principal and the Service Provider will undertake (each acting reasonably and in good faith) investigations and other value engineering activities (in each case to the extent it is reasonably necessary to do so) in order to determine:

- (a) whether it is necessary for the Service Provider to carry out Option 7 in order to comply with its obligations under this Deed;
- (b) whether Option 7 can be carried out by the Service Provider for an amount less than the amounts set out in Table A below; and



- (c) whether there are any arrangements that may be implemented by the Service Provider in order to avoid the need for the Service Provider to carry out Option 7 in order to comply with its obligations under this Deed (**Alternative Option**).

The parties agree that:

- (d) if, on or before [REDACTED], the parties agree in writing that it is not necessary for the Service Provider to carry out Option 7 in order to comply with its obligations under this Deed:
- (i) the Principal's Representative will not be required to issue a Direction exercising Option 7 under **clause 14.2**;
  - (ii) the Service Provider will be entitled to be reimbursed the reasonable additional costs (plus a margin of [REDACTED] on those reasonable additional costs) incurred by the Service Provider from the date of this Deed in carrying out investigations and other value engineering activities and work in respect [REDACTED] and [REDACTED];
  - (iii) where the parties have agreed to an Alternative Option, the Principal's Representative will direct the Service Provider to carry out that Alternative Option as a Modification under **clause 14.1(a)**;
- (e) if, on or before [REDACTED], the parties have not agreed in writing that it is not necessary for the Service Provider to carry out Option 7 in order to comply with its obligations under this Deed, the Principal's Representative must issue a Direction under **clause 14.2(a)** exercising Option 7 on or before [REDACTED], and if the Principal's Representative does not do so, it will be deemed to have issued a Direction under **clause 14.2(a)** exercising Option 7 on [REDACTED];
- (f) notwithstanding any other provision of this Deed (including the **Variations Schedule**), if the Principal's Representative exercises, or is deemed to have exercised, Option 7:
- (i) the Service Provider must promptly update the Mobilisation Plan to reflect the exercise of Option 7, and submit the updated Mobilisation Plan to the Principal's Representative under **clause 6.8**;
  - (ii) Appendix 1 of the **Payment Schedule** will be amended by adding the items in Table A below to Table 1 in Appendix 1 of the **Payment Schedule**; and
  - (iii) except to the extent a further Modification is subsequently directed by the Principal's Representative in respect of the relevant [REDACTED] [REDACTED] no other adjustments will be made to other amounts payable under this Deed, the Variations Schedule will not apply to the exercise of Option 7, and the amounts payable under Appendix 1 of the Payment Schedule (as amended under **clause 36(e)(i)**) will be a limitation on the Principal's liability to the Service Provider arising out of or in connection with the exercise of Option 7; and
- (g) in the period between:
- (i) the date of this Deed; and
  - (ii) the earlier of, the date on which:
    - (A) the Service Provider is entitled under **clause 6.8** to use the updated Mobilisation Plan submitted under **clause 36(f)**; and
    - (B) the parties agree in accordance with **clause 36(d)** that it is not necessary for the Service Provider to carry out Option 7,

the Service Provider may proceed to carry out activities in respect of Option 7 (in respect of which the Service Provider’s entitlements will, except as provided in **clause 36(f)(ii)**, be limited to the amount referred to in **clause 36(d)(ii)**), and the Service Provider will not be in breach of the Mobilisation Plan for carrying out activities in respect of Option 7.

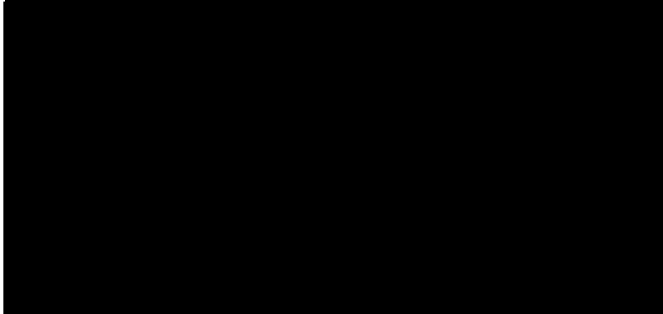
Table A: Option 7 Additional items for Table 1 of Appendix 1 of Payment Schedule

Mobilisation Milestone (in each case as more particularly described in the Mobilisation Plan)	Mobilisation Milestone Date	Mobilisation Payment (Nominal AUD)
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]		

Executed as a Deed

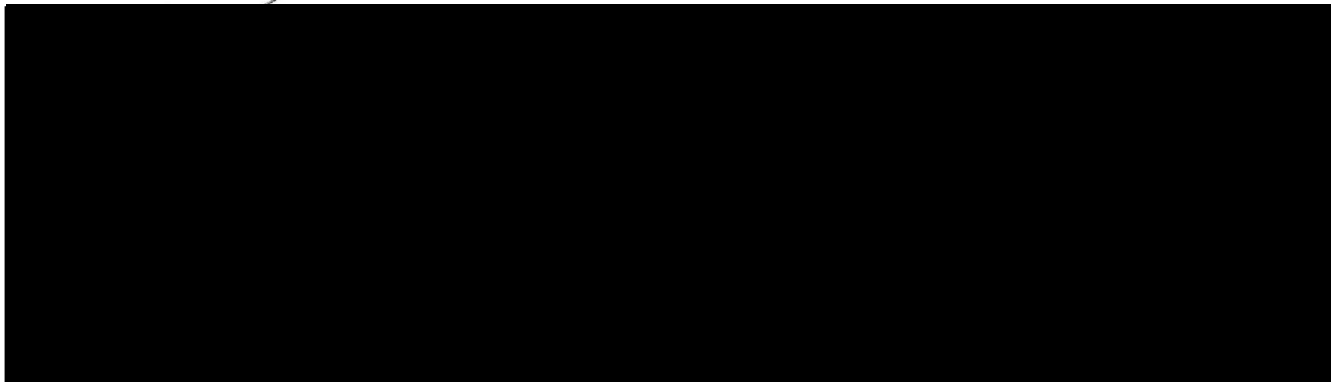
**Signed by Transport for NSW**  
**ABN 18 804 239 602** by its Authorised  
Delegate:

in the presence of:

