

**ATTACHMENT 2**

The State of Queensland

GoldLinQ Pty Ltd

GoldLinQ 2 Pty Ltd

**Modification Implementation Deed**

Gold Coast Light Rail Project

Riverside Centre  
123 Eagle Street  
Brisbane QLD 4000 Australia  
T +61 7 3334 3000  
F +61 7 3334 3444  
[www.allens.com.au](http://www.allens.com.au)

© Allens Australia 2016

**Contents**

<b>1</b>	<b>Definitions and Interpretation</b>	<b>1</b>
1.1	Definitions	1
1.2	Interpretation	3
1.3	Acknowledgement	3
<b>2</b>	<b>Implementation of Stage 2</b>	<b>3</b>
2.1	Amendment of the Project Deed	3
2.2	Novation of Stage 2 Documents	4
2.3	State consents	4
2.4	Financier consents	4
<b>3</b>	<b>General</b>	<b>4</b>
3.1	State Project Document	4
3.2	Relationship with State Project Documents	4
3.3	Ambiguity, Inconsistency or Discrepancy	4
3.4	Deemed incorporation	5
<b>Schedule 1</b>		<b>6</b>
	Proposed Share Capital Transactions	6
<b>Schedule 2</b>		<b>7</b>
	Amended and Restated Project Deed	7
<b>Schedule 3</b>		<b>8</b>
	Form of Novation Deed	8

This Agreement is made on 28 April 2016

## Parties

- 1 **The State of Queensland** (acting through the Department of Transport and Main Roads) of Level 13, Capital Hill Building, 85 George Street, Brisbane, Queensland 4000 (*the State*).
- 2 **GoldLinQ Pty Ltd** (ACN 147 815 441) of Level 29, 140 William Street, Melbourne, Victoria 3000 (*OF1*).
- 3 **GoldLinQ 2 Pty Ltd** (ACN 610 560 364) of Level 29, 140 William Street, Melbourne, Victoria 3000 (*OF2*).

## Recitals

- A On 5 May 2011, the State and OF1 entered into the Project Deed for the finance, design, construction, manufacture, installation, testing, commissioning, operation and maintenance of GCRT (Stage 1).
- B On 19 July 2014, OF1 achieved Completion of GCRT (Stage 1).
- C On 6 November 2015, the State approved the LRV Modification.
- D On 24 December 2015, OF1 achieved Close Out of GCRT (Stage 1).
- E On or about the date of this deed:
- (a) the State and OF2 entered into the Stage 2 Works Deed and entered into, or procured the execution of, all other Stage 2 Documents; and
  - (b) OF2 entered into the D&C Contract with the D&C Contractor and entered into, or procured the execution of, all other Stage 2 D&C Documents,
- to effect the Stage 2 Modification:
- F This deed sets out the terms upon which the State, OF1 and OF2:
- (a) agree to certain matters required to facilitate the Stage 2 Modification;
  - (b) agree to amend the Project Deed in order to address the Stage 2 Modification, including for the operation and maintenance of Stage 2 on and from the Date of Stage 2 Completion; and
  - (c) agree to novate the Novated Stage 2 Documents from OF2 to OF1 on the Date of Stage 2 Completion.

It is agreed as follows.

## 1 Definitions and Interpretation

### 1.1 Definitions

Unless expressed to the contrary, terms defined in the Stage 2 Works Deed have the same meaning in this document.

**LRV Modification** means the Operator Franchisee-initiated Modification under the Project Deed for the supply of 4 new LRVs, including associated testing and commissioning activities.

**Modification Implementation Deed (O&M Contract)** means the Modification Implementation Deed (O&M Contract) entered into between the O&M Contractor and OF1 on or about the date of this deed.

**Novated Stage 2 Document** means:

- (a) the Stage 2 Works Deed;
- (b) the Independent Verifier Deed;
- (c) the Independent Certifier Deed;
- (d) the Payment Certifier Deed;
- (e) the D&C Contract;
- (f) the D&C Interface Deed;
- (g) each Core Contractor Side Deed;
- (h) the D&C Guarantee (as that term is defined in the Core Contractor Side Deed (Stage 2));
- (i) the D&C Contractor Tripartite Deed;
- (j) Council Direct Deed;
- (k) QR Interface Deed;
- (l) each Designer Direct Deed;
- (m) the QFE Direct Deed;
- (n) the Parent Indemnity Deed (as defined in the D&C Contract);
- (o) each deed of appointment appointing a Proof Engineer in accordance with clause 6.2 of the Stage 2 Works Deed; and
- (p) any Deeds of Assurance or Escrow Deeds.

**Project** has the meaning given to that term in the Project Deed.

**Project Deed** means the Gold Coast Rapid Transit – Project Deed entered into between the State and OF1 dated 5 May 2011, as amended from time to time including in accordance with this deed.

**Proposed Share Capital Transactions** means the proposed transactions described in Schedule 1.

**Refinancing Coordination Deed** means the Refinancing Coordination Deed – Gold Coast Light Rail dated on or about the date of this deed between, among others, the Stage 1 Transaction Parties, the Stage 2 Transaction Parties, the Stage 1 Lenders and the Stage 2 Lenders (each as defined therein).

**Stage 2 D&C Document** has the meaning given to that term in the D&C Contract.

**Stage 2 Works Deed** means Stage 2 Works Deed entered into between the State and OF2 on or about the date of this deed.

**Stage 2 Modification** means the Operator Franchisee-initiated Modification under the Project Deed for:

- (a) the finance, design, construction, testing and commissioning of Stage 2 pursuant to the Stage 2 Works Deed; and
- (b) the operation and maintenance of Stage 2 from the Date of Stage 2 Completion pursuant to the Project Deed.



## 1.2 Interpretation

In this deed:

- (a) headings and subheadings are for convenience only and do not affect interpretation;
- (b) and the following rules apply in interpreting this deed unless the context makes it clear that a rule is not intended to apply:
- (c) person includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (d) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation;
- (e) a reference to a document (including this deed) is to that document as varied, novated, ratified or replaced from time to time;
- (f) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (g) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (h) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this deed, and a reference to this deed includes all schedules, exhibits, attachments and annexures to it;
- (i) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (j) includes in any form is not a word of limitation;
- (k) a reference to \$ or dollar is to Australian currency; and
- (l) references to a submission, statement, response, notice, notification, record, report, consent, waiver, agreement, demand, evidence, details or approval (or any variations of those words), are references to a submission, statement, response, notice, notification, record, report, consent, waiver, agreement, demand, evidence, details or approval (or any variations of those words) in writing.

## 1.3 Acknowledgement

The parties agree that this document constitutes:

- (a) a Project Document as defined in clause 1.1 of the Project Deed; and
- (b) a Stage 2 Document as defined in clause 1.1 of the Stage 2 Works Deed.

## 2 Implementation of Stage 2

### 2.1 Amendment of the Project Deed

The State and OF1 agree that:

- (a) on the date of this Deed, the Project Deed is amended as set out in Schedule 2;
- (b) on and from the date of this Deed, the Project Deed as amended by this Deed is to be read as a single integrated document incorporating the amendments effected by this Deed; and

- (c) nothing in this clause 2.1 limits or otherwise affects any Modification (as defined in the Project Deed) or variation of the Project Deed which has been agreed prior to the date of this Deed.

## **2.2 Novation of Stage 2 Documents**

OF2 and OF1 will:

- (a) on or before the date of this deed, enter into the deed of novation relating to the Stage 2 Works Deed; and
- (b) enter into, and will use all reasonable endeavours to procure that each of the counterparties (other than the State) to the relevant Novated Stage 2 Document enter into, deeds of novation within 30 days of this deed or Stage 2 Completion (whichever is the later),

which will be substantially in the form set out in Schedule 3.

## **2.3 State consents**

In consideration of the terms of this document, the State provides its consent to the transactions contemplated by this Deed, including the:

- (a) amendment of the O&M Contract in accordance with the Modification Implementation Deed (O&M Contract) pursuant to clause 54.1 of the Project Deed;
- (b) novation of the Novated Stage 2 Documents as described in clause 2.1, pursuant to clause 46.3 of the Stage 2 Works Deed;
- (c) Proposed Share Capital Transactions, pursuant to clause 55.2 of the Project Deed and clause 47.2 of the Stage 2 Works Deed; and
- (d) Refinancing (as defined in the Project Deed) contemplated in the Debt Financing Documents and the Refinancing Coordination Deed, pursuant to clause 52.1 of the Project Deed.

## **2.4 Financier consents**

OF1 represents and warrants that it has obtained any consents required from its Financiers under the Project Documents (as those terms are defined in the Project Deed) in relation to OF1's execution of this deed and the transactions contemplated by this deed.

# **3 General**

## **3.1 State Project Document**

This deed is deemed to be a State Project Document for the purposes of the Project Deed.

## **3.2 Relationship with State Project Documents**

Except to the extent expressly set out in this deed, this deed operates independently of and does not amend the existing State Project Documents.

## **3.3 Ambiguity, Inconsistency or Discrepancy**

If there is an ambiguity, inconsistency or discrepancy between this deed and the Project Deed or the Stage 2 Works Deed, then to the extent of the ambiguity, inconsistency or discrepancy, the terms of this deed take precedence.

### 3.4 Deemed incorporation

Clauses 50 (Disclosure, confidentiality and publicity), 57 (Dispute Resolution), 59 (Notices), 61.2 (GST) and 62 (General) of the Project Deed are deemed to be incorporated in this deed as if set out in full and as if references to 'Operator Franchisee' were references to 'OF1 and OF2' for the purposes of this deed. For the purposes of Clause 50 of the Project Deed and Clause 42 of the Stage 2 Works Deed, this deed is Commercially Sensitive Information.

## Schedule 1

### Proposed Share Capital Transactions

1. Hold Co acquiring all of the share capital in GoldLinQ 1 Holdings Pty Ltd (ACN 610 538 460) and GoldLinQ 2 Holdings Pty Ltd (ACN 610 538 479) and, in doing so, Hold Co becoming the ultimate holding company of GoldLinQ 2 Pty Ltd (ACN 610 560 364), which is a wholly-owned subsidiary of GoldLinQ 2 Holdings Pty Ltd.
2. GoldLinQ 1 Holdings Pty Ltd acquiring all of the share capital in OF1 from Hold Co in accordance with the Refinancing Coordination Deed.
3. The amendment and restatement of the Subordinated Loan Agreement dated 5 June 2011 between Hold Co and OF1, including:
  - (a) GoldLinQ 1 Holdings Pty Ltd becoming party to that document; and
  - (b) the novation of each 'Subordinated Loan' outstanding under that document from Hold Co to GoldLinQ 1 Holdings Pty Ltd.
4. Hold Co, OF2 and GoldLinQ 2 Holdings Pty Ltd entering into, and performing their obligations under, the Subordinated Loan Agreement (as defined in the Common Terms Deed).
5. The issuance of new share capital by Hold Co in accordance with the Shareholders Agreement and the Deferred Equity Commitment Deed.

**Schedule 2**

**Amended and Restated Project Deed**

**Schedule 3**

**Form of Novation Deed**

This Deed is made on

## Parties

- 1 **GoldLinQ Pty Ltd** (ACN 147 815 441) of Level 29, 140 William Street, Melbourne, Victoria 3000 (OF1).
- 2 **GoldLinQ 2 Pty Ltd** (ACN 610 560 364) of Level 29, 140 William Street, Melbourne, Victoria 3000 (OF2).
- 3 **[Insert name of Counterparty]** (ACN [\*]) of [\*] (*Counterparty*)

## Recitals

- A The Counterparty and OF2 are parties to an agreement entitled '[Name of Agreement]' dated [\*] (the *Agreement*).
- B The parties to this Deed have agreed to OF2 novating the Agreement to OF1 on the terms of this Deed.

It is agreed as follows.

## 1 Interpretation

### 1.1 Definitions

Unless expressed to the contrary, terms defined in the Stage 2 Works Deed have the same meaning in this document.

**Claim** means any claim, demand, remedy, suit, injury, damage, loss, cost, liability, action, proceeding, right of action, claim for compensation or claim for abatement of any monetary obligation.

**Deed** means this deed.

**Effective Date** means the Date of Stage 2 Completion.

**Stage 1 Debt Finance Side Deed** has the meaning given to 'Debt Finance Side Deed' in the Project Deed.

**Stage 2 Works Deed** means the deed entered into between The State of Queensland and GoldLinQ 2 Pty Ltd in relation to the finance, design, construction, manufacture, installation, testing and commissioning of the Stage 2 Works of the Gold Coast Light Rail, dated on or about 22 April 2016.

### 1.2 Interpretation

In this Deed:

- (a) headings are for convenience only and do not affect interpretation; and
- (b) the following rules apply unless the context makes it clear that a rule is not intended to apply:
  - (i) person includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
  - (ii) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation;

- (iii) a reference to a document (including this Deed) is to that document as varied, novated, ratified or replaced from time to time;
- (iv) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (v) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (vi) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this Deed, and a reference to this Deed includes all schedules, exhibits, attachments and annexures to it;
- (vii) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (viii) includes in any form is not a word of limitation;
- (ix) a reference to \$ or dollar is to Australian currency; and
- (x) references to a submission, statement, response, notice, notification, record, report, consent, waiver, agreement, demand, evidence, details or approval (or any variations of those words), are references to a submission, statement, response, notice, notification, record, report, consent, waiver, agreement, demand, evidence, details or approval (or any variations of those words) in writing.

## **2 Novation**

### **2.1 Novation**

The parties agree to novate the Agreement, such that on and from the Effective Date:

- (a) OF1 is substituted for OF2 under the Agreement as if OF1 had originally been a party to the Agreement instead of OF2; and
- (b) each reference in the Agreement to OF2 is to be read as if it were a reference to OF1.

### **2.2 Assumption of rights and obligations**

On and from the Effective Date:

- (a) OF1:
  - (i) will be bound by, and must comply with, the Agreement as it relates to OF2;
  - (ii) will enjoy all the rights and benefits conferred on OF2 under or in respect of the Agreement (whether arising before or after the Effective Date);
  - (iii) will assume all the obligations and liabilities of OF2 under or in respect of the Agreement arising or accruing on or after the Effective Date (but will not assume any obligation or liability of OF2 under or in respect of the Agreement arising or accruing before the Effective Date); and
- (b) the Counterparty will comply with the Agreement on the basis that OF1 has replaced OF2 under it in accordance with the terms of this Deed.



### 3 Termination

This Deed will automatically terminate if the Stage 2 Works Deed terminates before the Date of Stage 2 Completion.

### 4 Release

#### 4.1 Release of OF2

- (a) The Counterparty releases OF2 from:
  - (i) its obligations and liabilities under or in respect of the Agreement; and
  - (ii) all Claims that the Counterparty may have or claim to have or, but for this release might have had, against OF2 in connection with the Agreement, arising on or after the Effective Date.
- (b) The Counterparty does not release OF2 from:
  - (i) any of its obligations or liabilities under or in respect of the Agreement; or
  - (ii) any Claims that the Counterparty may have or claim to have or, but for this release might have had, against OF2 in connection with the Agreement, accruing or arising before the Effective Date.
- (c) OF2 remains liable to the Counterparty for all its obligations and liabilities under the Agreement accruing or arising before the Effective Date.

#### 4.2 Release of OF1

- (a) The Counterparty releases OF1 from:
  - (i) its obligations and liabilities under or in respect of the Agreement; and
  - (ii) all Claims that the Counterparty may have or claim to have or, but for this release might have had, against OF1 in connection with the Agreement, accruing or arising before the Effective Date.
- (b) The Counterparty does not release OF1 from:
  - (i) any of its obligations or liabilities under or in respect of the Agreement; or
  - (ii) any Claims that the Counterparty may have or claim to have or, but for this release might have had, against OF1 in connection with the Agreement, arising on or after the Effective Date.
- (c) OF1 remains liable to the Counterparty for all its obligations and liabilities under the Agreement arising on or after the Effective Date.

### 5 Representations and Warranties

Each party represents and warrants to each other party that:

- (a) the execution and delivery of this Deed has been properly authorised by all necessary corporate action of the party;
- (b) it has full corporate power and lawful authority to execute and deliver this Deed and to consummate and perform or cause to be performed its obligations under this Deed; and
- (c) this Deed constitutes a legal, valid and binding obligation of the party enforceable in accordance with its terms by appropriate legal remedy.

**6 Acknowledgement of security**

The Counterparty acknowledges that:

- (a) in accordance with the State Deed of Charge (as defined in the Project Deed) and the Debt Financiers' Securities (as defined in the Stage 1 Debt Finance Side Deed), OF1 has granted security interests over its present and future rights and obligations in respect of this Deed and the Agreement; and
- (b) in accordance with the State Security and the Debt Financiers' Securities (as defined in the Debt Finance Side Deed), OF2 has granted security interests over its present and future rights and obligations in respect of this Deed and the Agreement.

**7 Further Assurances**

Each party must do anything necessary (including executing agreements and documents) to give full effect to this Deed and the transactions contemplated by it.

**8 Inconsistency**

The parties acknowledge and agree that, as between them, if there is any inconsistency between the provisions of this Deed and the provisions of the Agreement then the provisions of the Agreement will prevail to the extent of the inconsistency and the provisions of this Deed will be construed accordingly.

**9 Notices under the Agreement**

For the purposes of all provisions in the Agreement regarding service of notices, the address for OF1 is the address set out at the start of this Deed.

**10 Assignment**

A party cannot assign, charge, create a security interest over, encumber or otherwise deal with any of its rights or obligations under this Deed, or attempt or purport to do so, without the prior written consent of each other party.

**11 Delivery of Documents**

OF2 will deliver to the OF1 on request a copy of all documents in its possession, custody or control connected with or evidencing its rights under the Agreement.

**12 Amendment**

This Deed may be amended only by another deed executed by all the parties.

**13 Costs**

Each party must bear its own costs arising out of the negotiation, preparation and execution of this Deed.

**14 GST****14.1 Recovery of GST**

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 amount of GST payable, or notionally payable, on that supply (the GST Amount). Subject to the prior receipt of a tax invoice, the GST Amount is payable at the same

time that the other consideration for the supply is provided. If a tax invoice is not received prior to the provision of that other consideration, the GST Amount is payable within 10 days of the receipt of a tax invoice. This clause does not apply to the extent that the consideration for the supply is expressly stated to be GST inclusive or the supply is subject to reverse charge.

#### **14.2 Liability net of GST**

Where any indemnity, reimbursement or similar payment under this Deed is based on any cost, expense or other liability, it shall be reduced by any input tax credit entitlement, or notional input tax credit entitlement, in relation to the relevant cost, expense or other liability.

#### **14.3 Adjustment events**

If an adjustment event occurs in relation to a supply made 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.

#### **14.4 Survival**

This clause will not merge upon completion and will continue to apply after expiration or termination of this Deed.

#### **14.5 Definitions**

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

### **15 Governing Law and Jurisdiction**

This Deed is governed by the laws of Queensland. In relation to it and related non-contractual matters each party irrevocably submits to the non-exclusive jurisdiction of courts with jurisdiction there.

### **16 Counterparts**

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


Each attorney executing this Deed states that he or she has no notice of the revocation or suspension of his or her power of attorney.


**Executed and delivered as a Deed.**


**Executed and delivered** as a deed.

Each attorney executing this deed states that he or she has no notice of revocation or suspension of his or her power of attorney.

**Executed** for and on behalf of the **State of Queensland** by the **Hon. Stirling Hinchliffe**, Minister for Transport and the Commonwealth Games and **Neil Scales**, Director-General, Department of Transport and Main Roads, in the presence of:

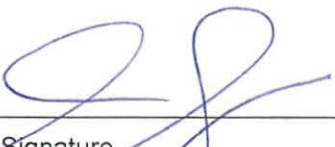
  
\_\_\_\_\_  
Witness Signature


  
\_\_\_\_\_  
Print Name

  
\_\_\_\_\_  
Signature


  
\_\_\_\_\_  
Signature


**Signed Sealed and Delivered** for **GoldLinQ Pty Ltd** by its attorney under power of attorney dated 18 April 2016 in the presence of:

  
\_\_\_\_\_  
Witness Signature  
**DAVID JAMES DONNELLY**  
\_\_\_\_\_  
Print Name

  
\_\_\_\_\_  
Attorney Signature  
P. MUMFORD  
\_\_\_\_\_  
Print Name

**Signed Sealed and Delivered** for **GoldLinQ 2 Pty Ltd** by its attorney under power of attorney dated 18 April 2016 in the presence of:

  
\_\_\_\_\_  
Witness Signature  
**DAVID JAMES DONNELLY**  
\_\_\_\_\_  
Print Name

  
\_\_\_\_\_  
Attorney Signature  
P. MUMFORD  
\_\_\_\_\_  
Print Name

Consolidated version incorporating amendments from Deed of Amendments No. 1-3, amendments from System Site Amendment Deed and amendments from Modifications and other changes agreed between the parties 1 January 2016 as well as legislative and policy update, changes to TTA structure and amendments for Stage 2.

---

The State of Queensland

---

GoldLinQ Pty Ltd

---

# Gold Coast Light Rail Project Deed

# Contents

PART A - PRELIMINARY MATTERS.....	1
1 Definitions and Interpretation	1
2 Conditions Precedent	57
3 Term	59
4 Objectives, primary obligations and risk allocation	59
PART B - SECURITY, PARTIES AND GENERAL OBLIGATIONS.....	63
5 Security	63
6 Project participants roles and representatives	64
7 Independent Verifier and Proof Engineer	68
8 Project Plans	73
9 General obligations applying to all the Project Activities	76
10 Community	89
PART C - LAND AND APPROVALS.....	93
11 Law and Approvals	93
12 Site conditions and environment	94
13 Tenure and access	106
PART D - D&C Activities .....	116
14 Design	116
15 Manufacture and Construction	125
16 Time	130
17 Acceptance Testing and Commissioning	136
18 Completion and Close Out	138
19 Returned Works	142
19A Securitised Lease Structure	147
PART E - OPERATIONS.....	150
20 Operation of the System	150
21 Performance Monitoring System	156
22 Commercial Opportunities	159
23 Naming and branding	162
24 Asset Inspections	164

PART F - ADVERSE EVENTS AND CHANGE.....	167
25 Step-In	167
26 Compensation Events	172
27 Relief Events	176
28 Force Majeure	178
29 Change in Law	181
30 State initiated Modifications	181
31 Operator Franchisee initiated Modifications	191
32 Pre-Agreed Modifications	195
33 Minor Works	198
34 Proximate Works	201
35 Operator Franchisee's role in the delivery of Proximate Works	204
36 Future Stages	206
37 No restrictions	209
PART G - PAYMENT PROVISIONS .....	211
38 Payment provisions	211
39 Base Case Financial Model	221
40 Benchmarking	225
PART H - LOSS, DAMAGE AND INSURANCE.....	229
41 Reinstatement of loss or damage	229
42 Indemnity	231
43 Insurance	235
PART I - DEFAULT, TERMINATION & HANDBACK.....	244
44 Default	244
45 Termination	251
46 End of Term arrangements	255
47 Transition to the State or another operator franchisee	261
PART J - ADMINISTRATION OF PROJECT .....	268
48 Access and inspections	268
49 Records and reporting obligations	270



<b>50</b>	<b>Disclosure, confidentiality and publicity</b>	<b>275</b>
<b>51</b>	<b>Intellectual Property</b>	<b>276</b>
<b>52</b>	<b>Refinancings</b>	<b>292</b>
<b>53</b>	<b>Representations and warranties</b>	<b>296</b>
<b>54</b>	<b>Assignment, security, ownership and restrictions on dealings</b>	<b>298</b>
<b>55</b>	<b>Share Capital Dealings</b>	<b>299</b>
<b>56</b>	<b>Subcontracting</b>	<b>305</b>
<b>57</b>	<b>Dispute resolution</b>	<b>307</b>
<b>58</b>	<b>Notice of Claims</b>	<b>311</b>
<b>59</b>	<b>Notices</b>	<b>312</b>
<b>60</b>	<b>Proportionate liability</b>	<b>313</b>
<b>61</b>	<b>Taxes</b>	<b>314</b>
<b>62</b>	<b>General</b>	<b>317</b>
	<b>Schedules</b>	<b>322</b>
	<b>Exhibit 1 - PSR</b>	<b>324</b>

## Date

## Parties

The State of Queensland (**the State**) c/- The Department of Transport and Main Roads

GoldLinQ Pty Ltd ACN 147 815 441 of Level 29, 140 William Street, Melbourne Victoria 3000, QBCC Licence Number 1205348 (**Operator Franchisee**)

---

## Background

- A In 2006 the State approved the CDIMP for the GCRT.
  - B In December 2009, the State invited expressions of interest for the delivery of the Project. On or about 5 May 2011, following the completion of a public tender process, the State selected Operator Franchisee as the successful proponent for the Project.
  - C This deed deals with design and construction of stage 1 of the GCRT, operation of Stage 1 until completion of Stage 2 and operation of the full System following completion of Stage 2. The Stage 2 Works Deed deals with the design and construction of Stage 2 of the GCRT.
  - D This deed sets out the terms on which:
    - a. Operator Franchisee agrees to:
      - i. finance GCRT (Stage 1);
      - ii. design, construct, manufacture, install, test and commission the Project Works for GCRT (Stage 1);
      - iii. operate and maintain the System;
      - iv. hand the System back to the State at the end of the Term; and
      - v. assist the State with the planning for and implementation of any Future Stages (as required);
    - b. the State agrees to pay Operator Franchisee in accordance with this deed; and
    - c. the risks associated with the Project are allocated as between the State and Operator Franchisee.
- 

## PART A – PRELIMINARY MATTERS

### 1 Definitions and Interpretation

#### 1.1 Definitions

In this deed:

**AAH** means Aveng Australia Holdings Pty Ltd (ACN 108 058 331).

**Aboriginal Cultural Heritage** has the meaning given to it in the *Aboriginal Cultural Heritage Act 2003* (Qld).

**Acceptance Tests** means those tests specified in the Acceptance Testing Plans.

**Acceptance Testing** means the carrying out of the Acceptance Tests.

**Acceptance Testing Plans** has the meaning given in the PSR.

**Accommodation Works** means:

- (a) those works described or specified as Accommodation Works in the PSR;
- (b) those works which are Nominated Accommodation Works (as defined in the Site Access Schedule);
- (c) the alteration, reinstatement and improvement of Accommodation Works Areas; and
- (d) all other works necessary to ensure that:
  - (i) the amenity of;
  - (ii) access to and egress from; or
  - (iii) the functionality of,  
any property or structure affected by the Project Activities (including any property located outside of the Project Area which is affected by the Project Activities), is maintained to at least the standard that it was in immediately prior to Operator Franchisee obtaining access to the land (excluding fair wear and tear which would be reasonably expected to occur to that property or structure under ordinary use (disregarding the effects of the Project Activities)) including:
    - (iv) fencing work to separate the property located outside the Project Area from the property located within the Project Area;
    - (v) construction of access;
    - (vi) construction of drainage; and
    - (vii) reinstatement and landscaping.

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

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

the Project Works, including those sections of public spaces, parks, pedestrian ways, pedal cycle paths, local roads, state highways, regional roads and main roads, including any associated road reserves, as generally described as the "Accommodation Works Areas" in the plans which form part of the Site Access Schedule.

**Accommodation Works Areas (Special Purpose)** has the meaning given in the Site Access Schedule.

**Account Bank Deed** means the deed entitled "Gold Coast Rapid Transit - Account Bank Deed" between, among others, the account banks named in the deed, Operator Franchisee and Security Trustee, dated on or about Financial Close.

**Accreditation** means the approvals under the Rail Safety Act which are necessary for Operator Franchisee to carry out the Project Activities (including design and construction of the Project Works and operation of the System).

**Actual Debt** means:

- (a) the Financial Indebtedness of Operator Franchisee or Secure Co under the Debt Financing Documents; and
- (b) on and from the Date of Stage 2 Completion, the Financial Indebtedness of OF2 or Secure Co 2 under the Debt Financing Documents (as defined in the Stage 2 Works Deed).

**Additional Commercial Opportunities** means:

- (a) a development on the Project Area (other than the Project Works); or
- (b) any other revenue generating activity not forming part of the Project Activities,

carried out or to be carried out by Operator Franchisee (other than the activities which Operator Franchisee is permitted to carry out under **clause 22.2**).

**Additional Completion Payment** means, in respect of an ECE Event after the Date of Completion, a payment equal to the portion of the relevant Estimated Cost Effect payable by the State to Operator Franchisee which Operator Franchisee has agreed to fund under this deed being an amount equal to the Receivables Purchase Price in respect of the Additional Receivables purchased by Secure Co from the State under the Securitisation Agreement resulting from the ECE Event.

**Additional Completion Payment Date** means each date upon which the State is required to pay an Additional Completion Payment under **clause 19A.2**.

**Additional Receivables** has the meaning given in the Securitisation Agreement.

**Additional Works** has the meaning given to that term in clause 12.3A(e).

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

**Agent** has the meaning given in the Debt Finance Side Deed.

**Agreement to Lease** means the agreement between the State and Operator Franchisee in respect of the future grant of the System Site Licence, dated on or about the date of this deed as varied by the Deed of Amendment.

**Agreement to Licence (Stage 2)** means the deed of that name between the State and OF2 dated on or about the date of the Stage 2 Works Deed.

**Agreement to Sub-Licence (Stage 2)** means the agreement between Operator Franchisee and OF2 in respect of the future grant of the System Site Sub-Licence (Stage 2), dated on or about the date of this deed.

**Amended Finance Proposal** has the meaning given in section 9.6 of **schedule 6**.

**Annual Asset Renewal Plan** has the meaning given in the PSR.

**Applicable Cure Period** has the meaning given in **clause 44.5**.

**Approval** means any licence, permit, consent, approval (including any approval, consent or determination issued under the EP Act, and any Accreditation), determination, certificate or exemption from or by any Authority or under any Law.

**Artefacts** means any fossils, bones, artefacts, coins, articles of antiquity, buildings, structures, natural features or other remains or objects or things of scientific, geological, historical, aesthetic, social, spiritual, cultural or archaeological interest or things otherwise of significance, including any items of cultural heritage significance and Aboriginal Cultural Heritage.

**As-built Information** has the meaning given in the PSR.

**Asset** has the meaning given in the PSR.

**Asset Inspection** has the meaning given in **clause 24.1(a)**.

**Asset Inspector** has the meaning given in **clause 24.1(a)**.

**Asset Maintenance Budget** has the meaning given in **clause 20.3(a)**.

**Asset Maintenance Strategy** has the meaning given in the PSR.

**Asset Management Retention Account** has the meaning given in **clause 24.5**.

**Asset Management Retention Amount** is an amount equal to 120% of the cost of any Remediation Works or Remediation Package (as applicable) as assessed by the Asset Inspector in accordance with **clause 24.3(a)(v)**.

**Asset Reinspection** has the meaning given in **clause 24.4(b)**.

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

- (a) in the case of Operator Franchisee:
  - (i) other than as set out in paragraph (ii), includes each Group Member, OF2 (after the Date of Stage 2 Completion only), each Core Contractor, each Significant Contractor, each Designer, the Equity Investors, and their respective Associates; and
  - (ii) does not include:
    - (A) the State or any of its Associates, the Independent Verifier or the Independent Verifier (Stage 2); or
    - (B) prior to the Date of Stage 2 Completion, OF2; and
- (b) in the case of the State:
  - (i) includes CoGC and DTMR;
  - (ii) includes the Associates of CoGC and DTMR (including any contractor engaged by or on behalf of DTMR to install or maintain the ETS or collect fare revenue from the ETS); and
  - (iii) does not include Operator Franchisee or its Associates, the Public Bus Operator, the operator of the Night Bus Services (as defined in the PSR), the V8 Supercar Event Promoter, the Commonwealth, TMR (South Coast Region) in its capacity as network manager for the main roads network, QR, the Independent Verifier or the Independent Verifier (Stage 2).

**Assumed Legislative Amendments** means the proposed legislative amendments set out in **schedule 18**.

**Assumed Legislative Amendment Date** means, in respect of an Assumed Legislative Amendment, the date by which that Assumed Legislative Amendment is proposed to be implemented, as set out in **schedule 18**.

**Assumed Refinancing** means the Refinancing provided for in the Day 1 Base Case Financial Model and which is consistent with the Refinancing Assumptions (including as to timing, tenor, margins, hedging and the gearing and amount of financial accommodation being no greater than that which is consistent with the amortisation schedule in the Base Case Financial Model).

**Authority** means:

- (a) any governmental, semi-governmental or local government authority, administrative or judicial body or tribunal, department, commission, public authority, agency, minister, statutory corporation or instrumentality; or
- (b) any other person (other than a private land owner in its capacity as a private land owner) who:
  - (i) has a right to impose a requirement, or whose consent is required, under Law with respect to any part of the Project Activities; or
  - (ii) has jurisdiction over or ownership of, or who provides, any PUP, the PUP Works, any Accommodation Works Areas or the Accommodation Works (but for the avoidance of doubt, does not include Operator Franchisee or the Core Contractors).

**Aveng Deed of Undertaking** has the meaning given to it in the D&C Contract.

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

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

**Base Case Equity Return** means, at any time, the nominal after tax blended internal rate of return to Equity Investors (which is after tax paid or payable on project cash flows by Operator Franchisee, and is before any tax paid or payable by Equity Investors), expressed as a percentage, as stated in the Base Case Financial Model at <Summary> cell I:19.

**Base Case Financial Model** means the base case scenario in Operator Franchisee's financial model for the Project and relevant assumptions, information, data files and output analysis routines used by or incorporated in the financial model, in the form agreed with the State at Financial Close and provided to the State under **clause 2.2(b)**, as updated from time to time in accordance with **clause 39**.

**Baseline SMP Monitoring** means the minimum level of monitoring required to be undertaken under the Updated SMPs at no more than 10 locations in aggregate

(including in respect of gas and water) across the Monitoring Area Site, on the assumption that no event or circumstance has occurred which, under the terms of the Updated SMPs, would require:

- (a) additional monitoring to be undertaken or monitoring to be undertaken at more than 10 locations; or
- (b) remediation or other activities to be undertaken.

**Beds and Banks** means (in relation to a Waterway) the land that is normally covered by the water of the Waterway, whether permanently or intermittently, regardless of frequency, but does not cover adjoining land from time to time which is covered by water in a flood event.

**Benchmarked Insurances** means the industrial special risks insurance, products and public liability insurance, business interruption insurance, third party property damage insurance for Rolling Stock and own damage insurance for Rolling Stock required to be taken out under **clause 43.1**.

**Bond** means each Handback Bond.

**Bridge Works** means all things, works and Materials that Operator Franchisee must design, construct, manufacture, install, supply, test and commission in accordance with the State Project Documents for the Nerang River Shared Use Bridge.

**Bridge Works Price** means [REDACTED]

**Broadbeach South Retail Opportunity** means retail activity or outlets (other than food and beverage vending machines) at or around Broadbeach South Station.

**Broadbeach South Retail Opportunity Date** means the date which is 24 months after Financial Close.

**Business Day** means any day in Queensland other than a Saturday, Sunday or public holiday or 27, 28, 29, 30 or 31 December.

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

**Capital Expenditure** means, at any time, expenditure which would be classified as capital expenditure in accordance with the then current Australian accounting standards issued by the Australian Accounting Standards Board on behalf of the professional accounting bodies.

**Carbon Emissions Law** means any Law that directly relates to renewable energy or carbon emissions, including:

- (a) the *Renewable Energy (Electricity) Act 2000* (Cth), the *Renewable Energy (Electricity) (Large-scale Generation Shortfall Charges) Act 2000* (Cth) and the *Renewable Energy (Electricity) Regulations 2001* (Cth); and
- (b) any Legislation enacted for the purpose of a tax in respect of, or reducing growth in, greenhouse gases (including carbon dioxide, methane, nitrous oxide, perfluorocarbons, hydro fluorocarbons and sulphur hexafluoride), including any Legislation enacted to give effect to the proposed "Australian Emissions Trading Scheme" identified in the Commonwealth Government's "Carbon Pollution Reduction Scheme Green Paper" issued in July 2008 (whether in the form contemplated by that paper or otherwise).

**CDIMP** means the "Concept Design and Impact Management Plan" for the GCRT Network dated March 2009 together with its supplements and addendums.

**Certificate of Close Out** means a certificate substantially in the form required by the Certification Schedule certifying that Close Out has been achieved.

**Certificate of Completion** means a certificate substantially in the form required by the Certification Schedule certifying that Completion has been achieved.

**Certificate of Returned Facility Completion** means, in respect of a Returned Facility, a certificate substantially in the form required by the Certification Schedule certifying that Returned Facility Completion has been achieved for that Returned Facility.

**Certification Schedule** means **schedule 4**.

**Change in Codes and Standards** means a change in Codes and Standards taking effect after the Relevant Date.

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

**Change in Environmental Law** means the introduction of an Emissions Trading Scheme or any associated amendment, repeal, change or enactment of a Carbon Emissions Law.

**Change in Law** means:

- (a) the amendment, repeal or change after the Relevant Date of any Law existing at the Relevant Date;
- (b) the enactment of any new Law after the Relevant Date;
- (c) a change in the way a Law is applied as a result of a binding decision of a court or tribunal of competent jurisdiction which reverses, overrides or refuses to follow an earlier binding decision of a court or tribunal of competent jurisdiction where that earlier decision existed on the Relevant Date; or
- (d) a Change in Codes and Standards, to the extent Operator Franchisee is required to comply with that change under **clause 26.4**,

but excluding:

- (e) any amendment, repeal, change or enactment of any Legislation, or any Code or Standard, contemplated by and in substantially the same form as the Assumed Legislative Amendments;
- (f) any amendment, repeal or change of the *Income Tax Assessment Act 1936* (Cth), the GST Law or the *Income Tax Assessment Act 1997* (Cth);
- (g) any amendment, repeal, change or enactment of any Law, or any Code or Standard, which, as at the Relevant Date:
  - (i) was published or of which public notice had been given (even as a possible amendment, repeal, change or enactment); or
  - (ii) a party experienced and competent in the delivery of works and services similar to the Project Works or the Project Activities (as applicable) would have reasonably foreseen or anticipated,

in substantially the same form as the amendment, repeal, change or enactment eventuating after the Relevant Date, other than:

- (iii) a Change in Law by reason of the introduction of an Emissions Trading Scheme or any associated amendment, repeal, change or enactment of a Carbon Emissions Law; or



- (iv) an increase to the minimum employer superannuation contributions required under the *Superannuation Guarantee Charge Act 1992* (Cth) or the *Superannuation Guarantee (Administration) Act 1992* (Cth) and its regulations, to the extent applicable to the O&M Contractor's employees working on the Project; and
- (h) any amendment, repeal, change or enactment of any Law, or any Code or Standard, effected in response to an illegal act or omission by Operator Franchisee (not including an act or omission which became illegal as the result of the amendment, repeal, change or enactment).

**Change in Railway Law** means a Change in Law relating specifically to:

- (a) any Light Rail Legislation; or
- (b) the Tariff Concession Order (reference no TC 0500954) published in the Commonwealth of Australia Gazette no TC 05/15 dated 13 April 2005.

**Change Notice** has the meaning given in **clause 16.7(b)(i)**.

**CHMP** means the Cultural Heritage Management Plan for the Project, approved under the *Aboriginal Cultural Heritage Act 2003* (Qld), dated 25 May 2010.

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

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

**Close Out** means the stage when:

- (a) the balance of the Project Works (other than Temporary Works) not completed as part of Completion have been completed, including correcting all Defects in the Project Works:
  - (i) specified in the Certificate of Completion; or
  - (ii) notified to Operator Franchisee under **clause 18.2(c)(ii)**; and
- (b) Operator Franchisee has done everything else which the State Project Documents require Operator Franchisee to have done as a condition precedent to Close Out, including as specified in annexure 9 (Construction Requirements) of the PSR.

**Codes and Standards** means:

- (a) the codes, standards, specifications, policies and guidelines specified in the PSR (including attachment 1 to the PSR Introduction), and any relevant Standards Australia codes, standards, specifications, policies and guidelines, current as at the Relevant Date; and
- (b) if and to the extent there is no relevant:

- (i) code, standard, specification or guideline specified in the PSR; or
- (ii) Standards Australia code, standard, specification or guideline, relevant international codes, standards, specifications and guidelines current as at the Relevant Date,

and in each case being a code, standard, specification or guideline:

- (c) with which Operator Franchisee is required to comply pursuant to the terms of this deed or the Stage 2 Works Deed; and
- (d) which is not Legislation.

**CoGC or GCCC** means the City of Gold Coast or Gold Coast City Council.

**Commercially Sensitive Information** means any information identified in or of the type referred to in **schedule 16**.

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

**Common Terms Deed** means the document of that name between, among others, Operator Franchisee, Secure Co, Hold Co, Hold Co 1, each swap bank named in that document, the Security Trustee and the Agent, dated on or about the date of Financial Close.

**Communications and Stakeholder Plans** means each of the Project Plans required under annexure 13 (Communication and Stakeholder Requirements) of the PSR (including the Communications and Stakeholder Management Strategy, Communications Plan, Stakeholder Management Plan, Marketing Plan and Queensland Charter for Local Content) as updated from time to time in accordance with **clause 8**.

**Community Audit Report** has the meaning given in **clause 10.2(f)(i)**.

**Community Audit Remediation Plan** has the meaning given in **clause 10.2(h)**.

**Community Requirements** means all safeguards and measures necessary to mitigate the effect on the community of the Project Activities, including those identified in **clause 35.4**, annexure 13 (Communications and Stakeholder Management Requirements) of the PSR, the Communications and Stakeholder Plans and the Traffic Management Plan, or required by any Approval.

**Compensation Event** means each of:

- (a) a breach by the State of its obligations under a State Project Document which adversely affects the ability of Operator Franchisee to perform any of its obligations or exercise any of its rights under the State Project Documents;
- (b) a breach by CoGC of its obligations under a Council Direct Deed, which adversely affects the ability of Operator Franchisee to perform any of its obligations or exercise any of its rights under the State Project Documents;
- (c) a failure by the State to give to Operator Franchisee the right to access a part of the Construction Site on or before the Site Access Date for the relevant part of the Construction Site in accordance with the Site Access Schedule;
- (d) the EEW have not achieved "practical completion" (as defined in the relevant EEW Contract or, in respect of the PUP, the equivalent stage of completion of the PUP works under the EEW Contracts for those works) on a part of the Construction Site identified in the Site Access Plans (as defined in the Site

Access Schedule) as an "Area for Early and Enabling Works", on or before the relevant Site Access Date for that part of the Construction Site.

Operator Franchisee acknowledges that "practical completion" may be achieved under the EEW Contracts notwithstanding the existence of minor defects in the EEW and that the presence of such defects will not constitute a Compensation Event;

(da)

- (i) damage to the Project Works or the System; or
  - (ii) unreasonable interference with the Project Activities,  
directly caused by a third party contractor engaged by or on behalf of the State or CoGC in carrying out Proximate Works, implementation of a Future Stage or rectification of an EEW Defect, provided that Operator Franchisee has fully complied with all of its obligations under **clauses 9.11 and 13.7** in relation to the works which gave rise to such damage or unreasonable interference;
- (e) a Station Defect, other than to the extent the State implements a Modification for Operator Franchisee to carry out the defect rectification works in accordance with **clause 15.6(c)(iv)**;
- (f) the exercise of any Step-In Rights or the taking of any Required Action by the State which is taken other than as a result (directly or indirectly) of any:
  - (i) negligence, Wilful Misconduct, breach or default of Operator Franchisee or its Associates; or
  - (ii) negligence, Wilful Misconduct, breach or default of OF2;
- (g) a legal challenge in relation to a Key Approval or the modification, withdrawal, revocation, suspension, invalidation or replacement of a Key Approval, unless the legal challenge, modification, withdrawal, revocation, suspension, invalidation or replacement relates to or arises out of or in connection with:
  - (i) legal action brought by or on behalf of Operator Franchisee or its Associates;
  - (ii) legal action brought by or on behalf of OF2; or
  - (iii) any failure of the Project Works or the System to comply with all Approvals;
- (h) the Assumed Legislative Amendment with respect to schedule 4 of the *Sustainable Planning Regulation 2009* (Qld) is not implemented by the Assumed Legislative Amendment Date;
- (i) a Native Title Claim resulting in Operator Franchisee or a Core Contractor being directed, ordered or required by the State, a court or tribunal to suspend or cease to perform any of the Project Activities (or to change the way it does so), except that a direction, order or requirement by the State, a court or tribunal for Project Activities undertaken within Accommodation Works Areas (Special Purpose) will not form part of the Compensation Event;
- (j) the discovery of an Artefact on or under the surface of the Project Area resulting in Operator Franchisee or a Core Contractor being directed, ordered or required by the State, a court or tribunal or by Law to suspend or

cease to perform any of the Project Activities (provided that, to the extent that the discovery of the Artefact occurs during the D&C Phase, Operator Franchisee or the Core Contractor must be required to suspend or cease to perform the Project Activities, with respect to the relevant part of the Construction Site on which the Artefact is discovered for a period of 30 days (in aggregate) or more);

- (k) a Qualifying Change in Law;
- (l) the remediation of Migrating Contamination within the Project Area by or on behalf of the State in accordance with **clause 12.3(c)(iii)(C)**, to the extent such remediation delays or prevents the performance of the Project Activities;
- (la) Contamination in, on, over or under the Project Area to the extent such Contamination is the direct result of an act or omission of the V8 Supercar Event Promoter or its Associates;
- (m) a delay by the Rail Safety Regulator in granting Accreditation required for Completion, provided that:
  - (i) it is a pre-condition to relief (and compensation, if applicable) under this **paragraph (m)** that Operator Franchisee has fully complied with all of its obligations under the Rail Safety Accreditation Plan; and
  - (ii) any delay by the Rail Safety Regulator in granting Accreditation as a result of the Rail Safety Regulator reasonably requiring additional information or reasonably requiring additional testing to satisfy itself that the requirements for Accreditation have been met (provided that the Rail Safety Regulator has the statutory right to require that additional information or additional testing) will not be a Compensation Event (regardless of whether the additional information or additional testing was contemplated under the Rail Safety Accreditation Plan);
- (n) destruction, loss or damage to the Project Works, the Project Area or the System, to the extent such destruction, loss or damage is the direct result of a fraudulent, unlawful or negligent act or omission of the State or any of its Associates or caused or contributed to by an act or omission of the V8 Supercar Event Promoter or any of its Associates; and
- (o) an exercise of a power or an instruction by the State or the V8 Supercar Event Promoter under or in connection with the *Motor Racing Events Act 1990* (Qld) occurring after the date of this deed or an act or omission of the V8 Supercar Event Promoter on the Project Area that:
  - (i) materially differs from the V8 Supercar Event Requirements as at the date of this deed (or as otherwise modified in accordance with the Pre-Priced Elements set out in table 2 of **schedule 15**); and
  - (ii) delays or disrupts Operator Franchisee or prevents Operator Franchisee from performing a material part of its obligations.

**Compensation Notice** has the meaning given in **clause 26.3(a)**.

**Completion** means, in relation to GCRT (Stage 1) (excluding the LRVs (Mod 60)), the stage when:

- (a) the Project Works (other than the Temporary Works and the LRVs (Mod 60)) are complete and comply with the requirements of the State Project Documents, except for Minor Defects; and

- (b) Operator Franchisee has done everything else which the State Project Documents require it to have done as a condition precedent to Completion, including as specified in annexure 9 (Construction Requirements) of the PSR.

**Completion Payment** means the final payment by the State to Operator Franchisee for the Project Works that have been carried out by Operator Franchisee being an amount equal to the Securitisation Payment payable by Secure Co to the State under the Securitisation Agreement.

**Concept Design** means the design prepared by Operator Franchisee prior to Contract Close and included in the PSR.

**Concurrent Delay** means the occurrence of an event (not being a Relief Event or Compensation Event) that delays the Project Works or the D&C Activities and which:

- (a) occurs at the same time as a delay caused by a Relief Event or Compensation Event; and
- (b) causes an overlapping or concurrent delay to achieving Completion.

For the avoidance of doubt, the fact that there has previously been a delay to achieving Completion by the Date for Completion will not of itself constitute such an event.

**Condition Precedent** means a condition precedent to Financial Close, as set out in **schedule 1**.

**Condition Precedent Deadline Date** means, in respect of a Condition Precedent, the date specified in **schedule 1**.

**Connection Charges** has the meaning given to it in section 1 of **schedule 3**.

**Consolidated Group Tax Agreements** has the meaning given in the Common Terms Deed.

**Construction Documentation** means the Design Documentation which Operator Franchisee is entitled to use for construction purposes in accordance with **clause 14.7(i)** and which meets the requirements set out in annexure 5 (Engineering Design Requirements) of the PSR.

**Construction Drawdown Schedule** means the drawdown schedule set out in **schedule 5**.

**Construction Facility** has the meaning given in the Facility Agreement.

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

**Construction Licence** has the meaning given in the Agreement to Lease.

**Construction Licence (Special Purpose)** has the meaning given in the Agreement to Lease.

**Construction Payment** means a payment made by the State to Operator Franchisee in accordance with **clause 38.3**.

**Construction Payment Maximum Amount** means [REDACTED]

**Construction Payment Notice** has the meaning given in **clause 38.3(b)**.

**Construction Proceeds Account** has the meaning given in the Common Terms Deed.

**Construction Site** has the meaning given in the Site Access Schedule.

**Contamination** means the presence on, in, over or under land (including surface, subsurface and ground water) of a substance (including odours) or heat, sound, vibration or radiation at a concentration or intensity above the concentration or intensity at which the substance, heat, sound, vibration or radiation is normally or naturally present on, in, over or under that land (including surface, subsurface and ground water) in the same locality, being a presence that presents a risk of harm to human health or any other aspect of the Environment.

**Contract Close** occurs when this deed has been executed by the last party to execute it. The date of Contract Close is the same as the date of this deed.

**Contract Timetable** has the meaning given to it in **schedule 3**.

**Control** means, with respect to an entity, the ability or capacity to determine the outcome of decisions about that entity's financial and operating policies.

**Controlling Unit Holder** means, in respect of any trust or managed investment scheme, any entity which:

- (a) Controls the trust or managed investment scheme (either directly or through one or more intermediary entities or trusts);
- (b) is in a position to cast, or Control the casting of, more than one half of the maximum number of votes that might be cast at a meeting of unit holders of the trust or managed investment scheme (either directly or through one or more intermediary entities or trusts or managed investment schemes); or
- (c) holds more than one half of the units in the trust or managed investment scheme.

**Core Contract** means:

- (a) the D&C Contract;
- (b) the O&M Contract; and
- (c) on and from the Date of Stage 2 Completion, the D&C Contract (Stage 2).

**Core Contractor** means:

- (a) the D&C Contractor;
- (b) the O&M Contractor; and
- (c) on and from the Date of Stage 2 Completion, the D&C Contractor (Stage 2).

**Core Contractor Holding Company** means:

- (a) in respect of the D&C Contractor, the D&C Guarantors;
- (b) in respect of the D&C Contractor (Stage 2), the D&C Guarantors (Stage 2); or
- (c) in respect of the O&M Contractor, the O&M Guarantors.

**Core Contractor Side Deed** means:

- (a) the Core Contractor Side Deed (D&C) between, among others, the State, Operator Franchisee, the D&C Contractor, the D&C Guarantor, Aveng Limited and the Independent Certifier, dated on or about the date of this deed;

- (b) the Core Contractor Side Deed (O&M) between the State, Operator Franchisee, the O&M Contractor and the O&M Guarantor, dated on or about the date of this deed;
- (c) on and from the Date of Stage 2 Completion, the Core Contractor Side Deed (D&C – Stage 2), as defined in the Stage 2 Works Deed; and
- (d) any other Core Contractor Side Deed entered into in accordance with **clause 56.2**.

**Core Guarantor** means:

- (a) the D&C Guarantor;
- (b) the O&M Guarantor; and
- (c) on and from the Date of Stage 2 Completion, the D&C Guarantor (Stage 2).

**Correctly Applied** means deposited in the Construction Proceeds Account or applied to capitalised interest, or other debt service as specified in the Base Case Financial Model, under the Construction Facility.

**Corporate Tax Rate** means the rate of tax declared by the *Income Tax Rates Act 1986* (Cth) (or equivalent Commonwealth legislation declaring the rates of income tax) in respect of taxable income derived by companies in the relevant year of income.

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

**Council Direct Deed** means:

- (a) the "Gold Coast Rapid Transit – Council Direct Deed" between CoGC and Operator Franchisee, dated on or about the date of this deed (**Council Direct Deed (Stage 1)**); and
- (b) on and from the Date of Stage 2 Completion, the Council Direct Deed (Stage 2) (as defined in the Stage 2 Works Deed).

**Council Interface Deed** means:

- (a) the "Gold Coast Rapid Transit – Council Interface Deed" between CoGC and the State, dated on or about the date of this deed; and
- (b) on and from the Date of Stage 2 Completion, the Council Interface Deed (Stage 2) (as defined in the Stage 2 Works Deed).

**Counterparty Details** means, in respect of each person other than the State who is a party to a State Project Document:

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

**CPI Indexed** means, with respect to an amount, the amount must be adjusted in accordance with the indexation process detailed in **clause 62.1**.

**Cure Plan** has the meaning given in **clause 44.6(a)**.

**D&C Activities** means all things that Operator Franchisee is, or may be, required to carry out or to do:

- (a) in connection with the design, construction, manufacture, installation, testing and commissioning of the Project Works in accordance with the State Project Documents; and
- (b) to otherwise comply with its obligations under the State Project Documents with respect to the Project Works.

**D&C Best Practices** means design, construction, commissioning and repair practices performed with the due skill, care and diligence which may reasonably be expected of a skilled professional suitably qualified in the performance of obligations similar to Operator Franchisee's obligations under the State Project Documents so as to achieve a result consistent with Law, reliability, safety, protection of the Environment and the requirements of the State Project Documents. It includes everything reasonably necessary to ensure that:

- (a) the Project Works are designed and constructed in a manner safe to all people and the Environment;
- (b) the Project Works are constructed in accordance with the Construction Documentation;
- (c) the Project Works (other than the Temporary Works) are designed and constructed to ensure reliable long term and safe operation;
- (d) the D&C Activities are performed by trained and experienced personnel utilising proper equipment, tools and procedures;
- (e) sufficient personnel are available and are adequately experienced and trained to carry out the D&C Activities;
- (f) adequate materials, resources and supplies are available to ensure compliance with requirements of the State Project Documents under normal conditions and reasonably anticipated at normal conditions; and
- (g) the principle of continuous improvement is adhered to, that is, a commitment to continually improving the standards and quality of the design and construction of the Project Works (other than the Temporary Works) and the manner in which the D&C Activities are carried out including a commitment to ensuring the design and construction of the Project Works (other than the Temporary Works) is carried out in a manner which at all times remains consistent with the applicable light rail network standards.

**D&C Contract** means the Gold Coast Rapid Transit D&C Contract between Operator Franchisee and the D&C Contractor, dated on or about the date of this deed.

**D&C Contract (Stage 2)** means the D&C Contract for the Stage 2 Works, as defined in the Stage 2 Works Deed.

**D&C Contractor** means the unincorporated joint venture comprising Bombardier Transportation Australia Pty Ltd and MacDow.

**D&C Contractor (Stage 2)** means the D&C Contractor appointed for the Stage 2 Works under the D&C Contract (Stage 2), as defined in the Stage 2 Works Deed.



**D&C Contractor Tripartite Deed** means the document of that name between, among others, Operator Franchisee, the D&C Contractor and the Security Trustee, dated on or about the date of Financial Close.

**D&C Guarantor** means Bombardier Inc. and AAH (or any person that becomes a D&C Guarantor in accordance with the D&C Contract).

**D&C Guarantor (Stage 2)** means the D&C Guarantor for the Stage 2 Works, as defined in the Stage 2 Works Deed.

**D&C Interface Deed** means the document of that name between Operator Franchisee, the D&C Contractor and the O&M Contractor, dated on or about the date of this deed.

**D&C Phase** means:

- (a) in relation to GCRT (Stage 1), the period commencing on the date of Financial Close and ending on the Date of Completion; and
- (b) in relation to Stage 2, the period commencing on the date of Stage 2 Financial Close and ending on the Date of Stage 2 Completion.

**D&C Phase Insurances** means the insurances referred to in Part A of **schedule 10**.

**D&C Phase Progress Report** means each progress report to be submitted by Operator Franchisee under **clause 16.3(b)**.

**D&C Program** means the program of the D&C Activities containing the details required by annexures 4 (D&C Program Requirements) and 17 (Contract Management Requirements) of the PSR or which the Independent Verifier otherwise reasonably requires, the initial version of which is attached to annexure 4 (D&C Program Requirements) of the PSR, as updated from time to time in accordance with **clause 16.3(a)**.

**Date for Close Out** means the date 6 months after the Date of Completion, as may be extended under **clause 16.7, 30 or 31**.

**Date for Completion** means:

- (a) if Financial Close occurs on or before 1 June 2011, 25 May 2014; or
- (b) if Financial Close occurs after 1 June 2011, 25 May 2014 plus the number of days from 1 June 2011 to and including the date on which Financial Close actually occurs,

in either case, as may be amended under **clause 16.7, 18.1(b)(v), 30 or 31**.

**Date of Close Out** means the date on which Close Out is achieved, as stated by the Independent Verifier in the Certificate of Close Out.

**Date of Completion** means:

- (a) if Completion is achieved prior to or on the Original Date for Completion, the Original Date for Completion; or
- (b) if Completion is achieved after the Original Date for Completion, the date on which Completion is achieved,

as stated by the Independent Verifier in the Certificate of Completion.

**Date of Stage 2 Completion** has the meaning given in the Stage 2 Works Deed.

**Date for LRV Completion (Mod 60)** means, in respect of an LRV (Mod 60), the relevant Date for LRV Completion specified in Mod 60.

**Day 1 Base Case Financial Model** means the financial model for the Project and relevant assumptions, information, data files and output analysis routines used by or incorporated in the financial model, prepared by Operator Franchisee in the form agreed with the State.

**Day 1 Clause** has the meaning given in **clause 2.1**.

**Debt Finance Side Deed** means:

- (a) in relation to the Actual Debt for GCRT (Stage 1), the deed so entitled dated on or about the date of Financial Close between the State, Operator Franchisee, Secure Co, the Agent and the Security Trustee; and
- (b) on and from the Date of Stage 2 Completion, in relation to the Actual Debt for Stage 2, the Debt Finance Side Deed (as defined in the Stage 2 Works Deed).

**Debt Financiers** means the providers of any facilities, financial arrangements or accommodation provided from time to time, in accordance with the Debt Financing Documents, to Secure Co for the purposes of carrying out the Project and may, where the context permits, include any agent or trustee of such Debt Financiers.

**Debt Financing Documents** means:

- (a) the Facility Agreement (including the guarantees in that agreement);
- (b) the Common Terms Deed;
- (c) each Swap Agreement (as defined in the Common Terms Deed);
- (d) the Security Trust Deed;
- (e) the Inter-Stage Security;
- (f) the Inter-Stage Security Sharing Deed;
- (g) the Refinancing Coordination Deed;
- (h) the Account Bank Deed;
- (i) each Debt Financiers' Security (as that term is defined in the Debt Finance Side Deed);
- (j) the D&C Contractor Tripartite Deed;
- (k) the O&M Contractor Tripartite Deed;
- (l) the Rolling Stock Tripartite Deed;
- (m) the On-Loan Agreement;
- (n) Project Co Hedge Agreement (as defined in the Common Terms Deed);
- (o) the Securitisation Agreement;
- (p) the Payment Directions Deed;
- (q) the Payment Certifier Deed;
- (r) any fee letters entered into in respect of the foregoing;
- (s) any document entered into in relation to any Refinancing in accordance with **clause 52**; and
- (t) any other document that the parties agree is a Debt Financing Document for the purposes of this deed.

**Deed of Amendment** means the Deed of Amendment entered into by the State, Operator Franchisee and Secure Co dated on or about 22 April 2016.

**Default Notice** has the meaning given in **clause 44.4**.

**Default Rate** means, in respect of a period, a rate equivalent to 2% per annum above the Bank Bill Rate for that period.

**Defect** means:

- (a) any defect, deficiency, fault, error or omission in the Project Works or the System or, for the purposes of **clause 19**, a Returned Facility; or
- (b) any:
  - (i) cracking, shrinking, movement or subsidence in the Project Works or the System or, for the purposes of **clause 19**, a Returned Facility; or
  - (ii) other aspect of the Project Works or the System or, for the purposes of **clause 19**, a Returned Facility,

which is not in accordance with the requirements of the State Project Documents.

**Defects Liability Period** has the meaning given in **clause 19**.

**Deferred Equity Commitment Deed** has the meaning given in the Common Terms Deed.

**Depot** has the meaning given in the PSR.

**Depot Upgrade Works Site** means that part of the 'Depot Upgrade Works Site' (as defined in the Agreement to Licence (Stage 2) that forms part of the Licensed Premises, being area 40b on sheet 23 of the Construction Site Plans (as defined in the Site Access Schedule (Stage 2)).

**Designated Equity Funding** means in respect of each Designated Investor, the amount necessary at Financial Close to subscribe for 10% of the shares or units issued in the Holding Entity at Financial Close on the basis that all Equity Investors had subscribed for all of their shares or units at that date.

**Designated Equity Holding** means, in respect of each Designated Investor, 10% of the issued shares in Hold Co directly, and in Operator Franchisee indirectly (through its holding of issued securities in Hold Co), in each case disregarding any securities issued to an officer, employee or contractor of Hold Co or Operator Franchisee under an employee share plan for the purposes of calculating the total issued securities and the percentage of those securities held by the relevant Designated Investor.

**Designated Investor** means:

- (a) Plenary Group Pty Ltd (as trustee of the Plenary Group Unit Trust) and/or the Plenary Funds;
- (b) Keolis SA; and
- (c) Aveng Australia (GCRT) Pty Ltd.

**Designated Investor Holding Company** means:

- (a) in respect of Keolis SA, Groupe Keolis SAS; and
- (b) in respect of Aveng Australia (GCRT) Pty Ltd, Aveng Limited.

**Design Documentation** means all design documentation (including all draft and final design standards, design reports, durability reports, drawings, specifications, manuals, designs, models, samples, patterns and calculations) in computer readable and written forms, or stored by any other means, which Operator Franchisee or any other person creates, or is required to, or must necessarily, create, in performing the D&C Activities, including:

- (a) the design of the Temporary Works; and
- (b) the Construction Documentation,

but excluding the Excluded Documentation (LRV) and Excluded Documentation (Control System).

**Designer** means each entity responsible for preparing the design for a particular element of the Project Works.

**Designer Direct Deed** means any direct deed entered into between the State, Operator Franchisee, the D&C Contractor, the Independent Verifier and a Designer in accordance with **clause 7.4**, substantially in the form set out in Part C of **schedule 13**.

**Design Life** has the meaning given in the PSR.

**Design Management Plan** means the Project Plan of that name required under annexure 5 (Engineering Design Requirements) of the PSR, as updated from time to time in accordance with **clause 8**.

**Design Package** means the Design Documentation for each discrete component or package of the Project Works (including each Returned Facility).

**Design Stage** means each of Design Stage 1 and Design Stage 2.

**Design Stage 1** means the preliminary design stage for each Design Package when the Design Documentation for that Design Package is sufficient to show the intended integrated design of the Project Works and other major infrastructure requirements.

**Design Stage 2** means the fully detailed design stage for each Design Package when the Design Documentation for that Design Package is:

- (a) complete;
- (b) fully integrated with the overall design, any Design Stage 2 Design Documentation which has been submitted to (and not rejected by) the Independent Verifier and any Construction Documentation;
- (c) appropriate for construction;
- (d) sufficient to enable Operator Franchisee to meet its obligations under the State Project Documents in respect of the Operations Phase (including with respect to safety, reliability and maintenance); and
- (e) compliant with all other requirements of the State Project Documents.

**Development Assessment Protocol** means the protocol of that name issued by DTMR to Operator Franchisee and dated on or about the date of this deed.

**Dispute** has the meaning given in **clause 57.1**.

**Distribution** means any:

- (a) dividend, return of capital or other distribution or payment (in cash or in kind), in respect of the share capital of Operator Franchisee or shareholder

loans (or other loans in the nature of equity funding) to, or for the benefit of Operator Franchisee;

- (b) release by Operator Franchisee of any actual or contingent liability of any Equity Investor (or any Related Body Corporate of an Equity Investor) which is not on arms length commercial terms;
- (c) payment, loan or transfer of any assets by Operator Franchisee to any Equity Investor (or any Related Body Corporate of any Equity Investor) which is not on arms length commercial terms; or
- (d) surrender by Operator Franchisee of losses or other amounts available for group relief unless full payment of an amount equal to the amount surrendered multiplied by the Corporate Tax Rate is made at the date of the surrender.

**DTMR** means the Queensland Department of Transport and Main Roads.

**ECE Event** means any event for which Operator Franchisee will be entitled to be paid the Estimated Cost Effect in accordance with **schedule 6**, which may include (unless specified otherwise in this deed):

- (a) a Compensation Event;
- (b) a Modification (including any Minor Works); and
- (c) any Proximate Works.

**EEW** means, in respect of an EEW Contract, the early and enabling works to be carried out under that EEW Contract.

**EEW Contract** means an EEW Contract (Roadworks), the EEW Contract (Station Hospital Canopy), the EEW Contract (Station Shell) and the contracts between the State and PUP providers in respect of the PUP relocation.

**EEW Contract (Roadworks)** means:

- (a) the contract between the State and Seymour Whyte Constructions Pty Ltd ACN 105 493 187 in respect of the north road works, dated 21 December 2010; and
- (b) the contract between the State and Boulderstone Queensland Pty Ltd ACN 006 505 559 in respect of the south road works, dated 3 March 2011,

(as amended by any variation to that contract prior to the date of this deed, including any variation noted in the change register in the data room).

**EEW Contract (Station Hospital Canopy)** means the contract between the State and Queensland Health in respect of the canopy for the northern side of the Station at GCUH, dated 8 June 2010 (as amended by any variation to that contract prior to the date of this deed, including any variation noted in the change register in the data room).

**EEW Contract (Station Shell)** means the contract between the State and Leighton Contractors Pty Limited ACN 000 893 667 in respect of station shell for GCUH Station, dated 29 October 2010 (as amended by any variation prior to that contract prior to the date of this deed, including any variation noted in the change register in the data room).

**EEW Defect** means a Roadworks Defect or a Station Defect.

**Election Date** means, in respect of a Pre-Agreed Modification, the Election Date for that Modification specified in **schedule 14**.

**Emergency Services** means the Queensland Police Service, the Queensland Fire and Rescue Service, the Rural Fire Service, Emergency Management Queensland, the State Emergency Service, the Queensland Ambulance Service and any other State emergency service that may be required to attend to an emergency on or near the Project Area, the Project Works or System.

**Emissions and Energy Data** means:

- (a) NGERs Data; and
- (b) any other data, information, records and reports concerning environmental emissions or energy production, use, consumption or efficiency, of the type that any person may be required by any Law (other than the NGER Legislation) to keep or to provide to any Authority.

**Emissions Trading Scheme** means a binding scheme or arrangement introduced (whether in Australia or otherwise) for the purposes of reducing emissions of carbon dioxide and/or other pollutants and which imposes obligations or financial incentives on its participants for the achievement of reductions in such emissions.

**Employee Relations Management Plan** means the Project Plan of that name required under annexure 17 (Contract Management Requirements) of the PSR, as updated from time to time in accordance with **clause 8**.

**ENERGEX** means ENERGEX Limited ABN 40 078 849 055, established under the *Government Owned Corporations Act 1993* (Qld).

**Energy Benchmark Date** means the Date of Completion and each third, or multiple thereof, anniversary of the Date of Completion, or such other date as is nominated by the State under **clause 40.2(g)**.

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

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

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

**Environmental Management Plans** means the D&C EMP, the O&M EMP and the Sustainability Plan (each as defined in the PSR) (as applicable) required under annexure 2 (Environmental Management and Sustainability Requirements) of the PSR, as updated from time to time in accordance with **clause 8**.

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

**EP Act** means the *Environmental Protection Act 1994* (Qld).

**EPBC Approval** means the Commonwealth Minister's decision under section 77A of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) made on 15 December 2009 in relation to the Project.

**Equity** means all ordinary share and ordinary unit capital in, or the subordinated debt which is, in substance, equivalent to ordinary equity of, Operator Franchisee.

**Equity Contribution Account** has the meaning given in the Common Terms Deed.

**Equity Documents** means:

- (a) the Deferred Equity Commitment Deed;
- (b) the Shareholders' Agreement between, among others, the Designated Investors, IPP (Aust) Ltd, Marubeni Australia Ltd and Marubeni Corporation;
- (c) each Deferred Equity LC (as defined in the Common Terms Deed);
- (d) the Subordinated Loan Agreement (as defined in the Common Terms Deed);
- (e) the constitution of each Transaction Party (as defined in the Common Terms Deed); and
- (f) Consolidated Group Tax Agreements.

**Equity Investor** means a person who holds shares in a Holding Entity or who provides shareholder loans (or other loans in the nature of equity funding) to or for the benefit of Operator Franchisee or a Holding Entity.

**Equity Investor Holding Company** means:

- (a) a Designated Investor Holding Company;
- (b) in respect of IPP (Aust) Ltd, International Public Partnerships Ltd; and
- (c) in respect of Marubeni Australia Ltd, Marubeni Corporation.

**Estimated Cost Effect** means the cost effect of an event calculated in accordance with **schedule 6**.

**ETS** means the electronic ticketing system for the System.

**ETS Intellectual Property** means all Intellectual Property associated with the ETS.

**ETS Maintenance** means all activities required to operate and maintain the ETS and to keep the ETS Equipment in good operational order including On-call ETS Maintenance, ETS Preventative Maintenance, Replacement and Upgrades, but does not include First Line Maintenance, and shall include:

- (a) providing all labour, tools, materials and equipment, and the replacement and/or installation of all parts, software, components, supplies and equipment necessary to maintain the ETS Equipment;
- (b) all inspection, adjustment, diagnosis, analysis, re-calibration, cleaning, lubrication, testing, sealing, replacement and replenishment of parts of ETS Equipment and the repair of ETS Equipment;
- (c) the replacement of any piece of ETS Equipment which is visible to the public and which becomes deteriorated in appearance; and
- (d) all upkeep and cleaning services required to ensure that all ETS Equipment and related facilities are kept to a high standard of cleanliness and acceptable appearance.

For the purposes of this definition:

- (e) **Replacement** includes the replacement of entire units, spare parts or consumables used in or forming part of the ETS Equipment; and
- (f) **On-call ETS Maintenance** means repair and maintenance work carried out on the ETS Equipment as a result of a service call logged with the ETS Technical Support Service.

**ETS Preventative Maintenance** means the planned ETS Maintenance and routine servicing required by ETS Equipment including the following activities:

- (a) routine functional equipment checks and inspections;
- (b) internal equipment and lubrication;
- (c) running diagnostic tests;
- (d) scheduled replacements, including removal and replacement of devices and modules;
- (e) reconfiguring parameters and installing software/firmware upgrades; and
- (f) on-going monitoring of software performance.

**ETS Technical Support Service** means the technical phone support services for the ETS Equipment to be provided by the State to Operator Franchisee.

**ETS Training Materials** means materials in written, visual or any other form used to assist with the provision of training services for the ETS.

**ETS Vandalism** means an abuse of an item of ETS Equipment by any person causing damage to an item of ETS Equipment, including Major ETS Vandalism and Minor ETS Vandalism. A break and enter of ETS Equipment is deemed to be an instance of ETS Vandalism.

**Event of Default** means any event specified in **clause 44.3**.

**Event of Insolvency** means:

- (a) a "controller" (as defined in section 9 of the Corporations Act), administrator or similar officer is appointed in respect of a person or any asset of a person;
- (b) a liquidator or provisional liquidator is appointed in respect of a person;
- (c) any application (not withdrawn or dismissed within 10 Business Days) is made to a court for an order, or an order is made, a meeting is convened, or a resolution is passed, for the purpose of:
  - (i) appointing a person referred to in **paragraphs (a) or (b)**;
  - (ii) winding up or deregistering a person;
  - (iii) proposing or implementing a scheme of arrangement;
  - (iv) any application (not withdrawn or dismissed within 10 Business Days) is made to a court for an order, a meeting is convened, a resolution is passed or any negotiations are commenced, for the purpose of implementing or agreeing:
  - (v) a moratorium of any debts of a person;
  - (vi) any other assignment, composition or arrangement (formal or informal) with a person's creditors; or
  - (vii) any similar proceeding or arrangement by which the assets of a person are subjected conditionally or unconditionally to the control of that person's creditors or a trustee,



or any agreement or other arrangement of the type referred to in this **paragraph (c)** is ordered, declared or agreed to (other than in any of the circumstances in this **paragraph (c)** for the purposes of a solvent reconstruction or amalgamation on terms approved by the State);

- (d) as a result of the operation of section 459F(1) of the Corporations Act, a person is taken to have failed to comply with a statutory demand (as defined in the Corporations Act);
- (e) any writ of execution, garnishee order, mareva injunction or similar order, similar attachment or other similar process is made, levied or issued against or in relation to any asset of a person;
- (f) anything analogous to anything referred to in **paragraphs (a) to (e)** inclusive of this definition, or which has a substantially similar effect, occurs with respect to a person under any law; or
- (g) a person is, or admits in writing that it is, or is declared to be, or is taken under any applicable law to be (for any purpose), insolvent or unable to pay its debts as and when they fall due.

**Excluded Documentation (Control System)** means design drawings for the manufacture of the control system known as the "CityFlo 150" but excluding:

- (a) any design drawings for the application, function or integration of that control system or any of its components, which are developed specifically for the Project and not for the usual manufacture of the "CityFlo 150" for any project;
- (b) As built Information (excluding Primary Part Drawings); and
- (c) any documentation, information or thing required by section 7 of Annexure 16, Part 1 of the PSR.

**Excluded Documentation (LRV)** means design drawings for the manufacture of the LRV known as the "Flexity 2" but excluding:

- (a) any design drawings for the application, function or integration of the LRV or any of its components, which are developed specifically for the Project and not for the usual manufacture of the "Flexity 2" for any project;
- (b) any documentation, information or thing required by section 4 of Annexure 7, Part 1 of the PSR;
- (c) As built Information (excluding Primary Part Drawings); and
- (d) any documentation, information or thing required by section 7 of Annexure 16, Part 1 of the PSR.

**Executive Negotiator** means, for each party, its chief executive officer (or his or her delegate, who must not be part of the Senior Project Group).

**Existing Operations** means:

- (a) all infrastructure (including the existing infrastructure and the PUP, but excluding all infrastructure forming part of the Project Works) which is owned, operated or under the control of CoGC, DTMR or any other person; and
- (b) the businesses and operations undertaken by CoGC, DTMR or any other person,

on or in the vicinity of the Construction Site.

**Expert Determination Agreement** has the meaning given in **clause 57.4(b)**.

**Expiry Date** means the 15<sup>th</sup> anniversary of the Date for Completion.

**Extra Land** means the land and Waterways referred to in **clause 13.8(a)**.

**Facility Agreement** means the syndicated facility agreement between the Agent, the Debt Financiers and Secure Co, dated on or about Financial Close.

**Final Frequent Breaches Notice** means a notice issued under **clause 44.2(c)** which complies with the requirements of **clause 44.2(d)**.

**Final Persistent Breach Notice** means a notice issued under **clause 44.1(c)** which complies with the requirements of **clause 44.1(d)**.

**Financial Audit Notice** has the meaning given in **clause 49.9(a)**.

**Financial Auditor** has the meaning given in **clause 49.9**.

**Financial Auditor's Report** has the meaning given in **clause 44.2**.

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

**Financial Close Adjustment Protocol** means the document of that name signed by a representative of the State and Operator Franchisee for identification purposes, dated on or about the date of Financial Close.

**Financial Indebtedness** means an obligation of a person (whether present or future, actual or contingent) to pay or deliver any money or commodity under or in respect of any financial accommodations, including under or in respect of any:

- (a) money borrowed or raised;
- (b) bill, promissory note or other financial instrument (whether or not transferable or negotiable);
- (c) lease, licence or other arrangement entered into primarily to raise finance or to finance the acquisition of any property (other than a lease, licence or arrangement which may be accounted for as an operating lease under any applicable generally accepted approved accounting principles in Australia); or
- (d) any arrangement which achieves the same or similar commercial effect as any of the above.

**First Line Maintenance** means basic maintenance of the ETS to be carried out by Operator Franchisee, including:

- (a) clearing or removal of paper jams or foreign objects;
- (b) routine ETS equipment checks;
- (c) cleaning external surface of the ETS equipment to remove grease, smudges, liquids and other similar substances or marks; and
- (d) replenishing consumables of the ETS equipment (including printer cartridges and receipt paper),

in accordance with annexure 16 (Asset Management Requirements) of the PSR.

**First Refinancing Date** means the date that is 7 years from the date of Financial Close, being the date of the first Assumed Refinancing.

**Fit for Purpose** means fit for its or their (as the case may be) intended purposes as specified in, or ascertainable (acting reasonably) from, the State Project

Documents (including for the purpose of enabling Operator Franchisee to perform the Project Activities in accordance with the State Project Documents), but does not extend to:

- (a) whether the requirements regarding service frequency specified in part 1 of annexure 14 (Operations and Customer Service Requirements) of the PSR are sufficient to meet actual patronage or the State's forecast patronage of the System; or
- (b) whether the configuration of the traffic intersections specified in attachment 1 of part 1 of annexure 5 of the PSR is sufficient to meet any growth in the volume of traffic for those intersections beyond that forecast in the Information Documents.

**Force Majeure Event** means the occurrence of a Relief Event which:

- (a) exists or occurs or the effects of which exist or occur, or can reasonably be expected to exist or occur, for a continuous period exceeding 180 days; and
- (b) directly causes or the direct and immediate effects of which cause either party to be unable to comply with a material part of its obligations under the State Project Documents,

and which:

- (c) has not occurred or arisen (directly or indirectly) as a result of or in connection with any action or omission (as the case may be), including any breach of obligations under any other Project Document, by Operator Franchisee or its Associates; or
- (d) has not been caused by OF2's negligence, Wilful Misconduct, breach or default; or
- (e) is not, or ought not to have been, within the control of Operator Franchisee or its Associates.

**Frequent Breach** has the meaning given in **clause 44.2**.

**Frequent Breaches Notice** means a notice issued under **clause 44.2(a)** which complies with the requirements of **clause 44.2(b)**.

**Future Stages** means any extension of the System, which may include the future stages of the GCRT as set out in the CDIMP.

**GCRT** or **GCLR** means the development of a light rail system for the Gold Coast (including GCRT (Stage 1), Stage 2 and the Future Stages) as conceptualised in the CDIMP.

**GCRT Network** or **GCLR Network** means:

- (a) GCRT (Stage 1);
- (b) on and from the Date of Stage 2 Completion, Stage 2; and
- (c) any Future Stage, once the Future Stage is operational.

**GCRT (Stage 1)** means section 2 (Griffith University to Southport) and section 3 (Southport to Broadbeach via Surfers Paradise) of the GCRT.

**General Change in Law** means a Change in Law that is not a Project Specific Change in Law.

**Good Industry Practice** means D&C Best Practices or O&M Best Practices, as applicable.

**Greenhouse and Energy Data Officer** means the Greenhouse and Energy Data Officer established under the NGER Legislation.

**Gross Negligence** means any negligent act or negligent omission resulting from a reckless and serious disregard of the consequences of a risk of which the relevant party was aware or ought reasonably to have been aware would result in loss being incurred by another party to this deed, but does not include an act or omission which occurs in the reasonable and honest attempt to discharge the relevant duty.

**Group** means Operator Franchisee, Secure Co, each Holding Entity (including Hold Co), any wholly owned subsidiary of any of them and any Related Body Corporate which becomes a member of the Group pursuant to a consent given in accordance with **clause 55.7**, but does not include OF2 until the Date of Stage 2 Completion and **Group Member** means any of them.

**GST** has the same meaning given in the GST Law and includes any payment made under or in accordance with the *GST and Related Matters Act (Qld) 2000*.

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

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

**Handback** means Operator Franchisee has done everything which the State Project Documents require to enable Operator Franchisee to handback the System in the required condition at the end of the Term, including complying fully with **clause 46.9**.

**Handback Audit** has the meaning given to that term in **clause 46.2(a)**.

**Handback Bond** means each bond provided to the State under **clause 46.3** or **46.8**, or any bond accepted in substitution for or replacement of those bonds.

**Handback Condition** means the required condition of the System (and associated items referred to in paragraphs (a) and (b)) as at the Expiry Date, as set out in annexure 16 (Asset Management Requirements) of the PSR, and includes:

- (a) all of the associated equipment, plant and Spares then in use or otherwise held (or which should be held in accordance with the Asset Management Plan or the PSR) in relation to the O&M Activities (including all Spares identified in the "Asset Management Plan" or plans developed in accordance with section 2.1.4 of part 1, annexure 16 (Asset Management Requirements) of the PSR); and
- (b) all associated records and documentation required in accordance with the State Project Documents.

**Handback Matters Agreement Notice** has the meaning given to that term in **clause 46.9(b)(i)**.

**Handback Matters Disagreement Notice** has the meaning given to that term in **clause 46.9(b)(ii)**.

**Handback Matters Notice** has the meaning given to that term in **clause 46.9(a)**.

**Hazardous Substance** means any substance which would or might reasonably be expected to cause damage or injury to human beings, any property or the Environment.

**Hold Co** means GoldLinQ Holdings Pty Ltd ACN 147 811 425.

**Hold Co 1** means GoldLinQ 1 Holdings Pty Ltd ACN 610 538 460.

**Hold Date** means:

- (a) in respect of each Designated Investor (other than Keolis SA or Aveng Australia (GCRT) Pty Ltd), the date which is 2 years after the Date of Completion;
- (b) in respect of Keolis SA, the date which is 4 years after the Date of Completion; and
- (c) in respect of Aveng Australia (GCRT) Pty Ltd, the date of Stage 2 Financial Close (as defined in the Stage 2 Works Deed).

**Holding Entity** means each company or trust which, directly or indirectly, holds all of the issued shares or units in Operator Franchisee, and which is not itself wholly owned by any other entity.

**Hold Point** means a point beyond which a work process must not proceed without the authorisation or release of a designated authority.

**Illegality Event** means the occurrence of any of the following events:

- (a) Operator Franchisee or a Core Contractor ceases to hold an Approval (except in the case of a Key Approval, if the circumstances described in paragraph (g) of the definition of Compensation Event apply) or breaches an applicable Law, and such failure or breach is, in the opinion of the State, material to the performance of Operator Franchisee's obligations under the State Project Documents;
- (b) any Project Document:
  - (i) being revoked, repudiated or terminated or ceasing to be legal, valid and binding and enforceable against Operator Franchisee or any other person (other than the State), other than as contemplated by or permitted in accordance with the Project Documents; or
  - (ii) becoming invalid, void or voidable in any material respect; or
- (c) it is or becomes unlawful for Operator Franchisee to perform any of its obligations under the Project Deed or the Core Contractors to perform any of their obligations under the Project Documents.

**Increased State Risk Allocation** means any increase in the risks for the State in relation to the Project solely as a result of entry into the Securitised Lease Structure.

**Independent Assessor** means the independent expert appointed by agreement between the parties to carry out the Handback Audit pursuant to **clause 46.2**.

**Independent Certifier** means Hyder Consulting Pty Limited ABN 76 104 485 289 and APP Corporation Pty Ltd ABN 29 003 764 770 (jointly and severally), trading as CERT-TRAM, or any replacement independent certifier appointed in accordance with the D&C Contract.

**Independent Certifier Deed** means the document of that name between Operator Franchisee, the D&C Contractor and the Independent Certifier, dated on or about the date of this deed.

**Independent Verifier** means Hyder Consulting Pty Limited ABN 76 104 485 289 and APP Corporation Pty Ltd ABN 29 003 764 770 (jointly and severally), trading as CERT-TRAM, or any replacement independent verifier appointed in accordance with **clause 7.1(j)**.

**Independent Verifier Deed** means the deed so entitled dated on or about the date of this deed between the State, Operator Franchisee and the Independent Verifier.

**Independent Verifier (Stage 2)** has the meaning given to the term "Independent Verifier" in the Stage 2 Works Deed.

**Indirect or Consequential Loss** means:

- (a) loss of opportunity, profit, anticipated profit, business, business opportunities or revenue, or any failure to achieve anticipated savings; or
- (b) any penalties under agreements other than the State Project Documents.

**Industrial Action** means industrial action of any description including industrial action involving:

- (a) the performance of work in a manner different from that in which it is customarily performed, or the adoption of a practice in relation to work, the result of which is a restriction or limitation on, or a delay in, the performance of work;
- (b) a ban, limitation or restriction on the performance of work, or acceptance of or offering for work; and
- (c) a failure or refusal by any person employed or engaged by Operator Franchisee or its Associates to attend for work.

**Industrial Waste** means any Waste arising from commercial, industrial or trade activities and any Waste containing substances or materials which are potentially harmful to human beings, any property or the Environment.

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

- (a) referred to in **schedule 12** or schedule 9 of the Stage 2 Works Deed;
- (b) issued or made available by, or on behalf of, the State or the State to Operator Franchisee in connection with the Invitation for Expressions of Interest for the Project issued by the State in December 2009, the RFP, the Project Works or the System (including anything issued or made available through the State's data room) and which at the time of issue (or being made available) was expressly classified or stated to be an "Information Document";
- (c) issued or made available by, or on behalf of, the State or the State to Operator Franchisee in connection with the Invitation for Expressions of Interest for the Project issued by the State in December 2009, the RFP, the Project Works or the System (including anything issued or made available through the State's data room), but which did not form part of the Invitation for Expressions of Interest or RFP (as applicable), regardless of whether or not it was expressly classified or stated to be an "Information Document";
- (d) issued or made available by, or on behalf of, the State or the State to Operator Franchisee or OF2 in connection with the Operator Franchisee initiated Modification for Stage 2, or the Stage 2 Works or the System (including anything issued or made available through the State's data room), regardless of whether or not it was expressly classified or stated to be an "Information Document"; or

- (e) referred to, or incorporated by reference, in an Information Document unless such information, data, document or material is otherwise expressly stated to form part of this deed,

whether issued or made available:

- (f) in relation to GCRT (Stage 1), on, before or after the date of submission of the Proposal (including any such information, data, document or material made available as part of the expression of interest phase);
- (g) in relation to Stage 2, on, before or after the date of submission of the Operator Franchisee initiated Modification in relation to Stage 2 (including any such information, data, document or material made available as part of the expression of interest phase); or
- (h) on, before or after the Relevant Date.

**Insurance Benchmark Date** means the Date of Completion and each third, or multiple thereof, anniversary of the Date of Completion until the Date of Stage 2 Completion, then the Date of Stage 2 Completion and each third, or multiple thereof, anniversary of the Date of Stage 2 Completion.

**Insurance Component** means the insurance component (being the insurance premiums, statutory charges and fees) of the Service Payment payable in respect of the relevant Benchmarked Insurances.

**Insurance Proceeds** means all moneys received under the D&C Phase contract works (material damage) insurance and the Operations Phase industrial special risks/consequential loss insurance and any light rail vehicle insurances, but excluding any proceeds of delay in start up insurance or business interruption insurance.

**Insurance Proceeds Account** means the account referred to in **clause 43.9(a)**.

**Insurances** means the insurances required to be effected and maintained under **clause 43** and **schedule 10**.

**Interchanges** has the meaning given in the PSR.

**Inter-Stage Security** has the meaning given in the Common Terms Deed.

**Inter-Stage Security Sharing Deed** means the deed so entitled dated on or about the date of Stage 2 Financial Close between the Security Trustee and Permanent Custodians Limited ACN 001 426 384.

**IV Fee** has the meaning given to the term "Fee" in the Independent Verifier Deed.

**Key Approvals** means:

- (a) the EPBC Approval;
- (b) the CHMP; and
- (c) on and from the Date of Stage 2 Completion, the Key Approvals (as defined in the Stage 2 Works Deed).

**KPI** has the meaning given to it in section 1 of **schedule 3**.

**Law** means:

- (a) Legislation; and
  - (b) common law or principles of equity applicable in Queensland,
- but does not mean the terms of a contract.

**Licence Fee Side Letter** means the letter so entitled dated on or about the date of the System Site Licence between the State and Operator Franchisee.

**Licensed Premises** has the meaning given in the Agreement to Lease.

**Licence Receivable Amount** means the amount of the licence payments (GST exclusive) which are or may become due and payable after the Post Completion Payment Date (as defined in Schedule 3) in accordance with the System Site Licence (Stage 2).

**Legislation** means, in relation to Queensland or the Commonwealth of Australia:

- (a) any act of parliament or statute;
- (b) any subordinate legislation, rules, regulations or by-laws; and
- (c) any document, code, standard or policy issued under such legislation or delegated legislation with which Operator Franchisee is legally required to comply.

**Light Rail Legislation** means all statutes, regulations and other subordinate legislation in force or that come into force during the Term in the State of Queensland in respect of public transport, including the *Transport Infrastructure Act 1994* (Qld), the *Transport Operations (Passenger Transport) Act 1994* (Qld), the *Transport Planning and Coordination Act 1994* (Qld), the *Transport Operations (TransLink Transit Authority) Act 2008* (Qld) and the *Transport (Rail Safety) Act 2010* (Qld) and all regulations and other subordinate legislation made under those Acts.

**Loss** means:

- (a) any cost, expense, loss, damage or liability whether direct, indirect or consequential (including pure economic loss), present or future, fixed or unascertained, actual or contingent; and
- (b) without being limited by **paragraph (a)** and only to the extent not prohibited by law, any fine or penalty.

**LRV** has the meaning given in the PSR, and on and from the Date of LRV Completion (Mod 60) includes the LRVs (Mod 60).

**LRV Completion** has the meaning given in Mod 60.

**LRV Interface Deed** means the 'O&M Interface Deed – Gold Coast Rapid Transit Project' between Operator Franchisee, the O&M Contractor and Bombardier Transportation Australia Pty Ltd (ACN 010 699 804) dated 10 November 2015.

**LRVs (Mod 60)** means the LRVs that are the subject of Mod 60.

**LRVs (Mod 60) Supply Contract** means the 'Light Rail Vehicle Supply Contract – Gold Coast Light Rail Project' between Operator Franchisee and the LRV Supplier dated 6 November 2015.

**MacDow** means McConnell Dowell Constructors (Aust) Pty Ltd ABN 71 002 929 017.

**Major ETS Vandalism** means all damage that compromises the integrity or operation of any item of ETS Equipment, or any major module or major component of any item of ETS Equipment, to the extent that it requires removal from its place of installation for repair. Major modules or components include any doors or panel (side, top or bottoms) of a Smart Card interface device.

**Marketing Plan** has the meaning given to it in the PSR.



**Materials** means any equipment, plant, materials, fixtures, fittings, furniture, machinery, goods and parts.

**Maximum Services** has the meaning given in **schedule 3**.

**Migrating Contamination** means Contamination which migrates on to the Project Area from outside the Project Area after the Relevant Date, but does not include Contamination:

- (a) which could have been prevented or minimised by Operator Franchisee by the implementation of measures that would have been taken by a competent and experienced contractor to prevent or minimise such migration;
- (b) which is caused or contributed to by OF2 or its Associates or which OF2 is otherwise responsible for under clause 11.3(a) of the Stage 2 Works Deed; or
- (c) existing in, on or under the Project Area at the Relevant Date.

**Minor Defect** means a Defect:

- (a) which does not prevent the Project Works or the System from being Fit for Purpose; and
- (b) which the Independent Verifier determines that Operator Franchisee has reasonable grounds for not promptly rectifying.

**Minor ETS Vandalism** means all vandalism that is not Major ETS Vandalism, including graffiti.

**Minor Works** means any variation, change or addition to the Project Activities, the Project Works or the System which (in the State's reasonable opinion):

- (a) does not require Capital Expenditure in excess of \$500,000 (CPI Indexed);
- (b) will not, provided that Operator Franchisee uses its reasonable endeavours to mitigate the impact of such variation, change or addition on the D&C Program, directly result in Operator Franchisee being delayed in achieving Completion; and
- (c) will not require Operator Franchisee to incur additional costs in performing the O&M Activities.

**Mod 60** means Modification Approval No. 60 dated 6 November 2015.

**Modification** means any change or variation to:

- (a) the D&C Activities;
- (b) the Project Works;
- (c) the System; or
- (d) the O&M Activities, the method of performing them or the materials required to perform them,

including any addition, reduction, increase, decrease, omission, deletion, demolition or removal to or from them (or to the sequencing or timing of them) and including any Minor Works.

**Modification Approval** means a notice titled "Modification Approval" issued by the State under **clause 31.4** or **31.5**.

**Modification Notice** means a notice which complies with **clauses 30.3** and **30.4**.

**Modification Order** means a notice title "Modification Order" issued by the State under **clause 30.7**.

**Modification Proposal** means a proposal referred to in **clause 30.1**.

**Modified V8SE Area Layout** means the drawings identified as GL-A-40CAL01-AA-X-0131, GL-A-40CAL01-AA-D0157 and GL-A-40CAL01-AA-D-0158 and attached to table 2 of **schedule 15** of this deed.

**Monitoring Area Site** means areas upon which Operator Franchisee is required to undertake monitoring activities and Additional Works from time to time in accordance with a Site Management Plan.

**Monthly Performance Report** means the monthly report prepared in accordance with, and containing the information required by, annexure 17 (Contract Management Requirements) of the PSR and **schedule 3** and submitted in accordance with **clause 21.2**.

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

**Nerang River Shared Use Bridge** means a shared pathway bridge for the use of pedestrians and cyclists across the Nerang River from Southport to Main Beach in the immediate vicinity of and to the east of the existing Gold Coast Highway.

**Nerang River Shared Use Bridge Works Progress Certificate** means a certificate substantially in the form required by the Certification Schedule certifying that Bridge Works have been performed in accordance with the State Project Documents and the extent of Bridge Works performed, in a relevant month.

**Network Connection Agreement** means the Gold Coast Rapid Transit – Network Connection Agreement between Operator Franchisee and ENERGEX, dated on or about the date of this deed.

**New Operator Franchisee** means any new contractor of such works or services the same or similar to the Project Activities or any other nominee of the State.

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

**NGERs Data** means:

- (a) any data, information, records and reports of the type that, on the basis of **clause 12.6(a)**, a registered corporation or any person is required by the NGER Legislation to keep or to provide to the Greenhouse and Energy Data Officer concerning greenhouse gas emissions, energy production or energy consumption in relation to the Project Activities or the Project; and
- (b) any data, information, records and reports of the type that, on the basis of **clause 12.6(a)**, a registered corporation or any person is entitled to provide to the Greenhouse and Energy Data Officer under the NGER Legislation concerning reduction of greenhouse gas emissions, removal of greenhouse gases or offsets of greenhouse gas emissions arising in relation to the Project Activities or the Project.

**Notice to Prepare** has the meaning given in **clause 30.2(b)(vi)**.

**Notice to Proceed** means a notice given by the State to Operator Franchisee under **clause 30.1** or **30.7(f)** requiring Operator Franchisee to carry out a Modification.

**Notional Initial Equity Investor** means a notional corporate tax payer who:

- (a) is issued with share capital in, or provides shareholder loans (or other loans in the nature of equity funding) to or for the benefit, of Operator Franchisee, on or prior to the date of Financial Close; and
- (b) holds that share capital, or provides the loans, from the date of Financial Close until the end of the Term.

**O&M Activities** means all things that Operator Franchisee is, or may be, required to do in order to carry out or perform the operation and maintenance services to be provided by Operator Franchisee in accordance with the State Project Documents (but does not include the D&C Activities).

**O&M Best Practices** means operating, maintenance and repair practices performed with the due skill, care and diligence which may reasonably be expected of a skilled operations and maintenance contractor suitably qualified in the performance of obligations similar to Operator Franchisee's obligations under the State Project Documents so as to achieve a result consistent with Law, reliability, safety, protection of the Environment and the requirements of the State Project Documents. It includes everything reasonably necessary to ensure that:

- (a) the System is operated, maintained and repaired in a manner safe to all people and the Environment;
- (b) the System is functioning as designed;
- (c) operation, maintenance and repairs are performed to ensure reliable long-term and safe operation and are performed by trained and experienced personnel utilising proper equipment, tools and procedures;
- (d) a high quality experience is provided to Passengers;
- (e) sufficient operation and maintenance personnel are available and are adequately experienced and trained;
- (f) adequate materials, resources and supplies are available to ensure compliance with the requirements of the State Project Documents under normal conditions and reasonably anticipated abnormal conditions;
- (g) the principle of continuous improvement is adhered to, that is, a commitment to continually improving the standards and quality of the operation, maintenance and repair of the System and the manner in which it is carried out including ensuring that the O&M Activities are carried out in a manner which at all times remains consistent with applicable light rail network systems and standards; and
- (h) advancements in technology which Operator Franchisee must implement to enable it to meet its obligations under the State Project Documents are promptly responded to and incorporated into the O&M Activities no later than the time when the relevant component of the System is due to be replaced.

**O&M Contract** means the Gold Coast Rapid Transit O&M Contract between Operator Franchisee and the O&M Contractor, dated on or about the date of this deed.

**O&M Contractor** means KDR Gold Coast Pty Ltd ABN 87 150 236 936.

**O&M Contractor Tripartite Deed** means the document of that name between, among others, Operator Franchisee, the O&M Contractor and the Security Trustee, dated on or about the date of Financial Close.

**O&M Guarantor** means:

- (a) Keolis SA; and
- (b) Downer EDI Limited.

**OCC** has the meaning given in the PSR.

**OF2** means GoldLinQ 2 Pty Ltd ACN 610 560 364.

**On-Loan Agreement** means the document of that name between Operator Franchisee and Secure Co on or about the date of Financial Close.

**Open Book Basis** means the provision of any pricing, costing and other information on an open book basis to enable an assessment of actual costs and profit margins, including a breakdown of all relevant:

- (a) preliminaries;
- (b) insurances;
- (c) labour;
- (d) equipment;
- (e) materials;
- (f) subcontract costs;
- (g) margins; and
- (h) discount rates used to calculate net present values,

in a clear and transparent manner.

**Operating Hours** has the meaning given in the PSR.

**Operating Plan** means the Project Plan of that name developed in accordance with **clause 8** and annexure 14 (Operations and Customer Service Requirements) of the PSR, as updated from time to time in accordance with **clause 8**.

**Operating Year** means each calendar year during the Operations Phase with the first Operating Year commencing on the Date of Completion and ending on the last day of that calendar year and the last Operating Year ending on the last day of the Term.

**Operations Phase** means:

- (a) in relation to GCRT (Stage 1), the period commencing on the Date of Completion; and
- (b) in relation to Stage 2, the period commencing on the Date of Stage 2 Completion,

and ending on the last day of the Term.

**Operations Phase Insurances** means the insurances referred to in Part B of schedule 10.

**Operator Franchise Employees** has the meaning given in **clause 47.10(a)**.

**Operator Franchisee Termination Event** means any event specified in **clause 45.1**.

**Operator Franchisee's Privacy Plan** means the plan of that name to be prepared by Operator Franchisee in accordance with **clause 49.10(c)**.

**Operator Franchisee Representative** means the person appointed in accordance with **clause 6.6(a)** or any other person from time to time appointed by Operator Franchisee to replace that person in accordance with **clause 6.6**.

**Original Date for Completion** means the Date for Completion without any amendment under **clause 16.7, 18.1(b)(v), 30 or 31**.

**Original Date for LRV Completion (Mod 60)** means, in respect of an LRV (Mod 60), the relevant Date for LRV Completion specified in Mod 60 as at the date of Mod 60.

**PAM (Works Completion)** means:

- (a) [not used];
- (b) Pre-Agreed Modification #3A (Provision for future drainage requirements (Scarborough Street – between Nerang Street and Queen Street));
- (c) Pre-Agreed Modification #3B (Provision for future drainage requirements (Staghorn Avenue));
- (d) Pre-Agreed Modification #3C (Provision for future drainage requirements (Intersection of Elkhorn Avenue and Surfers Paradise Boulevard));
- (e) Pre-Agreed Modification #3D (Provision for future drainage requirements (Intersection of Thornton Avenue and Surfers Paradise Boulevard)); and
- (f) Pre-Agreed Modification #3E (Provision for future drainage requirements (Gold Coast Highway, Broadbeach)).

**PAM (Works Completion) Payment** means a payment made by the State to Operator Franchisee in accordance with **clause 38.3A**.