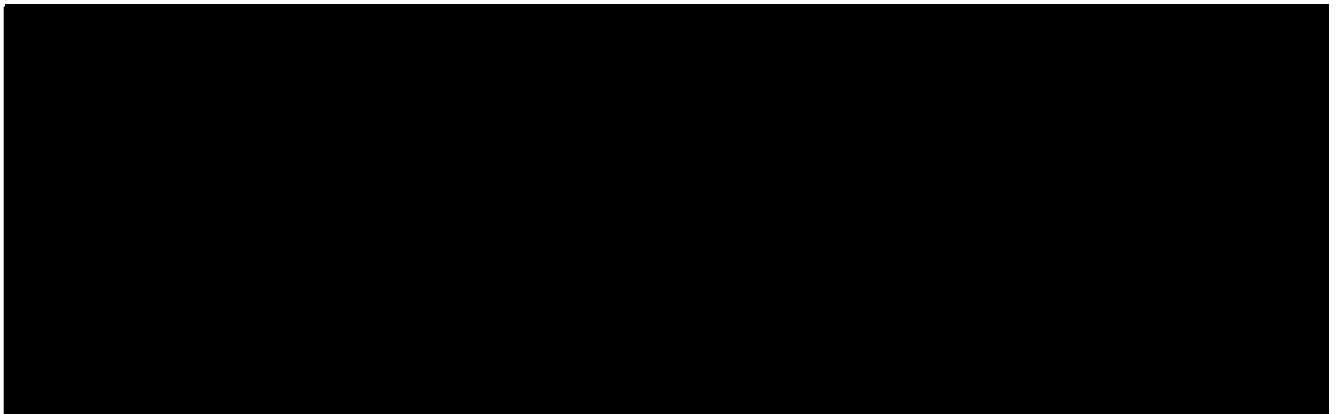


**Signed by Transport Asset Holding Entity**  
**of New South Wales ABN 59 325 778 353**  
by its Authorised Delegate:

in the presence of:



**Signed sealed and delivered** for and on behalf of  
**UGL Regional Linx Pty Ltd** (ACN 646 771 011) by  
its Attorney under a Power of Attorney dated **21**  
**January 2021** (and the Attorney declares that the  
Attorney has not received any notice of the  
revocation of such Power of Attorney) in the  
presence of:





THIS PAGE IS INTENTIONALLY LEFT BLANK

## Attachment A – Deed Details

Address details for the parties:

**(clause 30.13)**

The Principal:	Address:	231 Elizabeth Street, Sydney NSW 2000
	Attention:	Principal's Representative
	Email:	[REDACTED]
The Service Provider:	Address:	Level 8, 40 Miller St North Sydney 2060
	Attention:	[REDACTED]
	Email:	[REDACTED]

Proposed Services Commencement  
Date:

**(clause 1)**

[REDACTED]

Safety Interface Agreements required  
to satisfy Conditions Precent  
(Services Commencement):

**(clauses 1 and 7.15(a))**

As required to be entered into in accordance with the RSNL  
or to otherwise enable the Services to be carried out in  
accordance with this Deed

Parent Company:

**(clauses 1 and 3.14)**

CIMIC Group Limited ACN 004 482 982

Principal's Representative:

**(clause 2.10)**

[REDACTED]

Service Provider's Representative:

**(clause 2.13)**

[REDACTED]

Deed Poll Beneficiaries:

**(clause 20.3)**

Sydney Trains, NSW Trains, the Minister for Regional  
Transport and Roads and any of their successors and  
assigns.

General Liability Period Cap for First

General Liability Period:

**(clause 20.5(b)(i))**

[REDACTED]

Renewal Requirement Auditor:

**(clause 2(b) of Schedule 13)**

Nil

**Attachment B – Approved Form of Unconditional Undertaking**

[Letterhead of guarantor financial institution]

[Date]

To: Transport for NSW (ABN 18 804 239 602) of 231 Elizabeth Street, Sydney NSW 2000  
and  
Transport Asset Holding Entity of New South Wales (ABN 59 325 778 353) of 470 Pitt Street,  
Haymarket NSW 2000  
(jointly and severally the **Principal**).

**Unconditional Undertaking**

At the request of [insert Service Provider] (the **Service Provider**) and in consideration of the Principal accepting this Undertaking in relation to the Operations and Maintenance Deed dated [insert date] (the **Transaction**), [name and ABN of Financial Institution] (the **Financial Institution**) unconditionally undertakes to pay on demand any sum or sums which may from time to time be demanded under this Undertaking by the Principal to a maximum total sum of [REDACTED] (the **Sum**).

This Undertaking is to continue until the first to occur of:

- (a) 4.00 pm on [insert date] (the **Expiry Date**);
- (b) the return to the Financial Institution of this Undertaking at [the above address]; or
- (c) payment to the Principal by the Financial Institution of the whole of the Sum.

If the Financial Institution receives a written demand at its office at [the above address] no later than the Expiry Date that purports to be signed on behalf of the Principal and demands payment of all or any part of the Sum (not exceeding the maximum amount available under this Undertaking), then the Financial Institution unconditionally agrees to make such payment to the Principal immediately without further reference to the Service Provider and despite any notice to the contrary from the Service Provider. Despite anything else in this Undertaking, the Financial Institution may, at any time and without being required to do so, pay to the Principal the whole of the Sum or such part of the Sum as has not already been paid to the Principal by the Financial Institution and, upon such payment, the liability of the Financial Institution under this Undertaking will immediately cease and determine.

The Sum will be automatically reduced by the amount of any payment to the Principal by the Financial Institution under this Undertaking.

If two or more persons are named as the Principal, this guarantee takes effect for the benefit of them jointly and severally and a demand under this Undertaking by any one or more of them is deemed to be a demand by both or all of them jointly. Payment by the Financial Institution under this Undertaking to any one or more of them discharges this Undertaking to the extent of the amount so paid.

The Principal may, by written notice to the Financial Institution, assign the benefit of this Undertaking to Sydney Trains, NSW Trains or Sydney Metro or any of their successors or assigns.

This Undertaking is governed by the laws of New South Wales.

Signed in [Sydney] on [Date] on behalf of [name of Financial Institution]:



CRN Operations and Maintenance Deed

---

---

Authorised Signatory

---

Authorised Signatory

---

Print Name

---

Print Name

---

Position

---

Position

## Attachment C - Parent Company Deed of Guarantee and Indemnity

**Deed of Guarantee and Indemnity** made at \_\_\_\_\_ on \_\_\_\_\_ 20\_\_\_\_

**Transport for NSW (ABN 18 804 239 602)**

and

**Transport Asset Holding Entity of New South Wales (ABN 59 325 778 353)**

(together, jointly and severally, the *Principal*)

and

**CIMIC Group Limited (ACN 004 482 982)**

(*Guarantor*)

### RECITALS

- A. The Principal has agreed to enter into the CRN O&M Deed with the Service Provider on the condition that the Guarantor provide this Guarantee.
- B. The Guarantor has agreed on the following terms and conditions to guarantee to the Principal all of the Obligations and to indemnify the Principal against any loss arising from any failure by the Service Provider 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

---

##### 1.1 Definitions and Interpretation

In this Deed:

**CRN O&M Deed** means the Operations and Maintenance Deed dated on or about the date of this Deed between the Principal and the Service Provider.

**Deed** means this Deed of Guarantee and Indemnity and includes all schedules and annexures to it.

**Event of Default** means any event which constitutes a breach of, or is duly and properly declared to be an event of default (howsoever described) by, the CRN O&M Deed.

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

**GST Amount** means, in respect of a supply made under or in connection with this Deed, the amount of GST payable, or notionally payable, on that supply.

**GST Law** has the meaning given in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

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

**Insolvency Provision** means any Law relating to insolvency, sequestration, liquidation 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 in bankruptcy 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.

**Obligations** means all the liabilities and obligations of the Service Provider to the Principal under or arising out of or in any way in connection with the CRN O&M Deed or the work to be carried out or performed by the Service Provider under the CRN O&M Deed, and includes any liabilities or obligations which:

- (a) are liquidated or unliquidated;
- (b) are present, prospective or contingent;
- (c) are in existence before or come into existence on or after the date of this Deed;
- (d) relate to the payment of money or the performance or omission of any act;
- (e) sound in damages only; or
- (f) accrue as a result of any Event of Default,

and irrespective of:

- (g) whether the Service Provider is liable or obligated solely, or jointly, or jointly and severally with another person;
- (h) the circumstances in which the Principal comes to be owed each liability or obligation and in which each liability or obligation comes to be secured by this Deed, including any assignment of any liability or obligation or of this Deed; or
- (i) the capacity in which the Service Provider and the Principal comes to owe or be owed such liability or obligation,

and **Obligation** means any liability or obligation forming part of the Obligations.

**Power** means any right, power, authority, discretion, remedy or privilege conferred on the Principal by the CRN O&M Deed, by statute, by law or by equity.

**Security** means a mortgage, charge, pledge, lien, hypothecation, guarantee (including this Deed), indemnity, letter of credit, letter of comfort, performance bond, contractual right of set-off or combination or other assurance against loss which secures the Guaranteed Money or the performance of any other Obligation, and whether existing at the date of this Deed or at any time in the future.

**Service Provider** means UGL Regional Linx Pty Ltd (ACN 646 771 011).

**Specified Rate** means the rate which is [REDACTED] above the rate expressed as a percentage per annum:

[REDACTED]

[REDACTED]



## 1.2 Defined terms

Terms used in this Deed which are not otherwise defined will have the meaning given to them in the CRN O&M Deed.

## 1.3 Interpretation

In this Deed unless the context otherwise requires:

- (a) references to a person include an individual, a body politic, the estate of an individual, a firm, a corporation, an authority, an association or joint venture (whether incorporated or unincorporated), or a partnership;
- (b) the words "including", "includes" and "include" will be read as if followed by the words "without limitation";
- (c) a reference to any party to this Deed includes that party's executors, administrators, successors, and permitted substitutes and assigns, including any person taking part by way of novation;
- (d) a reference to any Authority, institute, association or body is:
  - (1) if that Authority, institute, association or body is reconstituted, renamed or replaced or if the powers or functions of that Authority, institute, association or body are transferred to another organisation, deemed to refer to the reconstituted, renamed or replaced organisation or the organisation to which the powers or functions are transferred, as the case may be; and
  - (2) if that Authority, institute, association or body ceases to exist, deemed to refer to the organisation which serves substantially the same purposes or objects as that Authority, institute, association or body;
- (e) a reference to this Deed or to any other deed, agreement, document or instrument is deemed to include a reference to this Deed or such other deed, agreement, document or instrument as amended, novated, supplemented, varied or replaced from time to time;
- (f) a reference to any legislation or to any section or provision of it includes:
  - (1) any statutory modification or re-enactment of, or any statutory provision substituted for, that legislation, section or provision; and
  - (2) ordinances, by-laws, regulations of and other statutory instruments issued under that legislation, section or provision;
- (g) words in the singular include the plural (and vice versa) and words denoting any gender include all genders;
- (h) headings are for convenience only and do not affect the interpretation of this Deed;
- (i) a reference to:
  - (1) a party or clause is a reference to a party or clause of or to this Deed; and
  - (2) a paragraph or a sub-paragraph is a reference to a paragraph or sub-paragraph in the clause in which the reference appears;
- (j) where any word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;
- (k) for all purposes (other than where designated as a Business Day), "day" means calendar day;
- (l) a reference to "\$" is to Australian currency;
- (m) no rule of construction applies to the disadvantage of a party on the basis that the party put forward or drafted this Deed or any part; and

- (n) any reference to "information" will be read as including information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, design, specifications, models, plans and other documents in all forms including the electronic form in which it was generated.