**PAM (Works Completion) Price** means:

- (a) [not used];
- (b) in respect of Pre-Agreed Modification #3A (Provision for future drainage requirements (Scarborough Street – between Nerang Street and Queen Street)), [REDACTED]
- (c) in respect of Pre-Agreed Modification #3B (Provision for future drainage requirements (Staghorn Avenue)), [REDACTED]
- (d) in respect of Pre-Agreed Modification #3C (Provision for future drainage requirements (Intersection of Elkhorn Avenue and Surfers Paradise Boulevard)), [REDACTED]
- (e) in respect of Pre-Agreed Modification #3D (Provision for future drainage requirements (Intersection of Thornton Avenue and Surfers Paradise Boulevard)) [REDACTED] and
- (f) in respect of Pre-Agreed Modification #3E (Provision for future drainage requirements (Gold Coast Highway, Broadbeach)), [REDACTED]

**PAM (Works Completion) Returned Works** means:

- (a) [not used];
- (b) all things, works and Materials that Operator Franchisee must design, construct, manufacture, install, supply, test and commission in accordance with the State Project Documents for Pre-Agreed Modification #3A (Provision for future drainage requirements (Scarborough Street – between Nerang Street and Queen Street));

- (c) all things, works and Materials that Operator Franchisee must design, construct, manufacture, install, supply, test and commission in accordance with the State Project Documents for Pre-Agreed Modification #3B (Provision for future drainage requirements (Staghorn Avenue));
- (d) all things, works and Materials that Operator Franchisee must design, construct, manufacture, install, supply, test and commission in accordance with the State Project Documents for Pre-Agreed Modification #3C (Provision for future drainage requirements (Elkhorn Avenue and Surfers Paradise Boulevard));
- (e) all things, works and Materials that Operator Franchisee must design, construct, manufacture, install, supply, test and commission in accordance with the State Project Documents for Pre-Agreed Modification #3D (Provision for future drainage requirements (Intersection of Thornton Avenue and Surfers Paradise Boulevard)); and
- (f) all things, works and Materials that Operator Franchisee must design, construct, manufacture, install, supply, test and commission in accordance with the State Project Documents for Pre-Agreed Modification #3E (Provision for future drainage requirements (Gold Coast Highway, Broadbeach)).

**PAM (Works Completion) System Works** means, in relation to each Pre-Agreed Modification which is implemented in accordance with **clause 32**, the meaning given to that term under the terms of that Pre-Agreed Modification.

**Parent Support Bond** has the meaning given in the D&C Contract.

**Parent Support Deed** has the meaning given in the D&C Contract.

**Passenger** means a person using any part of the GCRT Network for transportation purposes and includes a person using Replacement Services (other than the driver of the vehicle).

**Passenger Services** has the meaning given in **schedule 3**.

**Payment Directions Deed** means the document entitled "Gold Coast Rapid Transit – Payment Directions Deed" between the State, Operator Franchisee and Secure Co, dated on or about the date of Financial Close.

**Payment Certifier Deed** means the deed so entitled between, among others, the Independent Certifier and the Agent, dated on or about the date of Financial Close.

**Payment Month** means a calendar month which falls in whole or in part within the Operations Phase, except that:

- (a) the first Payment Month will commence on the Date of Completion and will end at the end of that calendar month; and
- (b) the last Payment Month will end on the last day of the Term.

**Performance Monitoring System** means the system referred to in **clause 21.1**.

**Performance Points** has the meaning given to it in section 1 of **schedule 3**.

**Permitted Change in Control** means:

- (a) in the case of a Designated Investor, any Change in Control following which the relevant Designated Investor Holding Company Controls the Designated Investor;

- (b) in the case of an Equity Investor, any Change in Control following which the relevant Equity Investor Holding Company Controls the Equity Investor; and
- (c) in the case of a Core Contractor, any Change in Control following which the relevant Core Contractor Holding Company Controls the Core Contractor.

**Permitted Share Capital Dealing** has the meaning given in **clause 55.4(b)**.

**Permitted Use** has the meaning given in the Agreement to Lease.

**Persistent Breach** has the meaning given in **clause 44.1(a)**.

**Persistent Breach Notice** means a notice issued under **clause 44.1(a)** which complies with the requirements of **clause 44.1(b)**.

**Personal Information** has the meaning given in the *Information Privacy Act 2009* (Qld).

**Plenary Funds** means:

- (a) WHTM Capital Management Limited ACN 082 494 362 (as trustee for the Palisade's Australian Social Infrastructure Fund 1); and
- (b) Pinnacle RE Services Limited ACN 130 508 379 (as trustee for the Palisade's Australian Social Infrastructure Fund 2).

**PPE Expiry Date** means, in respect of a Pre-Priced Element, the expiry date set out in **schedule 15**.

**Pre-Agreed Modification** means each of the Modifications in **schedule 14**, on the terms set out in **schedule 14**.

**Pre-Agreed Modification Cost** means, in respect of a Pre-Agreed Modification, the cost of that Modification specified in **schedule 14**.

**Pre-Agreed Modification Election** has the meaning given in **clause 32.1(a)**.

**Pre-Agreed Modification (Preventative Maintenance)** means, in respect of an LRV, a Modification in respect of that LRV only on the terms set out in table #5 of **schedule 14**.

**Pre-Priced Element** means the plans, components, programs, escalation and pricing for:

- (a) the acquisition of additional LRVs, set out in table 1 of **schedule 15**;
- (b) track realignment around V8SE Area, set out in table 2 of **schedule 15**; and
- (c) the GCUH Station canopy (Griffith University entrance), set out in table 3 of **schedule 15**.

**Preventative Maintenance Works** means the works which are the subject of the Pre-Agreed Modification (Preventative Maintenance).

**Prevention Plan** has the meaning given in **clause 44.6(b)**.

**Primary Part Drawings** means drawings that are related to initial manufacturing on a detailed system level (not at an aggregated system level).

**Privacy Principles** means the Information Privacy Principles set out in the *Information Privacy Act 2009* (Qld).

**Private Development** means construction, alteration, demolition or removal of structures, infrastructure or facilities and all associated and incidental activities and uses (including temporary works, temporary activities and uses to facilitate the construction, alteration, demolition, removal or use) which:

- (a) are undertaken or to be undertaken on or in the vicinity of the Project Area;
- (b) are undertaken or to be undertaken by a person other than the State, Operator Franchisee or an Associate of Operator Franchisee; and
- (c) require approval by CoGC.

**Private Development Application** means an application to CoGC in its capacity as an Authority for a Private Development Approval.

**Private Development Approval** means an approval issued by CoGC in its capacity as an Authority to use or carry out works in respect of a Private Development.

**Probity and Process Deed** means the "Gold Coast Rapid Transit – Probity and Process Deed" between the State and Keolis SA, Downer EDI Ltd, Bombardier Transportation Australia Pty Ltd, MacDow and Plenary Group Pty Ltd dated on or about 3 August 2010.

**Professional Engineers Act** means the *Professional Engineers Act 2002* (Qld).

**Project** means:

- (a) the financing, design, construction, manufacture, installation, testing and commissioning of the Project Works and the performance of the D&C Activities;
- (b) the operation and maintenance of the System and the performance of the O&M Activities; and
- (c) the handback to the State of the System,

in accordance with the State Project Documents.

**Project Activities** means all things or tasks which Operator Franchisee is, or may be, required to do to comply with its obligations under the State Project Documents, whether or not the performance of such things or tasks is subcontracted by Operator Franchisee to another person, including the D&C Activities and the O&M Activities.

**Project Area** means:

- (a) the Construction Site and any Extra Land; and
- (b) during the Operations Phase, the System Site and any Extra Land,

except that, for the purposes of the definition of Compensation Event, Migrating Contamination and Relief Event and **clause 13.3(b)(ii)** only, "Project Area" will not include any Extra Land or the Accommodation Works Areas (Special Purpose).

**Project Costs** has the meaning given in the Common Terms Deed.

**Project Documents** means:

- (a) this deed;
- (b) the Agreement to Lease;
- (c) the System Site Licence;
- (d) the Independent Verifier Deed;
- (e) the Independent Certifier Deed;
- (f) each Core Contract;
- (g) the D&C Interface Deed;



- (h) the GoldLinQ Interface Deed;
- (i) each Core Contractor Side Deed;
- (j) the D&C Guarantee (as defined in the Core Contractor Side Deed (D&C));
- (k) the O&M Guarantee (as defined in the Core Contractor Side Deed (O&M));
- (l) the Rolling Stock Sub-Contract;
- (m) the Rolling Stock Side Deed;
- (n) the Rolling Stock Guarantee (as defined in the Rolling Stock Side Deed);
- (o) each Council Direct Deed;
- (p) the Debt Financing Documents;
- (q) the Equity Documents;
- (r) the Securitisation Agreement;
- (s) the Payment Directions Deed;
- (t) the Debt Finance Side Deed;
- (u) the State Deed of Charge;
- (v) the Financial Close Adjustment Protocol;
- (w) each Designer Direct Deed;
- (x) the QFE Direct Deed;
- (y) any Expert Determination Agreements;
- (z) Parent Support Deed;
- (aa) each Parent Indemnity Deed (as defined in the D&C Contract);
- (bb) each deed of appointment appointing a Proof Engineer in accordance with **clause 7.2** or a principal contractor in accordance with **clause 9.4(d)**;
- (cc) any Deeds of Assurance or Escrow Deeds;
- (dd) the Licence Fee Side Letter;
- (ee) the Agreement to Sub-Licence (Stage 2);
- (ff) the System Site Sub-Licence (Stage 2); and
- (gg) on and from the Date of Stage 2 Completion, each Stage 2 Document (as defined in the Stage 2 Works Deed).

**Project Plans** means the plans listed in annexure 17 (Contract Management Requirements) of the PSR as updated from time to time in accordance with **clause 8**.

**Project-Specific Change in Law** means:

- (a) a Change in Law, the terms of which apply to:
  - (i) the Project or the System, and not to other light rail projects in Australia;
  - (ii) Operator Franchisee, and not to other persons;
  - (iii) the Project Area, and not to any other:
    - (A) similarly situated land or facilities; or

(B) land or facilities where similar activities to the Project Activities are undertaken; or

(iv) projects procured or established under the National Public Private Partnership Guidelines or other policies of the Commonwealth or the State in respect of privately financed projects, and not to other projects; and

(b) a Change in Railway Law.

**Project Training Management Plan** means the Project Plan of that name prepared by Operator Franchisee in accordance with annexure 17 (Contract Management Requirements) of the PSR and as updated from time to time in accordance with **clause 8**.

**Project Works** means all things, works and Materials (including all systems and software incorporated in, or necessary to enable their operation) that Operator Franchisee must design, construct, manufacture, install, supply, test and commission in connection with GCRT (Stage 1) in accordance with the State Project Documents including:

(a) the Temporary Works and Returned Works (including Accommodation Works and PUP Works), until such Returned Works are handed over in accordance with **clause 19.2**; and

(b) any Modifications (including any Minor Works) directed or approved during the D&C Phase in accordance with **clauses 30, 31 or 0**.

**Proof Engineer** means, at any time, the person then appointed as proof engineer and construction verifier by or on behalf of Operator Franchisee in accordance with **clause 7.2**.

**Proposal** means the response provided by Operator Franchisee to the RFP to undertake the Project Activities.

**Proposed Base Case Financial Model** has the meaning given in **clause 39.2(a)(iv)**.

**Proximate Works** means any works that the State wishes to carry out (or have carried out) within, over, under or adjacent to the Project Area, comprising:

(a) building any infrastructure for any Future Stages;

(b) building and fitting out any light rail stations;

(c) building additional connections between the System and its local environment;

(d) retail, commercial or residential development and associated infrastructure;

(e) closing off areas, including to prevent public access;

(f) opening up any areas that are closed off;

(g) undertaking excavations and tunnelling;

(h) building Passenger tunnels, bridges and other connections between the System and other infrastructure, including road, Passenger, pedestrian and other public transport infrastructure;

(i) installing, operating and maintaining equipment, including equipment required for safety, public and personal security, monitoring, advertising and public information;

- (j) installing PUP and connecting to existing PUP (including those under the control of Operator Franchisee); and
- (k) any other works, whether or not such works relate to the System or the public transport network,

and any ancillary works but excluding the Project Works, the Temporary Works, the Stage 2 Works, the Stage 2 Temporary Works, and any Modifications to the Project Works, Temporary Works, Stage 2 Works or Stage 2 Temporary Works, and any works in relation to the V8 Supercar Event.

**Proximate Works Handover Date** has the meaning given in **clause 34.4(b)**.

**Proximate Works Handover Notice** means a notice from the State to Operator Franchisee which gives notice that the assets the subject of Proximate Works will be deemed to form part of the System for the purposes of this deed.

**PSR** means the PSR (PD) and/or the PSR (S2WD), as applicable.

**PSR (PD)** means the performance scope and requirements for the Project, annexed to this deed as **exhibit 1**, as amended in accordance with this deed.

**PSR (S2WD)** means the performance scope and requirements for delivery of Stage 2, annexed to the Stage 2 Works Deed as exhibit 1, as amended in accordance with the Stage 2 Works Deed.

**Public Bus Operator** means Surfside Buslines Pty Ltd ABN 25 010 957 552 in its capacity as operator of public passenger bus services as a contractor of the State, or any replacement operator of public passenger bus services appointed by the State or DTMR from time to time (whether in respect of some or all of the public passenger bus services provided by Surfside Buslines Pty Ltd as at the date of this deed).

**Public Disclosure Obligations** has the meaning given in **clause 50.2(a)**

**PUP or Public Utility Plant** means any service or related item of infrastructure, including water, electricity, gas, telephone, drainage, sewerage and electronic communications (other than electricity or communications infrastructure which is specific to the Project and forms part of the System).

**PUP Works** means the construction, modification, or relocation of PUP all of which are to be designed and constructed by (or procured to be designed and constructed by) Operator Franchisee and handed over to the State or an Authority in accordance with this deed.

**QFE Direct Deed** means any direct deed entered into between the State, Operator Franchisee and the Qualified Fire Engineer in accordance with **clause 7.3(c)**, substantially in the form set out in Part C of **schedule 13**.

**QR** means Queensland Rail.

**QR Interface Deed** means the "Gold Coast Light Rail – QR Interface Deed (Stage 2)" between QR and OF2, dated on or about the date of the Stage 2 Works Deed.

**Qualified Fire Engineer** means the qualified fire engineer appointed by Operator Franchisee in accordance with **clause 7.3**.

**Qualifying Change in Law** means:

- (a) a Project-Specific Change in Law occurring after the Relevant Date and requiring Operator Franchisee to incur additional costs or loss of revenue; or

- (b) a General Change in Law occurring after the Relevant Date and requiring Operator Franchisee to incur, during the Operations Phase and with respect to the O&M Activities (or, if the General Change in Law is a Change in Environmental Law, occurring after the Relevant Date and requiring Operator Franchisee to incur, during the Term and with respect to the Project Activities):
  - (i) additional Capital Expenditure;
  - (ii) additional operating costs which would not otherwise be incorporated into the Service Payment as a consequence of the indexation or benchmarking of Service Payments pursuant to this deed; or
  - (iii) loss of revenue.

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

**Rail Safety Act** means the *Transport (Rail Safety) Act 2010* (Qld).

**Rail Safety Regulator** means the rail safety regulator under the Rail Safety Act.

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

**Reference Design** means the design referred to in **schedule 12** (Information Documents).

**Refinancing** means:

- (a) any amendment, novation, supplement or replacement of any Debt Financing Document;
- (b) the exercise of any right, or the request for or grant of any waiver or consent, under any Debt Financing Document;
- (c) the disposition of any rights or interests in, or the creation of any rights of participation in respect of, the Debt Financing Documents or the creation or granting of any other form of benefit or interest in either the Debt Financing Documents or the contracts, revenues or assets of Operator Franchisee whether by way of security or otherwise;
- (d) any new financing arrangements entered into by Operator Franchisee; and
- (e) any other step or arrangement that has an effect which is similar to any of the actions referred to in **paragraphs (a) to (d)**,

which is likely to:

- (f) give rise to a Refinancing Gain; or
- (g) change the type, amount, pricing, tenor, terms for payment or repayment, hedging or financial covenants of any financial accommodation connected with the Project,

but does not include:

- (h) the entry into of derivative transactions contemplated to be entered into on or before Financial Close by the Debt Financing Documents;
- (i) the syndication or subscription of any debt under the Debt Financing Documents that is contemplated at the date of Financial Close;
- (j) the change in control or sell down of any bonds in an arm's length transaction at market value;

- (k) secondary disposals of investments or commitments of Financial Indebtedness in the ordinary course of a Debt Financier's business which change the identity of Debt Financiers but not the commercial terms of the Debt Financing Documents; or
- (l) a waiver permitted under clause 5.5(b)(iv) of the Debt Finance Side Deed.

**Refinancing Assumptions** means each of the terms, conditions and assumptions concerning a Refinancing set out in <I-Funding> cells I72:I100 and C108:P111 in the Day 1 Base Case Financial Model.

**Refinancing Coordination Deed** has the meaning given in the Common Terms Deed.

**Refinancing Debt Amount** has the meaning given to that term in **clause 52.6(a)**.

**Refinancing Gain** means, in respect of a Refinancing, the net positive impact on Distributions as a result of the Refinancing determined in accordance with the following:

- (a) the net positive difference (if any) between the sum of any Distributions made in connection with the Refinancing or forecast to be made after the effective date of the Refinancing in accordance with the Base Case Financial Model updated in accordance with this deed to take account of the Refinancing and the sum of the Distributions forecast to be made from that date in accordance with the Base Case Financial Model in the absence of the Refinancing;
- (b) the positive difference will be determined ignoring the impact of non-Refinancing impacts on Distributions such as revenues, costs, Taxes, reserves or levels of retained cash (other than revenue received, costs incurred or Taxes, reserves or levels of retained cash changed pursuant to a Refinancing) being different than forecast by the Base Case Financial Model;
- (c) such positive difference will be expressed as an aggregate amount as at the date of the Refinancing; and
- (d) in calculating the positive difference, timing differences will be taken into account by expressing relevant amounts in their net present value as of the date of the Refinancing using the annual forecast pre-investor tax equity internal rate of return as set out in the Base Case Financial Model as the nominal discount rate,

taking due account of the fact that gains from Assumed Refinancings have already been reflected in the service payment and that the State should receive no additional payment in respect of such gains.

**Registered Professional Engineer or RPEQ** means a "registered professional engineer" under the Professional Engineers Act.

**Related Body Corporate** has the same meaning as in the Corporations Act.

**Related Trust Entity** means in respect of an entity which is a trustee, manager or responsible entity or a trust or managed investment scheme:

- (a) any Related Body Corporate of the trustee, manager or responsible entity;
- (b) any other trustee, manager or responsible entity of a trust or managed investment scheme (or Related Body Corporate of such an entity); and

- (c) any Controlling Unit Holder of the trust or managed investment scheme (or Related Body Corporate of such an entity).

**Related Loss** has the meaning given in **clause 62.24**.

**Relevant Amount** has the meaning given in **clause 46.2(c)**.

**Relevant Date** means:

- (a) in relation to Stage 1, the date of this deed; or
- (b) in relation to Stage 2, the date of the Stage 2 Works Deed.

**Relief Event** means:

- (a) flood, fire, explosion, lightning, cyclone, hurricane, mudslide, landslide, earthquakes, droughts declared as a state of emergency and high seas inundation;
- (b) a "terrorist act" (as defined in section 5 of the *Terrorism Insurance Act 2003* (Cth) as at the date of Contract Close);
- (c) war (declared or undeclared), armed conflict, riot, civil commotion;
- (d) ionising radiation, contamination by radioactivity, nuclear contamination, or sudden and accidental chemical or biological contamination;
- (e) failure by any Authority to carry out works or provide services to the Project Area which it is obliged by Law to carry out or provide;
- (f) any event or occurrence which causes loss or damage to the Project Works, the Project Area or the System;
- (g) any blockade or embargo;
- (h) any Industrial Action within Australia which:
  - (i) affects the construction or light rail operation or maintenance sectors or significant segments of those sectors; and
  - (ii) does not affect only the Project Area, the Project Works or the System;
- (i) during the Operations Phase, electricity required for the operation of the System not being available for use (either at all or in the necessary quantity) at the mains connection to the System Site for any reason other than because of:
  - (i) any act or omission or lack of diligence by Operator Franchisee or any of its Associates; or
  - (ii) a dispute under the electricity supply contract or any other arrangement between Operator Franchisee or its Associates and ENERGEX, regardless of how that dispute is initiated or by whom; and
- (j) during the Operations Phase, an instruction of the type described in **clause 9.7** by an Authority or any instruction by an authorised officer of the Queensland Police Service or Queensland Fire and Rescue Services to suspend the Project Activities (or any part of them) which prevents Operator Franchisee from performing a material part of its obligations.

**Relief Notice** has the meaning given in **clause 27.3(a)**.

**Remediation Package** has the meaning given in **clause 24.3(a)(iv)**.

**Remediation Works** has the meaning given in **clause 24.3(a)(ii)**.

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

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

**Required Action** has the meaning given in **clause 25.6(a)**.

**Required Rating** means a credit rating, or in the case of an insurer, a financial security rating, of:

- (a) subject to **paragraph (b)**, at least A- by Standard and Poor's (Australia) Pty Limited or A3 by Moody's Investors Service, Inc;
  - (b) in relation to third party liability insurance, at least A by Standard and Poor's (Australia) Pty Limited or A2 by Moody's Investors Service, Inc; or
  - (c) such other credit rating as the State may approve from time to time,
- or, if no rating is provided by Standard and Poor's (Australia) Pty Limited or by Moody's Investors Service, Inc, an equivalent rating with another reputable rating agency.

**Required Residual Design Life** has the meaning given in the PSR.

**Residual Design Life** has the meaning given in the PSR.

**Retail Energy Contract** means each contract entered into by Operator Franchisee for the sale of electricity for use in the System during the Operations Phase.

**Retail Energy Price** means, in respect of an Energy Category, the retail price determined in accordance with **clause 40.2**.

**Retail Opportunities** means, at each Station, retail outlets which:

- (a) supply perishable goods, print items, stationery, cash and ticket vending services to Passengers (including cafes, newsagencies, automatic teller machines and food and beverage vending machines); and
  - (b) comply with the Retail Opportunity Requirements,
- but excluding the Broadbeach South Retail Opportunity.

**Retail Opportunity Day 1 Proponent** means each of:

- (a) Vida Nueva Pty Ltd Trust Trading as Bar Ristretto ABN 45 120 631 183;
- (b) Bendigo and Adelaide Bank Limited ABN 11 068 049 178; and
- (c) The Smith's Snackfood Company Limited ABN 31 057 976 940.

**Retail Opportunity Design** means the design identified as such and forming part of attachment 2 of annexure 6, part 2 of the PSR.

**Retail Opportunity Requirements** means the requirements for Retail Opportunities specified at **clause 22.2(b)**.

**Retention Fund Account** has the meaning given in **clause 46.3(b)**.

**Returned Facility** means any discrete part of the Returned Works completed in accordance with this deed.

**Returned Facility Completion** means, in respect of a Returned Facility, the stage when the requirements set out in **clauses 19.2(a)(i) to 19.2(a)(iii)** have been met.

**Returned Facility Handover Notice** means a notice substantially in the form set out in the Certification Schedule, in relation to a Returned Facility.

**Returned Works** means any Project Works which Operator Franchisee is required to complete and hand over prior to Completion to the State, an Authority or a property owner, including the PUP Works, the Accommodation Works and the PAM (Works Completion) Returned Works and the Bridge Works (but not including the PAM (Works Completion) System Works).

**Returned Works Certificate** means a certificate substantially in the form set out in the Certification Schedule that the Returned Works in respect of the Returned Facility have (subject to **clause 19.2(a)(i)** (if applicable)) been completed in accordance with the State Project Documents.

**RFP** means the document entitled "Request for Proposals" dated 2 July 2010, being an invitation to submit a detailed proposal for the Project.

**Roadworks Defect** means a "defect" (within the meaning given to that term in an EEW Contract (Roadworks)) in the works carried out under that EEW Contract (Roadworks).

**Rolling Stock** means the LRVs and maintenance vehicles for the Project.

**Rolling Stock Contractor** means Bombardier Transportation Australia Pty Ltd.

**Rolling Stock Guarantor** means Bombardier Inc.

**Rolling Stock Side Deed** means the deed between the State, Operator Franchisee, the O&M Contractor, the O&M Guarantor, the Rolling Stock Contractor and the Rolling Stock Guarantor in relation to the Rolling Stock Sub-Contract, dated on or about the date of Financial Close.

**Rolling Stock Sub-Contract** means the rolling stock maintenance deed between the O&M Contractor and the Rolling Stock Contractor with respect to the Project, dated on or about the date of Financial Close.

**Rolling Stock Tripartite Deed** means the document named "Rolling Stock Contractor Tripartite Deed" between, among others, Operator Franchisee, the Rolling Stock Contractor and the Debt Financiers, dated on or about the date of Financial Close.

**Schedule of Rates** means the schedule of rates in appendix 2 of **schedule 6**.

**Secure Co** means GoldLinQ Securitisation Pty Limited ACN 147 811 434.

**Securitisation Agreement** means the document entitled "Securitisation Agreement" between the State, Operator Franchisee and Secure Co dated on or about the date of Financial Close.

**Securitised Lease Structure** means the Securitisation Agreement, the Payment Directions Deed, and **clause 19A** (other than **clauses 19A.2** and **19A.3**).

**Securitisation Payment** has the meaning given in the Securitisation Agreement.

**Security Interest** means a security interest under the *Personal Property Securities Act 2009* (Cth), any mortgage, charge, pledge, lien, encumbrance, assignment, hypothecation, security interest, title retention, preferential right, trust arrangement, contractual right of set-off or any other security agreement or arrangement in favour of any person.

**Security of Payment Legislation** means the *Building and Construction Industry Payments Act 2004* (Qld).

**Security Trust Deed** means the deed so entitled dated on or about the date of Financial Close between, among others, Secure Co, the Security Trustee and the each swap bank named in that document.



**Security Trustee** means, at any time, the person appointed as security trustee under the Security Trust Deed. At the date of this deed the Security Trustee is Permanent Custodians Limited ACN 001 426 384.

**Semi-Annual Performance Report** means the six monthly report prepared in accordance with, and containing the information required by, annexures 14 (Operations and Customer Service Requirements) and 17 (Contract Management Requirements) of the PSR and submitted in accordance with **clause 21.2**.

**Senior Project Group** means the group established under **clause 6.7**.

**Service Frequencies** has the meaning given in the PSR.

**Service Fee** has the meaning given under the O&M Contract.

**Service Payment** means, in respect of a month, the payment for that month (if any) in respect of the O&M Activities payable by the State to Operator Franchisee under **clause 38.4(c)**.

**Share Capital Dealing** has the meaning given in **clause 55.2**.

**Signalling Priority** has the meaning given in the Council Interface Deed.

**Significant Contract** means a contract entered into by Operator Franchisee or a Core Contractor in connection with the performance of any part of the Project Activities (other than a Core Contract):

- (a) in relation to the D&C Activities, which has a contract sum exceeding or expected to exceed \$10 million (CPI Indexed);
- (b) in relation to the O&M Activities, in respect of which the total amount payable to the relevant contractor and its Associates exceeds or is expected to exceed \$500,000 per annum (CPI Indexed); or
- (c) in relation to any aspect of the Project Activities, such other contract as the State (acting reasonably) considers should be a Significant Contract due to its importance to the Project Activities.

**Significant Contractor** means a party (other than Operator Franchisee or a Core Contractor) to a Significant Contract.

**Site Access Date** means each date specified as a "Site Access Date" in the Site Access Schedule.

**Site Access Schedule** means annexure B of the Agreement to Lease.

**Site Access Schedule (Stage 2)** has the meaning given in the Stage 2 Works Deed.

**Site Conditions** are any physical conditions and characteristics of, on, above, below or over the surface or about the Project Area, any Extra Land or their surroundings including:

- (a) natural and artificial conditions (including heritage and archaeological issues);
- (b) physical and structural conditions, including buildings, improvements, partially completed structures and in ground works;
- (c) all improvements, including any artificial things, foundations, retaining walls and other structures installed by or on behalf of the State or others;
- (d) ground water, ground water hydrology and the effects of any dewatering;

- (e) Contamination or the existence of any Hazardous Substance or thing or Waste;
- (f) topography of the Project Area, ground surface conditions and geology, including rock and sub-surface conditions or other materials encountered on, above, below or over the surface or about the Project Area and the Extra Land;
- (g) geological, geotechnical and subsurface conditions or characteristics;
- (h) underground strata;
- (i) PUP, systems and facilities, above or below ground and the location of all facilities with which such PUP and systems are connected;
- (j) the Environment, water, weather or atmospheric or climatic conditions, or the effects of the Environment, water, weather or atmospheric or climatic conditions (including rain, surface water run-off and drainage, water seepage, wind blown dust and sand, seasons and physical conditions that are a consequence of weather, atmospheric and climatic conditions); and
- (k) any latent conditions,

and include, at the date of this deed and at each Site Access Date, any early and enabling works procured by the State with third party contractors completed prior to that date.

**Site Preparation Works** means any of the following Project Works:

- (a) site clearing and grubbing;
- (b) demolition;
- (c) fencing;
- (d) preliminary earthworks and drainage, not forming part of the permanent works; and
- (e) relocation of, or modifications to, any PUP.

**Site Investigation Report** has the meaning given to that term in clause 12.3A(a).

**Site Management Plan** means a 'site management plan' under the Environmental Protection Act 1994 (Qld) relating to the lots incorporating areas 40, 40a, 40b, 40c, 41, 41a, 41b, 41c and 42 on sheet 23 of the Construction Site Plans as defined in the Site Access Schedule (Stage 2).

**Special Event** means:

- (a) during the D&C Phase, each event that may reasonably be expected to generate additional traffic, pedestrian, cyclist or public transport activity or restrict or inhibit access to the Project Area; or
- (b) in respect of an Operating Year, each event included in a Special Event Notice or Special Event Plan for that Operating Year, as amended in accordance with annexure 14 (Operations and Customer Service Requirements) of the PSR.

**Special Event Amendment Notice** has the meaning given in annexure 14 (Operations and Customer Service Requirements) of the PSR.

**Special Event Notice** has the meaning given in annexure 14 (Operations and Customer Service Requirements) of the PSR

**Special Event Plan** means, in respect of each Operating Year, the plan agreed or determined under annexure 14 (Operations and Customer Service Requirements) of the PSR.

**Special Event Type** means a Type A, Type B, Type C or Type D Special Event, as defined in annexure 14 (Operations and Customer Service Requirements) of the PSR.

**Stage 2** has the meaning given in the Stage 2 Works Deed.

**Stage 2 Construction Site** means the "Construction Site" as defined in the Stage 2 Works Deed.

**Stage 2 Financial Close** means Stage 2 Financial Close as defined in the Stage 2 Works Deed.

**Stage 2 Financial Close Adjustment Protocol** means the document of that name signed by a representative of the State, OF1 and OF2 for identification purposes, dated on or about the date of Stage 2 Financial Close.

**Stage 2 Works** has the meaning given in the Stage 2 Works Deed.

**Stage 2 Works Deed** means the "Gold Coast Light Rail – Stage 2 Works Deed" between the State and OF2 dated on or about 22 April 2016.

**Standards Australia** means the Australian standards body of that name.

**State Deed of Charge** means the deed of charge dated on or about the date of this deed between the State as chargee and Operator Franchisee as chargor.

**State Project Documents** means those Project Documents to which the State is a party and the Council Direct Deeds.

**State Refinancing Share** has the meaning given in **clause 52.9(a)**.

**State Representative** means the person appointed in accordance with **clause 6.4(a)** or any other person from time to time appointed by the State to replace that person in accordance with **clause 6.4(d)**.

**Station** means:

- (a) each of the stations listed in section 12 of part 1 of annexure 5 (Engineering Design Requirements) of the PSR (PD) and station precincts, as more particularly identified in the System Site drawings prepared by Operator Franchisee in accordance with clause 5.1(c) of the Agreement to Lease, and agreed by the State for the purposes of this definition; and
- (b) each of the stations listed in section 12 of part 1 of annexure 5 (Engineering Design Requirements) of the PSR (S2WD) and station precincts, as more particularly identified in the System Site drawings prepared by OF2 in accordance with clause 5.1(c) of the Agreement to Licence (Stage 2), and agreed by the State for the purposes of this definition.

**Station Defect** means:

- (a) any aspect of the works constructed under the EEW Contract (Station Shell) which is not in accordance with the requirements of the EEW Contract (Station Shell); or
- (b) any aspect of the works constructed under the EEW Contract (Station Hospital Canopy) which is not in accordance with the requirements of the EEW Contract (Station Hospital Canopy),

which has a significant detriment on the Project Activities or the D&C Program, provided that for the purposes of this definition, a defect (within the meaning set out in paragraph (a) or (b)) will be deemed to have a significant detriment on the Project Activities to the extent Operator Franchisee is abated under **schedule 3** as a result of that defect.

**Step-In Event** means:

- (a) an event or circumstance which:
  - (i) arises out of or in connection with the Project and poses a serious threat to, or causes or will cause material damage or material disruption to:
    - (A) the health or safety of persons;
    - (B) the Environment;
    - (C) any property; or
    - (D) the safe and secure performance of the Project Activities or the operation of the System; or
  - (ii) requires the State to exercise any of its responsibilities or functions at law; and
- (b) an Operator Franchisee Termination Event.

**Step-In Rights** means the State's rights to:

- (a) instruct Operator Franchisee under **clause 25.3**; and
- (b) take any Required Action under **clause 25.6(a)**.

**Substations** has the meaning given in the PSR.

**Sunset Date** means the date which is 12 months after the Date for Completion.

**System** means:

- (a) on and from the Date of Completion until the Date of Stage 2 Completion, the light rail system from Griffith University to Broadbeach, including all equipment, systems (including all information and communications systems), Substations, hardware and software, Stations, Rolling Stock (including spare rolling stock), track work and support structures, all civil infrastructure, stabling, operations, maintenance and depot facility and the OCC (but excluding the ETS), and which is also known as GCRT (Stage 1); and
- (b) on and from the Date of Stage 2 Completion, the light rail system from Helensvale Station to Broadbeach, including all equipment, systems (including all information and communications systems), Substations, hardware and software, Stations, Rolling Stock (including spare rolling stock), track work and support structures, all civil infrastructure, stabling, operations, maintenance and depot facility and the OCC (but excluding the ETS).

**System Documentation** means all drawings, plans, manuals, software designs, reports, computer records, specifications and any other documents (whether in hard copy or electronic form) prepared or required to be prepared or used or referred to by or on behalf of Operator Franchisee in performing the Project Activities including:

- (a) the Design Documentation;

- (b) the Project Plans;
- (c) all data recorded for the performance of the O&M Activities during the Term;
- (d) all warranties, guarantees and similar documentation (in hard copy) obtained in relation to the Project Activities;
- (e) all operational manuals;
- (f) any documented business processes or procedures; and
- (g) any documentation or programs required to be provided under **clause 51**.

**System Name** has the meaning given in **clause 23.1**.

**System Site** means the area where the as built System is located and in the case of track slab or Station areas (each from outer edge to outer edge) at top of rail level, extends 12 metres above top of rail level for each area and the lower of:

- (a) 1.5 metres below top of rail level; and
- (b) the depth of the lowest System element for the relevant area,

(other than to the extent of any registered rights granted by the State occupying that area).

**System Site Corridor** means the land described as such in the Site Access Schedule, within which the System is permitted to be constructed.

**System Site Licence** means the licence to be granted by the State to Operator Franchisee in accordance with clause 5.2 of the Agreement to Lease, substantially in the form of annexure A of the Agreement to Lease.

**System Site Licence (Stage 2)** has the meaning given in the Stage 2 Works Deed.

**System Site Sub-Licence (Stage 2)** means the licence to be granted by OF2 to Operator Franchisee in accordance with the Agreement to Sub-Licence (Stage 2), substantially in the form of annexure A to the Agreement to Sub-Licence (Stage 2).

**Tax and Taxes** includes any tax, levy, impost, duty, deduction, tax concession, rate or withholding by whatever name called levied, imposed or assessed under any Law in Australia or elsewhere including income tax, payroll tax, fringe benefits tax, superannuation guarantee surcharge, taxes on the supply of goods and services (including GST), rates, land tax, water and municipal rates, excise duties and customs duties and stamp duty together with any interest, penalty, charge, fees or other amounts payable in respect thereof.

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

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

**Temporary Change** means a change in the Signalling Priority which is not material and which is of less than 24 hours duration.

**Temporary Works** means any temporary physical works required for the purpose of performing the D&C Activities.

**Temporary Works Areas** means the land described as such in the Site Access Schedule.

**Term** means the period:

- (a) commencing on the date of Financial Close; and
- (b) ending on the earlier of:

- (i) the Expiry Date; or
- (ii) the date on which this deed is terminated.

**Termination Date** means any date of early termination of this deed in accordance with **clause 45**.

**Termination Payment** means an amount payable by the State to Operator Franchisee under **clause 45.8**, in each case calculated in accordance with **schedule 7**.

**Total Passenger Services** has the meaning given in **schedule 3**.

**Traffic Control Sequence** has the meaning given to it in the Council Interface Deed.

**Traffic Management Plan** means the Project Plan of that name as updated from time to time in accordance with **clause 8**.

**Transition Officer** means each representative of the State appointed under **clause 47.5(a)** and each representative of Operator Franchisee appointed under **clause 47.5(b)**.

**TransLink Appointment Letter** means the letter from the State to Operator Franchisee, dated on or about the date of the Stage 2 Works Deed, advising Operator Franchisee of the appointment of TransLink as the State Representative for the purposes of specific clauses of this deed (including specific sections of the PSR).

**Updated SMPs** has the meaning given to that term in **clause 12.3A(c)**.

**Upgrade** means improving machinery itself or improving computer systems/software necessary to operate the relevant machinery associated with the ETS Equipment.

**Uninsurable** means, in relation to a risk:

- (a) insurance required under **clause 43** is not available:
  - (i) in recognised international insurance markets in respect of that risk generally; or
  - (ii) to Operator Franchisee due to the capacity of insurers being filled in respect of that risk,
 

on the terms required by this deed (including where exclusions materially adversely impact on the insurability of that risk) from insurers having the Required Rating; or
- (b) the insurance premium payable for insuring that risk with such an insurer is at such a level or the terms and conditions are such that the risk is not generally being insured against by private sector providers of facilities similar to the System, in each of Australia, the United Kingdom, Canada and the United States of America,

and coverage is not available for that risk by operation of the *Terrorism Insurance Act 2003* (Cth), provided that to the extent the unavailability of insurance is caused or contributed to by:

- (c) a breach of any Project Document or any Law by Operator Franchisee or its Associates;
- (d) an act or omission of Operator Franchisee or its Associates under the relevant insurance policy;

- (e) a negligent act or omission, or wilful default, of Operator Franchisee or its Associates, whether in relation to this Project or generally;
- (f) negligence, Wilful Misconduct, breach or default of OF2, whether in relation to this Project or generally; or
- (g) an act or omission of OF2 under an insurance policy,

the risk will not be Uninsurable for the purposes of this definition.

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

**V8 Supercar Event** means the V8 Supercar event held under the *Motor Racing Events Act 1990* (Qld) or any alternative or replacement motor racing event of a similar type and location.

**V8 Supercar Event Promoter** means V8 Supercar Events Pty Ltd ACN 099 124 848 in its capacity as the promoter (as defined in the *Motor Racing Events Act 1990* (Qld)) of the V8 Supercar Event, or any alternative or replacement promoter of the V8 Supercar Event from time to time.

**V8 Supercar Event Requirements** means the following provisions of the State Project Documents in so far as they relate to the V8 Supercar Event:

- (a) **clause 9.11** (which will apply as if the V8 Supercar Event Promoter were a third party engaged or procured by the State to perform work on or in the vicinity of the Project Area during the Term in exercise of the State's rights or in compliance with the State's obligations under this deed);
- (b) **schedule 19**;
- (c) clause 2.2 of the Site Access Schedule;
- (d) the Special Conditions under the Site Access Schedule;
- (e) the V8SE Areas shown on the Construction Site Plans;
- (f) each Project Plan;
- (g) each Special Event Plan;
- (h) section 3.27 of annexure 3, part 1;
- (i) section 5.1.2 of annexure 4, part 1;
- (j) section 10.2.6 of annexure 5, part 1;
- (k) section 15 of annexure 5, part 1;
- (l) section 5.3 of annexure 11, part 1;
- (m) section 6.1.11 of annexure 14, part 1; and
- (n) the Modified V8SE Area Layout.

**Warning Notice** has the meaning given in **clause 21.7**.

**Waste** means any substance (whether solid, liquid or gaseous) that is described as waste in any EPA policy or publication, including Industrial Waste.

**Waterway** means a river, stream (including a tributary) or creek in which water flows permanently or intermittently (regardless of the frequency of flow events):

- (a) in a natural channel, whether artificially modified or not; or

- (b) in an artificial channel that has changed the course of the river, stream or creek,

and includes Beds and Banks.

**WHS Accreditation Scheme** means the accreditation scheme established by the *Fair Work (Building Industry) Act 2012* (Cth).

**WHS Legislation** means all statutes, regulations and other subordinate legislation in force or that come into force during the Term in the State of Queensland in respect of workplace health and safety, including the *Work Health and Safety Act 2011* (Qld) and the *Work Health and Safety Regulation 2011* (Qld) and all other regulations made under the *Work Health and Safety Act 2011* (Qld).

**Witness Point** means a point in a work process for which Operator Franchisee must give prior notice to the State to allow the State or its nominee to attend and witness the point in the work process should it choose to do so.

**Wilful Misconduct** means an intentional act or omission with the knowledge that the act or omission was likely to have harmful consequences but does not, for the avoidance of doubt, include any innocent or negligent act, omission, mistake or error of judgement.

**Workplace Health and Safety Management Plan** means the Project Plan of that name as updated from time to time in accordance with **clause 8**.

## 1.2 Interpretation

In this deed:

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

and the following rules apply in interpreting this deed unless the context makes it clear that a rule is not intended to apply:

- (b) if a party to this deed comprises more than one person an obligation or a liability assumed by, or a right conferred on that party binds or benefits the persons comprising that party jointly and severally;
- (c) person includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (d) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation;
- (e) a reference to a document (including this deed) is to that document as varied, novated, ratified or replaced from time to time;
- (f) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re enactments and replacements;
- (g) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (h) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this deed, and a reference to this deed includes all schedules, exhibits, attachments and annexures to it;



- (i) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (j) the term “may” when used in the context of a power or right exercisable by the State means that the State can exercise that power or right in its absolute and unfettered discretion and the State has no obligation to Operator Franchisee to do so;
- (k) subject to **clauses 16.8 and 38.14**, if a right or remedy is conferred on the State under this deed, that right or remedy is in addition to, and not in substitution of, any other right or remedy conferred on the State under this deed or otherwise according to Law;
- (l) includes in any form is not a word of limitation;
- (m) a reference to \$ or dollar is to Australian currency;
- (n) references to a submission, statement, response, notice, notification, record, report, consent, waiver, agreement, demand, evidence, details or approval (or any variations of those words), are references to a submission, statement, response, notice, notification, record, report, consent, waiver, agreement, demand, evidence, details or approval (or any variations of those words) in writing; and
- (o) references to the shareholder loans, units and shares comprising the Equity Funding or any of them, are references to those terms as defined in the Equity Documents (as applicable), as if they were subject to the terms and conditions notified to and agreed by the State prior to Financial Close but as modified, varied, amended or replaced by the parties to them (or any of them) with the consent of the State under **clause 54.1**.

### 1.3 Resolution of ambiguities

- (a) The following order of precedence applies in the event of any ambiguity, discrepancy or inconsistency in, or between, the documents comprising this deed:
  - (i) if the ambiguity, discrepancy or inconsistency is in or between the documents comprising this deed, the documents will be given precedence in accordance with the following:
    - (A) this deed (excluding the PSR); and
    - (B) the PSR;
  - (ii) to the extent **clause 1.3(a)(i)** does not apply to or resolve the ambiguity, discrepancy or inconsistency and the ambiguity, discrepancy or inconsistency is between the PSR, and the Design Documentation (as certified by the Independent Verifier under **clause 14**), the document which prescribes or requires the highest standard of compliance consistent with complying with all Approvals will take precedence;
  - (iii) to the extent **clauses 1.3(a)(i)** and **1.3(a)(ii)** do not apply or resolve the ambiguity, discrepancy or inconsistency and the ambiguity, discrepancy or inconsistency relates to the required quality or standard of the Project Works, the D&C Activities or the O&M Activities, Operator Franchisee must comply with the highest quality or standard specified or perform the more onerous obligation; and

- (iv) to the extent **clauses 1.3(a)(i) to 1.3(a)(iii)** do not apply or resolve the ambiguity, discrepancy or inconsistency and the ambiguity, discrepancy, or inconsistency is between figured and scaled dimensions, figured will prevail over the scaled dimensions.
- (b) The documents comprising this deed (including the PSR) are to be regarded as mutually explanatory and anything contained in one but not the others will be equally binding as if contained in all of them.
- (c) If an ambiguity, discrepancy or inconsistency is discovered by either Operator Franchisee or the State, that party must notify the other party within 5 Business Days of such discovery.
- (d) The State must, within 10 Business Days of receipt of a notice under **clause 1.3(c)**, instruct Operator Franchisee as to the interpretation to be followed so as to resolve the ambiguity, discrepancy or inconsistency in accordance with the rules set out in this **clause 1.3**.

## 1.4 National Public Private Partnership Policy and Guidelines

- (a) In respect of the principles and other guidance materials published from time to time by the Australian Government under its National Public Private Partnership Policy and Guidelines or the State under its Project Assessment Framework guidelines, or any related policies, however named, which deal with public and private sector partnerships and arrangements for the provision of infrastructure and O&M Activities (collectively the **Principles**):
  - (i) the State Project Documents do not purport to, and do not incorporate, the Principles;
  - (ii) to the extent any particular Principles are expressly incorporated into the provisions of the State Project Documents, they may not be, and are not required to be, incorporated in identical terms to the Principles as published by the Australian Government or the State; and
  - (iii) except to the extent expressly incorporated in the State Project Documents, the Principles will not be implied into the terms of the State Project Documents.
- (b) Operator Franchisee acknowledges and agrees to the matters stated in **clause 1.4(a)**.

## 2 Conditions Precedent

### 2.1 Conditions Precedent

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

- (a) **clause 1** (Definitions and Interpretation);
- (b) **clause 2** (Conditions Precedent);
- (c) **clause 12.1** (Physical conditions);
- (d) **clause 12.2** (Condition of the Project Area and structures);
- (e) **clause 31.5(d)** (EEW Contract variations);
- (f) **clause 32** and **schedule 14** (Pre-Agreed Modifications);

- (g) **clause 50** (Disclosure, confidentiality and publicity);
  - (h) **clause 52** (Refinancings);
  - (i) **clause 53** (Representations and warranties);
  - (j) **clause 54** (Assignment, security, ownership and restrictions on dealings);
  - (k) **clause 55** (Share capital dealings);
  - (l) **clause 57** (Dispute Resolution);
  - (m) **clause 58** (Notice of claims);
  - (n) **clause 59** (Notices);
  - (o) **clause 60** (Proportionate Liability); and
  - (p) **clause 62** (General),
- (each a **Day 1 Clause**) which will commence on the date of Contract Close.

## 2.2 Satisfaction of Conditions Precedent

- (a) The State must use all reasonable endeavours to satisfy the Conditions Precedent in rows 1(a), 9, 10 and 11 of **schedule 1**, by the relevant Condition Precedent Deadline Date.
- (b) Operator Franchisee must use all reasonable endeavours to satisfy the Conditions Precedent in rows 1(b) to 9, 11 and 12 of **schedule 1**, by the relevant Condition Precedent Deadline Date.
- (c) When a party is of the opinion that a Condition Precedent has been satisfied it must give the other party notice of its opinion.
- (d) The party receiving a notice given under **clause 2.2(c)** will notify the other party whether or not it agrees that the Condition Precedent has been satisfied, such agreement not to be unreasonably withheld.
- (e) If the party receiving a notice given under **clause 2.2(c)** fails to give the other party a notice under **clause 2.2(d)** within 5 Business Days, the Condition Precedent will be deemed to have been satisfied.
- (f) Upon the satisfaction (or waiver under **clause 2.3**) of all Conditions Precedent, the parties must promptly acknowledge in writing the fact that Financial Close has occurred.

## 2.3 Waiver of Conditions Precedent

A Condition Precedent is waived if, and only if:

- (a) in relation to the Conditions Precedent in rows 1(c), 3, 4, 5, 6 and 7 of **schedule 1**, the State notifies Operator Franchisee that the State waives that Condition Precedent; or
- (b) in relation to the Conditions Precedent in rows 1(a), 1(b), 2, 8, 9, 10, 11 and 12 of **schedule 1**, both of the parties have agreed to waive that Condition Precedent.

## 2.4 Condition Precedent Deadline Dates

- (a) If a Condition Precedent has not been satisfied (or waived under **clause 2.3**) by 11.59pm on the relevant Condition Precedent Deadline Date, then:
  - (i) in relation to the Conditions Precedent in rows 1(b), 1(c), 3, 4, 5, 6 and 7 of **schedule 1**, the State; or

- (ii) in relation to the Conditions Precedent in rows 1(a), 2, 8, 9, 10, 11 and 12 of **schedule 1**, either party,

may give notice to the other party that it is terminating this deed if the Condition Precedent in question is not satisfied (or waived under **clause 2.3**) within the period specified in its notice (which must not be less than 5 Business Days).

- (b) If a party gives notice under **clause 2.4(a)** and the Condition Precedent in question is not satisfied (or waived under **clause 2.3**) within the period specified in that notice (or such longer period as the parties may agree) then this deed will terminate upon the expiry of that period.
- (c) If this deed is terminated pursuant to this **clause 2.4** then no party will have any Claim against any other party under or in respect of the State Project Documents or in respect of any Loss suffered or incurred in connection with the Project, except for:
  - (i) the State's rights under the Probity and Process Deed; or
  - (ii) any Claim arising from or in relation to breach of a Day 1 Clause.

## 3 Term

### 3.1 Commencement date

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

### 3.2 Term

Unless terminated early or extended in accordance with this deed, the Term will end on the Expiry Date.

## 4 Objectives, primary obligations and risk allocation

### 4.1 Objectives

The State's strategic objectives for the Project include:

- (a) **(integrated transport network)**: to deliver a recognisable, accessible light rail system which significantly enhances the transport network for the Gold Coast by:
  - (i) providing a high capacity transit system between significant activity centres along the Gold Coast which could be enhanced by the delivery of Future Stages of the GCRT Network;
  - (ii) combining with existing and future bus and rail services to provide whole of network public transport outcomes; and
  - (iii) encouraging patronage growth and increasing mode shift to public transport, which could be continued through the delivery of Future Stages of the GCRT Network;
- (b) **(sustainability)**: to provide a rapid transit system with consistently high levels of service, comfort and reliability that will motivate people to use it as an alternative to car travel to reduce congestion and enhance the quality of life for future generations of the Gold Coast;

- (c) **(city changing system)**: to deliver a system which integrates with and enhances the urban environment, supporting urban regeneration and sustainable development;
- (d) **(support the city's competitiveness)**: to provide a system which will improve accessibility to key activity centres for residents and visitors, contribute to economic growth and maintain the Gold Coast's competitive advantage as a centre for tourism and emerging high value industries;
- (e) **(value for money and affordability)**: to deliver government and users of the system with value for money through a whole of life approach to delivery, optimum risk allocation and innovative solutions for the Project which are affordable for government; and
- (f) **(partnership)**: to create a partnership relationship which will benefit and enhance the reputation of the private sector and all three levels of government and which could be expanded through the delivery of Future Stages of the GCRT Network,

provided that nothing in this **clause 4.1** will expand or otherwise affect Operator Franchisee's obligations and warranties under the State Project Documents.

## 4.2 Operator Franchisee's primary obligations

- (a) Operator Franchisee must:
  - (i) finance GCRT (Stage 1);
  - (ii) design, construct, manufacture, install, test and commission the Project Works for GCRT (Stage 1);
  - (iii) handover the Returned Facilities prior to Completion;
  - (iv) operate and maintain the System during the Operations Phase in order to provide a safe, secure, continuous, reliable, effective and efficient light rail service;
  - (v) hand back the System to the State at the end of the Term; and
  - (vi) assist the State with the planning for and implementation of any Future Stages (as required),

subject to, and in accordance with, the State Project Documents.

- (b) Operator Franchisee acknowledges and agrees that, on and from Stage 2 Completion:
  - (i) Stage 2 will form part of the System and the Project for the purposes of this deed, including the O&M Activities;
  - (ii) except as expressly stated in this deed or the Stage 2 Works Deed, Operator Franchisee accepts all risks associated with Stage 2.

## 4.3 State's primary obligations

The State must:

- (a) grant Operator Franchisee the Construction Licence, Construction Licence (Special Purpose) and the System Site Licence in accordance with **clause 13.1**;
- (b) pay Operator Franchisee in accordance with **clause 38**; and

- (c) take back the System at the end of the Term in accordance with **clause 47**, subject to, and in accordance with, the State Project Documents.

#### **4.4 Project risks**

Except as expressly stated in this deed, Operator Franchisee accepts all risks associated with the Project including:

- (a) the actual cost of the Project or the performance of the Project Activities being greater than the cost estimated;
- (b) the Service Payment and other payments actually due from the State to Operator Franchisee under the State Project Documents being less than estimated;
- (c) without limiting **clause 4.4(a)**, the operating and maintenance requirements of the System being greater or less than those which are anticipated at Contract Close, including due to patronage of the System being greater or less than estimated;
- (d) the liability for Taxes being greater than estimated;
- (e) any Extra Land being necessary to enable Operator Franchisee to perform the Project Activities;
- (f) Site Conditions;
- (g) the availability or quality of any Materials to be used for the Project;
- (h) technical obsolescence occurring in relation to equipment or systems used by Operator Franchisee or its Associates in performing the Project Activities;
- (i) any Law (now or in the future) affecting Operator Franchisee's rights or obligations under the Project Documents;
- (j) Industrial Action or interference from third parties;
- (k) reliance upon or the use of the Reference Design or Concept Design;
- (l) inclement weather;
- (m) Modifications (including any Minor Works) ;
- (n) the risk that compliance with the PSR will not satisfy Operator Franchisee's obligations under the State Project Documents;
- (o) all risks associated with performing the Project Activities including any changes in the Project Activities causing delay, increased cost or decreased revenue;
- (p) delay in, or refusal by, any Authority in granting any Approval;
- (q) any other act or omission of an Authority;
- (r) the ability to obtain, operate and maintain any PUP;
- (s) the ability to obtain and maintain the Insurances that Operator Franchisee is required to obtain under **clause 43**;
- (t) the adequacy of the Insurances;
- (u) any occupational health and safety matters; and
- (v) the availability and cost of finance,

and, except as stated in this deed, Operator Franchisee will not be entitled to make any Claim against the State arising out of or in connection with such risks.

Neither the State's rights nor Operator Franchisee's liabilities or obligations whether under the State Project Documents or otherwise according to Law will be limited by the terms of this **clause 4.4**.

## PART B – SECURITY, PARTIES AND GENERAL OBLIGATIONS

### 5 Security

#### 5.1 Provision of Bonds

Operator Franchisee must provide the State with each Handback Bond required under **clause 46.3(a)** or **46.8(a)**.

#### 5.2 Release of Bonds

Subject to the State's right to have recourse to the Bonds, the State must release any Handback Bond in accordance with **clause 46.9(h)**.

#### 5.3 Requirements of Bonds

Each Bond must be:

- (a) in the form of **schedule 2** or such other form as the State may approve;
- (b) in favour of the State;
- (c) at all times provided by a bank or insurance company acceptable to the State that maintains the Required Rating and is regulated by the Australian Prudential Regulation Authority; and
- (d) payable at an office of the issuer in Brisbane (or such other place as the State may approve).

#### 5.4 Replacement of Bonds

- (a) Not less than one month before the expiry of any Bond, Operator Franchisee must procure the issue to the State of a replacement bond which must:
  - (i) have a face value equal to that of the Bond being replaced (unless the expiring Bond has been drawn upon by the State, in which case the replacement Bond will be for an amount equal to the undrawn amount of the expiring Bond); and
  - (ii) satisfy the requirements of **clause 5.3**,and the State must promptly surrender the expiring Bond to Operator Franchisee following receipt by the State of the replacement Bond.
- (b) If Operator Franchisee fails to replace any Bond when required under **clause 5.4(a)**, the State may make a demand on the Bond which is to expire.
- (c) The State may hold the proceeds of any Bond on which it makes a demand in accordance with **clause 5.4(b)** as security in lieu of the replacement Bond until the replacement Bond is replaced in accordance with **clause 5.4(a)**.
- (d) If the issuer of a Bond ceases to have the Required Rating, then Operator Franchisee must:
  - (i) promptly notify the State of that circumstance; and
  - (ii) within 20 Business Days of being requested to do so, procure the issue to the State of a replacement bond which must have a face



value equal to that of the Bond being replaced and must satisfy the requirements of **clause 5.3**,

and the State must promptly surrender the original Bond to Operator Franchisee following the issue of the replacement bond.

## **5.5 No injunction**

- (a) The State may only make a demand under a Bond in accordance with this deed.
- (b) Operator Franchisee must not, and must procure that its Associates do not, take any steps to injunct or otherwise restrain:
  - (i) the issuer of a Bond from paying the State pursuant to the Bond;
  - (ii) the State from making a demand under a Bond or receiving payment under a Bond; or
  - (iii) the State from using the proceeds of a Bond.

## **5.6 Proceeds of Bonds**

The State may use the proceeds of any Bond to reimburse it for any Loss for which Operator Franchisee is liable, and in payment of any other monies owing by Operator Franchisee to the State (including monies owing under any indemnity).

Any proceeds remaining will be repaid to Operator Franchisee in return for a replacement bond for the amount repaid and which satisfies the requirements of **clause 5.3**. The replacement bond will be regulated by this deed as if it were the Bond the State made the demand on.

## **5.7 No interest**

The State is not obliged to pay Operator Franchisee interest on a Bond or the proceeds of a Bond.

## **5.8 No trust**

If the State makes a demand under a Bond, it does not hold the proceeds on trust for Operator Franchisee.

## **5.9 Quantum of security**

The parties acknowledge and agree that this deed is not subject to the condition that would otherwise be implied by section 67K(2) of the *Queensland Building and Construction Commission Act* (Qld). Section 67K(2) implies a condition into building contracts that the total value of security and retention moneys is not to be more than 5% of the contract price, unless the contract expressly provides otherwise. Under this deed, the quantum of security moneys to be provided by Operator Franchisee is governed by this **clause 5**.

*Initialled for and on behalf of Operator Franchisee:* \_\_\_\_\_

*Initialled for and on behalf of the State:* \_\_\_\_\_

# **6 Project participants roles and representatives**

## **6.1 The State as an Authority**

- (a) Subject to **clause 6.1(b)**, Operator Franchisee acknowledges and agrees that:

- (i) nothing in the State Project Documents will in any way restrict or otherwise affect the unfettered discretion of the State to exercise any of its statutory functions or powers; and
  - (ii) anything the State does, fails to do, or purports to do, pursuant to its statutory functions or powers, will be deemed not to be an act or omission of the State under a State Project Document and will not entitle Operator Franchisee to make any Claim against the State arising out of the subject matter of any State Project Document.
- (b) **Clause 6.1(a)** does not, however, limit any liability which the State would have had to Operator Franchisee under any State Project Document, to the extent that it is expressly provided for in that State Project Document, or as a result of a breach by the State of a term of any State Project Document but for **clause 6.1(a)**.

## 6.2 Other Authorities

Operator Franchisee acknowledges that:

- (a) it bears the risk of Authorities exercising their statutory functions and powers in a manner which disrupts, interferes with or otherwise affects the Project Activities, except as otherwise stated in this deed; and
- (b) the State, in performing any of its duties and obligations, is not obliged to exercise any power, function or duty within the responsibility of any other Authority or to influence, override or direct any other Authority in the proper exercise of its legal duties and functions.

## 6.3 Reasonable endeavours

If the State is required under the terms of a State Project Document to exercise best or reasonable endeavours, Operator Franchisee acknowledges that:

- (a) the State will only be obliged to bring about the relevant outcome to the extent that it is reasonably able to do so, having regard to its resources and other responsibilities;
- (b) the State cannot guarantee the relevant outcome; and
- (c) the State, by undertaking to exercise best or reasonable endeavours, does not agree to:
  - (i) interfere with or influence the exercise by itself or any other person of a statutory power or discretion;
  - (ii) exercise a power or discretion or otherwise act in a manner that promotes the objectives and expected outcomes of the Project Documents if the State regards that exercise as not in the public interest;
  - (iii) develop policy or legislate by reference only or predominantly to the interests of the Project Documents;
  - (iv) procure legislation in the future in a manner that is only consistent with the objectives and expected outcomes of the Project Documents; or
  - (v) act in any other way that the State regards as not in the public interest.

## 6.4 State Representative

- (a) The State must ensure that a person is appointed as its representative for all purposes under the State Project Documents with full power and authority to

act for, on behalf of and to bind the State under the State Project Documents (**State Representative**).

- (b) The State Representative will carry out the functions of the State under the State Project Documents as the agent of the State (and not as an independent verifier, rail safety engineer, reviewer, certifier, assessor or valuer).
- (c) Operator Franchisee must comply with all directions, instructions and other notices given by the State Representative under the State Project Documents.
- (d) The State may at any time by notice to Operator Franchisee replace the State Representative with another person.
- (e) Operator Franchisee acknowledges that the State has, or will, appoint TransLink as State representative for the purposes of particular clauses of the State Project Documents as set out in the TransLink Appointment Letter. If TransLink becomes a separate legal entity to DTMR at any time during the Term, Operator Franchisee will, promptly on request by the State, execute a direct deed with TransLink, substantially in the form set out in part D of **schedule 13**.

## **6.5 Appointees of State Representative**

The State Representative may:

- (a) by notice to Operator Franchisee appoint persons to exercise any of the functions of the State under the State Project Documents;
- (b) not appoint more than one person to exercise a specific function at any one time;
- (c) revoke any appointment under **clause 6.5(a)** by notice to Operator Franchisee; and
- (d) continue to exercise a function under a State Project Document despite appointing another person to exercise the function under **clause 6.5(a)** (provided that any directions of the State Representative take precedence over those of any representatives to the extent of any inconsistency).

All references in the State Project Documents to the State include a reference to the State Representative or any appointee under **clause 6.5(a)**.

## **6.6 Operator Franchisee Representative**

- (a) Operator Franchisee must ensure that at all times a natural person is appointed as its representative for all purposes under the State Project Documents with full power and authority to act for, on behalf of and to bind Operator Franchisee under the State Project Documents (**Operator Franchisee Representative**).
- (b) Any communication with or information given to the Operator Franchisee Representative by or on behalf of the State will be deemed to be made or given to Operator Franchisee.
- (c) Operator Franchisee may revoke the authority or appointment of the Operator Franchisee Representative at any time by notice to the State, provided that it appoints another natural person as an alternate or substitute Operator Franchisee Representative by notice to the State.

- (d) Operator Franchisee must ensure that the Operator Franchisee Representative is available at all reasonable times for communications with the State.

## **6.7 Senior Project Group**

- (a) **(Composition):** A Senior Project Group must be established consisting of:
  - (i) the State Representative;
  - (ii) the Operator Franchisee Representative;
  - (iii) 2 other persons from Operator Franchisee, and 2 other persons from the State, holding positions more senior than the persons referred to in **clause 6.7(a)(i)** and **6.7(a)(ii)** (as applicable to the relevant party); and
  - (iv) such other persons as the parties agree on.
- (b) **(Delegates):** The persons referred to in **clause 6.7(a)** may appoint delegates (of an equivalent level of seniority or experience) to attend Senior Project Group meetings in their absence.
- (c) **(Objectives):** The objectives of the Senior Project Group are to:
  - (i) facilitate the development of a long term, collaborative working relationship between the parties;
  - (ii) monitor the overall progress of the Project;
  - (iii) assist with the resolution of any matters referred to the Senior Project Group by a party;
  - (iv) review each D&C Phase Progress Report provided by Operator Franchisee during the D&C Phase;
  - (v) review each Monthly Performance Report and Semi-Annual Performance Report provided by Operator Franchisee during the Operations Phase; and
  - (vi) review and consider such other matters relating to the Project as are agreed between the parties from time to time.
- (d) **(Frequency of meetings):** The Senior Project Group will meet monthly during the D&C Phase and quarterly during the Operations Phase, unless the parties agree otherwise.
- (e) **(Administration):** The State Representative will convene and chair meetings of the Senior Project Group and will take the minutes of all meetings and distribute the minutes to the members of the Senior Project Group.
- (f) **(State may require certain representatives to attend):** At the State's request, Operator Franchisee must procure the attendance of representatives of any Core Contractor, any Significant Contractor or the Debt Financiers at meetings of the Senior Project Group as observers. The State is also entitled to have representatives of the State or any Authority attend meetings as observers.
- (g) **(Operator Franchisee may bring certain representatives):** Operator Franchisee may, with the State's consent (acting reasonably), have a representative of each Core Contractor attend any meeting of the Senior Project Group as an observer.

- (h) **(No legal effect):** The Senior Project Group is consultative and advisory only and nothing which occurs during a meeting of the Senior Project Group will:
  - (i) affect the rights or obligations of the State, Operator Franchisee and Operator Franchisee's Associates under the State Project Documents;
  - (ii) to the extent permitted by Law, entitle Operator Franchisee or its Associates to make any Claim against the State;
  - (iii) relieve Operator Franchisee or its Associates from, or alter or affect, Operator Franchisee's or its Associates' liabilities or responsibilities whether under the State Project Documents or otherwise according to Law;
  - (iv) prejudice the State's rights against Operator Franchisee or its Associates whether under the State Project Documents or otherwise according to Law; or
  - (v) be construed as a direction by the State to do or not do anything.

## 6.8 Annual relationship review

- (a) As soon as practicable after the end of each calendar year, the State and Operator Franchisee must conduct an annual relationship review.
- (b) The annual relationship review must be designed to:
  - (i) review the health and quality of the working relationship between the parties during the previous year; and
  - (ii) identify opportunities to improve the working relationship between the parties during the forthcoming year.

## 6.9 Attendance at other groups and forums

- (a) Operator Franchisee must attend and participate in various groups and forums (in addition to the Senior Project Group) as required by the PSR.
- (b) Notwithstanding the attendance and participation requirements specified in the PSR, the State may at any time direct Operator Franchisee that it is no longer required to attend or participate in any group or forum.
- (c) At any time during the Term, if Operator Franchisee considers that its attendance or participation in a particular group or forum in accordance with the PSR, is no longer necessary or desirable for the Project, the integration of the Project with the broader community or the State's objectives for the Project, Operator Franchisee may request that the State issue a direction under **clause 6.9(b)**.

# 7 Independent Verifier and Proof Engineer

## 7.1 Independent Verifier

- (a) **(Appointment):** The Independent Verifier will be engaged on the terms of the Independent Verifier Deed.
- (b) **(Role):** The role and functions of the Independent Verifier are set out in the Independent Verifier Deed. They include:

- (i) without limiting the rights or obligations of the parties under the State Project Documents, independently verify in accordance with the Independent Verifier Deed that:
    - (A) the Design Documentation; and
    - (B) the manufacture, construction, installation, supply and commissioning of the Project Works;
 comply with the requirements of the State Project Documents;
  - (ii) make determinations on matters that this deed (including the PSR) expressly requires be determined by the Independent Verifier; and
  - (iii) issue certificates in accordance with this deed.
- (c) **(Independent Verifier costs):**
- (i) Subject to **clauses 7.1(c)(ii) and 7.1(c)(iii)**, the State will pay the IV Fee (as adjusted from time to time under section 3 of schedule 1 of the Independent Verifier Deed) and any disbursements for which the Independent Verifier is entitled to be reimbursed under the Independent Verifier Deed.
  - (ii) Operator Franchisee must pay to the State, in full on demand from time to time:
    - (A) any adjustment to the IV Fee; and
    - (B) any disbursements for which the Independent Verifier is entitled to be reimbursed under the Independent Verifier Deed,
 as a result of:
    - (C) an Operator Franchisee initiated Modification or a change to the IV Services directed by Operator Franchisee under clause 8 of the Independent Verifier Deed;
    - (D) re-verification of Design Documentation packages due to changes in Design Documentation; or
    - (E) significant delay to the performance of the IV Services having regard to the D&C Program.
  - (iii) Operator Franchisee must pay to the State, on demand from time to time, 50% of any disbursements for which the Independent Verifier is entitled to be reimbursed under the Independent Verifier Deed, in relation to the Independent Verifier's role in any dispute resolution process under **clause 57**.
- (d) **(Independence):** The Independent Verifier is obliged to act independently of the State, Operator Franchisee and any of their Associates and is not an employee, agent, contractor or consultant of the State or Operator Franchisee.
- (e) **(No approval):** Subject to **clause 18.3**, a certificate given by the Independent Verifier will not:
- (i) constitute an approval by the State of Operator Franchisee's performance of its obligations under the State Project Documents;
  - (ii) be taken as an admission or evidence that the item verified or certified by the Independent Verifier complies with the State Project Documents; or

- (iii) prejudice any rights or powers of the State whether under the State Project Documents or otherwise according to Law.
- (f) **(Determinations):** Subject to **clause 18.3(b)**, no determination of the Independent Verifier will be final and binding on the parties and if the parties wish to dispute any determination of the Independent Verifier (other than a determination referred to in **clause 18.3(b)**), they must do so in accordance with **clause 57**.
- (g) **(Operator Franchisee responsibility):**
  - (i) Operator Franchisee must comply with the Hold Point and Witness Point procedures required by this deed, including as set out in the PSR or inserted in the Project Plans by the Independent Verifier pursuant to **clause 7.1(h)(iii)**.
  - (ii) The Independent Verifier undertaking its role, functions and responsibilities as contemplated under the State Project Documents will not limit or relieve Operator Franchisee of any of its obligations under the State Project Documents.
- (h) **(Assistance):** The State and Operator Franchisee must provide the Independent Verifier with all information and documents and allow the Independent Verifier:
  - (i) to attend meetings (including any Senior Project Group meetings);
  - (ii) access to all premises; and
  - (iii) to insert Hold Points or Witness Points in the Project Plans and designate the nominated authority to release the Hold Points,
 all as may be:
  - (iv) necessary or reasonably required by the Independent Verifier or the State, to allow the Independent Verifier to perform its obligations under the Independent Verifier Deed; or
  - (v) reasonably requested by the Independent Verifier or reasonably directed by the State.
- (i) **(State right to comment):** The State may provide comments to the Independent Verifier in respect of the Project Activities.
- (j) **(Replacement or new appointment):** If:
  - (i) the Independent Verifier Deed is terminated in accordance with its terms; or
  - (ii) the Independent Verifier ceases to act as the Independent Verifier for the purposes of the State Project Documents,
 the State and Operator Franchisee must engage another person to act as Independent Verifier on substantially the same terms as the Independent Verifier Deed, provided that the new Independent Verifier must:
  - (iii) be reasonably acceptable to the State and Operator Franchisee;
  - (iv) have appropriate qualifications and experience (including registration as a Registered Professional Engineer to the extent required under the Professional Engineers Act); and
  - (v) have no interest or duty which conflicts or may conflict with its functions as an Independent Verifier.

Any new Independent Verifier appointed will be bound by the exercise of any function or the making of any decision by the previous Independent Verifier which would have been binding on the previous Independent Verifier but, is not bound by the exercise of any functions by the previous Independent Verifier which would not have been binding on the previous Independent Verifier.

## 7.2 Proof Engineer

- (a) **(Appointment):** Operator Franchisee must:
  - (i) engage (or procure that the D&C Contractor engages on Operator Franchisee's behalf) a Proof Engineer; and
  - (ii) ensure that if the engagement of the Proof Engineer is terminated or otherwise ceases, it engages another person to act as Proof Engineer.
- (b) **(Approval):** A Proof Engineer appointed under **clause 7.2(a)** must:
  - (i) be reasonably acceptable to the State;
  - (ii) be a different person to the Qualified Fire Engineer and be independent of the fire and life safety design of the Project Works;
  - (iii) have appropriate qualifications and experience (including registration as a Registered Professional Engineer to the extent required under the Professional Engineers Act); and
  - (iv) be appointed under a deed of appointment which is reasonably acceptable to the State.
- (c) **(Compliance and Assistance):** Operator Franchisee must ensure that the Proof Engineer:
  - (i) complies with the requirements set out in this deed (including the PSR) relevant to the role of Proof Engineer and the terms of its deed of appointment; and
  - (ii) provides such information, assistance and documentation to the Independent Verifier, and gives such access to the Independent Verifier (and any person authorised by the Independent Verifier), as may be reasonably required by the Independent Verifier for the purpose of performing its role and functions under the State Project Documents.
- (d) **(Operator Franchisee responsibility):** The Proof Engineer undertaking its role, functions and responsibilities as contemplated under the State Project Documents will not limit or relieve Operator Franchisee of any of its obligations under the State Project Documents.

## 7.3 Qualified Fire Engineer

- (a) **(Appointment):** Operator Franchisee must:
  - (i) engage (or procure that the D&C Contractor engages on Operator Franchisee's behalf) a Qualified Fire Engineer; and
  - (ii) ensure that if the engagement of the Qualified Fire Engineer is terminated or otherwise ceases, it engages another person to act as Qualified Fire Engineer.
- (b) **(Approval):** A Qualified Fire Engineer appointed under **clause 7.3(a)** must:
  - (i) be reasonably acceptable to the State;



- (ii) is a different person to the Proof Engineer and is independent of the fire and life safety design of the Project Works;
  - (iii) be (or if the QFE is not an individual, its representatives must be) an appropriately qualified and experienced fire safety engineer, (including being registered on the National Professional Engineers Register (NPER) in the specific area of Practice of Fire Safety Engineering), with suitable experience related to underground Station fire engineering; and
  - (iv) be appointed under a deed of appointment which is reasonably acceptable to the State.
- (c) **(QFE Direct Deed):** If requested by Operator Franchisee, the State will enter into a direct deed with the Qualified Fire Engineer, substantially in the form set out in part C of **schedule 13**.
- (d) **(Compliance and Assistance):** Operator Franchisee must ensure that the Qualified Fire Engineer:
- (i) complies with the requirements set out in this deed (including the PSR) relevant to the role of Qualified Fire Engineer and the terms of its deed of appointment; and
  - (ii) provides such information, assistance and documentation to the Independent Verifier, and gives such access to the Independent Verifier (and any person authorised by the Independent Verifier), as may be reasonably required by the Independent Verifier for the purpose of performing its role and functions under the State Project Documents.
- (e) **(Operator Franchisee responsibility):** The Qualified Fire Engineer undertaking its role, functions and responsibilities as contemplated under the State Project Documents will not limit or relieve Operator Franchisee of any of its obligations under the State Project Documents.

### 7.3A Building Surveyor (BCA Consultant)

- (a) **(Appointment):** Operator Franchisee must:
- (i) engage (or procure that the D&C Contractor engages on Operator Franchisee's behalf) a Building Surveyor; and
  - (ii) ensure that if the engagement of the Building Surveyor is terminated or otherwise ceases, it engages another person to act as Building Surveyor.
- (b) **(Approval):** A Building Surveyor appointed under **clause 7.3A(a)** must:
- (i) be reasonably acceptable to the State;
  - (ii) be independent of the Operator Franchisee and its Associates and suitably qualified;
  - (iii) be independent to the Proof Engineer and Qualified Fire Engineer;
  - (iv) be (or if not an individual, its representatives must be) an appropriately qualified building surveyor licensed by the QBCC; and
  - (v) be experienced in the certification of the design and the construction of similar buildings and associated infrastructure.

- (c) **(Building Surveyor Direct Deed):** If requested by Operator Franchisee, the State will enter into a direct deed with the Building Surveyor, substantially in the form set out in part C of **schedule 13**.
- (d) **(Compliance and Assistance):** Operator Franchisee must ensure that the Building Surveyor:
  - (i) complies with the requirements set out in this Deed (including the PSR) relevant to the role of Building Surveyor and the terms of its deed of appointment; and
  - (ii) provides such information, assistance and documentation to the Independent Verifier, and gives such access to the Independent Verifier (and any person authorised by the Independent Verifier), as may be reasonably required by the Independent Verifier for the purpose of performing its role and functions under the State Project Documents.
- (e) **(Operator Franchisee responsibility):** The Building Surveyor undertaking its role, functions and responsibilities as contemplated under the State Project Documents will not limit or relieve Operator Franchisee of any of its obligations under the State Project Documents.

#### **7.4 Designer Direct Deed**

If requested by Operator Franchisee, the State will enter into a direct deed with the Designer, substantially in the form set out in part C of **schedule 13**.

## **8 Project Plans**

### **8.1 Purpose**

The intended purposes of the Project Plans include:

- (a) to demonstrate to the State that Operator Franchisee has the understanding, capacity and capability at all times to perform the Project Activities safely and in accordance with the requirements of the State Project Documents;
- (b) to ensure that the System complies with the requirements of the State Project Documents;
- (c) to define responsibilities, resources and processes for planning, performing and verifying that the Project Activities satisfy the requirements of the State Project Documents; and
- (d) to allow the State to understand how Operator Franchisee will achieve the performance outcomes specified in the State Project Documents, the objectives set out in **clause 4.1** and fulfil its obligations under the State Project Documents.

### **8.2 Preparation of Project Plans**

- (a) **(Development of Project Plans):** Operator Franchisee must develop and finalise the Project Plans in accordance with the PSR and this **clause 8.2**, and must obtain the Independent Verifier's approval under **clause 8.4(c)(ii)** within the timeframe specified in the PSR (and must, in each case, ensure that it allows sufficient time for the process in **clause 8.4**, including any resubmission of the Project Plan as may be required under **clause 8.4**).

- (b) **(Update of Project Plans):** Operator Franchisee must, from Financial Close (or such later date as a Project Plan is first required to be approved under **clause 8.4(c)(ii)** in accordance with the PSR) until the end of the Term (or such earlier date contemplated by the PSR):
  - (i) regularly review (at least every 6 months or more often if required by the PSR or requested by the State or, during the D&C Phase, the Independent Verifier); and
  - (ii) if necessary, expeditiously and diligently update the Project Plan to reflect changes to any information contained in those plans and to take account of events or circumstances which will, or may, affect the Project Activities, including:
    - (A) Modifications (including any Minor Works);
    - (B) Changes in Law;
    - (C) the commencement of new phases or stages of design, manufacture, construction, testing or commissioning as shown in the D&C Program; and
    - (D) any breach or potential breach of the warranty in **clause 8.3**.
- (c) **(General obligations):** Operator Franchisee must:
  - (i) ensure that each Project Plan (including each updated Project Plan) complies with the requirements of the State Project Documents, including any time frame or other requirements specified in the PSR;
  - (ii) not update any Project Plan in a manner which makes the State's obligations under the State Project Documents more onerous or increases any liability or potential liability of the State or its Associates in connection with the Project Works or the System; and
  - (iii) ensure that each Project Plan developed and updated under this **clause 8.2**:
    - (A) is based upon;
    - (B) imposes standards, levels of service, scope and requirements that are equal to, greater than or higher than those imposed by; and
    - (C) provides an equal or greater level of detail than, the initial version of that Project Plan contained in the PSR and any version of that Project Plan which has been submitted under **clause 8.4(a)**, and in respect of which neither the State nor the Independent Verifier has given a notice of non-compliance under **clause 8.4(b)(ii)** or **8.4(c)(ii)**.

### 8.3 Fitness for purpose

Operator Franchisee warrants that each Project Plan will at all times during the Term be Fit for Purpose.

### 8.4 Review of Project Plans

- (a) **(Submission of Project Plans):** Operator Franchisee must promptly submit each Project Plan developed or updated under **clause 8.2** to the State and, during the D&C Phase, the Independent Verifier.
- (b) **(State review):** The State may:

- (i) review any Project Plan submitted under **clause 8.4(a)**; and
  - (ii) within 10 Business Days of the submission of the Project Plan, notify Operator Franchisee and, during the D&C Phase, the Independent Verifier, if, in the opinion of the State, the Project Plan does not comply with the requirements of the State Project Documents, together with the reasons why.
- (c) **(Independent Verifier review)**: During the D&C Phase, the Independent Verifier must:
  - (i) review each Project Plan submitted under **clause 8.4(a)** (taking into account any comments provided by the State under **clause 8.4(b)**); and
  - (ii) within 15 Business Days of the submission of the Project Plan, either:
    - (A) notify Operator Franchisee and the State that it considers the Project Plan does not comply with the State Project Documents and provide reasons (including detailed particulars of the alleged non-compliance); or
    - (B) approve the Project Plan, by notice to Operator Franchisee and the State.
- (d) **(Amendment of Project Plans)**: If Operator Franchisee receives:
  - (i) during the D&C Phase, a notice from the Independent Verifier under **clause 8.4(c)(ii)** stating that the Independent Verifier does not consider that the Project Plan complies with the requirements of the State Project Documents; or
  - (ii) during the Operations Phase, a notice from the State under **clause 8.4(b)(ii)** stating that the State does not consider that the Project Plan complies with the requirements of the State Project Documents,

Operator Franchisee must, within 20 Business Days, submit a revised Project Plan to the State and, during the D&C Phase, the Independent Verifier, and this **clause 8.4** will reapply to the revised Project Plan.
- (e) For the purposes of a review under this **clause 8.4**, if requested by the State or the Independent Verifier, Operator Franchisee must:
  - (i) make available to the State and, during the D&C Phase, the Independent Verifier, all relevant records held by Operator Franchisee and its Associates in relation to the Project Plan (including, in relation to the Employee Relations Management Plan, all industrial relations management records of Operator Franchisee and its Associates); and
  - (ii) provide all reasonable assistance to the State and, during the D&C Phase, the Independent Verifier, during the review including attending reviews and meetings.

## 8.5 Implementation and compliance

- (a) Operator Franchisee must implement and comply with each Project Plan which has been:
  - (i) approved by the Independent Verifier under **clause 8.4(c)(ii)**; or
  - (ii) submitted under **clause 8.4(a)** and is not the subject of a notice of non-compliance under **clause 8.4(b)(ii)** or **8.4(c)(ii)** (as applicable).

- (b) Operator Franchisee must allow the State and Independent Verifier access to the Project Plans and any related contract management systems of Operator Franchisee to enable monitoring and auditing by the State and Independent Verifier, provided that the State or Independent Verifier (as applicable) will carry out such inspection, monitoring and auditing in a manner which does not unreasonably interfere with the Project Activities.

## **8.6 No liability**

- (a) The State does not assume or owe any duty of care to Operator Franchisee to review, or if it does review it, in reviewing, any Project Plan submitted by Operator Franchisee for errors, omissions or compliance with the State Project Documents.
- (b) No review, failure to review, provision of comments or approval by, or opinion of, the State or Independent Verifier under this **clause 8.4** will:
  - (i) preclude the State or Independent Verifier from subsequently asserting that a Project Plan does not comply with the requirements of the State Project Documents;
  - (ii) relieve Operator Franchisee from, or alter or affect, Operator Franchisee's liabilities, obligations or responsibilities whether under the State Project Documents or otherwise according to Law; or
  - (iii) prejudice or limit the State's rights against Operator Franchisee whether under the State Project Documents or otherwise according to Law.

## **8.7 No relief**

Operator Franchisee will not be relieved from compliance with any of its obligations under the State Project Documents or from any of its liabilities whether under the State Project Documents or otherwise according to Law as a result of:

- (a) compliance by Operator Franchisee with its obligations under this **clause 8** including the implementation of, and compliance with any Project Plans; or
- (b) any failure by the State or the Independent Verifier, or anyone acting on behalf of the State or the Independent Verifier, to detect any non-compliance including if any failure arises from any negligence on the part of the State, the Independent Verifier or any other person.

Compliance by Operator Franchisee with its obligations under this **clause 8** is not evidence of compliance by Operator Franchisee with its other obligations under the State Project Documents.

# **9 General obligations applying to all the Project Activities**

## **9.1 All work included**

Operator Franchisee has allowed for the provision of all work and materials necessary for the Project Activities, whether or not expressly stated in the State Project Documents. All such work and materials:

- (a) must be undertaken and provided by Operator Franchisee at its own cost;
- (b) must form part of the Project Activities and will not constitute a Modification; and

- (c) will not entitle Operator Franchisee to make a Claim except as provided for in this deed.

## 9.2 Protection of persons and property

Operator Franchisee must:

- (a) perform the Project Activities safely and so as to protect persons and property; and
- (b) keep the Project Area in a good and safe condition so that it does not present a risk to the health and safety of any person and is suitable for its proposed use.

If the State considers there is a risk of injury to people or damage to property arising from the Project Activities, the State may direct Operator Franchisee to change its manner of working or to cease working to the extent necessary to remove the risk, and Operator Franchisee must comply with any such direction at its cost.

## 9.3 Workplace health and safety

(a) **(WHS obligations):** Operator Franchisee must:

- (i) in performing the Project Activities, comply with (and procure that each of its Associates complies with) all Laws and other requirements of the State Project Documents for occupational health and safety including the WHS Legislation;
- (ii) at all times comply with its Workplace Health and Safety Management Plan; and
- (iii) keep the State fully informed of all occupational health and safety incidents arising out of, or in any way in connection with, the Project Activities as soon as possible after they occur.

(b) **(Commonwealth WHS Accreditation Scheme)** Operator Franchisee:

- (i) warrants that the D&C Contractor is accredited under the WHS Accreditation Scheme;
- (ii) must procure that the D&C Contractor, subject to the exclusions specified in the *Fair Work (Building Industry Accreditation Scheme) Regulations 2005*, maintains accreditation under the WHS Accreditation Scheme while building work (as defined in section 5 of the *Fair Work (Building Industry) Act 2012*) is carried out; and
- (iii) must procure that the D&C Contractor complies with all conditions of the WHS Accreditation Scheme accreditation.

## 9.4 Principal contractor

(a) Operator Franchisee acknowledges that:

- (i) the State has (depending on the circumstances) a range of different potential obligations to ensure the safety of persons on the Project Area;
- (ii) the State may be subject to civil claims or criminal prosecution if Operator Franchisee does not adequately ensure the health and safety of persons while performing the Project Activities;

- (iii) the State has provided Operator Franchisee with sufficient information on risks associated with the Project Area and the Project Activities to enable Operator Franchisee to properly assess and control those and other risks; and
  - (iv) Operator Franchisee has control over all aspects of the Project Activities and safety issues at the Project Area.
- (b) In this **clause 9.4** the terms "principal contractor" and "construction work" have the same meanings assigned to those terms under the WHS Legislation.
- (c) Without limiting Operator Franchisee's obligations under any other provision of the State Project Documents:
  - (i) from the date on which Operator Franchisee is given access to a part of the Construction Site in accordance with this deed:
    - (A) the State will appoint MacDow as the principal contractor under the WHS Legislation in respect of all construction work carried out by or on behalf of the State on such part of the Construction Site;
    - (B) Operator Franchisee must procure that MacDow discharges the responsibilities imposed on the principal contractor under the WHS Legislation; and
    - (C) MacDow's appointment as principal contractor will be effective notwithstanding that Operator Franchisee, the D&C Contractor or MacDow does not have exclusive possession of the Construction Site; and
  - (ii) if Operator Franchisee is required to carry out any construction work during the Operations Phase:
    - (A) the State appoints Operator Franchisee (or will appoint the O&M Contractor if Operator Franchisee so requests and the State agrees to do so) as the principal contractor under the WHS Legislation in respect of all construction work carried out by or on behalf of the State on such land;
    - (B) Operator Franchisee (or the O&M Contractor (as applicable)) will discharge the responsibilities imposed on the principal contractor under the WHS Legislation; and
    - (C) Operator Franchisee's (or the O&M Contractor's (as applicable)) appointment as principal contractor will be effective notwithstanding that Operator Franchisee or the O&M Contractor does not have exclusive possession of the land on which the construction work is undertaken.
- (d) If required by the State, Operator Franchisee must:
  - (i) during the D&C Phase, procure that MacDow promptly enters into a deed (in form and substance reasonably acceptable to the State) with any landowner of a part of the Construction Site appointing MacDow as principal contractor; and
  - (ii) during the Operations Phase, must (or if the O&M Contractor is appointed as principal contractor under **clause 9.4(c)(ii)(A)**, must procure that the O&M Contractor) promptly enter into a deed (in form

and substance reasonably acceptable to the State) with any landowner of any land on which Operator Franchisee is required to carry out construction work during the Operations Phase, appointing Operator Franchisee or the O&M Contractor (as applicable) as principal contractor.

- (e) Operator Franchisee:
  - (i) subject to **clauses 42.2 to 42.4**, must attend to all applicable lodgements required and pay and indemnify and keep indemnified the State against all fees, fines and other amounts becoming payable under or in connection with the WHS Act (including in connection with its appointment as principal contractor);
  - (ii) is authorised to exercise such authority as is necessary to enable it (or MacDow or the O&M Contractor (as applicable)) to discharge the responsibilities imposed on a principal contractor by the WHS Legislation;
  - (iii) must ensure that each of its Associates complies with their respective obligations under the WHS Legislation; and
  - (iv) must in carrying out the Project Activities exercise and fulfil, and must procure that MacDow or O&M Contractor (as applicable, if that party is appointed the principal contractor) exercises and fulfils, all of the functions and obligations of a principal contractor under the WHS Legislation so as to ensure that the responsibilities imposed on a principal contractor by the WHS Legislation are discharged.
- (f) To the extent not prohibited by Law and, subject to **clauses 42.2 to 42.4**, Operator Franchisee must indemnify the State against any Claim or Loss suffered or incurred by the State arising out of or in connection with the failure of Operator Franchisee, or MacDow or O&M Contractor (as applicable, to the extent that party is appointed the principal contractor), to:
  - (i) exercise or fulfil the functions and responsibilities of the principal contractor under the WHS Legislation; or
  - (ii) comply with its obligations under **clauses 9.3 and 9.4**.
- (g) MacDow's appointment as principal contractor in respect of a part of the Construction Site pursuant to **clause 9.4(c)(i)(A)** and its obligations under **clause 9.4(c)(i)** to exercise and fulfil the function and obligations of a principal contractor, ends upon the earlier of:
  - (i) the termination of this deed;
  - (ii) the Date of Completion; and
  - (iii) with respect to any Returned Works, the date on which they are handed over to any relevant Authority or property owner.

## 9.5 Prevention of nuisance and interference

In performing the Project Activities, Operator Franchisee must:

- (a) prevent nuisance;
- (b) prevent unreasonable noise, dust, vibration and disturbances; and
- (c) not interfere with, and not interfere with access to, any premises, car parks, roads or pedestrian ways or operations or activities carried out on or



adjacent to the Project Area, except to the extent that such interference is required for purposes of public health or safety and is not reasonably avoidable in the performance of the Project Activities in accordance with the State Project Documents.

## **9.6 Traffic management**

- (a) During the D&C Phase, Operator Franchisee:
  - (i) is responsible for the control, direction and protection of all road and pedestrian traffic in any way affected by the carrying out of the Project Activities; and
  - (ii) must manage all such traffic to minimise any delays and disruptions to vehicular and pedestrian access and the movement of road traffic.
- (b) At all times during the Term, Operator Franchisee must comply with:
  - (i) the Site Access Schedules, the Council Direct Deeds, the QR Direct Deed, the Traffic Management Plan, the PSR and the PSR (as defined in the Stage 2 Works Deed); and
  - (ii) the directions, instructions, requirements or conditions of any relevant Authority or the State,with respect to management of vehicular and pedestrian access and traffic management and safety.

## **9.7 Instructions from Authorities**

Notwithstanding any other provision of the State Project Documents, Operator Franchisee:

- (a) must not restrict, close, interfere with or obstruct the free flow of the public in public spaces, parks, pedestrian ways or pedal cycle paths, or traffic on any lane or shoulder of the existing road network, including Accommodation Works Areas, contrary to the instructions of the Queensland Police or any other Authority; and
- (b) in restricting, closing, interfering with or obstructing the free flow of the public in public spaces or parks, pedestrian ways or pedal cycle paths, or traffic on any lane or shoulder of the existing road network, including Accommodation Works Areas, must act in accordance with any instructions of the Queensland Police or any other Authority including to cease any of the Project Activities and to re-open the public space, park, pedestrian way, pedal cycle path, lane or shoulder.

## **9.8 Industrial relations**

Operator Franchisee must, in performing the Project Activities:

- (a) subject to **clause 27**, assume sole responsibility for and manage all aspects of industrial relations in respect of its own workforce, and the workforces of its Associates, engaged in respect of the Project;
- (b) comply with the National Code of Practice for the Construction Industry in accordance with the *Building Code 2013*, as amended from time to time;
- (c) develop and implement the Employee Relations Management Plan in accordance with **clause 8** and attachment 1 of annexure 17 (Contract Management Requirements) of the PSR;

- (d) keep the State fully and promptly informed of all industrial relations problems or issues which affect or are likely to affect the carrying out of the Project Activities, including giving the State prompt notice of:
  - (i) any Industrial Action which causes Operator Franchisee to suspend or cease the D&C Activities or the O&M Activities; and
  - (ii) what action or measures (including settlement) Operator Franchisee has taken or proposes to take to overcome, or minimise the effects of, such Industrial Action;
- (e) at the end of the Term, pay those of its employees that become redundant, an amount which complies with all applicable Laws.

## **9.9 Training**

Operator Franchisee must (and must ensure that its Associates):

- (a) comply with the State's "State Government Building and Construction Contracts – Structured Training Policy (10% Policy)" and the requirements of the PSR;
- (b) provide training and instruction in accordance with the Project Training Management Plan; and
- (c) keep and maintain comprehensive and detailed training and instruction records and provide the State, the Independent Verifier or their nominees, upon request, with access to such records.

## **9.10 Long service leave levy**

- (a) Without limiting its other obligations or liabilities under the State Project Documents or otherwise, Operator Franchisee must comply with its obligations under the *Building and Construction Industry (Portable Long Service Leave) Act 1991* (Qld).
- (b) Operator Franchisee must pay all fees, levies, charges and contributions payable (whether by the State or Operator Franchisee) under the *Building and Construction Industry (Portable Long Service Leave) Act 1991* (Qld) in respect of the Project Works and, upon request by the State, produce to the State evidence of payment of the levy.

## **9.11 Cooperation and coordination with other contractors**

To the extent that the State exercises its rights or complies with its obligations under this deed to engage or procure third parties or OF2 and its Associates to perform work on or in the vicinity of the Project Area during the Term (including rectification of Defects in Project Works or Returned Works, Proximate Works or work in relation to implementation of a Future Stage or rectification of an EEW Defect), the State must use reasonable endeavours to provide to Operator Franchisee in a timely manner such information as Operator Franchisee may reasonably request (subject to any confidentiality requirements in respect of the third party arrangements) for the purposes of coordinating the work to be carried out by those third parties or OF2 and its Associates with the Project Works, and Operator Franchisee:

- (a) acknowledges that:
  - (i) the Project Activities may interface with work to be carried out by such third parties or OF2 and its Associates;

- (ii) such third parties or OF2 and its Associates may be executing work on parts of the Project Area, or adjacent to the Project Area, at the same time as Operator Franchisee is performing the Project Activities;
  - (iii) the State may require Operator Franchisee to provide information to third parties or OF2 and its Associates for the purposes of coordinating the design of the work to be carried out by those parties with the Project Works and, if so, this must be provided in a timely manner by Operator Franchisee; and
  - (iv) any delay in the performance of the Project Activities or in Operator Franchisee providing information to the State, or co-operating and coordinating with any such third parties, may adversely impact upon, delay or disrupt any one or more such third parties or OF2 and its Associates in a way which may lead to the State suffering or incurring Loss;
- (b) must at all times:
- (i) subject to the observance of Operator Franchisee's reasonable rules or requirements as to safety or security on the relevant part of the Project Area (to the extent work is to be carried out by such third parties or OF2 and its Associates on the Project Area) which are applied generally by Operator Franchisee, permit such third parties or OF2 and its Associates to execute their work on the applicable parts of the Project Area or any adjacent property to the Project Area;
    - (A) at the same time as Operator Franchisee is performing the Project Activities; and
    - (B) at the times agreed with those third parties or OF2 and its Associates, or failing agreement, at times determined by the State,

and for this purpose ensure they have safe, clean and clear access to those parts of the Project Area, or property adjacent to the Project Area, required by them for the purpose of carrying out their work;
  - (ii) take all reasonable precautions to ensure that the Project Works or the System and other improvements on the Project Area are protected from accidental damage by such third parties or OF2 and its Associates;
  - (iii) fully co-operate with such third parties or OF2 and its Associates and do everything reasonably necessary to:
    - (A) facilitate the execution of work by the such third parties or OF2 and its Associates, including providing such assistance as may be directed by the State; and
    - (B) during the D&C Phase, ensure the effective coordination of the Design Documentation with the design and construction of the work to be carried out by such third parties or OF2 and its Associates;
  - (iv) perform the Project Activities so as to minimise any interference with or disruption or delay to the work of any such third parties or OF2 and its Associates;

- (v) be responsible for coordinating the Project Activities, including work sequencing, construction methods, safety and industrial relations matters, with those affecting, and influenced by, the personnel and work of such third parties or OF2 and its Associates;
- (vi) comply with any interface components of the Project Plans prepared by Operator Franchisee in accordance with **clause 8** and reviewed and not rejected by the State;
- (vii) use its reasonable endeavours to resolve any problems, and work closely and iteratively, with such third parties or OF2 and its Associates to achieve the best solution to such problems, related to coordination in accordance with this **clause 9.11**;
- (viii) in the event that despite using its reasonable endeavours, and working closely and iteratively with such third parties or OF2 and its Associates, Operator Franchisee and any such third parties or OF2 and its Associates fail to resolve a problem between them:
  - (A) give notice to the State with a copy to the contractor describing the problem; and
  - (B) attend any coordination meetings as requested, and to be chaired, by the State, and in good faith work with those present to attempt to resolve the problem;
- (ix) promptly advise the State and the Independent Verifier of all matters arising out of the liaison with any such third parties or OF2 and its Associates that may involve a change to work under the State Project Documents or otherwise have an adverse effect upon the Project Activities; and
- (x) without limiting **clause 9.12**, subject to **clauses 42.2 to 42.4**, indemnify the State against any Claim or Loss the State may suffer or incur arising out of or in any way in connection with a breach of this **clause 9.11** by Operator Franchisee.

## **9.12 No claims arising out of work by third parties**

Except as expressly provided in **clause 16.7, 26 or 27**, Operator Franchisee:

- (a) acknowledges and agrees that, except if the State directs a Modification in circumstances where Operator Franchisee has fully complied with **clause 9.11**, the State will not be liable upon any Claim by Operator Franchisee arising out of or in any way in connection with:
  - (i) work being carried out by third parties or OF2 and its Associates engaged by or on behalf of the State; or
  - (ii) any act or omission of any such third party or OF2 and its Associates (whether or not it causes any delay, disruption or interference to the Project Activities); and
- (b) warrants that the Base Case Financial Model and the D&C Program contain sufficient allowances for the assumption by Operator Franchisee of the obligations and risks under **clause 9.11** and this **clause 9.12**.

## **9.13 Personnel**

- (a) Operator Franchisee must provide experienced and skilled personnel to perform its obligations under the State Project Documents.

- (b) Operator Franchisee must:
  - (i) during the D&C Phase, employ or ensure that the Core Contractors employ (as applicable) those personnel specified in Annexure 17, Part 2 of the PSR in the positions specified in Annexure 17, Part 2 of the PSR;
  - (ii) during the Operations Phase, employ or ensure that the Core Contractors employ (as applicable) those personnel specified in Annexure 17, Part 2 of the PSR in the positions specified in Annexure 17, Part 2 of the PSR;
  - (iii) other than as provided under **clause 9.13(b)(iv)**, not replace and procure that the Core Contractors do not replace (as applicable) the personnel referred to in **clauses 9.13(b)(i)** or **9.13(b)(ii)** without the State's prior approval (which must not be unreasonably withheld); and
  - (iv) if any of the personnel referred to in **clause 9.13(b)(i)** or **9.13(b)(ii)**:
    - (A) die;
    - (B) become seriously ill;
    - (C) resign from the employment of Operator Franchisee or a Core Contractor (as applicable); or
    - (D) become the subject of a direction under **clause 9.13(f)**, replace or procure that the Core Contractors replace (as applicable) them with personnel of at least equivalent experience, ability and expertise approved by the State acting reasonably.
- (c) The personnel referred to in **clause 9.13(b)** (including any replacements) must:
  - (i) carry out the functions and be given the authorities and responsibilities specified for them in this deed; and
  - (ii) otherwise be available for consultation with the State when the State reasonably requires.
- (d) Operator Franchisee must notify the State 6 months prior to the Date for Completion of the names and experience of the personnel to fill the roles referred to in **clause 9.13(b)(ii)** for the State's approval (which must not be unreasonably withheld).
- (e) Following the State's approval of the key personnel under **clause 9.13(d)**, **clause 9.13(b)** will apply to such personnel.
- (f) The State may direct Operator Franchisee to remove any person (including a person referred to in **clause 9.13(b)** or **9.13(e)**) from the Project Area or the Project Activities if the State considers that the person:
  - (i) poses a risk to the health, safety or security of any person, the Project Works, the System or the Project Activities; or
  - (ii) has engaged in inappropriate conduct that renders the person unsuitable to work on the Project Area or to perform the Project Activities.
- (g) Operator Franchisee must ensure that any person the subject of a direction under **clause 9.13(f)** is not again employed (either by Operator Franchisee

or any of its Associates) in connection with any of the Project Activities, or on the Project Area, without the State's prior consent.