## **2. Guarantee**

---

### **2.1 Guarantee**

The Guarantor irrevocably and unconditionally guarantees to the Principal the due and punctual performance by the Service Provider of all the Obligations.

### **2.2 Payment by Guarantor**

If the Service Provider does not pay the Guaranteed Money when due, the Guarantor must, within 5 Business Days of the Principal providing written notice to the Guarantor, pay to the Principal the Guaranteed Money which is then due and unpaid.

### **2.3 Perform Obligations**

If the Service Provider defaults in the performance or observance of any of the Obligations, the Guarantor must, in addition to its obligations under clause 2.2 of this Guarantee, on written notice from time to time by the Principal, immediately perform any of the Obligations then required to be performed by the Service Provider in the same manner as the Service Provider is required to perform the Obligations.

### **2.4 Guarantor will have same entitlements as the Service Provider**

Where performing Obligations of the Service Provider under the CRN O&M Deed, the Guarantor:

- (a) is entitled to rely on all defences, limitations and exclusions (including any set-off and counterclaims) available to the Service Provider under the CRN O&M Deed; and
- (b) will not be required to perform any Obligations under the CRN O&M Deed in a manner any different than that required of the Service Provider under the CRN O&M Deed had the Guarantor not assumed the Service Provider's Obligations under the CRN O&M Deed.

## **3. Indemnity**

---

As a covenant separate and distinct from that contained in clause 2.1, the Guarantor irrevocably and unconditionally agrees to indemnify the Principal against any loss or damage suffered by the Principal arising out of or in connection with:

- (a) any failure by the Service Provider 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 Service Provider for any reason, and whether or not the Principal knew or ought to have known of that reason.

## **4. Liability as guarantor and indemnifier**

---

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.



---

## 5. Nature and preservation of liability

---

### 5.1 Absolute liability

- (a) 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 Service Provider or the Guarantor.
- (b) This Deed binds each person who has executed it, notwithstanding that:
  - (1) any person, whether named as a party or not, does not execute this Deed;
  - (2) the execution of this Deed by any person is invalid, forged or irregular in any way;  
or
  - (3) this Deed is or becomes unenforceable, void or voidable against any other person.

### 5.2 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 5.2, might operate in law or in equity to release the Guarantor from that liability or to reduce the Guarantor's liability under this Deed, including any of the following:

- (a) the occurrence before, on or at any time after the date of this Deed, of any Insolvency Event in relation to the Service Provider or the Guarantor;
- (b) the receipt by the Principal of any payment, dividend or distribution under any Insolvency Provision in relation to the Service Provider or the Guarantor;
- (c) the occurrence of any Event of Default;
- (d) the CRN O&M Deed or any payment or other act, the making or doing of which would otherwise form part of the Obligations being or becoming or being conceded to be frustrated, illegal, invalid, void, voidable, unenforceable or irrecoverable in whole or in part for any reason whether past, present or future;
- (e) the Principal accepting or declining to accept any Security from any person at any time;
- (f) the Principal granting time, waiver or other indulgence or concession to, or making any composition or compromise with, the Service Provider or the Guarantor;
- (g) the Principal not exercising or delaying (whether deliberately, negligently, unreasonably or otherwise) in the exercise of any remedy or right it has for the enforcement of the CRN O&M Deed or any Obligation;
- (h) any laches, acquiescence or other act, neglect, default, omission or mistake by the Principal;
- (i) the determination, rescission, repudiation or termination, or the acceptance of any of the foregoing, by the Principal or the Service Provider or the Guarantor of the CRN O&M Deed or any Obligation;
- (j) any variation to the CRN O&M Deed or any Obligation, whether or not that variation is substantial or material, or imposes any additional liability on or disadvantages the Service Provider or the Guarantor;
- (k) the full, partial or conditional release or discharge by the Principal or by operation of law, of the Service Provider or the Guarantor from the CRN O&M Deed or any Obligation;
- (l) any change in membership (whether by death or retirement of an existing member, admission of a new member, or otherwise) or in the name of any partnership, firm or association in which the Service Provider or the Guarantor is a member;
- (m) the transfer, assignment or novation by the Principal or the Service Provider or the Guarantor of all or any of its rights or obligations under the CRN O&M Deed or under any other Obligation or any matter referred to in clause 9(b);



- (n) any failure by the Principal to disclose to the Guarantor any material or unusual fact, circumstance, event or thing known to, or which ought to have been known by, the Principal relating to or affecting the Service Provider or the Guarantor at any time before or during the currency of this Deed, whether prejudicial or not to the rights and liabilities of the Guarantor and whether or not the Principal was under a duty to disclose that fact, circumstance, event or thing to the Guarantor or to the Service Provider;
- (o) the Principal agreeing with the Service Provider or the Guarantor not to sue, issue process, sign or execute judgment, commence proceedings for bankruptcy or liquidation, participate in any administration, scheme or deed of arrangement or reconstruction, prove in any bankruptcy or liquidation, or do anything else in respect of the liability of the Service Provider or the Guarantor;
- (p) (where the Guarantor is an individual) the death or mental incapacity of the Guarantor; or
- (q) the provisions of section 440J of the *Corporations Act 2001* (Cth) operating to prevent or delay:
  - (1) the enforcement of this Deed against any Guarantor; or
  - (2) any claim for contribution against any Guarantor.