#### **9.14 PUP**

- (a) Operator Franchisee:
  - (i) must obtain, pay for, contract for the provision of, acquire or otherwise procure or provide any PUP and all connections for all PUP it needs to perform the Project Activities;
  - (ii) must investigate, protect, relocate, modify and provide for all PUP necessary for it to comply with its obligations under the State Project Documents;
  - (iii) must not, without the State's prior consent (which must not be unreasonably withheld), obtain any PUP or connect any PUP to the Project Works or the System that are not necessary to allow Operator Franchisee to carry out the Project Activities;
  - (iv) must consult with and keep the State fully informed as to Operator Franchisee's dealings with the Authorities providing PUP;
  - (v) assumes the risk of the existence, location, condition and availability of PUP (in so far as they affect the Project Activities);
  - (vi) subject to **clauses 42.2 to 42.4**, indemnifies the State from and against any Loss or Claim brought against, incurred or suffered by the State arising out of or in connection with:
    - (A) any damage to, destruction of, disruption to or interference with any PUP caused by:
      - (1) the Project Activities; or
      - (2) any act or omission of Operator Franchisee or its Associates; and
    - (B) a failure by Operator Franchisee to comply with any obligations under the State Project Documents with respect to the PUP or the PUP Works.
- (b) The State will not be liable under the State Project Documents or otherwise in relation to any PUP required or used for the Project.
- (c) Operator Franchisee must obtain the prior consent of the State (such consent not to be unreasonably withheld or delayed) in relation to:
  - (i) any proposal to construct any infrastructure in connection with the PUP outside the Project Area; and
  - (ii) the exact location of any infrastructure in connection with the PUP within or outside of the Project Area.

#### **9.15 Electricity**

- (a) Without limiting **clause 11.1**, if the State, as owner of the System, has obligations under any Law relating to electricity, Operator Franchisee will perform all obligations and carry out all tasks and activities required for the State to comply with the relevant Law.
- (b) In relation to electricity matters relevant to the Project, Operator Franchisee must:

- (i) liaise and cooperate with the State and any relevant Authority;
  - (ii) provide any reasonable assistance and information required by the State or any relevant Authority within any reasonable timeframe required by the State (if so specified); and
  - (iii) if required by the State or any relevant Authority, procure the attendance of representatives of Operator Franchisee at the meetings of any Authority in relation to electricity matters.
- (c) The State may, but is not obliged to, comment on any documents submitted by Operator Franchisee to the State under this **clause 9.15**. Operator Franchisee:
- (i) must allow the State a period of 20 Business Days after the date of submission of documents to the State to review and comment on drafts of the documents;
  - (ii) if the State makes any comments on the drafts of the documents within this 20 Business Day period and those comments are consistent with Operator Franchisee's obligations under the State Project Documents, must address the State's comments on the documents and promptly resubmit the draft relevant documents to the State, and the provisions of this **clause 9.15(c)** will reapply to such resubmitted documents; and
  - (iii) must not submit the relevant documents to any Authority unless the State has notified Operator Franchisee that it has no comments on the documents, or a period of 20 Business Days after the date of submission of those drafts of documents to the State has expired without the State:
    - (A) making any comments on the documents or, if the State does provide comments, after Operator Franchisee has complied with **clause 9.15(c)(ii)**; and
    - (B) advising that the State (rather than Operator Franchisee) will submit the relevant documents to the relevant Authority.

## 9.16 Procurement of Allowances

- (a) **(Definitions):** In this **clause 9.16**:

**Allowance Transaction** means the surrender, acquisition or transfer of an Allowance by Operator Franchisee under this **clause 9.16**.

**Allowances** means RECs, or such other environmental rights, credits, offsets, allowances, permits or instruments which will further the State's intention under **clause 9.16(b)**.

**Consideration** has the meaning given in **clause 9.16(m)**.

**REC** means a Renewable Energy Certificate as defined in the REC Legislation.

**REC Legislation** means the *Renewable Energy (Electricity) Act 2000* (Cth) and the *Renewable Energy (Electricity) Regulations 2001* (Cth). **REC**

**Registry** means the registry required under the REC Legislation.

- (b) **(Renewable energy):**

- (i) Operator Franchisee acknowledges that the State may elect to match all or part of the total electricity consumption of the System for all or any part of the Operations Phase with renewable energy by, without double counting any renewable energy component of the energy supplied pursuant to a Retail Energy Contract, acquiring (or requiring Operator Franchisee to acquire on the State's behalf) Allowances representing the renewable energy equivalent to the total electricity consumption of the System.
  - (ii) At any time during the Term, the State may notify Operator Franchisee that it requires Operator Franchisee to, in respect of the Operations Phase:
    - (A) acquire a specified number and type of Allowances for the forthcoming year; and
    - (B) acquire an additional quantity of Allowances for the current year including specifying the type and number of Allowances, and Operator Franchisee must acquire, surrender and otherwise deal with Allowances as directed by the State in accordance with that notice and this **clause 9.16**.
- (c) **(Registry):** Operator Franchisee must:
  - (i) if the Allowance is a REC, establish and maintain an account in the REC Registry;
  - (ii) take all reasonable steps necessary to enable it to discharge its obligations under this **clause 9.16**; and
  - (iii) comply with all Laws that may be imposed on Operator Franchisee or the State in discharging its obligations under this **clause 9.16** including, if the Allowance is a REC, the REC Legislation.
- (d) **(Annual strategy meeting):** If required by the State on reasonable notice, Operator Franchisee must meet with the State to discuss the strategy to be adopted by the State in the acquisition of Allowances for the following year.
- (e) **(Terms of Allowance transaction):** In addition to the notice provided under **clause 9.16(b)(ii)**, the State may notify Operator Franchisee of further instructions in relation to the terms (including any price) of any proposed or potential Allowance Transaction or the timeframe within which Operator Franchisee must acquire the Allowances.
- (f) **(Approval prior to executing transaction):** Unless otherwise notified by the State, Operator Franchisee must not enter into an Allowance Transaction without the prior approval of the State to the terms of that transaction.
- (g) **(Surrender or disposal of Allowances):** Operator Franchisee must ensure the Allowances acquired in accordance with this **clause 9.16** are retained until such time as the State directs Operator Franchisee to:
  - (i) surrender or acquit some or all of those Allowances; or
  - (ii) otherwise dispose or transfer some or all of those Allowances.
- (h) **(Unable to acquire):** If Operator Franchisee is unable to acquire the number or type of Allowances required by the State under **clause 9.16(b)(ii)** within the timeframe specified by the State (if any), Operator Franchisee must



notify the State as soon as practicable after becoming aware that it will be unable to acquire that number or type of Required Allowances within that timeframe (if any).

- (i) **(Details of transaction):** Each month during any period when Operator Franchisee is required to acquire Allowances under **clause 9.16(b)(ii)**, Operator Franchisee must provide the State with:
  - (i) an invoice (inclusive of GST) meeting the requirements of **clause (b)** for:
    - (A) the prices paid by Operator Franchisee for Allowances acquired in the preceding month; and
    - (B) any external costs referred to in **clause 9.16(k)** incurred in the preceding month;
  - less any Consideration (inclusive of GST) payable by Operator Franchisee to the State pursuant to **clause 9.16(m)** for the preceding month; and
  - (ii) the details of all Allowance Transactions including:
    - (A) the type of Allowance Transaction;
    - (B) the number of Allowances transacted;
    - (C) the Allowance Transaction date;
    - (D) details of the counterparty (if any); and
    - (E) any other documentation relating to the Allowance Transaction.
- (j) **(Payment of invoice):** The State must pay all invoices issued under **clause 9.16(i)(i)** in accordance with **clause 38.4(c)**.
- (k) **(External costs):** Operator Franchisee may charge to the State any external costs incurred by Operator Franchisee if, as a result of its obligations under this **clause 9.16**, Operator Franchisee is required to become registered, accredited or do any other thing in order to comply with its obligations under this **clause 9.16**.
- (l) **(Sale or transfer of Allowances):** The State may notify Operator Franchisee that the State requires Operator Franchisee to sell or transfer Allowances from time to time, in which case Operator Franchisee must comply with the State's direction.
- (m) **(Payment of amount received):** When Operator Franchisee transfers or sells an Allowance in accordance with the State's directions under **clause 9.16(l)**, Operator Franchisee must account to the State for the whole of the consideration received by Operator Franchisee in respect of the sale, transfer or other dealing in the Allowance (**Consideration**) by payment of the Consideration directly into the account identified by the State or, if no such account is identified by the State, Operator Franchisee must:
  - (i) each month subtract any Consideration payable to the State in that month from any amount payable by the State to Operator Franchisee pursuant to **clause 9.16** prior to issuing an invoice to the State under **clause 9.16(i)** in respect of that month; and
  - (ii) pay the balance of the Consideration (if any) to the State within 20 Business Days of its receipt by Operator Franchisee.

- (n) **(Good faith):** Operator Franchisee acknowledges that in performing the obligations under this **clause 9.16**, Operator Franchisee must act consistently with the standards which the State would seek to comply with in the same circumstances and Operator Franchisee must, at all times, act in good faith in the interests of the State.
- (o) **(Availability of Allowances):** The State assumes the risk as to the existence, availability and value of any Allowances acquired, or to be acquired, by Operator Franchisee under this **clause 9.16**, at all times during the Operations Phase.
- (p) **(Timeframe):** If the State notifies Operator Franchisee to undertake an activity under this **clause 9.16**, Operator Franchisee must undertake the activity within the timeframe specified in the notice.

## 9.17 System Documentation

Operator Franchisee warrants that:

- (a) the System Documentation will sufficiently, adequately and accurately document the System, the operation of the System and any interfaces with the System;
- (b) the System Documentation will be sufficient, adequate and accurate so as to enable the State or a third party to operate and maintain the System and otherwise carry out the Project Activities; and
- (c) the System Documentation will be Fit for Purpose.

## 9.18 V8 Supercar Event

Operator Franchisee must comply with the V8 Supercar Event Requirements.

# 10 Community

## 10.1 Community Relations

- (a) **(Acknowledgement):** Operator Franchisee acknowledges that the areas where the Project Activities are being carried out are of great importance to many people, including local residents and businesses.
- (b) **(Participation in community):** Operator Franchisee must manage and participate in all community relations and involvement programs and activities as:
  - (i) required by the PSR;
  - (ii) required by any Approvals;
  - (iii) contained in any Project Plan, including the Communications and Stakeholder Management Plans; or
  - (iv) reasonably required by the State from time to time.

## 10.2 Compliance and audit

- (a) **(Certification by Operator Franchisee):** Operator Franchisee must give the State and, during the D&C Phase, the Independent Verifier a certificate substantially in the form set out in the Certification Schedule, confirming that Operator Franchisee is satisfied that the Project Activities have been undertaken in accordance with the Community Requirements, on the following dates:

- (i) during the D&C Phase, on the first Business Day of each month, and
  - (ii) during the Operations Phase, on the first Business Day of each quarter.
- (b) **(Review by the State and Independent Verifier):** Upon receipt of:
  - (i) a certificate from Operator Franchisee under **clause 10.2(a)**; or
  - (ii) in the case of the Independent Verifier, a request from Operator Franchisee or the State to conduct an additional audit,

the State may and, during the D&C Phase, the Independent Verifier must audit the Project Activities to assess whether or not the Community Requirements are being complied with.
- (c) **(Explanation of Project Activities):** If required by the State or the Independent Verifier, Operator Franchisee must make available appropriate personnel to explain or provide information on such matters in relation to the conduct of the Project Activities as the State or the Independent Verifier reasonably requests, and in such form and substance as the State or the Independent Verifier reasonably requests.
- (d) **(Draft community audit report):** The State may give Operator Franchisee and, during the D&C Phase, the Independent Verifier must give the State and Operator Franchisee a draft community audit report:
  - (i) within 10 Business Days of receipt of a certificate from Operator Franchisee under **clause 10.2(a)**, in relation to the period from the date of that certificate back to the date of the previous certificate provided by Operator Franchisee under **clause 10.2(a)** (or, in the case of the first certificate, from the date of that certificate back to the date of Financial Close); and
  - (ii) in the case of the Independent Verifier, within a reasonable time of receipt of a request from the State or Operator Franchisee under **clause 10.2(b)(ii)**, in relation to the period of time stated in that request,

and in each case addressing compliance with each of the Community Requirements, including implementation of the Communications and Stakeholder Management Plans.
- (e) **(State or Operator Franchisee comments):** Within 5 Business Days after receipt of a draft community audit report from the State or the Independent Verifier under **clause 10.2(d)**, each of Operator Franchisee and the State (in the case of a draft report issued by the Independent Verifier) may provide comments on that draft report to the State or the Independent Verifier, as the case may be.
- (f) **(Community Audit Report):** Within 10 Business Days after issuing a draft community audit report under **clause 10.2(d)**, the State may and, during the D&C Phase, the Independent Verifier must:
  - (i) develop that draft community audit report (including addressing any comments provided by Operator Franchisee or the State (in the case of a report issued by the Independent Verifier) under **clause 10.2(e)**) into a final report (**Community Audit Report**); and

- (ii) provide the Community Audit Report to the State (if the Community Audit Report is issued by the Independent Verifier) and Operator Franchisee.
- (g) **(Public disclosure)**: Notwithstanding anything to the contrary in the State Project Documents, the State may disclose any Community Audit Report, in whole or in part, to the public.
- (h) **(Adverse Community Audit Report)**: If a Community Audit Report includes an opinion that the Community Requirements have not been complied with, within 5 Business Days after receipt of that report, Operator Franchisee must give the State and, during the D&C Phase, the Independent Verifier a plan and program for the rectification or remediation of any non-compliance and to ensure future compliance (**Community Audit Remediation Plan**).
- (i) **(Independent Verifier review)**: Within 7 Business Days of receipt of a Community Audit Remediation Plan, the State may notify Operator Franchisee (if the Community Audit Report was issued by the State) and the Independent Verifier must notify the State and Operator Franchisee (if the Community Audit Report was issued by the Independent Verifier), whether it considers the Community Audit Remediation Plan satisfactorily addresses the State's or the Independent Verifier's concerns (as the case may be), together with its reasons for forming that opinion.
- (j) **(Operator Franchisee obligations)**: Upon receipt of a notice from the State or the Independent Verifier under **clause 10.2(i)**:
  - (i) to the extent the Community Audit Remediation Plan satisfactorily addresses the State's or the Independent Verifier's concerns, Operator Franchisee must comply with the Community Audit Remediation Plan; and
  - (ii) to the extent (if any) the Community Audit Remediation Plan does not satisfactorily address the State's or the Independent Verifier's concerns and subject to **clause 57**, Operator Franchisee must continue to consult with the State (if the Community Audit Report was issued by the State) or the Independent Verifier (if the Community Audit Report was issued by the Independent Verifier) and amend its Community Audit Remediation Plan until the State or the Independent Verifier (as the case may be) is satisfied with the Community Audit Remediation Plan.

When Operator Franchisee considers it has rectified any non-compliance identified in the Community Audit Report, Operator Franchisee must provide a certificate, substantially in the form set out in the Certification Schedule, confirming that the non-compliance has been rectified in accordance with the Community Audit Remediation Plan;

- (k) **(Authorities may be advised)**: If:
  - (i) a Community Audit Report includes an opinion that any Community Requirements have not been complied with;
  - (ii) the State (if the Community Audit Report was issued by the State) or the Independent Verifier (if the Community Audit Report was issued by the Independent Verifier) has not confirmed its satisfaction with a Community Audit Remediation Plan under **clause 10.2(i)**; and

- (iii) the non-compliance or purported non-compliance involves a failure to comply in whole or part with an Approval,

the State (if the Community Audit Report was issued by the State) may notify Operator Franchisee and the Independent Verifier (if the Community Audit Report was issued by the Independent Verifier) must promptly notify the State and Operator Franchisee of the above circumstances and the State may notify the relevant Authority with responsibility for granting or administering that Approval.

- (l) **(No liability):** No review, failure to review, provision of comments by or opinion of the State or Independent Verifier, or any information given to any Authority, under this **clause 10.2** will:

- (i) impose any liability, responsibility or duty of care upon the State or its Associates; or
- (ii) entitle Operator Franchisee or its Associates to make, continue or enforce any Claim against, or seek, pursue or obtain an indemnity against or contribution to liability from, the State or any of its Associates,

and Operator Franchisee agrees to release the State from any Claim it may have but for the existence of this clause arising out of or in connection with any review, failure to review, provision of comments by or opinion of the State or Independent Verifier, or any information given to any Authority, under this **clause 10.2**.

## PART C – LAND AND APPROVALS

### 11 Law and Approvals

#### 11.1 Compliance with Laws

Operator Franchisee must:

- (a) in performing the Project Activities, comply with all applicable Laws;
- (b) ensure that each of its Associates, in performing the Project Activities, complies with all applicable Laws; and
- (c) ensure that the Project Works and the System comply with all applicable Laws.

#### 11.2 Approvals

- (a) The State has obtained the Key Approvals.
- (b) Operator Franchisee must:
  - (i) subject to **clause 11.2(a)**, obtain and maintain, and ensure that each of its Associates obtains and maintains, all Approvals required to perform the Project Activities, including:
    - (A) any secondary approvals, consents or any other action required under a Key Approval; and
    - (B) any further assessment, amendment, modification, conditions or Approvals in relation to the Key Approvals, arising out of a difference between the Project (as proposed or undertaken by Operator Franchisee, including the Concept Design) and the Reference Design;
  - (ii) comply with, carry out and fulfil, and ensure that:
    - (A) each of its Associates, in carrying out the Project Activities, complies with, carries out and fulfils; and
    - (B) the Project Works and, after the Date of Completion, the System comply with,  
  
all applicable conditions and requirements of all relevant Approvals (including those which the State, CoGC or the Commonwealth is expressed under the terms of any Approval to be required to comply with, carry out or fulfil) and the environment, development and planning requirements set out in the PSR;
  - (iii) comply with, and ensure that each of its Associates in carrying out the Project Activities complies with, any improvement notice issued by the Rail Safety Regulator; and
  - (iv) pay all fees, effect all insurances, provide any bonds and execute any undertakings or agreements or any other document required by any relevant Authority in respect of any Approval which Operator Franchisee must obtain or comply with (and ensure that each of its Associates does likewise in relation to any Approvals which it must maintain in connection with the Project Activities).

- (c) Operator Franchisee bears all risk associated with obtaining any Approvals or amendments to Approvals (including as contemplated by **clause 11.2(b)(i)**), except as expressly provided by this deed.

### **11.3 Legal challenge to Key Approvals**

If there is a legal challenge brought about by way of commencement of court proceedings in relation to a Key Approval, Operator Franchisee must continue to perform the Project Activities unless, as a result of that legal challenge:

- (a) it is otherwise ordered by a court or directed by the State; or
- (b) it is unlawful for it to do so.

### **11.4 Assistance and information**

Without limiting Operator Franchisee's obligations under **clauses 11.1 and 11.2(b)**, Operator Franchisee must:

- (a) promptly give the State copies of:
  - (i) all documents, notices, orders or directions given to or received by Operator Franchisee or its Associates, including all Approvals; and
  - (ii) all documents given by Operator Franchisee or its Associates to an Authority; and
  - (iii) details of any consultations or other communications with an Authority, in connection with the Project Activities pursuant to any Law; and
- (b) provide the State with such assistance as may be required by the State to enable the State to:
  - (i) comply with all applicable Laws; or
  - (ii) satisfy or fulfil the conditions and requirements in respect of any:
    - (A) Approvals which are obtained by the State after the date of this deed; or
    - (B) conditions and requirements of Approvals which are required to be satisfied or fulfilled by the State.

## **12 Site conditions and environment**

### **12.1 Physical conditions, investigations and Information Documents**

- (a) **(Examination and investigation):** Without limiting **clauses 12.1(d) or 62.14**, Operator Franchisee warrants and for all purposes it will be deemed to be the case that, prior to the date of this deed, Operator Franchisee:
  - (i) examined the State Project Documents (including the PSR), the Project Area and its surroundings and any other information that was made available by the State or any other person on the State's behalf, to Operator Franchisee or its Associates for the purpose of submitting its Proposal;
  - (ii) examined, and relied solely upon its own assessment, skill, expertise and enquiries in respect of, all information relevant to the risks, contingencies and other circumstances having an effect on its Proposal and its obligations under the State Project Documents;

- (iii) satisfied itself as to the correctness and sufficiency of its Proposal and that it has made adequate allowance for the costs of complying with all of its obligations under the State Project Documents and of all matters and things necessary for the due and proper performance and completion of the Project Activities;
  - (iv) informed itself of all matters relevant to the employment of labour and all industrial matters on the Project Area;
  - (v) was given the opportunity prior to submitting its Proposal to itself undertake, and to request others to undertake, tests, enquiries and investigations:
    - (A) relating to the subject matter of the Information Documents; and
    - (B) for design purposes and otherwise;
  - (vi) had a sufficient opportunity to obtain and obtained all necessary legal, geotechnical and other technical advice in relation to the terms of the State Project Documents, the Probity and Process Deed, the Information Documents, the Site Conditions, as well as the risks, contingencies and other circumstances having an effect on its Proposal, the performance of its obligations and its potential liabilities under the State Project Documents; and
  - (vii) had sufficient access to the Project Area, undertook sufficient tests, enquiries and investigations, had sufficient information and obtained a sufficient understanding of the risks involved to enable it to make an informed decision about whether or not to enter into the State Project Documents and assume the obligations and potential risks and liabilities which they impose on Operator Franchisee.
- (b) **(Operator Franchisee responsible):** Except as expressly provided for in **clause 26**, Operator Franchisee is responsible for, and assumes the risk of:
- (i) all Loss or delay it suffers or incurs; and
  - (ii) any adverse effect on the Project Works or the System, arising out of, or in any way in connection with the Site Conditions encountered in performing the Project Activities.
- (c) **(Probity and Process Deed):** Prior to Contract Close, Operator Franchisee signed the Probity and Process Deed, including acknowledgements in respect of Information Documents provided by the State to Operator Franchisee.
- (d) **(No warranty):** Without limiting **clause 12.1(e)** or the warranties or acknowledgements in the Probity and Process Deed:
- (i) the State does not warrant, guarantee, assume any duty of care or other responsibility for or make any representation about the accuracy, adequacy, suitability or completeness of the Information Documents;
  - (ii) whether or not an Information Document is listed in **schedule 12**, Operator Franchisee acknowledges that:
    - (A) no Information Document nor any part of any Information Document forms part of the State Project Documents; and
    - (B) **clause 12.1(e)** applies to the Information Document; and



- (iii) insofar as is permitted by Law, the State will not be liable upon any Claim by Operator Franchisee arising out of or in any way in connection with:
    - (A) the Information Documents; or
    - (B) a failure by the State to provide any information to Operator Franchisee.
- (e) **(No reliance):** Operator Franchisee:
  - (i) warrants that it did not in any way rely upon:
    - (A) any Information Document or any other information, data, representation, statement or document made, or provided to Operator Franchisee, by the State, CoGC, the Commonwealth or anyone on behalf of the State, CoGC, the Commonwealth or any other information, data, representation, statement or document for which the State is responsible or may be responsible whether or not obtained from the State or anyone on behalf of the State; or
    - (B) the accuracy, adequacy, suitability or completeness of such Information Document or other information, data, representation, statement or document,

for the purposes of entering into the State Project Documents or carrying out the Project Activities but nothing in this **clause 12.1(e)** will limit or otherwise affect Operator Franchisee's obligations under the State Project Documents;
  - (ii) warrants that it enters into the State Project Documents based on its own investigations, interpretations, deductions, information and determinations; and
  - (iii) acknowledges that it is aware that the State has entered into the State Project Documents relying upon:
    - (A) the warranties, acknowledgements and agreements in **clauses 12.1(e)(i)** and **12.1(e)(ii)**; and
    - (B) the warranties and acknowledgements in the Probity and Process Deed and Operator Franchisee's Proposal.
- (f) **(Release and indemnity):** subject to **clauses 42.2 to 42.4**, Operator Franchisee releases and indemnifies the State from and against:
  - (i) any Claim against the State by, or liability of the State to, any person; or
  - (ii) (without being limited by **clause 12.1(f)(i)**) any Loss suffered or incurred by the State,

arising out of or in any way in connection with:

  - (iii) the provision of, or the purported reliance upon, or use of, the Information Documents by Operator Franchisee, Operator Franchisee's Associates or any other person to whom the Information Documents are disclosed by Operator Franchisee or Operator Franchisee's Associates;
  - (iv) any breach by Operator Franchisee of this **clause 12.1**; or

- (v) the Information Documents being relied upon or otherwise used in the preparation of any information or document by Operator Franchisee, Operator Franchisee's Associates or any person to whom the Information Documents are disclosed by Operator Franchisee or Operator Franchisee's Associates, including any Information Document which is "misleading or deceptive" or "false or misleading" (within the meaning of those terms in sections 18 and 29 (respectively) of Schedule 2 of the *Competition and Consumer Act 2010* (Cth) or any equivalent provision of State or Territory legislation).
- (g) **(Release):** Operator Franchisee releases and will procure the Operator Franchisee's Associates release the State from and against:
  - (i) any Claim against the State by, or liability of the State to, any person; or
  - (ii) without being limited by **clause 12.1(g)(i)** any Loss suffered or incurred by the State,

arising out of or in any way in connection with a failure by the State to provide any information to Operator Franchisee or Operator Franchisee's Associates (other than to the extent the State is expressly required to provide information under the State Project Documents).

## 12.2 Condition of the Project Area and structures

- (a) **(No representation by State):** The State makes no representations and gives no warranty to Operator Franchisee in respect of:
  - (i) the condition of:
    - (A) the Project Area; or
    - (B) any structure or other thing on, above or adjacent to, or under the surface of, the Project Area;
  - (ii) the adequacy or suitability of the Project Area for the Project;
  - (iii) the existence, location, condition or availability of PUP in respect of the Project Area; or
  - (iv) the feasibility or fitness for purpose of the Concept Design including in respect of the constructability of the Concept Design having regard to the physical conditions and characteristics of the Project Area.
- (b) **(Operator Franchisee accepts land):** Subject to **clause 26**, Operator Franchisee accepts:
  - (i) the Project Area (including any Extra Land); and
  - (ii) any structures or other things on, above or adjacent to, or under the surface of, the Project Area (including any Extra Land),

in their present condition subject to all defects and Site Conditions.
- (c) **(Own investigations):** Operator Franchisee must investigate, design and construct the Project Works in accordance with the State Project Documents and, subject to **clause 26**, will not be relieved of its obligations under the State Project Documents, irrespective of:
  - (i) the Site Conditions encountered in performing the Project Activities;
  - (ii) whatever may be the condition or characteristics (including all sub-surface conditions) of:

- (A) the Project Area, the Environment or their surroundings; or
- (B) any structure or other thing on, above or adjacent to, or under the surface of, the Project Area, the Environment or their surroundings; and
- (iii) any assumptions, projections, estimates, contingencies or otherwise that Operator Franchisee may have made in relation to the Site Conditions or the conditions or the characteristics of any of the matters referred to in **clause 12.2(c)(ii)**.

### 12.3 Contamination

- (a) **(Responsibility):** Without limiting **clause 12.2**, Operator Franchisee is responsible for:
  - (i) all Contamination in, on, over or under the Project Area which:
    - (A) is encountered or disturbed by the carrying out of the Project Activities; or
    - (B) otherwise arises out of or in connection with the Project Activities,
 other than to the extent such Contamination is:
    - (C) caused or contributed to by the State or its Associates during the Term; or
    - (D) Migrating Contamination;
  - (ii) all Contamination in, on, over or under the Project Area which migrates out of the Project Area from inside the Project Area as a result of the Project Activities or any act of Operator Franchisee or its Associates; and
  - (iii) any Contamination outside of the Project Area to the extent caused or contributed to by Operator Franchisee or its Associates in carrying out the Project Activities.
- (b) **(Operator Franchisee's obligations):** Operator Franchisee must:
  - (i) not do anything with the intent, directly or indirectly, of causing or being likely to cause Contamination or the service of an Environmental Notice;
  - (ii) notify the State as soon as practicable, but nevertheless within 5 Business Days after Operator Franchisee discovers or becomes aware of any Contamination in, on, over or under the Project Area (whether or not Operator Franchisee or its Associates caused or contributed to that Contamination or Operator Franchisee is otherwise responsible for that Contamination under **clause 12.3(a)**) of:
    - (A) the presence of that Contamination;
    - (B) whether, in Operator Franchisee's opinion, the Contamination is:
      - (1) Contamination for which Operator Franchisee is responsible under **clause 12.3(a)**;
      - (2) Contamination which was caused or contributed to by the State or any of its Associates during the Term; or
      - (3) Migrating Contamination,

and the basis on which Operator Franchisee holds that opinion;  
and

- (C) whether an Environmental Notice has been issued in respect of that Contamination.

If an Environmental Notice is issued in respect of any Contamination after Operator Franchisee has issued a notice under this **clause 12.3(b)(ii)** in respect of that Contamination, Operator Franchisee must issue a further notice under this **clause 12.3(b)(ii)** within 2 Business Days of receipt of the Environmental Notice, notifying the State that the Environmental Notice has been issued;

- (iii) dispose of, or otherwise deal with, any Contamination for which Operator Franchisee is responsible under **clause 12.3(a)**, in accordance with Law (regardless of whether an Environmental Notice has been issued with respect to that Contamination);
- (iv) remediate the Project Area to the extent to which:
- (A) it is in any way degraded by any Contamination for which Operator Franchisee is responsible under **clause 12.3(a)**; and
- (B) the Contamination is of such a nature that an Authority could issue a statutory notice requiring it to be remediated,  
(regardless of whether an Environmental Notice has been issued with respect to that Contamination);
- (v) satisfy the requirements (and ensure that each of its Associates in carrying out the Project Activities satisfies the requirements) of an Environmental Notice issued in relation to the Project Area in relation to Contamination for which Operator Franchisee is responsible under **clause 12.3(a)**, regardless of whether:
- (A) the Environmental Notice is addressed to the State, Operator Franchisee or some other person; or
- (B) the Contamination occurred before or after Operator Franchisee or its Associates were given access to the relevant land;
- (vi) to the extent directed by the State under **clause 12.3(c)(iii)(D)**, satisfy the requirements (and ensure that each of its Associates in carrying out the Project Activities satisfies the requirements) of an Environmental Notice issued in relation to the Project Area in relation to Contamination (which is not Contamination for which Operator Franchisee is responsible under **clause 12.3(a)**), regardless of whether:
- (A) the Environmental Notice is addressed to the State, Operator Franchisee or some other person; or
- (B) the Contamination occurred before or after Operator Franchisee or its Associates were given access to the relevant land; and
- (vii) subject to **clauses 42.2 to 42.4**, indemnify the State against any Claim or Loss brought against, suffered or incurred by the State arising out of or in any way in connection with any Contamination for which Operator Franchisee is responsible under **clause 12.3(a)** or any failure by Operator Franchisee to comply with any obligation under this deed in connection with Contamination.

- (c) If Operator Franchisee notifies the State under **clause 12.3(b)(ii)** that, in Operator Franchisee's opinion, the Contamination is:
- (i) Contamination which was caused or contributed to by the State or any of its Associates during the Term; or
  - (ii) Migrating Contamination,
- then the State will notify Operator Franchisee within 5 Business Days (or such longer period as the State reasonably requires in the circumstances, having regard to the nature of the Contamination, the evidence provided by Operator Franchisee under **clause 12.3(b)(ii)** and whether any Environmental Notice has been issued in respect of the Contamination):
- (iii) that the State agrees with Operator Franchisee, in which case:
    - (A) if an Environmental Notice has not been issued in respect of that Contamination, the State may; or
    - (B) if an Environmental Notice has been issued in respect of that Contamination, the State must,
 either:
    - (C) notify Operator Franchisee that the State will (at its own cost) remediate, or appoint a third party to remediate, those parts of the Project Area affected by the Contamination and complete or procure the completion of that remediation as soon as practicable; or
    - (D) direct Operator Franchisee to remediate those parts of the Project Area affected by the Contamination (and **clause 12.3(d)** will apply),
 provided that nothing in this **clause 12.3(c)** will entitle Operator Franchisee to any payment or compensation for costs, or any relief, in respect of any measure Operator Franchisee is required to take under the conditions of any Approval (other than under an additional condition of an Approval or an additional Approval that is required to comply with the State direction under **clause 12.3(c)(iii)(D)**, to the extent Operator Franchisee is entitled to payment under **clause 12.3(d)**); or
  - (iv) that the State considers the Contamination is Contamination for which Operator Franchisee is responsible under **clause 12.3(a)**, in which case either party may refer the matter for dispute resolution under **clause 57**.
- (d) If the State directs Operator Franchisee to remediate any Contamination on the Project Area in accordance with **clause 12.3(c)(iii)(D)**, that direction will be deemed to be a State initiated Modification, including for the purposes of payment by the State to Operator Franchisee for Operator Franchisee's costs of remediating that Contamination in accordance with **clause 30.8**.
- (e) If an Environmental Notice is issued in respect of Contamination on the Depot Upgrade Works Site that requires Operator Franchisee to trace (and remediate) the Contamination in, on, over or under the Depot Upgrade Works Site back to the source of that Contamination outside of the Stage 2 Area (as defined in the Works Deed), the Licensed Premises (as defined in

the System Site Licence) or Licensed Premises (Stage 2) (as defined in the System Site Licence (Stage 2)), then:

- (i) Operator Franchisee must notify the State of that Contamination in accordance with **clause 12.3(b)(ii)** and Operator Franchisee's opinion whether this **clause 12.3(e)** applies, together with a copy of the Environmental Notice and an estimate of the cost for Operator Franchisee to comply with the Environmental Notice; and
- (ii) the State will, within 10 Business Days (or such longer period as the State reasonably requires in the circumstances having regard to the nature of the Contamination, the evidence provided by Operator Franchisee under **clause 12.3(e)(i)** and the requirements of the Environmental Notice):
  - (A) notify Operator Franchisee that the State will (at its own cost, except to the extent the Contamination was caused or contributed to by Operator Franchisee, OF2 or their respective Associates in which case the cost incurred by the State will be payable by Operator Franchisee) comply with, or appoint a third party to comply with, the Environmental Notice, and will complete or procure the completion of that remediation as soon as practicable;
  - (B) direct Operator Franchisee to comply with the Environmental Notice, in which case that direction will be deemed to be a State initiated Modification, including for the purposes of payment by the State to Operator Franchisee for Operator Franchisee's costs of remediating that Contamination in accordance with **clause 30.8** (provided that Operator Franchisee will not be entitled to any compensation or relief to the extent the Contamination was caused or contributed to by Operator Franchisee or OF2 or their respective Associates); or
  - (C) notify Operator Franchisee that it does not agree that this **clause 12.3(e)** applies to the relevant Environmental Notice, in which case either party may refer the matter for dispute resolution under **clause 57**.

For the avoidance of doubt, notwithstanding anything in this **clause 12.3(e)**, Operator Franchisee will remain responsible for, and will not be entitled to any relief or compensation for:

- (iii) complying with the Environmental Notice and Operator Franchisee's other obligations under this **clause 12.3** in respect of any Contamination in, on, over or under the Depot Upgrade Works Site; and
- (iv) doing all things reasonably necessary and consistent with Good Industry Practice and the State Project Documents to protect the Depot Upgrade Works Site from Contamination entering that site, nor to the extent that OF2 has failed to comply with its obligations under the Stage 2 Works Deed regarding the protection of the Depot Upgrade Works Site from Contamination entering that site.

## 12.3A Monitoring Area Site

- (a) The State will:
  - (i) undertake a site investigation in accordance with brief dated 22 March 2016 and prepare a site investigation report (***Site Investigation Report***); and
  - (ii) carry out (or procure that a third party carry out, or issue a Modification for Operator Franchisee to carry out) the remediation work recommended by the Site Investigation Report.
- (b) The costs of the remediation work referred to in **clause 12.3A(a)(ii)** will be paid by:
  - (i) Operator Franchisee to the extent caused or contributed to by Operator Franchisee, OF2 or their respective Associates; or
  - (ii) the State, to the extent not caused or contributed to by Operator Franchisee, OF2 or their respective Associates.
- (c) Operator Franchisee must prepare new or updated Site Management Plans (***Updated SMPs***) reflecting:
  - (i) the site investigation report for the Monitoring Area Site; and
  - (ii) the allocation of responsibility in this clause 12.3A.
- (d) Subject to clause 12.3A(e), at all times from the later of registration of the Updated SMPs pursuant to the *Environmental Protection Act 1994* (Qld) and completion of the remediation work under **clause 12.3A(a)(ii)** until the end of the Term, Operator Franchisee must carry out all Baseline SMP Monitoring in respect of the Monitoring Area Site in accordance with the Updated SMPs.
- (e) If the Baseline SMP Monitoring undertaken by Operator Franchisee under **clause 12.3A(d)** triggers, or an Authority requires (by way of Environmental Notice or otherwise), either:
  - (i) monitoring which exceeds Baseline SMP Monitoring; or
  - (ii) undertaking any work or activity other than monitoring, (***Additional Works***), then:
    - (iii) to the extent the Additional Works:
      - (A) or the reasons for such Additional Works being required were caused or contributed to by Operator Franchisee, OF2 or their respective Associates; or
      - (B) subject to clause 12.3A(e)(iv)(A), are required to be undertaken within the System Site,  
the Operator Franchisee is responsible for and must at its own cost undertake the Additional Works;
    - (iv) to the extent the Additional Works:
      - (A) or the reasons for such Additional Works being required were caused or contributed to by State or its respective Associates or relate to Migrating Contamination; or

- (B) subject to clause 12.3A(e)(iii)(A), are required to be undertaken outside of the System Site,
- the State is responsible for and must at its own cost undertake (or direct, as a State initiated Modification, Operator Franchisee to undertake at the State's cost) the Additional Works.
- (f) The parties acknowledge that:
  - (i) [not used]; and
  - (ii) only carrying out monitoring on the Monitoring Area Site and preparing Site Management Plans will not be deemed for the purposes of clause 12.3A(e) to be reasons for Additional Works being required.

## 12.4 Environmental compliance

Operator Franchisee must:

- (a) **(no improper use of Project Area)**: not use the Project Area, or allow any of its Associates to use the Project Area, so that:
  - (i) any Industrial Waste or Hazardous Substance is abandoned or dumped on the Project Area;
  - (ii) any Industrial Waste or Hazardous Substance is handled in a manner which is likely to cause an Environmental Hazard; or
  - (iii) any other substance is released from, deposited to, or emanates from, the Project Area such that a state of Contamination occurs;
- (b) **(be environmentally responsible)**: at all times carry out, and ensure that its Associates carry out, the Project Activities in an environmentally responsible manner, in accordance with Good Industry Practice, and so as to protect the Environment and keep the Project Area in a good and safe condition;
- (c) **(comply with Environmental Laws)**: without limiting **clause 11**:
  - (i) comply with, and ensure that its Associates in performing the Project Activities comply with:
    - (A) all Laws and relevant Approvals relating to the Environment;  
and
    - (B) all Environmental Notices; and
  - (ii) obtain and comply with all requirements of, and ensure that its Associates in performing the Project Activities obtain and comply with all requirements of, any Approvals required in order to release or emit anything from the Project Area into the air or water or onto the ground or otherwise into the Environment or to emit any substantial noise; and
- (d) **(notification)**: immediately notify the State as soon as Operator Franchisee:
  - (i) becomes aware of any non compliance with the requirements of any Law or Approval regarding the Environment in the performing of the Project Activities;



- (ii) becomes aware of a Site Condition that differs materially from the Site Conditions described in the Information Documents and the measures to be taken by Operator Franchisee in relation to that Site Condition;
- (iii) becomes aware of any information, fact or circumstance where, if the State or the freehold owner of the Project Area were to be aware of such information, fact or circumstance, the State or the freehold owner of the Project Area (as applicable) would be required to notify any Authority of that information, fact or circumstance pursuant to any Law relating to the Environment (without limiting any other obligation of Operator Franchisee in relation to the information, fact or circumstances); or
- (iv) notifies any Authority of any matter pursuant to any Law relating to the Environment, in which case Operator Franchisee must provide to the State a copy of such notification and of any subsequent correspondence with the Authority in relation to the subject of the notification.

## 12.5 Environmental Management Plans

Operator Franchisee:

- (a) must comply with, and ensure that its Associates in performing the Project Activities comply with, the Environmental Management Plans; and
- (b) will not be relieved from compliance with any of its obligations under the State Project Documents or from any of its liabilities whether under the State Project Documents or otherwise according to Law as a result of:
  - (i) compliance with the Environmental Management Plans;
  - (ii) any audits or other monitoring by the State of Operator Franchisee's compliance with the Environmental Management Plans; or
  - (iii) any failure by the State, or anyone acting on behalf of the State, to detect any non-compliance including if any failure arises from any negligence on the part of the State or other person.

## 12.6 Liability under the NGER Legislation

- (a) Without limiting any other clause in this deed, Operator Franchisee acknowledges and agrees that, if any of the Project Activities constitute a "facility" within the meaning of the NGER Legislation, then for the purposes of the NGER Legislation, it has operational control of that facility or facilities and Operator Franchisee will comply with any obligations arising in respect of the Project Activities under the NGER Legislation.
- (b) If, despite the operation of **clause 12.6(a)**, the State incurs, or but for this **clause 12.6** would incur, a liability under or in connection with the NGER Legislation as a result of or in connection with the Project Activities, and the NGER Legislation provides that such liability can be transferred by the State to Operator Franchisee, Operator Franchisee must, upon the request of the State, do all things reasonably necessary to transfer the liability to Operator Franchisee.

## 12.7 Provision of Emissions and Energy Data to the State

- (a) Operator Franchisee must provide Operator Franchisee's Emissions and Energy Data to the State:

- (i) subject to **clause 12.7(b)**, within 10 Business Days of receiving notice from the State indicating that it requires Operator Franchisee's Emissions and Energy Data to be provided; and
- (ii) on each occasion that Operator Franchisee is required to provide Operator Franchisee's Emissions and Energy Data to an Authority under the NGER Legislation or any other Law.
- (b) The State must act reasonably in exercising its rights under **clause 12.7(a)(i)**. The parties agree that it will not be reasonable for the State to exercise these rights more than once every three months or otherwise as required in order to comply with any reporting requirements under relevant legislation unless the State is required to provide Energy and Emissions Data to an Authority under the NGER Legislation or any other Law more frequently.
- (c) Operator Franchisee acknowledges and agrees that the State may use Operator Franchisee's Emissions and Energy Data for any purpose as it sees fit.

## 12.8 Reporting NGERs Data

- (a) This **clause 12.8** applies if despite the operation of **clause 12.6**, the State incurs a liability under or in connection with the NGER Legislation as a result of or in connection with the Project Activities.
- (b) If the State notifies Operator Franchisee that Operator Franchisee is required to provide Operator Franchisee's NGERs Data to the State, then Operator Franchisee must:
  - (i) provide Operator Franchisee's NGERs Data to the State in the same manner, form and level of detail, based on the same methods and at the same times:
    - (A) as if Operator Franchisee were obliged under the NGER Legislation to provide Operator Franchisee's NGERs Data to the Greenhouse and Energy Data Officer and the State was the Greenhouse and Energy Data Officer; and
    - (B) without limiting **clause 12.8(b)(i)(A)**, as may be required to enable the State:
      - (1) to discharge, as and when they fall due, any obligations that it may have to provide Operator Franchisee's NGERs Data to the Greenhouse and Energy Data Officer; and
      - (2) to provide to the Greenhouse and Energy Data Officer any Operator Franchisee's NGERs Data that it may be entitled to provide concerning any greenhouse gas project;
  - (ii) provide any of Operator Franchisee's NGERs Data to the State in accordance with the requirements or approvals of the Greenhouse and Energy Data Officer and any reasonable directions by the State;
  - (iii) keep all such Operator Franchisee's NGERs Data as may be required to enable it to discharge its obligations under **clause 12.8(b)(i)**;
  - (iv) retain records of its activities that are the basis of Operator Franchisee's NGERs Data for any financial year, for a period of not less than 7 years from the end of the year in which the relevant activities take place; and

- (v) permit Operator Franchisee's NGERs Data to be examined, monitored, measured, copied, audited and verified by any persons appointed or authorised for that purpose by the State or the Greenhouse and Energy Data Officer, and co-operate with and provide all reasonable assistance to any such persons, including giving access to premises, Materials, producing and giving access to documents (including any records kept and retained under **clauses 12.8(b)(iii)** and **12.8(b)(iv)**) and answering questions.
- (c) Without limiting **clause 12.8(b)**, Operator Franchisee must assist the State to comply with the NGER Legislation in relation to any aspect of the Project Activities.
- (d) Operator Franchisee acknowledges and agrees that:
  - (i) Operator Franchisee's NGERs Data is provided to the State:
    - (A) to discharge any obligations that the State may have to provide such NGERs Data to the Greenhouse and Energy Data Officer; and
    - (B) so that the State may provide to the Greenhouse and Energy Data Officer any Operator Franchisee's NGERs Data that it may be entitled to provide concerning any greenhouse gas project;
  - (ii) the State may provide or otherwise disclose Operator Franchisee's NGERs Data to any Authority; and
  - (iii) nothing in this **clause 12.8** is to be taken as meaning that the State has agreed to perform on behalf of Operator Franchisee, any obligation that Operator Franchisee itself may have under the NGER Legislation regarding the provision of NGERs Data to the Greenhouse and Energy Data Officer.

## 13 Tenure and access

### 13.1 Tenure

The State will grant to Operator Franchisee:

- (a) the Construction Licence and the Construction Licence (Special Purpose) for the D&C Phase; and
  - (b) the System Site Licence for the Operations Phase,
- in accordance with and subject to the Agreement to Lease.

### 13.2 Access to and from the Project Area

At all times during the Term, Operator Franchisee is responsible for gaining access to and from the Project Area and, except as expressly provided in this deed, will not be entitled to make any Claim against the State in connection with access, or failure to gain or delay in gaining access, to and from the Project Area.

### 13.3 Native Title Claims

- (a) Operator Franchisee acknowledges and agrees that neither the State nor any other person has made any representation, given any advice or given any warranty as to the existence or otherwise of any native or aboriginal title in respect of the Project Area or any part of the Project Area.

- (b) As between the State and Operator Franchisee:
  - (i) the State will deal with any Native Title Claim in respect of the Project Area or any part of the Project Area; and
  - (ii) the State will pay any compensation or other moneys required to be paid to the native title holders of the Project Area or any part of the Project Area pursuant to a Native Title Claim by those native title holders.
- (c) If there is a Native Title Claim with respect to the Project Area or any part of the Project Area, Operator Franchisee must:
  - (i) continue to perform the Project Activities, except to the extent otherwise:
    - (A) directed by the State;
    - (B) ordered by a court or tribunal; or
    - (C) required by Law;
  - (ii) at the request of the State, or if required to do so under any Law or by order of a court or tribunal, and at the State's cost, provide all reasonable assistance in connection with dealing with the Native Title Claim (including giving the State and any other persons authorised by the State access to the Project Area or that part of the Project Area which is the subject of the Native Title Claim when reasonably required by the State for that purpose);
  - (iii) take all reasonable steps to mitigate such costs and expenses;
  - (iv) comply with all reasonable directions of the State concerning the Native Title Claim and its consequences; and
  - (v) ensure that its Associates comply with the requirements of this **clause 13.3(c)**.

For the purposes of **clause 13.3(c)(i)(A)**, the State may by notice direct Operator Franchisee to suspend performance of any or all of the Project Activities until such time as the State gives Operator Franchisee further notice. No party will be in default of its obligations under the State Project Documents in so far as the failure or delay in the observance or performance of those obligations by that party arises as a consequence of a direction, order or requirement specified in **clause 13.3(c)(i)**.

- (d) Except as stated in this deed, the State will not be liable to Operator Franchisee for any Loss which Operator Franchisee or its Associates suffer or incur as a result of a Native Title Claim in respect of any part of the Project Area.

#### **13.4 Artefacts**

- (a) **(Discovery):** All Artefacts discovered on or under the surface of the Project Area will, as between the parties and to the extent any relevant Law permits, be the absolute property of the State.
- (b) **(Operator Franchisee's obligations):** Operator Franchisee must:
  - (i) upon the discovery of any Artefact:
    - (A) immediately notify the State of the discovery of the Artefact;

- (B) comply with applicable Law (including the *Queensland Heritage Act 1992* (Qld) and the *Aboriginal Cultural Heritage Act 2003* (Qld)) and any directions or orders imposed by any relevant Authority upon Operator Franchisee or the State in respect of the Artefact;
  - (C) comply with all reasonable directions of the State in respect of the State's obligations under all applicable Laws in respect of the Artefact; and
  - (D) continue to perform the Project Activities except to the extent otherwise:
    - (1) directed by the State;
    - (2) ordered by a court or tribunal; or
    - (3) required by Law;
  - (ii) at all times permit the State to watch or examine any excavation on the Project Area; and
  - (iii) take every reasonable precaution in carrying out the Project Activities so as to prevent Artefacts being damaged or removed until appropriate arrangements for dealing with, or removing, the Artefacts have been made.
- (c) **(CHMP):** Arrangements regarding the management of:
  - (i) known issues of Aboriginal Cultural Heritage; and
  - (ii) issues of Aboriginal Cultural Heritage discovered during the performance of the Project Activities,
 are set out in the CHMP.
- (d) **(Compliance with CHMP):** Operator Franchisee must comply with:
  - (i) the provisions and procedures of the CHMP; and
  - (ii) all reasonable directions of the State concerning Artefacts and the protection of Aboriginal Cultural Heritage under the *Aboriginal Cultural Heritage Act 2003* (Qld).
- (e) **(Operator Franchisee to bear loss):** If:
  - (i) Operator Franchisee fails to observe the requirements of:
    - (A) the *Aboriginal Cultural Heritage Act 2003* (Qld);
    - (B) the CHMP; or
    - (C) any directions or orders imposed by any relevant Authority upon Operator Franchisee or the State in respect of the Artefact; and
  - (ii) as a result of such failure Operator Franchisee or its Associates are enjoined from carrying out the Project Activities or suffer any financial penalty,
 Operator Franchisee will:
  - (iii) bear all resultant Losses including those arising out of or in connection with any delay or disruption to the Project; and
  - (iv) not be entitled to make any Claim against the State.

### 13.5 Working hours

- (a) Subject to **clause 13.5(b)**, unless otherwise agreed between Operator Franchisee and the State, the hours of work applicable to the Project Activities to be carried out on the Construction Site are those permitted by relevant Law and relevant Authorities.
- (b) If the State considers:
  - (i) Operator Franchisee is not complying with its obligations under **clause 9.5 or 9.6** or annexures 4 (D&C Program Requirements) or 13 (Communication and Consultation Requirements) of the PSR; and
  - (ii) the hours of work during which the Project Activities to be carried out on the Construction Site are causing or contributing to that failure,the State may (acting reasonably), by notice to Operator Franchisee, restrict the hours of work during which the Project Activities may be carried out on the Construction Site.

### 13.6 Permitted Use

- (a) Operator Franchisee must not use the Construction Site, or permit it to be used, for any purpose other than the Permitted Use without the State's prior consent.
- (b) Operator Franchisee must not:
  - (i) undertake the Project Works (other than the Temporary Works and the Returned Works and the manufacture and production of the LRVs) on, in or under land located outside the System Site Corridor;
  - (ii) undertake the Temporary Works on, in or under land located outside the Project Area; and
  - (iii) undertake the Returned Works on, in or under land located outside the Project Area, the Accommodation Works Areas and any other land where Operator Franchisee has the permission of the property owner to undertake those works.

### 13.7 Existing Operations

- (a) Operator Franchisee acknowledges that:
  - (i) the Public Bus Operator, CoGC, DTMR and any other persons will continue their Existing Operations during the course of the carrying out of the D&C Activities;
  - (ii) the Construction Site is used by other persons and will not be available exclusively to Operator Franchisee; and
  - (iii) in using the Construction Site, Operator Franchisee must ensure the minimum disturbance and inconvenience to the Existing Operations.
- (b) Operator Franchisee:
  - (i) in accessing the Construction Site, must comply with its obligations in the Site Access Schedule with respect to Prohibited Access Roads, Access Thoroughfare Roads and Prohibited Access Areas (as those terms are defined in the Site Access Schedule); and
  - (ii) bears the risk subject to **clause 26**, of coordinating its access to the Construction Site with any other relevant party (including the Public

Bus Operator, CoGC and DTMR) that use the access ways to the Construction Site.

- (c) Without limiting any other obligations of Operator Franchisee, Operator Franchisee must:
- (i) to the extent reasonably possible in performing the D&C Activities not interfere with the free movement of traffic (vehicular, pedal cycle and pedestrian) into and out of, adjacent to, around, on or about the Construction Site or the Existing Operations or block or impair access to any premises, car parks, roadways, pedestrian ways, public spaces, parks, pedal cycle paths or other facilities associated with the Existing Operations and comply with the State's reasonable directions in relation to them;
  - (ii) comply with any reasonable direction of the State in connection with:
    - (A) the Existing Operations (including access to and use of the Construction Site), to the extent such direction is consistent with Operator Franchisee's obligations under this **clause 13.7**; and
    - (B) workplace health and safety issues to enable the State to comply with, and not place the State in breach of, its obligations under workplace health and safety law;
  - (iii) keep itself informed as to the requirements to comply with and not do anything which may place the State in breach of Law applying to the Existing Operations on the Construction Site;
  - (iv) ensure that in carrying out and completing the D&C Activities, the Project Works properly interface and integrate with, and connect to, the physical infrastructure of the Existing Operations so as to enable the Project Works (other than the Temporary Works), when completed, to fully comply with the requirements of the State Project Documents; and
  - (v) immediately:
    - (A) repair and make good any damage to the physical infrastructure of the Existing Operations to the extent arising out of or in connection with the D&C Activities; and
    - (B) when directed by the State, take such action as is required to ensure that its obligations in this **clause 13.7(c)** are complied with.
- (d) Except to the extent expressly permitted by this deed, Operator Franchisee must:
- (i) not unreasonably disrupt, interrupt or interfere in any way with the Existing Operations;
  - (ii) not cause any nuisance or inconvenience to the Existing Operations except to the extent such nuisance or inconvenience is a direct and unavoidable result of carrying out and completing the D&C Activities in accordance with the State Project Documents; and
  - (iii) program and co-ordinate the D&C Activities using Good Industry Practice and so as to minimise the effect that the carrying out of the D&C Activities has on the Existing Operations.

- (e) Operator Franchisee must ensure that each of its Associates at all times complies with this **clause 13.7**.

### **13.7A Private Developments**

- (a) **(Development Assessment Protocol)**: The State may consult with Operator Franchisee (and Operator Franchisee must, if required by the State, consult with the State), in accordance with the Development Assessment Protocol in relation to any application received by DTMR as a technical advice agency in relation to Private Development.
- (b) **(Existing Operations)**: A Private Development will be an Existing Operation if the Private Development is the subject of:
  - (i) a Private Development Approval granted at the date of this deed and listed in **schedule 20**;
  - (ii) a Private Development Approval which is granted on the basis of a Private Development Application made at the date of this deed and listed in **schedule 20**; and
  - (iii) subject to **clause 13.7A(d)**, a Private Development Application made after the date of this deed.
- (c) **(All Private Developments)**: Operator Franchisee must:
  - (i) keep itself informed as to the requirements to comply with and not do anything which may place the State or its Associates in breach of Law applying to Private Development adjacent to or in the vicinity of the Construction Site or the System Site;
  - (ii) not unreasonably disrupt, interrupt or interfere in any way with Private Development adjacent to or around the Construction Site or the System Site, except to the extent expressly permitted by this deed;
  - (iii) not cause any nuisance or inconvenience to the Private Developments except to the extent such nuisance or inconvenience is a direct and unavoidable result of carrying out and completing the Project Activities in accordance with the State Project Documents; and
  - (iv) immediately:
    - (A) repair and make good any damage to the physical infrastructure of the Existing Operations to the extent arising out of or in connection with the Project Activities; and
    - (B) when directed by the State, take such action as is required to ensure that its obligations in this **clause 13.7A** are complied with.
- (d) **(Exclusions)**: **Clauses 13.7A(b)(iii)** and **13.7A(c)** do not apply to the extent that:
  - (i) in respect of Private Development Approvals in relation to which DTMR is a technical advice agency as a result of GCRT (Stage 1), the State has not:
    - (A) provided a Private Development Application made after the date of this deed in relation to which DTMR is a concurrence agency as a result of GCRT (Stage 1) to Operator Franchisee as contemplated by **clause 13.7A(a)**; or



- (B) used reasonable endeavours to address comments made by Operator Franchisee in accordance with **clause 13.7A(a)** and the Development Assessment Protocol; or
- (ii) the Private Development Approval does not contain the inclusions referred to in clause 11.1 of the Council Interface Deed.

### 13.8 Extra Land

- (a) Operator Franchisee must procure for itself and at its own cost the occupation or use of or relevant rights over any land and Waterways in addition to the Project Area from time to time, which is necessary or which it may deem necessary for the Project Activities (which may include additional land required for the Temporary Works, Returned Works, offsite storage, manufacturing, or lay down areas) (**Extra Land**).
- (b) Without limiting Operator Franchisee's obligations under **clause 41.5** and as a condition precedent to Completion, Operator Franchisee must provide to the State:
  - (i) a properly executed release, on terms satisfactory to the State from all Claims from the owner or occupier of, and from any other persons having a reasonably ascertainable interest in, such Extra Land; or
  - (ii) if Operator Franchisee is unable to obtain such a release, despite using reasonable endeavours to do so, a statement signed by Operator Franchisee to the effect that, such owner or occupier or other person having an interest in such land, has failed or refused to execute such a release within 15 Business Days of it being provided by Operator Franchisee to the owner, occupier or other person following completion of the work on the Extra Land.
- (c) Subject to **clauses 42.2 to 42.4**, Operator Franchisee must indemnify the State against any liability or Claim by the owner or occupier of any part of such land where:
  - (i) the owner or occupier has not executed a release in accordance with **clause 13.8(b)(i)**; and
  - (ii) the liability or Claim arises out of or in connection with the Project Activities.
- (d) Operator Franchisee acknowledges that:
  - (i) any required integration of the Extra Land with the Project Area is at the sole risk of Operator Franchisee; and
  - (ii) the State will not be liable upon any Claim by Operator Franchisee arising out of or in any way in connection with:
    - (A) identifying and obtaining access to Extra Land; or
    - (B) any delay, additional costs or other effects on the Project Activities related to the ability of Operator Franchisee or its Associates to obtain access to Extra Land or integrate such Extra Land with the Project Area.
- (e) Operator Franchisee must ensure that the use and rehabilitation of any Extra Land is to the reasonable satisfaction of the owner of the land, any lessee of the land, the State and all relevant Authorities.

### 13.9 Accommodation Works – Access to Unowned Parcels

- (a) **(Notice to owners):** If any Accommodation Works are required to be carried out on an Unowned Parcel, Operator Franchisee must give a notice to the owners of the property (with a copy to the State) which:
- (i) describes the Accommodation Works to be carried out;
  - (ii) requests access for the purpose of carrying out the Accommodation Works; and
  - (iii) specifies the intended date for commencement of the Accommodation Works,

not less than 10 Business Days prior to the day which Operator Franchisee intends to commence the Accommodation Works.

- (b) **(No access):**
- (i) If the owners of a property do not provide Operator Franchisee with sufficient access to carry out the Accommodation Works from either:
    - (A) the date notified in the notice under **clause 13.9(a)**; or
    - (B) such other date as may be agreed between Operator Franchisee and the owners,Operator Franchisee must promptly notify the State.
  - (ii) Within 60 Business Days of receipt of notice from Operator Franchisee under **clause 13.9(b)(i)**, the State will either:
    - (A) notify Operator Franchisee of the basis upon which Operator Franchisee may access the relevant property (in which case **clause 13.9(a)** will reapply); or
    - (B) require Operator Franchisee to carry out a Modification pursuant to **clause 30** to modify the Project Works or the Project Activities to accommodate the impact (if any) of the lack of access to the relevant property on the Project.
  - (iii) Operator Franchisee will not be required to carry out Accommodation Works on an Unowned Parcel to the extent prevented by the lack of access to the relevant property, from the date of Operator Franchisee's notice under **clause 13.9(b)(i)** until the date of the State's notice under **clause 13.9(b)(ii)**.
- (c) **(Minimise disruption):** Upon being given access to any property for the purpose of carrying out any Accommodation Works, Operator Franchisee must promptly carry out those Accommodation Works in a manner which minimises inconvenience and disruption to the owners, occupiers and users of the Unowned Parcel.
- (d) **(Rehabilitation and repair):** Operator Franchisee must:
- (i) rehabilitate any part of an Unowned Parcel to at least the standard it was in immediately prior to Operator Franchisee obtaining access; and
  - (ii) otherwise repair any damage or degradation to such a part arising out of or in any way in connection with the performance of its obligations under this **clause 13.9**.
- (e) **(PSR):** The PSR is indicative only of the scope of the Accommodation Works and does not limit or otherwise affect Operator Franchisee's

obligations under the State Project Documents in relation to the Accommodation Works.

### 13.10 Temporary Works Areas

- (a) Operator Franchisee must ensure that the use and rehabilitation of Temporary Works Areas is to the satisfaction of the owner of the land, the lessee of the land, the State and all relevant Authorities.
- (b) In respect of Temporary Works Areas other than Temporary Works Areas owned or controlled by CoGC, it is a condition precedent to Completion that Operator Franchisee provide the State with:
  - (i) a properly executed release on terms satisfactory to the State from all Claims from all owners or occupiers of each Temporary Works Area and from any other person having a reasonably ascertainable interest in such land; or
  - (ii) if Operator Franchisee is unable to obtain such release despite using its reasonable endeavours to do so, a statement signed by Operator Franchisee to the effect that such owner or occupier, or other person having an interest in such land, has failed or refused to execute such a release within 15 Business Days of it being provided by Operator Franchisee to the owner or occupier, or other person, following completion of the work on any Temporary Works Area.
- (c) Subject to **clauses 42.2 to 42.4**, Operator Franchisee must indemnify the State against any Loss or Claim by the owner or occupier of any part of a Temporary Works Area to the extent that:
  - (i) the owner or occupier of that Temporary Works Area has not executed a release in accordance with **clause 13.10(b)(i)**; and
  - (ii) the Loss or Claim arises out of or in connection with the Project Activities.
- (d) In respect of Temporary Works Areas owned or controlled by CoGC:
  - (i) when Operator Franchisee considers it has rehabilitated and established the land in accordance with the Site Access Schedule, Operator Franchisee must notify the State and the Independent Verifier of that opinion;
  - (ii) within 5 Business Days of receipt of a notice under **clause 13.10(d)(i)**, the Independent Verifier must inspect the Temporary Works Area and notify Operator Franchisee and the State that it considers that the Temporary Works Area:
    - (A) has been rehabilitated and established in accordance with the State Project Documents; or
    - (B) has not been rehabilitated and established in accordance with the State Project Documents, and details of the further work required to rehabilitate and establish the Temporary Works Area;
  - (iii) Operator Franchisee must carry out any further work identified by the Independent Verifier under **clause 13.10(d)(ii)(B)**, and **clause 13.10(d)(i)** will apply again; and

- (iv) subject to CoGC granting permission to access the relevant land, Operator Franchisee must fix (within a reasonable period specified by CoGC or the State) any Defect in the rehabilitation and establishment works notified to Operator Franchisee by the State or CoGC in the period up to 24 months after the Date of Completion (or, if later, 12 months after rectification of a Defect under this **clause 13.10(d)(iv)**).

It is a condition precedent to Completion that Operator Franchisee has obtained the approval of the Independent Verifier under **clause 13.10(d)(ii)(A)** of all Temporary Works Areas owned or controlled by CoGC.

## PART D – D&C Activities

### 14 Design

#### 14.1 Design obligations

Subject to **clause 1.3**, Operator Franchisee must design the Project Works and any works carried out as part of the O&M Activities in accordance with:

- (a) annexure 17 (Contract Management Requirements) of the PSR;
- (b) any Modification (including any Minor Works):
  - (i) directed by the State by a Modification Order; or
  - (ii) approved by the State by a Modification Approval;
- (c) the Design Management Plan; and
- (d) the other requirements of the State Project Documents and the Codes and Standards.

#### 14.2 Design warranties

- (a) Operator Franchisee warrants that:
  - (i) it has reviewed and carefully considered the PSR and that it is proper, adequate and fit for the purposes of enabling Operator Franchisee to carry out its design, manufacture, construction, operation and maintenance obligations under the State Project Documents, including ensuring that the Project Works (other than the Temporary Works) will, upon Completion and thereafter at all relevant times during the Term, be safe and Fit for Purpose;
  - (ii) the Design Documentation for the Project Works and any works carried out as part of the O&M Activities will:
    - (A) be prepared, certified, verified, completed and used in accordance with the requirements of the State Project Documents, including the PSR;
    - (B) satisfy the requirements of the State Project Documents, including the PSR; and
    - (C) be safe and Fit for Purpose.
- (b) Subject to **clauses 30, 31 and 33**, Operator Franchisee agrees that the warranties given in **clause 14.2(a)** will remain unaffected, and that it will bear and continue to bear full liability and responsibility for the design of the Project Works and any works carried out as part of the O&M Activities, despite any Modification (including any Minor Works) directed or approved by the State, except to the extent that any such Modification is undertaken by a third party:
  - (i) selected following a tender process referred to in **clause 30.6** and the Modification Notice provided by Operator Franchisee identifies that such Modification has an effect on the warranties given by Operator Franchisee under this **clause 14.2**; or

- (ii) in accordance with **clause 33.2(d)**.
- (c) The warranties in **clause 14.2(a)** do not extend to:
  - (i) whether the requirements regarding service frequency specified in part 1 of annexure 14 (Operations and Customer Service Requirements) of the PSR are sufficient to meet actual patronage or the State's forecast patronage of the System; or
  - (ii) whether the configuration of the traffic intersections specified in attachment 1 of part 1 of annexure 5 of the PSR is sufficient to meet any growth in the volume of traffic for those intersections beyond that forecast in the Information Documents.

### 14.3 Concept Design

- (a) Operator Franchisee acknowledges that prior to the date of this deed it prepared the Concept Design. Operator Franchisee agrees that it bears absolutely all risks howsoever they may arise as a result of the use by Operator Franchisee of, or the reliance by Operator Franchisee upon, the Concept Design in performing the Project Activities and that such use and reliance will not limit any of its obligations under the State Project Documents.
- (b) Operator Franchisee is responsible for, and assumes the risk of, any Loss it suffers or incurs arising out of or in connection with:
  - (i) the design, construction, manufacture, installation, testing and commissioning of the Project Works in accordance with the Concept Design costing more or taking longer than anticipated; and
  - (ii) any differences between the Project Works which Operator Franchisee is required to design, construct, manufacture, install, test and commission (ignoring for this purpose any differences which are the subject of a Modification under **clause 30** or Minor Works under **clause 33**) and the Concept Design including:
    - (A) differences necessitated by any Site Conditions encountered; and
    - (B) differences required to ensure that the Project Works will be and remain Fit for Purpose and satisfy the requirements of the State Project Documents,

and irrespective of any assumptions, projections, estimates, contingencies or otherwise that Operator Franchisee may have made in relation to any of the matters set out in **clauses 14.3(b)(i)** and **14.3(b)(ii)**.
- (c) Operator Franchisee warrants to the State that the Concept Design has been prepared by Operator Franchisee and that:
  - (i) it remains responsible for ensuring that the Project Works will satisfy the requirements of the State Project Documents despite the Concept Design;
  - (ii) if the Project Works are designed, constructed, manufactured, installed and commissioned in accordance with the Concept Design, the Project Works will satisfy the requirements of the State Project Documents but nothing in this **clause 14.3(c)(ii)** affects or limits

**clause 14.3(a) or 14.3(b)**, which will prevail to the extent of any inconsistency; and

- (iii) Operator Franchisee will carry out and complete the Project Activities in accordance with the Concept Design but nothing in this **clause 14.3(c)(iii)** affects or limits **clause 14.3(a) or 14.3(b)**, which will prevail to the extent of any inconsistency.

#### **14.4 Changes to Concept Design**

- (a) **(Development of Design Documentation):** The process of developing the design from the Concept Design to the Design Documentation may (subject to this **clause 14.4**) result in changes to the design set out in the Concept Design.
- (b) **(Restrictions on changes):** Operator Franchisee must not make a change referred to in **clause 14.4(a)** unless:
  - (i) Operator Franchisee notifies the State and the Independent Verifier of the change and demonstrates to the satisfaction of the Independent Verifier that the change:
    - (A) is minor;
    - (B) complies with the PSR or is necessary to comply with the PSR where the PSR imposes the greater or higher requirement, standard, level of service or scope;
    - (C) is consistent with the design intent in the Concept Design; and
    - (D) does not result in a lessening of any requirement, standard, level of service or scope for any work set out in the Concept Design (including any reduction in capacity, durability, maintainability, Design Life, quality, aesthetics of visual features, whole of life performance, functional performance, Journey Time (as defined in the PSR), environmental protection, sustainability, safety, security, community amenity or benefits, or Passenger benefits); or
  - (ii) the State consents to the change under **clause 14.4(c)**, or the change is accepted or approved by the State as a Modification.
- (c) **(State consent):**
  - (i) Operator Franchisee may request the State's consent to a change that does not comply with the PSR, is not minor, is not consistent with the design intent in the Concept Design or results in a lessening of any requirement, standard, level of service or scope for any work set out in the Concept Design.
  - (ii) If Operator Franchisee requests the State's consent under **clause 14.4(c)(i)**, the State will use reasonable endeavours to notify Operator Franchisee within 10 Business Days whether the State consents to that change.
- (d) **(No claim):** Operator Franchisee will have no entitlement to make any Claim against the State or the Independent Verifier in respect of:
  - (i) a change (or rejection of a change) under this **clause 14.4** (except to the extent the change is accepted or approved by the State as a Modification, in which case this **clause 14.4(d)** does not limit any

entitlement Operator Franchisee may have under **clause 30** or **31** in respect of that Modification); or

- (ii) any failure by the State to respond in the timeframe referred to in **clause 14.4(c)**.

#### **14.5 Development of Design Documentation**

- (a) Operator Franchisee must give the Independent Verifier and the State throughout the preparation of the Design Documentation the opportunity to review, to comment on and to monitor the design performance of Operator Franchisee in accordance with this **clause 14**.
- (b) Operator Franchisee must:
  - (i) develop and complete the Design Documentation for the Project Works and any works to be carried out as part of the O&M Activities in accordance with the requirements of the State Project Documents and the Design Management Plan;
  - (ii) during the D&C Phase, submit the Design Documentation to the Independent Verifier and the State:
    - (A) in a manner and at a rate which will give the Independent Verifier and the State a reasonable opportunity to review the submitted Design Documentation in accordance with the Design Management Plan and this **clause 14**; and
    - (B) in accordance with the requirements of annexure 17 (Contract Management Requirements) of the PSR;
  - (iii) during the Operations Phase, in the case of any work to be carried out as part of the O&M Activities, submit to the State any Design Documentation before it commences carrying out any such work;
  - (iv) if required by the State or the Independent Verifier:
    - (A) make available the appropriate design and certification personnel (including, in relation to the Design Stage 2 Design Documentation, the Proof Engineer and Qualified Fire Engineer (if applicable) to:
      - (1) explain the Design Documentation; and
      - (2) provide such information regarding the Design Documentation,as the State or the Independent Verifier reasonably requests; and
    - (B) deliver design presentation workshops at times and as requested by the State or the Independent Verifier and attended by all relevant personnel from Operator Franchisee's design team to the nominees of the State and the Independent Verifier on the status and detail of the Design Documentation of any discrete design part or element in the Project Activities as requested.

#### **14.5A Site Preparation Works**

Operator Franchisee may commence some or all of the Site Preparation Works provided that:



- (a) the State has approved the relevant works as Site Preparation Works under section 3.1.4 of Annexure 17, Attachment 2 of the PSR; and
- (b) Design Documentation for the relevant Site Preparation Works has been submitted to the Independent Verifier and the State in accordance with **clause 14.5(b)(ii)** and not rejected by the Independent Verifier.

#### **14.6 Design Stage 1**

- (a) The State may (but is not obliged to), within 10 Business Days of the date on which any Design Documentation for Design Stage 1 is submitted to the State in accordance with **clause 14.5(b)(ii)**:
  - (i) provide comments to Operator Franchisee in respect of the Design Documentation; and
  - (ii) notify the Independent Verifier (with a copy to Operator Franchisee) if the Design Documentation does not comply with the requirements of the State Project Documents, giving reasons why the Design Documentation does not comply with the requirements of the State Project Documents.
- (b) If the Independent Verifier considers that any Design Documentation for Design Stage 1 does not comply with the requirements of the State Project Documents, it must, within 15 Business Days of the date on which any Design Documentation for Design Stage 1 is submitted to the Independent Verifier in accordance with **clause 14.5(b)(ii)**, notify Operator Franchisee of any non-compliances:
  - (i) taking into account any notice received from the State under **clause 14.6(a)(ii)**; and
  - (ii) giving reasons why the Design Documentation does not comply with the requirements of the State Project Documents (including detailed particulars of the alleged non-compliance).

#### **14.7 Design Stage 2**

- (a) **(Development from Design Stage 1)**: The Design Documentation in respect of Design Stage 2 must:
  - (i) be consistent with and a logical development of the relevant Design Documentation submitted to the State and the Independent Verifier at Design Stage 1, subject to any changes to ensure compliance with the State Project Documents; and
  - (ii) address any comments made by the Independent Verifier pursuant to **clause 14.6(b)**.
- (b) **(Inconsistency with Design Stage 1)**: If any Design Documentation (or any part or element of it) Operator Franchisee intends to submit at Design Stage 2 does not comply with the requirements of **clause 14.7(a)(i)**:
  - (i) Operator Franchisee must, prior to submitting the Design Documentation for Design Stage 2, submit to the State and the Independent Verifier the Design Documentation that would have been required at Design Stage 1 if the proposed changes to the design of that design component, or part or element of it, had been made at Design Stage 1 and the process in **clauses 14.5** and **14.6** in respect of Design Documentation will reapply as though Operator Franchisee

- had not previously submitted any Design Documentation in respect of the particular design component, or part or element of it; or
- (ii) Operator Franchisee must amend that Design Documentation so as to comply with the requirements of **clause 14.7(a)(i)**.
- (c) **(Certification)**: The Design Stage 2 Design Documentation for each design component, or part or element of it, of the Project Works must be:
- (i) certified by each relevant Designer and Operator Franchisee as:
    - (A) being appropriate for construction; and
    - (B) complying with the State Project Documents including the PSR;
  - (ii) to the extent required by the PSR, certified by the Proof Engineer and Qualified Fire Engineer and Building Surveyor in accordance with annexures 5 (Engineering Design Requirements) and 17 (Contract Management Requirements) of the PSR;
  - (iii) certified by the O&M Contractor as being acceptable from an operational perspective to enable it to meet its obligations under the O&M Contract, including its obligations with respect to safety, reliability and maintenance; and
  - (iv) certified by Operator Franchisee as not involving or constituting a Modification unless that Modification has been:
    - (A) directed by the State by a Modification Order or approved by the State by a Modification Approval; or
    - (B) directed by the State as Minor Works under **clause 33**.
- (d) **(Form of certification)**: The certification required under **clause 14.7(c)** must be in the form set out in the Certification Schedule and, in the case of any certification by a Designer, the Proof Engineer, or the Qualified Fire Engineer, must be certified by a Registered Professional Engineer.
- (e) **(Submission of Design Documentation)**: Operator Franchisee must:
- (i) submit to each of the State and the Independent Verifier one electronic set of all Design Stage 2 Design Documentation of each design component, or part or element of it (including all Design Documentation for the Temporary Works), certified in accordance with **clause 14.7(c)** including amended versions so certified; and
  - (ii) store a hard copy of such Design Stage 2 Design Documentation in a secure location in accordance with the PSR;
  - (iii) allow 15 Business Days from the date the Design Stage 2 Design Documentation of each design component, or part or element of it, are submitted to the State and the Independent Verifier in accordance with **clause 14.7(e)(i) (Design Review Period)** for the State and the Independent Verifier (if either of them so desire) to review the Design Documentation, consult with others in respect of the Design Documentation and to consult with Operator Franchisee (and the D&C Contractor) and comment on that Design Documentation;
  - (iv) allow 5 Business Days after the expiry of the Design Review Period for the Independent Verifier to either provide certification or reject any such Design Documentation, as referred to in **clause 14.7(g)** (and with a copy to the D&C Contractor);

- (v) not use that Design Documentation for construction purposes except as permitted by **clause 14.7(i)**; and
- (vi) not amend for construction purposes any Design Documentation which has:
  - (A) been submitted to the State and the Independent Verifier in accordance with this **clause 14.7(e)**;
  - (B) not been rejected under **clause 14.7(g)(i)**; and
  - (C) been certified by the Independent Verifier pursuant to **clause 14.7(g)(ii)**,
 unless it first submits the proposed amendments (duly certified under **clause 14.7(c)**) to the State and the Independent Verifier and the process in this **clause 14.7(e)** has been reapplied to the proposed amendments.
- (f) **(State review)**: The State may (but is not obliged to) at any time prior to the expiry of the Design Review Period:
  - (i) provide comments to Operator Franchisee and the Independent Verifier in respect of the Design Documentation; and
  - (ii) notify the Independent Verifier (with a copy to Operator Franchisee) if the Design Documentation does not comply with the requirements of the State Project Documents, giving reasons why the Design Documentation does not comply with the requirements of the State Project Documents.
- (g) **(Independent Verifier review)**: The Independent Verifier must, within 5 Business Days after the expiry of the Design Review Period, either (taking into consideration any comments provided by the State under **clause 14.7(f)**):
  - (i) reject the Design Documentation submitted to it under **clause 14.7(e)** if the Design Documentation does not comply with the requirements of the State Project Documents (including for a failure to comply with the requirements of **clauses 14.7(e)** and **14.7(g)**) and provide reasons for the rejection (including detailed particulars of the alleged non-compliance); or
  - (ii) certify the Design Documentation by:
    - (A) including a notation on each document forming part of the Design Documentation; and
    - (B) providing to the State and Operator Franchisee (with a copy to the D&C Contractor) a document signed by the Independent Verifier in the form set out in the Certification Schedule.
- (h) **(Rejection or amendment of Design Documentation)**: If any Design Documentation is rejected by the Independent Verifier under **clause 14.7(g)(i)**, Operator Franchisee must promptly amend the Design Documentation and:
  - (i) have it certified under **clause 14.7(c)**; and
  - (ii) re-submit it to the State and the Independent Verifier,
 and after this the process in **clause 14.7(e)** will be reapplied to the amended Design Documentation.

- (i) **(Use of Design Documentation):** Unless otherwise approved by the State, Operator Franchisee must not use for construction purposes any Design Documentation (including any Design Documentation for Temporary Works), unless it is permitted to do so under **clause 14.5A** or the Design Documentation has:
  - (i) been certified by Operator Franchisee's contractor who prepared it and by Operator Franchisee under **clause 14.7(c)**;
  - (ii) been submitted to the State and the Independent Verifier under **clause 14.7(e)**; and
  - (iii) been certified by the Independent Verifier under **clause 14.7(g)(ii)**.
- (j) **(Documentation for construction):** Operator Franchisee must give the State four hard copy sets of all Design Stage 2 Design Documentation which it is entitled pursuant to this **clause 14.7** to use for construction purposes in accordance with the requirements of the PSR.

#### **14.8 Modifications during Design Documentation development**

If Operator Franchisee believes that the development of the Design Documentation under this **clause 14** has given rise to any proposal by the State for a Modification, Operator Franchisee must notify the State of the Modification within 10 Business Days of the date on which it became aware or ought reasonably to have become aware of the proposed Modification (and in any case prior to incorporating any such Modification in the Design Documentation) and will not be entitled to make any Claim against the State in respect of such a Modification unless it notifies the State in accordance with this **clause 14.8** and the State gives a direction to Operator Franchisee to proceed to carry out the Modification.

#### **14.9 No obligation to review**

- (a) **(No duty of care):** The State does not assume or owe any duty of care to Operator Franchisee to review, or in reviewing, any Design Documentation submitted by Operator Franchisee for any errors, omissions or compliance with the State Project Documents.
- (b) **(No relief):** No participation in the development of, review of, comments upon, acceptance or rejection of, or failure to participate in the development of, review or comment upon or accept or reject, any Design Documentation submitted by Operator Franchisee or any other direction, act or omission by the State or the Independent Verifier in respect of the Design Documentation or the certification of any Design Documentation by the Independent Verifier under **clause 14.7(g)(ii)** will:
  - (i) lessen or otherwise affect Operator Franchisee's warranties under **clause 14.7**, or otherwise relieve Operator Franchisee from, or alter or affect, Operator Franchisee's liabilities, obligations or responsibilities whether under any State Project Document or otherwise according to Law;
  - (ii) constitute an approval by the State that Operator Franchisee has complied with its obligations under the State Project Documents;
  - (iii) prejudice the State's rights against Operator Franchisee whether under the State Project Documents or otherwise according to the Law; or

- (iv) give rise to an entitlement for Operator Franchisee to make any Claim arising out of, or in any way in connection with, any change to design which occurs in accordance with this **clause 14** in accordance with the rules set out in this **clause 14.9**.

#### **14.10 Colour schemes and finishes**

- (a) Without limiting Operator Franchisee's obligations in relation to design under this **clause 14** (including to have Design Documentation certified by the Independent Verifier), Operator Franchisee must:
  - (i) comply with the requirements of annexures 6 (Urban and Landscape Design Requirements) and 7 (Rolling Stock Requirements) of the PSR in relation to colour schemes and finishes (including to provide a Schedule of Finishes);
  - (ii) ensure that the colour schemes and finishes in respect of similar elements of the System are uniform; and
  - (iii) submit to the State for approval:
    - (A) samples of the proposed colour scheme, interior finishes and exterior finishes for each LRV, the Depot, Stations, Interchanges and bus stops (including furniture, civil and structural finishes);
    - (B) samples of the final colour scheme, interior finishes and exterior finishes for each LRV, the Depot, Stations, Interchanges and bus stops (including furniture, civil and structural finishes); and
    - (C) at any time during the Term, any changes to any samples submitted under this **clause 14.10(a)(iii)** (including samples of the proposed new colour scheme, interior finishes and exterior finishes (as applicable)).
- (b) The State will, within 5 Business Days of receipt of any samples, or a request for a change, from Operator Franchisee under **clause 14.10(a)(iii)**:
  - (i) approve the proposed or final colour scheme, interior finishes and exterior finishes, or changes to the colour scheme, interior finishes and exterior finishes (as applicable);
  - (ii) request further information or samples from Operator Franchisee; or
  - (iii) notify Operator Franchisee that it does not approve the proposed or final colour scheme, interior finishes and exterior finishes, or changes to the colour scheme, interior finishes and exterior finishes (as applicable), together with the State's reasons for withholding its approval,

provided that, in relation to samples of a final colour scheme, interior finish or exterior finish, the State must approve that colour scheme, interior finish or exterior finish if the sample is consistent with a sample of a proposed colour scheme, interior finish or exterior finish which the State has previously approved under this **clause 14.10(b)**.
- (c) Operator Franchisee must not construct, manufacture or install Project Works except in accordance with a colour scheme, interior finish or exterior finish which has been approved by the State under **clause 14.10(b)**.

- (d) Any aspect of a colour scheme, an interior finish or an exterior finish which is inconsistent with the scheme or finish approved by the State under **clause 14.10(b)** is deemed to be a Defect.

## 15 Manufacture and Construction

### 15.1 Manufacture and Construction obligations

Subject to **clause 1.3**, Operator Franchisee must construct, manufacture and install the Project Works in accordance with:

- (a) the PSR and the Codes and Standards;
  - (b) the Construction Documentation;
  - (c) any Modification:
    - (i) directed by the State by a Modification Order; or
    - (ii) approved by the State by a Modification Approval;
  - (d) any Minor Works directed by the State; and
  - (e) the State Project Documents,
- and so that:
- (f) the Temporary Works are, at all relevant times, Fit for Purpose;
  - (g) the Project Works (other than the Temporary Works):
    - (i) are, upon Completion and at all times during the Term, Fit for Purpose; and
    - (ii) meet the requirements for the applicable Residual Design Lives; and
  - (h) the System is wholly located within the System Site Corridor.

Operator Franchisee accepts full responsibility for all manufacturing and construction means, methods and techniques used in the performance of the D&C Activities.

### 15.2 Manufacture and Construction warranties

Operator Franchisee warrants that:

- (a) the construction, manufacture and installation of the Project Works in accordance with **clause 15.1**, will satisfy the requirements of the State Project Documents; and
- (b) the Project Works (other than the Temporary Works):
  - (i) are, upon Completion and at all times during the Term, Fit for Purpose; and
  - (ii) will meet the requirements for the applicable Residual Design Lives.

Subject to **clause 30**, Operator Franchisee agrees that the warranties given in this **clause 15.2** will remain unaffected, and that it will bear and continue to bear full liability and responsibility for the construction, manufacture and installation of the Project Works, despite any Modification or Minor Works directed or approved by the State except if:

- (c) the Modifications are undertaken by a third party selected following a tender process referred to in **clause 30.6** and the Modification Notice provided by

Operator Franchisee identifies that such Modification has an effect on the warranties given by Operator Franchisee under this **clause 15.2**;

- (d) the Minor Works are undertaken by a third party engaged by the State in accordance with **clause 33.2(d)(ii)**; or
- (e) the State remediates Contamination itself or engages a third party to remediate that Contamination pursuant to **clause 12.3(c)(iii)(C)**.

### **15.3 Workmanship and Materials**

Operator Franchisee must, in performing the D&C Activities:

- (a) use workmanship of the standard set out in the PSR or, to the extent it is not so set out, in accordance with Good Industry Practice; and
- (b) use Materials which:
  - (i) comply with the requirements of the PSR or, if not fully described in the PSR, are new (other than in relation to the Temporary Works) and in accordance with Good Industry Practice;
  - (ii) are of merchantable quality; and
  - (iii) are safe and Fit for Purpose.

### **15.4 Independent Verifier's review of construction**

- (a) **(Review by Independent Verifier)**: The Independent Verifier must continually review (by general overview and reasonable checking) the construction, manufacture or installation of the Project Works so that it may form an opinion as to whether or not the obligations of Operator Franchisee under the State Project Documents relating to the Project Works (including compliance with the Project Plans and any Approvals) are being complied with.
- (b) **(Notice of non-compliance)**: If the Independent Verifier believes that the obligations of Operator Franchisee under the State Project Documents in relation to the construction, manufacture or installation of the Project Works (other than the Temporary Works) are not being complied with, the Independent Verifier may give notice to the State and Operator Franchisee of its opinion together with its reasons for forming that opinion.
- (c) **(Operator Franchisee's response)**: Within 5 Business Days of receipt of the Independent Verifier's notice under **clause 15.4(b)**, Operator Franchisee must:
  - (i) notify the State and the Independent Verifier of any matters in respect of which it disagrees with the Independent Verifier's opinion together with its reasons for doing so (**Explanation**); and
  - (ii) to the extent it does not disagree, provide a plan and a program for the rectification of any non-compliance (**Remediation Plan**).
- (d) **(Notice by Independent Verifier)**: Within 7 Business Days of receipt of the Explanation or Remediation Plan, the Independent Verifier must give notice to the State and Operator Franchisee of its opinion as to whether or not the Explanation or the Remediation Plan satisfactorily addresses its concerns together with its reasons for forming that opinion and, if the Independent Verifier does not consider the Explanation or the Remediation Plan satisfactorily addresses its concerns, Operator Franchisee must comply with

**clause 15.4(c)** as though the notice from the Independent Verifier under this **clause 15.4(d)** was a notice under **clause 15.4(b)**.

## **15.5 Defects**

- (a) **(Obligation to rectify):** Operator Franchisee must rectify all Defects whether or not the subject of a notice under this **clause 15.5**.
- (b) **(Notification by Operator Franchisee):** If Operator Franchisee identifies a Defect (including any Defect in Stage 2 after the Date of Stage 2 Completion), Operator Franchisee must:
  - (i) immediately notify the State and (if the Defect is identified prior to the Date of Completion) the Independent Verifier; and
  - (ii) expeditiously and diligently progress correction of that Defect.
- (c) **(Notification by the State or Independent Verifier):** If:
  - (i) at any time during the Term, the State;
  - (ii) prior to Close Out, the Independent Verifier;
  - (iii) prior to after the Date of Stage 2 Completion but prior to Stage 2 Close Out, the Independent Verifier (Stage 2),believes that there is any Defect (including any Defect in Stage 2 after the Date of Stage 2 Completion), the State or the Independent Verifier or the Independent Verifier (Stage 2) (as applicable) may give notice to Operator Franchisee specifying the Defect and the reasonable period of time within which Operator Franchisee must correct the Defect.
- (d) **(Dispute):** If Operator Franchisee disagrees with any notice given by the State under **clause 15.5(c)**, then:
  - (i) it must, within 5 Business Days of receipt of that notice, give notice of its disagreement to the State;
  - (ii) the State and Operator Franchisee must use reasonable endeavours to resolve the matter the subject of the disagreement; and
  - (iii) if the matter is not resolved within 10 Business Days after the date of that notice, either party may:
    - (A) if Completion has not been achieved, by notice to the other and the Independent Verifier, refer the matter for determination by the Independent Verifier, who must within 10 Business Days make a determination as to the matter and notify the parties in writing of its determination together with its reasons for making its determination; or
    - (B) if Completion has been achieved, refer the matter for dispute resolution under **clause 57**.
- (e) **(Rights of State):** If the State identifies any Defect or is notified of a Defect by Operator Franchisee and:
  - (i) correction of the Defect has not been achieved within the time period specified in the notice under **clause 15.5(c)** or resolved in accordance with **clause 15.5(d)** (as applicable);
  - (ii) correction of the Defect is not being expeditiously and diligently progressed by Operator Franchisee; or



- (iii) if otherwise agreed by Operator Franchisee and the State,  
the State may:
- (iv) notify Operator Franchisee that the State elects to accept the Defect and require Operator Franchisee to:
  - (A) pay the State the amount certified by the Independent Verifier or Independent Verifier (Stage 2) (as applicable) (or otherwise determined under **clause 57**) as being the costs which would have been incurred by Operator Franchisee had the work necessary to rectify the Defect identified or notified by the State been carried out; or
  - (B) comply with the requirements nominated by the State (including as to the payment of any money provided that the amount of that payment or the cost of such requirements cannot be greater than the amount that would have been payable under **clause 15.5(e)(iv)(A)**); or
- (v) correct the Defect itself or engage others to correct the Defect, in which case the moneys payable to the State under **clause 15.5(e)(iv)** or costs incurred by the State under **clause 15.5(e)(v)** will be a debt due and payable by Operator Franchisee to the State.
- (f) **(Operator Franchisee to correct Defect):** If the State gives a notice under **clause 15.5(c)** and Operator Franchisee does not give notice under **clause 15.5(d)** or, if it does, and it is determined by the Independent Verifier, the Independent Verifier (Stage 2) or under **clause 57** (as applicable) that a Defect exists, Operator Franchisee must correct the Defect expeditiously and diligently and in any event, within the time specified in the State's notice under **clause 15.5** or the time (if any) determined by the Independent Verifier, the Independent Verifier (Stage 2) or under **clause 57** (as applicable).
- (g) **(No limitation):**
  - (i) Neither the State's rights, nor Operator Franchisee's liability, whether under the State Project Documents or otherwise at Law in respect of Defects will be affected or limited by:
    - (A) the rights conferred upon the State by this **clause 15.5** or any other provision of this deed or the Stage 2 Works Deed;
    - (B) the failure by the State to exercise any such rights; or
    - (C) any direction in the State's notice.
  - (ii) Nothing in this **clause 15.5** excludes any rights the State may have to recover damages from Operator Franchisee for breach of the State Project Documents or limit or affect the State's rights under **clause 5**.
- (h) **(Returned Works):** This **clause 15.5** does not apply to Defects in a Returned Facility (which are dealt with in **clause 19.3**).

## 15.6 EEW Defects

- (a) **(Notification of EEW Defects):** If Operator Franchisee identifies an EEW Defect, Operator Franchisee must immediately notify the State:
  - (i) that it is of the opinion that it has identified an EEW Defect;

- (ii) the basis on which it holds that opinion; and
  - (iii) the effect of the EEW Defect on the Project Activities.
- (b) **(Rectification by EEW contractor):** If Operator Franchisee notifies the State of an EEW Defect prior to the end of the defects liability period under the relevant EEW Contract, the State will use reasonable endeavours to procure that the contractor under the relevant EEW Contract rectifies the EEW Defect within a reasonable period determined by the State (having regard to the information provided by Operator Franchisee under **clause 15.6(a)**).
- (c) **(Rectification by the State or a third party):** If:
  - (i) Operator Franchisee notifies the State of an EEW Defect after the end of the defects liability period under the relevant EEW Contract; or
  - (ii) Operator Franchisee notifies the State of an EEW Defect prior to the end of the defects liability period under the relevant EEW Contract but the State has been unable to procure rectification of the EEW Defect in accordance with **clause 15.6(b)**,
 the State will either:
  - (iii) rectify, or procure that a third party rectify, the EEW Defect (at its own cost); or
  - (iv) implement a Modification under **clause 30** for Operator Franchisee to carry out the defect rectification works.
- (d) **(Operator Franchisee to cooperate):** Operator Franchisee must:
  - (i) give the EEW Contractor, the State and its Associates (as applicable) sufficient access to the Project Area to enable rectification of the EEW Defect;
  - (ii) co-operate with the EEW Contractor, the State and its Associates (as applicable), to facilitate the rectification of the EEW Defect, including permitting reasonable temporary closure of parts of the Project Area, management of Passengers and others in areas affected by the EEW Defect and rescheduling Operator Franchisee's maintenance activities (as applicable);
  - (iii) carefully co-ordinate and interface the Project Activities with the activities associated with rectification of the EEW Defect; and
  - (iv) use its reasonable endeavours to minimise any interference with, or disruption or delay to, the activities associated with rectification of the EEW Defect.
- (e) **(Minimisation of interference):** The State must use reasonable endeavours to:
  - (i) minimise any interference with, or disruption or delay to, the Project Activities and ensure that its Associates comply with the requirements of this **clause 15.6**; and
  - (ii) ensure that any third party undertaking rectification works in respect of an EEW Defect has an obligation to co-operate with Operator Franchisee and its Associates to permit Operator Franchisee to carry out the Project Activities.

- (f) **(Agreement or determination):** If the parties cannot agree as to whether a matter notified to the State by Operator Franchisee under **clause 15.6(a)** is an EEW Defect, either party may refer the matter for dispute resolution in accordance with **clause 57**.

## 16 Time

### 16.1 Commencement

Operator Franchisee must promptly commence performance of the D&C Activities from Financial Close.

### 16.2 Dates for completion

Operator Franchisee must:

- (a) regularly, expeditiously and diligently progress the D&C Activities; and
- (b) achieve Completion by the Date for Completion; and
- (c) achieve Close Out by the Date for Close Out.

### 16.3 D&C Program and D&C Phase Progress Reports

- (a) **(D&C Program):** Operator Franchisee must:
  - (i) update the D&C Program in accordance with annexures 4 (D&C Program Requirements) and 17 (Contract Management Requirements) of the PSR, and otherwise periodically during the D&C Phase at intervals no less than monthly to take account of:
    - (A) changes to the program;
    - (B) delays which have occurred; and
    - (C) any corrective action plan submitted by Operator Franchisee under **clause 16.5** for which the State does not issue a notice under **clause 16.6(b)**;
  - (ii) ensure that each update of the D&C Program contains the details required by the PSR and any other details which the State or the Independent Verifier reasonably directs;
  - (iii) ensure that each update of the D&C Program makes allowance for the Project Plans and Design Documentation to be submitted to the State and the Independent Verifier in a manner and at a rate which will give the State and the Independent Verifier a reasonable opportunity to review the submitted Project Plans or Design Documentation within the periods referred to in **clause 8** or **14** (as the case may be); and
  - (iv) give the State and the Independent Verifier copies of each update of the D&C Program for their review.
- (b) **(D&C Phase Progress Reports):** In addition to Operator Franchisee's obligations under **clauses 16.5** and **16.6**, Operator Franchisee must give the State a D&C Phase Progress Report containing the details required by the PSR each month during the D&C Phase in accordance with annexure 17 (Contract Management Requirements) of the PSR.
- (c) **(State Review):**
  - (i) The State may review any update of the D&C Program submitted under **clause 16.3(a)** and any D&C Phase Progress Report submitted

under **clause 16.3(b)** and may, within 20 Business Days of submission of the updated D&C Program or the D&C Phase Progress Report, notify Operator Franchisee and the Independent Verifier if, in the opinion of the State, the updated D&C Program or the D&C Phase Progress Report does not comply with the requirements of the State Project Documents.

- (ii) If Operator Franchisee receives a notice under **clause 16.3(c)(i)**, Operator Franchisee must, within 20 Business Days, submit a revised D&C Program or D&C Phase Progress Report to the State and the Independent Verifier, and this **clause 16.3(c)** will reapply to the revised D&C Program or D&C Phase Progress Report.
- (d) **(No effect on the State's rights):** Any review of, comments upon or approval of, or failure to review, comment upon or approve, the D&C Program or the D&C Phase Progress Reports by the State will not:
  - (i) relieve Operator Franchisee from or affect its liabilities, obligations or responsibilities under the State Project Documents;
  - (ii) evidence or constitute the granting of an extension of time or an instruction by the State to accelerate, disrupt, prolong or vary any, or all, of the D&C Activities;
  - (iii) bind the State or otherwise affect the time for the performance of the State's obligations; or
  - (iv) preclude the State from subsequently asserting that the D&C Program or the D&C Phase Progress Report does not comply with the State Project Documents.

#### **16.4 Acceleration by Operator Franchisee**

If Operator Franchisee chooses to accelerate progress of the D&C Activities then:

- (a) the State may assist Operator Franchisee but will not be obliged to take any action to assist or enable Operator Franchisee to achieve Completion before the Date for Completion;
- (b) the time for the performance of the State's obligations will not be affected; and
- (c) Operator Franchisee will not be entitled to make any Claim against the State in relation to such acceleration (or any failure or inability by Operator Franchisee or the State to accelerate).

#### **16.5 Delays**

- (a) **(Notification by Operator Franchisee):** If Operator Franchisee becomes aware of any matter which will, or is likely to, give rise to a delay in achieving Completion, Operator Franchisee must give the State:
  - (i) a notice setting out detailed particulars of the delay or likely delay (including its cause and its expected effect on progress of the D&C Activities); and
  - (ii) a detailed corrective action plan in accordance with **clause 16.6** (which if the event giving rise to a delay is a Compensation Event or a Relief Event, will contain actions which are reasonable for Operator Franchisee to provide having regard to the nature of the relevant

Compensation Event or Relief Event (as applicable) and Operator Franchisee's obligations under **clause 16.5(c)**,

in each case as soon as reasonably practicable.

- (b) **(Notification by the State):** If the State reasonably believes that Operator Franchisee will be delayed in achieving Completion, the State may give notice to that effect to Operator Franchisee, and Operator Franchisee must then give the State a detailed corrective action plan in accordance with **clause 16.6**.
- (c) **(Obligation to mitigate):** Operator Franchisee must (and must ensure its Associates) take all reasonable steps to:
  - (i) prevent the cause of any delay to the D&C Activities;
  - (ii) reduce, mitigate, prevent or eliminate the effects of any delay (including by putting in place temporary measures reasonably acceptable to the State); and
  - (iii) use all reasonable endeavours to continue to perform its obligations under the State Project Documents despite the occurrence of a Relief Event or Compensation Event.

## **16.6 Corrective action plan**

- (a) Each corrective action plan which Operator Franchisee must provide pursuant to **clause 16.5** must (subject to **clause 16.5(a)(ii)** in relation to a Compensation Event or Relief Event) show how Operator Franchisee proposes to avoid, mitigate or minimise the consequences of the delay consistent with its obligations under **clause 16.2** and contain a proposed updated D&C Program.
- (b) The State may, within 20 Business Days (or sooner if reasonably practical) of receipt of a corrective action plan, give Operator Franchisee any comments on the corrective action plan provided that such comments are consistent with the requirements of **clause 16.6(a)**.
- (c) If the State gives Operator Franchisee any comments under **clause 16.6(b)**, Operator Franchisee must amend and resubmit the corrective action plan to the State to address the State's comments, after which **clause 16.6(b)** and this **clause 16.6(c)** will re apply until the State does not issue any further comments.
- (d) Operator Franchisee must comply with a corrective action plan for which the State does not issue any comments under **clause 16.6(b)**.
- (e) Operator Franchisee will not be relieved of any liability or responsibility under the State Project Documents or otherwise at Law arising out of or in connection with:
  - (i) any comments given by the State under **clause 16.6(b)**; or
  - (ii) the implementation of any corrective action plan in respect of which the State has or has not given comments under **clause 16.6(b)**.
- (f) Operator Franchisee will not be entitled to make any Claim against the State arising out of or in connection with any comments by the State under **clause 16.6(b)** or, subject to **clause 16.7(j)**, any Loss suffered or incurred by Operator Franchisee in preparing, or complying with, a corrective action plan.

## 16.7 Extensions of time

- (a) **(Delay):** If Operator Franchisee is, or is likely to be, delayed in achieving Completion by a Compensation Event or a Relief Event, Operator Franchisee may claim an extension of time in accordance with this **clause 16.7**.
- (b) **(Notice):** To claim an extension of time, Operator Franchisee must:
  - (i) as soon as practicable, and in any event within 10 Business Days from the date Operator Franchisee became aware, or ought reasonably to have become aware, of a delay (or likely delay) of the type referred to in **clause 16.7(a)**, submit a notice to the State and the Independent Verifier which must:
    - (A) set out detailed particulars of the delay or likely delay (including its cause and its expected affect on progress of the D&C Activities, by reference to the critical path shown in the D&C Program at that time);
    - (B) the number of days of extension of time claimed, together with the basis of calculating that period, including evidence that it will be delayed in achieving Completion in the manner set out in **clause 16.7(a)**;
    - (C) describe the action Operator Franchisee has taken and proposes to take to reduce, mitigate, prevent or eliminate the effects of the Compensation Event or Relief Event (as applicable) (including by putting in place temporary measures reasonably acceptable to the State);
    - (D) the extent to which the Compensation Event or Relief Event (as applicable) is covered by insurance; and
    - (E) set out any Estimated Cost Effect claimed, together with any other information contemplated by the Estimated Cost Effect Schedule (including information related to calculation of the Estimated Cost Effect),
  - (Change Notice); and**
  - (ii) if the effects of the delay continue beyond the period of 10 Business Days referred to in **clause 16.7(b)(i)**, and Operator Franchisee wishes to claim an extension of time in respect of the further delay, submit an updated Change Notice to the State and the Independent Verifier:
    - (A) every 10 Business Days after the first Change Notice until 5 Business Days after the end of the effects of the delay; and
    - (B) containing the information required by **clause 16.7(b)(i)**.
- (c) **(Conditions precedent):** Subject to **clause 16.7(h)**, it is a condition precedent to Operator Franchisee's entitlement to an extension of time that:
  - (i) Operator Franchisee submits its Change Notice and any updated Change Notice in the manner required by **clause 16.7(b)(i)**;
  - (ii) the cause of the delay was beyond the reasonable control of Operator Franchisee and its Associates (provided that the fact that a delay occurs after the Date for Completion will not, of itself, disentitle Operator Franchisee from relief on the basis that the delay was within the reasonable control of Operator Franchisee);

- (iii) Operator Franchisee has actually been, or is likely to be, delayed by a Compensation Event or a Relief Event in a manner which will delay it from achieving Completion in the relevant manner set out in **clause 16.7(a)**; and
  - (iv) subject to **clause 16.7(e)**, Operator Franchisee has submitted a D&C Program in accordance with **clause 16.3** and is otherwise (at the time it submits a claim under this **clause 16.7**) fully complying with its obligations in respect of the D&C Program under **clause 16.3**.
- (d) **(Extensions of time):**
  - (i) Subject to **clauses 16.7(e), 16.7(f) and 16.7(g)**, if the conditions precedent in **clause 16.7(c)** have been satisfied, the Independent Verifier will, pursuant to this **clause 16.7**, extend the Date for Completion by a reasonable period determined by the Independent Verifier and will notify Operator Franchisee and the State of that extension within 15 Business Days of submission of Operator Franchisee's Change Notice under **clause 16.7(b)(i)**.
  - (ii) If a Modification is implemented during the D&C Phase, the Date for Completion will be extended by the period agreed or determined under this deed in respect of that Modification.
  - (iii) For the avoidance of doubt, if for the purposes of paragraph (i) the Date for Completion has already passed, the Operator Franchisee is entitled to an extension to the Sunset Date on the same basis as it would have been entitled to an extension to the Date for Completion under paragraph (ii).
- (e) **(Failure to submit D&C Program): Clause 16.7(c)(iv)** will not be a condition precedent to Operator Franchisee's entitlement to an extension of time if Operator Franchisee:
  - (i) has not complied with its obligations under **clause 16.3** as at the commencement or cessation of the cause of the delay, but Operator Franchisee has, in the Independent Verifier's opinion, used reasonable endeavours to comply with those obligations;
  - (ii) demonstrates to the Independent Verifier's reasonable satisfaction that:
    - (A) the Independent Verifier will not be prejudiced in the assessment of Operator Franchisee's entitlement to an extension of time; and
    - (B) the State has not been significantly prejudiced (including in its entitlement to review and provide comments on the D&C Program),
 by Operator Franchisee's failure to comply with its obligations under **clause 16.3**; and
  - (iii) remedies the non-compliance with **clause 16.3** within 5 Business Days of the earlier of:
    - (A) Operator Franchisee delivering an extension of time claim under **clause 16.7(b)**; and

- (B) the State or the Independent Verifier issuing a notice to Operator Franchisee which requires Operator Franchisee to remedy the non-compliance.
- (f) **(Reduction in extension of time):** The Independent Verifier will reduce any extension to the Date for Completion that it would have otherwise notified to Operator Franchisee under **clause 16.7(d)** to the extent that Operator Franchisee or its Associates:
  - (i) contributed to the delay; or
  - (ii) failed to take all reasonable steps which a prudent, competent and experienced contractor in the circumstances would have taken, to both preclude the cause of the delay, and to avoid, minimise or mitigate the consequences of the delay.
- (g) **(Concurrent delays):** Operator Franchisee will not be entitled to any relief or extension of time under this **clause 16.7** to the extent there is a Concurrent Delay, except to the extent:
  - (i) delay caused by a Compensation Event under **paragraph (a)** of the definition of Compensation Event occurs at the same time as the Concurrent Delay;
  - (ii) that Compensation Event causes a delay to achieving Completion by the Date for Completion (or, after the Date for Completion, causes a delay to achieving Completion); and
  - (iii) all other requirements of this **clause 16.7** are met.
- (h) **(Unilateral extensions):**
  - (i) Subject to **clause 16.7(h)(ii)**, whether or not Operator Franchisee has made, or is entitled to make, a claim for an extension of time under **clause 16.7**, the State may, at any time and from time to time, by notice to Operator Franchisee, unilaterally extend the Date for Completion or the Sunset Date (or both).
  - (ii) The State's discretion under **clause 16.7(h)(i)** must not be used where the Independent Verifier would be otherwise required to extend the relevant Date for Completion or the Sunset Date (or both) under **clause 16.7(d)**.
  - (iii) The parties acknowledge that:
    - (A) the State is not required to exercise the State's discretion under **clause 16.7(h)(i)** for the benefit of Operator Franchisee;
    - (B) an extension under **clause 16.7(h)(i)** does not entitle Operator Franchisee to make any Claim against the State including any claim for any increased financing costs, prolongation costs in accordance with the Estimated Cost Effect Schedule; and
    - (C) the exercise or failure to exercise the State's discretion under this **clause 16.7(h)** is not capable of being the subject of a dispute for the purposes of **clause 57** or otherwise subject to review.
- (i) **(Delay to Close Out):**
  - (i) If after Completion Operator Franchisee is, or is likely to be, delayed prior to or after the Date for Close Out by a Compensation Event or



Relief Event which will delay Operator Franchisee in achieving Close Out, Operator Franchisee may claim an extension of time to the Date for Close Out in accordance with this **clause 16.7** as if all references (other than in **clauses 16.7(i)** and **16.7(j)**) to "Completion" were to "Close Out" and "Date for Completion" were to "Date for Close Out" (and without reference to any clauses to the extent related to extension of the Sunset Date).

- (ii) No extension of time under this **clause 16.7(i)** will entitle Operator Franchisee to make any Claim against the State, including for any increased financing costs, prolongation costs or any amounts calculated in accordance with the Estimated Cost Effect Schedule.
- (j) **(Compensation)**: If Operator Franchisee is granted: an extension of time to the Date for Completion and the Sunset Date under this **clause 16.7** in respect of a Compensation Event, the State will pay Operator Franchisee the Estimated Cost Effect (if any) in accordance with **schedule 6** in respect of the number of days by which the Date for Completion or Sunset Date (as applicable) is extended.
- (k) **(Modifications – Acceleration)**: Nothing in this **clause 16.7** restricts the State from proposing or implementing a State initiated Modification at any time during the Term, including in relation to acceleration of the D&C Activities to mitigate any delay or likely delay to achieving Completion.

## **16.8 Limitation of State's right to claim for delay**

- (a) Subject to **clause 25.6(e)**, the State must not make any Claim against Operator Franchisee for any liability to the extent arising due to a delay in Operator Franchisee achieving Completion by the Date for Completion or out of a failure in whole or part by Operator Franchisee to comply with **clause 16.2(b)**, unless this deed has been terminated under **clause 45.4**. This **clause 16.8** does not prevent the State from making such a Claim after termination of this deed under **clause 45.4** if the liability to which that Claim relates arose after termination of this deed.
- (b) The State will not terminate the Project Deed solely due to a failure by Operator Franchisee to comply with **clause 16.2(b)** otherwise than in accordance with a Termination Event arising under **clause 45.1(c)**, (d) or (g).

## **17 Acceptance Testing and Commissioning**

### **17.1 Acceptance Testing Plans**

Without limiting **clause 8**:

- (a) the Independent Verifier must review the Acceptance Testing Plans and certify that the Acceptance Tests required by the Acceptance Testing Plans will, if satisfied, allow the Independent Verifier to certify that Completion has been achieved in accordance with **clause 18**;
- (b) if the Independent Verifier does not believe that the Acceptance Testing Plans meet the requirements of **clause 17.1(a)**, it must notify Operator Franchisee, giving reasons why the Acceptance Testing Plans do not meet the requirements of **clause 17.1(a)**;

- (c) if Operator Franchisee receives a notice in accordance with **clause 17.1(b)**, Operator Franchisee must, within 20 Business Days, submit the revised Acceptance Testing Plans to the Independent Verifier and the State and the provisions of **clauses 17.1(a)** and **17.1(b)** will reapply to the revised Acceptance Testing Plans; and
- (d) the exercise (or failure to exercise) by the Independent Verifier of any of its rights under this **clause 17.1** will not preclude the State from subsequently asserting that the Acceptance Testing Plans do not comply with the requirements of the State Project Documents.

## **17.2 Testing and commissioning**

- (a) Testing and commissioning must be conducted in accordance with the Acceptance Testing Plans as certified by the Independent Verifier in accordance with **clause 17.1**.
- (b) Operator Franchisee must attend meetings of the testing and commissioning committee in accordance with annexure 10 (Acceptance Testing Requirements) of the PSR.

## **17.3 Notice**

Without limiting Operator Franchisee's notice obligations under the Acceptance Testing Plans, Operator Franchisee must give the State and the Independent Verifier:

- (a) notice of each Acceptance Test in accordance with annexure 10 (Acceptance Testing Requirements) of the PSR; and
- (b) 120 Business Days' and 20 Business Days' notice of the date on which it expects to commence commissioning of the System.

## **17.4 Conduct of Acceptance Tests**

- (a) Operator Franchisee will conduct all Acceptance Tests and must provide everything else required to conduct all Acceptance Tests.
- (b) The State and the Independent Verifier may attend any Acceptance Tests conducted under **clause 17.4(a)**.

## **17.5 Results of Acceptance Tests**

Operator Franchisee must provide the results of all Acceptance Tests to the State and the Independent Verifier.

## **17.6 Testing of Project Works**

- (a) The State may carry out, or direct Operator Franchisee to carry out, tests (in addition to the Acceptance Tests) in respect of the Project Works. The State must give Operator Franchisee and the Independent Verifier reasonable prior notice of these tests (being at least 3 Business Days, provided that Operator Franchisee will use its reasonable endeavours to accommodate access for, or to carry out, (as applicable) urgent testing required to be carried out on less than 3 Business Days notice). Operator Franchisee must provide all reasonable assistance required by the State and the Independent Verifier in relation to these tests.
- (b) The State may direct that any part of the Project Works not be covered up or made inaccessible without State's prior approval.

- (c) The reasonable costs incurred by Operator Franchisee in connection with these tests will be determined by the State and paid or reimbursed by the State unless:
  - (i) the results of the test show the work is not in accordance with the State Project Documents;
  - (ii) the test is in respect of work covered up or made inaccessible without the prior approval of the State (and such approval was required); or
  - (iii) the test is upon work undertaken to correct or overcome a Defect, in which event these costs will be borne by Operator Franchisee and any reasonable costs incurred by the State in connection with these tests will be a debt due from Operator Franchisee to the State.
- (d) Results of tests carried out under this **clause 17.6** must be made available by the relevant party to the other within 5 Business Days of them being available.

### **17.7 Failure of Acceptance Test**

If the Project Works (other than the Temporary Works) fail an Acceptance Test Operator Franchisee must:

- (a) provide the State and the Independent Verifier with an Acceptance Test failure report;
- (b) carry out all necessary rectification work; and
- (c) when it believes it has completed all necessary rectification work:
  - (i) give notice to the State and the Independent Verifier; and
  - (ii) re-conduct the Acceptance Test in accordance with the Acceptance Testing Plans and the provisions of this **clause 17**.

## **18 Completion and Close Out**

### **18.1 Completion**

- (a) **(Notice of Completion):** Operator Franchisee must give the State:
  - (i) 6 months';
  - (ii) 3 months';
  - (iii) 1 month's; and
  - (iv) 1 week's,
 notice of the estimated Date of Completion.
- (b) **(Early Completion):**
  - (i) At any time during the D&C Phase until the date which is 6 months prior to the Date for Completion, if Operator Franchisee considers it can achieve Completion prior to the Date for Completion, Operator Franchisee may submit to the State and the Independent Verifier:
    - (A) the earlier date by which it considers it can achieve Completion;
    - (B) a revised D&C Program (which must comply with **clauses 16.3(a)(ii)** and **16.3(a)(iii)**) demonstrating how Operator

Franchisee would progress the D&C Activities to achieve Completion by that earlier date; and

- (C) any other relevant information, including any security or other rights proposed to be granted to the State in the event that the earlier date is agreed under this clause but is not achieved,

**(Early Completion Proposal).**

- (ii) The Independent Verifier must, within 20 Business Days of receipt of an Early Completion Proposal, notify the State and Operator Franchisee whether it considers Operator Franchisee can achieve Completion by the earlier date in accordance with the D&C Program submitted as part of the Early Completion Proposal.
- (iii) The State will:
  - (A) consider any Early Completion Proposal in the context of integration with the broader public transport network in the Gold Coast region and any other matters which the State considers relevant; and
  - (B) within 30 Business Days of receipt of an Early Completion Proposal (or such longer period as the State may reasonably require), the State will notify Operator Franchisee that:
    - (1) it accepts the Early Completion Proposal (subject to any terms and conditions determined by the State); or
    - (2) it does not accept the Early Completion Proposal.
- (iv) If the State accepts an Early Completion Proposal subject to any terms and conditions, Operator Franchisee must within 10 Business Days (or such other validity period specified by the State):
  - (A) accept the Early Completion Proposal on those terms and conditions; or
  - (B) withdraw the Early Completion Proposal.
- (v) If:
  - (A) the State accepts an Early Completion Proposal without conditions; or
  - (B) Operator Franchisee accepts an Early Completion Proposal subject to terms and conditions specified by the State,the earlier date specified in the Early Completion Proposal will be the Date for Completion for the purposes of this deed.
- (vi) Operator Franchisee may submit an Early Completion Proposal under this **clause 18.1(b)** regardless of whether Operator Franchisee has previously submitted an Early Completion Proposal (whether or not that Early Completion Proposal was accepted, accepted subject to terms and conditions, not accepted or withdrawn).
- (c) **(Joint inspection):** Operator Franchisee, the State and the Independent Verifier must, within 5 Business Days of receipt of the notices referred to in **clauses 18.1(a)(i), 18.1(a)(ii) and 18.1(a)(iii)** jointly inspect the Project Works at a mutually convenient time.

- (d) **(Remaining works):** Within 2 Business Days after each joint inspection referred to in **clause 18.1(c)**, the Independent Verifier must give Operator Franchisee and the State a notice either:
  - (i) containing a list of items which it believes must be completed before Completion is achieved; or
  - (ii) stating that it believes Operator Franchisee is so far from achieving Completion that it is not practicable to issue a list as contemplated in **clause 18.1(d)(i)**.
- (e) **(Design, compliance and O&M certificates):** When Operator Franchisee considers it has achieved Completion, Operator Franchisee must notify the State and the Independent Verifier of that opinion. The notice must include certificates in the form set out in the Certification Schedule:
  - (i) from each Designer certifying (by a Registered Professional Engineer) that the Project Works (other than the Temporary Works) have been constructed in accordance with the Construction Documentation;
  - (ii) from the Qualified Fire Engineer, as required under section 4.5 of annexure 5 (Engineering Design Requirements) of the PSR;
  - (iii) from Operator Franchisee certifying that the Project Works (other than the Temporary Works):
    - (A) comply with all the requirements of the State Project Documents, including the PSR (other than any Minor Defects which are listed in Operator Franchisee's notice);
    - (B) have been constructed in accordance with the Construction Documentation; and
    - (C) do not involve or constitute a Modification unless that Modification has been:
      - (1) directed by the State by a Modification Order or approved by the State by a Modification Approval; or
      - (2) directed by the State as Minor Works under **clause 33**; and
  - (iv) from the O&M Contractor certifying that the Project Works (other than the Temporary Works) are acceptable from an operational perspective to enable it to meet its obligations under the O&M Contract, including its obligations with respect to safety, reliability and maintenance.
- (f) **(Joint inspection):** Operator Franchisee, the State and the Independent Verifier must jointly inspect the Project Works within 5 Business Days after receipt of notice under **clause 18.1(e)**.
- (g) **(Independent Verifier to make determination):** The Independent Verifier must within 5 Business Days after a joint inspection under **clause 18.1(f)**:
  - (i) if Completion has been achieved, issue to the State and Operator Franchisee a Certificate of Completion:
    - (A) certifying that Completion has taken place and stating the Date of Completion; and
    - (B) listing any Minor Defects; or

- (ii) if Completion has not been achieved, issue a notice to Operator Franchisee and the State in which it states:
  - (A) the items which remain to be completed before Completion; or
  - (B) that Operator Franchisee is so far from achieving Completion that it is not practicable to notify Operator Franchisee of the items which remain to be completed as contemplated by **clause 18.1(g)(ii)(A)**.
- (h) **(Completion of remaining work)**: If the Independent Verifier issues a notice under **clause 18.1(g)(ii)**:
  - (i) Operator Franchisee must expeditiously and diligently progress the Project Activities; and
  - (ii) when Operator Franchisee considers it has achieved Completion it must give the State and the Independent Verifier notice to that effect, after which **clauses 18.1(e), 18.1(f), 18.1(g) and 18.1(h)** will reapply.

## 18.2 Close Out

- (a) **(Progress)**: Immediately after the Date of Completion, Operator Franchisee must expeditiously and diligently progress the performance of the balance of the Project Works (other than the Temporary Works) required to achieve Close Out.
- (b) **(Notice of Close Out)**: When Operator Franchisee considers that Close Out has been achieved, Operator Franchisee must:
  - (i) notify the State and the Independent Verifier of its opinion; and
  - (ii) request the Independent Verifier to issue a Certificate of Close Out.
- (c) **(Independent Verifier to make determination)**: Within 15 Business Days of Operator Franchisee's notice under **clause 18.2(b)**, the Independent Verifier is required to inspect the Project Works (other than the Temporary Works) to determine whether Close Out has been achieved and either:
  - (i) if Close Out has been achieved, issue to the State and Operator Franchisee a Certificate of Close Out certifying that Close Out has taken place and stating the Date of Close Out; or
  - (ii) if Close Out has not been achieved, issue a notice to the State and Operator Franchisee listing the work remaining to be performed to achieve Close Out.
- (d) **(Completion of remaining work)**: If the Independent Verifier issues a notice under **clause 18.2(c)(ii)**:
  - (i) without limiting Operator Franchisee's other obligations under the State Project Documents (including in respect of Defects), Operator Franchisee must expeditiously and diligently progress the Project Activities; and
  - (ii) when Operator Franchisee considers it has achieved Close Out it must give the State and the Independent Verifier notice to that effect, after which **clauses 18.2(c) and 18.2(d)** will reapply.
- (e) **(No restriction by Independent Verifier)**: The Independent Verifier, in making a determination as to whether Close Out has been achieved:
  - (i) will not be restricted by any:

- (A) Certificate of Completion, notice, list or opinion already provided under the State Project Documents; or
- (B) obligation of Operator Franchisee under the State Project Documents to correct any Defects; and
- (ii) will be entitled to raise any items of work as a ground for determining that Close Out has not been achieved.

### 18.3 Effect of Certificates

- (a) A Certificate of Completion or a Certificate of Close Out will not:
  - (i) constitute an approval by the State of Operator Franchisee's performance of its obligations under the State Project Documents;
  - (ii) be taken as an admission or evidence that the Project Works comply with the State Project Documents; or
  - (iii) prejudice any rights or powers of the State under the State Project Documents or otherwise according to Law, including any rights which the State may have in respect of Defects.
- (b) Without limiting **clause 18.3(a)**, the parties agree that, in the absence of manifest error, the Independent Verifier's certification as set out in a Certificate of Completion or Certificate of Close Out is final and binding on the parties for the purposes only of establishing that Completion or Close Out (as applicable) has occurred and the date on which it occurred.
- (c) Subject to **clause 51** and without derogating from the State's rights under any Law:
  - (i) ownership of the fixed assets comprising the System vests in the State free of encumbrances as and when the assets are fixed;
  - (ii) ownership of non-fixed assets comprising the System (within the meaning of paragraph (a) of the definition) vests in the State free of encumbrances on the Date of Completion or such later date that such non-fixed assets are acquired by Operator Franchisee or its Associates; and
  - (iii) to the extent not vested in the State under **clause 18.3(c)(i)** or **18.3(c)(ii)**, ownership of non-fixed assets comprising the System vests in the State free of encumbrances on the Date of Stage 2 Completion or such later date that such non-fixed assets are acquired by Operator Franchisee or its Associates.

## 19 Returned Works

### 19.1 Completion of Returned Works

- (a) **(Progressive completion of Returned Works):** Operator Franchisee must progressively complete the Returned Works (or packages of Returned Works (as applicable)) and handover each Returned Facility (or packages of Returned Facilities (as applicable)) to the relevant Authority or property owner as soon as possible during the Term so as to ensure that:
  - (i) any loss of amenity and inconvenience to the relevant Authority or property owner is minimised;

- (ii) the completion of the Returned Works and handover of the Returned Facilities occurs in a smooth and orderly manner consistent with the Acceptance Testing Plan;
  - (iii) the Independent Verifier has a reasonable opportunity to consider whether each Returned Facility has been completed in accordance with the State Project Documents prior to the proposed handover;
  - (iv) if required by a relevant Authority (including under the Council Direct Deed (Stage 1)) or property owner, such Authority or property owner has had reasonable opportunity to inspect the Returned Facility prior to the proposed handover; and
  - (v) Completion is not delayed.
- (b) **(Completion):** It is a condition precedent to Completion that all Returned Facilities have been handed over in accordance with this **clause 19**.

## 19.2 Handover of Returned Facilities

- (a) **(Conditions of handover):** Handover of a Returned Facility to the relevant Authority or property owner must not occur until:
- (i) the Returned Works in respect of the Returned Facility have been completed in accordance with the State Project Documents (other than any Defects which are notified under **clause 15.5** before handover and which are to be corrected after handover of the Returned Facility within the time specified by the State in a notice given in accordance with **clause 15.5**);
  - (ii) Operator Franchisee has provided to the State and the Independent Verifier:
    - (A) a conformance report, compliance report and As-built Information in accordance with annexure 9 (Construction Requirements) of the PSR; and
    - (B) a certificate substantially in the form set out in the Certification Schedule that the Returned Works in respect of the Returned Facility have (subject to **clause 19.2(a)(i)** (if applicable)) been completed in accordance with the State Project Documents, and has given the Independent Verifier sufficient opportunity to review the relevant Returned Facility in accordance with **clauses 19.1(a)(iii), 19.2(c)** or the requirements for achievement of Completion (as applicable);
  - (iii) Operator Franchisee has provided to the State and the Independent Verifier a Returned Facility Handover Notice in relation to that Returned Facility in accordance with **clause 19.2(b)**; and
  - (iv) the Independent Verifier has given a Certificate of Returned Facility Completion in relation to that Returned Facility in accordance with **clause 19.2(c)**.
- (b) **(Returned Facility Handover Notice by Authority or property owner):** A Returned Facility Handover Notice must be duly signed:
- (i) for any PUP Works, by the relevant Authority with jurisdiction in respect of the relevant PUP;



- (ii) for any Accommodation Works on an Accommodation Works Area, by the relevant Authority who has jurisdiction over the Accommodation Works Area; or
  - (iii) for any Accommodation Works on an Unowned Parcel:
    - (A) by the relevant property owner; or
    - (B) if the relevant property owner refuses to sign the Returned Facility Handover Notice (or has not signed the Returned Facility Handover Notice within 30 days of receipt of the notice from Operator Franchisee despite Operator Franchisee having consulted reasonably with the property owner), a Returned Facility Handover Notice may be signed by Operator Franchisee.
- (c) **(Certificate of Returned Facility Completion):**
- (i) When Operator Franchisee considers it has achieved Returned Facility Completion in respect of any Returned Facility, Operator Franchisee may:
    - (A) provide the State and the Independent Verifier with a Returned Works Certificate, in the form as described in **clause 19.2(a)(ii)** in respect to that Returned Facility; and
    - (B) request the Independent Verifier to issue a Certificate of Returned Facility Completion.
  - (ii) Within 15 Business Days of Operator Franchisee giving a notice under **clause 19.2(c)(i)(A)**, the Independent Verifier is required to inspect the relevant Returned Facility to determine whether it has been completed in accordance with the requirements of the State Project Documents and either:
    - (A) if Returned Facility Completion has been achieved, issue to the State and Operator Franchisee a Certificate of Returned Facility Completion in respect of that Returned Facility; or
    - (B) if Returned Facility Completion has not been achieved, issue a notice to the State and Operator Franchisee listing the work remaining to be performed to complete that Returned Facility.
  - (iii) If the Independent Verifier issues a notice under **clause 19.2(c)(ii)(B)**:
    - (A) without limiting Operator Franchisee's other obligations under the State Project Documents (including to achieve Completion by the Date for Completion), Operator Franchisee must expeditiously and diligently progress the Returned Works; and
    - (B) when Operator Franchisee considers it has completed the Returned Facility Completion it must give the State and the Independent Verifier notice to that effect, after which **clauses 19.2(c)(i) and 19.2(c)(ii)** will reapply.
- (d) **(Indemnity):** Subject to **clauses 42.2 to 42.4**, Operator Franchisee indemnifies the State against any Loss or Claim by an owner or occupier of any part of an Unowned Parcel where:
- (i) such owners have not duly signed a Returned Facility Handover Notice; and

- (ii) the Loss or Claim arises out of or in connection with the Returned Works.
- (e) **(No restriction):** Operator Franchisee acknowledges and agrees that this **clause 19.2**, the progressive completion of the Returned Works and handover of each Returned Facility to the relevant Authority or property owner, and any act or omission of the State or the Independent Verifier arising out of or in respect of or in connection with, such progressive completion and handover (including acceptance of a Returned Facility Handover Notice) will not:
  - (i) constitute approval by the State or the Independent Verifier of Operator Franchisee's performance of the Project Works (including Operator Franchisee's performance in respect of a Returned Facility) or evidence that each Returned Facility complies with the requirements of the State Project Documents or that all or any of the obligations of Operator Franchisee under the State Project Documents have been satisfied;
  - (ii) limit or otherwise affect Operator Franchisee's obligations under the State Project Documents; or
  - (iii) restrict the Independent Verifier in making a determination or forming an opinion under **clause 18** or raising any item of work (in each case other than in respect of a Returned Facility) as a ground for determining that Completion or Close Out has not been achieved.

### 19.3 Defects Liability Period

Each Returned Facility has:

- (a) a defects liability period which:
  - (i) begins on the date on which the State receives a Returned Facility Handover Notice relating to that Returned Facility (provided that, if the Returned Facility Handover Notice is signed by Operator Franchisee, the Independent Verifier does not object to the handover of that Returned Facility under **clause 19.2(a)(iii)**); and
  - (ii) other than in respect of PUP Works, expires 24 months after the Date of Completion, and in respect of PUP Works, expires 24 months after the date referred to in **clause 19.3(a)(i)**; and
- (b) a further defects liability period of 12 months in respect of any work the subject of a notice from the State under **clause 19.4(b)** relating to a Returned Facility, which begins on the date on which the Defect is corrected, (in aggregate, the **Defects Liability Period**).

### 19.4 Correction of Defects in Returned Facilities

- (a) **(Correction of all Defects):** Operator Franchisee must correct all Defects in the Returned Facilities during the relevant Defects Liability Period.
- (b) **(Notice):**
  - (i) Without limiting **clause 19.4(a)**, if, during the relevant Defects Liability Period, the State considers (or is notified by the relevant Authority or property owner) that there is a Defect in respect of any Returned Facility, the State may give Operator Franchisee a notice (with a copy to the relevant Authority) identifying the Defect and requiring Operator

Franchisee to correct the Defect, specifying a reasonable time within which to do so.

- (ii) If:
  - (A) the State has given a notice under **clause 19.4(b)(i)** in relation to a Defect in a Returned Facility (CoGC) (as defined in the Council Direct Deed (Stage 1)); and
  - (B) CoGC has also given a notice in relation to that Defect under the Council Direct Deed (Stage 1), which specifies a period of time for Operator Franchisee to correct the Defect which is different to that specified in the State's notice under **clause 19.4(b)(i)**,

Operator Franchisee must notify the State and seek a direction from the State as to the timeframe which will apply for correction of the Defect.

- (c) **(Dispute)**: If Operator Franchisee disagrees with any notice given by the State under **clause 19.4(b)**, then:
  - (i) it must, within 5 Business Days of receipt of that notice, give notice of its disagreement to the State;
  - (ii) the State and Operator Franchisee must use reasonable endeavours to resolve the matter the subject of the disagreement; and
  - (iii) if the matter is not resolved within 10 Business Days after the date of that notice, either party may:
    - (A) if Completion has not been achieved, by notice to the other and the Independent Verifier, refer the matter for determination by the Independent Verifier, who must within 10 Business Days make a determination as to the matter and notify the parties of its determination together with its reasons for making its determination; or
    - (B) if Completion has been achieved, refer the matter for dispute resolution under **clause 57**.
- (d) **(Correction of Defect)**: If the State gives a notice under **clause 19.4(b)** and Operator Franchisee does not give notice under **clause 19.4(c)** or, if it does, and it is determined by the Independent Verifier or under **clause 57** (as applicable) that the Defect exists, Operator Franchisee must:
  - (i) correct the Defect expeditiously and diligently:
    - (A) within the time specified in the State's notice under **clause 19.4(b)** or the time (if any) determined by the Independent Verifier or under **clause 57** (as applicable);
    - (B) so as to minimise any adverse effect on the use of the Returned Facility; and
    - (C) in a manner which minimises any adverse effect upon the users, owners or occupiers of the Returned Facility; and
  - (ii) if directed by the State, prepare and submit a program and method statement for the performance of the Defect rectification work in accordance with the State Project Documents.

For the avoidance of doubt, nothing in this **clause 19.4** excludes any rights the State may have to recover damages from Operator Franchisee, or such other legal or equitable relief available for a breach of the State Project Documents.

- (e) **(Failure to correct):** If Operator Franchisee does not comply with a notice given under **clause 19.4(b)** (and has not given a notice under **clause 19.4(c)** within the specified time) or its obligations under **clause 19.4(d)** (as applicable), the State may:
  - (i) apply for, and the court may grant, an order for specific performance of Operator Franchisee's obligations under **clause 19.4(d)**;
  - (ii) notify Operator Franchisee that the relevant Authority or property owner wishes to accept such Defect, in which case Operator Franchisee must pay the relevant Authority or property owner the amount certified by the Independent Verifier (or otherwise determined under **clause 57**) as being the greater of:
    - (A) the costs which would have been incurred by Operator Franchisee had the work necessary to rectify the Defect identified or notified by the State been carried out; or
    - (B) the diminution in value of the Returned Facility as a consequence of the Defect; or
  - (iii) correct the Defect itself or engage others to correct the Defect, in which case the costs incurred (including any Liability) by the State in so doing will be a debt due and payable by Operator Franchisee to the State.
- (f) **(Notice of correction):** Promptly after correction of the Defect, Operator Franchisee must give notice to the State and (if corrected prior to the Date of Completion) the Independent Verifier that the Defect has been corrected.

## 19A Securitised Licence Structure

### 19A.1 Completion Payment

- (a) Subject to **clause 19A.1(b)**, in consideration of Operator Franchisee carrying out and completing of the Project Works, the State agrees to pay to, or at the direction of, Operator Franchisee the Completion Payment on the Date of Completion.
- (b) The State has no obligation to pay the Completion Payment unless and to the extent that it receives the Securitisation Payment from Secure Co under the Securitisation Agreement (and no adjustment to the Completion Payment or Securitisation Payment will affect this limitation).
- (c) The amount of the Completion Payment and the Securitisation Payment may only be adjusted:
  - (i) to reflect a Modification prior to the Date of Completion that is required to be funded by Operator Franchisee and agreed in accordance with this deed and calculated in accordance with **schedule 6** or **schedule 14** (as the case may be);

- (ii) to reflect any other ECE Event where the Estimated Cost Effect is agreed to apply prior to the Date of Completion in respect of and calculated in accordance with **schedule 6**; and
- (iii) otherwise by agreement between the parties prior to the Date of Completion.
- (d) If the Completion Payment is adjusted under **clause 19A.1(c)** the Securitisation Payment will be adjusted by a corresponding amount.
- (e) No adjustment to the Completion Payment or the corresponding Securitisation Payment will affect the limitation referred to in **clause 19A.1(b)**.
- (f) Notwithstanding any other clause of any State Project Document, the State may not set off any amount due and payable by Operator Franchisee to the State under the State Project Documents against the Completion Payment.
- (g) To the extent it has not already passed, all right, title and interest of Operator Franchisee in the Project Works to which Completion Payment applies passes to the State on payment by the State under **clause 19A.1(a)**.
- (h) Notwithstanding anything else in the Project Documents, the State acknowledges that, if the Securitisation Payment is not received in full, or at all, under the Securitisation Agreement, the State's only right or remedy in respect of such non-payment is the ability to withhold payment of the Construction Payment under **clause 19A.1(a)** until such time as the Securitisation Payment is received.

## **19A.2 Additional Completion Payment**

- (a) Subject to **clause 19A.2(b)**, if an ECE Event occurs after the Date of Completion and the State requests that Operator Franchisee, and Operator Franchisee agrees to, fund all or a portion of the relevant Estimated Cost Effect in accordance with this deed, the State agrees to pay the Additional Completion Payment to Operator Franchisee on the Additional Completion Payment Date.
- (b) The State has no obligation to pay the Additional Completion Payment unless and to the extent that it receives the corresponding Receivables Purchase Price from Secure Co under the Securitisation Agreement in relation to the relevant ECE Event.
- (c) The State may not set off any amount due and payable by the Operator Franchisee to the State under the State Project Documents against the Additional Completion Payment.
- (d) To the extent it has not already passed, all right, title and interest of Operator Franchisee in the works to which the Additional Completion Payment applies passes to the State on payment by the State in accordance with **clause 19A.2(a)**.
- (e) The State acknowledges that, if an Receivables Purchase Price in respect of Additional Receivables is not received in full, or at all, under the Securitisation Agreement, the State's only right or remedy in respect of such non-payment is the ability to withhold payment of the corresponding Additional Completion Payment under **clause 19A.2(b)** until such time as the Receivables Purchase Price is received.

### **19A.3 No change in risk allocation**

- (a) The parties acknowledge and agree that the Securitised Licence Structure is not intended to result in an Increased State Risk Allocation.
- (b) Operator Franchisee undertakes not to make any Claim inconsistent with the acknowledgement in **clause 19A.3(a)** and to procure that neither Secure Co nor any of their Related Bodies Corporate will make any such Claim.
- (c) If the State believes (on reasonable grounds supported by external advice) that the Securitised Licence Structure results or is likely to result in an Increased State Risk Allocation, then it may give Operator Franchisee a notice stating that the Securitised Licence Structure is to be amended to the extent necessary to ensure there is no Increased State Risk Allocation.
- (d) Following receipt of a notice given by the State under **clause 19A.3(c)**, Operator Franchisee and the State each agree to meet and negotiate in good faith acting reasonably to agree such amendments or modifications to the Securitised Licence Structure as are necessary to ensure that there is no Increased State Risk Allocation.

### **19A.4 Indemnity**

Operator Franchisee indemnifies the State for:

- (a) all costs or loss incurred by the State as a result of any Increased State Risk Allocation to the extent that it is not removed or remedied by changes to the Securitised Licence Structure agreed in accordance with **clause 19A.3**; and
- (b) any Claim brought against the State by Secure Co or any Related Body Corporate of Operator Franchisee or Secure Co which is inconsistent with the acknowledgement in **clause 19A.3(a)**.

## PART E – OPERATIONS

### 20 Operation of the System

#### 20.1 Commencement of the System

Operator Franchisee must not open the System for public use prior to the Date of Completion.

#### 20.2 O&M Activities

Operator Franchisee must:

- (a) perform the O&M Activities:
  - (i) in accordance with the PSR, the Codes and Standards and the other requirements of the State Project Documents;
  - (ii) in a professional, timely, safe and environmentally responsible manner;
  - (iii) in accordance with all applicable Law and Good Industry Practice; and
  - (iv) so that each asset forming part of the System having a specified Design Life which exceeds the Term is capable of achieving the Design Life if the asset continues to be maintained in an appropriate manner after termination or expiration of the Term;
- (b) without limiting **clause 20.2(a)**, comply with its obligations under and in relation to the Project Plans, including the Operating Plan and Annual Maintenance Plan;
- (c) operate, repair, maintain and replace the System so that the System remains Fit for Purpose at all times during the Operations Phase; and
- (d) in performing the O&M Activities (including in repairing and maintaining the System), use good workmanship and materials which are:
  - (i) free of Defects; and
  - (ii) of the standard specified in the PSR, or if no standard is specified, of a standard consistent with the O&M Best Practices for work of a similar nature to the works.

#### 20.3 Maintenance Budget

- (a) **(Provision of initial budget):** Before Completion, Operator Franchisee must give to the State a budget for the asset maintenance and replacement contemplated by **clause 20.6(a) (Asset Maintenance Budget)** for the:
  - (i) remainder of the Operating Year in which Completion is achieved; and
  - (ii) following Operating Year.
- (b) **(Provision of further budgets):**
  - (i) Prior to the commencement of each succeeding Operating Year, Operator Franchisee must give to the State a revised Asset Maintenance Budget for the following Operating Year.
  - (ii) Prior to the commencement of the Operating Year which is three years before the Expiry Date, Operator Franchisee must also give to the

State an Asset Maintenance Budget for the balance of the period up until the Expiry Date.

- (c) **(Budget requirements):** Each Asset Maintenance Budget referred to in this **clause 20.3** must:
- (i) specify authorised expenditure for each anticipated asset replacement for the System in such detail as the State may reasonably require; and
  - (ii) be reconciled with the forecast maintenance program in the Asset Management Strategy (and, in the case of the budget for the second last and last Operating Years before the Expiry Date provided under **clause 20.3(b)(i)**, reconciled with the budget provided under **clause 20.3(b)(ii)**) and provide such details as the State may reasonably require explaining any discrepancy.

#### **20.4 [Not used]**

#### **20.5 Forecast maintenance program**

- (a) Operator Franchisee must fully update the forecast maintenance program in the Annual Maintenance Plan and the Annual Asset Renewal Plan in accordance with, and at the times required by, annexure 16 (Asset Management Requirements) of the PSR, to permit Operator Franchisee to comply with its operation, maintenance and repair obligations under the State Project Documents.
- (b) Operator Franchisee must promptly provide a copy of the forecast maintenance program to the State in accordance with, and at the times required by, annexure 16 (Asset Management Requirements) of the PSR.
- (c) If the State considers that the forecast maintenance program in the Annual Maintenance Plan or the Annual Asset Renewal Plan provided by Operator Franchisee does not comply with the requirements of this **clause 20.5** and annexure 16 (Asset Management Requirements) of the PSR, the State may provide Operator Franchisee with reasons for its opinion. Upon receiving such reasons, Operator Franchisee must consult with the State in good faith in order to agree the forecast maintenance program. If the forecast maintenance program is not agreed within 20 Business Days of Operator Franchisee receiving the reasons of the State under this **clause 20.5(c)**, either the State or Operator Franchisee may refer the matter for resolution in accordance with **clause 57**.

#### **20.6 Major maintenance refurbishment and Asset replacement**

- (a) **(Operator Franchisee must maintain, refurbish and replace):** Operator Franchisee must:
  - (i) ensure that the System complies with the asset standards (including Design Life requirements) set out in the PSR at all times during the Term;
  - (ii) ensure that the System remains Fit for Purpose at all times during the Term;
  - (iii) maintain, refurbish and replace Assets as necessary to ensure compliance with **clauses 20.6(a)(i)** and **20.6(a)(ii)**; and
  - (iv) subject to **clause 20.6(b)**:



- (A) carry out any major refurbishments in accordance with, and at the intervals set out in, annexure 16 (Asset Management Requirements) of the PSR, the Annual Maintenance Plan, the Annual Asset Renewal Plan or **clause 46**; and
  - (B) comply with the Annual Maintenance Plan and the Annual Asset Renewal Plan.
- (b) **(Deferral of planned maintenance):**
  - (i) Operator Franchisee may elect by notice to the State to defer major refurbishment or Asset replacement by a period up to the Deferral Limit.
  - (ii) For the purposes of this **clause 20.6(b)**, the **Deferral Limit** is:
    - (A) in respect of any major refurbishment or Asset replacement which is required to be carried out after a specified number of kilometres, 125% of that number of kilometres; or
    - (B) in respect of major refurbishment or Asset replacement which is required to be carried out after a specified number of hours of operations, 125% of that number of hours of operations,

and in any event not more than 12 months after the date when that major refurbishment or Asset replacement would have been required to be carried out (if it had not been deferred), or such other period as agreed by the State.
  - (iii) Any deferral of maintenance under this **clause 20.6(b)** will not limit Operator Franchisee's warranties, liability or obligations under the State Project Documents (including to operate, repair and maintain the System so that at all times during the Operations Phase the System remains Fit for Purpose and including Operator Franchisee's obligations under **clause 46**) other than Operator Franchisee's obligations in respect of the timing for major refurbishment or Asset replacement specified in annexure 16 (Asset Management Requirements) of the PSR, the Annual Maintenance Plan or the Annual Asset Renewal Plan.

## 20.7 Operations Phase manufacture and construction warranties

Operator Franchisee warrants that:

- (a) the manufacture and construction of any works carried out as part of the O&M Activities will satisfy the requirements of the State Project Documents; and
- (b) the works carried out as part of the O&M Activities will, when complete and thereafter at all times during the Term, be safe and Fit for Purpose.

Subject to **clause 30**, Operator Franchisee agrees that the warranties given in this **clause 20.7** will remain unaffected, and that it will bear and continue to bear full liability and responsibility for the manufacture and construction works carried out as part of the O&M Activities, despite any Modification (including any Minor Works) directed or approved by the State under **clause 30, 31, 32 or 0** (as applicable) except if:

- (c) the Modifications (other than Minor Works) are undertaken by a third party selected following a tender process referred to in **clause 30.6** and the Modification Notice provided by Operator Franchisee identifies that such

Modification has an effect on the warranties given by Operator Franchisee under this **clause 20.7**;

- (d) the Minor Works are undertaken by a third party engaged by the State in accordance with **clause 33.2(d)(ii)**; or
- (e) the State remediates Contamination itself or engages a third party to remediate that Contamination pursuant to **clause 12.3(c)(iii)(C)**.

## **20.8 [Not used]**

## **20.9 Special Events**

- (a) **(Special Event planning)**: Prior to commencement of each Operating Year:
  - (i) the State will provide Operator Franchisee with a list of Special Events for the upcoming Operating Year and reasonable details of each Special Event; and
  - (ii) the State and Operator Franchisee will agree a Special Event Plan, in accordance with annexure 14 (Operations and Customer Service Requirements) of the PSR.
- (b) **(Compliance with Special Event Plan)**: Operator Franchisee must comply with each Special Event Plan (including providing any Special Event Services required under the Special Event Plan), as amended from time to time in accordance with annexure 14 (Operations and Customer Service Requirements) of the PSR.
- (c) **(Payment for Special Events)**: The State will pay Operator Franchisee the Special Event Services Payment, in accordance with **schedule 3**.
- (d) **(No claim)**: Operator Franchisee will not be entitled to make any Claim against the State arising out of or in connection with a Special Event, except as contemplated by **clause 20.9(c)**.

## **20.10 Cooperation with other transport providers**

Operator Franchisee must:

- (a) cooperate and share information with DTMR, CoGC, other public transport providers and Authorities in relation to:
  - (i) the integration of transport in and around the Project Area;
  - (ii) revenue protection measures; and
  - (iii) incident management and safety;
- (b) coordinate with and, if required, negotiate arrangements with DTMR, TTA, CoGC, other transport providers and Authorities in relation to the integration of transport infrastructure and O&M Activities; and
- (c) comply with its obligations under the PSR in relation to coordination and integration with other transport providers (including its obligations under annexure 15 (Integrated Transport Requirements) of the PSR in relation to the Transport Integration Liaison Group).

## **20.11 Ticketing and fare collection**

- (a) **(Ticketing and fare collection requirements)**: DTMR and its Associates will be responsible for providing the ETS.
- (b) **(ETS related obligations)**: Operator Franchisee must:

- (i) coordinate and project manage the installation of the ETS by DTMR and its Associates, including notifying the State and DTMR in relation to any delay to the installation of the ETS;
  - (ii) carry out all tasks and activities required to facilitate the provision of the ETS by DTMR and its Associates;
  - (iii) attend meetings as required for the purposes of the delivery, operation, maintenance and replacement of the ETS in relation to the System by DTMR and its Associates;
  - (iv) integrate the ETS with the System in accordance with annexure 15 (Integrated Transport Requirements) of the PSR;
  - (v) provide the State, DTMR and its Associates with any information they may require in relation to the System for the purposes of the delivery, operation, maintenance and replacement of the ETS;
  - (vi) ensure that its staff have been trained in relation to the ETS in accordance with any training requirements directed by the State, including by:
    - (A) facilitating attendance by staff of Operator Franchisee and its Associates at training provided by DTMR or its Associates; and
    - (B) conducting training for staff,
- in accordance with, and subject to, the State Project Documents (including the PSR).
- (c) **(Access):**
- (i) Without limiting **clause 20.11(b)**, Operator Franchisee must cooperate and work with the State, DTMR and their Associates regarding their access requirements to the Project Works and the System and to finalise a site access plan for all activities associated with the ETS (including the ETS interface requirements in **schedule 21** (ETS Interface Requirements)), including installation and maintenance, and must provide access to the Project Works and the System in accordance with such site access plan.
  - (ii) In addition to any other rights of access to the Project Works and the System granted to the State, DTMR and their Associates under the State Project Documents, Operator Franchisee must, at all reasonable times, provide the State, DTMR and their Associates with access to the Project Works and the System for the purpose of:
    - (A) carrying out any of the activities described in **clause 20.11(a)**; and
    - (B) installing, maintaining, replacing, upgrading, testing, inspecting or repairing the ETS.
  - (iii) The State will use reasonable endeavours to ensure that DTMR and its Associates comply with Operator Franchisee's reasonable requirements regarding access to the Project Works and the System, provided that these are first agreed with the State.
- (d) **(Notification of damage):** If Operator Franchisee or any of its Associates become aware of any faults or malfunctions in, or damage or disrepair to, the ETS, Operator Franchisee must report such fault or malfunction in

accordance with the procedures and timelines provided by DTMR or its Associates.

- (e) **(Fares and policies):** The parties acknowledge that:
  - (i) the State and DTMR will be responsible for setting fares, establishing fare policies, off-site ticket and pass sales, the selection and supply of the ETS, all aspects of credit card and debit card transactions, providing tickets and updating ETS software and hardware;
  - (ii) DTMR will be responsible for installation and maintenance of the ETS (other than First Line Maintenance) and collection of cash from the ETS, and may engage subcontractors to carry out such activities on its behalf;
  - (iii) at no time will Operator Franchisee own or have any rights to any fare revenue, including cash located inside the ETS machines at the Stations; and
  - (iv) Operator Franchisee will be responsible for First Line Maintenance in accordance with annexure 16 (Asset Management Requirements) of the PSR.
- (f) **(Maintenance):**
  - (i) Following the installation of ETS Equipment in accordance with this **clause 20.11** or the Stage 2 Works Deed (as applicable), the State or its Associates must perform and be responsible for all ETS Maintenance.
  - (ii) During the Operations Phase, Operator Franchisee must perform and be responsible for First Line Maintenance in accordance with this deed.
- (g) **(Notification):** Operator Franchisee must notify the State or its Associates within 1 Business Day upon it becoming aware of any of the following faults:
  - (i) faults to the ETS that have arisen through ETS Vandalism, including any risk associated with Major ETS Vandalism (which must be reported at the time when Major ETS Vandalism is reported to the ETS Technical Support Service); and
  - (ii) any faults that have come to the attention of the Operator Franchisee that have the capacity to affect the operation of the ETS.
- (h) **(Cash Collection):**
  - (i) The State is responsible for the collection of cash from the ETS Equipment located at the Stations and at other authorised points of sale.
  - (ii) Operator Franchisee must provide access to the State or its Associates to collect the cash from the ETS Equipment provided that:
    - (A) the State provides Operator Franchisee with a schedule of frequency of collection times for each of the Stations;
    - (B) collection of such monies from the ETS Equipment is to occur at times which minimises the disruption to Passengers; and
    - (C) the State complies with, and will use its reasonable endeavours to ensure its Associates comply with, Operator Franchisee's reasonable requirements regarding access to the Project Works

and the System, as set out in the agreed site access plan or as otherwise agreed from time to time.

(i) **(ETS Training Materials):**

- (i) The State will provide Operator Franchisee with the relevant ETS Training Materials to enable Operator Franchisee to develop a training plan with regard to Operator Franchisee's obligations under this **clause 20.11(i)**.
- (ii) Operator Franchisee is obliged to deliver training sessions on the ETS to its Associates who will undertake the First Line Maintenance. The frequency and nature of these training sessions is to be agreed by the parties.

(j) **(Intellectual Property):**

- (i) ETS Intellectual Property Rights used in connection with the ETS will remain the property of the State and its Associates (as applicable).
- (ii) The State grants Operator Franchisee a royalty-free, non-exclusive licence (including a right to sub-license to the O&M Contractor) to use and reproduce respective ETS Intellectual Property Rights, including but not limited to those required by the Operator Franchisee to create ETS Training Materials and deliver training to its Associates on the ETS.

## **20.12 Revenue protection**

- (a) Operator Franchisee is responsible for and must make all necessary arrangements for the protection of passenger revenues on the System in accordance with annexure 14 (Operations and Customer Service Requirements) of the PSR.
- (b) The State or DTMR, or their respective Associates, may, subject to **clause 48.1**, enter the Project Area and take any steps reasonably necessary to protect customer revenues and minimise fare evasion.

# **21 Performance Monitoring System**

## **21.1 Performance Monitoring**

- (a) Operator Franchisee must:
  - (i) establish a system for the monitoring of its performance of the O&M Activities in accordance with, and containing the information required by, annexure 14 (Operations and Customer Service Requirements) of the PSR (**Performance Monitoring System**);
  - (ii) without limiting the requirements of annexure 14 (Operations and Customer Service Requirements) of the PSR, ensure the Performance Monitoring System (as a minimum) monitors those aspects of the O&M Activities which are relevant to the KPIs in sufficient detail for the calculations under **schedule 3**;
  - (iii) monitor the performance of the O&M Activities in accordance with the Performance Monitoring System and the PSR, so as to ensure that it complies with its obligations under the State Project Documents;

- (iv) notify the State promptly if it identifies any risk to its ability to continuously perform the O&M Activities to the standard required by the State Project Documents and the action which Operator Franchisee intends to take or is taking to avoid or mitigate that risk; and
  - (v) meet all of its reporting requirements in respect of the O&M Activities as set out in the State Project Documents including the creation and provision of a Monthly Performance Report and Semi-Annual Performance Report in accordance with **clause 21.2**.
- (b) Operator Franchisee warrants that the performance data which results from the Performance Monitoring System (including source information, Monthly Performance Reports, Semi-Annual Performance Reports, documentation and data created for or by the Performance Monitoring System) will, at all times, be accurate, complete and correct.

## 21.2 Reports during Operations Phase

- (a) Operator Franchisee must:
- (i) with each payment claim under **clause 38.4(b)**, provide the Monthly Performance Report to the State; and
  - (ii) as part of each Monthly Performance Report submitted in July and in January of each year during the Operations Phase, provide the Semi-Annual Performance Report to the State,
- each in accordance with, and containing the information required by, annexure 17 (Contract Management Requirements), attachment 2 of the PSR and **schedule 3**.
- (b) Each Monthly Performance Report provided to the State must:
- (i) include sufficient information to enable the State to confirm the calculation of the Service Payment for the preceding month; and
  - (ii) be accompanied by notice from an authorised officer of Operator Franchisee confirming that, to the best of that officer's knowledge and belief, the Monthly Performance Report is accurate.

## 21.3 State right to monitor

During the Operations Phase, the State and DTMR (or any person authorised by the State or DTMR) may monitor and review the O&M Activities (wherever occurring) including by way of:

- (a) Passenger satisfaction surveys;
- (b) "mystery shoppers";
- (c) other feedback from Passengers;
- (d) the audit process described in **clause 21.5**;
- (e) real time and read-only access to Operator Franchisee's operations, maintenance and control systems; and
- (f) scheduled and unscheduled reviews and inspections of the System and the O&M Activities in accordance with **clause 48.2**.

## 21.4 Access to information

Without limiting **clauses 21.3** and **49.11**, Operator Franchisee must:

- (a) upon receipt of notice by the State, immediately give the State and its Associates access to the Performance Monitoring System and any data for, or resulting from, the Performance Monitoring System;
- (b) keep copies of all information, documents and data relevant to the Performance Monitoring System or the O&M Activities for 7 years after their creation or production; and
- (c) provide such assistance and access as the State reasonably requires in the exercise of its performance monitoring rights.

## 21.5 Audits

The State may, at the State's cost, engage an independent auditor on terms and conditions determined by the State to audit the O&M Activities including any performance data for, or resulting from, the Performance Monitoring System at any time during the Operations Phase and the 6 month period following the end of the Operations Phase.

## 21.6 Inaccurate data

If any audit under **clause 21.5** reveals an inaccuracy or incompleteness or incorrectness in any performance data for, or resulting from, the Performance Monitoring System then Operator Franchisee must:

- (a) correct and reissue the affected report or data and (if applicable) take steps to remedy the fault in its monitoring, measuring and reporting system;
- (b) if the error has affected the amount of a Service Payment, make the appropriate adjustment to the next scheduled payment claim or, if there are no further payment claims scheduled and the adjustment amount is a deduction, the amount will be a debt due from Operator Franchisee to the State; and
- (c) reimburse the State the cost of the audit.

If any fraud or intentionally false, misleading or deceptive reporting is discovered during any audit, this will constitute an Event of Default.

## 21.7 Operating performance warning

- (a) Without limiting any other rights of the State under the State Project Documents, if at any time the State considers that:
  - (i) the performance of the Project Activities has materially deteriorated,
  - (ii) Operator Franchisee is not performing the Project Activities in a manner consistent with a collaborative working relationship; or
  - (iii) Operator Franchisee will fail or has failed to perform its obligations and, as a result, is frustrating the objectives of the Project or impairing the ability of the State to fulfil any of its objectives under the Light Rail Legislation,

the State may issue a warning notice (**Warning Notice**) to Operator Franchisee under this **clause 21.7** notifying it of the State's concerns.

- (b) Upon receipt of a Warning Notice, Operator Franchisee must:
  - (i) promptly provide the State with a plan detailing how it proposes to address the State's concerns; and

- (ii) if requested to do so by the State, meet with the State at a time and place specified by it; and
- (iii) provide the State with such additional information as it reasonably requires.

## 22 Commercial Opportunities

### 22.1 No other business

Operator Franchisee may not engage in, or permit the System to be used for, any business or revenue generating activity (including retail, advertising or station promotions), other than with the State's prior consent.

### 22.2 Retail

- (a) Operator Franchisee may engage in the Retail Opportunities.
- (b) Operator Franchisee must:
  - (i) provide the State with:
    - (A) reasonable opportunity to monitor and review the design, construction and commissioning of the Retail Opportunities and provide reasonable prior notice (being not less than 10 Business Days) to the State in order to perform such monitoring and review; and
    - (B) as part of the Design Documentation, such information as is reasonably necessary to identify the integration between the Project Works and any Retail Opportunities;
  - (ii) ensure that the Retail Opportunities:
    - (A) are constructed in accordance with a design which is a consistent and logical development of the Retail Opportunity Design unless otherwise permitted by the State during the review referred to in **clause 22.2(b)(i)**;
    - (B) are:
      - (1) located on the parts of the Project Area as generally shown in the Retail Opportunity Design;
      - (2) to the extent reasonably practicable, located, orientated and operated so as to maximise available circulation space for, and safety of, Passengers; and
      - (3) of a size which does not exceed the area or circulation impacts shown in the Retail Opportunity Design;
    - (C) comply with all applicable Laws and Approvals; and
    - (D) are of a nature, quality and presentation which is consistent with State's objectives for the Project (as set out in **clause 4.1**) and is not of a lesser standard than that shown in the Retail Opportunity Design;
  - (iii) obtain the State's prior consent before granting a right to undertake any part of the Retail Opportunities to a person other than a Retail Opportunity Day 1 Proponent (such consent not to be unreasonably



- withheld or delayed) and provide the State with such information as it may reasonably require to consider whether to grant such consent;
- (iv) ensure any right to undertake the Retail Opportunities is granted for a term (including options exercisable at the discretion of a party other than Operator Franchisee) which will:
    - (A) expire on or before the Expiry Date; or
    - (B) if the Project Deed is terminated prior to the Expiry Date, be determined on the date of termination of the Project Deed,
 unless the State gives prior consent to waive or modify these requirements (such consent not to be withheld if Operator Franchisee provides a reasonable means of achieving the objectives stated in **clause 47.1**);
  - (v) ensure that the Retail Opportunities are undertaken on terms which:
    - (A) are consistent with the Retail Opportunity Requirements;
    - (B) permit the State to exercise its rights under **clause 25.6** as though the contracts in respect of the Retail Opportunities were Significant Contracts;
    - (C) permit the State reasonable access to information and documentation created for the purposes of the Retail Opportunities;
    - (D) do not permit advertising or branding on the Project Area, unless the State has approved or directed a Modification permitting Operator Franchisee to enter into advertising arrangements (as contemplated by **clause 22.4(b)**); and
    - (E) require any sales or services of DTMR ticketing products to be undertaken on a commission-free basis;
  - (vi) ensure that the Retail Opportunities do not:
    - (A) detract from or interfere with the primary function of the Project Area as a location for public passenger transport services;
    - (B) detract from or interfere with the Project Activities;
    - (C) impede or discourage safe access and use by Passengers or potential Passengers of the System and the ETS (including by impeding the flow of Passengers at, approaching or leaving Stations); or
    - (D) involve political, religious, racist, sexually explicit or offensive goods, activities or materials;
  - (vii) if a Retail Opportunity ceases to operate (other than for a reasonable and temporary period), either:
    - (A) ensure that it is promptly replaced by a new Retail Opportunity (which for the avoidance of doubt shall require Operator Franchisee to obtain the State's consent under **clause 22.2(b)(iii)** or
    - (B) unless otherwise permitted by the State, remove the infrastructure and facilities for that Retail Opportunity and permit

the State to access and use the area in accordance with the State Project Documents; and

- (viii) as reasonably requested by the State, meet with the State to discuss any issues arising in respect of the Retail Opportunities.

## **22.3 Additional Commercial Opportunities**

- (a) If Operator Franchisee identifies an area of the Project Area or the System in respect of which it wishes to pursue Additional Commercial Opportunities and Operator Franchisee is of the opinion that such Additional Commercial Opportunities will:
  - (i) result in a benefit to the State and the System; and
  - (ii) not disrupt the Project Activities or the System,Operator Franchisee may propose a Modification in relation to the proposed Additional Commercial Opportunities in accordance with **clause 31**.
- (b) If required by the State, Operator Franchisee must consult with relevant stakeholders in relation to the proposed Additional Commercial Opportunities, and conduct presentations on the Additional Commercial Opportunities for the State, other stakeholders and their respective consultants and advisors, at such times and places as the State may require.
- (c) Operator Franchisee acknowledges that:
  - (i) the State is under no obligation to agree to any Modification contemplated by **clause 22.3(a)**;
  - (ii) if the State agrees to the Modification, such agreement may be on such terms as the State determines; and
  - (iii) nothing in this **clause 22.3** or any other provision of this deed in any way limits the rights of the State to undertake any additional development or pursue any commercial opportunities in connection with the System.

## **22.4 Advertising**

- (a) **(Advertising by the State):** The State may at any time enter into advertising arrangements in respect of part or all of the System, the Project or the Project Area. If the State elects to do so:
  - (i) the State will notify Operator Franchisee;
  - (ii) Operator Franchisee must permit the State and the State's Associates to access the Project Area, including access to the System for the purposes of placing advertising material on the System (including on the LRVs):
    - (A) subject to the observance of Operator Franchisee's reasonable rules or requirements as to safety or security on the relevant part of the Project Area which are applied generally by Operator Franchisee;
    - (B) on reasonable notice from the State; and
    - (C) at times to be agreed between the State and Operator Franchisee (provided that Operator Franchisee must use reasonable endeavours to facilitate a request from the State for

access at a given time, and the State must use reasonable endeavours to minimise any disruption to the Project Activities);

- (iii) Operator Franchisee will not be entitled to any costs or compensation in respect of, or share in revenue from, the advertising arrangements; and
  - (iv) the requirements for advertising placement and advertising standards set out in **schedule 19** will apply to that advertising.
- (b) **(Advertising by Operator Franchisee):** Without limiting **clause 22.3**, if Operator Franchisee proposes a Modification in respect of an Additional Commercial Opportunities which relates to advertising, or the State proposes, approves or directs a Modification under which Operator Franchisee will enter into advertising arrangements:
- (i) the requirements for advertising placement and advertising standards set out in **schedule 19** will apply to that advertising;
  - (ii) Operator Franchisee must remove or procure the removal of advertising within the timeframes and in the circumstances prescribed in **schedule 19**, and if at any time:
    - (A) Operator Franchisee has failed to remove or procure the removal of advertising in accordance with **schedule 19**; or
    - (B) (without limiting **schedule 19**) the State considers that any advertising poses a risk to safety of any person,the State may, by notice, direct Operator Franchisee to remove such advertising from the System at Operator Franchisee's cost and Operator Franchisee must comply with any such direction as soon as reasonably practical, and in any event within 24 hours of that direction (including if the direction or the subsequent 24 hour period includes a day that is not a Business Day); and
  - (iii) to the extent that:
    - (A) the benefit of any advertising arrangement that accrues after the end of the Term is not passed on to the State in a manner reasonably acceptable to the State; or
    - (B) any advertising has not been removed or covered in a manner that is reasonably acceptable to the State prior to the end of the Term,

Operator Franchisee must pay the State an amount agreed between the parties to cover the reasonable cost of covering or removing the advertising in a manner reasonably acceptable to the State. If the parties fail to agree the cost within 1 month of the end of the Term, the parties may refer the dispute for resolution under **clause 57**.

## 23 Naming and branding

### 23.1 System Name

- (a) The System will be called by the name developed by Operator Franchisee in accordance with the brand creation strategy in the Marketing Plan and section 9 of annexure 13, part 1 (Communications and Stakeholder Management Requirements) of the PSR (**System Name**).

- (b) Operator Franchisee must display the System Name on the System in the locations and manner designated in the Marketing Plan.
- (c) The State may at any time direct Operator Franchisee to display the System Name on the System in areas not designated by the Marketing Plan.

### **23.2 Government logo and corporate image**

- (a) Operator Franchisee must display the TransLink logo on the System in the locations and manner designated in the PSR.
- (b) The State may at any time direct Operator Franchisee to display the TransLink logo on the System in areas not designated by the PSR.
- (c) The State may change the TransLink logo and may direct Operator Franchisee to display the new TransLink logo on the System in those areas designated in the PSR or as directed by the State under **clause 23.2(b)**.
- (d) The State will compensate Operator Franchisee for all reasonable costs incurred in compliance with **clause 23.2(b)** or **23.2(c)**.
- (e) Nothing in this deed confers any interest in, or right to use, the TransLink logo, other than in accordance with this deed or otherwise with the prior consent of the State and DTMR.

### **23.3 Operator Franchisee name/corporate image**

- (a) Operator Franchisee must display its livery, name/corporate image on the System in the areas and manner designated by the Marketing Plan.
- (b) Operator Franchisee must not change its livery, name/corporate image without the prior consent of the State.

### **23.4 Station names**

- (a) The Stations of the System will be named as set out in section 12 of part 1 of annexure 5 (Engineering Design Requirements) of the PSR (PD) and section 12 of part 1 of annexure 5 (Engineering Design Requirements) of the PSR (S2WD).
- (b) Subject to any rights Operator Franchisee may have under **clause 30.1(c)**, the State may at any time change any Station name by notice to Operator Franchisee.
- (c) The State will be entitled to retain all revenue received from any person in connection with any Station name.
- (d) Operator Franchisee:
  - (i) may use the Station names only for activities and purposes directly related to the Project and the State Project Documents; and
  - (ii) may not use for public purposes any name for the Stations other than the Station names described in **clauses 23.4(a)** and **23.4(b)**.

### **23.5 Other signage and displays**

Without limiting **clauses 23.1** to **23.4**, Operator Franchisee must display informational signage and other information, public art and branding at all times during the Term (including on hoardings, Project Works, the System, Stations and LRVs (as applicable) as required in accordance with the PSR, the Marketing Plan and Business Support Strategy (as defined in the PSR)).

## 24 Asset Inspections

### 24.1 Asset Inspections

- (a) Without limiting any other provision of this deed, at any time during the Operations Phase, the State will be entitled to procure the carrying out of an asset inspection of the System (**Asset Inspection**) by an independent expert (**Asset Inspector**):
  - (i) appointed by agreement between the parties; or
  - (ii) failing agreement, within 10 Business Days of a request made by the State, appointed by the President of the Institution of Engineers Australia.
- (b) The assets forming part of the System that will be the subject of the Asset Inspection (**Assets**) will be selected and specified by the State and may differ for each Asset Inspection.
- (c) The cost of each Asset Inspection will be borne by the State.

### 24.2 Notification of Asset Inspection

- (a) The State must notify Operator Franchisee a minimum of 10 Business Days in advance of the date it wishes to procure the carrying out of an Asset Inspection.
- (b) The State must consider in good faith any reasonable request by Operator Franchisee for the Asset Inspection to be carried out on a different date if such request is made at least 5 Business Days prior to the notified date and Operator Franchisee (acting reasonably) is able to demonstrate that carrying out the Asset Inspection on the notified date would materially prejudice Operator Franchisee's ability to perform the Project Activities.

### 24.3 Role of Asset Inspector

- (a) The Asset Inspector will inspect and assess the Assets and notify the State and Operator Franchisee, having considered any forecast maintenance under any applicable Asset Management Strategy (as defined in the PSR) or Annual Asset Renewal Plan, of:
  - (i) whether the Assets have been and are being maintained by Operator Franchisee in accordance with Operator Franchisee's obligations under the State Project Documents;
  - (ii) any rectification, refurbishment, maintenance and remediation works (**Remediation Works**) required to be carried out by Operator Franchisee to bring the condition of the Assets to the condition they would have been in had Operator Franchisee complied with its obligations under the State Project Documents (including the PSR);
  - (iii) a reasonable period within which Operator Franchisee must carry out the work under **clause 24.3(a)(ii)** (if any) including a date for completion of the work (**Remediation Works Program**);
  - (iv) if requested by Operator Franchisee, details of any packages of work which might reasonably form the basis of a staged completion of the Remediation Works identified in **clause 24.3(a)(ii)** (**Remediation Package**); and

- (v) the expected cost of carrying out the Remediation Works in accordance with the Remediation Works Program, including the cost of carrying out each Remediation Package (if applicable).
- (b) If Operator Franchisee disputes the Asset Inspector's decision under **clause 24.3(a)**, Operator Franchisee may refer those aspects of the matter in dispute for dispute resolution under **clause 57**.
- (c) Operator Franchisee must, at its cost, co-operate with the Asset Inspector and provide the Asset Inspector any reasonable assistance required by the Asset Inspector during the carrying out of the Asset Inspection and any Asset Reinspections.
- (d) The State must use its reasonable endeavours to procure that the Asset Inspector in carrying out the Asset Inspection minimises any disruption caused to the provision of the Project Activities by Operator Franchisee.

#### **24.4 Remediation Works**

- (a) Operator Franchisee must promptly notify the State and the Asset Inspector of the completion of the Remediation Works or any Remediation Package (as applicable).
- (b) The Asset Inspector must promptly reinspect and reassess the Assets (**Asset Reinspection**) the subject of the Remediation Works or the Remediation Package (as applicable) and notify the State and Operator Franchisee of whether the Asset Inspector is satisfied that the Remediation Works or Remediation Package (as applicable) have been completed in a manner which brings the relevant Assets to the condition specified in **clause 24.3(a)(ii)**.
- (c) If the Asset Inspector determines that the Remediation Works or the Remediation Package (as applicable) have not been completed, Operator Franchisee must complete the Remediation Works or the Remediation Package (as applicable), in which case **clauses 24.4(a)** and **24.4(b)** will reapply.
- (d) The cost of each Asset Reinspection will be borne by Operator Franchisee.
- (e) The State may only access the Asset Management Retention Account in the circumstances set out in **clauses 24.5(b)**, **24.5(c)** and **24.6(b)**.

#### **24.5 Asset Management Retention Account**

- (a) If, as a result of an Asset Inspection under **clause 24.3**, Operator Franchisee is required to carry out any Remediation Work, the State may withhold payment of up to 10% of each Service Payment payable following the date of the Asset Inspection until the withheld amounts equal the Asset Management Retention Amount for the Remediation Works.
- (b) The State will pay any amounts of the Service Payment withheld under **clause 24.5(a)** into an interest bearing account in the name of the State and established by the State (**Asset Management Retention Account**).
- (c) If the Asset Inspector notifies the parties under **clause 24.4(b)** that the Remediation Works or a Remediation Package (as applicable) have been completed, the State will pay Operator Franchisee the relevant Asset Management Retention Amount applicable to the completed Remediation Works or Remediation Package (as applicable) by withdrawing the amount from (to the extent there are moneys standing to the credit of) the Asset

Management Retention Account when the next Service Payment is due for payment.

- (d) In the event that the Asset Management Retention Amount is insufficient to cover Operator Franchisee's costs of carrying out the Remediation Works or the Remediation Package (as applicable), Operator Franchisee will bear the balance of such costs itself.

#### **24.6 Failure to carry out Remediation Works**

- (a) If and to the extent that Operator Franchisee fails to complete the Remediation Works or, if applicable, any Remediation Package within the time specified in the Remediation Works Program, the State will be entitled to carry out itself, or procure the carrying out of, the Remediation Works (or the Remediation Package), and the cost of the Remediation Works (or the Remediation Package) will be a debt due and payable by Operator Franchisee to the State.
- (b) The State:
  - (i) must deduct such debt from the Asset Management Retention Account (to the extent there are amounts standing to the credit of that account); and
  - (ii) may to the extent the amount in the Asset Management Retention Account is less than the debt, deduct or set off the remaining debt against any amount otherwise payable by the State to Operator Franchisee or take any other enforcement action available to the State.

#### **24.7 Return of Asset Management Retention Funds**

Any amount remaining in the Asset Management Retention Account (including accrued interests) after:

- (a) all Remediation Works and Remediation Packages to which the Asset Management Retention Account relates have been completed; and
- (b) all debts due and payable to the State under **clause 24.6(a)** have been deducted in accordance with **clause 24.6(b)(i)**,

will be paid by the State to Operator Franchisee.

#### **24.8 No limitation**

Nothing in this **clause 24** limits Operator Franchisee's obligations under **clause 15.5** or otherwise under the State Project Documents.

## PART F – ADVERSE EVENTS AND CHANGE

### 25 Step-In

#### 25.1 Notification and cooperation regarding safety issues

- (a) Operator Franchisee must:
  - (i) identify and investigate:
    - (A) any Project Activity which may give rise to health and safety risks for any person; and
    - (B) any accidents or other incidents involving any (or any risk of) loss, injury or damage to persons (including death) or property of any kind, which occurs on or about the Project Area or the System as a result of or in connection with the Project Activities;
  - (ii) in the case of the matters referred to in **clause 25.1(a)(i)(A)**, give the State notice of each such matter as soon as reasonably practicable after it is identified; and
  - (iii) in the case of the matters referred to in **clause 25.1(a)(i)(B)**, give the State prompt oral notice of the accident or incident followed by a detailed report on Operator Franchisee's investigation of such matters as soon as reasonably practicable after such accident or incident occurs.
- (b) Without limiting any other obligations of Operator Franchisee under the State Project Documents, the parties agree to co-operate openly and constructively (having regard to the reasonable protection of their commercial and legal positions) in relation to the investigation and management of, and response to, incidents occurring with respect to the System if such incidents have resulted, or have the potential to result, in serious injury or death to any person.

#### 25.2 Notification of Step-In Events

- (a) Operator Franchisee must notify the State immediately upon becoming aware of any matter that is likely to cause a Step-In Event and must, at all times while a Step-In Event is subsisting, co-operate with the State to ensure that the Step-In Event is dealt with and normal performance of the Project Activities resumes as soon as is reasonably practicable.
- (b) If Operator Franchisee becomes aware of a Step-In Event occurring, Operator Franchisee must, at its cost:
  - (i) immediately inform the State of the Step-In Event;
  - (ii) promptly after informing the State, give the State notice of the Step-In Event;
  - (iii) keep the State informed about the Step-In Event; and
  - (iv) provide the State with sufficient information to enable the State to assess the nature of the Step-In Event and the likely effect of the Step-In Event on:
    - (A) the health or safety of persons;
    - (B) the Environment;



- (C) any property; and
- (D) the safe and secure performance of the Project Activities or the operation of the System; and
- (v) immediately inform and keep the State informed about any action or measures Operator Franchisee has taken or proposes to take to respond to, overcome or minimise the effects of such incident, event or circumstances.

### 25.3 State may instruct

If a Step-In Event occurs, the State may instruct Operator Franchisee to do any one or more of the following:

- (a) immediately suspend performance of all or any part of the Project Activities;
- (b) provide additional or alternative services or other Project Activities; or
- (c) take, or procure that its Associates take, such other steps as the State determines are necessary or desirable in order to:
  - (i) continue the performance of the Project Activities; or
  - (ii) minimise the risk to:
    - (A) the health or safety of persons;
    - (B) the Environment;
    - (C) any property; and
    - (D) the safe and secure performance of the Project Activities or the operation of the System,

in each case to ensure that the Step-In Event is dealt with and normal performance of the Project Activities resumes as soon as is reasonably practicable.

### 25.4 [Not used]

### 25.5 State step-in

- (a) If:
  - (i) Operator Franchisee fails to promptly remedy or overcome the consequences of a breach, default, negligence or Wilful Misconduct which has given rise to a Step-In Event and the State believes that action must be taken in respect of the Step-In Event;
  - (ii) Operator Franchisee is unable or unwilling to provide additional or alternative Project Activities or take other steps requested under **clause 25.3(c)**, and the State believes that action must be taken in respect of the Step-In Event; or
  - (iii) the State otherwise believes that it must take action in response to the Step-In Event or to discharge a legislative or public duty;

the State may (without limiting **clause 25.6** or any statutory rights of the State):

- (iv) assume total or partial possession, management and control of the System and the performance of the Project Activities; or
- (v) take such other steps as it determines are necessary or desirable to continue the performance of the Project Activities, including any steps

to minimise the risk to the health and safety of persons, the Environment, any property or the safe and secure performance of the Project Activities or the operation of the System.

- (b) If the State wishes to exercise its rights under **clause 25.5**, the State must notify Operator Franchisee of the following:
  - (i) the action it wishes to take in general terms;
  - (ii) the reason for such action in general terms;
  - (iii) the date it wishes to commence such action, if such action has not already been taken;
  - (iv) the time period which it believes may be necessary for such action; and
  - (v) the extent to which the State will assume control of the System or performance of the Project Activities.

## **25.6 Required Action**

- (a) **(State to take Required Action):** The State or its nominees may take such action as notified in **clause 25.5** and any consequential additional action as the State believes is necessary to exercise those rights (together, the **Required Action**) and Operator Franchisee must (and must procure that its Associates) give all assistance to the State and its nominees while it is taking the Required Action including by:
  - (i) giving the State or its nominees access to the System, including the Project Area and any other land upon which the Project Activities are being carried out;
  - (ii) making available to the State all relevant staff of Operator Franchisee and its Associates and authorising the State to give lawful directions to all such staff;
  - (iii) making available to the State all parts of the System, including all spare parts, consumables and reparable items held by Operator Franchisee or its Associates in relation to the Project (wherever located);
  - (iv) making available to the State all documentation relating to the Project, including the documents referred to in **clause 47.9**; and
  - (v) enabling the State to step in to any relevant Core Contract or Significant Contract.
- (b) **(Power of attorney):** Operator Franchisee irrevocably appoints the State and its nominees as its attorney with full power an authority to exercise the State's Step-In Rights, carry out the Required Action and to carry out Operator Franchisee's obligation under **clause 25.6(a)**.
- (c) **(Completion of Required Action):** The State must:
  - (i) give Operator Franchisee notice of its intent to complete or cease the Required Action; and
  - (ii) complete or cease the Required Action in accordance with such notice;

in which case Operator Franchisee must recommence performance of the Project Activities, if such performance has been prevented by the State

exercising its Step-In Rights, immediately upon the completion or cessation of the Required Action.

- (d) **(Prompt step out):** Except to the extent the Required Action is taken as a result of any negligence, Wilful Misconduct, breach or default of Operator Franchisee or its Associates, the State will use its reasonable endeavours to complete the Required Action promptly upon cessation of the relevant event which gave rise to the exercise of the Step-In Rights.
- (e) **(Payment of State's costs):**
  - (i) If the Step-In Event is caused or contributed to by Operator Franchisee or its Associates then, during any period in which the State is exercising a Step-In Right or taking any Required Action:
    - (A) the Service Payment will be abated in accordance with **schedule 3**; and
    - (B) subject to **clause 25.6(e)(i)(A)**, the Service Payment must be applied:
      - (1) first, to meet the operational costs of the Project;
      - (2) secondly, to fund all costs and Losses incurred by the State in exercising its Step-In Rights or taking any Required Action; and
      - (3) thirdly, as directed by Operator Franchisee.
  - (ii) If the Step-In Event is not caused or contributed to by Operator Franchisee or its Associates then, during any period in which the State is exercising a Step-In Right or taking any Required Action:
    - (A) to the extent the event or circumstance giving rise to the Step-In Event, or the exercise of the Step-In Right or the taking of Required Action by the State, prevent Operator Franchisee or its Associates from carrying out the Project Activities:
      - (1) the Service Payment will not be abated in accordance with **schedule 3**; but
      - (2) the Service Payment will be reduced by the amount of any avoided costs which, for the avoidance of doubt, will not include the operational costs of the Project referred to in **clause 25.6(e)(ii)(B)(1)**; and
    - (B) subject to **clause 25.6(e)(ii)(A)**, the Service Payment must be applied:
      - (1) first, to meet the operational costs of the Project; and
      - (2) secondly, as directed by Operator Franchisee.
  - (iii) Nothing in this **clause 25** will prevent Operator Franchisee from bringing a claim under **clause 26** or **27** (to the extent the exercise of Step-In Rights, taking of Required Action or the consequences of either constitutes a Compensation Event or a Relief Event), provided that:
    - (A) Operator Franchisee will not be entitled to any compensation under **clause 26** to the extent it is entitled to payment under **clause 25.6(e)(i)** or **25.6(e)(ii)**; and

- (B) to the extent **clause 25.6(e)(ii)** applies, **clause 26.9** will not apply.
- (f) **(Release)**: Operator Franchisee acknowledges and agrees that the State and its Associates have no liability for any Loss or Claim which Operator Franchisee or Operator Franchisee's Associates suffer or incur as a result of the exercise of Step-In Rights or the taking of any Required Action except to the extent that:
- (i) such Claim or Loss is caused by any fraudulent act or omission of the State, if the State has acted in bad faith or if it arises from gross negligence of the State; or
  - (ii) the exercise of Step-In Rights, taking of Required Action or the consequences of either constitutes a Compensation Event or a Relief Event, in which case **clause 26** or **27** will apply.
- (g) **(Indemnity)**: Operator Franchisee:
- (i) agrees not to make a Claim (and to procure that its Associates do not make a Claim) against the State or any of the State's Associates in respect of any Loss or Claim referred to in **clause 25.6(f)** other than in the circumstances excepted in **clauses 25.6(f)(i)** and **25.6(f)(ii)**; and
  - (ii) subject to **clauses 42.2** to **42.4**, releases and indemnifies the State and its Associates in respect of any Loss or Claim which the State and its Associates suffer or incur as a result of any Claim brought in contravention of **clause 25.6(g)(i)**.
- (h) **(No relief or compensation)**: Except as expressly provided for in this **clause 25**, Operator Franchisee will not be entitled to any relief from obligations, nor any compensation in respect of the exercise of Step-In Rights or the taking of any Required Action.
- (i) **(No limitation on rights or obligations)**: Except as expressly provided in this **clause 25**, neither the State's rights or Operator Franchisee's liabilities or obligations, whether under the State Project Documents (including under **clauses 44** and **45**) or otherwise according to Law, in respect of Step-In Events, will be limited by the terms of this **clause 25**.
- (j) **(No obligation)**: Nothing in this **clause 25** requires the State to exercise its Step In Rights to remedy or cure any breach by Operator Franchisee or mitigate any risk or consequences in respect of which it exercises any Step In Rights.
- (k) **(Reasonable endeavours)**: In exercising its Step-In Rights, the State must use reasonable endeavours to operate and maintain the System and perform the Project Activities in accordance with the State Project Documents.

## 25.7 Training

Operator Franchisee must provide training sessions:

- (a) during the Operations Phase (at not less than annual intervals) to any persons nominated by the State in relation to the operation of the System to ensure that the State has the ability to exercise its rights under this **clause 25**; and
- (b) otherwise in accordance with the PSR and the Training Plan.

## 26 Compensation Events

### 26.1 Compensation Events

If and to the extent that a Compensation Event:

- (a) affects the ability of Operator Franchisee to comply with any of its obligations or exercise any of its rights under the State Project Documents (other than its obligations under **clause 16**); or
- (b) causes Operator Franchisee to incur additional or increased costs or lose revenue in respect of the Project (other than in respect of its obligations under **clause 16**),

then other than to the extent that the Compensation Event (or its effects):

- (c) occurs or arises (directly or indirectly) in whole or in part as a result of or in connection with any action or omission (other than any act or omission expressly permitted by a State Project Document) by Operator Franchisee or its Associates;
- (d) has been caused by OF2's negligence, Wilful Misconduct, breach or default;
- (e) is or ought reasonably to have been within the control of Operator Franchisee or its Associates,

Operator Franchisee is entitled to apply for relief from its obligations under the State Project Documents or claim compensation under this deed (or both) in accordance with the provisions of this **clause 26**.

### 26.2 Mitigation

Operator Franchisee must:

- (a) take all reasonable steps to reduce, mitigate, prevent or eliminate the effects of any Compensation Event (including by putting in place temporary measures reasonably acceptable to the State); and
- (b) use all reasonable endeavours to continue to perform its obligations under the State Project Documents despite the occurrence of a Compensation Event.

### 26.3 Claim for relief or compensation

To obtain relief or claim compensation in respect of a Compensation Event, Operator Franchisee must:

- (a) as soon as practicable, and in any event within 15 Business Days after it first becomes aware that the Compensation Event is likely to cause any of the consequences referred to in **clause 26.1**, give to the State a notice (**Compensation Notice**) setting out:
  - (i) details of the nature of the Compensation Event;
  - (ii) the date of the Compensation Event's occurrence;
  - (iii) the estimated duration of the Compensation Event;
  - (iv) the extent to which the Compensation Event is covered by insurance; and
  - (v) whether Operator Franchisee intends to claim for relief from its obligations under the State Project Documents and/or compensation in accordance with this **clause 26**;

- (b) within 10 Business Days of giving the Compensation Notice, give the State full details (including supporting documentation) of:
  - (i) any relief from obligations (other than its obligations under **clause 16**) and any Estimated Cost Effect claimed; and
  - (ii) the steps which Operator Franchisee has taken to mitigate, prevent or eliminate the effects of the relevant Compensation Event; and
- (c) comply with its continuous notification obligations under **clause 26.50**.

## 26.4 Change in Codes and Standards

- (a) Operator Franchisee must promptly notify the State of any Change in Codes and Standards.
- (b) During the D&C Phase:
  - (i) Operator Franchisee will not be required to comply with the Change in Codes and Standards unless directed to do so in accordance with **clause 26.4(b)(iii)** (in which case Operator Franchisee must comply with that direction);
  - (ii) Operator Franchisee must give the State (at the same time as the notice under **clause 26.4(a)**) an estimate of the Estimated Cost Effect of complying with that Change in Codes and Standards, including sufficient information to support the estimate;
  - (iii) the State may, within 15 Business Days of receipt of the information under **clause 26.4(b)(ii)**, direct Operator Franchisee to comply with the Change in Codes and Standards, in which case the Change in Codes and Standards will be addressed as a Qualifying Change of Law under this **clause 26** and **schedule 6**; and
  - (iv) if the State does not give Operator Franchisee a direction under **clause 26.4(b)(iii)**, Operator Franchisee must continue to comply with the Codes and Standards (disregarding that Change in Codes and Standards) and the relevant Change in Codes and Standards will not be treated as a Compensation Event.
- (c) During the Operations Phase:
  - (i) unless directed otherwise in accordance with **clause 26.4(c)(iii)(A)**, Operator Franchisee must comply with the Codes and Standards (as amended by the Change in Codes and Standards);
  - (ii) if Operator Franchisee intends to claim for compensation in accordance with this **clause 26**, Operator Franchisee must include in the Compensation Notice an estimate of the Estimated Cost Effect of complying with that Change in Codes and Standards, including sufficient information to support the estimate; and
  - (iii) if the Compensation Notice given by Operator Franchisee complies with **clause 26.4(c)(i)**, then within 15 Business Days of the notice being given, the State must either:
    - (A) direct Operator Franchisee to disregard the Change in Codes and Standards, in which case Operator Franchisee will not be regarded as being in breach of the State Project Documents to the extent that it disregarded the relevant Change in Codes and Standards in accordance with such notice (and the relevant

Change in Codes and Standards will not be treated as a Compensation Event); or

- (B) direct Operator Franchisee to comply with the Change in Codes and Standards, in which case the Change in Codes and Standards will be addressed as a Qualifying Change of Law under this **clause 26** and **schedule 6**.

#### **26.4A Delays to Depot Upgrade Works**

If:

- (a) a Compensation Event (a), (c), (d), (e), (f), (g), (h), (i), (j) or (k) (as defined in the Stage 2 Works Deed) occurs; and
- (b) as a direct result of that Compensation Event (a), (c), (d), (e), (f), (g), (h), (i), (j) or (k) (as defined in the Stage 2 Works Deed) (and not due to any D&C Compensation Event (as defined in the D&C Contract (Stage 2)) under paragraphs (b) or (c) of that definition), the 'Date for Stage 2 D&C Completion' in respect of 'Separable Portion A' (as those terms are defined in the D&C Contract (Stage 2)) is extended pursuant to the D&C Contract (Stage 2),

then, whether or not that Compensation Event (a), (c), (d), (e), (f), (g), (h), (i), (j) or (k) (as defined in the Stage 2 Works Deed) gives rise to an entitlement under this deed or the Stage 2 Works Deed, Operator Franchisee is entitled to claim compensation under this deed in accordance with the provisions of this clause 26, provided that Operator Franchisee's only entitlement (except to the extent such event constitutes a Compensation Event or a Relief Event under this deed) to relief or compensation in respect of such an event is limited to the reasonable incremental LRV fleet management costs calculated in accordance with section 4.1A, 4.2 and 4.3 of **Schedule 6** capped at the amount of [REDACTED]

#### **26.5 Continuing Compensation Events**

If the Compensation Event (or its effects) are continuing, Operator Franchisee must:

- (a) continue to give the information required by **clause 26.3(b)** every two months after the notice under **clause 26.3(b)** was provided to the State until after the Compensation Event (or its effects) have ceased; and
- (b) provide a final notice within 5 Business Days after the Compensation Event (or its effects) have ceased.

#### **26.6 Request for information**

At any time after receipt of a notice from Operator Franchisee under **clause 26.3** or **26.5 0**, the State may request from Operator Franchisee further information which the State requires to assess any claim for relief or compensation under this **clause 26**.

#### **26.7 Estimated Cost Effect and other relief**

Subject to **clause 26.8** and provided that Operator Franchisee has complied with **clauses 26.2** and **26.3** (and, in respect of a Change in Codes and Standards which is a Qualifying Change in Law, **clause 26.4(c)(i)**), the State will, as soon as practicable and in any event within 20 Business Days after receipt of Operator Franchisee's notice under **clause 26.3**, if the State is satisfied (acting reasonably) that a Compensation Event has occurred and, as a consequence, is satisfied

(acting reasonably) of the matters claimed in Operator Franchisee's notices under **clause 26.3**:

- (a) the State must grant Operator Franchisee such relief from its obligations (and the consequences under **clauses 44 and 45** of not performing those obligations) under the State Project Documents (other than its obligations under **clause 16** and the consequences of not performing those obligations) as is reasonable for such a Compensation Event, taking into account the notice given under **clause 26.3**; and
- (b) the State must pay Operator Franchisee the Estimated Cost Effect (if any).

#### **26.8 Delay in notification or failure to mitigate**

If, in respect of a Compensation Event:

- (a) the Compensation Notice or any further information is provided after the dates referred to in **clause 26.3** or **26.5 0**; or
- (b) Operator Franchisee fails to comply with its obligations under **clause 26.2** (or, in respect of a Change in Codes and Standards which is a Qualifying Change in Law, **clause 26.4(c)(i)**),

Operator Franchisee will not be entitled to any relief from its obligations under the State Project Documents or any compensation under this deed in respect of that Compensation Event.

#### **26.9 Service Payment not affected**

Nothing in this **clause 26** will affect the operation of **schedule 3** and the Service Payment will be calculated as if obligations affected by the Compensation Event subsisted during the period in which the Compensation Event is subsisting, provided that any abatement under **schedule 3** or any Performance Points accumulated in respect of a failure to comply with any obligation for which Operator Franchisee has been relieved of performance under this **clause 26** will be disregarded for the purposes of **clauses 44.3(d), 45.1(a) and 45.1(b)**.

Nothing in this **clause 26.9** prevents Operator Franchisee recovering any part of the Service Payment affected by the Compensation Event as part of the Estimated Cost Effect of a Compensation Event under this **clause 26**.

#### **26.10 Disputes**

If Operator Franchisee applies for relief under this **clause 26** and:

- (a) there is a dispute as to the amount of any compensation or relief from Operator Franchisee's obligations under the State Project Documents arising from a Compensation Event; or
  - (b) the State disagrees that a Compensation Event has occurred,
- the matter will be determined by expert determination under **clause 57**.

#### **26.11 Step-In rights**

- (a) Operator Franchisee's right to relief under **clause 26.7** does not affect the State's Step-In Rights.
- (b) A Compensation Event may also constitute a Step-In Event.



## 27 Relief Events

### 27.1 Occurrence of a Relief Event

If and to the extent that a Relief Event affects the ability of Operator Franchisee to comply with any of its obligations or exercise any of its rights under the State Project Documents (other than its obligations under **clause 16**), and unless the Relief Event:

- (a) occurs or arises (directly or indirectly) in whole or in part as a result of or in connection with any action or omission (other than any act or omission expressly permitted by a State Project Document) of Operator Franchisee or its Associates or OF2 or its Associates (including if any aspect of the System fails to comply with the design standards in the PSR, including in respect of floods); or
- (b) has been caused by OF2's negligence, Wilful Misconduct, breach or default or
- (c) is, or ought reasonably to have been, within the control of Operator Franchisee or its Associates,

then Operator Franchisee is entitled to apply for relief from its affected obligations under the State Project Documents in accordance with the provisions of this **clause 27** but will not be entitled to any compensation for additional or increased costs or lost revenue in respect of such Relief Event.

### 27.2 Mitigation

Operator Franchisee must:

- (a) take all reasonable steps to reduce, mitigate, prevent or eliminate the effects of any Relief Event (including by putting in place temporary measures reasonably acceptable to the State); and
- (b) use its reasonable endeavours to continue to perform its obligations under the State Project Documents despite the occurrence of a Relief Event.

### 27.3 Claim for relief

To obtain relief in respect of a Relief Event, Operator Franchisee must:

- (a) as soon as practicable, and in any event within 10 Business Days after it becomes aware that the Relief Event is likely to cause the consequences referred to in **clause 27.1**, give to the State a notice (**Relief Notice**) setting out the details of the nature of the Relief Event and whether Operator Franchisee intends to claim for relief from its obligations under the State Project Documents in accordance with this **clause 27**, including:
  - (i) the nature of the Relief Event;
  - (ii) the date of the Relief Event's occurrence;
  - (iii) the estimated duration of the Relief Event; and
  - (iv) the extent to which the Relief Event is covered by insurance;
- (b) within 5 Business Days of giving the Relief Notice, give the State full details (including supporting documentation) of:
  - (i) the relief from its obligations under the State Project Documents claimed;

- (ii) the steps which Operator Franchisee has taken to mitigate, prevent or eliminate the effects of the relevant Relief Event;
  - (iii) an estimate of the time during which Operator Franchisee will be unable to carry out the affected obligations due to the Relief Event;
  - (iv) all insurance moneys to which Operator Franchisee believes it will be entitled in making good any damage caused by the Relief Event; and
- (c) comply with its continuous notification obligations under **clause 27.4**.

#### **27.4 Continuing Relief Event**

- (a) If the Relief Event is continuing, Operator Franchisee must:
  - (i) continue to give the information required by **clause 27.3(b)** every two months after the notice under **clause 27.3(b)** was provided to the State until after the Relief Event has ceased; and
  - (ii) provide a final notice within 5 Business Days after the Relief Event has ceased.
- (b) Following a notification under **clause 27.4(a)(ii)**, the State Project Documents must continue to be performed on the terms existing immediately prior to the occurrence of the Relief Event.
- (c) Subject to **clause 28.4**, any sustained Relief Event will cease if and at the time that the Relief Event becomes a Force Majeure Event, unless otherwise agreed by the State and Operator Franchisee under **clause 28.2**.

#### **27.5 Request for information**

At any time after receipt of a notice from Operator Franchisee under **clauses 27.3** or **27.4**, the State may request from Operator Franchisee further information which the State requires to assess any claim for relief under this **clause 27**.

#### **27.6 Relief**

Subject to **clause 27.7** and provided that Operator Franchisee has complied with **clauses 27.2** and **27.3**, if the State is satisfied (acting reasonably) that a Relief Event has occurred and, as a consequence, is satisfied (acting reasonably) of the matters claimed in Operator Franchisee's notices under **clause 27.3**, the State must grant Operator Franchisee such relief from its obligations under the State Project Documents (other than its obligations under **clause 16**) as is reasonable for such a Relief Event, taking into account the notices given under and **27.3**.

#### **27.7 Delay in notification or failure to mitigate**

If, in respect of a Relief Event:

- (a) the Relief Notice or any further information is provided after the dates referred to in **clauses 27.3** or **27.4**; or
  - (b) Operator Franchisee fails to comply with its obligations under **clause 27.2**,
- Operator Franchisee will not be entitled to any relief from its obligations under the State Project Documents.

#### **27.8 Other obligations not affected**

Nothing in this **clause 27** will affect any obligation on Operator Franchisee under the State Project Documents including to:

- (a) satisfy or exceed the PSR; or

- (b) take remedial action (including, if applicable, provision of back-up PUP), rectify, reinstate or replace to deal with the effects or consequences of such Relief Event,

to the extent Operator Franchisee is not prevented from complying with such obligations by the relevant Relief Event.

## **27.9 Service Payment not affected**

Nothing in this **clause 27** will affect the operation of **schedule 3** and the Service Payment will be calculated as if obligations affected by the Relief Event subsisted during the period in which the Relief Event is subsisting, provided that any abatement under **schedule 3** or any Performance Points accumulated in respect of a failure to comply with any obligation for which Operator Franchisee has been relieved of performance under this **clause 27** will be disregarded for the purposes of **clauses 44.3(d), 45.1(a) and 45.1(b)**.

## **27.10 Disputes**

If Operator Franchisee applies for relief under this **clause 27** and:

- (a) there is a dispute as to Operator Franchisee's entitlement to relief from its obligations under the State Project Documents arising from a Relief Event; or

- (b) the State disagrees that a Relief Event has occurred,

the matter will be determined by expert determination under **clause 57**.

## **27.11 Step-In rights**

- (a) Operator Franchisee's right to relief under **clause 27.6** does not affect the State's Step-In Rights.

- (b) A Relief Event may also constitute a Step-In Event.

# **28 Force Majeure**

## **28.1 Notification**

On the occurrence of a Force Majeure Event, Operator Franchisee must notify the State as soon as practicable. The notification must include all updated details required to be provided in accordance with **clause 27.4** in relation to the Relief Event which has become a Force Majeure Event.

## **28.2 Meeting**

As soon as practicable after a notice under **clause 28.1** is given or the State notifies Operator Franchisee that a Force Majeure Event has occurred, the parties must meet and consult with each other in good faith and use all reasonable endeavours to:

- (a) determine whether a Force Majeure Event has occurred;
- (b) determine the extent to which the Force Majeure Event is covered by insurance;
- (c) determine the estimated duration of the Force Majeure Event; and
- (d) agree on appropriate measures to mitigate the effects of the Force Majeure Event and facilitate the continued performance of the State Project Documents.

### **28.3 Termination for Force Majeure Event**

- (a) Subject to **clauses 28.3(b)** and **28.4**, if:
  - (i) the parties are unable to agree on appropriate terms to mitigate the effects of the Force Majeure Event and facilitate the continued performance of the State Project Documents on or before the date falling 20 Business Days after the date of the commencement of the relevant Force Majeure Event (or the date on which the relevant Relief Event became a Force Majeure Event); and
  - (ii) the Force Majeure Event is continuing or its consequence remain such that the affected party has been or is unable to comply with a material part of its obligations under the State Project Documents during that 20 Business Day period,

then either party may terminate this deed by giving 20 Business Days' notice to the other party.

- (b) Operator Franchisee may only terminate this deed in accordance with **clause 28.3(a)** if:
  - (i) the Force Majeure Event occurred during the D&C Phase and:
    - (A) if Operator Franchisee is entitled to recover (or would have been entitled to recover if Operator Franchisee had fully complied with **clause 43** and made a proper claim) under the advance business interruption insurance policy, the maximum indemnity period stated in the advance business interruption insurance policy has been exceeded; or
    - (B) if Operator Franchisee is not entitled to recover under the advance business interruption insurance policy (other than because Operator Franchisee has not complied with its obligations under **clause 43** or made a proper claim), at the end of the 20 Business Day period referred to in **clause 28.3(a)**; or
  - (ii) the Force Majeure Event occurred during the Operations Phase and:
    - (A) if Operator Franchisee is entitled to recover (or would have been entitled to recover if Operator Franchisee had fully complied with **clause 43** and made a proper claim) under any business interruption insurance policies, the maximum indemnity period stated in the business interruption insurance policies has been exceeded; or
    - (B) Operator Franchisee is not entitled to recover under any business interruption insurance policies (other than because Operator Franchisee has not complied with its obligations under **clause 43** or made a proper claim), at the end of the 20 Business Day period referred to in **clause 28.3(a)**.

### **28.4 Suspension of Operator Franchisee's right to terminate**

- (a) If Operator Franchisee gives a termination notice under **clause 28.3**, the State may suspend Operator Franchisee's right to terminate by giving a suspension notice within 20 Business Days of receipt of Operator Franchisee's termination notice, provided that if the right to terminate is suspended:

- (i) the event giving rise to the Force Majeure Event will be treated as a Relief Event for the purposes of **clause 16** for the period of the suspension; and
  - (ii) during the Operations Phase, the period of any such suspension may not be more than 6 months.
- (b) If the State gives Operator Franchisee a suspension notice under **clause 28.4(a)**:
  - (i) the State must:
    - (A) if the right to terminate is suspended during the Operations Phase, during the period in which Operator Franchisee's right to terminate is suspended; or
    - (B) if the right to terminate is suspended during the D&C Phase, pay Operator Franchisee:
    - (C) in the circumstances described in **clause 28.4(b)(i)(A)**, the Service Payment which would have been payable if the Project Activities then required to be carried out under the State Project Documents which Operator Franchisee is relieved from performing in accordance with this deed due to the Force Majeure Event were being performed in full less the aggregate of (without double counting):
      - (1) the State's reasonable estimate of the costs not incurred by Operator Franchisee as a result of the non-performance of the Project Activities; and
      - (2) the amount of the proceeds Operator Franchisee is entitled to under any advanced business interruption or business interruption insurances; and
    - (D) in the circumstances described in **clause 28.4(b)(i)(B)**, Operator Franchisee's debt servicing costs for the period of suspension less any Insurance Proceeds recovered by Operator Franchisee (or which would have been recovered by Operator Franchisee had it complied with **clause 43**, in respect of the Force Majeure Event); and
  - (ii) this deed will not terminate until expiry of notice (of at least 30 Business Days) from the State to Operator Franchisee that it is ending the suspension of Operator Franchisee's right to terminate.
- (c) If Operator Franchisee becomes able to recommence performing the relevant obligations after the State gives Operator Franchisee a suspension notice:
  - (i) Operator Franchisee must recommence performance of those obligations; and
  - (ii) Operator Franchisee's termination notice under **clause 28.3** will cease to have any effect.