### 5.3 No merger

- (a) This Deed is in addition to and does not merge with, postpone, lessen or otherwise prejudicially affect the CRN O&M Deed or any other Power of the Principal.
- (b) The Principal will hold any judgment or order obtained by it against any person in respect of the Guaranteed Money or the Obligations collaterally with this Deed, and this Deed will not merge in that judgment or order.

### 5.4 No obligation to gain consent

No consent is required from any Guarantor nor is it necessary for the Guarantor to or be made aware of any event referred to in clause 5.2, any transaction between the Principal and the Service Provider, or any particulars concerning any Obligation.

### 5.5 Appropriation

- (a) The Principal is under no obligation to marshal or appropriate in favour of any Guarantor, or to exercise, apply, transfer or recover in favour of any Guarantor, any Security or any funds or assets that the Principal holds, has a claim on, or has received or is entitled to receive, but may do so in the manner and order as the Principal determines in its absolute discretion.
- (b) The Principal may hold in a suspense account (without liability to pay interest) any money which it receives from the Guarantor, or which it receives on account of the Guarantor's liability under this Deed, and which the Principal may, at its discretion, appropriate in reduction of the Guarantor's liability under this Deed.

### 5.6 Void or voidable transactions

If:

- (a) the Principal has at any time released or discharged:
  - (1) the Guarantor from its obligations under this Deed; or
  - (2) any assets of the Guarantor from a Security,in either case in reliance on a payment, receipt or other transaction to or in favour of the Principal; or
- (b) any payment or other transaction to or in favour of the Principal has the effect of releasing or discharging:
  - (1) the Guarantor from its obligations under this Deed; or

- (2) any assets of the Guarantor from a Security,
- and
- (c) that payment, receipt or other transaction is subsequently claimed by any person to be void, voidable or capable of being set aside for any reason, including under an Insolvency Provision or under the general law; and
- (d) that claim is upheld or is conceded or compromised by the Principal,
- then:
- (e) the Principal will immediately become entitled against the Guarantor to all rights (including under any Security) as it had immediately before that release or discharge;
- (f) the Guarantor must immediately do all things and execute all documents as the Principal may reasonably require to restore to the Principal all those rights; and
- (g) the Guarantor must indemnify the Principal against costs, losses and expenses suffered or incurred by the Principal in or in connection with any negotiations or proceedings relating to the claim or as a result of the upholding, concession or compromise of the claim.

## **5.7 Limitation**

Despite any other provision of this Deed or the CRN O&M Deed, the aggregate liability of the Guarantor under this Deed in respect of any Obligation will not exceed the aggregate liability of the Service Provider under the CRN O&M Deed in respect of that Obligation. Nothing in this Deed is intended to, and does not, render the Guarantor and the Service Provider liable for the same loss twice.

### **5.7A Discharge of Obligations**

Payment or performance by either the Service Provider or the Guarantor, or both the Service Provider and the Guarantor, will be deemed good discharge against the Principal for that Obligation. The Guarantor's Obligations under this Deed expire when the Service Provider's Obligations under the CRN O&M Deed expire.

## **5.8 Claim on the Guarantor**

Except where an Insolvency Event applies to the Service Provider, the Principal must make a claim or demand on the Service Provider prior to demanding payment of the Guaranteed Money or demanding performance of the Obligations from the Guarantor under this Deed. If the Service Provider does not pay the Guaranteed Money or perform the Obligations within 5 Business Days of the claim or demand made in accordance with this clause, then the Principal may make the claim or demand against the Guarantor.

## **5.9 No representation by Principal etc.**

The Guarantor acknowledges that it has not entered into this Deed as a result of any representation, promise, statement or inducement to the Guarantor by or on behalf of the Principal, the Service Provider or any other person.

## **6. Representations and Warranties**

---

### **6.1 General representations and warranties**

The Guarantor or, if there is more than one Guarantor, each Guarantor represents and warrants to the Principal:



- (a) this Deed constitutes a valid and legally binding obligation of the Guarantor in accordance with its terms;
- (b) the execution, delivery and performance of this Deed by the Guarantor does not breach any law, or any document or agreement to which the Guarantor is a party or which is binding on it or any of its assets;
- (c) no litigation, arbitration, mediation, conciliation, criminal or administrative proceedings are current, pending or, to the knowledge of the Guarantor, threatened, which, if adversely determined, may have a material adverse effect on the business assets or financial condition of the Guarantor;
- (d) all information relating to the Guarantor provided to the Principal in connection with this Deed is true in all material respects and is not, by omission or otherwise, misleading in any material respect; and
- (e) the Guarantor has not entered into this Deed as the trustee of any trust.

## 6.2 Corporate representations and warranties

The Guarantor, or if there is more than one Guarantor, each Guarantor, that is or purports to be a body corporate, further represents and warrants to the Principal that:

- (a) it is duly incorporated and has the corporate power to own its property and to carry on its business as is now being conducted;
- (b) the execution, delivery and performance of this Deed does not breach the Constitution of the Guarantor and, if the Guarantor or any of its subsidiaries is listed on the Australian Securities Exchange Limited or on any other stock exchange, those listing requirements or business rules;
- (c) it has the power, and has taken all corporate and other action required, to enter into this Deed and to authorise the execution and delivery of this Deed and the performance of its obligations under this Deed; and
- (d) the Guarantor has filed all corporate notices and effected all registrations with the Australian Securities and Investments Commission and all of those filings and registrations are current, complete and accurate.