## 28.5 Whole of System not affected

If a Force Majeure Event prevents Operator Franchisee from carrying out its obligations under the State Project Documents in respect of some but not all of the Project Works or the System, either party may, following the occurrence of the

Force Majeure Event, propose a Modification in accordance with **clause 30.1(a)** or **30.1(c)** (as applicable) under which the affected part of the Project Works or the System (as applicable) ceases to be subject to the State Project Documents.

## **29 Change in Law**

### **29.1 Non-Qualifying changes in Law**

Subject to this **clause 29** and **clause 31.5**, Operator Franchisee will be liable for the consequences of, and will have no Claim against the State arising out of or in any way in connection with, a Change in Law.

### **29.2 Qualifying Change in Law**

Operator Franchisee will be entitled to compensation for a Qualifying Change in Law in accordance with **clause 26** and **schedule 6**.

### **29.3 Beneficial Change in Law**

If a Change in Law results in a net cost saving (calculated in the same manner as an Estimated Cost Effect), Operator Franchisee must pay the cost saving to the State in the same manner as for any Estimated Cost Effect which is a negative number in accordance with **clause 31.7** as if the Change in Law arose due to an Operator Franchisee initiated Modification and the savings were shared equally between the State and Operator Franchisee.

### **29.4 Beneficial Carbon Emissions Law**

If a Change in Law which is a change in a Carbon Emissions Law results in the Project or the System becoming eligible for (or eligible to apply for) any benefit (including any carbon credits, industry assistance or other form of benefit), Operator Franchisee must:

- (a) promptly notify the State;
- (b) promptly take steps to obtain such benefits for the Project or the System (as applicable), as directed by the State (acting reasonably); and
- (c) at the State's election, transfer (or procure the transfer of) those benefits to the State, or pay to the State the financial benefit of that Change in Law (calculated in the same manner as an Estimated Cost Effect).

### **29.5 No limitation**

Nothing in **clause 29** limits Operator Franchisee's obligation to comply with Law.

## **30 State initiated Modifications**

### **30.1 Modification Proposal**

- (a) **(Modification Proposal):** The State may at any time issue to Operator Franchisee a notice titled "Modification Proposal" setting out the details of a proposed Modification which the State is considering, including the State's proposed requirements for the implementation and funding of the proposed Modification.
- (b) **(Notice of Modification):**
  - (i) If, in Operator Franchisee's opinion, any direction given by the State other than a direction given in a Notice to Proceed or Modification

Order constitutes or involves a Modification, Operator Franchisee must provide notice to this effect to the State within 3 Business Days of receipt of the direction.

- (ii) Within 2 Business Days of receipt of such notice from Operator Franchisee, the State will notify Operator Franchisee that either:
  - (A) it agrees that the direction constitutes or involves a Modification, in which case the State will issue a Modification Proposal or Modification Order in respect of that Modification (and Operator Franchisee will not be required to comply with the direction except in accordance with any Modification ordered, agreed or determined);
  - (B) it disagrees that the direction constitutes or involves a Modification, and that it considers Operator Franchisee is required to comply with the direction in accordance with this deed or at Law; or
  - (C) it withdraws the direction,provided that if the State fails to respond within the timeframe required under this **clause 30.1(b)(ii)**, the direction will be deemed to have been suspended until such time as the State responds to Operator Franchisee (and Operator Franchisee will have no claim against the State in respect of the failure to respond).
- (iii) If the parties fail to agree under this **clause 30.1(b)**, the matter may be referred by either party for resolution in accordance with **clause 57**.
- (iv) If Operator Franchisee does not provide a notice in accordance with **clause 30.1(b)(i)**, Operator Franchisee will not be entitled to any relief or compensation on the basis that a direction constituted or involved a Modification.
- (c) **(Modification Notice)**: Subject to **clause 30.2**, within 20 Business Days of receipt of a Modification Proposal from the State (or such other time as the State reasonably requires or permits having regard to the size and complexity of the proposed Modification), Operator Franchisee must prepare and submit a Modification Notice to the State.
- (d) **(No obligation to proceed)**: The State will not be obliged to proceed with any Modification proposed in a Modification Proposal or which is the subject of a Modification Notice.
- (e) **(Notice to Proceed)**: Without limiting the State's rights under this **clause 30**, the State may, at any time after issuing a Modification Proposal under **clause 30.1(a)** (whether or not Operator Franchisee has provided a Modification Notice), issue a Notice to Proceed with the Modification together with a Modification Order.
- (f) **(Implementation)**: If the State issues a Notice to Proceed to Operator Franchisee under **clause 30.1(e)**:
  - (i) Operator Franchisee must proceed to implement the Modification in accordance with the directions of the State;
  - (ii) Operator Franchisee will be relieved of its obligations under the State Project Documents to the extent specified in the Notice to Proceed;

- (iii) the parties will use their reasonable endeavours to agree to the Estimated Cost Effect of the Modification and any relief required by Operator Franchisee from its obligations under the State Project Documents (including any extensions of time to the Date for Completion or the Sunset Date) as is reasonable for the Modification;
- (iv) if the parties cannot agree to the Estimated Cost Effect or the relief required by Operator Franchisee, the matter will be referred to dispute resolution by expert determination under **clause 57** and will be reasonably determined by the State until the matter is resolved in accordance with **clause 57**; and
- (v) any necessary adjustments to the Estimated Cost Effect and the relief granted will be made following the determination of the dispute (if applicable).

### **30.2 Costs of preparation of Modification Notice**

- (a) **(No reimbursement except for Future Stages or above threshold):** Subject to **clause 30.2(b)**, Operator Franchisee will not be entitled to any reimbursement for any costs of preparation of a Modification Notice.
- (b) **(Modification Notices for Future Stages or above threshold):** If the State issues a Modification Proposal in relation to a Future Stage or a Modification which involves capital works with a capital cost in excess of \$5 million (CPI Indexed) during the D&C Phase or in excess of \$1 million (CPI Indexed) during the Operations Phase:
  - (i) **(price for Modification Notice):** Operator Franchisee must, within 5 Business Days of receipt of a Modification Proposal, provide the State with a proposed price for the preparation of the Modification Notice which will be an estimate of the costs that will be reasonably and properly incurred by Operator Franchisee in preparing the Modification Notice;
  - (ii) **(no margin):** the price proposed by Operator Franchisee under **clause 30.2(b)** must not include any margin (including any profit or costs for on-site and off-site overheads, administration or corporate expenses);
  - (iii) **(breakdown):** Operator Franchisee's proposed price will set out a detailed breakdown of the costs and time allowed to prepare the Modification Notice;
  - (iv) **(further details):** to the extent it is able to do so, the State will provide Operator Franchisee with further details of the proposed Modification reasonably requested by Operator Franchisee to assist in determining a price for the Modification Notice;
  - (v) **(State approval):** within 10 Business Days of receipt of Operator Franchisee's proposed price for the preparation of the Modification Notice, the State must advise Operator Franchisee whether:
    - (A) the State agrees to the proposal, in which case Operator Franchisee must prepare a Modification Notice;
    - (B) the State requires Operator Franchisee to conduct a tender process in accordance with **clause 30.6**; or



- (C) the State does not agree with the proposal in which case the State may:
  - (1) suggest an alternative price;
  - (2) require Operator Franchisee to submit a further price; or
  - (3) inform Operator Franchisee that it does not wish to proceed with the proposed Modification;
- (vi) **(alternative price)**: following receipt of:
  - (A) Operator Franchisee's response to an alternative price suggested by the State under **clause 30.2(b)(v)(C)(1)**; or
  - (B) Operator Franchisee's alternative price submission under **clause 30.2(b)(v)(C)(2)**,
 or if Operator Franchisee does not respond to the State's alternative price or submit an alternative price within 5 Business Days, then:
  - (C) if the parties have reached agreement on the price of the Modification Notice, the State may direct Operator Franchisee to proceed with the preparation of the Modification Notice; or
  - (D) subject to the State's rights under **clauses 30.2(b)(vii)** and **30.2(b)(viii)**, if the parties have not reached agreement on the price of the Modification Notice:
    - (1) the State will meet with Operator Franchisee to use their reasonable endeavours to agree to the price of the Modification Notice. If the State and Operator Franchisee cannot agree to the price of the Modification Notice, the matter may be referred to dispute resolution by expert determination in accordance with **clause 57**; and
    - (2) the State may direct Operator Franchisee to prepare the Modification Notice by issuing a notice to prepare (**Notice to Prepare**);
- (vii) **(Notice to Prepare)**: if the State issues a Notice to Prepare to Operator Franchisee:
  - (A) any disputed matters will, until the State and Operator Franchisee otherwise agree or a determination is made in accordance with **clause 30.2(b)(vi)(D)(1)**, be reasonably determined by the State;
  - (B) Operator Franchisee must prepare the Modification Notice on the basis determined by the State (notwithstanding that any matters in dispute have not been agreed or determined in accordance with **clause 30.2(b)(vi)(D)(1)**); and
  - (C) any necessary adjustments to the price payable to Operator Franchisee for preparation of the Modification Notice will be made following determination in accordance with **clause 30.2(b)(vi)(D)(1)** (if applicable);
- (viii) **(Modification Notice)**: if Operator Franchisee is required to prepare a Modification Notice in accordance with **clause 30.2(b)(v)** or **30.2(b)(vi)**, it must prepare and submit such Modification Notice to the State:

- (A) within 60 Business Days of:
    - (1) the State's agreement to the proposed price for the Modification Notice; or
    - (2) failing agreement, the issue of a Notice to Prepare by the State; or
  - (B) such other time as the State reasonably requires or agrees having regard to the size and complexity of the proposed Modification,
- in accordance with **clause 30.3**; and
- (ix) **(payment for Modification Notice)**: if:
- (A) Operator Franchisee is required to prepare a Modification Notice in accordance with **clause 30.2(b)(v)** or **30.2(b)(vi)**; and
  - (B) the State does not issue a Notice to Proceed or a Modification Order,
- the State will pay Operator Franchisee the price for the preparation and submission of the Modification Notice (as agreed or determined in accordance with this **clause 30.2**) within 60 Business Days of receiving an invoice from Operator Franchisee for such price, provided that the relevant Modification Notice has been prepared and submitted in accordance with this **clause 30.2**.

### **30.3 Contents of Modification Notice**

A Modification Notice must set out detailed particulars of:

- (a) the Estimated Cost Effect of the proposed Modification;
- (b) the basis (if any) on which Operator Franchisee would be prepared to fund the Modification and the cost difference, if Operator Franchisee, rather than the State, funds the Modification;
- (c) if the Modification is proposed to be carried out during the D&C Phase, the effect which the proposed Modification will have on the D&C Program;
- (d) if the Modification is proposed to be carried out during the Operations Phase, the time within which the proposed Modification will be implemented;
- (e) the methodology and process by which Operator Franchisee proposes to carry out the proposed Modification;
- (f) the effect the Modification will have on the key performance indicators specified in the PSR and **schedule 3**;
- (g) the effects which the proposed Modification will have on:
  - (i) the workmanship, durability or functional integrity of any element of the Project Works or the System;
  - (ii) Operator Franchisee's ability to perform the Project Activities in accordance with the State Project Documents;
  - (iii) the safety of the System;
  - (iv) Operator Franchisee's ability to return the System to the State (or its nominee) in accordance with the requirements of the State Project Documents;

- (v) any Future Stages or any proposed Proximate Works; or
- (vi) Operator Franchisee's ability to:
  - (A) satisfy any warranty given by Operator Franchisee under the State Project Documents; or
  - (B) perform any of its other obligations under the State Project Documents;
- (h) any relief required by Operator Franchisee from its obligations under the State Project Documents (including any extensions of time to the Date for Completion or the Sunset Date) as is reasonable for the proposed Modification;
- (i) any proposed amendments to the Project Documents that are necessary in order to carry out the Modification; and
- (j) any other information requested by the State in respect of the proposed Modification,

except to the extent the State advises Operator Franchisee that it does not require those particulars to be set out in the Modification Notice.

#### **30.4 General requirements for Modification Notice**

A Modification Notice must be prepared:

- (a) so as to avoid, as far as practicable, the need for a new Approval or a modification to an existing Approval for the implementation of the Modification;
- (b) in accordance with the principles contained in **schedule 6** and **schedule 15**;
- (c) assuming Operator Franchisee is a willing, efficient and competent provider of the Modification in an efficient and competitive market;
- (d) in a manner which is consistent with the requirements of the State for the implementation of the Modification;
- (e) so as to minimise the disruption to the System arising from the carrying out of the Modification;
- (f) so as to minimise any delay in achieving Completion arising from the carrying out of the Modification, to the extent that Completion has not yet been achieved;
- (g) so as to avoid any adverse safety impacts from carrying out the Modification;
- (h) in a manner which ensures that all appropriate insurances relevant to the Modification are taken out and maintained consistently with those that would have been required by the State if the Modification had been included in the original requirements of the State Project Documents, unless the State otherwise determines; and
- (i) in the form of an offer capable of immediate acceptance by the State at any time up to 40 Business Days after the date on which the State receives Operator Franchisee's Modification Notice.

#### **30.5 Consultation**

If required by the State, Operator Franchisee will meet at such times and provide such further details and such appropriately qualified personnel to explain, as may be reasonably necessary to enable the State to assess a Modification Notice.

### 30.6 Tender for works

- (a) If a Modification:
  - (i) during the D&C Phase, is likely to involve capital works with a cost in excess of \$1 million (CPI Indexed); or
  - (ii) during the Operations Phase, is likely to involve capital works,

the State may at any time require that Operator Franchisee conduct a tender process for all or part of the works which would be required to effect the Modification. Operator Franchisee will be entitled to any direct costs reasonably and properly incurred by it in carrying out the tender process in accordance with this **clause 30.6**.
- (b) If the State elects to require the tender process, the tender process must be carried out promptly, in accordance with the State's reasonable requirements and the process set out in section 7 of **schedule 6**.
- (c) Following completion of the tender process, Operator Franchisee must prepare a Modification Notice, having regard to the outcome of the tender process (including the tendered prices) in the Modification Notice (or, if a Modification Notice has been submitted before the completion of the tender process, promptly submit an appropriately amended Modification Notice).
- (d) If Operator Franchisee is required to prepare a Modification Notice in accordance with **clause 30.6(c)**, the date by which Operator Franchisee must provide a Modification Notice under **clause 30.1(c)** or **30.2(b)(viii)** (as applicable) will be extended by such period as is reasonably required to conduct the tender process.

### 30.7 Issue of a Modification Order

- (a) **(Modification Order)**: Within 20 Business Days (or such longer period as the State reasonably requires, having regard to the size and complexity of the proposed Modification) after receiving a Modification Notice, the State may:
  - (i) accept the Modification Notice;
  - (ii) reject the Modification Notice; or
  - (iii) inform Operator Franchisee that it does not wish to proceed with the proposed Modification.
- (b) **(State accepts Modification Notice)**: If the State accepts the Modification Notice in accordance with **clause 30.7(a)(i)**:
  - (i) the State will issue a Modification Order;
  - (ii) Operator Franchisee must carry out the Modification described in the Modification Order on the basis of the Modification Notice (as accepted by the State); and
  - (iii) Operator Franchisee will be relieved of its obligations under the State Project Documents and granted any extension of time, to the extent specified in the Modification Notice (as accepted by the State).
- (c) **(State rejects Modification Notice)**: If the State rejects the Modification Notice in accordance with **clause 30.7(a)(ii)**, the State may require that:

- (i) the parties consult in good faith and use their reasonable endeavours to agree on a mutually acceptable resolution to the matters set out in the Modification Notice which are in dispute; or
  - (ii) Operator Franchisee conduct a tender process (to the extent it has not already done so) under **clause 30.6**.
- (d) **(Parties reach agreement)**: If the parties reach agreement on the disputed matters in the Modification Notice, the State may direct Operator Franchisee to implement the Modification by issuing a Modification Order, in which case:
  - (i) Operator Franchisee must carry out the Modification on the basis of the Modification Notice (as varied by the parties' agreement, as recorded in the Modification Order, on the matters in the Modification Notice which were in dispute); and
  - (ii) Operator Franchisee will be relieved of its obligations under the State Project Documents and granted any extension of time, to the extent specified in the Modification Notice (as varied by the parties' agreement, as recorded in the Modification Order, on the matters in the Modification Notice which were in dispute).
- (e) **(If parties fail to reach agreement)**: If the parties are unable to reach agreement within 20 Business Days after the State receives the Modification Notice, the State may refer the matter for dispute resolution in accordance with **clause 57**. To the extent that any such dispute relates to the Estimated Cost Effect of the Modification, or any relief required by Operator Franchisee from its obligations under the State Project Documents (including any extensions of time to the Date for Completion or the Sunset Date), it will be referred to expert determination in accordance with **clause 57**.
- (f) **(State may direct that Modification proceed)**: If:
  - (i) Operator Franchisee fails to provide a Modification Notice as required by this **clause 30**; or
  - (ii) the State refers the matter for dispute resolution under **clause 30.7(e)**,
 the State may also direct Operator Franchisee to implement the Modification by issuing a Notice to Proceed together with a Modification Order (whether or not any matters in dispute have been agreed in accordance with **clause 57**).
- (g) **(Notice to proceed)**: If the State issues a Notice to Proceed to Operator Franchisee under **clause 30.7(f)**:
  - (i) any disputed matters (including any matters set out in **clauses 30.3(a), 30.3(c), 30.3(d) and 30.3(h)**) will, until the State and Operator Franchisee otherwise agree or a determination is made in accordance with **clause 57**, be reasonably determined by the State;
  - (ii) Operator Franchisee must proceed to implement the Modification on the basis determined by the State (notwithstanding that any matters in dispute have not been agreed or determined in accordance with **clause 57**);
  - (iii) Operator Franchisee will be relieved of its obligations under the State Project Documents and granted any extension of time, to the extent specified in the Notice to Proceed; and

- (iv) any necessary adjustments will be made following the determination of a dispute (if applicable).
- (h) **(State options following determination):** Following determination of the dispute referred to in **clause 30.7(e)** in accordance with **clause 57**, the State may, if it has not already exercised its right under **clause 30.7(f)**, elect to do either of the following:
  - (i) require Operator Franchisee to implement the Modification in accordance with the Modification Notice as varied by the determination by issuing a Modification Order; or
  - (ii) withdraw the proposed Modification.
- (i) **(Operator Franchisee to implement Modification):** If the State gives a Modification Order pursuant to **clause 30.7(h)(i)**:
  - (i) Operator Franchisee must carry out the Modification described in the Modification Order on the basis of the Modification Notice (as varied by the determination, once made); and
  - (ii) Operator Franchisee will be relieved of its obligations under the State Project Documents and granted any extension of time, to the extent specified in the Modification Notice (as varied by the determination, once made).

### **30.8 Estimated Cost Effect and relief**

If the State directs Operator Franchisee to carry out a Modification in accordance with this **clause 30** it must:

- (a) pay Operator Franchisee the Estimated Cost Effect; and
- (b) grant Operator Franchisee any relief from its obligations under the State Project Documents (including any extensions of time to the Date for Completion or the Sunset Date) as is reasonable for the proposed Modification,

each:

- (c) as agreed by the parties; or
- (d) failing agreement, as initially determined by the State and ultimately determined by expert determination in accordance with **clause 57**.

### **30.9 Right to omit Project Works or O&M Activities**

- (a) The State may omit any part of the Project Works or the O&M Activities in accordance with the procedure set out in this **clause 30** and may carry out those omitted Project Works or O&M Activities itself or have them carried out by a third party.
- (b) If the State exercises its rights under **clause 30.9(a)** Operator Franchisee will, subject to **clause 9.11**, be relieved of its obligations under the State Project Documents to the extent agreed by the parties or as determined in accordance with **clause 57** to be necessary to accommodate the Modification.

### **30.10 Additional O&M Activities**

- (a) Subject to **clause 30.10(b)**, Operator Franchisee will be responsible for all aspects of the O&M Activities as they relate to any Modification, whether the

Modification is carried out by Operator Franchisee or a third party, after completion or installation of the Modification pursuant to this **clause 30**.

- (b) Any changes to the O&M Activities, the Service Payment or any other matter Operator Franchisee is required to give particulars of in a Modification Notice, arising from any Modification, will be determined together with the Modification to which they relate in accordance with this **clause 30**.

### **30.11 Modification savings**

If Operator Franchisee implements a Modification in accordance with this **clause 30** that results in an Estimated Cost Effect which is a negative number, Operator Franchisee must pay the Estimated Cost Effect to the State (except to the extent otherwise agreed by the State, acting reasonably) as follows:

- (a) to the extent that the Estimated Cost Effect relates to the D&C Activities, the Estimated Cost Effect may be set-off against any Estimated Cost Effect for another Modification in respect of the D&C Activities, or if this is not set-off, it must be paid by Operator Franchisee to the State progressively within 10 Business Days after each month in which:
  - (i) the relevant work the subject of the Modification was performed; or
  - (ii) if the Modification involved the deletion or omission of work, the relevant work which has been deleted or omitted would have been undertaken but for the Modification; or
- (b) to the extent that the Estimated Cost Effect relates to the O&M Activities, the State may set-off the Estimated Cost Effect against its obligations to pay the Service Payment in the manner and at the time as agreed between the State and Operator Franchisee or, to the extent that they fail to agree, as determined in accordance with **clause 57** (or as reasonably determined by the State pending determination under **clause 57**).

### **30.12 No liability unless Modification Order**

Subject to **clause 30.2**, Operator Franchisee must not begin any work and will not be entitled to make any Claim against the State arising out of, or in any way in connection with, any State initiated Modification, except if Operator Franchisee is directed to carry out:

- (a) a Modification pursuant to a Modification Order issued by the State under this **clause 30**; or
- (b) any Minor Works under **clause 33**.

### **30.13 No cost Modifications**

To the extent that a Modification proposed by the State under this **clause 30** or any Minor Works proposed by the State under **clause 33** comprise:

- (a) minor design changes to the Project Works which, while inconsistent with the PSR or the Design Documentation, do not, in aggregate, require additional Capital Expenditure, increase the cost of carrying out the O&M Activities or cause Operator Franchisee to be delayed in achieving Completion;
- (b) development and refinement of the Design Documentation in accordance with **clause 14**;

- (c) a variation referred to in paragraphs (a) to (d) of the definition of "Modification" which is required to ensure that the Project Works (other than the Temporary Works) or the System will be Fit for Purpose;
- (d) a variation referred to in paragraphs (a) to (d) of the definition of "Modification" which is required to rectify a Defect in the Project Works (other than the Temporary Works) or the System; or
- (e) maintenance, refurbishment or capital replacement of any part of the System in accordance with the PSR, the Maintenance Plan or **clause 46**,

then Operator Franchisee will not be entitled to claim any costs (including any Estimated Cost Effect) incurred in connection with that Modification from the State.

### **30.14 Operator Franchisee acknowledgements**

Notwithstanding any other provision of this **clause 30**, Operator Franchisee acknowledges that:

- (a) Operator Franchisee must continue to carry out the Project Activities except to the extent that it is prevented from doing so as a consequence of the implementation of a Modification agreed or determined in accordance with this **clause 30**; and
- (b) subject to **clause 15.2(c)**, Operator Franchisee's obligations and representations and warranties given by Operator Franchisee under the State Project Documents in respect of the design, construction and maintenance of the Project Works will apply to all Modifications implemented in accordance with this **clause 30** as if those Modifications were implemented as part of the original Project Works.

## **31 Operator Franchisee initiated Modifications**

### **31.1 No Modification without consent**

Operator Franchisee must not undertake any Modification without the State's prior consent.

### **31.2 Operator Franchisee may propose a Modification**

Operator Franchisee may propose a Modification by giving a notice with details of:

- (a) the proposed Modification;
- (b) the reason for the proposed Modification;
- (c) the Estimated Cost Effect of the proposed Modification;
- (d) the time within, and the manner in which, Operator Franchisee proposes to implement the proposed Modification;
- (e) if the Modification is to be carried out during the D&C Phase, the effect the proposed Modification will have on the D&C Program;
- (f) if the Modification is proposed to be carried out during the Operations Phase, the time within which the proposed Modification will be implemented;
- (g) the effect the Modification will have on the key performance indicators specified in the PSR and **schedule 3**;
- (h) the effects which the proposed Modification will have on:



- (i) the workmanship, durability or functional integrity of any element of the Project Works or the System;
- (ii) Operator Franchisee's ability to perform the O&M Activities;
- (iii) the safety of the System;
- (iv) any Future Stages or any proposed Proximate Works;
- (v) Operator Franchisee's ability to return the System to the State (or its nominee) in accordance with the requirements of the State Project Documents; or
- (vi) Operator Franchisee's ability to:
  - (A) satisfy any warranty given by Operator Franchisee under the State Project Documents; or
  - (B) perform any of its other obligations under the State Project Documents; and
- (i) the value for money for the State arising from the Modification.

### **31.3 Operator Franchisee to provide statement**

If the State requires, Operator Franchisee must provide in respect of any Modification it proposes:

- (a) a statement stating that the proposed Modification:
  - (i) will not adversely affect the functional integrity of the System or the ability of Operator Franchisee to perform the Project Activities in accordance with the State Project Documents; and
  - (ii) will not adversely affect the quality standards, warranties and other obligations required under the State Project Documents; and
- (b) any other information and supporting documentation the State requires.

### **31.4 State may approve or reject**

- (a) If Operator Franchisee gives a notice under **clause 31.2** together with any statement or other information or supporting documentation which the State requires under **clause 31.3**, the State:
  - (i) subject to **clause 31.5**, may:
    - (A) approve (with or without conditions) the proposed Modification by issuing a Modification Approval to Operator Franchisee; or
    - (B) reject the proposed Modification; and
  - (ii) will be under no obligation to approve the proposed Modification for the convenience of or to assist Operator Franchisee.
- (b) If the State approves the Modification pursuant to **clause 31.4(a)(i)(A)**:
  - (i) Operator Franchisee must proceed to implement the Modification on the basis set out in the Modification Approval; and
  - (ii) Operator Franchisee will be relieved of its obligations under the State Project Documents to the extent specified in the Modification Approval.

### 31.5 Modifications required for compliance

- (a) **(Compliance with Law):** To the extent that any Modification requested by Operator Franchisee is required to ensure that the Project Works and the System comply with Law, the State must either:
- (i) approve the Modification proposed by Operator Franchisee by issuing a Modification Approval;
  - (ii) direct Operator Franchisee to carry out a Modification in accordance with **clause 30** to ensure that the Project Works and the System comply with the applicable Law; or
  - (iii) take such other action as the State considers necessary to ensure the Project Works and the System comply with the applicable Law,
- and if the State approves or directs a Modification in accordance with **clause 31.5(a)(i) or 31.5(a)(ii)**:
- (iv) Operator Franchisee must proceed to implement the Modification on the basis of Operator Franchisee's notice under **clause 31.2** or in accordance with **clause 30**; and
  - (v) if the Modification is required to ensure that the Project Works or the System comply with a Qualifying Change in Law, **clause 29** will apply.
- (b) **(Non-implementation of Assumed Legislative Amendments):** To the extent that an Assumed Legislative Amendment is not implemented by the Assumed Legislative Amendment Date, Operator Franchisee may propose a Modification to address the consequences of that Assumed Legislative Amendment not being implemented and the State must either:
- (i) approve the Modification proposed by Operator Franchisee by issuing a Modification Approval;
  - (ii) direct Operator Franchisee to carry out a Modification in accordance with **clause 30** to ensure that the Project Works and the System comply with the applicable Law and that Operator Franchisee is in no worse position that if the relevant Assumed Legislative Amendment had been implemented; or
  - (iii) without limiting Operator Franchisee's rights under **clause 30.1(b)**, take such other action as the State considers necessary to ensure the Project Works and the System comply with the applicable Law and that Operator Franchisee is in no worse position than if the relevant Assumed Legislative Amendment had been implemented,
- and if the State approves or directs a Modification in accordance with **clause 31.5(b)(i) or 31.5(b)(ii)** Operator Franchisee must proceed to implement the Modification on the basis of Operator Franchisee's notice under **clause 31.2** or in accordance with **clause 30** (as applicable).
- (c) **(Signalling Priority changes):** To the extent that there is a change (other than a Temporary Change) in the Traffic Control Sequences such that Signalling Priority cannot be achieved, Operator Franchisee may propose a Modification to address the consequences of that change in Signalling Priority (including any necessary changes to the Contract Timetable and Service Frequencies) and the State must either:
- (i) approve the Modification proposed by Operator Franchisee by issuing a Modification Approval;

- (ii) direct Operator Franchisee to carry out a Modification in accordance with **clause 30** to address the consequences of that change in Signalling Priority (including any necessary changes to the Contract Timetable and Service Frequencies); or
- (iii) take such other action as the State considers necessary to ensure that the System can achieve the requirements of the State Project Documents (including the Contract Timetable and Service Frequencies),

and if the State approves or directs a Modification in accordance with **clause 31.5(c)(i)** or **31.5(c)(ii)** Operator Franchisee must proceed to implement the Modification on the basis of Operator Franchisee's notice under **clause 31.2** or in accordance with **clause 30**. The State will provide a notice to Operator Franchisee within 10 Business Days of the State issuing a notice to CoGC under clause 13.2 of the Council Interface Deed or the State receiving a notice from CoGC under clause 13.3 of the Council Interface Deed.

- (d) **(EEW Contract variations):** The State must promptly notify Operator Franchisee of a variation to an EEW Contract after the date of this deed which has or will have a significant effect on the Project Works or the Project Activities. To the extent that the State requires or agrees to a variation to an EEW Contract after the date of this deed, and that variation has a significant effect on the Project Works or the Project Activities, Operator Franchisee may propose a Modification to address the consequences of that EEW Contract variation and the State must either:

- (i) approve the Modification proposed by Operator Franchisee by issuing a Modification Approval;
- (ii) direct Operator Franchisee to carry out a Modification in accordance with **clause 30** to ensure that Operator Franchisee is in no worse position than if the relevant variation to the EEW Contract had not been made; or
- (iii) take such other action as the State considers necessary to ensure that Operator Franchisee is in no worse position than if the relevant variation to the EEW Contract had not been made,

and if the State approves or directs a Modification in accordance with **clause 31.5(d)(i)** or **31.5(d)(ii)** Operator Franchisee must proceed to implement the Modification on the basis of Operator Franchisee's notice under **clause 31.2** or in accordance with **clause 30** (as applicable).

- (e) **(Non-implementation of Broadbeach South Retail Opportunity):** To the extent that the State is unable to provide sufficient access to the Project Area to allow Operator Franchisee to undertake the Broadbeach South Retail Opportunity in accordance with the Retail Opportunity Requirements on or after the Broadbeach South Retail Opportunity Date, Operator Franchisee may propose a Modification to address the consequences of such inability and the State must either:

- (i) approve the Modification proposed by Operator Franchisee by issuing a Modification Approval;
- (ii) direct Operator Franchisee to carry out a Modification in accordance with to ensure that Operator Franchisee is in no worse position than if Operator Franchisee's Modification had been approved; or

- (iii) take such other action as the State considers necessary to ensure that Operator Franchisee is in no worse position than if Operator Franchisee's proposed Modification had been approved.

### **31.6 Operator Franchisee to bear risks and costs**

Unless otherwise agreed by the State:

- (a) Operator Franchisee will bear all risks and costs:
  - (i) associated with proposing a Modification and providing the details under **clause 31.2** and complying with **clause 31.3**;
  - (ii) reasonably incurred by the State in assessing a Modification proposed by Operator Franchisee (other than in respect of a Modification proposed by Operator Franchisee under **clause 31.5**); and
  - (iii) associated with carrying out a Modification proposed by Operator Franchisee (other than in respect of a Modification proposed by Operator Franchisee under **clause 31.5**) and approved by the State under **clause 31.4**; and
- (b) Operator Franchisee will not be entitled to make any Claim against the State arising out of, or in any way in connection with, a Modification proposed by Operator Franchisee (other than in respect of a Modification proposed by Operator Franchisee under **clause 31.5**) and approved by the State under **clause 31.4**.

### **31.7 Modification savings**

If Operator Franchisee implements a Modification in accordance with this **clause 31** that results in an Estimated Cost Effect which is a negative number, Operator Franchisee must pay the State 50% of the Estimated Cost Effect as follows:

- (a) to the extent that the Estimated Cost Effect relates to the D&C Activities, the Estimated Cost Effect may be set off against any Estimated Cost Effect for another Modification in respect of the D&C Activities or if this is not set-off, it must be paid by Operator Franchisee to the State progressively within 10 Business Days after each month in which:
  - (i) the relevant work the subject of the Modification was performed; or
  - (ii) if the Modification involved the deletion or omission of work, the relevant work which has been deleted or omitted would have been undertaken but for the Modification; and
- (b) to the extent that the Estimated Cost Effect relates to the O&M Activities, the State may set-off the Estimated Cost Effect against its obligations to pay the Service Payment in the manner and at the time as agreed between the State and Operator Franchisee or, to the extent that they fail to agree, as determined in accordance with **clause 57**.

## **32 Pre-Agreed Modifications**

### **32.1 Pre-Agreed Modification Election**

- (a) The State may, at any time prior to the relevant Election Date, direct by way of a Modification any Pre-Agreed Modification by issuing to Operator

Franchisee a notice titled "Pre-Agreed Modification Election" (**Pre-Agreed Modification Election**).

- (b) If:
  - (i) a Pre-Agreed Modification Election is issued on or before the relevant Election Date, from the date of the Pre-Agreed Modification Election; or
  - (ii) a Pre-Agreed Modification (Preventative Maintenance) is deemed to be implemented in accordance with **clause 32.1A**, from the date the Pre-Agreed Modification (Preventative Maintenance) is deemed to be implemented,

the State Project Documents will be deemed to be amended in accordance with the relevant amendments set out in **schedule 14**.

### **32.1A Pre-Agreed Modification (Preventative Maintenance)**

- (a) Nothing in this **clause 32.1A** will:
  - (i) prevent Operator Franchisee from carrying out the Preventative Maintenance Works at any time during the Term; or
  - (ii) affect Operator Franchisee's obligations to comply with **clause 46** or otherwise reduce the requirements for the Handback Condition.
- (b) Operator Franchisee must notify the State 20 Business Days prior to commencing any Preventative Maintenance Works with respect to an LRV, and the parties acknowledge that the State may exercise its rights under **clause 48** if it wishes to observe those works or inspect the LRV prior to commencement of those works.
- (c) If, with respect to an LRV, Operator Franchisee undertakes the Preventative Maintenance Works prior to the actual mileage of that LRV reaching 1.2 million km:
  - (i) a Pre-Agreed Modification (Preventative Maintenance) will be deemed to be implemented with respect to that LRV, and the State will pay Operator Franchisee in accordance with that Pre-Agreed Modification (Preventative Maintenance), within 20 Business Days of the State receiving notice from the Operator Franchisee that the actual mileage of that LRV has reached 1.2 million km; or
  - (ii) if, at the Expiry Date:
    - (A) the actual mileage of that LRV is less than 1.2 million km but greater than 1.1 million km; and
    - (B) the Preventative Maintenance Works were carried out after the actual mileage for that LRV reached 1.1 million km,the State will pay Operator Franchisee the net value (as at the Expiry Date) that the Preventative Maintenance Works have delivered to the State (being the net of the Preventative Maintenance Works value less the increased lifecycle costs from the Preventative Maintenance Works having been done early) as assessed by the Independent Assessor at the end of the Term.
- (d) If, with respect to an LRV, Operator Franchisee undertakes the Preventative Maintenance Works after the actual mileage of that LRV reaches 1.2 million km, a Pre-Agreed Modification (Preventative Maintenance) will be deemed

to be implemented with respect to that LRV, and the State will pay Operator Franchisee in accordance with that Pre-Agreed Modification (Preventative Maintenance), within 20 Business Days of the State receiving notice from the Operator Franchisee that the Preventative Maintenance Works have been carried out for that LRV.

- (e) Operator Franchisee will have no entitlement to payment for any Preventative Maintenance Works in respect of an LRV except in accordance with **clause 32.1A(c)** or **32.1A(d)**, including if:
  - (i) Operator Franchisee carries out Preventative Maintenance Works with respect to an LRV and the actual mileage of that LRV is less than 1.1 million km at the Expiry Date; or
  - (ii) Operator Franchisee does not carry out Preventative Maintenance Works with respect to the LRV.

### **32.2 Implementation**

If the State issues a Pre-Agreed Modification Election on or before the relevant Election Date, Operator Franchisee must:

- (a) carry out its obligations under the State Project Documents as those obligations are amended by **clause 32.1(b)**; and
- (b) implement the Pre-Agreed Modification in accordance with **schedule 14**.

### **32.3 Payment**

If Operator Franchisee implements a Pre-Agreed Modification in accordance with **clause 32.2**, the State will pay Operator Franchisee the relevant Pre-Agreed Modification Cost stated in **schedule 14**:

- (a) progressively within 10 Business Days after each month in which the relevant work was undertaken; or
- (b) as otherwise specified in **schedule 14**.

### **32.4 No further claim**

- (a) Payment of the Pre-Agreed Modification Cost in accordance with **clause 32.3** will be full compensation for any Loss or delay Operator Franchisee or its Associates suffer or incur arising out of or in connection with the implementation of the relevant Pre-Agreed Modification and no further payment or adjustment will be made.
- (b) Other than a claim for payment of Pre-Agreed Modification Costs under **clause 32.3**, Operator Franchisee will have no entitlement to make any Claim against the State or the Independent Verifier in respect of any Pre-Agreed Modification, including for any:
  - (i) acceleration to the carrying out of the Project Works which Operator Franchisee or its Associates may perform at any time in order to achieve Completion by the Date for Completion; or
  - (ii) extension of time for any delay to the carrying out of the Project Works.

### **32.5 Modifications after Election Date**

Nothing in this **clause 32** prevents the State from:

- (a) issuing a Modification Proposal under **clause 30.1(a)**;

- (b) issuing a Modification Order under **clause 30.7**; or
- (c) issuing a notice requiring Operator Franchisee to carry out Minor Works under **clause 33.2(a)**;

that involves the same (or similar) changes to the Project Works as a Pre-Agreed Modification after the relevant Election Date.

## 32A Mod 60

### 32A.1 Modification Approval No. 60

The parties acknowledge that 4 additional LRVs are to be delivered, tested and commissioned by Operator Franchisee in accordance with Mod 60. The amendment and restatement of this deed in accordance with the Modification Implementation Deed does not affect or amend the terms of that Modification.

### 32A.2 Availability of LRVs

If one or more LRVs (Mod 60) has not achieved LRV Completion by the relevant Original Date for LRV Completion (Mod 60), Operator Franchisee may request a Modification under this **clause 32A.2**, provided that:

- (a) in respect of the period between the relevant Original Date for LRV Completion (Mod 60) and the Date of Stage 2 Completion, the Modification must only include the following relief and compensation, to the extent that such relief and/or compensation is required to address the direct, incremental impact of the delay to LRV Completion:
  - (i) relief arising from changes to the O&M Activities only to the extent necessary to permit the O&M Contractor to utilise existing LRVs to:
    - (A) carry out testing and commissioning for Stage 2 in accordance with the D&C Interface Deed (Stage 2); or
    - (B) [not used]; and
  - (ii) compensation for the direct incremental costs incurred by the O&M Contractor (excluding any margin) only in connection with those changes to the O&M Activities calculated in accordance with Schedule 6 and:
    - (A) capped, to the extent the delay is not caused by a 'LRV Compensation Event' under the LRVs (Mod 60) Supply Contract, at the amount of Liquidated Damages (as defined in Mod 60) actually paid to the State under clause 6.1 of Mod 60; and
    - (B) [not used]
- (b) in respect of the period between the Date of Stage 2 Completion and LRV Completion, the Modification must only include the following relief to address the direct, incremental impact of the delay to LRV Completion:
  - (i) arising from changes to the O&M Activities only to the extent necessary to permit the O&M Contractor to utilise existing LRVs to:
    - (A) [not used]; or
    - (B) provide the Services on the System after the Date of Stage 2 Completion; and

- (ii) such relief will be structured in a manner which avoids Operator Franchisee incurring incremental costs in performing the O&M Activities.

If Operator Franchisee issues a Modification in accordance with this **clause 32A.2**, the State must within 10 Business Days after receiving Operator Franchisee's proposed Modification under clause 32A.2 either:

- (i) approve the Modification proposed by Operator Franchisee by issuing a Modification Approval; or
- (ii) to the extent that the Modification proposed by Operator Franchisee does not comply with **clauses 32A.2(a) and (b)**, issue a Modification Order on terms which the State determines (acting reasonably) do comply with **clauses 32A.2(a) and (b)**.

### **32A.3 Compensation Events**

Nothing in this clause 32A.3 affects Operator Franchisee's rights arising out of a Compensation Event.

## **33 Minor Works**

### **33.1 Operator Franchisee's acknowledgments and warranties**

Operator Franchisee acknowledges and agrees that the performance of Minor Works will not in any way derogate from, limit or otherwise affect:

- (a) Operator Franchisee's obligations or liabilities under the State Project Documents, including the obligation to ensure that the Project Works and the System are Fit for Purpose;
- (b) Operator Franchisee's obligation to achieve Completion by the Date for Completion and Close Out by the Date for Close Out;
- (c) Operator Franchisee's obligation to carry out the D&C Activities and the O&M Activities in accordance with the PSR; or
- (d) Operator Franchisee's obligations in respect of the operation of the System.

### **33.2 Process for performance of Minor Works**

- (a) **(Notification of proposed Minor Works)**: The State may at any time notify Operator Franchisee of any Minor Works which the State requires Operator Franchisee to carry out and complete by issuing a notice entitled "Minor Works Notice".
- (b) **(Response by Minor Works Quote)**: Within 5 Business Days of receipt by Operator Franchisee of a notice in accordance with **clause 33.2(a)**, Operator Franchisee must prepare and submit for the approval of the State a statement entitled "Minor Works Quote", which sets out:
  - (i) the expected Estimated Cost Effect of the Minor Works;
  - (ii) an estimate of the time to complete the proposed Minor Works;
  - (iii) details of any contractors proposed to be engaged to implement the Minor Works;
  - (iv) details of the impact, if any, of the Minor Works on the PSR, the Project Activities, the operation of the System and Operator Franchisee's ability to comply with the State Project Documents; and



- (v) any other particulars required by the State.
- (c) **(State approval):** The State will advise Operator Franchisee within a reasonable time of receiving a Minor Works Quote which complies with the requirements of **clause 33.2(b)** whether the Minor Works Quote is approved.
- (d) **(State not satisfied):** If, under **clause 33.2(c)**, the State does not approve the Minor Works Quote, the State may:
  - (i) elect not to proceed with the proposed Minor Works;
  - (ii) proceed to implement the works itself by engaging a third party to carry out the required works, in which case the works will not be Minor Works for the purposes of this deed; or
  - (iii) take any other action it considers necessary in the circumstances.
- (e) **(Not commence before approval):** Operator Franchisee must not commence the Minor Works until the Minor Works Quote has been approved in accordance with **clause 33.2(c)**.
- (f) **(Implementation of Minor Works):** Operator Franchisee warrants that the Minor Works will be:
  - (i) undertaken and completed as soon as reasonably practicable after the State's approval is given under **clause 33.2(c)**; and
  - (ii) diligently pursued and completed in accordance with the Minor Works Notice and the reasonable directions of the State using Good Industry Practice,
 so that:
  - (iii) upon Completion and at all times during the Term, the Project Works and the System are Fit for Purpose; and
  - (iv) the Project Works and the System meet the requirements for the applicable Residual Design Lives.

### **33.3 No duty to review**

Notwithstanding **clause 33.2**, the approval or failure to approve a Minor Works Quote will not:

- (a) except to the extent otherwise specifically provided under this deed, relieve Operator Franchisee from, or alter or affect the obligations and liabilities of Operator Franchisee; or
- (b) prejudice the State's rights against Operator Franchisee,

whether under the State Project Documents or at Law, nor entitle Operator Franchisee to make any Claim against the State in respect of any such matter.

### **33.4 Notice of Minor Works**

If in Operator Franchisee's opinion, any direction given by the State other than a direction given in a Minor Works Notice constitutes or involves Minor Works, Operator Franchisee must provide notice to this effect to the State within 2 Business Days of receipt of the direction. If the State agrees that the direction constitutes and involves Minor Works, it will serve a Minor Works Notice on Operator Franchisee and the process for performance of the Minor Works will proceed in accordance with **clause 33.2**.

### **33.5 Payment of Estimated Cost Effect**

Unless otherwise agreed with the State at the time it receives the Minor Works Quote and subject to **clause 30.13**, the Estimated Cost Effect of the Minor Works (calculated in accordance with **schedule 6**) will be payable by a fixed lump sum within 20 Business Days after completion of the Minor Works the subject of the Minor Works Quote. Operator Franchisee must perform the Minor Works for the Estimated Cost Effect and Operator Franchisee will not be entitled to any additional payment in respect of the Minor Works.

### **33.6 Completion**

Operator Franchisee must give notice to the State upon completion of the Minor Works implemented in accordance with **clause 33.2(f)**.

### **33.7 Disputes**

- (a) If any dispute arises in relation to the Minor Works (including with respect to matters included in a Minor Works Notice, whether or not works constitute Minor Works and payment for Minor Works), the State Representative and the Operator Franchisee Representative will meet to attempt to resolve the dispute.
- (b) If the dispute is not resolved within 5 Business Days of the meeting referred to in **clause 33.7(a)**, either party may refer the dispute to resolution by an expert determination in accordance with **clause 57**.

## **34 Proximate Works**

### **34.1 Rights in respect of Proximate Works**

- (a) Without limiting the State's rights under the State Project Documents, the State may at any time carry out Proximate Works, or have Proximate Works carried out by a third party.
- (b) Nothing in this **clause 34** limits Operator Franchisee's obligations under **clause 9.11**.

### **34.2 Proximate Works Process**

- (a) If the State proposes to undertake Proximate Works or to have a third party carry out Proximate Works:
  - (i) the State must first give Operator Franchisee reasonable notice of its intention to do so, which must:
    - (A) outline the proposed Proximate Works;
    - (B) indicate the State's anticipated timeframe for undertaking the Proximate Works;
    - (C) outline the impacts that the State anticipates will result from the proposed Proximate Works; and
    - (D) indicate the State's proposal for changes to the Service Payment in connection with the Proximate Works (if any); and
  - (ii) Operator Franchisee must:
    - (A) fully co-operate with the State and its Associates to enable them to undertake the Proximate Works; and
    - (B) provide any further information required by the State.

- (b) If the State carries out or intends to carry out Proximate Works (or requires a third party to carry out Proximate Works), the State may at any time issue to Operator Franchisee a Modification Proposal under **clause 30** requiring Operator Franchisee to give the State a proposal for the provision of additional D&C Activities or O&M Activities in relation to the Proximate Works, including the maintenance, repair and operation of such Proximate Works.
- (c) If the State carries out (or procures a third party to carry out) any Proximate Works (and regardless of whether the State has issued a Modification Proposal as contemplated by **clause 34.2(b)** or has otherwise implemented a Modification):
  - (i) Operator Franchisee will be entitled to the Estimated Cost Effect for its role in relation to the Proximate Works;
  - (ii) within 5 Business Days of receipt of a notice under **clause 34.2(a)(i)**, Operator Franchisee must give the State an estimate of the Estimated Cost Effect for approval by the State; and
  - (iii) once the estimate of the Estimated Cost Effect has been approved, Operator Franchisee must not exceed the approved estimate without first obtaining the consent of the State.

### **34.3 Carrying out Proximate Works**

If the State decides to carry out Proximate Works (or to have a third party carry out Proximate Works), then (without limiting **clause 35**):

- (a) Operator Franchisee must:
  - (i) give the State and its Associates sufficient access to the Project Area to enable the State and any such third party to plan, design, investigate, construct, operate and maintain the Proximate Works;
  - (ii) co-operate with the State and its Associates, any such third party and Authorities to facilitate the implementation of the Proximate Works, including permitting reasonable temporary closure of parts of the Project Area, management of Passengers and others in areas affected by the Proximate Works and rescheduling Operator Franchisee's maintenance activities;
  - (iii) carefully co-ordinate and interface the Project Activities with the activities associated with the Proximate Works; and
  - (iv) use its reasonable endeavours to minimise any interference with, or disruption or delay to, the activities associated with the Proximate Works,

and for these purposes, upon request by the State, use reasonable endeavours to agree and enter into cooperation and interface arrangements with the State, its Associates, any such third parties or Authorities (as applicable), in a form and substance reasonably acceptable to the State (and such agreements will be Project Documents for the purposes of this deed); and

- (b) the State must:
  - (i) use its reasonable endeavours to minimise any interference with, or disruption or delay to, the Project Activities and ensure that its Associates comply with the requirements of this **clause 34.3(b)(i)**; and

- (ii) use its reasonable endeavours to ensure that any third party undertaking Proximate Works has an obligation to co-operate with Operator Franchisee and its Associates to permit Operator Franchisee to carry out the Project Activities.

#### **34.4 Completion of Proximate Works**

- (a) The State:
  - (i) must provide Operator Franchisee with the drawings and specifications with which any third party carrying out any Proximate Works must comply to the extent reasonably required by Operator Franchisee to comply with the State's requirements (if any) under **clause 34.4** and subject to any confidentiality requirements under the arrangements between the State and the relevant third party;
  - (ii) may require Operator Franchisee to accompany the State on an inspection of the Proximate Works, following which Operator Franchisee may, within 5 Business Days, give the State notice of any aspect of the Proximate Works which, in Operator Franchisee's reasonable opinion do not comply with the drawings and specifications referred to in **clause 34.4(a)(i)**;
  - (iii) may if Operator Franchisee gives a notice under **clause 34.4(a)(ii)**, carry out further works and then require Operator Franchisee to reinspect the works, in which case **clause 34.4(a)(ii)** will reapply;
  - (iv) may whether or not Operator Franchisee gives a notice under **clause 34.4(a)(ii)**, issue Operator Franchisee with a Proximate Works Handover Notice.
- (b) If the State gives Operator Franchisee a Proximate Works Handover Notice, from the date specified in a Proximate Works Handover Notice (**Proximate Works Handover Date**):
  - (i) any assets the subject of the Proximate Works will be deemed to form part of the System for the purposes of this deed; and
  - (ii) the land on which such assets are situated will be deemed to form part of the Project Area,

to the extent specified in the Proximate Works Handover Notice and Operator Franchisee will be entitled to be paid the Estimated Cost Effect in accordance with **schedule 6**.
- (c) Without limiting **clause 35.2**, during the 12 month period following the Proximate Works Handover Date, Operator Franchisee must promptly give the State notice of any latent defects in the Proximate Works which become apparent to Operator Franchisee during that period and which, because of their latent nature, were not apparent to Operator Franchisee during the inspection referred to in **clause 34.4**.
- (d) Operator Franchisee must provide the State and its Associates (including any third party responsible for rectification of defects in any Proximate Works) with such access to the Project Area to rectify any defects in the Proximate Works, subject to Operator Franchisee's reasonable safety and security constraints.

## 35 Operator Franchisee's role in the delivery of Proximate Works

### 35.1 General obligations

In relation to any Proximate Works, Operator Franchisee must, and must ensure that its Associates:

- (a) assist the State in:
  - (i) ensuring that any Proximate Works are compatible with; and
  - (ii) integrating any Proximate Works with, the Project;
- (b) manage and minimise any disruption to the Project Activities during the implementation of the Proximate Works by putting into place appropriate arrangements, procedures and protocols with regard to the management, continuity and safe operation of the System;
- (c) operate light rail services, provide access, exercise operational control and maintain the System during the implementation of the Proximate Works in a manner which facilitates the completion of the Proximate Works in a safe, timely and cost effective manner;
- (d) if any pre-existing policy, practice or procedure used in the conduct of the Project Activities is not fully compatible with the implementation of Proximate Works, develop a transitional policy, practice or procedure that is fully compatible with the implementation of the Proximate Works;
- (e) mitigate any loss or damage suffered by Operator Franchisee as a result of the implementation of the Proximate Works;
- (f) review and comment on any material provided by the State to Operator Franchisee in relation to the Proximate Works, including:
  - (i) any design documentation;
  - (ii) any construction program or methodology;
  - (iii) site access plans;
  - (iv) interface management plans;
  - (v) occupational health and safety plans;
  - (vi) design management plans;
  - (vii) project staging plans;
  - (viii) inspection, testing, commissioning, operation and maintenance plans; and
  - (ix) stakeholder and community involvement plans;
- (g) make resources available as reasonably required to assist the State in the design, construction, testing and commissioning of Proximate Works; and
- (h) do anything (including executing any document or entering into an agreement with a third party on terms which the State considers to be commercially reasonable) which the State reasonably requires in order to give full effect to this **clause 35**.

### **35.2 Duty to warn**

Operator Franchisee must promptly give notice to the State upon becoming aware of any matter or thing which:

- (a) constitutes a defect in any work or activity being carried out by a third party in relation to any Proximate Works;
- (b) prevents or substantially interferes with (or is likely to prevent or substantially interfere with) the performance of the Project Activities; or
- (c) may affect:
  - (i) the safety, operation or maintenance of the System; or
  - (ii) the safety of the System customers or any persons carrying out activities on or about the System.

### **35.3 Cooperation with State tender process for Proximate Works**

- (a) If the State engages in a tender process for any Proximate Works, Operator Franchisee must provide the State with any assistance the State may reasonably require relating to the development of any tender documentation for the Proximate Works.
- (b) If required by the State, Operator Franchisee must:
  - (i) attend meetings with tenderers;
  - (ii) assist the State in answering questions submitted by tenderers;
  - (iii) assist the State in assessing all or any specified part of tenders received;
  - (iv) work with the State and the tenderers to develop a preliminary site access schedule; and
  - (v) provide any other assistance reasonably requested by the State in relation to the conduct of the tender process.
- (c) Operator Franchisee must allow tenderers to undertake site inspections of the Project Area provided that Operator Franchisee is given reasonable notice of the proposed inspection and subject to Operator Franchisee's reasonable safety and security constraints.
- (d) If requested by the State, Operator Franchisee must enter into and actively participate in, good faith discussions with the State and any third parties specified by the State, regarding alternative project procurement methods, including any alliancing or partnering arrangements.
- (e) Operator Franchisee must not (nor permit its Associates to) tender for or carry out any element of the Proximate Works (including as a subcontractor), except if:
  - (i) the express approval of the State is obtained; and
  - (ii) Operator Franchisee and its Associates comply with any conditions that may be imposed by the State in respect of their involvement in a tender for, and the carrying out of, the Proximate Works.

### **35.4 Communications and community relations**

- (a) Operator Franchisee must:

- (i) develop a customer service and communications plan which addresses the management of disruption to the System during the implementation of the Proximate Works;
  - (ii) submit the draft customer service and communications plan to the State in accordance with **clause 9**; and
  - (iii) implement and update the agreed customer service and communications plan for the Proximate Works in accordance with **clause 9**.
- (b) If any works carried out as part of Proximate Works (whether by Operator Franchisee or a third party) are likely to impact on the System customers, Operator Franchisee must ensure that:
  - (i) the status of the Proximate Works, timing of light rail services and (if applicable) information regarding any alternative mode of transport is accurate and is provided to customers in a timely manner; and
  - (ii) any alternative mode of transport is provided and managed effectively from the customers' perspective if this is required to be implemented.
- (c) Operator Franchisee must participate in any community relations aspects of Proximate Works by:
  - (i) taking an active role in any marketing or communications steering group established by or on behalf of the State;
  - (ii) attending any community forums, presentations and workshops held throughout the planning process; and
  - (iii) collaborating with the State to promote (if applicable) any benefits of the Proximate Works.

## 36 Future Stages

### 36.1 Future Stages

- (a) **(State right to implement)**: The State may, at any time, elect to implement a Future Stage.
- (b) **(No right for Operator Franchisee to participate)**: Operator Franchisee acknowledges that:
  - (i) the State has not yet decided whether to include Operator Franchisee or its Associates in any procurement process in relation to any Future Stage; and
  - (ii) neither Operator Franchisee or its Associates has any right or expectation that they will be entitled to design, construct, operate or maintain, or to participate in any tender process in relation to, any Future Stage unless formally invited to do so by the State as part of any such procurement process.
- (c) **(Information and cooperation)**: Without limiting Operator Franchisee's obligations under **clause 48** (and whether or not the State elects to implement a Modification Proposal in relation to a Future Stage or conduct any procurement process in relation to a Future Stage), Operator Franchisee must, upon request by the State:

- (i) provide the State with any information held by or on behalf of Operator Franchisee which relates to the Project;
- (ii) ensure that the State has direct access to any System Documentation or other information, documents or material which relates to the Project which is maintained by third parties (including Operator Franchisee's Associates);
- (iii) make available personnel to explain any information, and provide reasonable support in relation to any information, the State is entitled to, or to have access to, under **clause 36.1(c)(i)** or **(c)(ii)**; and
- (iv) cooperate, and procure that its Associates cooperate, with the State and its Associates and OF2 and its Associates in relation to the implementation of a Future Stage (whether or not implemented as a Modification under this deed).

The State may use any information obtained by it under **clause 36.1(c)(i)** or **(c)(ii)** as it considers appropriate in relation to implementation of a Future Stage (including providing such information other than Commercially Sensitive Information unless in accordance with **clause 51** to one or more tenderers as part of a tender process for a Future Stage, or any third party or OF2 and its Associates engaged to implement a Future Stage).

## 36.2 Modifications for Future Stages

- (a) **(Modification Proposal for Future Stage):** The State must, if it wishes to implement a Future Stage, issue to Operator Franchisee a Modification Proposal under **clause 30** requiring Operator Franchisee to either:
  - (i) design and construct a Future Stage or provide additional O&M Activities in respect of a Future Stage, including the maintenance, repair and operation of the Future Stage; or
  - (ii) omit any part of the Project Works or the O&M Activities under **clause 30.9(a)** to facilitate development, delivery or operation of a Future Stage by the State or a third party,
 or a combination of those things.
- (b) **(Future Stages implemented by other contractors):** If the State proposes a Future Stage, Operator Franchisee acknowledges and agrees that:
  - (i) without limiting **clause 48.1**, Operator Franchisee must provide the State (and any person authorised by the State) with such access to the Project Area as may be reasonably required by the State to enable the State and any authorised persons to perform any investigations, surveys or tests in connection with the proposed Future Stage, subject to Operator Franchisee's reasonable safety and security constraints and subject to the State using reasonable endeavours to minimise the effect of such access, investigations, surveys or testing on the Project Activities;
  - (ii) the State reserves the right to negotiate directly with any Core Contractor or Significant Contractor in relation to any Future Stage and Operator Franchisee must provide any reasonable assistance required by the State in negotiating with that contractor;
  - (iii) the State may at any time procure a third party or OF2 and its Associates to carry out all or part of the work required for the Future



Stage (including any infrastructure and station construction and fit-out required for the Future Stage);

- (iv) if the State procures a third party or OF2 and its Associates to carry out the design, construction or commissioning of works required for the Future Stage, Operator Franchisee will, if requested by the State, enter into a cooperation and integration deed on terms acceptable to Operator Franchisee (acting reasonably) with the third party or OF2 and its Associates addressing such matters as are reasonably required by the State; and
  - (v) if required by the State, Operator Franchisee will seek to negotiate and agree cooperation and interface arrangements with other persons who may be impacted by, or who may otherwise have an interest in, such Future Stage (including any Authorities).
- (c) **(Safety):**
- (i) Operator Franchisee acknowledges that, as between the State and Operator Franchisee, at all times during the planning, development and implementation of a Future Stage, Operator Franchisee is solely responsible for ensuring the safety of Project Activities carried out by Operator Franchisee.
  - (ii) Without limiting **clause 36.2(c)(i)**, in relation to any Future Stage, Operator Franchisee must, and must procure that its Associates, do all things necessary to enable Operator Franchisee to:
    - (A) comply with all applicable Laws;
    - (B) comply with the Safety Management System;
    - (C) identify and implement any changes to the Safety Management System required as a result of the implementation of the Future Stage; and
    - (D) advise the State in a timely manner of any information it requires from the State in relation to a Future Stage to enable it to comply with its obligations under this **clause 36.2(c)**.

### **36.3 Tender process for Future Stages**

- (a) Operator Franchisee acknowledges that the integrity of any tender process undertaken as part of a Future Stage is critical to the State.
- (b) Operator Franchisee must cooperate with the State's conduct of any tender process, and preparation by the State in anticipation of any tender process, in relation to a Future Stage, including permitting the State access to Operator Franchisee's and Operator Franchisee's Associates' information in accordance with **clause 48**.
- (c) Operator Franchisee must comply, and must procure that its Associates comply, with all arrangements and restrictions imposed by the State to maintain the integrity of any tender process undertaken by the State or Operator Franchisee in relation to a Future Stage, including:
  - (i) restrictions imposed by the State on dealings between Operator Franchisee and tenderers;
  - (ii) restrictions imposed by the State on the right of Operator Franchisee and its Associates to tender for work; and

- (iii) restrictions imposed by the State on the ability of Operator Franchisee to use cost and price sensitive information which Operator Franchisee is privy to as a result of being a party to the State Project Documents.

## 37 No restrictions

- (a) Nothing in the Project Documents will in any way restrict, or require the exercise of, any right or power of the State, directly or through any Authority (including the State, DTMR or CoGC), to develop, manage or change Queensland's transport network.
- (b) Accordingly, and without limiting **clause 37(a)**, the State and all other Authorities will be entitled on their own account, and to authorise others, to exercise, or not exercise, any right or power they would otherwise have had, to:
  - (i) develop, upgrade, extend, reduce, remove or otherwise alter:
    - (A) public transport infrastructure and services, including:
      - (1) rail infrastructure and services, including metro rail, heavy rail, light rail, monorail or any other rail system;
      - (2) road related public transport infrastructure and road based public transport services, including the development of dedicated roads or lanes for public transport services (including busways and bus lanes) and bus services, taxi services, or any other service making use of road infrastructure; and
      - (3) water based public transport infrastructure and services, including by ferry or any other service making use of waterways;
    - (B) roads, including tollroads, motorways and freeways; or
    - (C) pedal cycle paths, footpaths and any other means of access for pedal cyclists and pedestrians;
  - (ii) develop, implement and promote policies in respect of the transport network and transport related infrastructure including in respect of car pooling and the parking of vehicles;
  - (iii) connect new or existing public transport infrastructure and services to the System, including by:
    - (A) developing Passenger tunnels, bridges and other connections between the System and other public transport infrastructure; and
    - (B) developing other public transport infrastructure above, adjacent to or within the Project Area;
  - (iv) develop further connections between the System and its local environment, including by developing additional exits and entrances for light rail stations;
  - (v) extend and upgrade the System, including by lengthening the light rail line, upgrading light rail stations and developing additional light rail stations;

- (vi) carry out development above, under or adjacent to the Project Area;
- (vii) procure Future Stages and provide for the operation and maintenance of such Future Stages;
- (viii) otherwise implement government policies, including in relation to transport and the urban environment; or
- (ix) otherwise do anything which, subject to the State Project Documents, they are empowered to do by Law.

These rights and powers extend to infrastructure and services irrespective of whether they were in existence at the date of this deed.

- (c) Operator Franchisee acknowledges and agrees that it has no Claim against the State or the State's Associates with respect to any consequence of the State, the State's Associates or any Authority exercising, or not exercising, any right or power of the type referred to in this **clause 37**, unless expressly provided in the State Project Documents, including **clauses 26, 27 and 30**.

## PART G – PAYMENT PROVISIONS

### 38 Payment provisions

#### 38.1 State payment obligation

Subject to this **clause 38**, the State must pay Operator Franchisee:

- (a) the Construction Payments;
- (b) the Service Payments;
- (c) the PAM (Works Completion) Payments; and
- (d) any other amounts which are payable by the State to Operator Franchisee under this deed; and
- (e) the Bridge Works Price.

#### 38.2 Payments during D&C Phase

- (a) **(Payment claim):** Operator Franchisee must give the State claims for payment on account of any amounts payable by the State to Operator Franchisee in respect of the D&C Activities (such as any Estimated Cost Effect payable in respect of any ECE Event) (other than the Construction Payments, the PAM (Works Completion) Payments) and the Bridge Works Price:
  - (i) within 5 Business Days after the end of each month during the D&C Phase;
  - (ii) in the form set out in the Certification Schedule or such other form as the State reasonably requires;
  - (iii) which are valid Tax Invoices for any Taxable Supplies to which the payment relates;
  - (iv) which include the documentation required under **clause 38.10** and any evidence reasonably required by the State of the amount claimed; and
  - (v) which are based on the Schedule of Rates to the extent applicable (in the State's reasonable opinion).
- (b) **(Payment after payment claim):** Subject to **clause 38.9**, the State must within 15 Business Days of receiving a payment claim which complies with requirements of **clause 38.2(a)**:
  - (i) pay Operator Franchisee:
    - (A) the amount claimed; or
    - (B) such lesser amount as the State reasonably determines is due in accordance with this deed; and
  - (ii) if the State determines that a lesser amount is due, give Operator Franchisee a statement of the reasons why.

If the State gives a notice under **clause 38.2(b)(i)(B)**, Operator Franchisee must promptly issue a revised Tax Invoice or Adjustment Note, as the case may be.

### 38.3 Construction Payment

- (a) **(Consideration):** In consideration for progressively carrying out the Project Works, the State agrees to pay to, or at the direction of, Operator Franchisee the Construction Payments and Operator Franchisee must deposit those amounts into the Construction Proceeds Account. For the avoidance of doubt, payment made under this **clause 38** are in addition to payments required under **clause 19A**.
- (b) **(Construction Payment Notice):** Operator Franchisee may give the State a notice (in the form of a valid Tax Invoice) no later than 7 Business Days before each drawdown date for that month set out in the Construction Drawdown Schedule:
  - (i) for an amount up to the aggregate of the Construction Payments set out in the Construction Drawdown Schedule up to the relevant drawdown date, less the aggregate amount of Construction Payments previously made by the State;
  - (ii) together with a copy of the Drawdown Notice (as defined in the Common Terms Deed) given to the Agent in respect of the corresponding drawdown under the Construction Facility scheduled for that drawdown date, confirming:
    - (A) the amount of the corresponding drawdown which Secure Co has requested under the Construction Facility; and
    - (B) the aggregate amount drawn down from the Construction Facility up to the date of the Construction Payment Notice,

#### **(Construction Payment Notice).**

Operator Franchisee must not give the State a Construction Payment Notice more than once each month and cannot give the first one more than 30 days prior to the first drawdown date set out in the Construction Drawdown Schedule.

- (c) **(Payment by the State):** Subject to **clause 38.3(d)** and compliance by the Agent and Operator Franchisee with clause 21 of the Debt Finance Side Deed, the State will, by the later of 7 Business Days of receipt of the Construction Payment Notice and the relevant drawdown date pay Operator Franchisee the amount claimed.
- (d) **(Construction Payment conditions):** The State will only be obliged to make any Construction Payment to Operator Franchisee if, subject to any consent given by the State under clause 21.4(d) of the Debt Finance Side Deed:
  - (i) 100% of Equity agreed to be contributed in accordance with the Equity Documents has been either:
    - (A) deposited in the Equity Contribution Account or the Construction Proceeds Account; or
    - (B) is the subject of commitments to subscribe under the Deferred Equity Commitment Deeds and is supported by letters of credit which satisfy the requirements of the Common Terms Deed and the Equity Documents unless the State otherwise consents (including in accordance with clause 21.4(e) of the Debt Finance Side Deed),

or a combination of the two;

- (ii) for the first Construction Payment, the Agent has confirmed that an amount equal to or greater than 50% of the Construction Facility Commitment (as at Financial Close) has been drawn down and Correctly Applied prior to the State making the first Construction Payment (or, in respect of the first month in which a Construction Payment is required, will have been drawn down and Correctly Applied following application of the proceeds of the draw down under the Construction Facility for that month);
  - (iii) the aggregate of the amount of:
    - (A) the Construction Payment and each previously paid Construction Payment will be no greater than the aggregate Construction Payments set out in the Construction Drawdown Schedule as at the same date; and
    - (B) the drawings under the Construction Facility that have been made available and are due to be made available on the same date are not less than the aggregate drawings of the Construction Facility set out in the Construction Drawdown Schedule as at the same date,or, if the amounts in **clause 38.3(d)(iii)(B)** are less than such aggregate, then the Construction Payment will be reduced proportionately;
  - (iv) in respect of all previous Construction Payments, the applicable amounts requested to be drawn down by Secure Co have been Correctly Applied on or before the relevant drawdown date;
  - (v) no breach by the Agent or Operator Franchisee of clause 21.4 of the Debt Finance Side Deed is subsisting;
  - (vi) Operator Franchisee has provided confirmation from the Agent addressed to the State that the Construction Facility drawing due on the same date has been or will be made available and Correctly Applied by the Agent in the amount required under **clause 38.3(d)(iii)(B)**; and
  - (vii) the aggregate of Construction Payments paid by the State and the amount payable under the Construction Payment Notice do not exceed the Construction Payment Maximum Amount.
- (e) **(Early submission of Construction Payment Notice):** If Operator Franchisee submits a Construction Payment Notice before the time for lodgement of that Construction Payment Notice, such early lodgement will not require or permit the State to make any payment under **clause 38.3(c)** in respect of that Construction Payment Notice any earlier than would have been the case had Operator Franchisee submitted the payment claim in accordance with **clause 38.3(b)**.
- (f) **(Confirmation of Construction Facility drawdown):** Operator Franchisee must notify the State of amounts drawn down under the Construction Facility and how they have been applied within one Business Day of their application. If, for a Construction Payment, the corresponding amount referred to in **clause 38.3(b)(ii)(A)** has not been drawn down under the Construction Facility by the relevant drawdown date, Operator Franchisee

must procure that the Construction Payment is repaid to the State within one Business Day of the drawdown date. If the corresponding amount referred to in **clause 38.3(b)(ii)(A)** is subsequently drawn down and Correctly Applied and this is confirmed by the Agent and Operator Franchisee, the State will repay the Construction Payment to Operator Franchisee as soon as practical, but in any event within 7 Business Days.

- (g) **(Set off restrictions):** The State may not set off any amount due and payable under a State Project Document against a Construction Payment .

### **38.3A PAM (Works Completion) Payments**

- (a) **(Payment claim):** In relation to each PAM (Works Completion), Operator Franchisee may give the State a claim for payment of the PAM (Works Completion) Price that relates to that PAM (Works Completion):
  - (i) on or after the date of the State receiving a Certificate of Returned Facility Completion in relation that PAM (Works Completion);
  - (ii) in the form set out in the Certification Schedule or such other form as the State reasonably requires; and
  - (iii) which is a valid Tax Invoice.
- (b) **(Payment after payment claim):** Subject to **clause 38.9**, the State must within 15 Business Days of receiving a payment claim which complies with requirements of **clause 38.3A(a)**:
  - (i) pay Operator Franchisee:
    - (A) the amount claimed; or
    - (B) such lesser amount as the State reasonably determines is due in accordance with this deed; and
  - (ii) if the State determines that a lesser amount is due, give Operator Franchisee a statement of the reasons why.

If the State gives a notice under **clause 38.3A(b)(i)(B)**, Operator Franchisee must promptly issue a revised Tax Invoice or Adjustment Note, as the case may be.

### **38.3B Bridge Works Payment**

- (a) **(Payment Claim):** Operator Franchisee may give the State a claim for payment of such part of the Bridge Works Price that relates to the Bridge Works undertaken in the preceding month:
  - (i) within 5 Business Days of the end of each month in which Bridge Works have been undertaken;
  - (ii) in the form set out in the Certification Schedule or such other form as the State reasonably requires;
  - (iii) which is a valid Tax Invoice; and
  - (iv) which includes:
    - (A) the documentation required under **clause 38.10**;
    - (B) the Nerang River Shared Use Bridge Works Progress Certificate; and
    - (C) any evidence reasonably required by the State of the amount claimed.

- (b) **(Payment after payment claim):** Subject to **clause 38.3B(c)** and **clause 38.9**, the State must within 15 Business Days of receiving a payment claim which complies with requirements of **clause 38.3B(a)**:
  - (i) pay Operator Franchisee:
    - (A) the amount claimed;
    - (B) such lesser amount as the State reasonably determines is due in accordance with this deed; and
  - (ii) if the State determines that a lesser amount is due, give Operator Franchisee a statement of the reasons why.

If the State gives a notice under **clause 38.3B(b)(i)(B)**, Operator Franchisee must promptly issue a revised Tax Invoice or Adjustment Note, as the case may be.
- (c) **(Retention amounts):** The State may deduct from each payment to be made under **clause 38.3B(b)(i)** an amount equal to up to 5% of the value of each such payment, until a total amount equal to 5% of the Bridge Works Price has been reached in retention moneys deducted under this **clause 38.3B(c)**. The State will accept a bond provided by or procured by Operator Franchisee in lieu of cash retention. If a bond is provided in lieu of cash retention, the cost of the bond will be borne by Operator Franchisee.
- (d) **(Release of retention amounts):** Within 14 days after the Date of Completion, the State shall release to Operator Franchisee or the relevant third party provider (as applicable) any bond or retention moneys deducted pursuant to **clause 38.3B(c)** then held by the State.

#### 38.4 Service Payments

- (a) **(Performance based payment regime):** Operator Franchisee acknowledges and agrees that:
  - (i) both the State and Operator Franchisee require a formula for the calculation of losses, costs, expenses and detriments which the State may incur if Operator Franchisee fails to discharge its obligations under the State Project Documents, that is able to be readily applied without unnecessary administrative costs, delay or difficulty;
  - (ii) it is in the economic and other best interests of both the State and Operator Franchisee that a formula of the nature referred to in **clause 38.4(a)(i)** be adopted;
  - (iii) there are many and varied matters which form part of the losses, costs, expenses and detriments which the State may incur as a result of a failure by Operator Franchisee to discharge its performance obligations under the State Project Documents many of which are either difficult, or in some cases impossible, to calculate with precision;
  - (iv) the formula adopted in the State Project Documents and set out in **schedule 3** meets the requirements set out in **clauses 38.4(a)(i), 38.4(a)(ii) and 38.4(a)(iii)**; and
  - (v) Operator Franchisee:
    - (A) is contracting with the State at arms' length;
    - (B) possesses equivalent bargaining power to the State;



- (C) possesses extensive commercial experience and expertise;
- (D) has had access to and been advised by its own legal, accounting, technical, financial, economic, commercial and other professionals and experts in relation to its rights and obligations under the State Project Documents;
- (E) having received advice, warrants that the payment regime is legally binding, valid and enforceable according to its terms and does not constitute a penalty in any respect;
- (F) enters into the State Project Documents without any duress, coercion, undue influence or other form of unconscionable conduct or impermissible or objectionable persuasion on the part of the State;
- (G) enters into the State Project Documents not dependent on or influenced by any statements or representations (whether express or implied) made by or on behalf of the State, other than those stated in the State Project Documents; and
- (H) enters into the State Project Documents with the intention that the payment regime is legally binding, valid and enforceable in accordance with its terms.

Operator Franchisee agrees to exclude and waive any right of the benefit of, to the extent permissible, the application of any legal rule or norm, including under statute, equity and common law, relating to the enforceability of the payment regime or the characterisation of such abatements and reductions or any of them as penalties.

- (b) **(Payment claim):** Operator Franchisee must give the State claims for payment on account of the Service Payment and any other amounts payable by the State to Operator Franchisee in respect of the O&M Activities (including any Estimated Cost Effect payable in respect of any ECE Event):
  - (i) within 5 Business Days after the end of each month during the Operations Phase;
  - (ii) in the form set out in the Certification Schedule or such other form as the State reasonably requires;
  - (iii) which are valid Tax Invoices for any Taxable Supplies to which the payment relates;
  - (iv) which include:
    - (A) the documentation required under **clause 38.10**;
    - (B) the Monthly Performance Report required under **clause 21.2(a)(i)**;
    - (C) any other evidence of the amounts claimed reasonably required by the State; and
    - (D) the amount of the applicable Licence Receivable Amount due and payable to the State after the Post Completion Payment Date in accordance with the System Site Licence (Stage 2) to be deducted in accordance with **clause 38.9(a)**; and
  - (v) which are based on the Schedule of Rates to the extent applicable (in the State's reasonable opinion).

- (c) **(Payment after payment claim):** Subject to **clause 38.9**, the State must within 20 Business Days of receiving a payment claim which complies with requirements of **clause 38.4(b)**:
  - (i) pay Operator Franchisee:
    - (A) the amount claimed; or
    - (B) such lesser amount as the State reasonably determines is due in accordance with this deed; and
  - (ii) if the State determines that a lesser amount is due, give Operator Franchisee a statement of the reasons why.

If the State gives a notice under **clause 38.4(c)(ii)**, Operator Franchisee must promptly issue a revised Tax Invoice or Adjustment Note, as the case may be.

### **38.5 Net amount due from Operator Franchisee to the State**

If a payment claim shows, or the State reasonably determines, that a net amount is due from Operator Franchisee to the State, Operator Franchisee must (at the State's election):

- (a) pay that amount to the State within 20 Business Days of being requested by the State to do so; or
- (b) otherwise carry forward the amount and set it off against the next payment claim.

### **38.6 Payment on account**

- (a) Any payment of moneys (including any Construction Payment, any PAM (Works Completion) Payment, any payment in respect of Bridge Works or any Service Payment) by the State to Operator Franchisee is not:
  - (i) evidence of the value of work or Project Activities, or that any work or Project Activities have been satisfactorily carried out in accordance with the State Project Documents;
  - (ii) an admission of liability; or
  - (iii) approval by the State or the Independent Verifier of Operator Franchisee's performance or compliance with the State Project Documents,
- (b) but is only taken to be payment on account, and will not prejudice any rights or powers of the State whether under the State Project Documents or otherwise according to Law, including any rights which the State may have in respect of Defects.

### **38.7 Payment disputes**

- (a) Subject to **clause 38.7(b)**, either Operator Franchisee or the State may refer a dispute relating to:
  - (i) the Performance Monitoring System or the output of the Performance Monitoring System;
  - (ii) any matter arising from any Monthly Performance Report or Semi-Annual Performance Report; or
  - (iii) any matter arising in respect of any payment claim (including the calculation of any Construction Payment, any PAM (Works

Completion) Payment, any amount payable in respect of Bridge Works or any Service Payment),

for resolution by expert determination in accordance with **clause 57**.

- (b) Operator Franchisee may refer any dispute for resolution in accordance with **clause 57** in relation to the calculation of:
  - (i) any payment during the D&C Phase (other than in respect of any Construction Payment, any PAM (Works Completion) Payment) or any payment in respect of Bridge Works, if, and only if, the dispute is notified within 30 Business Days after the issue of the statement under **clause 38.2(b)(i)(B)**;
  - (ii) any PAM (Works Completion) Payment, if, and only if, the dispute is notified within 30 Business Days after the issue of the statement by the State under **clause 38.3A(b)(i)(B)**;
  - (iii) any Construction Payment, if, and only if, the dispute is notified within 30 Business Days after the payment of the relevant amount by the State under **clause 38.3(c)**;
  - (iv) any payment in respect of the Bridge Works, if, and only if, the dispute is notified within 30 Business Days of the issue of the statement under **clause 38.3B(a)**; or
  - (v) any Service Payment if, and only if, the dispute is notified within 30 Business Days after the issue of the statement under **clause 38.4(c)(ii)**.
- (c) If the dispute is not referred for resolution by Operator Franchisee in accordance with **clause 38.7(b)**, then Operator Franchisee:
  - (i) is not entitled to make any Claim in respect of such dispute; and
  - (ii) releases the State from any liability in respect of such dispute.
- (d) If, following resolution of the dispute under **clause 57**, an adjustment is agreed or determined in respect of any previous payment claim, then that adjustment will be added to or deducted from (as the case may be) the next payment claim after that agreement is reached or that determination is made (as the case may be) and Operator Franchisee must promptly issue a revised Tax Invoice or Adjustment Note, as the case may be.

### **38.8 Interest**

Any late payment of amounts that are properly due and payable by either the State or Operator Franchisee to the other under any State Project Document (including a previously disputed amount or an amount which is not paid due to the application of set-off by the State under **clause 38.9(a)** if the amount set-off is determined to be incorrect) will incur simple interest at the Default Rate from the day after the date on which the payment was due to (and including) the date of payment.

### **38.9 Set off**

- (a) Subject to **clauses 19A.1(e)** and **44.9(e)**, the State will be entitled to set-off or deduct from any amount due from the State to Operator Franchisee or, on and from the Date of Stage 2 Completion, OF2 under a State Project Document:
  - (i) any debt or other monies due from Operator Franchisee or, on and from the Date of Stage 2 Completion, OF2 to the State; and

- (ii) any claim to money which the State may make in good faith against Operator Franchisee or, on and from the Date of Stage 2 Completion, OF2 whether for damages or otherwise and whether or not the amount is disputed provided that notice of the Claim is given to Operator Franchisee or, on and from the Date of Stage 2 Completion, OF2, whether under a State Project Document or otherwise at Law relating to the Project.
- (b) Operator Franchisee must make all payments due to the State under the State Project Documents without set-off or counterclaim, and without any deduction to the extent permitted by Law.
- (c) Nothing in this **clause 38.9** affects the State's rights under **schedule 3** or the State's rights to recover from Operator Franchisee the whole of the debt or any balance that remains owing after any set-off.

### **38.10 Payment of workers and subcontractors**

Operator Franchisee is not entitled to give the State a payment claim under **clause 38.2, 38.3A, 38.3B or 38.4(b)**, and the State is not obliged to make any payment under **clause 38.2, 38.3A, 38.3B or 38.4(c)**, unless Operator Franchisee has provided the State with:

- (a) a statement (given by a person having proper authority to do so and having knowledge of the financial records of Operator Franchisee relating to the relevant Project Works or Project Activities), together with any supporting evidence which may be reasonably required by the State, that all subcontractors have been paid all moneys due and payable to them, except those amounts which are the subject of a good faith dispute (the particulars of which have been set out in the statement), in respect of the relevant Project Works or Project Activities;
- (b) in respect of a payment claim under **clause 38.2, 38.3A or 38.3B**, a statement from the D&C Contractor (given by a person having proper authority to do so and having knowledge of the financial records of the D&C Contractor relating to the relevant Project Works), together with any supporting evidence which may be reasonably required by the State, stating that all amounts which are then due and payable by the D&C Contractor to its subcontractors, except those amounts which are the subject of a good faith dispute (the particulars of which have been set out in the statement), have been duly paid by the D&C Contractor to the relevant subcontractors; and
- (c) a statement signed by Operator Franchisee that no wages are due and owing by Operator Franchisee in respect of the relevant Project Works or Project Activities.

### **38.11 [Not used]**

### **38.12 Security of Payment Legislation**

- (a) Operator Franchisee agrees with the State that:
  - (i) the Independent Verifier is authorised to receive on behalf of the State payment claims made under the Security of Payment Legislation;
  - (ii) unless the State otherwise notifies Operator Franchisee, the Independent Verifier is authorised to give payment schedules and

carry out all other functions of the State under the Security of Payment Legislation as the agent of the State; and

- (iii) to the extent permitted by and for the purposes of the Security of Payment Legislation, the "reference dates" are those dates prescribed in **clause 38.3**.
- (b) Notwithstanding any other provision of the State Project Documents, Operator Franchisee must:
  - (i) immediately give the State and the Independent Verifier notice if Operator Franchisee has been required to supply information to a subcontractor under section 9A of the *Subcontractors' Charges Act 1974* (Qld) together with a copy of the information provided; and
  - (ii) immediately notify the State and the Independent Verifier if it becomes aware that a subcontractor has claimed or intends to claim a statutory charge under section 10(1) of the *Subcontractors' Charges Act 1974* (Qld) in respect of work done by the subcontractor forming part of the Project Works.
- (c) Operator Franchisee must indemnify the State against any claims against, or costs, losses or damages (including lawyers' fees and expenses on a solicitor / client basis) suffered or incurred by, the State arising out of, or in any way in connection with:
  - (i) a notice of claim of charge being served on the State under section 10(1) of the *Subcontractors' Charges Act 1974* (Qld); and
  - (ii) a failure by Operator Franchisee to comply with **clause 38.12(b)**.
- (d) For the purposes of this **clause 38.12**, a reference to a subcontractor refers to any person engaged by Operator Franchisee, any of its subcontractors or any other person engaged to carry out work which forms part of the Project Works.
- (e) If the State makes a payment into court or to a subcontractor or other person as a result of receiving a notice of claim or charge under the *Subcontractors' Charges Act 1974* (Qld) for the purposes of calculating the Construction Payment finally payable by the State to Operator Franchisee, that payment will be treated as though it was a payment made by the State to Operator Franchisee.

### **38.13 No other payment**

Operator Franchisee is not entitled to, and will have no Claim against the State in respect of, any payments by the State to Operator Franchisee unless expressly provided in this deed or the Stage 2 Works Deed.

### **38.14 Service Payment reductions**

- (a) Subject to **clauses 38.14(b)** and **38.14(c)**, any reduction of the Service Payment due to a failure to carry out or perform a Project Activity (in accordance with the regime set out in **schedule 3**) will be the only monetary compensation for which Operator Franchisee will be liable to the State or CoGC in respect of its failure to carry out or perform that Project Activity.
- (b) **Clause 38.14(a)** does not limit or affect:
  - (i) any other right or remedy (other than for monetary compensation for failures to carry out or perform Project Activities which result in a

reduction in the Service Payment in accordance with the regime set out in **schedule 3**) under the State Project Documents or at Law; or

- (ii) the State's rights to payment on termination of this deed.
- (c) **Clause 38.14(a)** does not limit or affect any other Claim the State may have against Operator Franchisee (including a Claim for money) as a result of, or in connection with, Operator Franchisee's failure to carry out or perform the Project Activities, to the extent that the State has not been compensated for such losses by the reduction in the Service Payment, including for:
  - (i) damage to property for which Operator Franchisee bears the risk of loss or damage under **clause 41.1** and any consequential loss arising out of such loss or damage (to the extent that such consequential loss is covered by Insurance Proceeds or any proceeds of Insurances that Operator Franchisee would have been entitled to recover if Operator Franchisee had fully complied with **clause 43**);
  - (ii) third party property damage incurred by the State or its Associates or for which the State or its Associates is liable;
  - (iii) personal injury or death;
  - (iv) costs and expenses incurred by the State in exercising its rights under:
    - (A) **clause 44** or **45.4**; or
    - (B) **clause 25** to the extent that:
      - (1) the relevant event was caused or contributed to by Operator Franchisee or any of its Associates; and
      - (2) the State is entitled to recover such costs and expenses under **clause 25**; and
  - (v) any reasonably foreseeable economic loss of the State or its Associates (or through them any Passenger) caused by:
    - (A) breach of any Law; or
    - (B) fraudulent or negligent act or omission of, or wilful breach of, any Project Document by Operator Franchisee or its Associates.

## **39 Base Case Financial Model**

### **39.1 No Changes without State consent**

Operator Franchisee must not make any change to the Base Case Financial Model except with the State's prior consent (not to be unreasonably withheld or delayed).

### **39.2 Changes for Refinancing and Service Payment adjustments**

- (a) **(Operator Franchisee to submit revised Base Case Financial Model):**
    - (i) If and when required to submit a revised Base Case Financial Model under **clause 52**; and
    - (ii) as soon as reasonably practicable following any adjustment to the Service Payment in accordance with **clause 43.2** or **schedule 3** or **6**,
- Operator Franchisee must submit to the State:

- (iii) one electronic copy of the proposed revised **schedule 3** (if applicable);
  - (iv) an electronic copy of the proposed revised Base Case Financial Model (**Proposed Base Case Financial Model**) (incorporating all adjustments to the Service Payment made in accordance with **clause 43.2 or 52 or schedule 3 or 6** (as applicable)) and all supporting formulae and data;
  - (v) in relation to the changes to the previous Base Case Financial Model, an instruction manual outlining how to use the Proposed Base Case Financial Model, which is acceptable to the State, acting reasonably;
  - (vi) an interest rate adjustment protocol (if applicable) outlining the interest rate setting procedures and model solving procedures for adjusting the Proposed Base Case Financial Model to incorporate updated interest rates; and
  - (vii) in relation to the changes to the previous Base Case Financial Model, a certificate from an auditor acceptable to the State confirming that an independent audit of the Proposed Base Case Financial Model has been completed and that:
    - (A) calculations in the Proposed Base Case Financial Model have been checked and are in all material respects internally consistent and mathematically correct;
    - (B) the Proposed Base Case Financial Model allows changes in assumptions to correctly flow through to the results;
    - (C) any macros in the Proposed Base Case Financial Model that govern the calculation of the Proposed Base Case Financial Model are correct;
    - (D) the input data used in the Proposed Base Case Financial Model is consistent with all relevant supporting project documentation, formulae or constants;
    - (E) the calculations of any relevant ratios and financial covenants in the Proposed Base Case Financial Model have been checked and that the Proposed Base Case Financial Model correctly reflects the definitions contained in the Debt Financing Documents;
    - (F) the Proposed Base Case Financial Model correctly incorporates the relevant structural features in the Debt Financing Documents such as reserve accounts, lock up provisions, default provisions and amortisation;
    - (G) the accounting assumptions and outputs from the Proposed Base Case Financial Model are in accordance with the generally accepted accounting principles in Australia; and
    - (H) the Tax assumptions and outputs from the Proposed Base Case Financial Model are in accordance with the relevant Tax legislation.
- (b) **(State review)**: The State must, within 15 Business Days of receipt of the documentation required under **clause 39.2(a)**, either:

- (i) approve the Proposed Base Case Financial Model, interest rate adjustment protocol and the revised **schedule 3** (if applicable); or
- (ii) submit proposed amendments to the Proposed Base Case Financial Model, interest rate adjustment protocol and the revised **schedule 3** (if applicable),

provided that such approval or amendments (as applicable) are limited to the changes to the previous Base Case Financial Model effected by the Proposed Base Case Financial Model or any consequential amendments arising out of those changes.

- (c) **(Operator Franchisee to assist):** Operator Franchisee must, upon request by the State:

- (i) make available, at the cost and expense of Operator Franchisee, the appropriate personnel to explain; or
- (ii) provide information, in such form as the State reasonably requests, in relation to,

the documentation submitted by Operator Franchisee under **clause 39.2(a)**.

- (d) **(Approved changes):** If the State approves the Proposed Base Case Financial Model, interest rate adjustment protocol and the revised schedule 3 (if applicable) submitted by Operator Franchisee in accordance with **clause 39.2(b)(i)**, then:

- (i) the Proposed Base Case Financial Model as adjusted in accordance with the interest rate adjustment protocol will be the Base Case Financial Model for the purposes of this deed;
- (ii) If the Proposed Base Case Financial Model was adjusted in accordance with the interest rate adjustment protocol, Operator Franchisee must submit to the State a certificate from an auditor acceptable to the State confirming that an independent audit of the Base Case Financial Model has been completed in accordance with the requirements of **clause 39.2(a)**; and
- (iii) the revised schedule 3 (if applicable) submitted under **clause 39.2(a)** as adjusted in accordance with the interest rate adjustment protocol will be **schedule 3** for the purposes of this deed.

- (e) **(Consultation in good faith):** If the State submits amendments to the Proposed Base Case Financial Model, interest rate adjustment protocol or revised **schedule 3** in accordance with **clause 39.2(b)(ii)**, then:

- (i) Operator Franchisee and the State must consult in good faith with respect to, and use their reasonable endeavours to agree on, the amendments required to the Proposed Base Case Financial Model, interest rate adjustment protocol or revised **schedule 3** (if applicable); and
- (ii) if, and to the extent that, those amendments are agreed, the revised Proposed Base Case Financial Model and revised **schedule 3** (if applicable) agreed by the State and Operator Franchisee and amended in accordance with the interest rate adjustment protocol (if applicable) will be the Base Case Financial Model or **schedule 3** for the purposes of this deed and **clause 39.2(d)(ii)** will apply.



- (f) **(Dispute resolution):** If the State and Operator Franchisee do not agree on the amendments required to be made to the Proposed Base Case Financial Model, interest rate adjustment protocol or revised **schedule 3** (if applicable) within 10 Business Days after the commencement of the consultation pursuant to **clause 39.2(e)** or if no consultation has been held within 12 Business Days after the date when the State submitted amendments to the Proposed Base Case Financial Model, interest rate adjustment protocol or revised schedule 3 (if applicable) in accordance with **clause 39.2(b)(ii)**, then:
- (i) the State or Operator Franchisee may refer the dispute for resolution by expert determination in accordance with **clause 57**; and
  - (ii) the Base Case Financial Model and revised **schedule 3** (if applicable), as determined under **clause 57**, will be the Base Case Financial Model and **schedule 3** for the purposes of this deed and **clause 39.2(d)(ii)** will apply.
- (g) **(No duty to review):** Operator Franchisee acknowledges and agrees that the State's review of, comment on, rejection of, or direction in respect of any of the Base Case Financial Model, **schedule 3**, interest rate adjustment protocol, the Proposed Base Case Financial Model and the revised **schedule 3** (if applicable) is solely for the benefit of the State for the purpose of monitoring the performance of Operator Franchisee, and the State does not assume any duty of care or responsibility to ascertain errors, omissions, defects or non-compliance with the State Project Documents, and no action or inaction on the part of the State will entitle Operator Franchisee to make any Claim or in any way relieve, alter, limit or change Operator Franchisee's obligations and liabilities to the State under the State Project Documents.

### 39.3 Checking Base Case Financial Model

Operator Franchisee must ensure that:

- (a) such persons as may from time to time be nominated by the State are given such access to the Base Case Financial Model or Proposed Base Case Financial Model (as applicable) as that person considers necessary in order to enable the person to check whether the obligations concerning the model under this deed have been observed (including technical assistance and information as to structure and operation or so as to allow the person to establish an operating version of the model on that person's computer system), provided that the State will only nominate such a person if it reasonably considers the person to be skilled in the operation or audit of computer models and has informed the person of the confidentiality of the contents of the Base Case Financial Model or Proposed Base Case Financial Model (as applicable); and
- (b) revisions to the Base Case Financial Model or Proposed Base Case Financial Model (as applicable) specified by such a person by notice to Operator Franchisee are promptly effected unless Operator Franchisee by notice to the State promptly disputes the reasonableness, accuracy or relevance of any such revisions. In that event, in the absence of agreement by the parties, Operator Franchisee may promptly refer the dispute for dispute resolution in accordance with **clause 57**.

## 40 Benchmarking

### 40.1 Benchmarking of Insurance Component of Service Payment

- (a) Three months prior to each Insurance Benchmark Date, Operator Franchisee must obtain separate quotations from three Reputable Insurers in the commercial insurance market at that time, for annual premium costs (including separate identification of the fee component payable to the insurance broker) of obtaining the Benchmarked Insurances.
- (b) The State will select one quotation for each Benchmarked Insurance which will form the basis of the benchmarking of the Insurance Component.
- (c) On each Insurance Benchmark Date, if the annual insurance premiums for the Benchmarked Insurances (as specified in the quotations selected by the State) are greater or less than the insurance premiums (CPI Indexed) for the Benchmarked Insurances at the commencement of the Operations Phase or the last Insurance Benchmark Date on which an adjustment to the Insurance Component occurred under this **clause 40.1** (as applicable), the Insurance Component will be adjusted by the amount by which the insurance premium for the Benchmarked Insurance:
  - (i) exceeds the Insurance Component; or
  - (ii) is less than the Insurance Component,provided that:
  - (iii) any increase or decrease in the cost of obtaining the Benchmarked Insurance which is attributable to:
    - (A) Operator Franchisee's or any of its Associates' performance under the Project Documents (excluding Debt Financing Documents and Equity Documents);
    - (B) the performance of Materials, Rolling Stock or systems designed, constructed, manufactured, installed, operated or maintained by Operator Franchisee or its Associates, whether or not in relation to the Project; or
    - (C) the insurance history of (or other relevant acts or omissions of) Operator Franchisee or any of its Associates under or in relation to any existing or previous insurance policy, whether or not in relation to the Project other than to the extent that a reputable insurance broker acceptable to the parties determines, in its reasonable opinion, that history involves claims beyond the control of Operator Franchisee or the relevant Associate, will be disregarded; and
  - (iv) the increase or decrease in the cost of obtaining the Benchmarked Insurances is due to circumstances generally prevailing in the Australian and overseas insurance market for the relevant class of insurance.

### 40.2 Benchmarking of Retail Energy Prices

- (a) Operator Franchisee must:
  - (i) not less than nine months prior to each Energy Benchmark Date, commence a tender process acceptable to the State (without limiting **clause 40.2(b)**) to obtain separate tenders from no fewer than three

energy retailers reasonably acceptable to the State (or, to the extent that there are fewer than three energy retailers which are able to supply the required electricity, Operator Franchisee must use reasonable endeavours to obtain quotations from as many retailers as possible):

(A) providing price quotations:

- (1) of a price per kWh of electricity only; or
- (2) to the extent it is market practice to include fixed components of pricing, a combination of price per kWh of electricity and fixed component pricing, provided that the basis of calculation for any fixed components is transparent and is by reference to an expected consumption level,

and, in each case, which price must be:

- (3) applicable to each relevant Energy Category;
- (4) inclusive of all costs, charges, fees (including those arising from any Carbon Emissions Law in force as at the date of the Retail Energy Contract) and loss adjustment factors (other than Connection Charges) which the energy retailer proposes to pass on to the purchaser;
- (5) valid for a nominated period acceptable to the State; and
- (6) based upon forecast energy consumption specified by Operator Franchisee;

(B) for the entry in a Retail Energy Contract with Operator Franchisee for a term specified by the State which may not expire earlier than the next Energy Benchmark Date; and

(C) providing a calculation for any increase to those charges if a Carbon Emissions Law were amended, repealed, changed or enacted during the term of the Retail Energy Contract;

(ii) permit the State to review all materials that are submitted in the process of obtaining tenders and provide any other information that the State reasonably requires;

(iii) demonstrate to the reasonable satisfaction of the State that the energy retailer it intends to select and engage is the best choice having regard to:

- (A) the price quoted in the prevailing market conditions; and
- (B) the experience, capability, financial and regulatory standing of the energy retailer in the context of the Project; and

(iv) select an energy retailer acceptable to the State from the energy retailers who have provided tenders to Operator Franchisee pursuant to this **clause 40.2(a)**.

(b) For the purposes of any tender process required under **clause 40.2(a)(i)**:

(i) the State may (but is not obliged to) specify:

- (A) the dates for the commencement and conclusion of a tender process;

- (B) the manner of advertising the request for tender and the means of identifying prospective tenderers;
  - (C) the evaluation criteria to be applied to the assessment of tenders;
  - (D) the required financial standing of prospective tenderers;
  - (E) the level of experience of prospective tenderers;
  - (F) the required tender validity period; and
  - (G) the information that tenderers are required to provide in their responses to a request for tender.
- (ii) Operator Franchisee will retain primary responsibility for undertaking the tender process including retaining primary responsibility for:
- (A) the preparation of the tender documents and collation of the information required to be provided to prospective tenderers;
  - (B) general management of the tender process such as co-ordinating meetings and advertising or compiling the list of prospective tenderers and notifying tenderers to be invited to submit tenders; and
  - (C) evaluating the tender responses received by Operator Franchisee; and
- (iii) the State will have the right to object to the selection of any person as a prospective tenderer if the State reasonably believes:
- (A) that person does not (or could not reasonably be considered to) comply with any of the criteria referred to in this **clause 40.2**; or
  - (B) the selection of that person as a prospective tenderer would give rise to a potential or perceived conflict of interest.
- (c) On or prior to each Energy Benchmark Date Operator Franchisee must select, and enter into a Retail Energy Contract acceptable to the State with, an energy retailer acceptable to the State.
- (d) The quotations provided by the energy retailer selected in accordance with **clause 40.2(a) (Quotations)** will form the basis of the Retail Energy Price required for the calculation of the Energy Payment (as defined in **schedule 3**) in accordance with **schedule 3**.
- (e) On each Energy Benchmark Date:
- (i) with respect to the Date of Completion, the Retail Energy Price stated in **schedule 3**; and
  - (ii) with respect to each subsequent Energy Benchmark Date, the Retail Energy Price at the previous Energy Benchmark Date,
- will be replaced by the prices per unit of electricity applicable to each Energy Category specified in the Retail Energy Contract entered into in accordance with **clause 40.2(c)**, provided that if Operator Franchisee does not enter into a Retail Energy Contract in accordance with **clause 40.2(c)**, the Retail Energy Price at the previous Energy Benchmark Date will be replaced by the lower of:
- (iii) the prices per unit of electricity applicable to each Energy Category stated in the Quotations; and

- (iv) the Retail Energy Price at the previous Energy Benchmark Date.
- (f) If a Carbon Emissions Law is amended, repealed, changed or enacted during the term of the Retail Energy Contract entered into with one energy retailer selected in accordance with **clause 40.2(a)**, then the Retail Energy Price will be changed in accordance with the relevant calculation referred to in **clause 40.2(a)(i)(C)** and the Energy Payment (as defined in **schedule 3**) will be adjusted accordingly.
- (g) On or prior to each Energy Benchmark Date the State may nominate the date which will be the next Energy Benchmark Date by notice to Operator Franchisee.