## 6.3 Representations and warranties repeated

Each representation and warranty in this Deed will be repeated on each day whilst any of the Guaranteed Money remains outstanding (whether or not then due for payment) with reference to the facts and circumstances then subsisting, as if made on each such day.

## 7. Payments

---

### 7.1 On demand

All money payable by the Guarantor under this Deed must be paid by the Guarantor within 5 Business Days' written notice by the Principal and paid in immediately available funds to the account and in the manner notified by the Principal to the Guarantor.

### 7.2 Payment in gross

All money received or recovered by the Principal on account of the Guaranteed Money will be treated as payments in gross without any right on the part of the Guarantor to claim the benefit of any money received or recovered by the Principal or any Security, until the Principal has been paid 100 cents in the dollar in respect of the Guaranteed Money.



### 7.3 Interest

As a liability separate and distinct from the Guarantor's liability under clauses 2 and 3, the Guarantor must on demand by the Principal pay interest on all amounts due and payable by it and unpaid under or in respect of this Deed. Interest will accrue on those amounts from day to day from the due date up to the date of actual payment, before and (as a separate and independent obligation) after judgment, at the Specified Rate for successive 90 day interest periods commencing on the date of default and, if not paid when due, will itself bear interest in accordance with this clause 7.3.

### 7.4 Merger

If the liability of the Guarantor to pay to the Principal any money under this Deed becomes merged in any judgment or order, then, as an independent obligation, the Guarantor will pay interest on the amount of that money at the rate which is the higher of that payable under clause 7.3 and that fixed by or payable under the judgment or order. However, nothing in this Deed is intended to, and does not, render the Guarantor liable for interest twice despite clauses 7.3 and 7.4.

### 7.5 No set-off or deduction

All payments by the Guarantor to the Principal under this Deed must be:

- (a) free of any set-off or counterclaim; and
- (b) without deduction or withholding for or on account of any present or future Taxes, unless the Guarantor is compelled by law to make any deduction or withholding.

If the Guarantor is compelled by law to make any deduction or withholding for or on account of any present or future Taxes (not being Taxes on the overall net income of the Principal), then the Guarantor must:

- (c) pay to the Principal any additional amounts necessary to enable the Principal to receive (after all deductions and withholdings for those Taxes) a net amount equal to the full amount which would otherwise be payable to the Principal if no deduction or withholding was required to be made;
- (d) promptly (and within the time prescribed by law) pay to the relevant taxing authority the amount of those Taxes which it is compelled by law to deduct or withhold, and indemnify the Principal for any Taxes and interest or penalties to which the Principal may become liable consequent on the failure of the Guarantor to pay those Taxes; and
- (e) deliver to the Principal, promptly on request from the Principal, a copy of any receipt issued by the relevant taxing authority on payment of those Taxes.

### 7.6 Currency indemnity

- (a) The Australian Dollar is the currency of payment by the Guarantor under or in connection with this Deed, except that payment by the Guarantor of or in relation to any Obligation which is denominated in a foreign currency must be made in that foreign currency.
- (b) If for any reason any amount payable by the Guarantor under or in connection with this Deed is received by the Principal in a currency (Payment Currency) other than the currency (Agreed Currency) in which that amount is required to be paid under this Deed (whether as a result of any judgment or order, the liquidation of the Guarantor or otherwise), and the amount obtained (net of charges) by the Principal on its conversion of the amount of the Payment Currency received into the Agreed Currency is less than the amount payable under this Deed in the Agreed Currency, then the Guarantor will, as an independent and additional obligation, indemnify the Principal for that deficiency and for any loss sustained as a result of that deficiency.

---

## 8. Expenses and stamp duties

---

### 8.1 Expenses

The Guarantor must on demand reimburse the Principal for and keep the Principal indemnified against all expenses, including legal fees, costs and disbursements on a solicitor/own client basis (or on a full indemnity basis, whichever is the higher) assessed without the necessity of taxation, incurred by the Principal in connection with:

- (a) any consent, agreement, approval, waiver or amendment to this Deed requested by the Guarantor or Service Provider; and
- (b) any exercise, enforcement or preservation, or attempted exercise, enforcement or preservation, of any rights under this Deed.

### 8.2 Stamp duties

- (a) The Guarantor must pay all stamp duties, transaction, registration and similar Taxes, including fines and penalties, financial institutions duty and debits tax which may be payable to or required to be paid by any appropriate authority, or determined to be payable in connection with the execution, delivery, performance or enforcement of this Deed or any payment, receipt or other transaction contemplated by this Deed.
- (b) The Guarantor must indemnify the Principal against any loss or liability incurred or suffered by it as a result of the delay or failure by the Guarantor to pay Taxes.

### 8.3 Goods and Services Tax

- (a) Unless the context requires otherwise, words used in this clause that have a specific meaning in the GST Law will have the same meaning in this clause.
- (b) The parties agree that:
  - (i) all payments of consideration for a supply made under this Deed will be subject to the prior receipt of a tax invoice;
  - (ii) if GST is payable, or notionally payable, on a supply made under or in connection with this Deed, the party providing the consideration for that supply must pay as additional consideration an amount equal to the GST Amount, on that supply, except to the extent that the consideration for the supply is expressly stated to be GST inclusive or the supply is subject to reverse charge.
  - (iii) subject to the prior receipt of a tax invoice, the GST Amount is payable at the same time that the other consideration for the supply is provided;
  - (iv) where any indemnity, reimbursement or similar payment under this Deed is based on any cost, expense or other liability, it will be reduced by any input tax credit entitlement, or notional input tax credit entitlement, in relation to the relevant cost, expense or other liability;
  - (v) for the purposes of calculating the relevant reduction under clause 8.3(b)(iv) and unless the relevant party demonstrates otherwise before the payment is made, it must be assumed that a full input tax credit is available;
  - (vi) if an adjustment event occurs in relation to a supply under or in connection with this Deed, the GST Amount will be recalculated to reflect that adjustment and an appropriate payment will be made between the parties; and
  - (vii) any reference in this Deed to a cost, expense or other similar amount (**Cost**) is a reference to that Cost exclusive of GST.

---

## 9. Assignment and Transfer of Functions

---

- (a) The Principal may assign, novate or otherwise transfer all or any part of its rights under this Deed to the same party to whom it may assign, novate or transfer its rights under the



CRN O&M Deed or any other party with the consent of the Guarantor (not to be unreasonably withheld) and may disclose to a proposed assignee or transferee any information in the possession of the Principal relating to the Guarantor.

- (b) The Guarantor acknowledges and agrees that:
- (iii) TfNSW or TAHE may be reconstituted, renamed, dissolved, replaced or restructured and that some or all of the powers, functions, assets, liabilities or responsibilities of TfNSW or TAHE may be transferred to or vested in another entity;
  - (iv) if TfNSW or TAHE is reconstituted, renamed, dissolved, replaced or restructured or if some or all of the powers, functions, assets, liabilities or responsibilities of TfNSW or TAHE are transferred to or vested in another entity, references in this Deed to TfNSW or TAHE (as applicable) will, subject to any facilitative legislation, be deemed to refer, as applicable, to that reconstituted, renamed, restructured or new entity to the extent that the entity has assumed or has had transferred to it or vested in it those powers, functions, assets, liabilities or responsibilities; and
  - (v) the Guarantor will be taken for all purposes to have consented to any matter referred to in this clause 9(b) and must, to the extent required by the Principal and without limiting any facilitative legislation, negotiate in good faith any amendments required to this Deed, or any replacement agreement or agreements for this Deed to give effect to TfNSW or TAHE being reconstituted, renamed, dissolved, replaced or restructured.

## 10. Governing law, jurisdiction and arbitration

### 10.1 Governing law

This Deed and where applicable, the arbitration reference contained in clause 10.3, is governed by and will be construed according to the laws of New South Wales.

### 10.2 Jurisdiction

- (a) This clause 10.2 only applies where clauses 10.3 to 10.7 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.

### 10.3 Reference to arbitration

- (a) Clauses 10.3 to 10.9 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.
- (d) The number of arbitrators will be one.



(e) The language of the arbitration will be English.

#### **10.4 Powers of the arbitrator**

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

#### **10.5 Consolidation**

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

#### **10.6 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.

#### **10.7 Award final and binding**

Any award will be final and binding upon the parties.

#### **10.8 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) and Chapter 7A of the *Civil Law (Wrongs) Act 2002* (ACT) are not conferred on an arbitral tribunal appointed in accordance with this clause 10.
- (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 Chapter 7A of the *Civil Law (Wrongs) Act 2002* (ACT) (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.

#### **10.9 Urgent relief**

Nothing in this clause 10 will prejudice the right of a party to seek urgent injunctive or declaratory relief from a court.

### **11. Miscellaneous**

---

#### **11.1 Notices**

- (a) Any notices contemplated by this Deed must be in writing and delivered to the relevant address or sent to the email address as set out below (or to any new address or email address that a party notifies to the others).

- (1) to the Principal:

Attention: the Principal's Representative

Address: 231 Elizabeth Street, Sydney NSW 2000

[REDACTED]

(2) to the Guarantor:

[REDACTED]

[REDACTED]

[REDACTED]

- (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) A notice sent by email will be taken to have been received on the earlier of:
- (i) receipt by the sender of an email acknowledgement from the recipient's information system showing that the notice has been delivered to the email address stated above;
  - (ii) the time that the notice enters an information system which is under the control of the recipient; and
  - (iii) the time that the notice is first opened or read by an employee or officer of the recipient,

but if the result is that a notice would be taken to be given or made on a day that is not a Business Day or is later than 4:00pm (Sydney time) it will be taken to have been duly given or made at the start of business on the next Business Day.

## 11.2 Continuing obligation

Subject to clauses 2.4, 5.7 and 5.8, this Deed is a continuing obligation notwithstanding any termination by the Guarantor, settlement of account, intervening payment, express or implied revocation or any other matter or thing, and the Principal will continue to be entitled to the benefit of this Deed as regards the due and punctual performance of all the Obligations until a final discharge has been given to the Guarantor.

## 11.3 Further assurance

The Guarantor must immediately on the request of the Principal, and at the cost of the Guarantor, do and perform all further acts and things and execute and deliver all further documents as the Principal reasonably requires, or as are required by law, to perfect or to give effect to the rights and powers of the Principal created, or intended to be created, by this Deed.

## 11.4 Form of written notice

A written notice served on the Guarantor for payment under this Deed may be in the form and contain any information as the Principal determines, but must state that it is made under this Deed, and where applicable, identify the amount being claimed and the reason for the claim. It need not specify the amount of the Guaranteed Money, nor the method or basis of calculation of all or any part of the Guaranteed Money, including amounts of, or in the nature of, interest.

## 11.5 Entire agreement

This Deed constitutes the entire agreement and understanding between the parties and will take effect according to its tenor despite, and supersede:

- (a) any prior agreement (whether in writing or not), negotiations and discussions between the parties in relation to the subject matter of this Deed; or



- (b) any correspondence or other documents relating to the subject matter of this Deed that may have passed between the parties prior to the date of this Deed and that are not expressly included in this Deed.

#### **11.6 Joint and several liability**

The obligations of the Guarantor, if more than one person, under this Deed, are joint and several. Each person constituting the Guarantor acknowledges and agrees that it will be causally responsible for the acts and omissions (including breaches of this Deed) of the other as if those acts or omissions were its own and the Principal may proceed against any or all of them. This Deed binds each person who signs as a "Guarantor" even if another person who was intended to become a "Guarantor" does not become a "Guarantor" or is not bound by this Deed.