## PART H – LOSS, DAMAGE AND INSURANCE

### 41 Reinstatement of loss or damage

#### 41.1 Risk of loss or damage

Except as expressly provided in this deed, Operator Franchisee bears the risk of destruction, loss or damage to the Project Area, any other area where the Project Activities are carried out and:

- (a) during the D&C Phase, the Project Works; and
- (b) during the Operations Phase, the System,

including the risk of any destruction, loss or damage caused by any person but Operator Franchisee does not bear the risk of such destruction, loss or damage to the extent the destruction, loss or damage is the result of:

- (c) a fraudulent, unlawful or negligent act or omission of the State or its Associates;
- (d) an act or omission of the V8 Supercar Event Promoter or its Associates; or
- (e) a breach by the State or its Associates of the State Project Documents,

unless and to the extent that Operator Franchisee is entitled to recover under the Insurances with respect to the destruction, loss or damage (or would have been entitled to recover if Operator Franchisee had fully complied with **clause 43**).

#### 41.2 Reinstatement

- (a) Subject to **clause 41.3**, if any destruction, loss or damage occurs to any part of the Project Works, the Project Area or, after the Date of Completion, the System, Operator Franchisee must (without limiting its other obligations under the State Project Documents):
  - (i) promptly repair, replace or remedy the destruction, loss or damage so that, to the greatest extent possible, Operator Franchisee continues to comply with its obligations under the Project Documents (excluding Debt Financing Documents and Equity Documents);
  - (ii) promptly provide the State with notice of any such destruction, loss or damage and any required replacement, reinstatement or repair;
  - (iii) as soon as practicable, provide the State with a further detailed report of all action being taken or to be taken to replace, reinstate or remedy the destruction, loss or damage, including the estimated time such action will require;
  - (iv) consult with the State as to the programming of the works needed to effect the relevant replacement, repair, reinstatement or remedy;
  - (v) in carrying out the relevant replacement, repair, reinstatement or remedy, minimise the impact on the Project Works, the Project Area and, after the Date of Completion, the System and keep the State fully informed of the progress of the repair and replacement activities; and
  - (vi) subject to **clause 41.3(a)(ii)**, apply all Insurance Proceeds towards the cost of repair, replacement or reinstatement.

- (b) To the extent that the destruction, loss or damage is the direct result of:
  - (i) a fraudulent, unlawful or negligent act or omission of the State or its Associates;
  - (ii) an act or omission of the V8 Supercar Event Promoter or its Associates; or
  - (iii) a breach by the State or its Associates of the State Project Documents,

if Operator Franchisee is required to repair, replace or remedy the destruction, loss or damage pursuant to **clause 41.2(a)**, the State must pay Operator Franchisee the reasonable cost of carrying out the repair, replacement or remediation work arising from such damage, loss or destruction (to the extent the Insurance Proceeds, if any, are insufficient).

### **41.3 Direction to modify or not to replace or reinstate**

The State may direct Operator Franchisee, by notice:

- (a) not to carry out its obligations under **clause 41.2**, in which case:
  - (i) Operator Franchisee waives in favour of and for the benefit of the State, Operator Franchisee's right to make a claim under the Insurances, other than claims in respect of Operator Franchisee's or its Associates' own loss or damage or any insured legal liability to third parties;
  - (ii) Operator Franchisee must pay to the State all Insurance Proceeds;
  - (iii) Operator Franchisee will be relieved of its obligations to carry out the Project Activities to the extent reasonably determined by the State in the context of the destruction, loss or damage; and
  - (iv) the State will issue a Modification Order in relation to changes to the obligations of Operator Franchisee to carry out the Project Activities; or
- (b) to carry out a Modification in reinstating or repairing the Project Works, the Project Area or the System and specifying a reasonable time within which the Modification must be carried out, in which case:
  - (i) the reinstatement or repair will constitute a Modification only to the extent that the work required differs from the requirements of the PSR; and
  - (ii) Operator Franchisee will be compensated for the Modification only to the extent that any Insurance Proceeds (or any proceeds of Insurances that Operator Franchisee would have been entitled to recover if Operator Franchisee had fully complied with **clause 43**) are less than the Estimated Cost Effect of the Modification.

### **41.4 State may repair or reinstate**

Without limiting any other provision of the State Project Documents, and subject to **clause 41.3**, if Operator Franchisee does not comply with **clause 41.2**:

- (a) the State may give Operator Franchisee notice that the State intends to remedy, repair or reinstate any destruction, loss or damage (or have such work done by a nominee) which Operator Franchisee was (and is) obliged to repair, replace or remedy under **clause 41.2**; and

- (b) if Operator Franchisee:
  - (i) does not commence complying with its obligations under **clause 41.2** within 14 Business Days of the issue of the notice by the State; or
  - (ii) having commenced to comply with its obligations under **clause 41.2**, ceases to comply with its obligations (as reasonably determined by the State),

the State may, without further notice, elect to remedy, repair or reinstate any destruction, loss or damage or to have such work done by a person nominated by the State, in which case:

  - (iii) the costs and expenses incurred in doing such work or having such work done by another person will be a debt due and payable by Operator Franchisee to the State; and
  - (iv) Operator Franchisee will not be entitled to make any Claim against the State in respect of such work and, subject to **clauses 42.2 to 42.4**, must indemnify the State and its Associates against any Claim or Loss (including any legal costs on a full indemnity basis) that the State or its Associates (as applicable) pay, suffer, incur or are liable for, in respect of such work.

#### **41.5 Damage to property outside the Project Area**

- (a) Without limiting **clause 42**, if any damage to or loss or destruction of real property outside the Project Area or personal property of third parties, the State or its Associates (to the extent not covered under **clause 41.2**) occurs which arises out of:
  - (i) a breach by Operator Franchisee of its obligations under the State Project Documents, Operator Franchisee must promptly repair, replace or reinstate the damage, loss or destruction at Operator Franchisee's cost or if the affected person agrees, reasonably compensate the affected person; and
  - (ii) the Project Activities, Operator Franchisee must promptly repair, replace or reinstate the damage, loss or destruction (if Operator Franchisee has legal liability to do so), or if the affected person agrees, reasonably compensate the affected person (if Operator Franchisee has legal liability to do so).
- (b) If Operator Franchisee fails to carry out the repair, replacement or reinstatement work or pay reasonable compensation (if this **clause 41.5** requires Operator Franchisee to do so), the State may carry out the repair, replacement or reinstatement work or pay reasonable compensation and any Loss incurred by the State will be a debt due and payable from Operator Franchisee to the State.

## **42 Indemnity**

### **42.1 Indemnity from Operator Franchisee**

Subject to **clauses 42.2 and 42.4**, Operator Franchisee must release and indemnify the State from and against:

- (a) any Claim or Loss brought against, suffered or incurred by the State or its Associates in respect of:



- (i) damage to, loss or destruction of, or loss of use (whether total or partial) of, any real or personal property (including property belonging to the State or its Associates);
- (ii) any injury to, or death or disease of persons; or
- (iii) any third party suits, claims, actions, demands, proceedings, penalty, costs, charges or expenses not otherwise covered by **clause 42.1(a)(i) or 42.1(a)(ii)**,  
to the extent caused or contributed to by or arising out of:
  - (iv) the condition of the Project Area or the use or occupation of the Project Area by Operator Franchisee or its Associates; or
  - (v) any act or omission of Operator Franchisee or its Associates in relation to, or in consequence of, the Project or the Project Activities (including the performance or non performance by Operator Franchisee of its obligations under the State Project Documents); and
- (b) any Claim or Loss suffered by or incurred by the State or its Associates to the extent caused or contributed to by or arising out of:
  - (i) breach or failure to comply with the terms of any State Project Document by Operator Franchisee or its Associates; or
  - (ii) negligent or unlawful acts or omissions or Wilful Misconduct by Operator Franchisee or its Associates.

## **42.2 Exclusion from indemnity**

Operator Franchisee's liability under **clause 42.1**, and under any other indemnity in a State Project Document which is expressed to be subject to this **clause 42.2**, will be reduced to the extent that a Claim or Loss arises from:

- (a) a fraudulent, negligent, unlawful or wrongful act or omission or Wilful Misconduct of the State or its Associates;
- (b) a fraudulent, unlawful or negligent act or omission of the V8 Supercar Event Promoter or its Associates;
- (c) a breach by the State or its Associates of their respective express obligations under a State Project Document;
- (d) Operator Franchisee following an express direction of the State with respect to its obligations under the State Project Documents if such directions are given in accordance with this deed, provided that this does not reduce Operator Franchisee's liability under **clause 42.1** to the extent the State direction arises out of, or is given in relation to a circumstance which is caused by, a breach of the State Project Documents by Operator Franchisee or its Associates;
- (e) a third party suit, claim, action, demand, proceeding, penalty, cost, charge or expense for pure economic loss arising solely as a result of:
  - (i) the decision by the State to proceed with the Project;
  - (ii) the decision by the State to proceed with the System; or
  - (iii) the existence of the System or location of the System Site Corridor; or
- (f) any of:

- (i) a Compensation Event, Relief Event or Force Majeure Event, to the extent Operator Franchisee is entitled to relief in respect of that event under **clause 16, 26, 27 or 28** (as applicable);
- (ii) provided that Operator Franchisee has complied with all of its obligations under this deed in respect of the Migrating Contamination (including the conditions of any Approvals), the effects of Migrating Contamination;
- (iii) the effects of Contamination caused or contributed to by the State or its Associates during the Term, to the extent the State retains the risk of such Contamination under **clause 12.3**;
- (iv) an Uninsurable risk to the extent the State has agreed to indemnify Operator Franchisee for that risk under **clause 43.2**; or
- (v) destruction, loss or damage, to the extent such destruction, loss or damage is the direct result of the circumstances in **clause 41.2(b)**, other than to the extent that Operator Franchisee is entitled to recover (or would have been entitled to recover if Operator Franchisee had fully complied with **clause 43** and made a proper claim) under any insurance policy.

#### **42.3 Obligations not affected**

**Clause 42.1** does not lessen Operator Franchisee's other obligations under the State Project Documents.

#### **42.4 Liability for Indirect or Consequential Loss**

- (a) **(Limit on State liability):** Despite any other provisions of this deed (including the definition of Loss and its use), neither the State nor any Associate of the State has any liability to Operator Franchisee, nor will Operator Franchisee be entitled to make any Claim, in respect of any Indirect or Consequential Loss incurred or sustained by Operator Franchisee as a result of any act or omission of the State or any Associate of the State (whether negligent or otherwise) or as a result of a breach of the State Project Documents by the State, except to the extent that such Indirect or Consequential Loss is in respect of:
  - (i) an amount for which the State is liable under **clause 38, schedule 3, clause 40 or schedule 6**;
  - (ii) an amount for which the State is liable under **clause 45 or schedule 7**; or
  - (iii) an Uninsurable risk for which the State is liable to indemnify or otherwise pay Operator Franchisee under **clause 43.2**.
- (b) **(Limit on Operator Franchisee's liability):** Despite any other provision of this deed (including the definition of Loss and its use), neither Operator Franchisee nor any Associate of Operator Franchisee has any liability to the State, nor will the State be entitled to make any Claim, in relation to any Indirect or Consequential Loss incurred or sustained by the State or an Associate of the State as a result of any act or omission of Operator Franchisee or any Associate of Operator Franchisee (whether negligent or otherwise) or as a result of a breach of the Project Documents by Operator Franchisee, except to the extent that such Indirect or Consequential Loss is in respect of:

- (i) Wilful Misconduct, Gross Negligence, a criminal act or fraud of Operator Franchisee or an Associate of Operator Franchisee;
  - (ii) a liability that cannot be limited or excluded at Law;
  - (iii) a reduction to the Service Payment under **clause 38.14**;
  - (iv) economic loss which is insured or required to be covered in an insurance policy held by Operator Franchisee or a subcontractor in compliance with this deed;
  - (v) any injury to, or death or disease of persons; or
  - (vi) any third party suit, claim, action, demand, proceeding, penalty, cost, charge or expense arising out of or in relation to a breach of the State Project Documents by Operator Franchisee or its Associates.
- (c) **(Management of Claims):** In respect of a third party suit, claim, action, demand, proceeding, penalty, cost, charge or expense for Indirect or Consequential Loss in respect of which the State is indemnified by Operator Franchisee under this **clause 42**:
- (i) subject to **clauses 42.4(c)(ii)** and **42.4(c)(iii)** the State must, as soon as is reasonably practicable after it becomes aware of a suit, claim, action, demand, proceeding, penalty, cost, charge or expense:
    - (A) notify Operator Franchisee of the alleged suit, claim, action, demand, proceeding, penalty, cost, charge or expense;
    - (B) give Operator Franchisee at the time of notification the option to conduct the defence of the suit, claim, action, demand, proceeding, penalty, cost, charge or expense; and
    - (C) provide Operator Franchisee (at Operator Franchisee's expense) with reasonable assistance in conducting the defence of such suit, claim, action, demand, proceeding, penalty, cost, charge or expense;
  - (ii) **clause 42.4(c)(i)** does not apply if:
    - (A) interlocutory proceedings are commenced against the State on an urgent basis;
    - (B) the State reasonably considers that there is insufficient time to notify Operator Franchisee and for Operator Franchisee to commence defence of such proceedings on behalf of the State;
    - (C) the State initially defends such proceedings; and
    - (D) as soon as practical after commencement of the proceedings the State gives Operator Franchisee the option to conduct the defence of such proceedings; and
  - (iii) **clause 42.4(c)(i)** does not apply to any suit, claim, action, demand, proceeding, penalty, cost, charge or expense which:
    - (A) the State (acting reasonably) considers should be conducted by the State for public policy reasons; or
    - (B) would prevent the continued development or operation of the Project or the System or continued conduct of the Project Activities,

and the State to the extent reasonably practicable consults in good faith with Operator Franchisee with respect to such suit, claim, action, demand, proceeding, penalty, cost, charge or expense.

In respect of a suit, claim, action, demand, proceeding, penalty, cost, charge or expense managed by the State under **clause 42.4(c)(ii) or 42.4(c)(iii)**, the State will:

- (iv) notify Operator Franchisee of that suit, claim, action, demand, proceeding, penalty, cost, charge or expense as soon as reasonably practical after it becomes aware of a suit, claim, action, demand, proceeding, penalty, cost, charge or expense;
- (v) use reasonable endeavours to give Operator Franchisee prior notice before agreeing to any compromise or settlement of such a suit, claim, action, demand, proceeding, penalty, cost, charge or expense; and
- (vi) use reasonable endeavours to consult in good faith with Operator Franchisee prior to agreeing to any such compromise or settlement.

## 43 Insurance

### 43.1 Insurance generally

Operator Franchisee must obtain and maintain (or cause to be obtained or maintained) such insurances as a prudent owner and operator would obtain and maintain for works substantially similar to the Project Activities and for facilities of a type substantially similar to the System, including as a minimum:

- (a) during the D&C Phase, the D&C Phase Insurances on the minimum terms and for the periods specified in **schedule 10**; and
- (b) during the Operations Phase, the Operations Phase Insurances on the minimum terms and for the periods specified in **schedule 10**.

### 43.2 Uninsurability

- (a) (**Insurance unavailability**): Operator Franchisee need not effect or maintain any particular D&C Phase or Operations Phase insurance required to be effected and maintained in accordance with **schedule 10** to the extent that it covers a risk which, after Financial Close, is agreed or determined in accordance with this **clause 43.2** to be Uninsurable, for so long as it remains Uninsurable.
- (b) (**Notice**): If Operator Franchisee intends not to obtain insurance in reliance on its rights under **clause 43.2(a)**, Operator Franchisee must at all times act in good faith with respect to the State and must not less than 45 Business Days before Operator Franchisee is required to effect that insurance:
  - (i) notify the State on becoming aware that the risk is, or is likely to become, Uninsurable;
  - (ii) provide the State with the names and contact details of Operator Franchisee's insurance broker and other insurance advisers for the purposes of attempting to arrange that insurance;
  - (iii) provide the State with a report by Operator Franchisee's insurance broker or insurance advisers detailing the steps which have been taken by or on behalf of Operator Franchisee to obtain that insurance and the terms if any upon which that insurance is available; and

- (iv) provide to the State written authority for Operator Franchisee's insurance broker and other insurance advisers to disclose to the State, and provide all documents evidencing, the steps which have been taken by or on behalf of Operator Franchisee to obtain that insurance and the terms if any upon which that insurance is available.
- (c) **(State request):** After receipt of the notice under **clause 43.2(b)**, the State will notify Operator Franchisee that the State:
  - (i) agrees that the risk is Uninsurable; or
  - (ii) disagrees that the risk is Uninsurable, in which case the State may request Operator Franchisee to effect and maintain the relevant insurance or substitute insurance if the State reasonably considers that the relevant insurance or substitute insurance is available on commercially reasonable terms.
- (d) **(Operator Franchisee to comply):** Subject to **clause 43.2(e)**, Operator Franchisee must give effect to a request under **clause 43.2(c)(ii)** promptly.
- (e) **(Insurance dispute resolution):** Operator Franchisee must promptly carry out each request made by the State in accordance with the terms of the request under **clause 43.2(c)(ii)**, unless it disputes the reasonableness of the State's request and within 10 Business Days refers the Dispute for resolution under **clause 57**.
- (f) **(State may advise Operator Franchisee):** The State may advise Operator Franchisee that it considers insurance of a risk to be so uneconomic as to make the risk Uninsurable and it requires consultation under **clause 43.2(g)** on the means to manage the risk.
- (g) **(Meeting to discuss):** If a risk is agreed or determined to be Uninsurable in accordance with this **clause 43**, the parties must meet to discuss the means by which the risk should be managed, including:
  - (i) consideration of the issue of self-insurance by either party;
  - (ii) if, though Uninsurable, it is still possible to insure the risk by paying high premiums, taking out the insurance cover, and passing the premium charges through to the State under the Service Payment from the date the insurance cover is taken out; or
  - (iii) assigning some other allocation of responsibility to the risk.
- (h) **(State to indemnify):** If the parties agree that the State will indemnify Operator Franchisee against the Uninsurable risk in accordance with **clause 43.2(g)**, the parties must agree on the beneficiaries of that indemnity, any deductible payable to the State, and the amount, scope and period of cover under that indemnity.
- (i) **(Management):** If a risk is agreed or determined under this **clause 43** to be Uninsurable but, after meeting in accordance with **clause 43.2(g)** the parties cannot agree as to how to manage the risk, then:
  - (i) this deed will continue but each Service Payment will be adjusted each year to deduct an amount equal to the premium that was payable by Operator Franchisee for insurance of such a risk immediately prior to such risk becoming Uninsurable (but will be increased to reflect the premium payable if the risk ceases to be Uninsurable and Operator Franchisee takes out insurance to cover that risk); and

- (ii) on the occurrence of the risk (if such occurrence does not constitute a Force Majeure Event), the State will either (at the State's option):
  - (A) indemnify Operator Franchisee for the loss (including loss of revenue) or damage suffered or incurred by Operator Franchisee to the extent such loss or damage arose from the occurrence of that risk, up to an amount equal to the insurance proceeds that would have been payable had the relevant insurance continued to be available (less any deductibles which would have been Operator Franchisee's risk), or, if the insurance had never been available, the amount agreed by the parties to cover that loss or damage (less any deductibles which would have been Operator Franchisee's risk), or if no agreement, determined in accordance with **clause 57**, and this deed will continue; or
  - (B) if the Project Works are, or the System, is wholly or substantially damaged or destroyed, terminate this deed, in which case a Force Majeure Event will be deemed to have occurred, and the State will pay Operator Franchisee an amount equal to the Force Majeure Termination Amount in accordance with **clause 45.8(a)(iii)**,

and will advise Operator Franchisee within 10 Business Days of its election.

- (j) **(Direction to Reinstate):** If the State elects to indemnify Operator Franchisee after the occurrence of a risk that is Uninsurable, the State will, within 60 Business Days of the occurrence of the Uninsurable risk (or such longer period as the State reasonably requires in order to assess the situation and form its intention), require Operator Franchisee:
  - (i) to reinstate or repair the damage or destruction to the Project Works, the System or the Project Area or any part of them caused by the Uninsurable risk in accordance with **clause 41.2**;
  - (ii) to reinstate or repair the damage or destruction to the Project Works, the System or the Project Area or any part of them caused by the Uninsurable risk in accordance with **clause 41.2** on the basis of different specifications than those for the original Project Works or the System (as applicable), in which case the State will issue a Modification Order setting out the different specifications and **clauses 30 and 41.3(b)** will apply; or
  - (iii) not to reinstate or repair the damage or destruction to the Project Works, the System or the Project Area or any part of them caused by the occurrence of the Uninsurable risk, in which case **clause 41.3(a)** will apply in respect of the occurrence of the Uninsurable risk.
- (k) **(Operator Franchisee to approach insurance market):** If Operator Franchisee is not required to effect or maintain any particular insurance under this **clause 43.2** then:
  - (i) Operator Franchisee must, in good faith, approach the insurance market on a regular basis and in any event at intervals of no more than 6 months, to establish the extent to which the relevant insurance remains an insurance that is unavailable in respect of projects in the

nature of the Project (or is not available on commercially reasonable terms); and

- (ii) provide the State with all relevant information concerning those approaches on a regular basis and in any event at intervals of no more than 6 months.
- (l) **(Insurance that becomes available):** If an Uninsurable risk (which would, but for the operation of **clause 43.2(a)**, otherwise be required to be insured under this **clause 43**) ceases to be Uninsurable, Operator Franchisee must immediately take out and maintain that insurance and otherwise comply with the requirements of this **clause 43** with respect to that insurance and:
  - (i) the provisions of **clause 43.2(a)** will not apply to relieve Operator Franchisee from the obligations to effect and maintain that insurance; and
  - (ii) any agreement or determination under **clause 43.2(g), (h), (i) or (n)** as to self-insurance, adjustment of Service Payments for higher premiums, indemnity from the State or other allocation of responsibility for the risk will no longer apply to that risk.
- (m) **(Set off of saved premium):** To the extent Operator Franchisee does not effect or maintain any particular insurance under **clause 43.2(a)** and the Service Payment has not otherwise been adjusted to reflect this in accordance with **clause 43.2(i)(i)** the State may set off the amounts of any premiums not paid by Operator Franchisee as a consequence against one or more Service Payment. For these purposes, the premiums saved will be deemed to be the greater of the amount budgeted for the insurance in the Base Case Financial Model and the amount previously paid for the insurance by Operator Franchisee.

### **43.3 Acceptable insurers**

All insurances which Operator Franchisee is required to effect under this deed must be effected with Reputable Insurers.

### **43.4 Proof of insurance**

- (a) **(Evidence of Operator Franchisee's insurance):** Upon notice from the State, Operator Franchisee must provide (and must (if applicable) procure that its Associates provide) evidence to the State of the insurances effected and maintained by Operator Franchisee (or caused by Operator Franchisee to be effected or maintained).
- (b) **(Certificates of currency):** Notwithstanding **clause 43.4(a)**, Operator Franchisee must provide, or cause to be provided, to the State:
  - (i) a certified copy of each certificate of currency, renewal certificate and endorsement slip, within 10 Business Days of the inception date or renewal date of any insurance policy or the issuing of any endorsement to any insurance policy, and such certificates of currency, renewal certificates and endorsement slips must be issued on the insurers' or insurance broker's letterhead, or in the case of layered insurance must be the letterhead, or stamp and signature of the insurer or lead insurer for each layer;
  - (ii) other than with respect to Employers Liability and Workers Compensation Insurance, Motor Vehicle Insurance and Plant and Equipment Insurance, a certified copy of each insurance policy, and

the original of such policy must be made available for inspection by the State from time to time as required by the State, subject to the reasonable requirements of Operator Franchisee as to confidentiality; and

- (iii) other than with respect to Employers Liability and Workers Compensation Insurance, Motor Vehicle Insurance and Plant and Equipment Insurance, within 30 Business Days of the payment due date of any insurance policy or of the renewal date of any insurance policy, evidence by way of the insurer's official receipt, or other acceptable form (which includes a statement from an insurance broker receiving payment as agent of the relevant insurer), confirming that the premium due and all applicable statutory charges connected with the insurance policy have been paid to the insurer.
- (c) **(Failure to provide evidence):** If, after being notified by the State to do so, Operator Franchisee fails to produce evidence of compliance with its insurance obligations under this **clause 43** to the satisfaction of the State within 10 Business Days of that notice, the State may effect and maintain the relevant insurance and pay the premiums for that insurance. Any amount paid by the State will be a debt due from Operator Franchisee to the State payable on demand.

#### **43.5 Notices from or to insurer**

Except to the extent prohibited by Law, Operator Franchisee must ensure that each policy of insurance required to be effected by Operator Franchisee in accordance with this deed under which the State is a named insured, additional insured or noted interested party contains provisions reasonably acceptable to the State that require the insurer:

- (a) whenever the insurer gives to or serves upon Operator Franchisee or its Associates a notice of cancellation or other material notice concerning the policy, at the same time to give to the State a copy of the notice that has been given or served upon Operator Franchisee or its Associates; and
- (b) whenever Operator Franchisee fails to renew the policy or to pay a premium or Operator Franchisee requests that the insurer cancel the policy, to give notice of that failure or request (as the case may be) to the State and Operator Franchisee at least 20 Business Days prior to the insurer giving any notice of cancellation or non-renewal.

#### **43.6 Notices of potential Claims**

Operator Franchisee and the State must, as soon as practicable, notify each other of any occurrence or incident that may give rise to a Claim in excess of \$100,000 or \$10,000 in respect to professional indemnity claims under a policy of insurance required by this **clause 43** and must keep the other informed of subsequent developments concerning that occurrence or incidence or the Claim.

#### **43.7 Extent of cover**

- (a) **(Notice of required cover):** If the State at any time reasonably requires Operator Franchisee to:
  - (i) insure against a risk not specifically provided for or contemplated under this **clause 43**; or
  - (ii) increase the extent of or change the terms of an existing cover in relation to a risk,



it may notify Operator Franchisee accordingly and request that Operator Franchisee give effect to the State's requirements as set out in the notice.

- (b) **(Notice of additional premium):** Operator Franchisee must promptly notify (and provide supporting evidence to) the State of the amount (if any) of any additional premium payable to effect a request by the State under this **clause 43.7**.
- (c) **(State response):** Within 10 Business Days after receipt of notification from Operator Franchisee under **clause 43.7(b)** the State must inform Operator Franchisee whether it requires Operator Franchisee to:
  - (i) obtain another quote of the insurance requested under **clause 43.7(a)**, in which case **clause 43.7(b)** applies;
  - (ii) effect that insurance cover; or
  - (iii) not effect that insurance cover.
- (d) **(Implementation of additional cover):** If the State informs Operator Franchisee under **clause 43.7(c)** that the State requires Operator Franchisee to effect that insurance cover, Operator Franchisee must promptly do so and the State must reimburse the amount of the additional premium to Operator Franchisee within 20 Business Days after Operator Franchisee provides evidence satisfactory to the State (acting reasonably) that the insurance cover has been so effected.

#### **43.8 General requirements**

- (a) **(Terms):** All insurances which Operator Franchisee is required to effect under this **clause 43** must:
  - (i) be governed by and must be construed according to the laws of Queensland and, in the case of all policies other than legal liability policies, include a provision under which each party to that policy agrees to:
    - (A) submit to the non exclusive jurisdiction of the courts of Queensland, and the courts competent to determine appeals from those courts, with respect to any proceedings which may be brought at any time relating to that policy; and
    - (B) waive any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within **clause 43.8(a)(i)(A)**;
  - (ii) in the case of the D&C Phase contract works (material damage) insurance and the Operations Phase industrial special risks/consequential loss insurance specified in **schedule 10**, specify the Security Trustee (while any Actual Debt remains outstanding) and the State as the sole loss payees to whom the insurers may pay monies under such insurance policies in accordance with **clause 43.9** (provided that, with respect to any terrorism coverage available under those policies, Operator Franchisee and the Security Trustee will be the claimant for such coverage and the State will not be a loss payee and must not be the insured party claiming the coverage);

- (iii) contain such conditions, endorsements and exclusions as are reasonably required by the State;
  - (iv) other than with respect to Employer's Liability and Workers Compensation Insurance, Motor Vehicle Insurance and Plant and Equipment Insurance, contain no conditions, endorsements or exclusions unless those conditions, endorsements or exclusions have been first approved by the State (such approval must not be unreasonably withheld);
  - (v) subject to **clause 43.8(g)**, not be materially altered, cancelled or permitted to lapse by or on behalf of Operator Franchisee without the prior approval of the State; and
  - (vi) other than with respect to Employer's Liability and Workers Compensation Insurance, Motor Vehicle Insurance and Plant and Equipment Insurance, the form of each insurance policy must be provided to and approved by the State (such approval must not be unreasonably withheld) before that insurance is effected or renewed.
- (b) (**Excesses**): No insurances which Operator Franchisee is required to effect and maintain under this **clause 43** will be subject to an excess or deductible that is not in accordance with **schedule 10** unless the State has approved the amount of the excess or deductible.
- (c) (**Do not permit vitiation**): Operator Franchisee must not knowingly permit or suffer to be done any act, matter or thing whereby any insurance required to be effected under this **clause 43** may be vitiated or rendered void or voidable.
- (d) (**Premiums**): Operator Franchisee must pay or cause to be paid punctually all premiums and other moneys payable in respect of any policy of insurance required to be effected by Operator Franchisee under this **clause 43**.
- (e) (**Information to insurer**): Operator Franchisee must give full, true and particular information to the relevant insurer of all matters and things the non-disclosure of which might in any way prejudice or affect any policy or policies of insurance or the payment of any or all moneys under that policy or those policies.
- (f) (**Information to the State**): Operator Franchisee must provide to the State:
  - (i) in respect of any D&C Phase renewable insurance policy effected or proposed to be effected under this **clause 43** which also insures other works, projects or activities in addition to the Project, a certificate on the insurers' letterhead stating that the Project has been accepted by the insurer as complying with all terms and conditions of that policy; and
  - (ii) in respect of any insurance policy effected or proposed to be effected under this **clause 43** which Operator Franchisee's broker has bound under an insurer's binder or automatic facility, a certificate on the insurer's letterhead stating that the Project has been accepted by the insurer as complying with all terms and conditions of that binder or automatic facility.
- (g) (**Permission to cancel**): Before the cancellation by Operator Franchisee of any insurance required to be effected under this **clause 43**, Operator Franchisee must first:

- (i) provide the State with the reasons for the proposed cancellation and details of any insurance which is proposed to be substituted for the policy proposed to be cancelled; and
  - (ii) obtain the State's consent to that cancellation.
- (h) **(Reasonable assistance):** Operator Franchisee must do everything reasonably required by the State or any other person in whose name an insurance policy is effected and maintained to enable the State or other person (as the case may be) to claim, and to collect or recover, money due, under or in respect of any insurance policy.
- (i) **(Non vitiation):** Whenever under this deed insurance is effected in more than one name, the policy of insurance must, to the extent the policy of insurance may cover more than one insured party, contain a non-vitiation clause providing that any non-disclosure or misrepresentation (whether fraudulent or otherwise), any breach or a term or condition of a policy, or any fraud or other act, omission or default by one insured party does not affect another insured party's right to claim under the policy, provided that such acts or omissions were not made with the connivance of that other insured party.
- (j) **(Cross liability):** For the contract works (public/products liability) insurance, material damages insurances and the Operations Phase public/products liability insurance, such insurance must provide that:
  - (i) the insurance operates in the same manner as if there were a separate policy of insurance covering each insured party; and
  - (ii) the insurer waives all rights, remedies or relief to which it might become entitled by way of subrogation or contribution against any of the parties comprising the insured and their insurers and that failure by any insured party to observe and fulfil the terms of the policy does not prejudice the insurance in regard to any other insured party.

### 43.9 Insurance Proceeds Account

- (a) Not later than Financial Close, Operator Franchisee must:
  - (i) establish an account to be known as the Insurance Proceeds Account;
  - (ii) maintain that account in the name of Operator Franchisee with a financial institution nominated by Operator Franchisee and approved by the State (such approval not to be unreasonably withheld) or with a financial institution which is a party to the Debt Finance Side Deed;
  - (iii) give details of that account to the State;
  - (iv) notify the financial institution referred to in **clause 43.9(a)(ii)** of the charge over the Insurance Proceeds Account in accordance with the State Security Deed and procure, and copy the State with, acknowledgment of that notice from the financial institution; and
  - (v) procure the agreement of the financial institution referred to in **clause 43.9(a)(ii)** not to exercise any right of set off or combination of accounts in relation to the Insurance Proceeds Account.
- (b) Each of the State and Operator Franchisee must deposit any amount it receives under any insurance policy taken out in compliance with the D&C Phase contract works (material damage) insurance and the Operations

Phase industrial special risks/consequential loss insurance and rolling stock insurance specified in **schedule 10** into the Insurance Proceeds Account.

- (c) Moneys in the Insurance Proceeds Account may only be applied:
  - (i) in the payment of Claims, to fund the remedy, repair, rectification or reinstatement of any defect in, damage to, or destruction of, the Project Works, the System or relevant part of the Project Works or the System in accordance with this deed; or
  - (ii) in accordance with **clause 41.3(a)(ii)** or **schedule 7**.
- (d) Operator Franchisee must give to the State records of expenditure from the Insurance Proceeds Account within 45 days of such expenditure.
- (e) Any funds remaining in the Insurance Proceeds Account after such application as referred to in **clause 43.9(c)** will belong to Operator Franchisee.

## PART I – DEFAULT, TERMINATION & HANDBACK

### 44 Default

#### 44.1 Persistent Breach

- (a) The State may issue a Persistent Breach Notice to Operator Franchisee if a breach of the same obligation under any State Project Document occurs more than twice in any 12 month period (**Persistent Breach**).
- (b) A Persistent Breach Notice must:
  - (i) state that it is a Persistent Breach Notice;
  - (ii) identify the breach;
  - (iii) not relate to:
    - (A) an Event of Default which is the subject of a Cure Plan or Prevention Plan which Operator Franchisee is diligently implementing;
    - (B) an Operator Franchisee Termination Event which is the subject of a notice by the State under **clause 45.4**;
    - (C) a breach as a result of which the Service Payment has been or will be subject to a reduction in the Service Payment; or
    - (D) breaches of the State Project Documents in relation to which the State has issued a Frequent Breaches Notice under **clause 44.2(a)** and which Operator Franchisee is diligently remedying; and
  - (iv) state that, if the breach continues beyond 30 Business Days or recurs within the 12 month period commencing 30 Business Days (or such longer period as the State reasonably determines having regard to the nature of the breach) after the date of service of the Persistent Breach Notice, it may result in the State becoming entitled to terminate this deed.
- (c) If, following the issue of a Persistent Breach Notice, the breach specified in the Persistent Breach Notice has continued beyond 30 Business Days or recurred within the 12 month period commencing 30 Business Days (or such longer period determined by the State under **clause 44.1(b)(iv)**) after the date of service of the Persistent Breach Notice, then the State may issue a Final Persistent Breach Notice.
- (d) A Final Persistent Breach Notice must:
  - (i) state that it is a Final Persistent Breach Notice;
  - (ii) identify the breach;
  - (iii) state that the breach has been the subject of a Persistent Breach Notice served within the period of 12 months and 30 Business Days (or such longer period determined by the State under **clause 44.1(b)(iv)**) prior to the date of the service of the Final Persistent Breach Notice; and

- (iv) state that if the breach continues beyond 30 Business Days (or such longer period as the State reasonably determines having regard to the nature of the breach) or recurs three or more times within the six month period after the date of service of the Final Persistent Breach Notice, the State will become entitled to terminate this deed.

#### **44.2 Frequent Breaches**

- (a) The State may issue a Frequent Breaches Notice to Operator Franchisee if Operator Franchisee commits frequent breaches of the State Project Documents which, in aggregate:
  - (i) substantially frustrate the objectives for the Project;
  - (ii) significantly impair the State's ability to fulfil any of its objectives under the Light Rail Legislation in the form enacted as at the date of this deed;
  - (iii) otherwise have a material adverse effect on the System, Passengers or local communities (including local residents or businesses); or
  - (iv) in the State's reasonable opinion indicate that Operator Franchisee does not intend to be or does not regard itself as being bound by this deed,

whether or not such breaches are of the same type or class (**Frequent Breaches**).

- (b) A Frequent Breaches Notice must:
  - (i) state that it is a Frequent Breaches Notice;
  - (ii) identify the Frequent Breaches; and
  - (iii) not relate to:
    - (A) an Event of Default which is the subject of a Cure Plan or Prevention Plan which Operator Franchisee is diligently implementing;
    - (B) an Operator Franchisee Termination Event which is the subject of a notice by the State under **clause 45.4**;
    - (C) a breach as a result of which the Service Payment has been or will be subject to a reduction in the Service Payment; or
    - (D) breaches of the State Project Documents in relation to which the State has issued a Persistent Breach Notice under **clause 44.1(a)** and which Operator Franchisee is diligently remedying; and
- (iv) state that, if Frequent Breaches continue to occur, they may result in the State becoming entitled to terminate this deed.
- (c) If, following the issue of a Frequent Breaches Notice, any Frequent Breaches continue to occur during the 12 month period commencing 30 Business Days after the date of service of a Frequent Breaches Notice, the State may issue a Final Frequent Breaches Notice to Operator Franchisee.
- (d) A Final Frequent Breaches Notices must:
  - (i) state that it is a Final Frequent Breaches Notice;
  - (ii) identify the Frequent Breaches;

- (iii) state that the Frequent Breaches have been the subject of a Frequent Breaches Notice served within the period of 12 months and 30 Business Days prior to the date of service of the Final Frequent Breaches Notice; and
- (iv) state that if Frequent Breaches continue to occur at any time in the 6 month period after the date of service of the Final Frequent Breaches Notice, the State will become entitled to terminate this deed.

#### 44.3 Events of Default

Each of the following events is an Event of Default:

- (a) **(failure to progress)**: Operator Franchisee fails to regularly and diligently progress the D&C Activities as required under **clause 16.2(a)**;
- (b) **(fraud or misleading conduct)**: there is any fraud or any collusive or misleading or deceptive conduct on the part of Operator Franchisee or its Associates in the performance of any of the Project Activities (including any fraud or intentionally false, misleading or deceptive reporting discovered during any audit under **clause 21.5**);
- (c) **(funding cancelled)**: the obligation of a Debt Financier or an Equity Investor to provide funding under the Debt Financing Documents or the Equity Documents, respectively, is cancelled due to a breach, an event of default or review event (in each case, however described) under a Debt Financing Document or an Equity Document (as applicable), or a Debt Financier or Equity Investor fails (in whole or in part) to provide funding under the Debt Financing Documents or the Deferred Equity Commitment Deeds for the amounts set out in the Base Case Financial Model;
- (d) **(unacceptable availability or quality)**: at any time during the Operations Phase:
  - (i) the Availability Entitlement under **schedule 3** is less than [REDACTED] in respect of any Payment Month;
  - (ii) the total abatement arising from the Performance Abatement and calculation of the Availability Entitlement under **schedule 3** is greater than [REDACTED] of the Base Service Payment (as defined in **schedule 3**) in any two consecutive Payment Months; or
  - (iii) Operator Franchisee accumulates more than [REDACTED] in a Payment Month;
- (e) **(failure to pay)**: Operator Franchisee fails to pay an amount that is due under any State Project Document when it is due and the failure is not remedied with 20 Business Days of a demand from the State;
- (f) **(failure to provide Bonds)**: Operator Franchisee fails to provide the State with a Bond required under this deed within the time period required under this deed;
- (g) **(failure to report)**: Operator Franchisee fails to comply with its reporting obligations under this deed or a report from Operator Franchisee contains a material inaccuracy;
- (h) **(refinancing)**: Operator Franchisee breaches its obligations under **clause 52.1**;

- (i) **(incorrect representation or warranty)**: a representation or warranty made or given by Operator Franchisee in any State Project Document proves to be untrue;
- (j) **(Illegality Event)**: an Illegality Event occurs;
- (k) **(notice of Permitted Change in Control)**: Operator Franchisee breaches its obligations under **clause 55.3A**;
- (l) **(subcontracting)**: Operator Franchisee breaches its obligations under **clause 56**; and
- (m) **(other breach)**: any other breach of an obligation under any State Project Document by Operator Franchisee (or, after the Date of Stage 2 Completion, OF2) (other than a breach as a result of which the Service Payment has been or will be subject to a reduction in the Service Payment),

provided that:

- (n) an event described in **clause 44.3(g), 44.3(i) or 44.3(m)** will only be an Event of Default if the State (acting reasonably) considers that such event is material; and
- (o) a failure to achieve Stage 2 Close Out by the Date for Stage 2 Close Out will not be an Event of Default (and **clause 44.9** will apply).

#### 44.4 Default Notice

If an Event of Default occurs:

- (a) **(State may notify)**: the State may give Operator Franchisee a notice **(Default Notice)**:
  - (i) stating that it is a notice under this **clause 44.4**;
  - (ii) specifying the nature of the Event of Default; and
  - (iii) specifying a period that is, in the reasonable opinion of the State, the period reasonably required to Remedy the Event of Default; and
- (b) **(Operator Franchisee must remedy and notify)**: Operator Franchisee must:
  - (i) whether or not a Default Notice has been issued by the State, immediately commence and diligently pursue any action required to Remedy the Event of Default; and
  - (ii) if a Default Notice has not been issued by the State, immediately notify the State of the Event of Default.

#### 44.5 Applicable Cure Period

Subject to the Debt Finance Side Deed, the Applicable Cure Period will be the period specified by the State in the Default Notice, provided that:

- (a) **(failure to pay)**: if the Event of Default is a failure to pay money, Operator Franchisee must Remedy the Event of Default within 10 Business Days after receipt of the Default Notice (and **clauses 44.5(b), 44.6** and **44.7** will not apply to that Event of Default);
- (b) **(extension of Applicable Cure Period)**: subject to **clause 44.5(c)**:
  - (i) if at any time Operator Franchisee considers in good faith that the Applicable Cure Period is not reasonable, it may request an extension to the Applicable Cure Period by notifying the State of that belief, the



reasons for that belief (in such detail as the State may reasonably require) and the time which Operator Franchisee believes is reasonably required to Remedy the Event of Default; and

(ii) if Operator Franchisee:

- (A) gives the State a notice under **clause 44.5(b)(i)**;
- (B) is and has been diligently pursuing a Remedy of the Event of Default; and
- (C) during the Operations Phase, is and has been continuing to perform the O&M Activities to the extent it is able to (having regard to the technical capability of the System) and it is safe to do so,

the Applicable Cure Period will be extended by the time which the State determines is reasonably required to Remedy the Event of Default (having regard to, among other things, the notice from Operator Franchisee under **clause 44.5(b)(i)**);

(c) **(Limitation on Applicable Cure Period):**

- (i) subject to **clause 44.5(c)(ii)**, Operator Franchisee may only apply once for an extension of the Applicable Cure Period in respect of an Event of Default, unless the State otherwise agrees;
- (ii) the State agrees to consider in good faith any application from Operator Franchisee for a second extension of an Applicable Cure Period if Operator Franchisee can satisfy the State that Operator Franchisee is diligently pursuing its step in rights under a Core Contract as required to Remedy the Event of Default; and
- (iii) the maximum period of time which Operator Franchisee may be given to Remedy an Event of Default will be 6 months in aggregate from the date of the relevant Default Notice; and

(d) **(suspended obligations):** an Applicable Cure Period will not take into account any period in which the performance of the relevant obligations by Operator Franchisee is suspended by operation of **clause 26.7, 27.6 or 30.8**.

#### **44.6 Operator Franchisee to Remedy Event of Default**

- (a) **(Cure Plan):** If the State issues a Default Notice and the Event of Default is capable of being Remedied, Operator Franchisee must:
  - (i) comply with the Default Notice;
  - (ii) unless the Applicable Cure Period is less than 10 Business Days (in which case no Cure Plan is required), within 10 Business Days after receipt of the Default Notice (or such longer period as the parties agree), prepare and submit to the State a draft plan describing the actions and measures which Operator Franchisee will diligently pursue to Remedy the Event of Default;
  - (iii) the parties must consult in good faith to agree to that plan (including any amendments to the draft plan reasonably required by the State); and
  - (iv) following agreement or determination of that plan (**Cure Plan**), Operator Franchisee must implement the Cure Plan.

- (b) **(Prevention Plan):** If the State issues a Default Notice and the Event of Default is not capable of being Remedied, Operator Franchisee must:
  - (i) within 10 Business Days after receipt of the Default Notice prepare and submit to the State a draft plan describing the actions and measures which Operator Franchisee will diligently pursue to prevent the Event of Default from recurring;
  - (ii) the parties must consult in good faith to agree to that plan (including any amendments to the draft plan reasonably required by the State); and
  - (iii) following agreement or determination of that plan (**Prevention Plan**), Operator Franchisee must implement the Prevention Plan.

#### **44.7 Disputes over Applicable Cure Period, Cure Plan or Prevention Plan**

If the parties cannot agree the Applicable Cure Period, the Cure Plan or the Prevention Plan:

- (a) the State may refer the matter for dispute resolution under **clause 57**; or
- (b) Operator Franchisee may refer the matter for dispute resolution under **clause 57** if and only if Operator Franchisee is and has been:
  - (i) diligently pursuing a Remedy of the Event of Default; and
  - (ii) during the Operations Phase, continuing to perform the O&M Activities to the extent it is able to (having regard to the technical capability of the System) and it is safe to do so,

and, if either party refers the matter for dispute resolution under **clause 57**:

- (c) whilst the matter is being determined, Operator Franchisee must continue to diligently pursue a Remedy of the Event of Default and, during the Operations Phase, continues to perform the O&M Activities to the extent it is able to (having regard to the technical capability of the System) and it is safe to do so; and
- (d) any person determining the Applicable Cure Period under **clause 57** is not entitled to determine an Applicable Cure Period which exceeds 6 months in aggregate from the date of the relevant Default Notice (including if that 6 month period may expire notwithstanding that the Dispute has not been determined).

#### **44.8 No prejudice to other remedies**

Nothing in this **clause 44** prejudices or limits the State from:

- (a) exercising its other rights, whether under the State Project Documents or otherwise according to Law, and whether against Operator Franchisee or otherwise, in relation to Event of Default, any Persistent Breaches, Frequent Breaches or any other default by Operator Franchisee, including the State's:
  - (i) rights pursuant to any security held by the State;
  - (ii) Step-In Rights under **clause 25**; or
  - (iii) rights to terminate this deed under **clause 45**; or
- (b) suing Operator Franchisee, or exercising any other rights against Operator Franchisee, whether under the State Project Documents or otherwise

according to Law, in relation to an Event of Default, any Persistent Breaches, Frequent Breaches or any other default by Operator Franchisee.

#### **44.9 Stage 2 Close Out**

- (a) **(Stage 2 Close Out by Date for Stage 2 Close Out):** Operator Franchisee must procure that OF2 achieves Stage 2 Close Out by the Date for Stage 2 Close Out.
- (b) **(Notice):** Without limiting **clause 44.9(a)**, if Stage 2 Close Out is not achieved by the Date for Stage 2 Close Out, the State may give Operator Franchisee a notice requiring Operator Franchisee to achieve Stage 2 Close Out, specifying a reasonable time within which to do so.
- (c) **(Correction of Defect):** If the State gives a notice under **clause 44.9(b)**, Operator Franchisee must:
  - (i) procure that OF2 expeditiously and diligently pursues the achievement of Stage 2 Close Out:
    - (A) within the time specified in the State's notice under **clause 44.9(b)**;
    - (B) so as to minimise any adverse effect on the Project; and
    - (C) in a manner which minimises any adverse effect upon the users, owners or occupiers of the System; and
  - (ii) if directed by the State, prepare and submit a program and method statement for achieving Stage 2 Close Out in accordance with the State Project Documents.

For the avoidance of doubt, nothing in this **clause 44.9** excludes any rights the State may have to recover damages from Operator Franchisee or OF2, or such other legal or equitable relief available for a breach of the State Project Documents.

- (d) **(Failure to correct):** If Operator Franchisee does not comply with a notice given under **clause 44.9(b)** or its obligations under **clause 44.9(c)** (as applicable), the State may:
  - (i) apply for, and the court may grant, an order for specific performance of Operator Franchisee's obligations under **clause 44.9(c)**;
  - (ii) notify Operator Franchisee that the State will waive the requirement to achieve Stage 2 Close Out, in which case Operator Franchisee must pay the State the amount agreed or determined under **clause 57** as being the greater of:
    - (A) the costs which would have been incurred by Operator Franchisee and OF2 had the work necessary to achieve Stage 2 Close Out identified or notified by the State been carried out; or
    - (B) the diminution in value of the System as a consequence of not achieving Stage 2 Close Out; or
  - (iii) carry out the works necessary to achieve Stage 2 Close Out itself or engage others to do so, in which case the costs incurred (including any Liability) by the State in so doing will be a debt due and payable by Operator Franchisee to the State.

- (e) **(Set off)**: The State will be entitled to set-off or deduct any amount owed to it under **clause 44.9(d)(ii)** or **(iii)** (or pending agreement or determination of any such amounts, the State's reasonable estimation of those amounts), or any abatement incurred by Operator Franchisee due to a failure to achieve Stage 2 Close Out by the Date for Stage 2 Close Out, from the Service Payments to the extent of the Stage 2 capital component of the Service Payments as identified in **schedule 3A**. Other than as expressly provided for in this **clause 44.9(e)**, the State must not exercise any set off rights under **clause 38.9** in respect of those amounts. To the extent the State sets off an amount in excess of the actual amount owed to it under **clause 44.9(d)(ii)** or **(iii)** as agreed or determined under **clause 57**, the State will reimburse Operator Franchisee for the excess together with interest calculated in accordance with **clause 38.8** as if the payment were a late payment.
- (f) **(Security under D&C Contract (Stage 2))**: To the extent Operator Franchisee is liable to pay the State any amount under **clause 44.9(d)(ii)** or **(iii)**, or the State is entitled to deduct an amount from the Service Payment due to a failure to achieve Stage 2 Close Out by the Date for Stage 2 Close Out, the State may require Operator Franchisee to make (or procure that OF2 makes) a demand on any security held by Operator Franchisee or OF2 from the D&C Contractor (Stage 2) and pay the proceeds to the State.

## 45 Termination

### 45.1 Operator Franchisee Termination Events

Each of the following events is an Operator Franchisee Termination Event:

- (a) **(unacceptable availability)**: the Availability Entitlement under **schedule 3** is less than [REDACTED] in any 3 out of 6 consecutive Payment Months (excluding the first 6 months after the Date of Completion);
- (b) **(unacceptable quality)**: Operator Franchisee accumulates more than [REDACTED] per Payment Month in any 4 out of 6 consecutive Payment Months;
- (c) **(failure to complete by Sunset Date)**: either:
  - (i) Completion has not occurred by the Date for Completion and the Independent Verifier reasonably forms the view (including having regard to any applicable Cure Plan or Prevention Plan which Operator Franchisee is diligently implementing) that Operator Franchisee will not achieve Completion by the Sunset Date; or
  - (ii) Completion has not occurred by the Sunset Date;
- (d) **(failure to commence)**: following Financial Close, Operator Franchisee fails to commence within 60 Business Days the performance of the Project Activities;
- (e) **(Persistent Breach)**: the State has issued a Final Persistent Breach Notice and the relevant breach has continued beyond 30 Business Days (or such longer period determined by the State under **clause 44.1(d)(iv)**) or recurred three or more times within the six month period after the date of service of the Final Persistent Breach Notice;

- (f) **(Frequent Breaches)**: the State has issued a Final Frequent Breaches Notices and Frequent Breaches continue to occur at any time in the six month period after the date of service of the Final Frequent Breaches Notice;
- (g) **(abandonment)**: Operator Franchisee wholly or substantially abandons the Project or displays an intention to do so;
- (h) **(failure to Remedy)**: a failure by Operator Franchisee to Remedy an Event of Default which is capable of being Remedied within the Applicable Cure Period;
- (i) **(failure to prevent)**: a failure by Operator Franchisee to prevent the recurrence of an Event of Default which is the subject of a Prevention Plan;
- (j) **(failure to submit, amend or implement plan)**: a failure by Operator Franchisee to submit a draft Cure Plan or a draft Prevention Plan or to consult in good faith with the State to agree to a Cure Plan or a Prevention Plan, if such failure is not remedied within 6 Business Days of notice from the State regarding that failure;
- (k) **(insolvency of Operator Franchisee)**: an Event of Insolvency occurs in relation to Operator Franchisee, whether or not Operator Franchisee has been in breach of this deed;
- (l) **(insolvency of contractor or guarantor)**: an Event of Insolvency occurs in relation to a Core Contractor or a Core Guarantor whether or not Operator Franchisee is then in breach of this deed, and either:
  - (i) that Core Contractor or Core Guarantor is not replaced within 120 Business Days (or, at any time during that period, Operator Franchisee is not diligently pursuing the replacement of that Core Contractor or Core Guarantor (as applicable)), by a person that:
    - (A) satisfies the requirements of **clause 56**; or
    - (B) is otherwise acceptable to the State (acting reasonably);
- (m) **(failure to insure)**: Operator Franchisee fails to effect and maintain (or cause to be effected and maintained) the Insurances it is required to effect and maintain pursuant to this deed (subject to **clause 43.2**);
- (n) **(assignment etc)**: Operator Franchisee breaches its obligations under **clause 54**; or
- (o) **(restrictions on dealing with share capital)**: Operator Franchisee breaches its obligations under **clause 55.2**.

## 45.2 Notice of Operator Franchisee Termination Event

Without limiting the State's other rights or Operator Franchisee's other obligations under the State Project Documents, Operator Franchisee must notify the State immediately upon becoming aware of an Operator Franchisee Termination Event or an event or occurrence with, with the giving of notice, or lapse of time, would or is likely to become an Operator Franchisee Termination Event.

## 45.3 State action following Operator Franchisee Termination Event

Without limiting the State's other rights and remedies under the State Project Documents, if an Operator Franchisee Termination Event has occurred and is subsisting, the State may take any action it considers appropriate or necessary to overcome the effects of Operator Franchisee Termination Event or preserve the

Project, which may include the State (or its nominees) entering and remaining on or in the Project Area or the System and the amount of any costs or expenses incurred in taking such action will be payable on demand by Operator Franchisee to the State.

#### **45.4 Termination for Operator Franchisee Termination Event**

If an Operator Franchisee Termination Event occurs and is subsisting, the State may terminate this deed by not less than 10 Business Days' notice to Operator Franchisee, which states the Operator Franchisee Termination Event in respect of which the notice is given, with effect from the date stated in the notice, without any cure period being given to Operator Franchisee.

#### **45.5 Voluntary termination by the State**

Without prejudice to any of the State's other rights or entitlements under the State Project Documents, the State may:

- (a) at any time for its sole convenience and without giving reasons terminate this deed by not less than 60 Business Days' notice to Operator Franchisee with effect from the date stated in the notice; and
- (b) thereafter either itself or by third parties continue to carry out all or part of the Project (if the State elects to do so).

#### **45.6 Termination for Force Majeure Event**

Either party may terminate this deed pursuant to **clause 28.3**.

#### **45.7 Consequences of termination**

Upon expiry or termination of this deed, the rights and obligations of the parties under this deed will cease except for:

- (a) any accrued rights and obligations under this deed; and
- (b) any rights and obligations which are expressed to continue after termination of this deed, including those referred to in **clause 62.11**.

#### **45.8 Termination Payments**

- (a) Subject to **clause 45.8(b)**, the State must pay to Operator Franchisee:
  - (i) if this deed is terminated under **clause 45.4** (other than as the result of an Operator Franchisee Termination Event referred to in **clause 45.1(g)**), the Termination Payment determined in accordance with section 3 of **schedule 7**;
  - (ii) if this deed is terminated under **clause 45.5**, the Termination Payment calculated in accordance with section 4 of **schedule 7**; or
  - (iii) if this deed is terminated under **clause 45.6** or **43.2(i)(ii)(B)** the Termination Payment calculated in accordance with section 5 of **schedule 7**.
- (b) If this deed is terminated as the result of an Operator Franchisee Termination Event referred to in **clause 45.1(g)**, Operator Franchisee will receive no compensation or Termination Payment.
- (c) In the calculation of Termination Payments under **schedule 7**, there will not be any double counting of any costs or other amounts payable, whether such costs or other amounts are referred to in **schedule 7** or elsewhere in this deed.

- (d) Payment of the relevant Termination Payment in applicable circumstances will be full and final settlement of Operator Franchisee's rights against the State for breach and termination of this deed and the State Project Documents.

#### **45.9 Waiver and no Claim**

Subject to **clause 45.11**, if this deed is terminated:

- (a) Operator Franchisee waives any right it might otherwise have to pursue a claim of restitution of any kind, including a claim of unjust enrichment or quantum meruit and Operator Franchisee's only entitlement in these circumstances will be in respect of its rights under **clause 45.8**; and
- (b) Operator Franchisee will not be entitled to make a Claim against the State for any amount other than for payment of the Termination Payment, if applicable.

#### **45.10 Termination for failure to achieve Sunset Date**

- (a) Notwithstanding any other provision of this deed, Operator Franchisee acknowledges and agrees that the State will be entitled to exercise its rights to terminate this deed as a consequence of Operator Franchisee Termination Event referred to in **clause 45.1(c)(ii) (Sunset Date Termination Event)** at any time on or after the Sunset Date despite the occurrence of:
  - (i) any Relief Event in respect of which Operator Franchisee has:
    - (A) failed to submit a claim under **clause 27.3**; or
    - (B) submitted a claim under **clause 27.3** after expiry of the period referred to in **clause 27.3**;
  - (ii) any Compensation Event in respect of which Operator Franchisee has:
    - (A) failed to submit a claim under **clause 26.3**; or
    - (B) submitted a claim under **clause 26.3** after expiry of the period referred to in **clause 26.3**.
- (b) Operator Franchisee waives any Claim or other right at law, in equity, or under statute that it has, may have had or could otherwise have to assert that any exercise, or purported exercise by the State of its right to terminate this deed as a consequence of a Sunset Date Termination Event was void, ineffective or unlawful due to any act of prevention by the State or its Associates (except to the extent that such an act of prevention constitutes a Compensation Event and Operator Franchisee has been granted relevant relief under **clause 16.7** or **26.7**).

#### **45.11 No other termination rights**

Despite any rule of law or equity to the contrary, neither party may terminate, rescind or treat as repudiated this deed other than as expressly provided for in this deed.

## 46 End of Term arrangements

### 46.1 Indicative Asset statement

The State may, by notice to Operator Franchisee given a reasonable time before the end of the Term, require Operator Franchisee to prepare an indicative statement in respect of all Assets setting out the current condition and the current value of each of those Assets (calculated in accordance with the then current Australian accounting standards issued by the Australian Accounting Standards Board on behalf of the professional accounting bodies) (**Indicative Statement**). Operator Franchisee must provide the Indicative Statement to the State within 1 month after the date of the State's notice.

### 46.2 Handback Audit

- (a) Without prejudice to any other provision of the State Project Documents, approximately:
  - (i) 3 years; and
  - (ii) 1 year,prior to the Expiry Date, the State will be entitled to procure the carrying out of a project audit of the System (**Handback Audit**) by an independent expert (**Independent Assessor**) appointed by:
  - (iii) agreement between the parties; or
  - (iv) failing agreement, within 20 Business Days of a request made by the State, appointed by the President of the Australian Institute of Quantity Surveyors.
- (b) The Independent Assessor will inspect and assess the System and notify the State and Operator Franchisee of:
  - (i) whether the System has been and is being maintained by Operator Franchisee in accordance with its obligations under the State Project Documents;
  - (ii) the rectification, refurbishment, maintenance and remediation works (if any) required to be carried out by Operator Franchisee before the Expiry Date to:
    - (A) bring the condition of the System to the condition it would have been in had Operator Franchisee complied with its obligations under the State Project Documents; and
    - (B) ensure that on the Expiry Date, the System will comply with the Handback Conditions (fair wear and tear excepted);
  - (iii) a reasonable period within which Operator Franchisee must carry out such work under **clause 46.2(b)(ii)** (if any);
  - (iv) determine the aggregate of the amount (if any), without double counting:
    - (A) required to be expended or reserved against, during or for the balance of the period up until the Expiry Date to ensure that the System is in the Handback Condition on the Expiry Date, less any Lifecycle Payments (as defined in **schedule 3**) to be received by Operator Franchisee in the period up until the Expiry Date; and



- (B) for making good or rectifying any breaches by Operator Franchisee of the State Project Documents.
- (c) The aggregate amount calculated under **clause 46.2(b)(iv)** updated by each subsequent Handback Audit less the amount calculated in accordance with **clause 46.6** will be the Relevant Amount.
- (d) The cost of each Handback Audit will be shared equally by the State and Operator Franchisee.
- (e) If Operator Franchisee disputes the Independent Assessor's decision under **clause 46.2(b)**, Operator Franchisee may refer those aspects of the matter in dispute for dispute resolution under **clause 57**.
- (f) Operator Franchisee must, at its cost, co-operate with the Independent Assessor and provide the Independent Assessor any reasonable assistance required by the Independent Assessor during the carrying out of the Handback Audit.
- (g) The State must use its reasonable endeavours to procure that the Independent Assessor in carrying out the Handback Audit minimises any disruption caused to the provision of the Project Activities by Operator Franchisee.

#### **46.3 Handback Bond or Retention Fund – Relevant Amount**

- (a) If following a Handback Audit under **clause 46.2(a)** it is determined that rectification, maintenance or remediation works are required, Operator Franchisee must provide to the State within 20 Business Days of the Independent Assessor notifying the State and Operator Franchisee of the results of the Handback Audit a bond (**Handback Bond**):
  - (i) which has a face value of the Relevant Amount; and
  - (ii) which satisfies the requirements of **clause 5.3**.
- (b) If Operator Franchisee fails to provide a Handback Bond which complies with the terms of **clause 46.3(a)**, then the State may deduct from each payment of the Service Payment until the end of the Term, an amount equal to 120% of the Relevant Amount divided by the number of months until the scheduled expiry of the Term, and will pay such amount into an interest bearing account in the name of the State and established by the State (**Retention Fund Account**).
- (c) If the State establishes a Retention Fund Account in accordance with **clause 46.3(b)**, it will promptly give Operator Franchisee particulars of the Retention Fund Account.
- (d) All funds deposited in the Retention Fund Account will be the property of the State.

#### **46.4 Notification of Handback Audit**

- (a) The State must notify Operator Franchisee a minimum of 10 Business Days in advance of the date it wishes to procure the carrying out of the Handback Audit.
- (b) The State must consider in good faith any reasonable request by Operator Franchisee for the Handback Audit to be carried out on a different date if such request is made at least 5 Business Days prior to the notified date and Operator Franchisee (acting reasonably) is able to demonstrate that carrying

out the Handback Audit on the notified date would materially prejudice Operator Franchisee's ability to perform the Project Activities.

#### **46.5 Rectification Work**

Operator Franchisee must carry out any required rectification, maintenance and remediation work notified pursuant to **clause 46.2(b)(ii)**:

- (a) to the reasonable satisfaction of the Independent Assessor;
- (b) in accordance with all applicable Laws; and
- (c) so as to satisfy the standards and other requirements applicable to the System under the State Project Documents,

within the period specified pursuant to **clause 46.2(b)(iii)** and any costs it incurs in carrying out such rectification, maintenance or remediation work will, subject to **clause 46.6**, be at its own expense.

#### **46.6 Reduction of the Relevant Amount**

- (a) If and to the extent that Operator Franchisee carries out the required rectification, maintenance or remediation work in accordance with **clause 46.5**, the Relevant Amount will be reduced by the costs estimated in the Handback Audit for undertaking the relevant work.
- (b) If **clause 46.3(b)** applies, then:
  - (i) if and to the extent that Operator Franchisee carries out the required rectification, maintenance or remediation work in accordance with **clause 46.5**, the State will reimburse Operator Franchisee's costs of so doing by withdrawing amounts from, and to the extent there are moneys standing to the credit of, the Retention Fund Account which were withheld by the State under **clause 46.3(b)** (and not any moneys withheld by the State under **clause 46.8(b)**) and paying these to Operator Franchisee;
  - (ii) if the amount in the Retention Fund Account funded by moneys withheld under **clause 46.3(b)** is insufficient to cover Operator Franchisee's costs, the State will reimburse Operator Franchisee's costs from any amounts which subsequently stand to the credit of the Retention Fund Account as a result of the deductions made from the Service Payment pursuant to **clause 46.3(b)**. In the event that the amount remaining in the Retention Fund Account on the expiration of the Term (other than moneys that stand to the credit of that account as a result of deductions by the State under **clause 46.8(b)**) is insufficient to cover Operator Franchisee's costs which have not been reimbursed, Operator Franchisee will bear the balance of such costs itself.

#### **46.7 Failure to carry out work**

- (a) If and to the extent that Operator Franchisee fails to carry out the necessary rectification, maintenance or remediation work in accordance with **clause 46.5**, the State will be entitled to carry out itself, or procure, such rectification, maintenance or remediation work, and the cost of such rectification, maintenance or remediation work will be a debt due and payable by Operator Franchisee to the State.
- (b) The State may:

- (i) first, deduct that amount from any amounts in the Retention Fund Account; and
  - (ii) second, to the extent the amount in the Retention Fund Account is insufficient, deduct or set off that amount against any amount otherwise payable by the State to Operator Franchisee, or may take any other enforcement action available to it including under the security provided under **clause 46.3(a)**, in respect of an unpaid debt owed to it.
- (c) Operator Franchisee acknowledges that damages will not be an adequate remedy for the State for any failure by Operator Franchisee to comply with its obligations under this **clause 46** and if there is a breach or suspected breach of this **clause 46** by Operator Franchisee, nothing in the State Project Documents prevents the State from claiming injunctive or declaratory relief or orders for specific performance to remedy such breach or suspected breach and no objection will be made by Operator Franchisee to the claim for such relief on the basis of equitable defences. Upon any application by the State for injunctive relief or orders for specific performance to remedy a breach or suspected breach of this **clause 46**, Operator Franchisee agrees that it will not raise in opposition any claims of equitable estoppel, acquiescence, hardship and unfairness, laches or "unclean hands" by the State.

#### **46.8 Handback Bond or Retention Fund – Handback Security**

- (a) No later than 3 months prior to the Expiry Date, Operator Franchisee must provide to the State a bond (**Handback Security Bond**):
  - (i) which has a face value of \$10 million; and
  - (ii) which satisfies the requirements of **clause 5.3**.
- (b) If Operator Franchisee fails to provide a Handback Bond which complies with the terms of **clause 46.8(a)**, then the State may deduct from each payment of the Service Payment until the end of the Term, an amount equal to \$3.3 million (or, in the case of the final Service Payment, \$3.4 million), and will pay such amount into the Retention Fund Account established under **clause 46.3(b)**.

#### **46.9 Inspection at end of Term**

- (a) (**Handback Matters Notice**): Within 60 Business Days after the end of the Term, the State must give to Operator Franchisee a notice (**Handback Matters Notice**) specifying:
  - (i) details of matters or things (if any) which the State considers are required to be remedied or rectified by the State or its Associates due to any failure by Operator Franchisee to achieve Handback;
  - (ii) the extent (if any) to which the State considers the actual Residual Design Life is less than the Required Residual Design Life;
  - (iii) the amount which the State considers is required to be spent by the State or its Associates to remedy or rectify the matters or things specified in **clause 46.9(a)(i)** and to ensure that the System (or any part of it) has an actual Residual Design Life at least equal to the Required Residual Design Life and to carry out all necessary works:
    - (A) in accordance with the requirements of any relevant Authority;

- (B) so as to minimise the impact on the use of the System; and
  - (C) in a manner which causes as little inconvenience as possible to the State, its Associates and the general public; and
- (iv) details of how the amount in **clause 46.9(a)(iii)** was calculated.
- (b) **(Operator Franchisee election)**: Operator Franchisee must, within 20 Business Days after receiving the Handback Matters Notice, notify the State that it:
  - (i) agrees with the amount set out in the Handback Matters Notice **(Handback Matters Agreement Notice)**; or
  - (ii) disagrees with the details or the amount set out in the Handback Matters Notice, together with details of why Operator Franchisee disagrees **(Handback Matters Disagreement Notice)**.
- (c) **(Handback Matters Agreement notice)**: If Operator Franchisee gives the State a Handback Matters Agreement Notice or, fails to give a Handback Matters Disagreement Notice, then:
  - (i) the amount set out in the Handback Matters Notice will be a debt due and payable by Operator Franchisee to the State; and
  - (ii) without prejudicing any other rights the State may have, the State may:
    - (A) draw on the Retention Fund Account or make a demand under the Handback Bond provided under **clause 46.3** to recover the amount set out in the Handback Matters Notice to the extent it relates to the rectification, maintenance or remediation work in relation to which the Retention Fund Account or Handback Bond was provided; and
    - (B) draw on the Retention Fund Account or make a demand under the Handback Security Bond provided under **clause 46.8** to recover any other amount set out in the Handback Matters Notice.
- (d) **(Handback Matters Disagreement notice)**: If Operator Franchisee gives the State a Handback Matters Disagreement Notice, Operator Franchisee and the State must consult in good faith and use their reasonable endeavours to agree on the details or the amount referred to in **clause 46.9(a)**.
- (e) **(Consequences following consultation)**: If Operator Franchisee and the State, following the consultation in **clause 46.9(d)**:
  - (i) reach agreement as to the amount, then:
    - (A) the agreed amount will be a debt due and payable by Operator Franchisee to the State; and
    - (B) without prejudicing any other rights the State may have, the State may:
      - (1) draw on the Retention Fund Account or make a demand under the Handback Bond provided under **clause 46.3** to recover the amount set out in the Handback Matters Notice to the extent it relates to the rectification, maintenance or remediation work in relation to which the

- Retention Fund Account or Handback Bond was provided;  
and
- (2) draw on the Retention Fund Account or make a demand under the Handback Security Bond provided under **clause 46.8** to recover any other amount set out in the Handback Matters Notice; or
- (ii) are unable to reach agreement as to the amount within 10 Business Days after service of the Handback Matters Disagreement Notice, then:
    - (A) without prejudicing any other rights the State may have, the State may:
      - (1) draw on the Retention Fund Account or make a demand under the Handback Bond provided under **clause 46.3** to recover the amount set out in the Handback Matters Notice or otherwise agreed under **clause 46.9(d)** to the extent it relates to the rectification, maintenance or remediation work in relation to which the Retention Fund Account or Handback Bond was provided; and
      - (2) draw on the Retention Fund Account or make a demand under the Handback Security Bond provided under **clause 46.8** to recover any other amount set out in the Handback Matters Notice; and
    - (B) the matters in dispute will be referred directly for determination in accordance with **clause 57**.
- (f) **(State to reimburse Operator Franchisee)**: The State must pay to Operator Franchisee the difference between the amount drawn from the Retention Fund Account or paid by the issuer of the Handback Bond following a demand under **clause 46.9(e)(ii)(A)** and any lesser amount which is determined under **clause 57** to be the amount referred to in **clause 46.9(a)**, within 5 Business Days of the determination.
  - (g) **(No obligation in respect of monies)**: Operator Franchisee acknowledges and agrees that the State is under no obligation to apply any monies it receives under this **clause 46.9** towards the cost of satisfying the conditions precedent to Handback.
  - (h) **(Return of Handback Bonds or Retention Funds)**: If after:
    - (i) the State has recovered the amounts (if any) it is entitled to recover out of the Retention Fund Account or Handback Bond under **clause 46.9(c)**, **46.9(e)(i)** or **46.9(e)(ii)** (as applicable); and
    - (ii) any set off or deduction by the State under **clause 38.9**,
 the State will:
    - (iii) subject to the State's right to have recourse to the Handback Bonds, return any Handback Bond; and
    - (iv) if there is any money remaining in the Retention Fund Account (including accrued interest), pay such money to Operator Franchisee.
  - (i) **(No limitation of rights)**: Nothing in this **clause 46** will limit the State's rights against Operator Franchisee, whether under the State Project

Documents or otherwise according to Law, in respect of any Defect or other failure to comply with this **clause 46**.

## **47 Transition to the State or another operator franchisee**

### **47.1 Maintenance as a going concern**

Operator Franchisee must maintain and manage the Project in a way that the State or a New Operator Franchisee is able at any time to immediately take over the Project as a going concern.

### **47.2 Handback packages**

Operator Franchisee must:

- (a) as soon as practicable after Date of Completion (and in any event as a condition precedent to Close Out), prepare and provide to the State for inspection two handback packages, each of which must contain at a minimum the information set out in **schedule 8**, such information to be current as at the time of preparation;
- (b) ensure that each handback package contains such other information the State may reasonably specify from time to time;
- (c) ensure that the information contained in each handback package is up to date as of 31 December and 30 June of each Operating Year;
- (d) provide an up to date handback package to the State no later than 30 September each year;
- (e) ensure that, on or before the expiry or termination of the Term, a New Operator Franchisee has access to a handback package on the date notified by the State to Operator Franchisee;
- (f) keep the handback packages at the locations nominated by the State;
- (g) upon request by the State (such a request to be made no more than once in each Operating Year), provide a report from Operator Franchisee's auditors addressed to the State which confirms that the handback packages contain the required information; and
- (h) provide copies of the handback packages or make the handback packages available for inspection to the State and its Associates whenever reasonably requested by the State.

### **47.3 Return of the System**

At the end of the Term (whether by expiry or termination), Operator Franchisee must:

- (a) surrender and return to the State the Project Works or the System (as applicable);
- (b) transfer (or procure the transfer) to the State or its nominee of all title, interest and rights in and to the Project Works or the System (including a supply of Spares, consumables and rotatable components as required by annexure 16 (Asset Management Requirements) of the PSR and the Operating Plan, which at a minimum must include those Spares listed in the Asset Management Plan at that time) (as applicable) and any goods and materials comprising the Project Works or the System (as applicable):

- (i) free from any encumbrances;
  - (ii) if Completion has occurred, in a state and condition which complies with the Handback Condition (fair wear and tear excepted); and
  - (iii) which will, without further action by any party, immediately vest in and become the absolute property of the State or its nominee; and
- (c) transfer to the State or its nominee all of Operator Franchisee's rights, title and interest (if any) in any Extra Land held by Operator Franchisee at the end of the Term.

#### **47.4 Duty to Co-operate**

During:

- (a) the final six months prior to the Expiry Date (or any early period required by the State with respect to any re-tendering or prospective re-tendering of the Project Activities) until six months after the Expiry Date; or
- (b) the period (if any) after a notice of termination has been given under **clause 45** until twelve months later,

(as applicable) Operator Franchisee must co-operate fully with the transfer of responsibility from Operator Franchisee to the State or any New Operator Franchisee, including:

- (c) transferring or procuring the transfer of all title, interest and rights in and to the System in accordance with **clause 47.3(b)**;
- (d) arranging or liaising with the State or any New Operator Franchisee (or both, as required), and providing reasonable assistance and advice concerning the Project Activities and their transfer to the State or to such New Operator Franchisee, including providing any relevant training regarding the Project Activities;
- (e) arranging to provide sufficient information to the State or any such New Operator Franchisee (or both, as required) to determine the status and condition of the System and any works, maintenance or refurbishment programs in progress at that time; and
- (f) arranging to allow any New Operator Franchisee access (at reasonable times and on reasonable notice) to the Project Area, but not so as to interfere with or impede the provision of the Project Activities.

#### **47.5 Transition Officer**

- (a) **(State Transition Officer):** The State may, by notice to Operator Franchisee, appoint one or more representatives to attend any part of the System (including the Depot or OCC) to undertake such activities as the State reasonably requires in connection with the preparation for, and the conduct of, a tender for the operation of all or any part of the System or to facilitate the continuity of the operation of the System and its transfer as a going concern to the State or a New Operator Franchisee at the end of the Term.
- (b) **(Operator Franchisee Transition Officer):** Operator Franchisee must, by notice to the State, appoint a representative reasonably acceptable to the State to liaise with the State, and undertake such activities as the State reasonably requires, in connection with Operator Franchisee's obligations under this **clause 47**, including (upon request by the State) assisting in the

preparation for, and the conduct of, a tender for the operation of all or any part of the System or to facilitate the continuity of the operation of the System and its transfer as a going concern to the State or a New Operator Franchisee at the end of the Term.

- (c) Operator Franchisee must ensure that each Transition Officer:
  - (i) has all necessary access to the books, financial records, agreements and any other records or other material kept by or on behalf of Operator Franchisee and to all offices, depots, maintenance facilities and other premises or facilities used by Operator Franchisee in connection with the Project; and
  - (ii) is provided with office accommodation, computer access and printing facilities reasonably required by the Transition Officer,

provided that each Transition Officer may only access information, agreements, records or other material to which the State is entitled to access under a State Project Document.

#### **47.6 Termination prior to Completion**

In addition to the other requirements of this **clause 47**, the State may require Operator Franchisee to do any or all of the following upon termination of this deed:

- (a) without limiting **clause 47.8**, procure a novation to the State or the New Operator Franchisee of any relevant Core Contract or Significant Contract;
- (b) if this deed is terminated during the D&C Phase, give, and require its Associates to give to the State or the New Operator Franchisee possession of the Materials, temporary works and tools being used in the Project Activities and other things on or in the vicinity of the Project Area, in each case which are owned by Operator Franchisee or its Associates and are reasonably required to facilitate completion of the Project Works;
- (c) deliver, and require its Associates to deliver, to the State or any such New Operator Franchisee (or both, as required), true copies of the books of account and all other records and documents relating to the Project Activities; and
- (d) do all other acts and things reasonably required to enable the State or any New Operator Franchisee (or both, as required) to undertake the Project Activities including complying with Operator Franchisee's obligations under **clause 51**.

#### **47.7 Re-tendering requirements**

- (a) Operator Franchisee must provide the State and its Associates with:
  - (i) copies of the books, financial records, agreements and any other records and other material kept by or on behalf of Operator Franchisee in connection with the Project (including books, financial records, agreements and any other records or other material which have previously been provided to the State or an Authority); and
  - (ii) access to Operator Franchisee's employees,

for the purpose of the State and its Associates preparing reports or other documents in connection with any tender process or consideration of any proposed tender process.



- (b) Without limiting any of Operator Franchisee's obligations under this **clause 47**, if the State elects to tender the right to:
  - (i) if Completion has not been achieved, carry out any or all of the Project Works;
  - (ii) operate all or any part of the System or the Project;
  - (iii) design, construct, operate or maintain a Future Stage; or
  - (iv) provide any other passenger services or operate any rolling stock or light rail system,

Operator Franchisee must use reasonable endeavours to assist the State with such tender. In particular, Operator Franchisee must:

- (v) provide copies of or otherwise make available to the State and its Associates any information (including information which has previously been provided to the State or any Authority);
  - (vi) assist in the verification of any information (including the provision of answers to verification questions); and
  - (vii) make premises and activities undertaken at the premises reasonably available for inspection by a prospective New Operator Franchisee,
- as reasonably required in connection with the tendering process. Operator Franchisee's obligations under this **clause 47.7(b)** do not require Operator Franchisee to undertake activities which will unduly interfere with the Project Activities, however Operator Franchisee acknowledges that compliance with this **clause 47.7(b)** will cause some disruption or interference with the Project Activities.
- (c) All assistance provided by Operator Franchisee under **clause 47.7(b)** must be provided within the timeframe reasonably specified by the State or, if no timeframe is specified, within a reasonable time.
  - (d) Operator Franchisee warrants to the State that to the best of its belief all information it provides under **clause 47.7(b)** will be, at the time it is provided, true and correct in all material respects and will not be misleading, by omission or otherwise. The State may not provide or purport to provide the benefit of this warranty to any other recipient of the information and must use reasonable endeavours to ensure that Operator Franchisee obtains the benefit of any disclaimer or exclusion of liability in respect of the information which the State obtains for itself from the recipient of the information.

#### **47.8 Novation of contracts**

Operator Franchisee must procure the novation to the State or the New Operator Franchisee of any agreement, sublease or licence relating to the Project Activities which the State may nominate, with effect from the end of the Term or such other date as the State may agree.

#### **47.9 Handback of documents at end of Term**

At or before the end of the Term, Operator Franchisee must deliver to the State or any New Operator Franchisee (or both, as required) all System Documentation and any other documents and information concerning the Project Activities which is required for the efficient transfer of responsibility for their performance.

## 47.10 Operator Franchise Employees

- (a) In this **clause 47.10**, the following terms have the following meanings:

**Active Member** means a person who contributes to, or who is accruing benefits in, a superannuation fund.

**Operator Franchise Employees** means:

- (i) each employee of Operator Franchisee;
  - (ii) each employee of a Related Body Corporate of Operator Franchisee who is employed in relation to the Project or to carry out any Project Activities; and
  - (iii) each employee of a Related Body Corporate of Operator Franchisee, if the Related Body Corporate is engaged by Operator Franchisee as a subcontractor in relation to the Project or the Project Activities.
- (b) **(Variation employment terms):** Operator Franchisee must not (and must procure that each Related Body Corporate of Operator Franchisee does not), except with the prior consent of the State (such consent not to be unreasonably withheld), vary, or purport or promise to vary, the terms or conditions of employment (including superannuation entitlements) of any Operator Franchise Employee if:
- (i) the variation takes effect within 6 months before the end of Term unless it is in the ordinary course of business or is a variation imposed by a determination or order of the Australian Industrial Relations Commission or the Fair Work Commission and, when aggregated with any other variation which takes effect during that period, represents a percentage increase in the remuneration of the Operator Franchise Employee of no more than the percentage increase in CPI over the 12 month period ending on the month for which that index was last published;
  - (ii) all or part of the variation first takes effect after the end of the Term;
  - (iii) the variation results in the employment being for a fixed term, the expiry of which is more than 6 months after the end of the Term;
  - (iv) the variation relates to a payment or the provision of a benefit triggered by termination of employment (other than the Operator Franchise Employee's entitlements at Law);
  - (v) the variation relates to the provision of a benefit (but excluding base salary and the employee's legal entitlements) which the Operator Franchise Employee will or may have a contractual right to receive after the end of the Term; or
  - (vi) the variation prevents, restricts or hinders the Operator Franchise Employee from working for a New Operator Franchisee or from performing the duties the Operator Franchise Employee performed for Operator Franchisee.
- (c) **(Certified Agreements and Queensland Workplace Agreements):** Operator Franchisee must honour:
- (i) any Certified Agreements or Queensland Workplace Agreements (within the meaning given to those terms in the *Industrial Relations Act 1999* (Qld)) and any enterprise agreements (within the meaning given

to that term in the *Fair Work Act 2009* (Cth)) to which Operator Franchisee is a party; and

- (ii) any other agreements that Operator Franchisee enters into with any Operator Franchise Employees for so long as they remain in force.
  - (d) **(Availability of Operator Franchise Employees and subcontractors to New Operator Franchisee):** Operator Franchisee must ensure (and must procure that its Related Bodies Corporate ensure) that an appropriate number of Operator Franchise Employees, having sufficient skills, qualifications and experience (having regard to the number, skills, qualifications and experience of employees required by Operator Franchisee to operate the System) are available to be employed by a New Operator Franchisee following the end of the Term to enable the New Operator Franchisee to operate the System after the end of the Term.
  - (e) **(New Operator Franchisee to make offers):** At the request of Operator Franchisee, the State must procure that any New Operator Franchisee makes offers of employment to all of the Operator Franchise Employees on terms and conditions that are substantially similar to and considered on an overall basis, no less favourable than the terms and conditions of their employment with Operator Franchisee immediately before the proposed transfer date. Such offers must:
    - (i) recognise continuity of service for all employment related entitlements; and
    - (ii) meet any criteria as to "acceptable alternative employment" for the purpose of any exemption from the liability of Operator Franchisee to make redundancy payments set out under any applicable legislation, award or workplace or enterprise agreement which applies to the Operator Franchise Employees as at the termination or expiry of the Term.
- Offers made by a New Operator Franchisee will take effect from the expiry or termination of this deed.
- (f) **(Treatment of superannuation):**
    - (i) Throughout the Term, Operator Franchisee must make all employer contributions in respect of each Operator Franchise Employee who is an Active Member of a superannuation fund as are sufficient to avoid the imposition of a superannuation guarantee charge pursuant to the *Superannuation Guarantee (Administration) Act 1992* (Cth) in respect of the Term.
    - (ii) Provided Operator Franchisee complies with **clause 47.10(f)(i)**, Operator Franchisee will have no ongoing obligations in respect of the superannuation entitlements of Operator Franchise Employees accruing after the end of the Term.

## **47.11 Transfer of Responsibility**

Operator Franchisee must:

- (a) facilitate the smooth transfer of responsibility of the performance of the Project Activities to the New Operator Franchisee or to the State, as the case may be;

- (b) take no action at any time during the Term or thereafter which is calculated or intended, directly or indirectly, to prejudice or frustrate or make such transfer more difficult; and
- (c) do all other acts and things reasonably required to enable the State and any New Operator Franchisee to be in a position to complete the Project Works and operate, maintain and repair the System.

#### **47.12 Non frustration of transfer**

Operator Franchisee must not do anything which directly or indirectly avoids, or materially prejudices or frustrates:

- (a) the transfer as a going concern of the Project at the end of the Term to the State or a New Operator Franchisee; or
- (b) a provision of a Project Document which is included in whole or in part for the purpose of facilitating the transfer as a going concern of the Project at the end of the Term to a New Operator Franchisee.

#### **47.13 Power of attorney**

Operator Franchisee irrevocably appoints, with effect from the expiry of the Term, the State and such persons as are from time to time nominated by the State, jointly and severally, as its attorney with full power and authority to execute any agreement or novation contemplated by this **clause 47**.

## PART J – ADMINISTRATION OF PROJECT

### 48 Access and inspections

#### 48.1 State right of entry

The State, its Associates and any other person authorised by the State will:

- (a) subject to the observance of Operator Franchisee's reasonable rules or requirements as to safety or security on the relevant part of the Project Area which are applied generally by Operator Franchisee, have the right to enter the Project Area at any time:
  - (i) during the D&C Phase, during Business Hours;
  - (ii) during the Operations Phase, during Operating Hours; or
  - (iii) if the State (or a person authorised by the State) requires access outside the hours specified in **clauses 48.1(a)(i) and 48.1(a)(ii)**, on 24 hours' notice (except in the case of emergency when the right of access will be immediate); and
- (b) be entitled to exercise the right of entry under **clause 48.1(a)** for the purposes of:
  - (i) observing the Project Activities and monitoring compliance by Operator Franchisee with its obligations under the State Project Documents;
  - (ii) exercising any right or performing any obligation which the State has under any State Project Document or under any Law or to satisfy the requirements of any Authority; or
  - (iii) carrying out any activity which does not adversely interfere with the ability of Operator Franchisee or its Associates to carry out the Project Activities.

#### 48.2 State right to inspect

- (a) Without limiting **clause 48.1**, the State (or any person authorised by the State) may inspect the Project Activities (wherever occurring, including the locations where Rolling Stock or other components of the System are being manufactured) during Business Hours and subject to reasonable safety and security constraints.
- (b) Operator Franchisee acknowledges that:
  - (i) the State owes no duty to Operator Franchisee to:
    - (A) inspect the Project Activities; or
    - (B) review manufacturing, construction, installation, maintenance or repair work for errors, omissions or compliance with the requirements of the State Project Documents if it does so inspect; and
  - (ii) any inspection of the Project Activities or review of manufacturing, construction, installation, maintenance or repair work (or lack of inspection or review) by or on behalf of the State will not in any way lessen or affect:

- (A) Operator Franchisee's obligations whether under the State Project Documents or otherwise according to Law; or
  - (B) the State's rights against Operator Franchisee whether under the State Project Documents or otherwise according to Law.
- (c) The State will carry out any such inspection in a manner which does not unreasonably interfere with the Project Activities.
- (d) Operator Franchisee must use reasonable endeavours to:
  - (i) coordinate the Project Activities so they do not interfere with the inspection; and
  - (ii) provide the State with every reasonable facility and other assistance necessary for the inspection, including providing access to any systems, registers, manuals, records (including financial records), plans and programs maintained in relation to the Project Activities.
- (e) If an inspection shows that Operator Franchisee has not complied or is not complying with its obligations under the State Project Documents, the State:
  - (i) must notify Operator Franchisee of the details of the non-compliance;
  - (ii) must specify a reasonable period within which Operator Franchisee must carry out appropriate rectification or remedy activities; and
  - (iii) will be entitled to be reimbursed by Operator Franchisee for the cost of the inspection and any reasonable administrative costs incurred by the State in relation to the inspection.
- (f) Operator Franchisee must at its own cost carry out such rectification or remedy activities within the period specified by the State, and the State may carry out or procure the carrying out of an additional inspection to assess compliance with the requirement to carry out such rectification or remedy activities.

### 48.3 Access to information

Without limiting any other provision of the State Project Documents:

- (a) the State may at any time notify Operator Franchisee that it requires access to any information held by or on behalf of Operator Franchisee which:
  - (i) relates to the Project Activities (including results from the operation of the Base Case Financial Model, in a form reasonably satisfactory to the State);
  - (ii) has been collected from members of the public by Operator Franchisee in relation to the Project Activities; or
  - (iii) is received by Operator Franchisee from the State to enable Operator Franchisee to perform the Project Activities;
- (b) upon receipt of a notice under **clause 48.3(a)**, Operator Franchisee must immediately provide the required information to the State other than to the extent it is information which is:
  - (i) subject to legal professional privilege; or
  - (ii) information in respect of which Operator Franchisee owes a third party an obligation of confidence and despite Operator Franchisee having used its best efforts it has been unable to obtain third party consent to the release of that information; and

- (c) the State may review, copy, retain or otherwise deal with such information to enable it to satisfy any obligations under any Law.

#### **48.4 Access to third parties' information**

Operator Franchisee must:

- (a) ensure that the State and any persons authorised by the State have direct access to any System Documentation or other information, documents or material which is maintained by third parties (including Operator Franchisee's Associates) and which type of information, document or material the State is entitled to have access to, or have copies of, from Operator Franchisee under the State Project Documents;
- (b) ensure that any contractual arrangements between Operator Franchisee or its Associates and any third parties acknowledge the State's right of access under **clause 48.4(a)**; and
- (c) provide to the State on demand evidence (including copies of any contractual arrangements referred to in **clause 48.4(b)**) showing compliance by Operator Franchisee with its obligations under **clause 48.4(b)**.

#### **48.5 Operator Franchisee to cooperate**

Operator Franchisee must cooperate, and must procure that its Associates cooperate, with the State and any persons authorised by the State in the exercise of the State's rights under this **clause 48**.

### **49 Records and reporting obligations**

#### **49.1 Accounting records**

- (a) Operator Franchisee must keep at its registered office proper books of account and all other financial and financial planning records that would be expected of a prudent and competent person undertaking similar obligations as Operator Franchisee undertakes under the Project Documents.
- (b) Without limiting **clause 49.1(a)**, Operator Franchisee must keep and maintain a full record of the construction, manufacture, installation, operation, maintenance and financing costs incurred in carrying out the Project Activities and details of funds held to cover such costs.
- (c) Operator Franchisee must:
  - (i) have its financial accounts audited annually; and
  - (ii) ensure that its Core Contractors and the Core Guarantors have their financial statements audited annually, in the case of the D&C Contractor and the D&C Guarantor until the expiry of the D&C Defects Liability Period (as defined in the D&C Contract).
- (d) Operator Franchisee must ensure the books of account and records of Operator Franchisee are available to the State and its nominees at all reasonable times during the Term for examination, audit, inspection, transcription and copying.
- (e) Without limiting Operator Franchisee's obligations under **clause 46**, if this deed is terminated, Operator Franchisee must give the State and its Associates access to all of Operator Franchisee's books of account and records necessary for continued design, construction, manufacture,

installation, operation, maintenance and refurbishment of the System and performance of the Project Activities.

- (f) Without limiting **clause 49.11**, the State must give Operator Franchisee access to any books of account or records given to the State by Operator Franchisee for 7 years after the date on which they are given.

#### **49.2 Cost to complete information**

Operator Franchisee must give the State the same information required to be given to any Debt Financier under the Debt Financing Documents in relation to the cost to complete the Project Works, at such times as are required under the Debt Financing Documents.

#### **49.3 Financial reporting**

- (a) Not later than 4 months after the end of each financial year, Operator Franchisee must give the State:
  - (i) unconsolidated audited financial statements for the previous financial year for Operator Franchisee;
  - (ii) the audited financial statements for the previous financial year of any consolidated entity of which Operator Franchisee forms part;
  - (iii) the audited financial statements for the previous financial year of:
    - (A) each joint venture partner comprising the D&C Contractor; and
    - (B) the O&M Contractor; and
  - (iv) a statement in such detail as the State may reasonably require reconciling the information in the audited financial statements of Operator Franchisee with the Base Case Financial Model and with any financial information or financial model information provided for or utilised for the purposes of the Debt Financing Documents.
- (b) Within 20 Business Days after each six month period during a financial year, Operator Franchisee must provide to the State its unaudited management accounts, a statement of financial performance, a cash flow statement and a statement of financial position, together with details of any Financial Indebtedness and an explanation of any material variations between actual and budgeted performance.
- (c) Without limiting **clause 49.2**, Operator Franchisee must promptly provide to the State copies of all documents, reports, plans, materials, certificates, notices (including any updated financial models or reports) which Operator Franchisee provides to any Debt Financier.
- (d) Each of the documents to be provided to the State in accordance with this **clause 49.3** must be accompanied by a certificate signed by an authorised officer of the relevant entity certifying that the information provided is accurate, complete and correct in all respects.
- (e) Operator Franchisee must prepare (or procure the preparation of) the accounts and financial statements required under this **clause 49.3** in compliance with Law and, without limitation, in accordance with the accounting principles generally accepted in Australia and consistently applied.



#### **49.4 Other reporting**

(a) Operator Franchisee must:

- (i) monitor its performance in carrying out the Project Activities and maintain the information, programs, plans, procedures, standards, policies, systems, records and manuals required in accordance with the procedures set out in this deed (including the PSR);
- (ii) accurately, clearly and concisely document all business and other processes, including properly documented operating manuals, in relation to the System and the Project Activities; and
- (iii) if a significant change is made to the business and other processes in relation to the O&M Activities, provide the State with such amended documentation within 20 Business Days of the change being made.

#### **49.5 Operation and maintenance costs**

Without limiting Operator Franchisee's other obligations under this **clause 49**, Operator Franchisee must give the State such information relating to the cost of operating, maintaining and repairing the System as the State may reasonably require from time to time.

#### **49.6 Notices under Project Documents**

Operator Franchisee must give the State as soon as practicable copies of all notices of default, breach or dispute given or received by it under the Project Documents (other than those given or received under this deed or the Debt Finance Side Deed).

#### **49.7 Advice on rights of third parties under State Project Documents**

Operator Franchisee undertakes to advise the State as soon as practicable after an event has occurred which, to Operator Franchisee's actual knowledge, could in any way materially prejudice the State's rights under the State Project Documents by reason of the exercise of rights available to third parties arising from the Project Documents.

#### **49.8 Other information**

Operator Franchisee must:

- (a) give the State, as soon as practicable, copies of:
  - (i) all notices and other documents given or received by Operator Franchisee or an Equity Investor to or from the Australian Securities and Investments Commission or the Australian Stock Exchange Limited;
  - (ii) all notices and other documents given or received by an Equity Investor to or from the Australian Securities and Investments Commission; and
  - (iii) all other notices to Equity Investors and all notices from an Equity Investor to the holder of any securities issued by the Equity Investor;
- (b) give the State, if the State is, or is likely to become, liable to pay a Termination Payment under **clause 45.8**, reasonable details of each component of that amount and the way in which the component was calculated, promptly after being requested to do so by the State;

- (c) give the State details of any changes to the Counterparty Details within 20 Business Days after the change; and
- (d) promptly give the State such other information relating to the Project as the State may reasonably require from time to time.

#### **49.9 State financial audit**

- (a) At any time up to 6 months after the last day of the Term, the State may give notice to Operator Franchisee (**Financial Audit Notice**) requiring an independent audit of any annual financial statements or other financial information of Operator Franchisee provided pursuant to **clause 49.3** to be undertaken for the purpose of reviewing any such financial statements or other financial information and verifying their accuracy, correctness and completeness.
- (b) If the State gives a Financial Audit Notice under this **clause 49.9**:
  - (i) the State will appoint, and notify Operator Franchisee of, an appropriately trained and qualified person to carry out and complete the audit (**Financial Auditor**), at the State's cost and expense, on terms and conditions of appointment determined by the State; and
  - (ii) Operator Franchisee must, within a reasonable period, make its financial statements, other financial reports and accounts and all source information, documentation and data required for the preparation of such annual financial statements or other financial reports, available for audit by the Financial Auditor.
- (c) Upon request by the Financial Auditor, Operator Franchisee must make available to the Financial Auditor an appropriately trained and qualified member of Operator Franchisee's staff (or staff of an Operator Franchisee Associate) to extract any relevant information from Operator Franchisee's accounting system for the purposes of the audit.
- (d) If the report of the Financial Auditor (**Financial Auditor's Report**) states that any annual financial accounts, or any other financial reports, or any part of them is not accurate, complete and correct, then:
  - (i) Operator Franchisee must:
    - (A) fix the inaccuracy, incorrectness or incompleteness in the affected accounts or data and re-issue the affected accounts or data to the State; and
    - (B) as applicable, promptly take steps to remedy the inaccuracy, incorrectness or incompleteness in its monitoring, measuring and reporting systems;
  - (ii) if the inaccuracy, incorrectness or incompleteness has affected the amount of any Service Payment or any other amount that has been paid to Operator Franchisee, the State will determine, and notify Operator Franchisee of, the amount of the appropriate adjustment to the affected amounts and that amount will be added to or deducted from (as the case may be) the next Service Payment scheduled after the date of the State's notice; and
  - (iii) Operator Franchisee will reimburse the State the costs of the Financial Auditor in carrying out the audit pursuant to this **clause 49.9**.

## 49.10 Privacy

- (a) **(Compliance with privacy principles and plans):** Operator Franchisee must:
  - (i) comply with the Privacy Principles and Operator Franchisee's Privacy Plan; and
  - (ii) provide all reasonable assistance to enable the State to comply with the Privacy Principles.
- (b) **(Personal Information):** Without limiting **clause 49.10(a)**, Operator Franchisee must ensure that Personal Information is collected, used, disclosed and handled by it in accordance with Operator Franchisee's Privacy Plan and the State Project Documents.
- (c) **(Operator Franchisee's Privacy Plan):** At least 20 Business Days prior to the first occasion on which Operator Franchisee will handle any Personal Information in undertaking the Project Activities, Operator Franchisee must submit to the State an Operator Franchisee's Privacy Plan which sets out Operator Franchisee's procedures in relation to privacy protection and includes, as a minimum, procedures which:
  - (i) ensure that Operator Franchisee will comply with the Privacy Principles;
  - (ii) are consistent with the Privacy Principles as they apply to the State; and
  - (iii) are consistent with Good Industry Practice.
- (d) **(State review):** The State will have the right to comment on Operator Franchisee's Privacy Plan and Operator Franchisee must amend Operator Franchisee's Privacy Plan to address any comments by the State.
- (e) **(Updating of Operator Franchisee's Privacy Plan):** Throughout the Term, Operator Franchisee must review and, if necessary, update Operator Franchisee's Privacy Plan:
  - (i) to take account of:
    - (A) events or circumstances which will, or may, affect the manner in which Operator Franchisee carries out the Project Activities; and
    - (B) any evolution in technology and in security threats; and
  - (ii) upon request by the State.
- (f) **(Submission of updated plan):** Operator Franchisee must submit any plan updated in accordance with **clause 49.10(e)** to the State, in which case **clause 49.10(d)** will reapply.
- (g) **(Subcontracts):** Operator Franchisee must ensure any subcontract entered into by Operator Franchisee or its Associates with a contractor who collects, uses, stores, disposes or discloses Personal Information contains provisions to the same or similar effect as **clauses 49.10**.
- (h) **(Audit):** The State may require Operator Franchisee and any Core or Significant Contractor to have their privacy procedures audited by a qualified nationally recognised firm provided that it is not entitled to require such an audit more frequently than annually. Operator Franchisee and the Core or Significant Contractor (as applicable) must take such action as is reasonable

to comply with any exceptions or discrepancies discovered by any such audit.

#### **49.11 Retention of records**

Operator Franchisee must retain all records and statements in relation to the Project for at least 7 years after the end of the Term.

## **50 Disclosure, confidentiality and publicity**

### **50.1 Disclosure by the State**

- (a) Subject to **clause 50.1(b)**, the State may publish or disclose (on the internet or otherwise):
  - (i) the terms and conditions of any Project Document; and
  - (ii) any document or information arising under, out of or in connection with any Project Document or relating to the performance of any Project Document.
- (b) To the extent that the information proposed to be published or disclosed by the State under **clause 50.1(a)** (and without limiting the State's rights to publish or disclose information under **clause 50.2(a)**) contains Commercially Sensitive Information:
  - (i) the State may publish or disclose the information under **clause 50.1(a)** without consultation with Operator Franchisee if the Commercially Sensitive Information is redacted or otherwise not disclosed;
  - (ii) the State will use reasonable endeavours to maintain the confidentiality of the Commercially Sensitive Information (and the parties acknowledge that the State will have done so to the extent that disclosure of the Commercially Sensitive Information is reasonably necessary to give effect to any re-tender process or novation under **clause 47** or to give effect to any re-tendering procedure or calculation of the Estimated Fair Value under **schedule 7** and the State uses reasonable endeavours to procure that any third party to whom any Commercially Sensitive Information is disclosed has entered into a confidentiality agreement agreeing to keep such information confidential); and
  - (iii) without limiting **clause 50.1(b)(ii)**, if the State proposes to disclose any Commercially Sensitive Information, the State must use reasonable endeavours to give Operator Franchisee prior notice of that intention and must consult with Operator Franchisee prior to disclosing any Commercially Sensitive Information, however the State may disclose the Commercially Sensitive Information if disclosure is required under any applicable government policy.

### **50.2 Public disclosure**

- (a) Operator Franchisee acknowledges and agrees that disclosures regarding the Project by the State, the State or any Authority may be required:
  - (i) under the *Right to Information Act 2009* (Qld) or any similar or replacement legislation; and

- (ii) to satisfy the disclosure requirements of the Auditor General or to satisfy the requirements of Parliamentary accountability, including tabling information concerning the Project Documents in Parliament, (**Public Disclosure Obligations**).
- (b) Operator Franchisee must, at its own cost and expense, use all reasonable endeavours to assist the State or an Authority in meeting its Public Disclosure Obligations.

### 50.3 Publicity

Except for notices which Operator Franchisee is required to disclose to any recognised stock exchange, Operator Franchisee must:

- (a) not make any public announcements or statements in relation to the Project (including by posting any information relating to the Project on any website) without the State's prior consent;
- (b) use reasonable endeavours to agree with the State the wording and timing of all public announcements and statements by it or its Associates relating to the Project before the relevant announcement or statement is made;
- (c) give the State a draft of any proposed media release relating to the Project and obtain the State's approval of the media release before distributing it;
- (d) give the State a copy of any announcement or media release as soon as practicable after it is made or distributed; and
- (e) ensure that all of its Associates comply with the requirements referred to in this **clause 50.3**.

## 51 Intellectual Property

### 51.1 Definitions

For the purposes of this **clause 51**, the following definitions will apply:

**Brand** means all goodwill associated with the Project including:

- (a) the System Name and any associated branding, including as identified in **paragraphs (b) to (d)**;
- (b) all registered and unregistered trade marks (other than Excluded Brands);
- (c) all names including business names, domain names and company names; and
- (d) all telephone numbers, email addresses and all other addresses used by the general public in relation to the Project to make contact using a telecommunication network.

**Core IP Providers** means any person nominated by the State as a Core IP Provider under **clause 51.16(g)**.

**Data** means all data and expressions of data contained in, or processed or generated by, the Project Activities or produced as a result of the Project Activities, including:

- (a) all data and expressions of data contained in all images contained in or processed or generated by the Project Activities;

- (b) all data and expressions of data comprising reports generated by the Project Activities; and
- (c) all data and expressions of data about or relating to or generated by Operator Franchisee or its Associates stored within the Project.

**Deed of Assurance** means a deed from a Core IP Provider in favour of the State, substantially in the form set out in Part B of **schedule 13**.

**Domain Names** means any domain names used by Operator Franchisee in relation to the Project.

**Equipment** means any hardware, equipment, devices, plant, machinery, fixtures, vehicles and furniture forming part of the Project.

**Equipment IP** means Intellectual Property in all and part of:

- (a) the Equipment; and
- (b) computer programs supplied as a component of, embedded in or forming part of the Equipment and without which such tangible items cannot operate, such as Software known as "device" Software or Firmware,

but excluding any Intellectual Property which is owned by Operator Franchisee or its Associates or which is State IP.

**Escrow Agent** means, at any time, the person appointed as escrow agent under the Escrow Deed. At the date of this deed, the Escrow Agent is BTA Institutional Services Australia Ltd ACN 002 916 396.

**Escrow Deed** means an agreement between the State, Operator Franchisee and the Escrow Agent, substantially in the form set out in Part A of **schedule 13**.

**Escrow Material** means each of the following to the extent necessary for the State to exercise its rights under **clause 51.5**:

- (a) all the source code for the Software contained or to be contained in the items or material identified in **paragraphs (a) to (d)** of the definition of Licensed Intellectual Property;
- (b) all documentation necessary for the State, or that a person in the State's position would otherwise require, to modify, maintain, test, further develop or regenerate the Software contained in the items or material identified in **paragraphs (a) to (d)** of the definition of Licensed Intellectual Property or otherwise exercise any rights of ownership under this **clause 51**;
- (c) any Software tools, object libraries and methodologies necessary for the State, or that a person in the State's position would otherwise require, to modify, maintain, test, further develop or regenerate the bespoke components of the items or material identified in **paragraphs (a) to (d)** of the definition of Licensed Intellectual Property, including the Existing Tools, that has not been and is not required to be provided to the State under this **clause 51**;
- (d) the Vehicle Escrow Material; and
- (e) the Signalling System Escrow Material,

irrespective of whether or not it has been especially customised or developed for the purposes of the State Project Documents.

**Excluded Brands** means those trade marks of Operator Franchisee's Associates which are used in their business generally and are applied by them to services,

devices or equipment they supply, but which do not include, directly or indirectly, any brands which are created or developed in connection with the Project or any part of the Project.

**Excluded Rolling Stock Intellectual Property** means any Intellectual Property in the Excluded Documentation (LRV) and Excluded Documentation (Control System).

**Excluded Trade Marks** means those trade marks of Operator Franchisee's Associates (or any shareholder in any of Operator Franchisee's Associates) which are used in the ordinary course of their business and which are applied by them to services, devices or equipment which they supply, but does not include any trade marks which are created or developed in connection with the Project or any part of the Project.

**Existing Tools** means any tools, object libraries and methodologies existing at the date of this deed which are owned by Operator Franchisee or in which Operator Franchisee has sufficient rights to grant sub-licences.

**Firmware** means a set of coded instructions embedded within a device or component of a device that performs functions or provides data to enable the device to operate in a specified manner.

**Intellectual Property** includes any and all intellectual and industrial property rights throughout the world, whether subsisting now or in the future, including rights of any kind in:

- (a) inventions, discoveries and novel designs, whether or not registered or registrable as patents, innovation patents or designs, including developments or improvements of equipment, technology, processes, methods or techniques;
- (b) literary works, dramatic works, musical works, artistic works, cinematograph films, television broadcasts, sound broadcasts, published editions of works and any other subject matter in which copyright (including future copyright and rights in the nature of or analogous to copyright) may, or may upon creation of the subject matter, subsist anywhere in the world;
- (c) registered and unregistered trade marks and service marks, including goodwill in the business concerned in the relevant goods or services;
- (d) trade, business or company names;
- (e) internet domain names; and
- (f) proprietary rights under the *Circuit Layouts Act 1989* (Cth),

whether created or in existence before or after the Relevant Date (and whether developed or created for the purposes of the State Project Documents or for any other purpose) and includes any thing, whether tangible or intangible, which incorporates, embodies or is based on any of the things referred to in **paragraphs (a) to (f)** inclusive of this definition.

**Licensed Intellectual Property** means all Intellectual Property (including Software) and trade secrets and know how comprised in or related to:

- (a) all and any part of the Project, the Project Works and the System;
- (b) all and any part of the Project Activities, including all and any items or materials or documents used by Operator Franchisee in undertaking the Project Activities;

- (c) all and any part of the Design Documentation and Construction Documentation; and
- (d) to the extent that it is not included in (a), (b), (c) or (d) the Intellectual Property comprised in the Escrow Material,

excluding Third Party Software, Equipment IP, Excluded Rolling Stock Intellectual Property, State IP, Excluded Trade Marks and Excluded Brands.

**List of Intellectual Property** means a list of each item of Intellectual Property used or to be used by Operator Franchisee or its Associates in performing its obligations under the State Project Documents, which includes, separately identified, the List of Software, and specifies in relation to any Intellectual Property not identified in the List of Software:

- (a) the nature and, if applicable, name of the material in which the Intellectual Property is comprised;
- (b) the owner of the Intellectual Property and, if relevant, the licensor and the licensee of that Intellectual Property;
- (c) the duration of any licence and maintenance agreements; and
- (d) the licence and maintenance fees and similar fees.

**List of Software** means a list of each item of Software used or to be used by Operator Franchisee or its Associates in performing the Project Activities which specifies in relation to each item of Software:

- (a) name and release version of the Software;
- (b) owner and distributor of the Software and, if relevant, the licensor and the licensee of that Software;
- (c) whether the Software is Third Party Software;
- (d) the duration of any licence and maintenance agreements; and
- (e) the licence and maintenance fees and similar fees.

**LRV Supplier** means Bombardier Transportation Australia Pty Ltd.

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

**Operations and Maintenance Data** means all Data relating to the O&M Activities.

**Permitted Security Interest** means:

- (a) a Security Interest to which the State has given its prior consent and in respect of which the amount secured by that Security Interest (other than costs, fees and uncapitalised interest or amounts in the nature of interest) does not increase beyond the amount in respect of which the State has given that consent;
- (b) a Security Interest created under a Debt Financing Document for the benefit of one or more Debt Financiers;
- (c) a lien which arises solely by operation of Law in the ordinary course of Operator Franchisee's business, where the amount secured is not overdue for payment;
- (d) any Security Interest arising out of title retention provisions in a supplier's conditions of supply of goods acquired in the ordinary course of Operator Franchisee's business, where the amount subject to the title retention is not overdue for payment; or



- (e) any Security Interest over any asset of Operator Franchisee created by operation of Law in favour of any governmental agency for the purpose of securing payment of Taxes provided that such Security Interest has not been created pursuant to, or as a consequence of, a default on the part of Operator Franchisee in the due payment of such Taxes.

**Signalling System** means the system that will control the movement of LRVs across the GCRT Network including the vehicle location system (to the extent it forms part of the traffic priority system, as described in the PSR), control of points and point machines themselves including any necessary indicators and the interface to road traffic intersections.

**Signalling System Escrow Material** means all design and construction documentation and drawings and source codes relating to the Signalling System, including:

- (a) application software and drawings for tram location system;
- (b) application software and drawings for point machines; and
- (c) application software, data and drawings for Ebi Screen (automatic vehicle location system front end),

but excluding:

- (d) Design Documentation;
- (e) Construction Documentation; and
- (f) material in the public domain.

**Signalling System IP** means the Intellectual Property comprised in or related to the Signalling System.

**Signalling System Supplier** means Bombardier Transportation Australia Pty Ltd.

**Software** means a set of coded instructions that performs functions or provides working data or parameters to enable a device or system to operate in a specified manner, and be loaded into a system or device dynamically by a user and includes all Firmware and operating systems required by a system or subsystem to perform in a specified manner.

**State IP** means any Intellectual Property licensed to Operator Franchisee under **clause 51.17**.

**Third Party Licences** means all licences, maintenance and similar contracts for the Third Party Software.

**Third Party Software** means commercial, off the shelf Software and Firmware owned by any entity other than the State, Operator Franchisee, a Core Contractor, a Significant Contractor or their Related Bodies Corporate that is:

- (a) comprised in all or any part of the Project, the Project Works or the System;
- (b) otherwise used or to be used by, or on behalf of, Operator Franchisee, a Core Contractor, a Significant Contractor or their Related Bodies Corporate in performing the Project Activities; or
- (c) Software tools necessary for the State, or that a person in the State's position, would otherwise require to modify, maintain, test, further develop or regenerate the bespoke Software contained in the System or otherwise exercise any rights of ownership given to the State under **clause 51.11**,

and is identified as such in the List of Software and any information provided under **clause 51.9(b)(iv)**.

**Trade Marks** means any trade marks used by or on behalf of Operator Franchisee in relation to the Project (other than Excluded Trade Marks).

**Vehicle Escrow Material** means those materials detailed in part B of schedule 17 but excluding:

- (a) Design Documentation;
- (b) Construction Documentation; and
- (c) material in the public domain.

**Vehicle Specification** means the specification for the design and construction of the LRVs.

**Vehicle Supplier** means Bombardier Transportation Australia Pty Ltd.

**Vehicle Third Party IP** means the Intellectual Property comprised in the Vehicle Third Party Subsystems but excluding any Vehicle Third Party System Interface Designs.

**Vehicle Third Party System Interface Designs** means the design of all interfaces between any Vehicle Third Party Subsystem and any other part of the LRVs (including any other Vehicle Third Party Subsystem) or the LRV operating system, including full details of:

- (a) the physical mounting arrangements of the relevant Vehicle Third Party Subsystem, such as the space envelope required, physical fastenings, any vibration dampers or moisture sealants; and
- (b) all electrical, data, hydraulic, pneumatic or other exchange or control mechanisms, and all data and computer software, necessary to ensure the Vehicle Third Party Subsystem (when operating in conjunction with other parts of the LRVs functions in accordance with the Vehicle Specifications.

**Vehicle Third Party Subsystem** means the parts or components of the LRVs specified in part A of **schedule 17**.

## **51.2 Operator Franchisee warranty**

Operator Franchisee represents and warrants that:

- (a) it has all appropriate licences of, or title to, all Intellectual Property that is required by it for the purpose of its obligations under the State Project Documents;
- (b) Operator Franchisee's Associates have all appropriate licences of, or title to, all Intellectual Property that is required for performing their obligations under the Project Documents (excluding Debt Financing Documents and Equity Documents) or performing obligations under the State Project Documents on behalf of Operator Franchisee;
- (c) it does not require any licences of, or title to, any Intellectual Property from the State in order to perform its obligations under the State Project Documents apart from any licences to Intellectual Property or title to Intellectual Property transferred under this deed;
- (d) the Licensed Intellectual Property, the Third Party Software, the Equipment IP and the State IP are all the Intellectual Property that is required for

- Operator Franchisee to carry out its obligations under the State Project Documents;
- (e) it has authority to assign or license (as the case may be) all Intellectual Property granted to the State or its nominees under the State Project Documents;
  - (f) every item of the Software used or to be used in the Project Activities is contained in the List of Software or will be later identified in accordance with **clause 51.9(b)(iv)**;
  - (g) it has the authority to undertake the obligations concerning the Third Party Software contained in **clause 51.11** and the Equipment IP contained in **clause 51.12**;
  - (h) no third party rights or interests will affect the enjoyment of the benefit of the licences in **clause 51.5(a)** or prevent the rights in **clause 51.5(b)**;
  - (i) none of the:
    - (i) provision or performance of the Project Activities, nor anything arising from the provision or performance of the Project Activities; or
    - (ii) the Project Works or the System,
 infringes or will infringe any rights, including any Intellectual Property or Moral Rights, of any third party;
  - (j) other than a Permitted Security Interest, there are no Security Interests, and it will not allow any Security Interests to be created, over any Intellectual Property it contributes to the Project;
  - (k) the use or enjoyment of the Project in accordance with or as contemplated by the State Project Documents by the State or any person authorised by the State in accordance with or as contemplated by the State Project Documents will not infringe any Law, Intellectual Property or Moral Rights or other protected rights of any person, whether in Australia or overseas; and
  - (l) it is not aware of any allegations of infringement or notices of misappropriation issued by any person or any Claims that the Project or its use or enjoyment in accordance with or as contemplated by the State Project Documents infringe or will infringe any rights, including any Intellectual Property or Moral Rights, of any third party.

Each representation and warranty in this **clause 51.2** is a continuing representation and warranty and will be repeated on each day while any obligation under the State Project Documents remains outstanding, with reference to the facts and circumstances then subsisting.

### **51.3 Indemnity**

- (a) Subject to **clauses 42.2 to 42.4**, Operator Franchisee indemnifies the State against:
  - (i) all Claims which may be brought or made against the State by any person in respect of:
    - (A) any alleged or actual infringement of Intellectual Property by Operator Franchisee or its Associates in the course of, or incidental to, performing any obligations under this deed other than to the extent such Intellectual Property is State IP;

- (B) the use by the State of any Intellectual Property that is the subject of the warranty in **clause 51.2(d)**, excluding the State IP;
  - (C) an infringement of Moral Rights resulting from the use, operation, maintenance or modification of the Project Works or the System or any part of them;
- (ii) any Loss (including legal fees on an indemnity basis) that may be suffered or incurred by the State in connection with any such Claim or any Claim arising from a breach of the warranties set out in **clause 51.2**; and
- (iii) any Loss that may be suffered or incurred by the State in connection with the Intellectual Property necessary for the continuation of the Project Activities being unavailable as a result of or in connection with Operator Franchisee not fulfilling its obligations under **clause 51.11**, to obtain the licenses referred to in **clause 51.11**.
- (b) Subject to **clauses 51.3(c)** and **51.3(d)** the State must, as soon as is reasonably practicable after it becomes aware of a claim:
  - (i) notify Operator Franchisee in writing of the alleged infringement;
  - (ii) give Operator Franchisee at the time of notification the option to conduct the defence of the claim; and
  - (iii) provide Operator Franchisee (at Operator Franchisee's expense) with reasonable assistance in conducting the defence of such claim.
- (c) **Clause 51.3(b)** does not apply if:
  - (i) interlocutory proceedings are commenced against the State on an urgent basis;
  - (ii) the State reasonably considers that there is insufficient time to notify Operator Franchisee and for Operator Franchisee to commence defence of such proceedings on behalf of the State;
  - (iii) the State initially defends such proceedings; and
  - (iv) as soon as practicable after the commencement of the proceedings the State gives Operator Franchisee the option to conduct the defence of such proceedings.
- (d) **Clause 51.3(b)** does not apply to claims which would or may prevent the continued development or operation of the Project or the System or continued conduct of the Project Activities and the State:
  - (i) to the extent reasonably practicable, consults in good faith with Operator Franchisee with respect to such claims; and
  - (ii) does not in the course of defending or compromising such claims make admissions which may materially affect the validity of the Licensed Intellectual Property without Operator Franchisee's consent (such consent not to be unreasonably withheld or delayed).

## 51.4 Infringements

- (a) If Operator Franchisee:
  - (i) becomes aware of a Claim by a person that the use of any of the Intellectual Property relating to the Project Works or the System

infringes or amounts to a misuse of the Intellectual Property or other rights of a third party; or

- (ii) believes that the State may have a claim against a person for infringement or misuse of any Intellectual Property in the Project Works or the System,

it must promptly notify the State.

- (b) Notwithstanding **clauses 51.2** and **51.3**, if as a result of any alleged infringement or threatened infringement of Intellectual Property as contemplated by **clause 51.4(a)**, the State, Operator Franchisee or any other entity performing work under the State Project Documents is prevented (whether by court order or otherwise) from exercising Intellectual Property it had been exercising or was proposing to exercise to perform the Project Activities, Operator Franchisee must:
  - (i) secure for the State the right to continue exercise such Intellectual Property;
  - (ii) replace such Intellectual Property with equivalent non infringing Intellectual Property; or
  - (iii) modify any materials, equipment, Software, devices or processes so that they become non infringing or remove any materials, equipment, Software, devices or processes that are infringing and refund sums paid for them without prejudice to any other rights of the State.
- (c) If the amount of time necessary to proceed with one of the options set out in **clause 51.4(b)** is deemed excessive by the State, the State may direct Operator Franchisee to select another option and Operator Franchisee must comply with that direction.
- (d) The steps required for Operator Franchisee to comply with its obligations under **clauses 51.4(b)** and **51.4(c)** are at Operator Franchisee's sole cost and expense unless the alleged infringement or threatened infringement directly arises in respect of State IP, in which case the costs are to be borne based upon the extent of responsibility of each party for the alleged infringement or threatened infringement, as reasonably determined by the State.

## **51.5 Rights granted to the State**

- (a) Operator Franchisee grants to the State and any entity nominated by the State a permanent, perpetual, irrevocable, transferable, royalty free, non exclusive licence to exercise the Licensed Intellectual Property and the Existing Tools to the extent necessary to:
  - (i) complete the Project;
  - (ii) carry out the Project Works or Project Activities; or
  - (iii) operate and maintain the System; and
  - (iv) other than for Vehicle Third Party IP (which is not licensed for this purpose), to interface or integrate the Project, Project Works or the System, or the Project Activities, with the broader GCRT Network (including any Future Stage).
- (b) The licence granted in **clause 51.5(a)**:

- (i) is, where necessary, subject to the release of the Escrow Material from escrow in accordance with the terms of the Escrow Deed;
- (ii) arises in respect of each component of the Licensed Intellectual Property and the Existing Tools upon the later of the Relevant Date or upon the creation of each component of the Licensed Intellectual Property;
- (iii) may be sub-licensed; and
- (iv) will survive expiry of this deed or termination of this deed on any basis.

## **51.6 Access to Intellectual Property**

- (a) Operator Franchisee must if requested by the State:
  - (i) fully disclose to the State all details of the Intellectual Property, trade secrets and know-how required to carry out the Project Works and Project Activities and to design, construct, install, test, commission, operate and maintain the System; and
  - (ii) provide, and procure that any of its Associates involved in the creation, development or use of the Intellectual Property, trade secrets and know-how provide the State with any further information reasonably requested in respect of such Intellectual Property, trade secrets and know-how.
- (b) The details and information the State may request under **clause 51.6(a)** does not include:
  - (i) the Escrow Material until such material is released from escrow; or
  - (ii) the Excluded Rolling Stock Intellectual Property.

## **51.7 Escrow Material**

- (a) At all times during the Term, Operator Franchisee must maintain a copy of the Escrow Material for the current or proposed configuration of the Project, in escrow with the Escrow Agent on the terms of the Escrow Deed.
- (b) The State will be entitled, at no cost to the State, to be provided with the Escrow Material, excluding the Vehicle Escrow Material and Signalling System Escrow Material, at any time if any of the following events occur:
  - (i) this deed is terminated for any Operator Franchisee Termination Event or Force Majeure Event;
  - (ii) the Term expires;
  - (iii) the State exercises any Step-In Rights in accordance with this deed, but only to the extent, and for the period, required for the State to exercise its Step-In Rights; or
  - (iv) the parties otherwise agree to the release of the Escrow Material, provided that in each case the State's entitlement to the Escrow Material is limited to that part of the Escrow Material which the State reasonably needs.
- (c) The State will be entitled, at no cost to the State, to be provided with the Vehicle Escrow Material and Signalling System Escrow Material, at any time if any of the following events occur:
  - (i) this deed is terminated for any Operator Franchisee Termination Event;

- (ii) the date which is 25 years from the date of this deed;
- (iii) the State exercises any Step-In Rights in accordance with this deed, but only to the extent, and for the period, required for the State to exercise its Step-In Rights; or
- (iv) the parties otherwise agree to the release of the Escrow Material; or
- (v)
  - (A) the State wishes to interface or integrate the Project, Project Works or the System, or the Project Activities, with the broader GCRT Network (including any Future Stage);
  - (B) access to the Vehicle Escrow Material and/or Signalling System Escrow Material is necessary to design or implement such interface or integration; and
  - (C) the Vehicle Supplier or the Signalling System Supplier cannot or will not agree to support the State with such interface or integration on reasonable commercial terms,

in which case the Vehicle Escrow Material and/or Signalling System Escrow Material will be released to the State to the extent and for the period reasonably required by the State.
- (d) The State may (at the State's cost), once every 12 months, have an auditor review, analyse and conduct tests on a confidential basis in relation to materials maintained in escrow with the Escrow Agent for the purposes of:
  - (i) verifying that Operator Franchisee is complying with **clause 51.7(a)**;
  - (ii) reviewing the quality of the material in escrow to ensure there has been no degradation to the material in escrow; and
  - (iii) providing a report as to the auditor's findings.
- (e) Without derogating from Operator Franchisee's obligations under **clause 51.7(a)**, Operator Franchisee must update the Escrow Material maintained on escrow with the Escrow Agent within 20 Business Days of any development, test or production release of any Software comprised in the items or materials identified in **paragraphs (a) to (d)** of the definition of Licensed Intellectual Property.
- (f) The State may give Operator Franchisee notice at any time that it wishes to witness the preparation of the Escrow Material for the next deposit of Escrow Material with the Escrow Agent required under this **clause 51.7**. Following receipt of such a notice, Operator Franchisee must notify the State of the date, time and location where the preparation of the Escrow Material will occur and permit the State to witness the preparation of the Escrow Material.
- (g) If, as a result of witnessing the preparation of the Escrow Material, the State considers that Operator Franchisee is not complying with its obligations under **clause 51.7(a)** or **51.7(e)**, it may notify Operator Franchisee of the respects in which Operator Franchisee is not complying with **clause 51.7(a)** or **51.7(e)** and give reasonable directions as to how Operator Franchisee must remedy such non-compliance.
- (h) Operator Franchisee must promptly comply with any directions given by the State pursuant to **clause 51.7(g)** and do all other things reasonably

necessary in order to rectify its non-compliance with **clause 51.7(a)** or **51.7(e)**.

- (i) Operator Franchisee must, within 20 Business Days of receipt of a notice from the State specifying that an audit pursuant to **clause 51.7(c)(i)** has determined that Operator Franchisee is not complying with **clause 51.7(a)** or there has been degradation to the material in escrow, remedy such non-compliance or replace such material as the case may be.
- (j) Operator Franchisee is not required to deposit and maintain in escrow any material that it has already given to the State on a permanent basis.

## **51.8 Moral Rights**

To the extent permitted by law, Operator Franchisee must not, and must take all reasonable steps to ensure that its Associates do not, sue, enforce any claim, bring any action or exercise any remedy in respect of any breach or alleged breach of any person's Moral Rights (whether before or after the Relevant Date) in respect of the Project Works or the System by:

- (a) the State;
- (b) any third party to whom the State sub-licenses (whether that sub-licence is express or implied), or grants any other right to use, possess, modify, vary or amend any Licensed Intellectual Property or the Project; or
- (c) any third party to whom the State assigns any part of the Equipment.

## **51.9 Physical material**

- (a) From time to time or on request of the State during the Term and upon termination or expiry of this deed, Operator Franchisee must deliver to the State such physical media embodying the:
  - (i) Licensed Intellectual Property (excluding the Escrow Material);
  - (ii) Third Party Software and Equipment IP which Operator Franchisee or its Associates owns or has appropriate rights to provide; and
  - (iii) all Data,as the State reasonably requests to enable it to fully exercise its ownership and rights under the State Project Documents, including to operate and maintain the System (or permit a third party to operate or maintain the System) following the end of the Term.
- (b) Without limiting **clause 51.9(a)**:
  - (i) Operator Franchisee must create and deliver to the State prior to Completion one copy of any Software comprised in the items or materials identified in **paragraphs (a) to (d)** of the definition of Licensed Intellectual Property; and
  - (ii) within 5 Business Days of any change to the Software used in the items or materials identified in **paragraphs (a) to (d)** of the definition of Licensed Intellectual Property, Operator Franchisee must deliver a copy of it to the State;
  - (iii) immediately after execution of this deed, Operator Franchisee must deliver the List of Software (current as at that date) to the State as part of the List of Intellectual Property delivered under **clause 51.16(e)**; and



- (iv) within 5 Business Days of the use by Operator Franchisee of any Software which is not specified on the List of Software, Operator Franchisee must provide the State with the following information:
  - (A) name of the Software;
  - (B) owner of the Software;
  - (C) a copy of the Software licence, if any; and
  - (D) confirmation that the Software is the subject of the warranty in **clause 51.2**.

#### **51.10 Copyright and Circuit Layout Act**

This deed does not exclude or limit, or have the effect of excluding or limiting, the operation of subsection 47B(3) or sections 47C, 47D, 47E or 47F of the *Copyright Act 1968* (Cth) or Part II, Division 3 of the *Circuit Layout Act 1989* (Cth).

#### **51.11 Third Party Software**

- (a) If required by the State, Operator Franchisee must:
  - (i) on or after the termination or expiry of this deed, use commercially reasonable endeavours to sublicense or assign to the State Operator Franchisee's rights under, or cause a novation to the State of Operator Franchisee's rights and obligations under, or assist the State to obtain direct rights to, Third Party Licences (and must take commercially reasonable steps to ensure that the Third Party Licences make provision for this); and
  - (ii) at the State's request during the Term or if the State exercises any Step-In Rights, use commercially reasonable endeavours to sublicense to the State or assist the State to obtain direct rights to Third Party Licences.
- (b) In respect of any sub-licence, assignment, novation or any such direct rights obtained under **clause 51.11(a)**:
  - (i) each party will bear its own costs of effecting the assignment or novation or obtaining direct rights, except for any fee charged by a relevant third party (not being Operator Franchisee or a Related Body Corporate of Operator Franchisee) which will be paid by the State;
  - (ii) the State will pay all costs and expenses referable to any period after the date of their assignment;
  - (iii) without derogating from **clause 51.2**, Operator Franchisee must do all acts and things reasonably requested by the State to allow the State to:
    - (A) obtain copies of, and otherwise be apprised of all the terms of, and communications and information concerning, the Third Party Licences and their performance;
    - (B) exercise and enforce all rights and perform all obligations under the Third Party Licences as if named as Operator Franchisee; and
    - (C) obtain such sub-licence, assignment, novation or direct rights on the same or substantially similar terms (including the remaining duration of any term) as Operator Franchisee has acquired for

itself as enables it to fulfil its obligations under the State Project Documents; and

- (iv) on and from the date of the assignment or novation of such Third Party Licences, the State will:
  - (A) assume all of Operator Franchisee's obligations under such Third Party Licences; and
  - (B) indemnify Operator Franchisee against all claims in respect of such Third Party Licences which arise on or from the date of assignment or novation of such Third Party Licences.

#### **51.12 Equipment IP**

Operator Franchisee must ensure that:

- (a) at the time ownership of tangible items (including computer hardware) forming part of the Project Works or the System (including, if necessary, Operator Franchisee's confidential information) is transferred to and vests in the State pursuant to **clause 47**; and

- (b) at all times when the State is exercising any Step-In Rights,

the State has such perpetual, royalty-free, transferable licences of the Equipment IP as will enable the State to fully and effectively use and deal with the tangible items and to permit others to use those tangible items (including computer hardware) under contract with the State.

#### **51.13 Perfecting licence and ownership**

- (a) Without limiting any other provision of this deed, including **clause 51.16**, Operator Franchisee must do all things necessary (including executing documents) to perfect the licences and ownership granted to the State in this **clause 51** and otherwise to give effect to Operator Franchisee's obligations and the State's rights under this **clause 51**.
- (b) If and to the extent the State notifies Operator Franchisee that it has failed to perform any act required under **clause 51.13(a)** and Operator Franchisee fails to then perform that act within a reasonable period as identified in that notice, Operator Franchisee will with effect from the expiry of the time period identified in the notice irrevocably appoint the State, or such other person as the State nominates from time to time, as Operator Franchisee's attorney to perform the matter the subject of the notice.

#### **51.14 Ownership of Data**

Notwithstanding any other provision of this deed, Operator Franchisee agrees and acknowledges that the State owns the Data including all Intellectual Property in the Data. These ownership rights vest in the State upon creation of the Data. To the extent necessary to give effect to this, Operator Franchisee assigns to the State all of its rights, title and interest in the Data.

#### **51.15 Patent validity**

If any component of any Intellectual Property which is licensed or assigned under this deed expires through the effluxion of time or is or becomes invalid, then, without limiting the State's rights in respect of that expiry or invalidity, that component will, to that extent only, be deemed to be excluded from the Intellectual Property licensed or assigned under this deed and this deed will otherwise continue in full force and effect.

## 51.16 Assurance

- (a) Operator Franchisee must use reasonable endeavours to ensure that it maintains its relationship with the owner of any Licensed Intellectual Property, Third Party Software or Equipment IP.
- (b) If any circumstances occur whereby the relationship between Operator Franchisee and the owner of any Licensed Intellectual Property, Third Party Software or Equipment IP not owned by Operator Franchisee concerning the Licensed Intellectual Property, Third Party Software or Equipment IP changes or is likely to change, then Operator Franchisee must procure that:
  - (i) the owner of the Licensed Intellectual Property, Third Party Software or Equipment IP (as applicable) and Operator Franchisee must immediately notify the State, including a reasonable level of detail as to the nature of those circumstances and their effect or likely effect on the State;
  - (ii) notwithstanding those circumstances, the owner of the Licensed Intellectual Property, Third Party Software or Equipment IP (as applicable) permits the State to continue exercising its rights to the Licensed Intellectual Property, the Intellectual Property in all or any part of the Third Party Software or Equipment IP (as applicable) as if such circumstances did not occur, or as the case requires, had not occurred; and
  - (iii) the owner of the Licensed Intellectual Property, Third Party Software or Equipment IP (as applicable) and Operator Franchisee will do all such acts and things as the State reasonably requests in order to give effect to this **clause 51.16**.
- (c) Circumstances referred to in **clause 51.16(b)** include termination of any licensing arrangement or circumstances involving an inability to pay debts.
- (d) Operator Franchisee must ensure that no arrangements with respect to Intellectual Property owned by a Core IP Provider are entered into in connection with the Project Activities without Operator Franchisee and the relevant Core IP Provider having delivered to the State a duly executed Deed of Assurance in relation to any Licensed Intellectual Property, Third Party Software or Equipment IP owned by the Core IP Provider.
- (e) Immediately after the date of this deed, Operator Franchisee must deliver the List of Intellectual Property (current at that date) to the State.
- (f) Prior to entering into any arrangements with respect to any Intellectual Property which is not specified on the List of Intellectual Property, Operator Franchisee must notify the State of:
  - (i) the nature of the Intellectual Property;
  - (ii) the owner of the Intellectual Property and, if relevant, the licensor and licensee of the Intellectual Property; and
  - (iii) details of the proposed arrangements to be entered into with respect to the Intellectual Property.
- (g) The State may nominate any owner of Intellectual Property identified in a notice from Operator Franchisee under **clause 51.16(f)** as a Core IP Provider, in which case **clause 51.16(d)** will apply.

- (h) Operator Franchisee must deliver an updated List of Intellectual Property to the State within 10 Business Days of the use of any Intellectual Property not listed on the List of Intellectual Property previously delivered to the State.

#### **51.17 State IP**

- (a) The State grants to Operator Franchisee an irrevocable, royalty free non-exclusive licence (including a right to sub-license) during the Term to use, copy, modify, adapt or translate:
  - (i) the Brand;
  - (ii) the Operations and Maintenance Data;
  - (iii) all trademarks, brands and all materials protected by copyright which the State requires Operator Franchisee to use or display or include in any information provided to passengers, the community or other stakeholders as part of the Project Activities,solely for the purposes of carrying out the Project Activities.
- (b) The licence granted in **clause 51.17(a)** (including the ability to grant further sub-licences) may be sublicensed (free of charge) by Operator Franchisee on such conditions as the State may reasonably require.

#### **51.18 Trade Marks**

- (a) Operator Franchisee acknowledges and agrees that the State owns or, where appropriate, holds the lawful registration of the Brand.
- (b) To the extent that any rights, title or interest in the Intellectual Property in the Brand or Trade Marks vests in Operator Franchisee or its Associates, Operator Franchisee assigns, and will ensure that its Associates assign, such rights, title and interest on its creation to the State.
- (c) Operator Franchisee must do all things necessary (including executing documents) and provide the State with all such assistance as is reasonably required by the State to register the Trade Marks and the Domain Names in the name of the State and to maintain that registration throughout the Term.
- (d) Operator Franchisee must ensure that where the Trade Marks appear in any written material (including any electronic material) published by or on behalf of Operator Franchisee, unless otherwise authorised by the State:
  - (i) the Trade Marks must appear with the ® symbol; and
  - (ii) the Trade Marks must be accompanied by the following footnote: "*The [insert trade mark] trade mark is used by Operator Franchisee under licence from the State*".
- (e) Operator Franchisee must not use the Trade Marks in a manner which is prejudicial to the State or likely to prejudice the distinctiveness of the Trade Marks or the validity of any registration for the Trade Marks.
- (f) The State may, from time to time during the Term by notice to Operator Franchisee, impose reasonable requirements regarding the use of the Trade Marks, and Operator Franchisee must comply with those requirements.
- (g) Operator Franchisee must comply with any standards, directions and specifications notified by the State from time to time during the Term as to the appearance, colour, size and positioning of the Trade Marks and the footnote referred to in **clause 51.18(d)(ii)**.

- (h) Operator Franchisee must not at any time during the Term use the Trade Marks in juxtaposition to any other trade mark, embellishment or device without the prior consent of the State.
- (i) Operator Franchisee will:
  - (i) if requested by the State, take all necessary action and execute and deliver to the State all necessary documents and instruments to record Operator Franchisee as a registered user of the Trade Marks;
  - (ii) if requested by the State, submit to the State samples of all materials (including all advertisements, promotions and other marketing material) which incorporate the Trade Marks for the State's prior approval;
  - (iii) except to the extent expressly permitted by this agreement, not use or apply to register the Trade Marks as part of its corporate, business, trading or domain name;
  - (iv) not directly or indirectly contest or oppose or assist any other party to contest or oppose the State's ownership of the Trade Marks; and
  - (v) not register or use any trade mark or trade name which is substantially identical or deceptively similar to the Trade Marks.
- (j) Any and all goodwill attaching (now or in the future) to the Trade Marks as a result of use of the Trade Marks by or on behalf of or under licence from the State is and will remain the property of and enure to the State and Operator Franchisee will not obtain any rights in or to the Trade Marks.
- (k) If, during the Term, Operator Franchisee becomes aware of any infringement or unauthorised use of, act inconsistent with, challenge to or claim against or in relation to any of the Trade Marks, Operator Franchisee must promptly notify the State.
- (l) The State will have the conduct of all proceedings relating to any infringement or unauthorised use of, act inconsistent with, challenge to or claim against or in relation to any of the Trade Marks and will in its sole discretion decide what action if any to take in respect of that matter. Operator Franchisee must, at the State's reasonable cost, take any action which the State reasonably requests to bring the matter to an end.
- (m) Operator Franchisee must upon termination or expiry of this deed procure that all telephone numbers, email addresses and all other electronic addresses which are designated by Operator Franchisee for use by the general public to make contact with Operator Franchisee in relation to the operation of the System using a telecommunication network be transferred to the State.

## 52 Refinancings

### 52.1 Execution of Refinancings

- (a) Operator Franchisee must not enter into any Refinancing except if:
  - (i) the Refinancing is undertaken in accordance with this **clause 52** and Operator Franchisee has complied with all its obligations in this **clause 52**;
  - (ii) the State has given its prior consent to the Refinancing;

- (iii) except if the Refinancing is an Assumed Refinancing, the amount and manner and timing of payment of any Refinancing Gain has been agreed or otherwise determined in accordance with this **clause 52**; and
  - (iv) the incoming financiers and Operator Franchisee have executed a deed substantially in the form of the Debt Finance Side Deed and otherwise on terms reasonably acceptable to the State.
- (b) Operator Franchisee must within 10 Business Days of the Refinancing being implemented provide the State:
  - (i) certified copies of all executed documentation in relation to the Refinancing; and
  - (ii) a copy of the Proposed Base Case Financial Model and related documentation in accordance with **clause 39**.

## **52.2 Notice of intended Refinancing**

If Operator Franchisee intends to undertake any Refinancing, Operator Franchisee must submit to the State:

- (a) in the case of an Assumed Refinancing, a notice of intention to refinance at least 30 Business Days prior to the proposed Refinancing; and
- (b) in the case of a Refinancing (other than an Assumed Refinancing):
  - (i) a preliminary notice of intention to refinance as soon as reasonably practicable when a Refinancing is being developed (and in any event at least 40 Business Days prior to the proposed Refinancing); and
  - (ii) a notice of intention to refinance seeking its consent at least 30 Business Days prior to the proposed Refinancing.

## **52.3 Details for inclusion in preliminary notice**

In a notice or notification under **clause 52.2(b)(i)**, Operator Franchisee must inform the State that a Refinancing is being developed. Operator Franchisee must provide the State with copies of working draft term sheets, models and other material information relevant to the Refinancing progressively and as soon as practicable after they are produced or updated by or made available to Operator Franchisee or any person negotiating or developing the Refinancing on behalf of it.

## **52.4 Details for inclusion in notice**

In a notice or notification under **clause 52.2(a)** or **52.2(b)(ii)**, Operator Franchisee must set out:

- (a) full details as to the terms of the proposed Refinancing (including copies of all relevant draft contractual and security documentation in the form proposed to be signed by all relevant parties);
- (b) its good faith and detailed view of the impact or potential impact of the proposed Refinancing on the State's liabilities, rights or obligations under the State Project Documents;
- (c) in the case of a Refinancing (other than an Assumed Refinancing):
  - (i) the reasons why Operator Franchisee wishes to implement the Refinancing;

- (ii) its good faith and detailed view of the impact or potential impact of the proposed Refinancing on:
  - (A) the provision of the Project by Operator Franchisee;
  - (B) the performance by Operator Franchisee of its obligations under the State Project Documents;
  - (C) the financial structure or business of Operator Franchisee and its Associates;
  - (D) the State's interest under or in respect of the State Project Documents; and
  - (E) the Base Case Equity Return and Distributions;
- (iii) a proposed mechanism for determining any Refinancing Gain, details of any anticipated Refinancing Gain and the proposed mechanism for paying the State Refinancing Share to the State;
- (iv) all other material information in respect of the Refinancing which it believes in good faith is relevant to the State's decision to give or withhold its consent to the Refinancing; and
- (v) copies of any documents and models (including a Proposed Base Case Financial Model and related documentation in accordance with **clause 39**) relevant to Operator Franchisee's request; and
- (d) in the case of an Assumed Refinancing:
  - (i) confirmation that Operator Franchisee considers the Refinancing is an Assumed Refinancing and detailed information to enable the State to verify that the relevant Refinancing Assumptions will not be contravened; and
  - (ii) its good faith and detailed view, including supporting information, on whether the requirements of **clause 52.1** are satisfied.

## **52.5 State consent to Refinancing**

The State must advise Operator Franchisee within 20 Business Days of receiving Operator Franchisee's notice under **clause 52.2(b)(ii)** that:

- (a) it consents to the proposed Refinancing;
- (b) the proposed Refinancing is unacceptable to it and the reasons why this is the case; or
- (c) it requires further information from Operator Franchisee regarding the proposed Refinancing. If so, Operator Franchisee must provide the additional information reasonably sought by the State within a further period of 10 Business Days, after which the State must respond in terms of **clause 52.5(a), 52.5(b) or 52.5(c)** within 20 Business Days of receiving the further information.

## **52.6 State consent not to be unreasonably withheld**

Subject to **clause 52.7**, the State must not unreasonably withhold or delay its consent to a proposed Refinancing if the State is reasonably satisfied that:

- (a) the purpose of a proposed Refinancing is:
  - (i) to cure an actual or potential event of default under the Debt Financing Documents; or

- (ii) to enable the Debt Financiers to waive a cash lock up or funding restrictions under the Debt Financing Documents in order to make payments as they fall due to the State or Core Contractors,

provided that to the extent that additional funding is raised as a consequence of the Refinancing, that amount will be deemed a Refinancing Debt Amount (unless consent is granted by the State to exclude additional funding from the Refinancing Debt Amount in accordance with **clause 52.6(c)**) and must not be taken into account in any determination of a Termination Payment under **schedule 7**;

or:

- (b) the terms and conditions of the proposed Refinancing are arms' length commercial terms and in accordance with market practice at the relevant time;
- (c) the Refinancing would not result in any of the State's rights, obligations or liabilities (including Termination Payment amounts) under the State Project Documents being worse than they would have been if the Refinancing did not occur without adequate mitigation of the risk, compensation to the State, or both, in each case as determined by the State; and
- (d) the calculation of any Refinancing Gain and the basis on which the State is to be paid its share of the Refinancing Gain has been agreed or otherwise determined in accordance with **clause 52.9**.

## **52.7 State to consent to Assumed Refinancings**

- (a) The State must not withhold its consent to an Assumed Refinancing.
- (b) The State may request further information from Operator Franchisee regarding a proposed Assumed Refinancing, in which event Operator Franchisee must provide the additional information reasonably sought by the State within 10 Business Days of the State's request.

## **52.8 Cost of State review**

Operator Franchisee must pay the State's reasonable costs (including any reasonable legal or financial advisers' fees incurred by the State) in reviewing and, if approved, implementing any Refinancing proposal other than in respect of an Assumed Refinancing.

## **52.9 Refinancing Gain**

- (a) The State will be entitled to 50% of any Refinancing Gain (**State Refinancing Share**).
- (b) The State may elect to receive the State Refinancing Share as:
  - (i) a single payment made on or about the date of the Refinancing;
  - (ii) a reduction in the Service Payment over some of the remaining period of the Term; or
  - (iii) a combination of (i) and (ii).
- (c) The State and Operator Franchisee will use their respective reasonable endeavours to agree the Refinancing Gain and the manner and timing of paying the State Refinancing Share to the State. For these purposes, Operator Franchisee must provide the State with all information concerning



the Refinancing, the Distributions and the Project that the State may require to calculate the Refinancing Gain.

- (d) If the parties fail to agree the Refinancing Gain or the manner or timing of payment of the State Refinancing Share to the State, either party may require that the matter be determined in accordance with **clause 57**.
- (e) For these purposes the parties must require any expert or arbitrator to make his or her determination on the basis that the State is to be paid its share of the Refinancing Gain no later than any Equity Investor receives its share of the Refinancing Gain. The parties must also require the expert or arbitrator to determine any necessary changes to the Base Case Financial Model to reflect the Refinancing.

## **53 Representations and warranties**

### **53.1 State representations and warranties**

The State represents and warrants for the benefit of Operator Franchisee that:

- (a) it has the power to execute, deliver and perform its obligations under the State Project Documents and all necessary action has been taken to authorise their execution, delivery and performance;
- (b) each State Project Document constitutes a valid and legally binding obligation of it in accordance with its terms; and
- (c) the execution, delivery and performance of each State Project Document does not violate any Law, or any document or agreement to which it is a party or which is binding on it or its assets.

### **53.2 Operator Franchisee representations and warranties**

Operator Franchisee represents and warrants for the benefit of the State that:

- (a) it is duly registered and remains in existence;
- (b) the execution, delivery and performance of each Project Document to which it is a party does not violate any Law, or any document or agreement to which it is a party or which is binding on it or any of its assets;
- (c) it has taken all corporate and other action required to enter into any Project Document to which it is a party and to authorise the execution and delivery of that Project Document and the satisfaction of its obligations under it;
- (d) each Project Document to which it is a party constitutes a valid and legally binding obligation of it in accordance with its terms;
- (e) it subsists and is properly constituted;
- (f) it is not the trustee or responsible entity of any trust, nor does it hold any property subject to or impressed by any trust;
- (g) Operator Franchisee has no subsidiaries;
- (h) it is not at the date of this deed, and will not be without the prior consent of the State, be a member of any consolidated group for purposes of Part 3-90 of the *Income Tax Assessment Act 1997* (Cth), unless Operator Franchisee and each member of the consolidated group has executed a valid tax sharing agreement approved by the State;

- (i) to the extent Operator Franchisee makes taxable importations (as defined in the GST Law) in relation to the Project, it, or the representative member of any GST Group of which Operator Franchisee is a member, is and will continue to be approved by the Commissioner to make deferred payments of GST on taxable importations for the purposes of section 33-15(1)(b) of the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and Division 33 of the *A New Tax System (Goods and Services Tax) Regulations 1999* (Cth);
- (j) except as expressly disclosed to the State in such detail as the State requires (including specific reference to this **clause 53.2(j)**), no Operator Franchisee Events of Default or Operator Franchisee Termination Events have occurred or are subsisting;
- (k) it is not in default of its material obligations under any State Project Document;
- (l) it has not traded since its incorporation other than for the purposes of entering into the Project Documents to which it is a party and has no liabilities other than those that have arisen in connection with entering into those Project Documents;
- (m) except as contemplated by the Debt Finance Side Deed, subject to Laws from time to time, its obligations under the State Deed of Charge will rank ahead of, and its obligations under each State Project Document (other than the State Deed of Charge) will rank at least equally with, all its present and future unsecured obligations;
- (n) it does not have immunity from the jurisdiction of a court or from legal process (whether through service of notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise);
- (o) except as expressly disclosed to the State in such detail as the State requires (including specific reference to this **clause 53.2(o)**), there has been no material change in the financial condition of Operator Franchisee (since its incorporation) or the Equity Investors or Core Contractors (since the date of their last audited accounts) which would prejudice the ability of Operator Franchisee to perform its obligations under the Project Documents;
- (p) except as expressly disclosed to the State in such detail as the State requires (including specific reference to this **clause 53.2(p)**), the most recently published financial statements of the Equity Investors and Core Contractors have been prepared on a basis consistently applied and using accounting principles which are generally accepted and give a true and fair view of the financial condition of the Equity Investors and Core Contractors and are unqualified for the period in question;
- (q) Operator Franchisee is not aware of any material facts or circumstances that have not been disclosed to the State and which might, if disclosed, materially adversely affect the decision of a prudent person considering whether or not to enter into this deed with Operator Franchisee;
- (r) it has provided to the State all material documents relating to the financing of the Project; and
- (s) except as expressly disclosed to the State in such detail as the State requires (including specific reference to this **clause 53.2(s)**), no litigation, arbitration, mediation, conciliation, criminal or administrative procedures are current, pending or to its knowledge, threatened, which, if adversely

determined, would or could have a material adverse effect upon it or its ability to perform its financial or other obligations under any Project Document to which it is expressed to be a party.

### **53.3 Repetition of representation and warranties**

Except for the representations and warranties contained in **clauses 53.2(l) and 53.2(q)**, each representation and warranty contained in this deed:

- (a) is made on the date of this deed; and
- (b) will be deemed to be repeated at Financial Close, on the Date of Stage 2 Completion, and on the first Business Day of each January, April, July and October during the Term,

with reference to the facts and circumstances then subsisting.

## **54 Assignment, security, ownership and restrictions on dealings**

### **54.1 Amendment of Project Documents**

Subject to **clauses 55 and 56**, Operator Franchisee must not, without the State's consent (which consent will not be unreasonably withheld or delayed) at any time:

- (a) make or permit any amendment to, replacement of or waiver of a provision of or any supplement or agreement collateral to (other than an amendment to an Equity Document which is mechanical and immaterial);
- (b) terminate, surrender, rescind or accept the repudiation of;
- (c) permit the novation, assignment or substitution of any counterparty's right, obligation or interest in; or
- (d) enter into any agreement or arrangement which affects the operation or interpretation of,

any Project Document to which the State is not a party.

### **54.2 Assignment by the State**

- (a) **(No assignment without consent):** Subject to **clause 54.2(b)**, the State may not sell, transfer or assign or otherwise dispose of its interest in the State Project Documents without Operator Franchisee's consent.
- (b) **(Assignment of revenue rights):** The State may assign any of its rights under the State Project Documents to receive revenue.
- (c) **(Consent to be given):** Operator Franchisee must give its consent under **clause 54.2(a)** if:
  - (i) it has been provided with details of the proposed transferee and the terms and conditions of the proposed transfer;
  - (ii) the proposed transferee is an Authority of the type referred to in **paragraph (a)** of the definition of Authority and has the requisite power and financial capability to comply with the State's obligations under the relevant State Project Documents; and
  - (iii) the proposed transferee has agreed to be bound by the relevant State Project Documents.

### **54.3 Assignment by Operator Franchisee**

Except as expressly permitted by this deed, the Debt Finance Side Deed or the State Deed of Charge, Operator Franchisee must not assign, novate, transfer, mortgage or charge its interest in, or obligations under, any of the Project Documents, without the State's prior approval (such approval not to be unreasonably withheld or delayed in respect of the Equity Documents).

### **54.4 Financier's Securities**

Operator Franchisee may, after execution of the Debt Finance Side Deed, mortgage or charge its interest under the Project Documents to secure obligations to any Debt Financier (or trustee or agent for any Debt Financier) under the Debt Financing Documents, if, and for so long only as, the Debt Financier (or the trustee or agent for the Debt Financier) is a party to the Debt Finance Side Deed.

### **54.5 Restrictions on dealings**

Operator Franchisee must not:

- (a) create, permit or suffer any security interest over;
- (b) lease, licence, transfer, sell, part with possession of, or otherwise deal with; or
- (c) operate or use, or permit any other person to operate or use,

the System or any part of the Project Area, except as expressly permitted under this deed, the Debt Finance Side Deed, the State Deed of Charge or the System Site Licence or as otherwise approved by the State.

## **55 Share Capital Dealings**

### **55.1 Initial status of ownership**

Operator Franchisee represents and warrants that as at Financial Close the legal and beneficial ownership of each Group Member and the Group structure is as set out in **schedule 11**.

### **55.2 Restrictions on Share Capital Dealings**

Subject to **clause 55.4**, Operator Franchisee undertakes not to (and undertakes to ensure that each Group Member does not):

- (a) at any time during the Term:
  - (i) redeem, repurchase, defuse, retire or repay any share capital or units in Operator Franchisee or resolve to do so;
  - (ii) issue or agree to issue any share capital or units in Operator Franchisee;
  - (iii) issue or agree to issue any warrants or options over any unissued share capital or units in Operator Franchisee;
  - (iv) permit or suffer any change to (or transfer of the issued units or share capital in) Operator Franchisee or Hold Co 1, which results in Operator Franchisee ceasing to be directly and beneficially wholly owned and controlled by Hold Co 1 or Hold Co 1 ceasing to be directly and beneficially wholly owned and controlled by Hold Co; or
  - (v) permit the transfer of unitholder or shareholder loans (or other loans in the nature of equity funding) made to Operator Franchisee from an

Equity Investor to a party other than one wholly owned and controlled by that Equity Investor;

- (b) allow Hold Co or Hold Co 1, at any time during the Term, to:
  - (i) redeem, repurchase, defuse, retire or repay any units or share capital in Hold Co or Hold Co 1, or resolve to do so;
  - (ii) issue or agree to issue any units or share capital in Hold Co or Hold Co 1;
  - (iii) issue or agree to issue any warrants or options over any unissued units or unissued share capital in Hold Co or Hold Co 1;
  - (iv) permit or suffer any change (or transfer of), the issued units or share capital in Hold Co which changes the percentage of issued units or issued share capital owned (legally or beneficially) by the Equity Investors; or
  - (v) permit the transfer of unitholder or shareholder loans (or other loans in the nature of equity funding) made to Hold Co or Hold Co 1 from an Equity Investor to a party other than one wholly owned and controlled by that Equity Investor; or
- (c) at any time during the Term, permit or suffer any change to (or transfer of the share capital or units in) the ultimate holding company (as defined in the Corporations Act) of, or the ultimate holding trust of, or the ultimate holder of the entire limited partners' interest in:
  - (i) an Equity Investor which results in:
    - (A) a Change in Control of Operator Franchisee;
    - (B) an entity becoming a Controlling Unit Holder of Operator Franchisee;
    - (C) a change in the Controlling Unit Holder of Operator Franchisee;or
  - (ii) a Designated Investor which results in a Change in Control of that Designated Investor,

other than as a result of the acquisition of securities which are publicly listed on a stock exchange or a Permitted Change in Control,

(each a **Share Capital Dealing**) without the State's prior consent.

### **55.3 The State's right to withhold consent**

- (a) Subject to **clauses 55.3(b)** and **55.4** the State may only withhold its consent to a proposed Share Capital Dealing if the State is of the reasonable opinion that:
  - (i) the new Equity Investor or Equity Investors (or any direct or indirect holding entity of the new Equity Investor or Equity Investors):
    - (A) is or are not solvent and reputable;
    - (B) has or have an interest or duty which conflicts or may conflict in a material way with the interests of the State and is or are involved in a business or activity which is incompatible, or inappropriate, in relation to the construction or operation of the System; or

- (C) do or does not have a sufficient level of financial or technical capacity in each case having regard to the role to be performed by the Equity Investor; or
- (ii) the proposed Share Capital Dealing:
  - (A) is against the public interest;
  - (B) would adversely affect the ability or capability of Operator Franchisee to perform its obligations under any Project Document;
  - (C) would have a material adverse effect on the Project; or
  - (D) would increase the liability of, or risks accepted by, the State under the State Project Documents or in any other way in respect of the Project.
- (b) Subject to **clause 55.4**, the State's consent to a Share Capital Dealing may be given or withheld, or may be given subject to any conditions, as the State thinks fit if the Share Capital Dealing will occur during the period commencing on the date of this deed and ending on:
  - (i) in the case of a transfer of issued units or share capital in Hold Co by a Designated Investor, the relevant Hold Date; or
  - (ii) otherwise, the date that is 2 years after the Date of Completion, except that this **clause 55.3(b)** does not apply to a Share Capital Dealing referred to in:
    - (iii) **clause 55.2(b)** to the extent the Share Capital Dealing is:
      - (A) in relation to units or share capital issued in or by Hold Co which are publicly listed on a stock exchange; and
      - (B) not a transfer of units or share capital in Hold Co by a Designated Investor; or
    - (iv) **clause 55.2(c)(i)**.

### **55.3A Permitted Changes in Control**

Operator Franchisee must give the State at least 15 Business Days prior notice of any Permitted Change in Control.

### **55.4 Permitted Share Capital Dealings**

- (a) The State must not withhold its consent to a Permitted Share Capital Dealing.
- (b) For the purposes of this deed, each of the following is a Permitted Share Capital Dealing:
  - (i) the creation of any Security Interest under, or as contemplated by, the State Deed of Charge or any Debt Financing Document;
  - (ii) the issue of any units or share capital in Hold Co to an Equity Investor;
    - (A) as part of the Initial Equity Subscription or Deferred Equity Subscription (in each case as described in the Equity Documents), in accordance with the Equity Documents; or
    - (B) in order to fund a Modification or any remedial action to be undertaken by Operator Franchisee under or in connection with

the Project Documents, provided that the issue of such units or share capital is to a person who is an Equity Investor immediately prior to that issue,

in each case as contemplated by the Equity Documents;

- (iii) the redemption of any redeemable preference shares issued by Hold Co in accordance with their terms or any dealing in respect of any redemption (including the issue and redemption of any replacement redeemable preference shares or securities on the same or different terms);
- (iv) the issue of any units or share capital in Hold Co to an Equity Investor which will, in effect, replace existing units or share capital held by that Equity Investor in Hold Co, and any corresponding redemption of existing units or share capital in Hold Co;
- (v) any change to (or transfer of the issued units or share capital in) Hold Co which changes the percentage of issued units or issued share capital owned by the Equity Investors where:
  - (A) Operator Franchisee has terminated the appointment of a Core Contractor and appointed a replacement Core Contractor under **clause 56**; and
  - (B) the change or transfer reflects the replacement of an entity that is a Related Body Corporate or Related Trust Entity of the terminated Core Contractor by an entity which is a Related Body Corporate or Related Trust Entity of the replacement Core Contractor;
- (vi) a transfer of issued units or share capital in Hold Co between Equity Investors:
  - (A) by virtue of the exercise of a pre-emptive right under the Shareholders Agreement;
  - (B) where the pre-emptive right is consequent upon an event which compels the transfer of issued units or share capital held by an Equity Investor; and
  - (C) where the transferor is a Designated Investor, the transfer occurs no earlier than the relevant Hold Date;
- (vii) any transfer of all (but not part) of the issued units or share capital in Hold Co held by an Equity Investor to a Related Body Corporate or Related Trust Entity of that Equity Investor in accordance with the Equity Documents and provided that the transfer is conditional upon the transferred units or share capital being transferred back to the Equity Investor if the transferee ceases to be a Related Body Corporate or Related Trust Entity of the Equity Investor;
- (viii) any transfer of all (but not part) of the issued units or share capital in Hold Co held by an Equity Investor to a fund or limited partnership under common management, or having common advisory arrangements, with that Equity Investor's Equity Investor Holding Company provided that the transfer is conditional upon the transferred units or share capital being transferred back to the Equity Investor if the transferee ceases to be under common management, or to have

common advisory arrangements, with that Equity Investor's Equity Investor Holding Company;

- (ix) any transfer of all (but not part) of the issued units or share capital in Hold Co held by Plenary Group Pty Ltd to the Plenary Funds;
- (x) where an Equity Investor:
  - (A) is a trustee, a transfer of issued units or share capital in Hold Co by that Equity Investor to any custodian engaged by, or to any replacement trustee of, that Equity Investor; or
  - (B) is a custodian, to the entity for whom the custodian holds the issued units or share capital or to any replacement custodian appointed by that entity; and
- (xi) the issue of any units or share capital in Hold Co to an officer, employee or contractor of Hold Co or Operator Franchisee under an employee share plan relating to units or share capital in Hold Co.

## **55.5 Consent**

The State must advise Operator Franchisee within 10 Business Days (or such longer period as the State reasonably requests given the nature of the proposed Share Capital Dealing) of receiving Operator Franchisee's request for consent pursuant to **clause 55.2**, that:

- (a) it consents to the Share Capital Dealing;
- (b) subject to **clause 55.3**, the Share Capital Dealing is unacceptable to it and the reasons why the Share Capital Dealing is unacceptable; or
- (c) it requires further information from Operator Franchisee regarding the Share Capital Dealing. If so, Operator Franchisee must provide the additional information sought by the State within a further period of 10 Business Days, after which the State must respond in terms of **clause 55.5(a)** or **55.5(b)** within 10 Business Days.

## **55.6 Designated Investors**

Until the relevant Hold Date, Operator Franchisee must ensure that:

- (a) each Designated Investor holds at least the Designated Equity Holding of the issued securities in Hold Co directly, and in Operator Franchisee indirectly (through its holding of issued securities in Hold Co);
- (b) each Designated Investor continues to have an obligation to provide or has provided the Designated Equity Funding to Hold Co; and
- (c) each Designated Investor must continue to be legally and beneficially owned (either directly or indirectly) by its ultimate holding entity as at Financial Close, as follows:
  - (i) in the case of Keolis SA, at least 95% legally and beneficially owned by Groupe Keolis SAS; and
  - (ii) in the case of Aveng Australia (GCRT) Pty Ltd, at least 100% legally and beneficially owned by Aveng Limited,

unless the State gives its prior consent.



## **55.7 Change in Control of Core Contractor**

- (a) If a Change in Control of a Core Contractor has occurred, Operator Franchisee must promptly notify the State. To the extent a Change in Control of a Core Contractor is a Permitted Change in Control:
  - (i) **clause 55.3A** will apply (and notice under **clause 55.3A** will satisfy the obligation to give notice under this **clause 55.7(a)**); and
  - (ii) **clause 55.7(c)** will not apply to any such Permitted Change in Control.
- (b) Operator Franchisee must provide to the State in its notification under this **clause 55.7**:
  - (i) full details of the Change in Control, including the acquisition of voting power, the change in equity interests or any other event which has caused or constituted the Change in Control; and
  - (ii) all other information necessary for the State to determine whether to exercise its rights under **clause 55.7(c)**, in relation to the Change in Control of the Core Contractor.
- (c) If the State determines that it does not approve of the Change in Control which requires notification under this **clause 55.7**, because:
  - (i) the person or entity which now exercises Control of the relevant Core Contractor is not a reputable entity or person to properly carry out the obligations of the relevant Core Contractor under the relevant Project Documents; or
  - (ii) as a result of the Change in Control, the relevant Core Contractor no longer:
    - (A) has sufficient expertise and ability; or
    - (B) is of sufficiently high financial and commercial standing, to properly carry out the obligations of the relevant Core Contractor under the relevant Project Documents; or
  - (iii) the person or entity which now exercises Control of the relevant Core Contractor is an unsuitable entity or person, having regard to the activities or business of that entity or person, and their compatibility with the obligations of the relevant Core Contractor under the Project Documents,

Operator Franchisee must at its own cost, terminate any Core Contract with that Core Contractor and re-tender those works or services being provided by that Core Contractor, in accordance with the procedure in sections 3(c) to 3(i) of **schedule 6** (as though references in those sections were to the Core Contract rather than to an ECE Event), within 60 Business Days.
- (d) The exercise of the State's rights under **clause 55.7(c)** will not relieve Operator Franchisee of any of its obligations under the State Project Documents including the performance of the Project Activities in accordance with the State Project Documents.

## 56 Subcontracting

### 56.1 Subcontracting

- (a) Operator Franchisee must not subcontract the performance of the Project Activities or any part of them except in accordance with this **clause 56**.
- (b) Operator Franchisee is not relieved of any of its liabilities or obligations under the State Project Documents as a result of any subcontracting of the Project Activities or approval of any Core Contractor or Significant Contractor, and Operator Franchisee is at all times responsible for the performance of all subcontractors (including the Core Contractors and Significant Contractors).

### 56.2 Core Contracts and Significant Contracts

- (a) **(Entry into Core and Significant Contracts):** Operator Franchisee must:
  - (i) promptly provide to the State a copy of each Core Contract and each Significant Contract entered into or proposed to be entered into involving any of the Project Activities;
  - (ii) not engage any new subcontractor, who would become a Core Contractor or a Significant Contractor on such engagement, without the State's prior consent;
  - (iii) ensure that no Core Contractor is engaged in connection with the Project Activities without Operator Franchisee and the relevant Core Contractor having delivered to the State a duly executed side deed, substantially in the form of the Core Contractor Side Deeds, in respect of its Core Contract; and
  - (iv) if required by the State, procure that any Significant Contractor enter into a side deed, substantially in the form of the Core Contractor Side Deeds, in respect of its Significant Contract.
- (b) **(Terms and conditions):** Operator Franchisee:
  - (i) must ensure that each Core Contract and each Significant Contract contains provisions which:
    - (A) satisfy the requirements of **clause 60**;
    - (B) recognise the State's rights under **clauses 25, 47 and 48.2**;
    - (C) enable Operator Franchisee to comply with its novation obligations under **clauses 47.6 and 47.8**; and
    - (D) are consistent with the State's rights under **clauses 25 and 51**; and
  - (ii) warrants that it will do everything necessary to ensure that the State will be able to exercise its rights under **clause 25.6(a)(v)**.
- (c) **(Compliance):** Operator Franchisee must:
  - (i) comply with its obligations under and enforce the terms of each Core Contract and each Significant Contract;
  - (ii) ensure that each Core Contractor and each Significant Contractor complies with the obligations imposed on that contractor under a Core Contract or a Significant Contract (as applicable);

- (d) **(Disputes):** Operator Franchisee must, not later than the tenth day of each month, provide to the State details of each formal dispute with a Core Contractor or a Significant Contractor arising in connection with the Project Activities.
- (e) **(Waiver of claims):** Operator Franchisee must not, without the State's prior consent, compromise or waive any claim it may have against a Core Contractor or a Significant Contractor, if it may impact the rights of the State or the ability of Operator Franchisee to satisfy its obligations under the State Project Documents.
- (f) **(Warranties):** Operator Franchisee must obtain and ensure that the State has the benefit of warranties and guarantees offered by each Core Contractor and each Significant Contractor with respect to any part of the Project Activities.
- (g) **(Agreed form):** Unless otherwise agreed by the State, each Core Contract must remain in the form agreed by the State prior to Contract Close.
- (h) **(Amendment and termination):** Operator Franchisee:
  - (i) must not, without the State's prior consent, permit any variation or amendment to, material departure from, termination, novation, assignment or replacement of:
    - (A) a Core Contract; or
    - (B) a Significant Contract, if it may impact the rights of the State or the ability of Operator Franchisee to satisfy its obligations under the Project Documents;
  - (ii) must give the State notice of the termination or material amendment of a Significant Contract immediately upon Operator Franchisee becoming aware of such termination or material amendment; and
  - (iii) agrees that no amendment to, departure from, termination or assignment or replacement of a Core Contract or a Significant Contract made without the consent of the State will be binding on the State or affect or prejudice the rights of the State against Operator Franchisee under this deed or under a Core Contractor Side Deed, or in any other way.

### 56.3 All subcontracts

- (a) **(General obligations):** Operator Franchisee must ensure that:
  - (i) each contractor engaged in relation to the Project Activities by Operator Franchisee or its Associates is reputable and has, or has access to, sufficient experience, expertise, ability and resources to perform its obligations to the standards required by the State Project Documents; and
  - (ii) no contractor is (either directly or indirectly) engaged in relation to the Project Activities by Operator Franchisee or its Associates without that contractor having taken out workers compensation insurance, public liability insurance and professional indemnity insurance as required under **clause 43**, to the extent, and for insured amounts, applicable to the relevant Project Activities to be performed by that contractor and in the case of public liability and professional indemnity insurance it will

be sufficient for the purposes of this **clause 56.3(a)(ii)** if the relevant subcontractor is covered by Operator Franchisee's insurance policies.

(b) **(Disclosure of subcontracts):**

- (i) Unless the State otherwise gives its prior consent, Operator Franchisee must ensure that any agreement it enters into in connection with the Project is on terms that permit Operator Franchisee and the State to disclose:
  - (A) the agreement subject to the terms of **clause 50** (other than any Commercially Sensitive Information); and
  - (B) any information that the parties are required to keep confidential under the agreement subject to the terms of **clause 50** (other than any Commercially Sensitive Information),to:
  - (C) the State and its Associates; and
  - (D) proposed or prospective New Operator Franchisee and its Associates, who have undertaken to the State to keep the agreement and any such information confidential.
- (ii) If Operator Franchisee fails to comply with **clause 56.3(b)(i)** in relation to any agreement, Operator Franchisee, subject to **clauses 42.2 to 42.4**, must indemnify and keep indemnified the State and its Associates from and against any loss, damage, cost or expense that may be incurred or sustained by the State or its Associates arising from the disclosure of the agreement or such information to a proposed or prospective New Operator Franchisee.

## 57 Dispute resolution

### 57.1 Disputes generally

Any dispute, difference, controversy or claim (**Dispute**) directly or indirectly based upon, arising out of, relating to or in connection with the Project Works, the System, the Project Activities, the State Project Documents (including any questions relating to the existence, validity or termination of a State Project Document) or either party's conduct before the Relevant Date, must be resolved in accordance with this **clause 57**.

### 57.2 Notice of Dispute

- (a) If a party requires a Dispute to be resolved, the party must, within the time required by **clause 57.2(b)**, give the other party notice of the Dispute, specifying:
  - (i) the Dispute;
  - (ii) particulars of the party's reasons for being dissatisfied; and
  - (iii) the position which the party believes is correct.
- (b) Without limiting **clause 58**, the notice under **clause 57.2(a)** must be given to the other party and the State within 20 Business Days of the Dispute arising.

### 57.3 Executive Negotiation

- (a) If a notice of Dispute is given under **clause 57.2**, the Dispute must be referred to the Executive Negotiators and the Executive Negotiators must, within 5 Business Days after the date on which the notice of Dispute was given under **clause 57.2**, commence meetings and negotiations with a view to resolving the Dispute.
- (b) If the Executive Negotiators:
  - (i) have not resolved the Dispute; or
  - (ii) have not reached agreement upon a procedure to resolve the Dispute, within 20 Business Days after the date on which the notice of Dispute was given under **clause 57.2** (or such longer period of time as the Executive Negotiators or the parties may have agreed) then, whether or not the Executive Negotiators have met and undertaken negotiations with a view to resolving the Dispute:
  - (iii) if this deed provides that a Dispute will be referred to an expert for determination, either party may give the other party notice requiring that the Dispute be referred to expert determination under **clause 57.4**; or
  - (iv) if this deed does not provide that a Dispute will be referred to an expert for determination:
    - (A) the State may within 10 Business Days of the 20 Business Day period issue a notice to Operator Franchisee stating that the Dispute is to be determined by litigation pursuant to court proceedings; or
    - (B) if the State does not issue any such notice within the required time, the Dispute will be referred to arbitration under **clause 57.5**.
- (c) If the Dispute is referred to expert determination pursuant to **clause 57.3(b)**, the Executive Negotiators will attempt to agree on the expert to be appointed for the dispute resolution process.
- (d) If, within 5 Business Days of a referral pursuant to **clause 57.3(b)** to expert determination, the parties cannot agree on the expert to be appointed for the dispute resolution process, either party may request the President of the Institute of Arbitrators and Mediators Australia (**President**) to nominate a committee of not less than 3 experts (**Selected Committee**).
- (e) If the President has nominated a Selected Committee, the State must within 3 Business Days of being notified of the members of the Selected Committee advise Operator Franchisee of the expert for the purposes of **clause 57.4**, chosen from the Selected Committee.
- (f) If the State fails to select a member of the Selected Committee as the expert within that period of 3 Business Days then Operator Franchisee will be entitled to select the expert for the purposes of **clause 57.4**.
- (g) This **clause 57** has no application to the appointment of an independent expert under **clause 24.1** or **46.2**.

#### **57.4 Expert determination**

- (a) If a Dispute is referred to expert determination under this deed then the State will appoint, upon the referral in accordance with **clause 57.3** as expert:
  - (i) the person agreed between the parties under **clause 57.3(c)** (if applicable); or
  - (ii) a person selected in accordance with **clauses 57.3(d), 57.3(e) and 57.3(f)**.
- (b) The parties must enter into an agreement with the expert on the terms contained in **schedule 9** or such other terms as may be agreed between the parties and the expert (**Expert Determination Agreement**).
- (c) The parties must not withhold agreement to:
  - (i) any amendment the expert requests to be made to those terms contained in the Expert Determination Agreement provided the amendment is reasonable and does not conflict with this **clause 57.4**; or
  - (ii) any reasonable fees and disbursements the expert requests to be set out in the Expert Determination Agreement between the parties and the expert.
- (d) The expert must make the determination in accordance with:
  - (i) the Expert Determination Agreement and the rules for expert determination (**Rules**) contained in Part B of **schedule 9**; and
  - (ii) the Institute of Arbitrators and Mediators Australia Expert Determination Rules, to the extent they are not inconsistent with the Expert Determination Agreement and the Rules.
- (e) An expert determination conducted in accordance with the Expert Determination Agreement and the Rules is not an arbitration and the expert is not an arbitrator.
- (f) The determination of the expert will be final and binding unless a party serves a notice of appeal on the other party within 20 Business Days of the determination.
- (g) If a notice of appeal is given:
  - (i) by the State:
    - (A) the State may within 10 Business Days of the 20 Business Day period issue a notice to Operator Franchisee stating that the matter is to be determined by litigation pursuant to court proceedings; or
    - (B) if the State does not issue any such notice within the required time, the matter will be referred to arbitration under **clause 57.5**;
  - (ii) by Operator Franchisee, it may be given between 10 Business Days and 20 Business Days following the expert's determination and the matter will be referred to arbitration under **clause 57.5**; and
  - (iii) the determination of the expert will be binding on the parties until it is overturned, reversed, varied or otherwise changed by an award of an arbitrator or a court.

## 57.5 Arbitration

If a Dispute is referred to arbitration under **clause 57.3** or **57.4**, the arbitration will be conducted in accordance with the following procedure:

- (a) the arbitration will be conducted in accordance with the arbitration rules of the Australian Centre for International Commercial Arbitration known as the ACICA Arbitration Rules;
- (b) the seat of the arbitration will be Brisbane, Australia;
- (c) the language of the arbitration will be English;
- (d) the parties agree that:
  - (i) they have chosen arbitration for the purposes of achieving a just, quick and cost-effective resolution of the Dispute;
  - (ii) the arbitration conducted pursuant to this **clause 57.5** will not necessarily mimic court proceedings and the practices of those courts will not regulate the conduct of the proceedings before the arbitral tribunal;
  - (iii) in conducting the arbitration, the arbitral tribunal must take into account the matters set out in **clauses 57.5(d)(i)** and **57.5(d)(ii)**, particularly in deciding issues such as:
    - (A) the number of written submissions that will be permitted;
    - (B) if appropriate, the length of written submissions;
    - (C) the extent of document discovery permitted, if any;
    - (D) the consolidation of proceedings, when requested;
    - (E) the joinder of parties, when requested;
    - (F) the length of any hearing, if any; and
    - (G) the number of experts, if any, each party is permitted to appoint;
- (e) subject to **clauses 57.5(i)** and **57.5(j)** the arbitral tribunal will have the power to grant all legal, equitable and statutory remedies, except punitive damages;
- (f) the arbitral tribunal will have the power, on the application of any party to the arbitration agreement, to allow a third party who the arbitral tribunal considers has a sufficient interest in the outcome of the arbitration to be joined in the arbitration as a party, and that each party consents to such joinder. In the event of such joinder of parties in the arbitration, the arbitral tribunal has the power to make a single final award, or separate awards, in respect of all parties so joined in the arbitration;
- (g) any award of the arbitral tribunal will be final and binding upon the parties;
- (h) the arbitration agreement will be governed by and must be construed according to the laws applying in Queensland;
- (i) the powers conferred and restrictions imposed on a court by Part 2 of the *Civil Liability Act 2003* (Qld) are not conferred on an arbitral tribunal appointed in accordance with this **clause 57**; and
- (j) the arbitral tribunal has no power to make a binding or non-binding determination or any award in respect of a claim by applying or considering the provisions of Part 2 of the *Civil Liability Act 2003* (Qld) (and any

equivalent statutory provisions in any other state or territory) which might, in the absence of this provision, have applied to any dispute referred to the arbitral tribunal.

#### **57.6 Payments**

The State may withhold payment of that part of any amount which is the subject of a Dispute.

#### **57.7 Urgent relief**

Nothing in this **clause 57** will prejudice the right of a party to seek urgent injunctive or declaratory relief from a court.

#### **57.8 Continued performance of obligations**

Despite the existence of any Dispute the parties must, except as expressly provided otherwise, continue to perform their respective obligations under the State Project Documents.

#### **57.9 Core Contract disputes**

- (a) The parties acknowledge and agree that a dispute or difference arising under a Core Contract may concern the respective rights and obligations of the State and Operator Franchisee under the State Project Documents.
- (b) Operator Franchisee must inform the State immediately of any formal disputes and differences under any Core Contracts and the consequences (if any) on the operation of the State Project Documents.
- (c) In such circumstances, and if the State consents, Operator Franchisee may join the Core Contractor in the dispute resolution process under this deed, provided that the relevant Core Contractor agrees to be bound by decisions made in accordance with the dispute resolution process under this deed to the same extent as the State and Operator Franchisee.

### **58 Notice of Claims**

#### **58.1 Notices of Claims**

Subject to any provisions of the State Project Documents containing specific notice requirements, the State and its Associates will not be liable for any Loss of, or upon any Claim by, Operator Franchisee arising out of or in any way in connection with any direction, instruction, notice or any other act or omission of the State or its Associates or any other fact, matter or thing, under, arising out of, or in connection with the Project or the Project Activities unless Operator Franchisee gives the State the notices required by **clause 58.2** and, if applicable, **clause 58.3**.

#### **58.2 Prescribed notices**

The notices referred to in **clause 58.1** are:

- (a) a notice from Operator Franchisee which must be given to the State within the earlier of:
  - (i) 15 Business Days of when Operator Franchisee first became aware of the events on which the Loss or Claim is based; or
  - (ii) 45 Business Days of the first occurrence of the event on which the Loss or Claim is based (provided that, if Operator Franchisee reasonably demonstrates that the event is not something of which it



ought reasonably to have been aware within that 45 Business Day Period, the period for submission of the notice will be extended to 15 Business Days after Operator Franchisee first became aware of, or ought reasonably to have become aware of, that event),

in which Operator Franchisee states that it intends to submit a Claim and the event upon which the Claim will be based; and

- (b) a Claim by Operator Franchisee to be given to the State within 20 Business Days of giving notice under **clause 58.2(a)** and which must include:
  - (i) detailed particulars of the facts on which the Claim is based;
  - (ii) the legal basis for the Claim whether based on a term of the State Project Documents or otherwise, and if based on a term of a State Project Document, clearly identifying the specific term;
  - (iii) the facts relied upon in support of the Claim in sufficient detail to permit verification; and
  - (iv) details of the amount claimed and how it has been calculated, including any Loss.

### **58.3 Continuing events**

If the events upon which the Claim under **clause 58.2(b)** is based or the consequences of the events are continuing, Operator Franchisee must continue to give information required by **clause 58.2(b)** within 14 Business Days after the end of each calendar month after the claim under **clause 58.2(b)** was submitted, until the events or consequences have ceased.

## **59 Notices**

Each communication (including each notice, consent, approval, request and demand) under or in connection with the State Project Documents:

- (a) must be in writing;
- (b) must be addressed as follows (or as otherwise notified by that party to each other party from time to time):

#### **The State**

Name: Department of Transport and Main Roads  
Address: Gold Coast Rapid Transit Project  
Locked Bag 56  
Southport BC Queensland 4215  
Email: tim.r.poole@tmr.qld.gov.au  
For the attention of: Tim Poole, Project Director

#### **Operator Franchisee**

Name: GoldLinQ Pty Ltd  
Address: Level 29, 140 William Street  
Melbourne Victoria 3000  
Email: morne.swanepoel@plenarygroup.com.au  
For the attention of: Company Secretary

- (c) must be signed by the party making it or (on that party's behalf) by the solicitor for, or any attorney, director, secretary or authorised agent of, that party;

- (d) must be delivered by hand or posted by prepaid post to the address, or sent by email to the email address, of the addressee, in accordance with **clause 59(b)**; and
- (e) is taken to be received by the addressee:
  - (i) (in the case of prepaid post sent to an address in the same country) on the third day after the date of posting;
  - (ii) (in the case of prepaid post sent to an address in another country) on the fifth day after the date of posting by airmail;
  - (iii) (in the case of email) upon the first to occur of:
    - (A) receipt by the sender of an email acknowledgement from the intended recipient's information system showing that the email has been delivered to the email address of that recipient;
    - (B) the time that the email enters an information system which is under the control of the intended recipient; and
    - (C) the time that the email is first opened or read by an employee or officer of the intended recipient; and
  - (iv) (in the case of delivery by hand) on delivery,
 but if the communication is taken to be received on a day that is not a Business Day or after 5.00pm, it is taken to be received at 9.00am on the next Business Day.

## 60 Proportionate liability

### 60.1 Exclusion of proportionate liability scheme

- (a) To the extent permitted by Law, Part 2 of the *Civil Liability Act 2003* (Qld) (and any equivalent statutory provision in any other state or territory) is excluded in relation to all and any rights, obligations or liabilities of either party under the State Project Documents whether these rights, obligations or liabilities are sought to be enforced in contract, tort or otherwise.
- (b) Without limiting the above, the rights, obligations and liabilities of the State and Operator Franchisee under the State Project Documents with respect to proportionate liability are as specified in this deed and not otherwise, whether these rights, obligations or liabilities are sought to be enforced by a claim in contract, in tort or otherwise.

### 60.2 Contractor not to apply proportionate liability scheme

To the extent permitted by Law:

- (a) Operator Franchisee must not seek to apply the provisions of Part 2 of the *Civil Liability Act 2003* (Qld) in relation to any claim by the State against Operator Franchisee (whether in contract, tort or otherwise); and
- (b) if any of the provisions of Part 2 of the *Civil Liability Act 2003* (Qld) are applied to any claim by the State against Operator Franchisee (whether in contract, tort or otherwise), Operator Franchisee will indemnify the State against any loss, damage, cost or expense that forms part of a claim by the State against Operator Franchisee which the State cannot recover from Operator Franchisee because of the operation of Part 2 of the *Civil Liability Act 2003* (Qld).

### 60.3 Subcontracts

Operator Franchisee must:

- (a) in each subcontract into which it enters for the performance of the Project Activities, include a term that (to the extent permitted by Law) excludes the application of Part 2 of the *Civil Liability Act 2003* (Qld) in relation to all and any rights, obligations or liabilities of either party under each subcontract whether these rights, obligations or liabilities are sought to be enforced by a claim in contract, tort or otherwise; and
- (b) require each Core Contractor and each Significant Contractor to include, in any further contract that it enters into with a third party for the performance of the Project Activities, a term that (to the extent permitted by Law) excludes the application of Part 2 of the *Civil Liability Act 2003* (Qld) in relation to all and any rights, obligations or liabilities of either party under each further agreement whether such rights, obligations or liabilities are sought to be enforced by a claim in contract, tort or otherwise.

## 61 Taxes

### 61.1 Liability for Taxes

- (a) Subject to **clause 61.2** and **clauses 42.2 to 42.4**, Operator Franchisee must indemnify the State against, and must pay the State on demand the amount of, all Taxes incurred in connection with:
  - (i) the negotiation, preparation, execution, stamping and registration of any State Project Document;
  - (ii) the transactions that any State Project Document contemplates; and
  - (iii) any amendment to, or any consent, approval, waiver, release or discharge of or under, any State Project Document.
- (b) Operator Franchisee will be responsible for the lodgement and stamping of the State Project Documents unless otherwise notified by the State within 10 Business Days after execution of this deed that the State will attend to lodgement and stamping of the State Project Documents, in which case Operator Franchisee must promptly deliver all executed copies of the documents in its possession to the State to enable it to arrange lodgement and must co-operate with the State to arrange stamping, payment of any assessment and to dispute an assessment (at the State's cost) in accordance with the State's directions.

### 61.2 GST

- (a) **(Interpretation):**
  - (i) Except if the context suggests otherwise, terms used in this **clause 61.2** have the meanings given to those terms by the GST Law (as amended from time to time).
  - (ii) Unless otherwise expressly stated, all consideration to be provided under this deed is exclusive of GST. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purpose of this **clause 61.2**.

- (iii) references to GST payable and input tax credit entitlement include GST payable by, and the input tax credit entitlement of, the representative member for a GST group of which the entity is a member.
- (b) **(Additional amount of GST payable):** If GST becomes payable on any supply made by a party (**Supplier**) under or in connection with this deed:
  - (i) any party (**Recipient**) that is required to provide consideration to the Supplier for that supply must pay an additional amount to the Supplier equal to the amount of the GST payable on that supply (**GST Amount**):
    - (A) in respect of a payment to which **clause 61.2(c)** applies, at the time specified in **clause 61.2(c)**; or
    - (B) in any other case, at the same time as any other consideration is to be provided for the supply;
  - (ii) the Supplier must provide a Tax Invoice to the Recipient for that supply, no later than the time at which the GST Amount for that supply is to be paid in accordance with **clause 61.2(b)(i)**.
- (c) **(Other payments):** The State is not required to pay the GST component of the Completion Payment, an Additional Completion or a Construction Payment until the 18<sup>th</sup> day after the end of the month in which the relevant Completion Payment, Additional Completion Payment or Construction Payment (as applicable) is properly invoiced by Operator Franchisee to the State in accordance with this deed.
- (d) **(Reimburse):** If the State is denied an input tax credit by the Commissioner of Taxation, a Court or other appropriate government agency for all or part of the GST component in respect of the Completion Payment, an Additional Completion Payment or a Construction Payment, Operator Franchisee must reimburse the State for any part of the GST component it has paid to Operator Franchisee in excess of the State's input tax credit entitlement and indemnify the State for an amount equal to any penalty or interest as a result of the State claiming an input tax credit in respect of the whole of the GST component of the Completion Payment, an Additional Completion Payment or a Construction Payment (as applicable).
- (e) **(State to take reasonable steps):** For the purposes of **clause 61.2(d)**, the State must:
  - (i) take all reasonable steps to ensure it receives the benefit of the input tax credit in respect of the Completion Payment, an Additional Completion Payment or a Construction Payment (as applicable) from the Australian Taxation Office, including reporting the relevant acquisition in the first GST return in which it can properly be reported and lodging the GST return in which the acquisition is reported no later than the due date for that GST return; and
  - (ii) forward any correspondence from the Commissioner of Taxation in respect of that GST return (but only to the extent that the correspondence relates to the relevant input tax credit) to Operator Franchisee and promptly informing Operator Franchisee of any delays or other related issues in respect of the input tax credit.

- (f) **(Reimbursements):** Where a party is required under this deed to pay or reimburse an expense or outgoing of another party, the amount to be paid or reimbursed by the first party will be the sum of:
  - (i) the amount of the expense or outgoing less any input tax credits in respect of the expense or outgoing to which the other party is entitled; and;
  - (ii) if the payment or reimbursement is subject to GST, an amount equal to that GST.
- (g) **(Liability net of GST):** Any reference in the calculation of consideration under this deed to a cost, expense or other liability incurred by a person, will exclude the amount of any input tax credit entitlement of that person in relation to an acquisition to which the relevant cost, expense or other liability relates. A person will be assumed to have an entitlement to a full input tax credit unless it demonstrates otherwise prior to the date on which the consideration must be provided.
- (h) **(Revenue exclusive of GST):** Except to the extent that the contrary intention is expressly stated, any reference in this deed to price, value, sales, proceeds, revenue or a similar amount (**Revenue**), will be a reference to that Revenue determined on a GST exclusive basis.
- (i) **(Cost exclusive of GST)** Except to the extent that the contrary intention is expressly stated, any reference in this deed (other than in the calculation of consideration) to cost, expense or other similar amount (**Cost**), will be a reference to that Cost reduced by any input tax credit to which that person is entitled in relation to an acquisition to which the relevant Cost relates. A person will be assumed to have an entitlement to a full input tax credit unless it demonstrates otherwise prior to the date on which the consideration must be provided.
- (j) **(Adjustment events)** If an adjustment event arises in respect of a taxable supply made by a Supplier under this deed, the amount payable by the recipient under **clause 61.2(b)** will be recalculated to reflect the adjustment event and a payment will be made by the recipient to the Supplier or by the Supplier to the recipient as the case requires and the Supplier must issue an adjustment note.
- (k) **(CPI):**
  - (i) The parties acknowledge that any increase in the rate of the GST could result in a significant inflationary impact on the CPI or other indices that may extend over a number of quarters subsequent to the increase in the rate of the GST
  - (ii) The parties agree to exclude the impact of the GST on the CPI or other indices in any relevant calculations under this deed. The parties will meet at the request of either of them in an effort to identify a replacement index or an adjustment to the published index as may be necessary, such that there is consistency before and after the increase in the rate of GST as to what was being measured under the old index and what is being measured under the new index. To the extent that the parties cannot agree within 30 days on any appropriate adjustment to the index, or as to what is an acceptable alternative index, the dispute may be resolved in accordance with **clause 57**.

## 62 General

### 62.1 CPI Indexed

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

$$A \text{ (CPI Indexed)} = A \times \frac{\text{CPI}_{Q-1}}{\text{CPI}_{\text{Base}}}$$

Where:

A is the monetary amount originally specified;

CPI<sub>Q-1</sub> is the Consumer Price Index All Groups weighted average for the eight capital cities published by the Australian Bureau of Statistics for the Quarter End expressly provided for or otherwise following the date that occurs 3 months before the relevant calculation date; and

CPI<sub>Base</sub> is the Consumer Price Index All Groups weighted average for the eight capital cities published by the Australian Bureau of Statistics for the Quarter End March 2010, being 171.0.

If either:

- (a) the Consumer Price Index All Groups weighted average for the eight capital cities ceases to be published quarterly; or
- (b) the method of calculation of the Consumer Price Index All Groups weighted average for the eight capital cities substantially alters,

then the Consumer Price Index All Groups weighted average for the eight capital cities is to be replaced by the nearest equivalent index as selected in good faith by the State and any necessary consequential amendments are to be made.

### 62.2 Replacement Body

Where a reference is made to any body or authority which ceases to exist (**Former Body**), that reference will be to that body or authority (**Replacement Body**) which then serves substantially the same functions as the Former Body. Any reference to any senior officer of the Former Body will be to the equivalent senior officer of the Replacement Body.

### 62.3 Business Day

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

### 62.4 No bias against drafter

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

### 62.5 Excluding liability

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

## **62.6 Certification**

For the purposes of this deed, a copy of a document will be regarded as duly certified by Operator Franchisee if it is certified as a true copy by a director, secretary or general manager of Operator Franchisee.

## **62.7 Cost of performing obligations**

Each party must perform its obligations under this deed at its own cost, unless expressly provided otherwise.

## **62.8 Governing Law and jurisdiction**

- (a) This deed is governed by and must be construed according to the Law applying in Queensland.
- (b) Each party irrevocably:
  - (i) submits to the non exclusive jurisdiction of the courts of Queensland, and the courts competent to determine appeals from those courts, with respect to any proceedings which may be brought at any time relating to this deed; and
  - (ii) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within **clause 62.8(b)(i)**.

## **62.9 Amendments**

- (a) This deed may only be varied by a deed executed by or on behalf of each party.
- (b) The State Project Documents will be deemed to be amended as provided for in the Financial Close Adjustment Protocol and the Stage 2 Financial Close Adjustment Protocol.

## **62.10 Waiver**

- (a) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy provided by Law or under this deed by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by Law or under this deed.
- (b) A waiver or consent given by a party under this deed is only effective and binding on that party if it is given or confirmed in writing by that party.
- (c) No waiver of a breach of a term of this deed operates as a waiver of another breach of that term or of a breach of any other term of this deed.

## **62.11 Survival of certain provisions; no merger**

- (a) Without limiting **clause 62.18(a)**:
  - (i) **clauses 5** (Security), **6.1** (The State as an Authority), **6.2** (Other Authorities), **6.4** (State Representative), **38** (Payment Provisions), **42** (Indemnity), **45.8** (Termination Payments), **45.9** (Waiver and no Claim), **46** (End of Term arrangements), **47** (Transition to the State or another operator franchisee), **49.1** (Accounting records), **50** (Disclosure, confidentiality and publicity), **51** (Intellectual Property), **57** (Dispute resolution), **58** (Notice of Claims), **59** (Notices), **60** (Proportionate liability), **62.8** (Governing Law), this **clause 62.11**, the

representations and warranties given by Operator Franchisee under this deed and any other provisions which are expressed to survive termination (together, the **Surviving Clauses**) will survive rescission, termination or expiration of this deed; and

(ii) if this deed is rescinded or terminated, no party will be liable to any other party except:

(A) under the Surviving Clauses; or

(B) in respect of any breach of this deed occurring before such rescission or termination.

(b) No right or obligation of any party will merge on completion of any transaction under this deed. All rights and obligations under this deed survive the execution and delivery of any transfer or other document which implements any transaction under this deed.

#### **62.12 Further acts and documents**

Each party must promptly do all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to that party) required by Law or reasonably requested by another party to give effect to this deed.

#### **62.13 Consents**

A consent required under this deed from a party may be given or withheld, or may be given subject to any conditions, as that party thinks fit, unless this deed expressly provides otherwise.

#### **62.14 No representation or reliance**

(a) Each party acknowledges that no party (nor any person acting on a party's behalf) has made any representation or other inducement to it to enter into this deed, except for representations or inducements expressly set out in this deed.

(b) Each party acknowledges and confirms that it does not enter into this deed in reliance on any representation or other inducement by or on behalf of any other party, except for representations or inducements expressly set out in this deed.

#### **62.15 Severance**

If at any time any provision of this deed is or becomes illegal, invalid or unenforceable in any respect under applicable Law, that provision is to be severed to the extent necessary to make this deed enforceable, and it will not affect or impair the legality, validity or enforceability of any other provision of this deed.

#### **62.16 Exercise of remedies**

Except to the extent expressly provided for in this deed:

(a) if Operator Franchisee breaches any of its obligations under any State Project Document, the State may exercise any or all of the rights and powers and pursue any or all of the remedies available to the State under the State Project Documents or enforce any other legal or equitable remedy available at Law;

(b) each and every right, power and remedy of the State will be cumulative and in addition to any other right, power and remedy, whether under a State Project Document or at Law, which may be exercised by the State and the



exercise of a right, power or remedy will not be construed to be a waiver of the right to exercise any other right, power or remedy; and

- (c) no delay or omission by the State in the exercise of any right, power or remedy will impair such right, power or remedy or constitute a waiver of the relevant breach.

#### **62.17 Entire agreement**

To the extent permitted by Law, in relation to its subject matter, this deed:

- (a) embodies the entire understanding of the parties, and constitutes the entire terms agreed by the parties; and
- (b) supersedes any prior written or other agreement of the parties.

#### **62.18 Indemnities**

- (a) Each indemnity in this deed is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiration of this deed.
- (b) It is not necessary for a party to incur expense or to make any payment before enforcing a right of indemnity conferred by this deed.
- (c) A party must pay on demand any amount it must pay under an indemnity in this deed.

#### **62.19 Counterparts**

This deed may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes the deed of each party who has executed and delivered that counterpart.

#### **62.20 Attorneys**

Each person who executes this deed on behalf of a party under a power of attorney declares that he or she is not aware of any fact or circumstance that might affect his or her authority to do so under that power of attorney.

#### **62.21 Relationship between the State and Operator Franchisee**

Nothing in, or contemplated by, any State Project Document will be construed or interpreted as:

- (a) constituting a relationship between the State and Operator Franchisee, or any other person, of partners, joint venturers, fiduciaries, employer and employee or principal and agent; or
- (b) imposing any general duty of good faith on the State to Operator Franchisee or its Associates in relation to or arising out of this deed, other than to comply with the obligations (if any) expressly stated to be assumed by the State under this deed or any other State Project Document on a good faith basis.

#### **62.22 Contract documents to be in English**

All documentation in computer readable or other written forms brought (whether before or after the Relevant Date) or required to be brought into existence as part of, or for the purpose of, performing the Project Activities must be written in the English language.

#### **62.23 Vienna convention**

The UN Convention on Contracts for the International Sale of Goods (1980) does not apply to this Contract.

#### **62.24 Related Loss**

Notwithstanding any other provision of this deed, to the extent that the State is liable to Operator Franchisee for any Claim arising under this deed, the State will not be entitled to avoid or reduce its liability to Operator Franchisee on the basis that Operator Franchisee has not suffered all or part of the relevant loss or damage (**Related Loss**) solely because such Related Loss is incurred by a subcontractor (of any tier) of Operator Franchisee or because the subcontractor's right to recover such Related Loss from Operator Franchisee or any other subcontractor is deferred, suspended or dependent upon recovery or entitlement from the State, Operator Franchisee or other subcontractor or is dependent upon determination of such entitlement.

# Schedules

Schedule 1 - Conditions Precedent

Schedule 2 - Form of Bond

Schedule 3 - Service Payments and Key Performance Indicators

Schedule 3A - Stage 2 capital component of Service Payments

Schedule 4 - Certification Schedule

Schedule 5 - Construction Drawdown Schedule

Schedule 6 - Estimated Cost Effect

Schedule 7 - Termination Payments

Schedule 8 - Handback Packages

Schedule 9 - Expert Determination

Schedule 10 - Insurances

Schedule 11 - Group Structure

Schedule 12 - Information Documents

Schedule 13 - Pro Forma Documents

Schedule 14 - Pre-Agreed Modifications

Schedule 15 - Pre-Priced Elements

Schedule 16 - Commercially Sensitive Information

Schedule 17 - Vehicle IP

Schedule 18 - Assumed Legislative Amendments

Schedule 19 - Advertising Requirements

Schedule 20 - Existing Private Development Applications and Private Development Approvals

**Executed** as a deed.

**Executed** for and on behalf of the  
**State of Queensland** by the **Hon.**  
**Stirling Hinchliffe**, Minister for  
Transport and the Commonwealth  
Games and **Neil Scales**, Director-  
General, Department of Transport and  
Main Roads, in the presence of:

)  
)  
)  
)

**Not required to be executed, as  
deemed executed by virtue of the  
Modification Implementation Deed**

.....  
Signature of Witness

.....  
Signature

.....  
Name of Witness (print)

.....  
Signature

**Executed by GoldLinQ Pty Ltd ACN**  
**147 815 441** by the party's attorney  
pursuant to power of attorney dated  
..... who states that no notice  
of revocation of the power of attorney  
has been received in the presence of:

)  
)  
)  
)  
)  
)

**Not required to be executed, as  
deemed executed by virtue of the  
Modification Implementation Deed**

.....  
Signature of Witness

.....  
Signature of Attorney

.....  
Name of Witness (print)

.....  
Name of Attorney (print)

# Exhibit 1

## PSR

*The PSR is deemed to be the version included in the executed Project Deed dated 5 May 2011, except as otherwise amended by the amended PSRs exhibited in this section.*

Consolidated version incorporating amendments from Deed of Amendments No. 1-3, amendments from System Site Amendment Deed and amendments from Modifications and other changes agreed between the parties 1 January 2016 (excluding legislative and policy update, changes to TTA structure, amendments related to LRV procurement and Stage 2 procurement), and amendments for Stage 2.