#### **11.7 Severance**

If at any time any 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.

#### **11.8 Remedies cumulative**

Each Power is cumulative and in addition to each other Power available to the Principal.

#### **11.9 Waiver**

- (a) Failure to exercise or enforce or a delay in exercising or enforcing or the partial exercise or enforcement of any right, power or remedy provided by law or under this Deed by the Principal will not in any way preclude, or operate as a waiver of, any 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) Any waiver or consent given by the Principal under this Deed will only be effective and binding on the Principal if it is given or confirmed in writing by the Principal.
- (c) No waiver by the Principal of:
  - (1) a breach of any term of this Deed; or
  - (2) any other failure by the Guarantor to comply with a requirement of this Deed, will operate as a waiver of another breach of that term or failure to comply with that requirement or of a breach of any other term of this Deed or failure to comply with any other requirement of this Deed.

#### **11.10 Consents**

Any consent of the Principal referred to in, or required under, this Deed may be given or withheld, or may be given subject to any conditions, as the Principal (in its absolute discretion) thinks fit, unless this Deed expressly provides otherwise.

#### **11.11 Moratorium legislation**

To the fullest extent permitted by law, the provisions of all laws operating directly or indirectly to lessen or affect in favour of the Guarantor any obligation under this Deed, or to delay or otherwise prevent or prejudicially affect the exercise of any Power, are expressly waived.



**11.12 Set-off**

- (a) The Principal may (without prior notice at any time) set off any obligation then due and payable by the Guarantor under this Deed against any obligation (whether or not due and payable) by the Principal to the Guarantor, regardless of the place or currency of payment of either obligation or the office or branch through which either obligation is booked. If the obligations are in different currencies, the Principal may convert either obligation into the currency of the other obligation at a market rate of exchange determined by it for the purpose of the set-off. If either obligation is unliquidated or unascertained, the Principal may effect the set off in an amount estimated by it in good faith to be the amount of that obligation.
- (b) The Principal is not obliged to exercise any right of set off pursuant to clause 11.12(a), which is in addition to its other rights of combination of account, set-off or lien (by contract or operation of law).
- (c) On its exercise of any set off pursuant to clause 11.12(a) against the Guarantor, the Principal will promptly notify the Guarantor of details of that set-off.

**11.13 Variations**

This Deed may only be varied by a document signed by or on behalf of both the Principal and the Guarantor.

**11.14 Provisions limiting or excluding liability**

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

**11.15 Counterparts**

- (a) This Deed need not be executed by the Principal.
- (b) If the Guarantor is more than one person, a Guarantor may execute this Deed in one or more separate counterparts, each of which constitutes the deed of that Guarantor.

**Executed** as a deed.

**Executed by**

**Signed sealed and delivered** for and on behalf of **CIMIC Group Limited** (ACN 004 482 982) by its Attorneys under a Power of Attorney dated **9 February 2021** (and the Attorneys declare that the Attorneys have not received any notice of the revocation of such Power of Attorney) in the presence of:

\_\_\_\_\_  
Signature of Attorney

\_\_\_\_\_  
Name of Attorney

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Name of Witness in full

\_\_\_\_\_  
Signature of Attorney

\_\_\_\_\_  
Name of Attorney

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Name of Witness in full

**Signed by Transport for NSW (ABN 18 804 239 602)**, by its Authorised Delegate:

\_\_\_\_\_  
Signature of Authorised Delegate

\_\_\_\_\_  
Name of Authorised Delegate (print)

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Name of Witness (print)

**Signed by Transport Asset Holding Entity of New South Wales (ABN 59 325 778 353), by its Authorised Delegate:**

\_\_\_\_\_  
Signature of Authorised Delegate

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Name of Authorised Delegate (print)

\_\_\_\_\_  
Name of Witness (print)



THIS PAGE IS INTENTIONALLY LEFT BLANK



































































**Attachment E – CRN Land**

Attachment E comprises the documents listed below, which the Service Provider acknowledges and agrees were provided to the Service Provider by the Principal on or about the date of this Deed via the hard drive labelled “Hard Drive - CRN Operations and Maintenance Deed” in the subfolder on that hard drive labelled “Attachment E – CRN Land”.

1. CRN Core Lots document
2. CRN Sectors document
3. CRN Isolated Boxes document



**Attachment F - List of CRN Assets**

Attachment F comprises the documents listed below, which the Service Provider acknowledges and agrees were provided to the Service Provider by the Principal on or about the date of this Deed via the hard drive labelled "Hard Drive - CRN Operations and Maintenance Deed" in the subfolder on that hard drive labelled "Attachment F – List of CRN Assets".

## 1. List of CRN Assets

**Attachment G - Form of Payment Claim**

**PAYMENT CLAIM**

**Clause 17.2**

**Payment Claim No. [##]**

In accordance with clause 17.2 of the General Conditions of the Country Regional Network Operations and Maintenance Deed, we claim:

[REDACTED]

Invoice in conjunction with this Payment Claim No. [##] is attached [REDACTED]

[REDACTED]

[REDACTED] Please be advised that all calculations concerning the claim are clearly stated in the attached invoice. The relevant calculations to support each pricing component are also attached.

*[include or attach detailed calculations for, and evidence reasonably acceptable to the Principal's Representative verifying and substantiating amounts used for the purposes of calculating, all amounts claimed]*

*[include or attach any other information/documents which may be required by law (such as a supporting statement for the purposes of the Security of Payment Act (NSW)).]*

Yours sincerely,

[insert name of Service Provider's Representative]

[Insert Service Provider]

**Attachments: [Invoice xxxx, supporting calculations, insert where required]**