---

The State of Queensland

---

GoldLinQ Pty Ltd

---

# Gold Coast Rapid Transit Project Deed - Schedules

# Contents

<b>Schedule 1 - Conditions Precedent</b>	<b>2</b>
<b>Schedule 2 - Form of Bond</b>	<b>5</b>
<b>Schedule 3 - Service Payments and Key Performance Indicators</b>	<b>7</b>
<b>Schedule 3A - Stage 2 capital component of Service Payments</b>	<b>79</b>
<b>Schedule 4 - Certification Schedule</b>	<b>80</b>
<b>Schedule 5 – Construction Drawdown Schedule</b>	<b>109</b>
<b>Schedule 6 - Estimated Cost Effect</b>	<b>111</b>
<b>Schedule 7 - Termination Payments</b>	<b>127</b>
<b>Schedule 8 - Handback Packages</b>	<b>140</b>
<b>Schedule 9 - Expert Determination</b>	<b>142</b>
<b>Schedule 10 - Insurances</b>	<b>156</b>
<b>Schedule 11 - Group Structure</b>	<b>161</b>
<b>Schedule 12 - Information Documents</b>	<b>162</b>
<b>Schedule 13 - Pro Forma Documents</b>	<b>163</b>
<b>Schedule 14 - Pre-Agreed Modifications</b>	<b>216</b>
<b>Schedule 15 - Pre-Priced Elements</b>	<b>243</b>
<b>Schedule 16 – Commercially Sensitive Information</b>	<b>249</b>
<b>Schedule 17 – Vehicle IP</b>	<b>252</b>
<b>Schedule 18 – Assumed Legislative Amendments</b>	<b>254</b>
<b>Schedule 19 – Advertising Requirements</b>	<b>256</b>
<b>Schedule 20 – Existing Private Development Applications and Private Development Approvals</b>	<b>260</b>
<b>Schedule 21 – ETS Interface Requirements</b>	<b>277</b>

# Schedule 1

## Conditions Precedent

Condition Precedent	Condition Precedent Deadline Date
<p><b>1 Project Documents</b></p> <p>(a) Execution of all State Project Documents by the State.</p> <p>(b) Execution of all Project Documents and the Aveng Deed of Undertaking by all parties to those documents (other than the State) and the satisfaction or waiver of all conditions precedent to such documents (other than any condition precedent that requires the satisfaction or waiver of the conditions precedent to this deed).</p> <p>(c) Receipt by the State of evidence, in form and substance satisfactory to it, that any authorisation required by each of Operator Franchisee, each Core Contractor, each Core Guarantor and the Debt Financiers (or any trustee or agent on behalf of the Debt Financiers) in connection with its entry into the Project Documents to which it is a party and the performance of its obligations under those Project Documents has been obtained and is in full force and effect.</p>	<p>1 August 2011</p>
<p><b>2 D&amp;C Phase Insurance Policies</b></p> <p>The D&amp;C Phase Insurances being effected and evidence of those insurances being provided to the State in accordance with <b>clause 43.4(b)</b>.</p>	<p>1 August 2011</p>
<p><b>3 Tax ruling</b></p> <p>Operator Franchisee obtaining a tax ruling(s) issued by and binding upon the Commissioner and the Australian Taxation Office, acceptable to the State, with respect to the key tax issues arising in relation to the proposed structure and arrangements the subject of the Project Documents. Unless agreed otherwise, the tax ruling is, at a minimum, to cover the application or non-application (as the case may be) of Division 250 of the <i>Income Tax Assessment Act 1997</i> (Cth).</p>	<p>1 August 2011</p>
<p><b>4 Base Case Financial Model</b></p>	<p>1 August 2011</p>



Condition Precedent	Condition Precedent Deadline Date
<p>The State receiving:</p> <ul style="list-style-type: none"> <li>(a) the Base Case Financial Model in a form or forms satisfactory to the State (which must be consistent with the Day 1 Base Case Financial Model with only those changes provided for in the Financial Close Adjustment Protocol or otherwise as reasonably approved by the State);</li> <li>(b) a letter in a form and substance satisfactory to the State confirming the Base Case Financial Model is identical to the Day 1 Base Case Financial Model except as set out in the letter; and</li> <li>(c) an audit report on the Base Case Financial Model acceptable to the State from an auditor acceptable to the State.</li> </ul>	
<p><b>5 Counterparty Details</b></p> <ul style="list-style-type: none"> <li>(a) The State receiving the Counterparty Details.</li> <li>(b) Operator Franchisee obtaining, and providing to the State a legal opinion, in a form and substance satisfactory to the State, regarding the validity and enforceability of the execution of any State Project Documents by any foreign entity entering into a State Project Document.</li> </ul>	1 August 2011
<p><b>6 FIRB Approval</b></p> <p>If necessary, evidence of notifications under the <i>Foreign Acquisitions and Takeovers Act 1975</i> (Cth) or a certified copy of the unconditional approval from the Australian Treasurer advising that there is no objection under the <i>Foreign Acquisitions and Takeovers Act 1975</i> (Cth) to the ownership of Operator Franchisee or its interest in the Project has been provided to the State.</p>	1 August 2011
<p><b>7 QBSA Licence</b></p> <p>The State receiving evidence satisfactory to it that:</p> <ul style="list-style-type: none"> <li>(a) Operator Franchisee holds a contractor's licence of the appropriate class under the <i>Queensland Building Services Authority Act 1991</i> (Qld); and</li> <li>(b) MacDow holds a contractor's licence of the appropriate class under the <i>Queensland Building Services Authority Act 1991</i> (Qld).</li> </ul>	1 August 2011

	Condition Precedent	Condition Precedent Deadline Date
8	<b>WHS Accreditation</b>  The State receiving evidence satisfactory to it that MacDow is accredited under the WHS Accreditation Scheme, and that such accreditation will not expire during the D&C Phase.	1 August 2011
9	<b>Principal Contractor</b>  The State being satisfied that it has duly appointed MacDow as the principal contractor for all of the works to be carried out on the Construction Site in accordance with the <i>Workplace Health &amp; Safety Act 1995</i> (Qld).	1 August 2011
10	<b>Native Title</b>  The State satisfying itself in relation to the processes required under the <i>Native Title Act 1993</i> (Cth) to allow for the Project to be carried out in accordance with the State Project Documents.	1 August 2011
11	<b>Financial Close Adjustment Protocol</b>  The Financial Close Adjustment Protocol has been complied with.	1 August 2011
12	<b>Accreditation</b>  The State receiving evidence satisfactory to it that Operator Franchisee has accreditation for the construction of a railway, railway tracks and associated track structures.	1 August 2011
13	<b>Parent Support Bond</b>  The State receiving a certified copy of evidence in writing confirming the issue of the Parent Support Bond to the Operator Franchisee and the Security Trustee.	

# Schedule 2

## Form of Bond

### Form of Bond

**TO:** [Insert name and ABN (if applicable) of the party receiving the bond]  
(Principal)

**FOR:** [Insert name and ABN of the party procuring the bond] (Customer)

**DATE:**

GoldLinQ Pty Ltd ACN 147 815 441 (**Operator Franchisee**) has been chosen by the State to design, construct, finance and maintain stage 1 of the Gold Coast Rapid Transit light rail system pursuant to a Project Deed entered into between the State of Queensland and Operator Franchisee (**Project Deed**).

At the request of the Customer and in respect of the [insert relevant person] obligations under the [describe relevant agreement], [insert name and ABN of issuer] of [insert address] (**Issuer**) unconditionally and irrevocably undertakes to pay to the Principal, on demand by the Principal, any sum or sums which may from time to time be demanded by the Principal to a maximum aggregate sum of A\$[#] million (**Maximum Aggregate Sum**).

Payment or payments under this undertaking must be made by the Issuer to the Principal:

1. without reference to the Customer, any other person (other than the Issuer) or the Project Deed;
2. without enquiring into the performance or non-performance of the Project Deed;
3. despite any notice by the Customer or any other person to the Issuer not to pay the whole or any part of the Maximum Aggregate Sum;
4. despite anything which but for this provision may operate to release, prejudicially affect or discharge or in any way relieve the Issuer from any obligation including, without limitation:
  - (a) any variation or alteration to any contract between the Principal and the Customer (including the Project Deed); or
  - (b) the grant to any person of any time, waiver or other indulgence, or the discharge or release of any person; and
5. to an Australian Dollar account in the State of Queensland.

This undertaking expires on the earlier of:

6. [insert date];
7. the date the Principal notifies the Issuer in writing, endorsed with the consent of the State, that this undertaking is no longer required;

8. the date the Issuer has paid the Maximum Aggregate Sum to the Principal; or
9. the date the undertaking is returned to the Issuer.

The Issuer will have no liability in respect of any claim under this undertaking after the date upon which this undertaking expires.

However, the Issuer may at any time without being required to do so pay to the Principal the Maximum Aggregate Sum less any amount or amounts it may previously have paid under this undertaking or such lesser sum as may be required and specified by the Principal and thereupon the liability of the Issuer hereunder will immediately cease.

The Principal may not assign its rights under this undertaking without the written consent of the Issuer, the Customer and the State except to the State or replacement Security Trustee.

This undertaking is governed by and construed in accordance with the laws of Queensland.

**Executed and delivered as a deed.**

Each attorney executing this deed states that [he/she] has no notice of revocation or suspension of [his/her] power of attorney.

*[Insert execution clause of Issuer]*

**Additional requirements**

The Performance Bond must:

- (a) be payable at an office of the Issuer in Brisbane (or such other place as the State in writing may approve) which is open during normal business hours; and
- (b) be issued by an Issuer with a Required Rating.

## Schedule 3

### Service Payments and Key Performance Indicators

# Definitions and interpretation

## 1.1 Definitions

**Actual Floating Rate Stage 1** means in respect of an Interest Period, the average bid rate for three month maturity, or if the relevant Interest Period Stage 1 is less than three months the shortest maturity which is greater than the number of whole and part months in Interest Period Stage 1, published on Reuters page BBSY (at or about 10:15am (Sydney time)) on the first day of that Interest Period.

For the avoidance of doubt, if an Interest Period Stage 1 commenced on 1 January and ended on 10 February, the relevant maturity would be two months.

**Actual Floating Rate Stage 2** means in respect of an Interest Period, the average bid rate for three month maturity, or if the relevant Interest Period Stage 2 is less than three months the shortest maturity which is greater than the number of whole and part months in Interest Period Stage 2, published on Reuters page BBSY (at or about 10:15am (Sydney time)) on the first day of that Interest Period.

For the avoidance of doubt, if an Interest Period Stage 2 commenced on 1 January and ended on 10 February, the relevant maturity would be two months.

**Actual Floating Rate Interest Payment** means in respect of an Interest Period, the sum of Actual Floating Rate Interest Payment Stage 1 and Actual Floating Rate Interest Payment Stage 2.

**Actual Floating Rate Interest Payment Stage 1** means in respect of an Interest Period, the interest payable at the Actual Floating Rate Stage 1 (excluding any margin) on the Base Case Floating Rate Debt Stage 1, calculated in accordance with the following formula.

Actual Floating Rate Interest Payment Stage 1 =  $AFR_i \times BCFRD_i \times Days_i / Days_y$

where :

$AFR_i$  is the Actual Floating Rate Stage 1 for the relevant Interest Period

$BCFRD_i$  is the Base Case Floating Rate Debt Stage 1 for the relevant Interest Period

$Days_i$  is the greater of zero or the number of calendar days in Interest Period Stage 1 for the relevant Interest Period

$Days_y$  is 365, being the assumed number of calendar days in the year.

**Actual Floating Rate Interest Payment Stage 2** means in respect of an Interest Period, the interest payable at the Actual Floating Rate Stage 2 (excluding any margin) on the Base Case Floating Rate Debt Stage 2, calculated in accordance with the following formula.

Actual Floating Rate Interest Payment Stage 2 =  $AFR_i \times BCFRD_i \times Days_i / Days_y$

where :

$AFR_i$  is the Actual Floating Rate Stage 2 for the relevant Interest Period

$BCFRD_i$  is the Base Case Floating Rate Debt Stage 2 for the relevant Interest Period

$Days_i$  is the greater of zero or the number of calendar days in Interest Period Stage 2 for the relevant Interest Period

Days<sub>y</sub> is 365, being the assumed number of calendar days in the year.

**Additional Service** means a Passenger Service that the State requires Operator Franchisee to provide in excess of the Minimum Services (but not in excess of the Maximum Services) and that is not a Special Event Service.

**Additional Services Payment (ASP)** means the amount payable to Operator Franchisee for Additional Services calculated in accordance with **section 4.1** of part A.

**AM Peak** has the meaning given to it in the PSR.

**Automated LRV Locating System (AVLS)** means a system determining the location and performance against the timetable for each LRV.

**Availability Entitlement (AE)** means a percentage calculated in accordance with **section 7.1** of part A.

**Base Case Floating Rate Debt Stage 1** means in respect of an Interest Period the amounts of outstanding Stage 1 private sector floating rate debt less the amount of hedged Stage 1 private sector debt in the Base Case upon which floating rate interest payments are made as set out in "Base Case Floating Rate Debt Stage 1" in Appendix A2. For the purposes of calculating the Floating Rate Component in section 9A Base Case Floating Rate Debt Stage 1 can be a positive or negative number.

**Base Case Floating Rate Debt Stage 2** means in respect of an Interest Period the amounts of outstanding Stage 2 private sector floating rate debt upon which floating rate interest payments are payable, in circumstances where the Post Completion Payment Date is later than 12 calendar months after the Date for Stage 2 Completion, as set out in "Base Case Floating Rate Debt Stage 2" in Appendix A2. For the purposes of calculating the Floating Rate Component in section 9A Base Case Floating Rate Debt Stage 2 is to be expressed as a positive number.

**Base Case Floating Rate Interest Payment** means in respect of an Interest Period, the sum of Base Case Floating Rate Interest Payment Stage 1 and Base Case Floating Rate Interest Payment Stage 2.

**Base Case Floating Rate Interest Payment Stage 1** means in respect of an Interest Period, the interest payable in the Base Case (excluding any margin) on the Base Case Floating Rate Debt Stage 1 as set out in "Base Case Floating Rate Interest Payment Stage 1" in Appendix A2.

**Base Case Floating Rate Interest Payment Stage 2** means in respect of an Interest Period, the interest payable in the Base Case (excluding any margin) on the Base Case Floating Rate Debt Stage 2 as set out in "Base Case Floating Rate Interest Payment Stage 2" in Appendix A2, except that where the Post Completion Payment Date is in the relevant Interest Period, the value for Base Case Floating Rate Interest Payment Stage 2 will be varied by:

- (a) first, multiplying by the number of calendar days in the relevant Interest Period Stage 2 which precede and include the Post Completion Payment Date; and
- (b) second, dividing by the total number of calendar days in the relevant Interest Period, to the extent those calendar days precede or include the Expiry Date Stage 2.

For the avoidance of doubt, that portion of the Base Case Floating Rate Interest Payment Stage 2 relating to calendar days after the Post Completion Payment Date will be calculated as nil.

**Base Energy Consumption (BEC)** means the total energy consumption forecast by Operator Franchisee for an Operating Year based on the Minimum Services to be provided for that Operating Year as contained in **section 6.1**.

**Base Performance Adjustment** means [REDACTED] in real value at 30 June 2015.

**Base Service Payment (BSP)** means the amount calculated in accordance with **section 2** of part A.

**Base Service Payment Components (BSPC3)** means the components of the Base Service Payment as set out in Table 1 of **appendix A**.

**CCTV** means the use of video cameras to capture imagery either for storage or real time transmission to a centralised location.

**Complaints Management System** means a system that is utilised to communicate, manage and control the complaints process between Translink and Operator Franchisee.

**Completed Service** means either:

- (a) a Passenger Service that departs from an Originating Station, stops at all Stations and arrives at a Terminating Station in accordance with the Contract Timetable; or
- (b) a Special Event Service that departs from an Originating Station, stops at all Stations and arrives at a Terminating Station in accordance with the Special Event Timetable.

**Connection Charges (CC)** means the charges payable for a Payment Month under the Network Connection Agreement excluding, in each case and to the extent that the charge is a function of actual energy consumption and power demand, that part of the charge which is greater than it otherwise would be due to:

- (a) the electricity consumption (in MWh) of the System being greater than the Base Energy Consumption; or
- (b) the power demand (in MW) of the System exceeding the 'Maximum Contract Demand' as specified in the Network Connection Agreement.

**Consultant** means a Mystery Shopper or a Qualified Professional.

**Contract Timetable** has the meaning given to it in the PSR.

**Critical Systems** mean those systems that are critical to Operator Franchisee's operations including emergency help points, CCTV, AVLS and PMCS.

**Customer Service Officer** has the meaning given to it in the PSR.

**Daily Availability (DA)** means the average of the seven day rolling average of the Completed Services and Partially Completed Services as a proportion of the Total Passenger Services during the relevant Payment Month calculated in accordance with **section 7.2** of part A and expressed as a percentage.

**Daily Punctuality (DP)** means daily punctuality of either the Early Services or Late Services calculated in accordance with **sections 7.3** and **7.4** of part A respectively.

**Day** has the meaning given to it in the PSR.

**Early Morning** has the meaning given to it in the PSR.



**Early Service** means either:

- (a) a Passenger Service with a Scheduled Departure Time in the Peak Period which departs from a Measuring Station more than 15 seconds before the Scheduled Departure Time; or
- (b) a Passenger Service with a Schedule Departure Time in the Off Peak Period which departs from a Measuring Station before the Scheduled Departure Time.

**Emergency Call** has the meaning given to it in section 14.3.3, part 1 of annexure 14 (Operations and Customer Service Requirements) of the PSR.

**Energy Payment** means the monthly energy payment calculated in accordance with **section 6** of part A.

**Evening** has the meaning given to it in the PSR.

**Expiry Date Stage 1** means the Maturity Date of the Term Facility as defined in the Facility Agreement

**Expiry Date Stage 2** means 30 November 2028, being the assumed maturity date for Stage 2 debt in circumstances where the Post Completion Payment is never paid.

**Fare Evasion** means ticketless or fraudulent travel on the System.

**Fare Evasion Survey** means a survey that is undertaken in accordance with **appendix D** to determine the level of Fare Evasion on the GCRT System.

**Graffiti** has the meaning given to it in the PSR.

**Indexation Factor 1** has the meaning given to it in **section 3.1** of part A.

**Indexation Factor 2** has the meaning given to it in **section 3.2** of part A.

**Indexation Period** means an Operating Year.

**Inspection** means the process of determining performance and compliance with KPIs by a Mystery Shopper.

**Insurance Payment** means the Insurance Component as calculated in accordance with **clause 40.1** of this deed.

**Interest Period** means the relevant calendar quarter ending on the dates as set out in Appendix A2.

**Interest Period Stage 1** means in respect of an Interest Period the portion of that Interest Period commencing on the later of the first day of that Interest Period or date of Stage 2 Financial Close and ending on the earlier of the last day of that Interest Period or Expiry Date Stage 1.

**Interest Period Stage 2** means in respect of an Interest Period the portion of that Interest Period commencing on the later of the first day of that Interest Period or the day following the date which is 12 calendar months after the Date for Stage 2 Completion and ending on the earlier of the last day of that Interest Period or the Post Completion Payment Date or Expiry Date Stage 2.

**KPI** means Key Performance Indicator, a measure of Operator Franchisee's performance against specified criteria.

**KPI Event** means a failure to achieve a KPI in accordance with the requirements of the KPI Table as set out in part B of this **schedule 3** and which results in Performance Points being incurred by Operator Franchisee.

**KPI Table** means Table 2 of part B.

**Late Service** means a Completed Service or a Partially Completed Service which arrives at a Measuring Station more than 1 minute and 59 seconds after the Scheduled Arrival Time at a Measuring Station and excludes Special Events Services except during the V8 Supercar Event when traffic control in place for the event affects the normal operation of Passenger Services, in which case it means a Completed Service or a Partially Completed Service which arrives at a Measuring Station, more than 3 minutes and 29 seconds after the Scheduled Arrival Time at a Measuring Station.

**Lifecycle Payment** means the monthly lifecycle payment calculated in accordance with **section 8** of part A.

**Line-Side Noise** means the exterior noise levels experienced during Passenger Services.

**LRV Mystery Shopper Report** has the meaning given to it in **section 2.1(a)(xii)** of **appendix C**.

**Maintenance Management System** means a software package that captures Operator Franchisee's maintenance activities.

**Maximum Services** means the maximum number of Passenger Services provided in a Service Band as set out in Table 4 of **appendix A**

**Measurement Method** means the method used to measure Operator Franchisee's performance against the KPIs as set out in the KPI Table.

**Measurement Period** means the period of time specified in the KPI Table over which Operator Franchisee may accrue Performance Points in respect of a single KPI.

**Measurements** mean the process of determining performance and compliance with KPIs by a Qualified Professional.

**Measuring Station** means a Station at which Early Services and Late Services are measured. Measuring Stations are each Originating Station, each Terminating Station, Southport Station, Cavill Avenue Station and Gold Coast University Hospital.

**Minimum Services** means the minimum number of Passenger Services provided in a Service Band as set out in Table 4 of **appendix A**.

**Mystery Shopper** means a person or an entity appointed by the State to determine Operator Franchisee's compliance with specified KPIs in the KPI Table.

**Mystery Shopper Report** means either the LRV Mystery Shopper Report or the Station Mystery Shopper Report or both, as the context requires.

**Night** has the meaning given to it in the PSR.

**Off Peak Period** means the Operating Hours during the Early Morning, Evening and Night service periods.

**Onboard Noise** means the noise levels experienced in the LRV interior during Passenger Services.

**Operating Day** has the meaning given to it in the PSR.

**Operating Quarter** means a period of three months commencing on 1 January, 1 April, 1 July or 1 September which falls (as a whole or in part) within the Operations Phase, except that:

- (a) the first Operating Quarter will commence on the Date of Completion and will end at the end of that Quarter; and
- (b) the last Operating Quarter will end on the last day of the Term.

**Originating Station** means a Station from which:

- (a) a Passenger Service commences its journey and is designated as such in the Contract Timetable; or
- (b) a Special Event Service commences its journey and is designated as such in the Special Event Timetable.

**Partially Completed Service** means a Passenger Service or a Special Event Service that:

- (a) departs from the designated Originating Station but fails to arrive at the designated Terminating Station;
- (b) does not depart from the designated Originating Station but departs from another Station and arrives at the designated Terminating Station;
- (c) does not depart from the designated Originating Station but departs from another Station and does not arrive at the designated Terminating Station; or
- (d) departs from the designated Originating Station and arrives at the designated Terminating Station but does not allow Passengers to board or alight at one or more of the Stations in accordance with the Contract Timetable or the Special Event Timetable.

**Passenger Announcement System** mean a system that provides audible announcements that are operationally relevant to Passengers, including Service Disruption announcements, and PA means each public announcement speaker that forms part of such system.

**Passenger Information Display System** means a system that displays operationally relevant information to Passengers, including information regarding the next service or Service Disruption information, and PID means each passenger information display that forms part of such system.

**Passenger Satisfaction Survey** means the passenger satisfaction survey as set out in **appendix B** and intended to be completed by Passengers using the GCRT System.

**Passenger Services** has the meaning given to it in the PSR. For the purposes of Schedule 3 only, the term Passenger Services includes only Minimum Services and Additional Services.

**Passenger Service Availability and Punctuality KPIs** means a key performance indicator contained in **sections 7.2 to 7.4** of part A.

**Passenger Service Availability** means a percentage calculated in accordance with **section 7.2**.

**Payment Month** means a calendar month which falls in whole or in part within the Operations Phase, except that:

- (a) the first Payment Month will commence on the Date of Completion and will end at the end of that calendar month; and
- (b) the last Payment Month will end on the last day of the Term.

**Peak Period** means the Operating Hours during the AM Peak, Day and PM Peak service periods.

**Performance Abatement** means an amount calculated in accordance with **section 9.1** of part A.

**Performance Points (PP)** means the points incurred by Operator Franchisee for a KPI Event as calculated in accordance with the KPI Table.

**Performance Point Ratchet (PPR)** means the factor calculated for a KPI Event in accordance with **section 9.2** of part A and the KPI Table.

**Planned Shutdown** has the meaning given to it in the PSR.

**Plant Monitoring Control System (PMCS)** means a system that monitors and controls the assets and systems such as traction power supply, CCTV, lighting, etc. used on the System.

**PM Peak** has the meaning given to it in the PSR.

**Post Completion Payment** has the meaning given to it in the Debt Finance Side Deed

**Post Completion Payment Date** means the later of the Post Completion Payment Date or Deferred Payment Date (if applicable), as both terms are defined in the Debt Finance Side Deed.

**Price per Special Event Service Hour (PSH)** means the price per hour for Special Event Services set out in Table 3 of **appendix A**.

**Qualified Professional** means a person with the required qualifications appointed by the State to determine Operator Franchisee's compliance with specified KPIs in the KPI Table.

**Ramp-up Factor** means, in respect of a Payment Month:

- (a) 0.5 for the first three Payment Months after the Date of Completion; and
- (b) 1 for the balance of the Operations Phase.

**Remediation Works Program** has the meaning given to it in **clause 24.3(a)(iii)**

**Replacement Service** has the meaning given to it in the PSR.

**Ride Quality** means the combination of lateral, longitudinal and horizontal accelerations, experienced by Passengers on LRVs providing Passenger Services.

**Scheduled Arrival Time** means the time at which a Passenger Service is scheduled to arrive at a Measuring Station in accordance with the Contract Timetable.

**Scheduled Departure Time** means the time at which a Passenger Service is scheduled to depart from a Measuring Station in accordance with the Contract Timetable.

**Scheduled Service** means

- (a) a Passenger Service that is scheduled to depart from an Originating Station, stops at all Stations and arrives at a Terminating Station in accordance with the Contract Timetable; or
- (b) a Special Event Service that is scheduled to depart from an Originating Station, stops at all Stations and arrives at a Terminating Station in accordance with the Special Event Timetable.

**Service Band** means the range of Scheduled Services that may be required between the Minimum Services and Maximum Services as set out in Table 4 of **appendix A**.

**Service Disruption** means any disruption to a Scheduled Service which results in an inability of Operator Franchisee to deliver a Scheduled Service in accordance with the Contract Timetable.

**Special Event** has the meaning given to it in the Project Deed.

**Special Event Type A** has the meaning given to it in section 6.1.10, part 1 of annexure 14 (Operations and Customer Service Requirements) of the PSR.

**Special Event Type B** has the meaning given to it in section 6.1.10, part 1 of annexure 14 (Operations and Customer Service Requirements) of the PSR.

**Special Event Type C** has the meaning given to it in section 6.1.10, part 1 of annexure 14 (Operations and Customer Service Requirements) of the PSR.

**Special Event Type D** has the meaning given to it in section 6.1.10, part 1 of annexure 14 (Operations and Customer Service Requirements) of the PSR.

**Special Event Service Payment (SEP)** means the amount payable to Operator Franchisee for Special Event Services calculated in accordance with **section 5.1** of part A.

**Special Event Service** has the meaning given to it in the PSR. For the avoidance of doubt, Special Event Services are provided in addition to the Minimum Services and the Additional Services.

**Special Event Timetable** has the meaning given to it in the PSR.

**Special Event Type** has the meaning given to it in the PSR.

**Station Mystery Shopper Report** has the meaning given to it in **section 2.2(a)(ix)** of **appendix C**.

**Survey Period** means a period of six months during which Passenger Satisfaction Surveys or Fare Evasion Surveys will be completed and reported on. The first Survey Period will commence on the Date of Completion

**Survey Results Report** means in respect of:

- (a) Passenger Satisfaction Surveys, the report to be provided by Operator Franchisee based on the results of all questions (provided by the Surveyor) which were included in the Passenger Satisfaction Survey in accordance with appendix C; and
- (b) Fare Evasion Surveys, the report to be provided by Operator Franchisee based on the results of the Fare Evasion Survey (provided by the Surveyor) in accordance with appendix D.

**Surveyor** means in respect of:

- (a) Passenger Satisfaction Surveys, a person or entity appointed jointly by the State and Operator Franchisee to undertake the Passenger Satisfaction Surveys; and
- (b) Fare Evasion Surveys, a person or entity appointed by Operator Franchisee to undertake Fare Evasion Surveys.

**Target Response Period** means the period within which Operator Franchisee must respond to and/or rectify a KPI non compliance as set out in the KPI Table.

**Terminating Station** means a Station at which:

- (a) a Passenger Service completes its journey having travelled in one direction and is designated as such in the Contract Timetable; or
- (b) a Special Event Service completes its journey having travelled in one direction and is designated as such in the Special Event Timetable.

**Time Period** means the time of day or day of week as set out in tables 2, 3 and 4 of **appendix A**.

**Total Passenger Services (TPS)** means the total of the Minimum Services, the Additional Services

and the Special Event Services provided during each Time Period.

**TransLink Customer Satisfaction Survey** means the survey which Translink undertakes to determine customer satisfaction on all modes of transport in South East Queensland.

**Translink Help Desk** means the Translink Hotline, Translink website or GPO Box by which Passengers and other members of the public can lodge complaints.

**Variable Energy Consumption (VEC)** means the energy consumption for the Variable Services expressed in kilowatt hours per Service as set out in **section 6.1**.

**Variable Services (VS)** means the Additional Services and the Special Event Services.

**Weighted Indexation Factor** means the indexation factor calculated in accordance with **section 3.3** of Part A.

## **1.2 Interpretation**

All values calculated in accordance with this **schedule 3**, must be rounded to the nearest two decimal places, except where a value is to apply as a percentage, in which case that value must be rounded to the nearest four decimals places such that, for example, a value of 0.1234 will apply as a percentage of 12.34%.

# Part A: Service Payments

## Stage 1 definition

### 1A Acknowledgement Regarding Licence Receivables Amounts

#### 1A.1 Licence Receivables Amounts

The parties acknowledge that Licence Receivable Amounts due and payable to the State after the Post Completion Payment Date in accordance with the System Site Licence (Stage 2) which are to be deducted in accordance with clause 38.9(a) are to be identified in relevant payment claims under clause 38.4(b)(iv)(D).

## 1 Service Payment

### 1.1 Calculation of the Service Payment

The Service Payment for each Payment Month (SP) is calculated as:

$$SP = BSP - BSP \times (1-AE) \times RF + LP - PA + IP + FRCIP$$

where:

BSP = Base Service Payment for the relevant Payment Month calculated in accordance with **section 2** of this part A;

AE = Availability Entitlement for the relevant Payment Month calculated in accordance with **section 7.1** of this part A;

RF = Ramp-up Factor;

LP = Lifecycle Payment for the relevant Payment Month calculated in accordance with **section 8.1** of this part A;

PA = Performance Abatements for the relevant Payment Month calculated in accordance with **section 9.1** of this part A;

IP = Insurance Payment for the relevant Payment Month; and

FRCIP = Floating Rate Component for the relevant Payment Month, calculated in accordance with **section 9A** of this part A.

### 1.2 Maximum deduction

If the Service Payment (excluding the Insurance Payment Component and Floating Rate Component) for a Payment Month as calculated in accordance with this part A of schedule 3 is less than zero, then the Service Payment (excluding the Insurance Payment Component and Floating Rate Component) for that Payment

Month will be deemed to be zero.

## 2 Base Service Payment

The Base Service Payment (**BSP**) for each Payment Month is calculated as follows:

$$\text{BSP} = [\text{BSPC1} + (\text{BSPC2} \times \text{IF1}) + (\text{BSPC3} \times \text{IF2})] \times (\text{Nm} / \text{Ny}) + \text{ASP} + \text{SEP} + \text{EP}$$

where:

BSPC1, BSPC2, BSPC3 = the Base Service Component as set out in Table 1 of **appendix A**;

IF1 = Indexation Factor 1, calculated in accordance with **section 3.1** of this part A;

IF2 = Indexation Factor 2, calculated in accordance with **section 3.2** of this part A;

Nm = the number of days in the relevant Payment Month;

Ny = the number of days in the relevant Operating Year which will be 365 days in a non-leap year and 366 days if the relevant Operating Year is a leap year. To the extent that the first and the last Operating Years are part years, for the purposes of this calculation, the number of days in that year will be 365 or 366 as applicable;

ASP = Additional Services Payment calculated in accordance with **section 4** of this part A;

SEP = Special Event Service Payment calculated in accordance with **section 5** of this part A; and

EP = Energy Payment calculated in accordance with **section 6** of this part A.

## 3 Indexation

### 3.1 Indexation Factor 1

The Indexation Factor 1 (IF1) for each Indexation Period is calculated as follows:

$$\text{IF1} = (\text{CPI}_{(\text{Q}-1)} / \text{CPI}_{\text{Base}})$$

where:

$\text{CPI}_{(\text{Q}-1)}$  = the Consumer Price Index All Groups weighted average for the eight capital cities published by the Australian Bureau of Statistics for the March Quarter End in the Indexation Period immediately preceding the relevant Indexation Period (or, for the first Indexation Period, for March in the calendar year immediately preceding the calendar year of the first Indexation Period); and



$CPI_{Base}$  = the Consumer Price Index All Groups weighted average for the eight capital cities published by the Australian Bureau of Statistics for the March 2015 Quarter End, being 106.8.

**Note:** For the avoidance of doubt, for the first Operating Year (2014)  $CPI_{(Q-1)}$  means the March 2013 index figure and for the second Operating Year (2015)  $CPI_{(Q-1)}$  means the March 2014 index figure.

### 3.2 Indexation Factor 2

The Indexation Factor 2 (IF2) for each Indexation Period is calculated as follows:

$$IF2 = (LP1_{(Q-1)} / LP1_{Base})$$

where:

$LP1_{(Q-1)}$  = Wage Price Index (A2600949X – total hourly rates of pay excluding bonuses Queensland private and public all industries published by the Australian Bureau of Statistics) for March in the Indexation Period immediately preceding the relevant Indexation Period (or, for the first Indexation Period, for March in the calendar year immediately preceding the calendar year of the first Indexation Period); and

$$LP1_{(Base)} = 120.8.$$

### 3.3 Weighted Indexation Factor

The Weighted Indexation Factor (WIF) for each relevant Indexation Period is calculated as follows:

$$WIF = IF1 \times W + IF2 (1 - W)$$

where:

$IF1$  = Indexation Factor 1 calculated in accordance with **section 3.1** of this part A;

$IF2$  = Indexation Factor 2 calculated in accordance with **section 3.2** of this part A; and

$$W = \text{[REDACTED]}$$

## 4 Additional Services Payment

### 4.1 Calculation of the Additional Services Payment

The Additional Services Payment (ASP) for each Payment Month is calculated as follows:

$$ASP = \sum [(TPS_n - SES_n - MS_n) \times PAS_n \times WIF]$$

where:

$TPS_n$  = the Total Passenger Services provided during each Time Period (n) for the relevant Payment Month;

$SES_n$  = Special Event Services provided during each Time Period (n) for the relevant Payment Month;

- $MS_n$  = the total number of Minimum Services provided during each Time Period (n) as contained in Table 4 of **appendix A** for the relevant Payment Month;
- $PAS_n$  = price per Additional Service for each Time Period (n) as contained in Table 2 of **appendix A**; and
- WIF = Weighted Indexation Factor, calculated in accordance with section 3.3 of this part A.

## 5 Special Event Services Payment

### 5.1 Calculation of the Special Event Service Payment

The Special Event Service Payment (SEP) for each Payment Month is calculated as follows:

$$SEP = [(SES \times PSES) + \Sigma(SH_{n,t} \times PSH_{n,t})] \times WIF$$

where:

- SES = the total number of Special Event Services for the relevant Payment Month;
- PSES = Price per Special Event Service as set out in Table 3 of **appendix A**;
- WIF = Weighted Indexation Factor, calculated in accordance with **section 3.3** of this part A;
- $SH_{n,t}$  = the total number of hours that the System was affected by Special Events during each Time Period (n) for each Special Event Type (t) for the relevant Payment Month; and
- $PSH_{n,t}$  = relevant Price per Special Event Service hour for each Time Period (n) for each Special Event Type (t) as set out in Table 3 of **appendix A**.

## 6 Energy Payment

### 6.1 Calculation of Energy Payment

The Energy Payment (EP) for each Payment Month is calculated as follows:

$$EP = REP \times (BEC \times (Nm / Ny) + (VS \times VEC)) + CC$$

where:

- REP = Retail energy unit price (expressed as a price per kilowatt hour) which will be updated in accordance with **clause 40.2** of the Project Deed;
- BEC = [REDACTED] prior to Date of Stage 2 Completion and [REDACTED] on and from the Date of Stage 2 Completion;
- $Nm$  = the total number of days in the relevant Payment Month;
- $Ny$  = the total number of days in the relevant Operating Year which will be 365 days in a non-leap year and 366 days if the relevant Operating

Year is a leap year. To the extent that the first and the last Operating Years are part years, for the purposes of this calculation, the number of days in that year will be 365 or 366 as applicable;

**VS** = the total number of Variable Services provided in the relevant Payment Month;

**VEC** = [REDACTED] prior to the Date of Stage 2 Completion and [REDACTED] on and from the Date of Stage 2 Completion; and

**CC** = Connection Charges for the relevant Payment Month.

## 7 Availability Entitlement

### 7.1 Calculation of the Availability Entitlement

The Availability Entitlement (**AE**) for each Payment Month is calculated as follows:

**AE** = **PSA – DP1 – DP2**

where:

**PSA** = Passenger Service Availability for the relevant Payment Month as calculated in accordance with **section 7.2** of this part A;

**DP1** = Daily Punctuality 1 for the relevant Payment Month as calculated in accordance with **section 7.3** of this part A; and

**DP2** = Daily Punctuality 2 for the relevant Payment Month as calculated in accordance with **section 7.4** of this part A.

### 7.2 Calculation of Passenger Service Availability

(a) Passenger Service Availability for each Payment Month is calculated as follows:

**PSA** = [REDACTED]

where:

**DA** = Daily Availability calculated in accordance with **section 7.2(b)** of this part A.

(b) Daily Availability for each Payment Month is calculated as the average of the 7 day rolling average of Daily Availability during the relevant Payment Month as follows:

**DA** = [REDACTED]

where:

**CS** = the number of Completed Services calculated in accordance with **section 7.2(c)** of this part A;

**PS** = the number of Partially Completed Services calculated in accordance with **section 7.2(d)** of this part A;

**PM** = the relevant Payment Month; and

TPS = number of Total Passenger Services for the relevant day in the Payment Month.

For the first 6 days following the Date of Completion, the rolling average is calculated for each day as the rolling average of the number of days that Passenger Services and Special Event Services (if applicable) were delivered.

- (c) The number of Completed Services for each day is calculated as follows:

CS = [REDACTED]

where:

CS<sub>V</sub> = number of Completed Services for the relevant day where Passenger Services and Special Event Services (if applicable) were provided by LRVs;

CS<sub>RS</sub> = number of Completed Services for the relevant day where Passenger Services and Special Event Services (if applicable) were provided by Replacement Services;

- (d) The number of Partially Completed Services for each relevant day is calculated as follows:

PS = [REDACTED]

where:

AA<sub>V</sub> = number of arrivals at a Station for the relevant day where Passenger Services and Special Event Services agreed to be delivered in accordance with the Special Event Plan (if applicable) were provided by LRVs;

AA<sub>RS</sub> = number of arrivals at a Station for the relevant day where Passenger Services and Special Event Services (if applicable) were provided by Replacement Services;

SA = number of Scheduled Services at all Stations for the relevant day; and

TPCS = total number of Scheduled Services and Special Event Services (if applicable) for which Partially Completed Services were provided for the relevant day.

### 7.3 Calculation of Daily Punctuality – Early Services

The Daily Punctuality of Early Services (DP1) for each Payment Month is calculated as follows:

DP1 = [REDACTED]

where:

MSE = the number of Early Services during the Payment Month; and

MSC = the number of times that Completed Services and Partially Completed Services (excluding Special Event Services) were

scheduled to depart from Measuring Stations during the Payment Month.

## 7.4 Calculation of Daily Punctuality – Late Services

- (a) The Daily Punctuality of Late Services (DP2) for each Payment Month is calculated as follows:

$$DP2 = \frac{LSR}{MSC}$$

where:

LSR = the Late Service Result calculated in accordance with **section 7.4(b)** of this part A; and

- (b) The Late Services Result (LSR) for the relevant Payment Month is calculated as follows:

$$LSR = \frac{PM \times MSL}{MSC}$$

where:

PM = the relevant Payment Month;

MSL = the number of Late Services for each relevant day in the Payment Month; and

MSC = the number of times at which Completed Services and Partially Completed Services (excluding Special Event Services) were scheduled to arrive at Measuring Stations for each relevant day in the Payment Month.

For the first six days following the Date of Completion, the Rolling Average is calculated for each day as the rolling average of the number of days that Passenger Services were delivered.

## 8 Lifecycle Payment

### 8.1 Calculation of the Lifecycle Payment

The Lifecycle Payment (LP) for each Payment Month is calculated as:

$$LP = (LP_{yr} \times IF1) / M$$

Where:

LP = the Lifecycle Payment for the relevant Payment Month;

LP<sub>yr</sub> = for a Payment Month including or preceding the Date of Stage 2 Completion, the "Lifecycle Payment for the relevant Operating Year of Stage 1", or for a Payment Month after the Date of Stage 2 Completion, the "Complete Lifecycle Payment for the relevant Operating Year", as set out in Table 5 of appendix A for each relevant Operating Year;

IF1 = Indexation Factor 1, calculated in accordance with section

3.1 of this part A; and

M = the absolute number of calendar months in the Operating Year

## 9 Performance Abatement

### 9.1 Calculation of Performance Abatement

The Performance Abatement (PA) for each Payment Month is calculated as:

$$PA = BPA \times IF1 \times \Sigma(PPe \times PPRe)$$

where:

BPA = Base Performance Adjustment;

IF1 = Indexation Factor 1 calculated in accordance with **section 3.1** of this part A;

PPe = the total Performance Points accumulated during the Payment Months for each KPI Event as specified in part B of this **schedule 3**; and

PPRe = the total Performance Point Ratchet accumulated during the Payment Month for each KPI Event calculated in accordance with **section 9.2**.

### 9.2 Calculation of Performance Point Ratchet for each Payment Month

- (a) If Operator Franchisee has accumulated Performance Points in relation to a KPI Event and a Performance Point Ratchet applies to the KPI Event as specified in part B of this schedule 3, the Performance Point Ratchet for the relevant Measurement Period in respect of that KPI Event (PPR) will be:
  - (i) 1.00, if Operator Franchisee did not incur Performance Points for the immediately preceding Measurement Period in respect of the same KPI Event;
  - (ii) 1.25, if it is the second consecutive Measurement Period in which Operator Franchisee has incurred Performance Points for the same KPI Event; and
  - (iii) 1.50, if it is the third consecutive Measurement Period in which Operator Franchisee has incurred Performance Points for the same KPI Event.
- (b) For the avoidance of doubt, the Performance Point Ratchet will apply to a KPI Event, regardless of whether the manner in which Operator Franchisee failed the KPI was different from the manner in which Operator Franchisee failed that same KPI in the immediately preceding Measurement Period.
- (c) A KPI Event will not be taken into account for the purposes of determining whether a Performance Point Ratchet applies to the extent that Operator Franchisee is relieved from performance of the underlying obligation which

gives rise to the KPI Event in accordance with clause 26 or 27.

## 9A Floating Rate Component

### 9A.1 Calculation of the Floating Rate Component

This section 9A will apply for the purposes of calculating the Floating Rate Component.

- (a) On the first day of each Interest Period, the Floating Rate Component will be calculated for that Interest Period. The Floating Rate Component for each Payment Month will be calculated as follows:

$$\text{FRCIP} = (\text{Int}_{\text{actual}} - \text{Int}_{\text{base}}) \times (n_m / n_p)$$

where:

$\text{Int}_{\text{actual}}$  = Actual Floating Rate Interest Payment for the relevant Interest Period

$\text{Int}_{\text{base}}$  = Base Case Floating Rate Interest Payment for the relevant Interest Period

$n_m$  = The number of calendar days in that Payment Month

$n_p$  = The number of calendar days in the relevant Interest Period which includes that Payment Month

- (b) The Floating Rate Component may be a positive or negative amount.

- (c) Where:

- (i) the Post Completion Payment Date was assumed to occur in the calculation of FRCIP for an Interest Period, but does not occur on the date assumed in the calculation, or
- (ii) the Post Completion Payment Date occurs in an Interest Period but was not assumed to occur in the calculation of FRCIP for that Interest Period,

the FRCIP for the relevant Interest Period will be recalculated no later than the first day following the relevant Interest Period applying the actual date for the Post Completion Payment Date. Acting in good faith, the parties will agree an adjustment to the Service Payment to restore the parties to a financial position which would have existed had the original calculation of the FRCIP equalled the recalculated FRCIP for the relevant Interest Period.

## 10 Planned and Unplanned Shutdowns

### 10.1 Planned Shutdowns

Where Operator Franchisee notifies the State pursuant to the PSR that Operator Franchisee will undertake a Planned Shutdown and provided that Operator Franchisee complies with its obligations under the PSR:

- (a) where relevant, Stations are deemed to be adjacent bus stops;
- (b) Completed Services are deemed to be neither Early Services or Late

Services;

- (c) the Service Payment will not be affected by Performance Abatements in accordance with section 9 during the period of the Planned Shutdown; and
- (d) Operator Franchisee will not be in breach of this deed.

## **10.2 Partial System Shutdowns**

Where Operator Franchisee is required to provide Replacement Services in the event of a partial System shutdown in accordance with the PSR and provided that Operator Franchisee complies with its obligations under the PSR:

- (a) where relevant, Stations are deemed to be adjacent bus stops;
- (b) Completed Services are deemed to be neither Early Services or Late Services; and
- (c) Operator Franchisee will not be in breach of this deed.



## Part B - Key Performance Indicators

### 1 General overview of the KPIs and KPI Table

#### 1.1 Purpose

This part B of schedule 3 sets out the KPIs that will be applied during the Operations Phase in order to measure Operator Franchisee's achievement of the minimum performance outcomes and to monitor and measure Operator Franchisee's performance.

The KPIs set out in this part B of schedule 3 will be used to determine any Performance Abatements that will apply to the Service Payment.

#### 1.2 Summary of KPI Table

The information contained in the KPI Table is presented in the manner described in the following paragraphs:

- (a) The first column of the KPI Table, headed "KPI ref" allocates a reference number for each KPI.
- (b) The second column of the KPI Table, headed "KPI" describes in detail each KPI that Operator Franchisee is required to meet. This column also describes the point at which a KPI Event will occur.
- (c) The third column of the KPI Table, headed "Target Response Period" sets out the time within which Operator Franchisee must rectify any KPI non-compliance to avoid the occurrence of a KPI Event. For some KPIs, e.g. those KPIs that require Operator Franchisee to achieve a specific level of availability rather than rectification of non-compliance within a specific time period, there will be no Target Response Period.
- (d) The fourth column of the KPI Table, headed "Measurement" is sub-categorised into two further columns as follows:
  - (i) the first sub-column headed "Period" sets out the period over which Performance Points may be accrued in respect of a KPI. Multiple KPI Events may occur in respect of a single KPI during a single Measurement Period.
  - (ii) the second sub-column headed "Method", sets out the KPI measuring methods that should be adopted to determine Operator Franchisee's performance against each KPI.
- (e) The fifth column of the KPI Table, headed "Performance Points" sets out the number of Performance Points that will be incurred by Operator Franchisee in respect of each KPI Event. If Operator Franchisee fails a single KPI multiple times during a "Measurement Period", Operator Franchisee will incur Performance Points for each failure of the KPI. For KPIs that are measured annually or semi-annually, Operator Franchisee will incur Performance Points (if it fails the KPI Event) in the Payment Month that the failure occurred.
- (f) The sixth column of the KPI Table headed "PP Ratchet" sets out whether the

Performance Point Ratchet (PPR) will apply to a particular KPI Event. If the PPR applies, then PPR in respect of that KPI Event will be calculated in accordance with section 8.2 of part A of this schedule 3.

- (g) The KPIs set out in part B of this schedule 3 are separated into six categories being:
- (i) Passenger KPIs (P1 - P7);
  - (ii) Asset (excluding LRVs) KPIs (A1 – A13);
  - (iii) LRV KPIs (V1 – V10);
  - (iv) Reporting KPIs (R1 - R2);
  - (v) Environmental KPIs (E1 - E2); and
  - (vi) Close Out KPIs (C1).

The headings shaded grey and set out at the beginning of each KPI category in the KPI Table are for guidance only. Operator Franchisee is only required to meet those KPIs that are allocated a KPI reference number.

### **1.3 No derogation from KPI Table**

Operator Franchisee acknowledges and agrees that the content of this part B of schedule 3:

- does not derogate from Operator Franchisee's obligations and the State Project Documents; and
- is not an exhaustive list of the performance standards and outcomes Operator Franchisee may be required to achieve to meet the KPIs and its obligations the State Project Documents.

## **2 Persistent failure**

If a KPI Event occurs as a result of failure to meet the Target Response Period identified in the KPI Table, a subsequent KPI Event will be deemed to occur (and the applicable Performance Points applied) at the end of each successive Target Response Period until the KPI Event is rectified.

## **3 KPI Measurement Method**

Where specified in Table 2, Operator Franchisee must monitor compliance with KPIs using the method(s) set out in the PSR and in the KPI Table.

Where specified in Table 2, State will monitor compliance with KPIs using the methods described in items 1 and 3 in Table 1 below.

The minimum measurement method required for each KPI is described in the KPI Table by reference to the numbering set out below:

**Table 1: Methods of KPI Measurement**

Measurement method	
1	Operator Franchisee, the State or Passengers, via communications with Operator Franchisee's OCC (operational control centre) or the Translink Help Desk.
2	Operator Franchisee self monitoring via the Performance Monitoring System, CCTV, Maintenance Management Systems, Passenger Satisfaction Survey, Fare Evasion Survey, hand held card readers or other such method as specified in the PSR.
3	State via a Consultant, Surveyor, other State inspections or audits.

The State will appoint Consultants and Surveyors (other than those persons or entities appointed to undertake Fare Evasion Surveys) to inspect, measure or survey the performance of a number of KPIs as identified in the KPI Table in accordance with appendix B and C. Appendix C sets out the procedure that Consultants are required to follow when measuring or inspecting the performance of KPIs.

The State will pay the cost of all inspections and / or measurements undertaken by Consultants and Surveyors in accordance with section 3(d) of this part B.

## **4 Other matters**

### **4.1 Warning and Notifications**

Notwithstanding availability requirements and Target Response Periods set out in the KPI Table, it is Operator Franchisee's responsibility to maintain the safety of the System at all times. Operator Franchisee must provide signage at Stations and on LRVs and notify Passengers of any potential health and safety hazards including but not limited to spills, cracks and contaminated water fountains.

### **4.2 Passenger Satisfaction Surveys**

Operator Franchisee must undertake Passenger Satisfaction Surveys at least twice a year in accordance with the requirement set out in appendix B.

### **4.3 Fare Evasion Surveys**

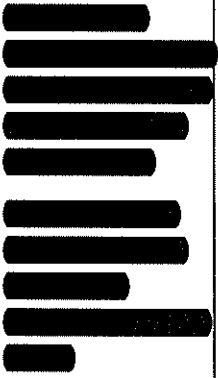
Operator Franchisee must undertake Fare Evasion Surveys at least twice a year in accordance with the requirements set out in appendix D.

## KPI table

KPI ref	KPI	Target Resp Period	Measurement		Performance Points (PP)	PP Ratchet (PPR)
			Period	Method		
	<b>Passenger communications –</b> Passenger communications must be made in accordance with the requirements of the PSR and provide sufficient, up to date and relevant information to Passengers.					
P1	<b>Availability -</b> Operator Franchisee must ensure that the PIDs and PAs are available and in proper working order during Operating Hours in accordance with the requirements of the PSR for no less than 99.8% of the aggregate Operating Hours for all PIDs and PAs during a Payment Month.  In calculating the availability performance, a PID or PA will be deemed not available where it is not operating in accordance with the requirements of the PSR.	N/A	Monthly	2	██████████ ██████████████████ ██████████████████ ██████████████████ ██████████████████ ██████████ ██████████████████ ██████████████████ ██████████████████ ██████████████████	Yes

KPI ref	KPI	Target Resp Period	Measurement		Performance Points (PP)	PP Ratchet (PPR)
			Period	Method		
	A KPI Event will occur where the availability of the PIDs or the PAs is below the target availability of 99.8% of the aggregate operating hours of all PIDs and PAs in the Payment Month.					
P2	<p><b>Availability -</b> Operator Franchisee must ensure that any Passenger Information Display Systems or Passenger Announcement Systems failure is rectified to the standard required by the PSR within the Target Response Period.</p> <p>An individual KPI Event will occur if Operator Franchisee fails to rectify the defective Passenger Information Display Systems or Passenger Announcement System to the required standard within the Target Response Period.</p>	4 Operating Hours or by the next Operating Day, whichever occurs first, apart from Friday and Saturday when the target response is 4 Operating Hours.	Monthly	1,2,3	██████████ ██████	No
P3	<b>Initial disruption notification -</b> Operator	N/A	Monthly	1,2	██████████ ██████████ ██████████	Yes

KPI ref	KPI	Target Resp Period	Measurement		Performance Points (PP)	PP Ratchet (PPR)
			Period	Method		Applies (yes / no)
	<p>Franchisee must inform Passengers through the Passenger Information Display System and the Passenger Announcement System in accordance with the requirements of the PSR of a Service Disruption within 7.5 minutes of Operator Franchisee, or its Core Contractors or their respective officers, employees, contractors or agents becoming aware that a Service Disruption has occurred or will occur.</p> <p>An individual KPI Event will occur for each Service Disruption announcement Operator Franchisee fails to make at a Station in accordance with the PSR.</p>				<div style="background-color: black; width: 100px; height: 10px; margin-bottom: 2px;"></div> <div style="background-color: black; width: 100px; height: 10px; margin-bottom: 2px;"></div> <div style="background-color: black; width: 100px; height: 10px; margin-bottom: 2px;"></div> <div style="background-color: black; width: 100px; height: 10px; margin-bottom: 2px;"></div> <div style="background-color: black; width: 100px; height: 10px; margin-bottom: 2px;"></div> <div style="background-color: black; width: 100px; height: 10px; margin-bottom: 2px;"></div>	
P4	<p><b>Continuous disruption notification -</b></p> <p>Operator Franchisee must keep Passengers updated through the Passenger</p>	N/A	Monthly	2	<div style="background-color: black; width: 100px; height: 10px; margin-bottom: 2px;"></div> <div style="background-color: black; width: 100px; height: 10px; margin-bottom: 2px;"></div>	No

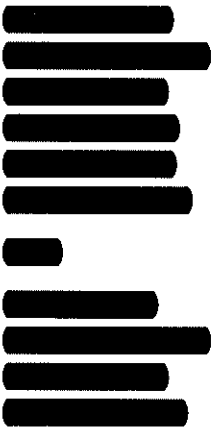
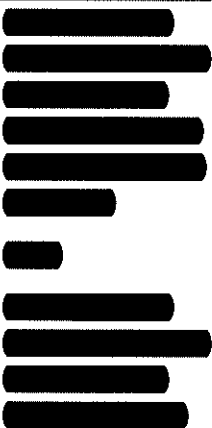
KPI ref	KPI	Target Resp Period	Measurement		Performance Points (PP)	PP Ratchet (PPR)
			Period	Method		
	Information Display System and the Passenger Announcement System in accordance with the requirements of the PSR of a Service Disruption at least every 5 minutes following the first announcement of a Service Disruption.  An individual KPI Event will occur for each continuous notification that is not made at a Station.					
	<b>Passenger Satisfaction –</b> Passenger Satisfaction must be of a high level and reflect a state of the art System					
P5	<b>Passenger Satisfaction –</b> Operator Franchisee must achieve Passenger Satisfaction Survey results of not less than: <ul style="list-style-type: none"> <li>an average score for each individual recurring question of 60%; and</li> <li>an average score of all</li> </ul>	N/A	Semi-annually	2		Yes

KPI ref	KPI	Target Resp Period	Measurement		Performance Points (PP)	PP Ratchet (PPR)
			Period	Method		
	<p>recurring questions of 70%.</p> <p>A KPI Event will occur if the results of the Passenger Satisfaction Survey are less than the specified thresholds.</p> <p>For the avoidance of doubt, if Operator Franchisee fails to meet this KPI, a KPI Event will occur in the Payment Month in which the semi annual survey results are compiled.</p>					
P6	<p><b>Response to complaints</b> - Operator Franchisee must, in the State's reasonable opinion, appropriately and constructively respond in writing to complaints raised through the Complaints Management System within the Target Response Period of notification of that complaint.</p> <p>An individual KPI Event will occur for each complaint that is not responded to</p>	2 Business Days	Monthly	1	██████████ ██████	No

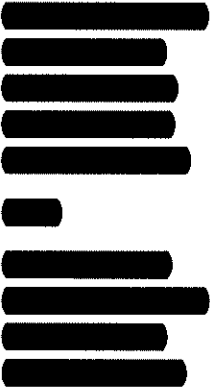
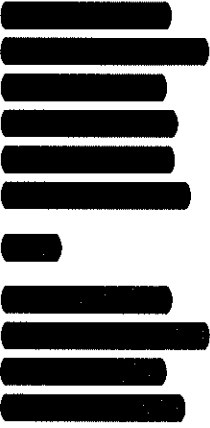


KPI ref	KPI	Target Resp Period	Measurement		Performance Points (PP)	PP Ratchet (PPR)
			Period	Method		
	within the Target Response Period.					
	<b>Fare evasion – The level of Fare Evasion must be below the Fare Evasion target</b>					
P7	<p><b>Fare evasion -</b> Operator Franchisee must achieve a level of Fare Evasion that is no greater than 8% of the validated trips for all Passengers using the System for the Payment Month (<b>Target Fare Evasion Level</b>).</p> <p>A KPI Event will occur if the actual level of Fare Evasion is greater than the Target Level of Fare Evasion.</p> <p>If Operator Franchisee achieves an actual level of Fare Evasion that is less than the Target Fare Evasion Level, Operator Franchisee will accumulate negative Performance Points in accordance with column five of this table.</p>	N/A	Monthly	2		No

KPI ref	KPI	Target Resp Period	Measurement		Performance Points (PP)	PP Ratchet (PPR)
			Period	Method		
					██████████ ██████████	
	<b>Escalators and lifts</b> - escalators and lifts at Stations must be accessible to all Passengers, in proper working order, in a good condition and free of physical obstruction.					
A1	<p><b>Emergencies</b> - In the event of any lift failure, Operator Franchisee must have personnel on-site commencing the safe and efficient release of occupants from the lift as soon as practicable but in any case, within the Target Response Period of Operator Franchisee or its Core Contractors or their respective officers, employees, contractors or agents becoming aware of such failure.</p> <p>An individual KPI Event will occur if Operator Franchisee does not respond to the lift failure within the Target Response Period.</p>	30 minutes	Monthly	1, 2	██████████ ██████████████████ ██████████████████ ██████████████████ ██████████████ ██████████ ██████████████████ ██████████████████	Yes


KPI ref	KPI	Target Resp Period	Measurement		Performance Points (PP)	PP Ratchet (PPR)
			Period	Method		Applies (yes / no)
A2	<b>Availability - Operator</b> Franchisee must ensure that each lift is available for use during Operating Hours no less than 99.8 % of the time during a Payment Month.  An individual KPI Event will occur if the availability of a lift is below the target lift availability in a Payment Month.	N/A	Monthly	2		Yes
A3	<b>Availability - Operator</b> Franchisee must ensure that each escalator is available during Operator Hours for use no less than 99 % of the time during a Payment Month.  An individual KPI Event will occur if the availability of an escalator is below the target escalator availability in a Payment Month.	N/A	Monthly	2		Yes
	<b>Critical Systems - Critical Systems</b> must be: <ul style="list-style-type: none"> <li>available to all Passengers (where</li> </ul>					

KPI ref	KPI	Target Resp Period	Measurement		Performance Points (PP)	PP Ratchet (PPR)
			Period	Method		
	<p>applicable);</p> <ul style="list-style-type: none"> <li>• in proper working order;</li> <li>• in a good condition; and</li> <li>• free of physical obstruction</li> <li>• at all times and at all Stations.</li> </ul>					
A4	<p><b>Emergencies -</b> A human representative of Operator Franchisee must answer (in person) all Emergency Calls within the Target Response Period, 24 hours a day, seven days a week, in accordance with the PSR.</p> <p>An individual KPI Event will occur if a human representative of Operator Franchisee does not answer the call within the Target Response Period.</p> <p>An individual KPI event will not occur where routine emergency help point testing is being undertaken by the Operator Franchisee.</p>	10 seconds	Monthly	1, 2	<div style="background-color: black; width: 100px; height: 10px;"></div> <div style="background-color: black; width: 100px; height: 10px;"></div> <div style="background-color: black; width: 100px; height: 10px;"></div> <div style="background-color: black; width: 100px; height: 10px;"></div> <div style="background-color: black; width: 100px; height: 10px;"></div> <div style="background-color: black; width: 100px; height: 10px;"></div> <div style="background-color: black; width: 100px; height: 10px;"></div>	Yes
A5	<b>Availability -</b>	N/a	Monthly	2	<div style="background-color: black; width: 100px; height: 10px;"></div>	Yes

KPI ref	KPI	Target Resp Period	Measurement		Performance Points (PP)	PP Ratchet (PPR)
			Period	Method		
	<p>Operator Franchisee must ensure that each emergency help point is available and in proper working order no less than 99.8% of the time (except in circumstances where Operator Franchisee has staff available on site and on LRVs with working radios replicating the emergency help points function) during a Payment Month.</p> <p>An individual KPI Event will occur for each emergency help point where availability is below the target emergency help point availability of 99.8% in a Payment Month.</p>					
A6	<p><b>Availability -</b> Operator Franchisee must ensure each CCTV is available and in proper working order in accordance with the requirements of the PSR no less than 99.0% of the time during a Payment Month.</p>	N/a	Monthly	2		Yes


KPI ref	KPI	Target Resp Period	Measurement		Performance Points (PP)	PP Ratchet (PPR)
			Period	Method		
	An individual KPI Event will occur for each CCTV where availability is below the target CCTV availability of 99.0% in a Payment Month.					
A7	<p><b>Availability - Operator</b> Franchisee must ensure that AVLS (Automated LRV Locating System) is available and in proper working order during Operating Hours no less than 99.8% of the time during a Payment Month.</p> <p>In calculating the availability performance, the AVLS will be deemed not available where any part of the AVLS is not operating in accordance with the requirements of the PSR.</p> <p>An individual KPI Event will occur for AVLS availability below the target for AVLS availability of 99.8% in a Payment Month.</p>	N/a	Monthly	2	<div></div> <div></div> <div></div> <div></div> <div></div> <div></div> <div></div> <div></div> <div></div> <div></div>	Yes
A8	<p><b>Availability - Operator</b> Franchisee must</p>	N/a	Monthly	2	<div></div> <div></div> <div></div>	Yes

KPI ref	KPI	Target Resp Period	Measurement		Performance Points (PP)	PP Ratchet (PPR)
			Period	Method		
	<p>ensure that PMCS (Plant Monitoring Control System) is available and in proper working order no less than 99.9% of the time during a Payment Month.</p> <p>In calculating the availability performance of the PMCS, the PMCS will be deemed not available where any part of the PMCS is not operating in accordance with the requirements of the PSR.</p> <p>An individual KPI Event will occur for PMCS availability below the target for PMCS availability of 99.9% in a Payment Month.</p>				<div></div> <div></div> <div></div> <div></div> <div></div> <div></div> <div></div>	
A9	<p><b>Availability -</b> Operator Franchisee must ensure any Critical System failure is rectified and returned to proper working order within the applicable Target Response Period for that component of the Critical System.</p> <p>An individual KPI Event will occur if</p>	<p>Emergency help points: 4 Hours</p> <p>CCTV and AVLS: 24 Hours</p> <p>PMCS: 12 Hours</p>	Monthly	1,2,3	<div></div> <div></div>	No

KPI ref	KPI	Target Resp Period	Measurement		Performance Points (PP)	PP Ratchet (PPR)
			Period	Method		
	Operator Franchisee fails to rectify the Critical System failure within the applicable Target Response Period.					
	<b>Stations Availability –</b> Stations, must be: <ul style="list-style-type: none"> <li>• available and accessible to all to all Passengers and other users;</li> <li>• in proper working order;</li> <li>• fit for purpose;</li> <li>• in good condition (subject to normal wear and tear); and</li> <li>• free of physical obstruction.</li> </ul>					
A10	<b>Station condition</b> - Operator Franchisee must ensure that all Station walls, ceilings, waiting areas/platforms and signage are: <ul style="list-style-type: none"> <li>• available for use and free from physical obstruction; and</li> <li>• in good condition,</li> </ul>	60 hours	Monthly	1,3		Yes



KPI ref	KPI	Target Resp Period	Measurement		Performance Points (PP)	PP Ratchet (PPR)
			Period	Method		
	<p>including being free from cracks, leaks, major marks or stains, rust or other surface degradation that detract from the visual appearance of the Station.</p> <p>Operator Franchisee must rectify any non compliance at a Station within the Target Response Period of Operator Franchisee or its Core Contractors or their respective officers, employees, contractors or agents becoming aware of the non compliance.</p> <p>An individual KPI Event will apply if Operator Franchisee fails to rectify the non-compliance within the Target Response Period.</p>					
A11	<p><b>Graffiti</b> - Operator Franchisee must remove all Graffiti from Stations and accessible line side areas of the System in accordance with the PSR and within the Target</p>	<p>24 hours except in respect of Graffiti on the retaining wall at the Griffith University Station, on any bridge on</p>	Monthly	1,3	<div style="background-color: black; width: 100px; height: 1.2em; margin-bottom: 2px;"></div> <div style="background-color: black; width: 40px; height: 1.2em;"></div>	No

KPI ref	KPI	Target Resp Period	Measurement		Performance Points (PP)	PP Ratchet (PPR)
			Period	Method		
	<p>Response Period of Operator Franchisee or its Core Contractors or their respective officers, employees, contractors or agents becoming aware of the Graffiti.</p> <p>An individual KPI Event will occur for each item of Graffiti that is not removed within the Target Response Period. For the avoidance of doubt, no individual KPI Event will occur for the removal of graffiti from the non-system side of noise barriers.</p>	the System, on any viaduct and on the system-side of structures adjacent to Stage 2 where the Target Response Period is 5 Business Days.				
A12	<p><b>Cleanliness -</b> Operator Franchisee must ensure that all Stations are clean in accordance with the standards specified in the PSR. Operator Franchisee must also clean any spills or other matter, remove rubbish from overflowing garbage bins, and address any cleanliness issue within the Target Response Period of</p>	3 hours	Monthly	1,3		No

KPI ref	KPI	Target Resp Period	Measurement		Performance Points (PP)	PP Ratchet (PPR)
			Period	Method		
	<p>Operator Franchisee or its Core Contractors or their respective officers, employees, contractors or agents becoming aware of the incident.</p> <p>An individual KPI Event will apply to each incident at a Station that Operator Franchisee fails to rectify within the Target Response Period.</p>					
A13	<p><b>Station furniture</b> - Operator Franchisee must ensure that Station furniture:</p> <ul style="list-style-type: none"> <li>is functional, operational and satisfies the requirements of the PSR; and</li> <li>shows no more than minor signs of wear that does not detract from the appearance of the item.</li> </ul> <p>Operator Franchisee must rectify any non compliance within the Target Response Period of Operator</p>	24 hours	Monthly	1,3	██████████ ██████	No

KPI ref	KPI	Target Resp Period	Measurement		Performance Points (PP)	PP Ratchet (PPR)
			Period	Method		
	<p>Franchisee or its Core Contractors or their respective officers, employees, contractors or agents becoming aware of the non compliance.</p> <p>An individual KPI Event will apply to each Station where there is non-compliance at a Station that Operator Franchisee fails to rectify within the Target Response Period.</p>					
	<p><b>Passenger comfort –</b> Passenger comfort must be acceptable to the average Passenger and provided in accordance with requirements specified in the PSR.</p>					
V1	<p><b>Ride quality -</b> All LRVs must comply with the ride quality requirements as set out in the PSR.</p> <p>A KPI Event will occur for each LRV that is deemed to have one or more instance of non-compliance with the Ride Quality</p>	N/A	At the State's discretion, but not more frequently than annually	3	██████████ ██████████	Yes

KPI ref	KPI	Target Resp Period	Measurement		Performance Points (PP)	PP Ratchet (PPR) Applies (yes / no)
			Period	Method		
	<p>requirements set out in the PSR.</p> <p>For the avoidance of doubt, if Operator Franchisee fails to meet this KPI, a KPI Event will occur in the Payment Month in which the ride quality is measured.</p>					
V2	<p><b>Ride quality rectification</b>– Operator Franchisee must ensure that any non-compliance with the Ride Quality requirements is rectified to the standard specified in the PSR within the Target Response Period.</p> <p>An individual KPI Event will occur for each non-compliance that is not rectified within the Target Response Period.</p>	30 calendar days	Monthly	1,3	■■■■■ ■■■■■	Yes
V3	<p><b>On board noise</b> - Operator Franchisee must comply with the on-board noise requirements as set out in PSR.</p> <p>A KPI Event will occur for each LRV that is deemed to</p>	N/A	Annually	3	■■■■■ ■■■■■	Yes

KPI ref	KPI	Target Resp Period	Measurement		Performance Points (PP)	PP Ratchet (PPR)
			Period	Method		
	<p>have one or more instances of non-compliance with the Onboard Noise requirements set out in the PSR.</p> <p>For the avoidance of doubt, if Operator Franchisee fails to meet this KPI, a KPI Event will occur in the Payment Month in which the on board noise quality is measured.</p>					
V4	<p><b>On Board Noise rectification –</b></p> <p>Operator Franchisee must ensure that any non-compliance with the On Board Noise requirements is rectified to the standard specified in the PSR within the Target Response Period.</p> <p>An individual KPI Event will occur for each instance of non-compliance that is not rectified within the Target Response Period.</p>	30 calendar days	Monthly	1,3	■■■■■ ■■■■■	Yes
V5	<p><b>On board temperature -</b></p> <p>Operator Franchisee must ensure that any non-compliance of a LRV during</p>	60 minutes	Monthly	2	■■■■■ ■■■■■	Yes

KPI ref	KPI	Target Resp Period	Measurement		Performance Points (PP)	PP Ratchet (PPR)
			Period	Method		
	<p>Operating Hours with the on board temperature requirements is rectified to the standard specified in the PSR within the Target Response Period of Operator Franchisee or its Core Contractors of their respective officers, employees, contractors or agents becoming aware of the non-compliance.</p> <p>An individual KPI Event will occur for each non-compliance that is not rectified within the Target Response Period.</p>					
V6	<p><b>Lighting –</b> Operator Franchisee must ensure that during measurable hours of 4.00pm to 7.00am each day any non compliance of a LRV with the LRV lighting level requirements specified in the PSR is rectified with within the Target Response Period of Operator Franchisee or its Core Contractors or</p>	4 hours	Monthly	2	██████████ ██████	No

KPI ref	KPI	Target Resp Period	Measurement		Performance Points (PP)	PP Ratchet (PPR)
			Period	Method		
	<p>their respective officers, employees, contractors or agents becoming aware of the non compliance.</p> <p>An individual KPI Event will occur for each LRV where Operator Franchisee fails to rectify the non-compliance within the Target Response Period.</p>					
V7	<p><b>Graffiti</b> - Operator Franchisee must ensure that all Graffiti is removed from LRVs within the Target Response Period after the earlier of Operator Franchisee or its Core Contractors or their respective officers, employees, contractors or agents becoming aware of the Graffiti or after a scheduled inspection in accordance with the Annual Maintenance Plan.</p> <p>An individual KPI Event will occur for each item of Graffiti that is not removed within the Target Response Period in</p>	24 hours	Monthly	1,3	<div style="background-color: black; width: 100px; height: 15px; margin-bottom: 2px;"></div> <div style="background-color: black; width: 100px; height: 15px;"></div>	No



KPI ref	KPI	Target Resp Period	Measurement		Performance Points (PP)	PP Ratchet (PPR)
			Period	Method		
	a Payment Month.					
V8	<b>Interior cleanliness -</b> Operator Franchisee must ensure that the interior of each LRV is clean to the standard required by the PSR. Operator Franchisee must clean any spills, rubbish or other matter within the Target Response Period of Operator Franchisee or its Core Contractors or their respective officers, employees, contractors or agents becoming aware of the incident.  An individual KPI Event will occur for each LRV where interior cleanliness is not rectified within the Target Response Period in a Payment Month.	2 hours	Monthly	1,3	██████████ ██████	No
V9	<b>Exterior cleanliness -</b> Operator Franchisee must ensure that the exterior of each LRV is clean to the standard required by the PSR. Operator	Before the LRV re-enters Passenger Service	Monthly	1,3	██████████ ██████	No

KPI ref	KPI	Target Resp Period	Measurement		Performance Points (PP)	PP Ratchet (PPR)
			Period	Method		
	<p>Franchisee must remove all built up dirt or other visible matter on a LRV exterior within the Target Response Period of Operator Franchisee or its Core Contractors or their respective officers, employees, contractors or agents becoming aware of the incident.</p> <p>An individual KPI Event will occur for each LRV where there is built up dirt or other matter on a LRV exterior that is not rectified by within the Target Response Period in a Payment Month.</p>					
V10	<p><b>LRV interiors -</b> Operator Franchisee must ensure that the interior of each LRV in service, including seats, flooring, walls and ceilings are:</p> <ul style="list-style-type: none"> <li>functional, operational and satisfy the requirements as set out in the PSR; and</li> <li>in good condition and</li> </ul>	3 hours	Monthly	1,3	■■■■■ ■■■■■	Yes

KPI ref	KPI	Target Resp Period	Measurement		Performance Points (PP)	PP Ratchet (PPR)
			Period	Method		Applies (yes / no)
	<p>show no more than minor signs of wear which do not detract from the appearance of the interiors.</p> <p>Operator Franchisee must ensure that any non compliance of a LRV interior with the requirements of the PSR is rectified to the required standard within the Target Response Period following Operator Franchisee or its Core Contractors or their respective officers, employees, contractors or agents becoming aware of such non compliance.</p> <p>An individual KPI Event will occur for each LRV. Where an instance of non-compliance is not rectified within the Target Response Period in a Payment Month.</p>					
	<b>Reporting</b>					
R1	<b>Reporting -</b> Operator Franchisee must prepare a Monthly Performance	N/A	Monthly	1,2	██████████ ██████	Yes

KPI ref	KPI	Target Resp Period	Measurement		Performance Points (PP)	PP Ratchet (PPR)
			Period	Method		
	<p>Report in accordance with the requirements of clause 21.2 of this deed and other reports as specified in the PSR.</p> <p>An individual KPI Event will occur for each Monthly Performance Report and other report that is not delivered in the format required by this deed (including the PSR).</p>					
R2	<p><b>Reporting -</b> Operator Franchisee must submit each Monthly Performance Report and other reports required in the PSR in accordance with the timeframes specified in clause 21.2 of this deed.</p> <p>An individual KPI Event will occur for each Monthly Performance Report and any other report that is not submitted within the timeframes required by this deed (including the PSR).</p>	N/A	Monthly	1,2	██████████ ██████	Yes

KPI ref	KPI	Target Resp Period	Measurement		Performance Points (PP)	PP Ratchet (PPR)
			Period	Method		
	<b>Noise</b>					
E1	<p><b>Line-side noise - Operator</b> Franchisee must ensure that any non-compliance with the Line Side Noise levels specified in the PSR comply with the design specification set out in the PSR. The specified Line Side Noise level requirements will be measured at separate locations.</p> <p>An individual KPI Event will occur for each location where the Line Side Noise requirements are not met.</p> <p>For the avoidance of doubt, if Operator Franchisee fails to meet this KPI, a KPI Event will occur in the Payment Month in which the Line-Side Noise is measured.</p>	N/A	at least annually but not more than every 3 months	1,3	██████████ ██████████ ██████████	Yes
E2	<p><b>Line-side noise rectification - Operator</b> Franchisee must ensure that any non-compliance with the Line Side Noise levels specified in the</p>	24 hours	Monthly	1,3	██████████ ██████████ ██████████	No

KPI ref	KPI	Target Resp Period	Measurement		Performance Points (PP)	PP Ratchet (PPR)
			Period	Method		
	<p>PSR are rectified within the Target Response Period.</p> <p>An individual KPI Event will occur for each location where Operator Franchisee fails to meet the Target Response Period.</p>					
C	<p><b>Close Out –</b> Operator Franchisee must ensure that:</p> <ul style="list-style-type: none"> <li>• Close Out is achieved by the Date for Close Out; and</li> <li>• Stage 2 Close Out is achieved by the Date for Stage 2 Close Out.</li> </ul> <p>An individual KPI Event will occur during each Payment Month that Operator Franchisee has not achieved:</p> <ul style="list-style-type: none"> <li>• Close Out after the Date for Close Out; or</li> <li>• Stage 2 Close Out after the Date for Stage 2 Close Out.</li> </ul>	N/A	Monthly	2, 3	██████████ ██████	No

# Appendix A: Service Pricing, Values, Service Band and Lifecycle Payment

## 1 Base Service Payment Components

The Base Payment Component of the Service Payment for each Payment Month is calculated by reference to Table 1:

- (a) a “Base Value” determined by
  - (i) column (c), prior to the Date of Stage 2 Completion;
  - (ii) column (d), on and from the Date of Stage 2 Completion to the day before the Post Completion Payment Date;
  - (iii) column (e) on and from the Post Completion Payment Date.
- (b) a “Delta Value” added to the relevant “Base Value” under paragraph (a), on and from 1 June 2018 (column (f)).

**Table 1: Base Service Payment Components as at 30 June 2015 [Annual values]**

**[Note that these values will be updated from the Model Output Schedule]**

BSPC	Description	\$Real at 30 June 2015			
		Base Value			Delta Value
		Prior to the Date of Stage 2 Completion	From Date of Stage 2 Completion to the day before the Post Completion Payment Date	From Post Completion Payment Date	From 1 June 2018 (added to relevant "Base Value")
(a)	(b)	(c)	(d)	(e)	(f)
BSPC1	Proportion of the annual base service payment not indexed	██████████	██████████	██████████	██████████
BSPC2	Proportion of the annual base service payment indexed at IF1 (CPI)	██████████	██████████	██████████	██████████
BSPC3	Proportion of the annual base service payment indexed at IF2 (LPI)	██████████	██████████	██████████	●



## 2 Additional Service pricing

Table 2: Service prices (\$Real at 30 June 2015)

PAS ref	Description	Time Period (n)	\$ Price Per Service (PAS <sub>n</sub> ) prior to the Date of Stage 2 Completion	\$ Price Per Service (PAS <sub>n</sub> ) on and from the Date of Stage 2 Completion
PAS <sub>1</sub>	Weekday early mornings PAS	From 12.00am and prior to 9am	██████	██████
PAS <sub>2</sub>	Weekday Standard PAS	From 9am and prior to 12.30pm	██████	██████
PAS <sub>3</sub>	Weekday afternoon PAS	From 12.30pm and prior to 5.00pm	██████	██████
PAS <sub>4</sub>	Weekday night PAS	From 5.00pm	██████	██████
PAS <sub>5</sub>	Saturday PAS	All hours	██████	██████
PAS <sub>6</sub>	Sunday PAS	All hours	██████	██████
PAS <sub>7</sub>	Public holiday PAS	All hours	██████	██████

### 3 Special Event Service pricing

**Table 3a: Service prices prior to the Date of Stage 2 Completion (\$Real at 30 June 2015)**

PSH ref	Description	Time Period (n)	Special Event Type A PSH <sub>t</sub>	Special Event Type B PSH <sub>t</sub>	Special Event Type C PSH <sub>t</sub>
	Price per Special Event (PSES)				
PSH <sub>1</sub>	Weekday early morning PSH	from 12.00am and prior to 9am			
PSH <sub>2</sub>	Weekday Standard PSH	from 9am and prior to 12.30pm			
PSH <sub>3</sub>	Weekday afternoon PSH	from 12.30pm and prior to 5.00pm			
PSH <sub>4</sub>	Weekday night PSH	from 5.00pm			
PSH <sub>5</sub>	Saturday PSH	All hours			
PSH <sub>6</sub>	Sunday PSH	All hours			
PSH <sub>7</sub>	Public holiday	All hours			

**Table 3b: Service prices on and from the Date of Stage 2 Completion (\$Real at 30 June 2015)**

PSH ref	Description	Time Period (n)	Special Event Type A PSH <sub>t</sub>	Special Event Type B PSH <sub>t</sub>	Special Event Type C PSH <sub>t</sub>
	Price per Special Event (PSES)				
PSH <sub>1</sub>	Weekday early morning PSH	from 12.00am and prior to 9am			
PSH <sub>2</sub>	Weekday Standard PSH	from 9am and prior to 12.30pm			
PSH <sub>3</sub>	Weekday afternoon PSH	from 12.30pm and prior to 5.00pm			
PSH <sub>4</sub>	Weekday night PSH	from 5.00pm			
PSH <sub>5</sub>	Saturday PSH	All hours			
PSH <sub>6</sub>	Sunday PSH	All hours			
PSH <sub>7</sub>	Public holiday	All hours			

## 4 Service levels

Table 4: Service levels

Ms Ref		Time Period (n)	Minimum Services	Maximum Services
	Service Band (Number of Scheduled Services per week)	All day		
MS1	Number of Scheduled Services Weekday early morning in Time Period 1	from 12:00am and prior to 9am		
MS2	Number of Scheduled Services Weekday Standard in Time Period 2	from 9am and prior to 12:30pm		
MS3	Number of Scheduled Services Weekday afternoon in Time Period 3	from 12:30pm and prior to 5:00pm		
MS4	Number of Scheduled Services Weekday night in Time Period 4	from 5:00pm		
MS5	Number of Scheduled Services (Saturday)	All day		
MS6	Number of Schedules Services (Sunday)	All day		
MS7.1	Number of Schedules Services Weekday early morning in Time Period 1 (Public Holiday)	from 12:00am and prior to 9am		
MS7.2	Number of Scheduled Services Weekday Standard in Time Period 2 (Public Holiday)	from 9am and prior to 12:30pm		
MS7.3	Number of Scheduled Services Weekday afternoon in Time Period 3 (Public Holiday)	from 12:30pm and prior to 5:00pm		
MS7.4	Number of Scheduled Services Weekday night in Time Period 4	from 5:00pm		

Ms Ref		Time Period (n)	Minimum Services	Maximum Services
	(Public Holiday)			

## 5 Lifecycle Payment

Table 5: Lifecycle Payment (\$Real at 30 June 2015)

Operating Year	Year Start	Year End	Lifecycle Payment for the relevant Operating Year of Stage 1 (A)	Lifecycle Payment for the relevant Operating Year of Stage 2 (B)	Complete Lifecycle Payment for the relevant Operating Year (A+B)
1	1 June 14	31 Dec 14	0	0	0
2	1 Jan 15	31 Dec 15	0	0	0
3	1 Jan 16	31 Dec 16		0	
4	1 Jan 17	31 Dec 17		0	
5	1 Jan 18	31 Dec 18			
6	1 Jan 19	31 Dec 19			
7	1 Jan 20	31 Dec 20			
8	1 Jan 21	31 Dec 21			
9	1 Jan 22	31 Dec 22			
10	1 Jan 23	31 Dec 23			
11	1 Jan 24	31 Dec 24			
12	1 Jan 25	31 Dec 25			
13	1 Jan 26	31 Dec 26			
14	1 Jan 27	31 Dec 27			
15	1 Jan 28	31 Dec 28			
16	1 Jan 29	31 Dec 29			
<b>Total</b>					

## Appendix A2: Floating Rate Component 'Base Case' Values

[Note that these values will be updated from the Model Output Schedule]

INTEREST PERIOD		Base Case Floating Rate Debt Stage 1	Base Case Floating Rate Debt Stage 2	Base Case Floating Rate Interest Payment Stage 1	Base Case Floating Rate Interest Payment Stage 2
Quarter End	Year				
All	<=2015				
31 March	2016				
30 June	2016				
30 September	2016				
31 December	2016				
31 March	2017				
30 June	2017				
30 September	2017				
31 December	2017				
31 March	2018				
30 June	2018				
30 September	2018				
31 December	2018				
31 March	2019				
30 June	2019				
30 September	2019				
31 December	2019				

INTEREST PERIOD		Base Case Floating Rate Debt Stage 1	Base Case Floating Rate Debt Stage 2	Base Case Floating Rate Interest Payment Stage 1	Base Case Floating Rate Interest Payment Stage 2
Quarter End	Year				
31 March	2020				
30 June	2020				
30 September	2020				
31 December	2020				
31 March	2021				
30 June	2021				
30 September	2021				
31 December	2021				
31 March	2022				
30 June	2022				
30 September	2022				
31 December	2022				
31 March	2023				
30 June	2023				
30 September	2023				
31 December	2023				
31 March	2024				
30 June	2024				
30 September	2024				
31 December	2024				
31 March	2025				
30 June	2025				



INTEREST PERIOD		Base Case Floating Rate Debt Stage 1	Base Case Floating Rate Debt Stage 2	Base Case Floating Rate Interest Payment Stage 1	Base Case Floating Rate Interest Payment Stage 2
Quarter End	Year				
30 September	2025				
31 December	2025				
31 March	2026				
30 June	2026				
30 September	2026				
31 December	2026				
31 March	2027				
30 June	2027				
30 September	2027				
31 December	2027				
31 March	2028				
30 June	2028				
30 September	2028				
31 December	2028				
31 March	2029				
30 June	2029				
30 September	2029				
31 December	2029				
All	>=2030				

# Appendix B - Passenger Satisfaction Survey

## 1 Introduction

### 1.1 Overview and Scope

- (a) The State and Operator Franchisee must jointly appoint a Surveyor to carry out the Passenger Satisfaction Surveys.
- (b) Operator Franchisee is responsible for the procuring that the Surveyor carry out Passenger Satisfaction Surveys throughout the year to gauge the satisfaction of Passengers using the System.
- (c) Poor Passenger Satisfaction Survey results may trigger a KPI Event in accordance with Table 2 of part B of this **schedule 3**.
- (d) The Passenger Satisfaction Survey must:
  - (i) be representative of the System;
  - (ii) be representative of the Passengers and other users of the System;
  - (iii) be representative of the System's actual day to day performance;
  - (iv) be statistically robust;
  - (v) be cost-effective;
  - (vi) minimise inconvenience to Passengers; and
  - (vii) ensure its results are of value to Operator Franchisee over and above their use for the purposes of the payment regime; and
  - (viii) incorporate and expand as necessary the TransLink Customer Satisfaction Survey methodology and output requirements.

## 2 Survey Requirements

### 2.1 Passenger Satisfaction Survey Methodology

The Passenger Satisfaction Survey methodology must:

- (a) be based on a self-completion survey;
- (b) be carried out by the Surveyor;
- (c) be no longer than 25 questions all of which must be capable of being answered on a scale of 1 to 10 or via multiple choice;
- (d) utilise questionnaires handed to boarders of LRVs along with a pen or pencil;
- (e) allow the collection of filled questionnaires from alighting Passengers;
- (f) provide an option to send in the completed questionnaire in a pre-paid return envelope to the Surveyor;

- (g) provide for a controlled spread of alighting points and travel times in the sample.

## 2.2 Sample

- (a) **(Sample size):**
  - (i) Operator Franchisee must ensure that the Passenger Satisfaction Survey achieves a representative sample of completed and returned questionnaires of at least 4000 Passengers per year, with each individual 6 monthly report being based on at least 2000 completed questionnaires from Passengers.
  - (ii) Operator Franchisee must ensure that sufficient numbers of questionnaires are handed out to achieve the sample size requirements set out in **section 2(a)(i)** of this **appendix B**.
  - (iii) If a sample size larger than the minimum number required is achieved, all returned questionnaires must be included in the Passenger Satisfaction Survey report provided to the State.
- (b) **(Sample distribution):** The sample of Passengers included in the Passenger Satisfaction Survey must be representative of the patronage distribution on the System and comparative from survey to survey, including in relation to:
  - (i) the distribution of origin and destination combinations;
  - (ii) the age groups represented in the Passenger Satisfaction Survey sample;
  - (iii) the demand distribution in relation to time of day;
  - (iv) the days throughout the year including working days, Saturdays, Sundays and public holidays; and
  - (v) the proportion of seasonal holiday periods throughout the survey period.

## 2.3 Questionnaire content

The Surveyor must provide the results of all questions included in the Passenger Satisfaction Survey and Operator Franchisee.

- (a) **(Recurring questions):**
  - (i) Operator Franchisee must ensure that five recurring questions are included in each Passenger Satisfaction Survey questionnaire, so as to allow the evaluation of those questions in the payment regime.
  - (ii) The following five questions must be included in each questionnaire with Passengers to provide answers on a scale of 1 to 10:
    - "In your experience, how reliable is the service on GCRT?" – 1 (very unreliable) to 10 (very reliable);
    - "How do you rate customer service on GCRT?" – 1 (very poor) to 10 (very good);
    - "Do you feel safe and secure when travelling on GCRT?" – 1 (very unsafe) to 10 (very safe);

“How easy do you find it to use GCRT (including the way information is provided to you and how GCRT dealt with any disruptions)?” – 1 (very difficult) to 10 (very easy); and

“How clean and presentable did you find GCRT (including litter, graffiti, scratched windows and the general state of GCRT Stations, LRV and other infrastructure)?” – 1 (very unclean) to 10 (very clean)

(each, a Recurring Question).

**(b) (Non-recurring Questions defined by the State):**

- (i) The State may include up to 10 additional questions in the Passenger Satisfaction Survey with respect to the O&M Activities.
- (ii) If the State wishes to include additional questions pursuant to **section 2.3(b)(i)** of this **appendix B**, the State must advise Operator Franchisee about the content of the 10 additional questions no less 3 months before the release of the next edition of the questionnaire.

**(c) (Questions defined by Operator Franchisee):**

- (i) Operator Franchisee may, subject to receiving the State's consent, include up to 10 additional questions in the Passenger Satisfaction Survey as determined by Operator Franchisee.
- (ii) The State has the right to reasonably reject any questions proposed to be included in the Passenger Satisfaction Survey by Operator Franchisee.
- (iii) The questions selected by Operator Franchisee must take into account the Survey requirements set out in this **section 2** of this **appendix B**.
- (iv) Operator Franchisee will advise the State about the content of the 10 additional questions two months before the release of the next edition of the questionnaire for the next Survey Period.

## **3 Survey Report for Requirements**

### **3.1 Survey Results**

- (a) Operator Franchisee must provide the Survey Results Report of the preceding six month survey period within one month of end of the preceding Survey Period.
- (b) The Survey Results Report must be provided in electronic format and hard copy and must include the statistical information required by the State which may include means, standard errors and sample sizes, broken down by day, time of day and direction of travel.
- (c) With each Survey Results Report, Operator Franchisee must provide to the State:
  - (i) the Survey Results Report for the preceding two Survey Periods; and
  - (ii) the data from the Survey Results Report in respect of each Recurring Question since the Date of Completion.

### **3.2 Calculation of Performance Outcomes**

- (a) Each Passenger Satisfaction Surveys must contain the Recurring Questions, which will be used to gauge Operator Franchisee's performance in relation to customer satisfaction over time. Each of these questions ask customers to rate Operator Franchisee's performance in relation to a specific area of customer satisfaction on a scale of 1 (e.g. very poor) to 10 (e.g. very good).
- (b) For each Recurring Question, the average performance over the Survey Period will be calculated as a percentage value.
- (c) The average score over all five Recurring Questions for the previous Survey Period will be calculated.

### **3.3 Performance Points**

Operator Franchisee will accrue Performance Points in accordance with part B of this **schedule 3** if:

- (a) the average score over the Survey Period for an individual Recurring Question is equal to or lower than 60%.
- (b) the average score of all Recurring Questions over the Survey Period is equal to or lower than 70%.

### **3.4 Service Improvement Plans**

- (a) If:
  - (i) Operator Franchisee achieves an average score of less than 60% for any individual Recurring Question; or
  - (ii) Operator Franchisee achieves an overall average score of less than 70% the Recurring Questions,

then Operator Franchisee must provide to the State a service improvement plan within 14 days of Operator Franchisee receiving the Passenger Satisfaction Survey results which specifies a work plan to increase Passenger Satisfaction Survey results above the level non-compliance specified in **section 3.3** of this **appendix B**.

- (b) Within, five Business Days of receiving the service improvement plan, the State and Operator Franchisee must meet to agree the contents of the service improvement plan.
- (c) Once agreed by the State and Operator Franchisee, Operator Franchisee must comply with and diligently pursue the service improvement plan.

### **3.5 Audit results**

The State retains the right to carry out an audit of any Passenger Satisfaction Survey results.

# Appendix C - Consultants

## 1 Overview

The Mystery Shopper must undertake Inspections; and a Qualified Professional must undertake Measurements, at Stations, line side and LRVs as required and in accordance with this Appendix.

## 2 Inspections

### 2.1 Inspections - LRVs

- (a) The Mystery Shopper must:
  - (i) undertake LRV inspections to determine compliance with the KPIs set out in the KPI Table;
  - (ii) randomly select 5 LRVs that are providing Passenger Services for interior inspection and randomly select 5 LRVs that are in operation for exterior inspection (Selected LRVs);
  - (iii) inspect Selected LRV interiors by entering a randomly chosen door on a randomly chosen LRV in successive operational LRVs (starting at randomly set start time, location and direction);
  - (iv) inspect each LRV interior by looking at the internal space of the LRV;
  - (v) inspect Selected LRV exteriors of successive LRVs departing at a random Station starting at a randomly set start time;
  - (vi) inspect each LRV exterior by looking at the exteriors of the whole side of the LRV;
  - (vii) take a photograph of the LRV interior or exterior to support the assessment;
  - (viii) notify Operator Franchisee through the Translink Helpdesk of any potential KPI non compliance;
  - (ix) the Mystery Shopper will return in after the relevant Target Response Period (where applicable) has elapsed and inspect the Selected LRVs interiors and exteriors using the approach described above to determine whether Operator Franchisee rectified LRV graffiti and/or cleanliness within the Target Response Period, where appropriate;
  - (x) take a photograph of the LRV interior or exterior to support the assessment;
  - (xi) record the date, time, LRV number, and door number (as applicable) and any notes in support of their assessment; and

- (xii) provide all data, photos and assessment notes for each LRV to the State (LRV Mystery Shopper Report).
- (b) The Mystery Shopper may conduct LRV inspections on any day during an Operating Quarter;
- (c) The Mystery Shopper will use his / her professional judgement to determine whether the LRV interior condition KPI was met (subject to fair wear and tear).
- (d) The State must submit an LRV Mystery Shopper Report in respect of the surveyed LRVs to Operator Franchisee within three Business Days of conducting the inspection.
- (e) The average result of the Selected LRVs will be the inferred compliance for the LRV fleet with Graffiti and cleanliness requirements, e.g. where 2 of the 5 LRVs are not compliant 40% of the LRV fleet will be deemed not be compliant.

## **2.2 Inspections - Stations and line side**

- (a) The Mystery Shopper must:
  - (i) undertake Station and line side inspections to determine compliance with KPIs set out in table 2 of part B;
  - (ii) randomly select at least 5 Stations for inspection;
  - (iii) inspect (Station and line side Items):
    - (A) Stations;
    - (B) Station environments (stations shelters, walkways up to the station, etc);
    - (C) lifts, escalators and stairs where appropriate;
    - (D) toilets;
    - (E) platforms;
    - (F) station furniture; and
    - (G) line side.
  - (iv) take photographs of the assessment ;
  - (v) notify Operator Franchisee through the Translink Helpdesk of any potential KPI non compliance;
  - (vi) return after the relevant Target Response Period has elapsed and inspect the same Station and line side Items using the approach described above to determine whether Operator Franchisee rectified Station Availability, graffiti and cleanliness within the Target Response Periods, where appropriate;
  - (vii) take a photographs of the assessment;
  - (viii) record the date, time and any notes in support of the assessment; and

- (ix) provide all data, photos and assessment notes for each Station and line side Item to the State (**Station Mystery Shopper Report**).
- (b) The Mystery Shopper may conduct Station inspections on any day during Operating Hours in an Operating Quarter.
- (c) The Mystery Shopper will use his / her professional judgement to determine whether the Station condition KPIs were met (subject to fair wear and tear).
- (d) The State must submit a Station Mystery Shopper Report in respect of the surveyed Stations to Operator Franchisee within three Business Days of undertaking the inspection.

### 3 Measurements

#### 3.1 Measurements – LRVs

Ride quality and on-board noise:

The suitably qualified professional must:

- (a) be an independent engineer who will perform the ride quality and on board noise tests in accordance with the PSR;
- (b) specify the number of LRVs to be tested, which will not be less than 2;
- (c) randomly select LRVs from a list of available LRVs ;
- (d) record the date, time, LRV number, the results and any notes in support of their assessment; and
- (e) provide all data and assessment notes for each LRV to the State (LRV Measurement Report).

The State must submit a Measurement Report in respect of the surveyed LRVs to Operator Franchisee the next day.

The average result will be the inferred compliance for the LRV fleet with the ride quality and on board noise requirements, e.g. where 1 of the 2 LRVs measured are not compliant, half of the LRV fleet will be deemed not be compliant.

#### 3.2 Measurement – Station and line side

Line-side noise:

- (a) the suitably qualified professional must:
  - (i) be an independent engineer which will perform line side noise tests in accordance with the PSR;
  - (ii) specify the number and location of sites to be tests where the number of sites or locations will not exceed 5 locations;
  - (iii) record the date, time, LRV number, location, the results and any notes in support of their assessment; and



- (iv) provide all data and assessment notes for each location to the State (**Line Side Measurement Report**).
- (b) the State will submit a Measurement Report in respect of the surveyed Line Side to Operator Franchisee the next day.

## **4 Timing and Performance Abatement**

### **4.1 Timing of Inspections and Measurements for Consultants**

- (a) Inspections will be carried out once every Operating Quarter on dates randomly selected by the State and / or the Mystery Shopper; and
- (b) Measurements will be carried out annually and will be arranged by the State and or the suitably qualified professional with Operator Franchisee with 10 days notice.

### **4.2 Performance Abatement**

- (a) Operator Franchisee must determine the KPI Events and calculate the Performance Abatements in accordance with the outcomes of each Mystery Shopper Report and each Measurement Report.
- (b) Performance Abatements will be deducted from the Service Payment in accordance with section 9.1 of part A for the Payment Month in which the Mystery Shopper or Qualified Professional undertook the inspection or measurement.

## Appendix D - Fare Evasion Survey

### 1 Introduction

#### 1.1 Overview and Scope

- (a) Operator Franchisee must appoint a Surveyor to undertake 6 monthly Fare Evasion Surveys to determine the level of Fare Evasion on the GCRT System.
- (b) Operator Franchisee must pay the cost of the Surveyor appointed to undertake Fare Evasion Surveys.
- (c) Poor Fare Evasion levels may result in a KPI Event in accordance with Table 2: KPI Table of part B of this schedule 3.
- (d) the Fare Evasion Survey must:
  - (i) be representative of the System;
  - (ii) be representative of the System's actual day to day performance;
  - (iii) be statistically robust;
  - (iv) be unbiased; and
  - (v) minimise inconvenience to Passengers.

### 2 Survey Requirements

#### 2.1 Fare Evasion Survey methodology

- (a) The Fare Evasion Survey methodology must:
  - (i) employ a "measurement by survey" methodology;
  - (ii) be undertaken every 6 months by the Surveyor with the exception of the first six months of 2018 when no Fare Evasion Survey will be undertaken (**Moratorium Period**).

If there is a material delay to the Date of Stage 2 Completion or the Commonwealth Games, the parties will in good faith seek to agree appropriate adjustment of the Moratorium Period detailed in this section 2.1(a)(ii).
  - (iii) result in a margin of error of not more than  $\pm 1\%$ . For the avoidance of doubt, the margin of error will not be taken into consideration in determining the actual level of Fare Evasion for purposes of determining Performance Points;
  - (iv) be undertaken during a "typical" one week period and not during school holiday periods or during a Special Event Type A or Special Event Type B;

- (v) Surveyors will collect Fare Evasion data on-board LRVs, using a randomised methodology to select Passengers for survey during inter-station trips; and
  - (vi) be approved by the State.
- (b) The data collected from each passenger will include:
- (i) boarding station;
  - (ii) alighting station;
  - (iii) trip purpose;
  - (iv) age (or approximate);
  - (v) sex;
  - (vi) ticket type; and
  - (vii) ticket validity (through use of handheld card readers or by visual inspection of non smartcard products).

During the Survey Period immediately following the Moratorium Period, the results of the latest Fare Evasion Survey undertaken before the Moratorium Period will apply for the purpose of abatement except that if the actual level of Fare Evasion measured through that Fare Evasion Survey is below the Target Fare Evasion Level of 8%, no negative Performance Points will accrue in that period.

## **2.2 Sample size**

Operator Franchisee must ensure that the Fare Evasion Survey achieves a representative sample of at least 3,000 Passengers per survey.

# **3 Fare Evasion Survey reporting requirements**

## **3.1 Survey Results**

- (a) Operator Franchisee must provide the Survey Results Report within one month of the end of the Survey Period.
- (b) The Survey Results Report must be provided in electronic format and hard copy and must include the actual level of Fare Evasion determined by the Fare Evasion Survey and statistical information required by the State which may include the sample data, means, standard errors and sample sizes, further categorised by day, time of day and direction of travel.
- (c) Upon submission of each Survey Results Report, Operator Franchisee must provide the State with the Survey Results Report for the preceding two Survey Periods.
- (d) Operator Franchisee must not discuss or disclose the Fare Evasion Survey results with any third party without the express permission of the State.

### **3.2 Performance Points**

- (a) Operator Franchisee will accrue monthly Performance Points in accordance with Table 2: KPI Table in part B of this schedule 3 if the actual level of Fare Evasion measured through the Fare Evasion Survey, is above or below the Target Fare Evasion Level of 8%.
- (b) For the purpose of determining the monthly Performance Points, the actual level of Fare Evasion measured by the Fare Evasion Survey will be the assumed monthly level of Fare Evasion for the duration of the following Survey Period and until such time as the next Fare Evasion Survey is undertaken.

### **3.3 Service Improvement Plans**

- (a) If:
  - (i) Operator Franchisee achieves a level of Fare Evasion of 10% or higher; or
  - (ii) Operator Franchisee achieves a level of Fare Evasion that increases over four consecutive Survey Periods,then Operator Franchisee must provide the State with a Fare Evasion improvement plan, within 14 days of Operator Franchisee receiving the Fare Evasion Survey results, which specifies a work plan to reduce the level of Fare Evasion.
- (b) Within 5 Business Days of receipt by the State of the Fare Evasion improvement plan, the State and Operator Franchisee must meet to agree the contents of the Fare Evasion improvement plan.
- (c) Once agreed by the State and Operator Franchisee, Operator Franchisee must comply with and diligently pursue the Fare Evasion improvement plan.

### **3.4 Audit results**

The State retains the right to carry out an audit of any Fare Evasion Survey results.

## Schedule 3A

### Stage 2 capital component of Service Payments

Stage 2 Service Payment	Real June \$2015 pa	
	From Date of Stage 2 Completion to the day before the Post Completion Payment Date	From Post Completion Payment Date (net of Licence Fee to be set off from Post Completion Payment Date)
Capital Component (non indexing)	██████████	██████████
Capital Component (indexing, CPI)	██████████	██████████

# Schedule 4

## Certification Schedule

Certificate/ Notice		Issuer of Certificate /Notice	Clause
1	Operator Franchisee's Certificate – Compliance with Community Requirements	Operator Franchisee	10.2(a)
2	Operator Franchisee's Certificate – Rectification of non-compliance with Community Requirements	Operator Franchisee	10.2(j)
3	Qualified Fire Engineer's Certificate – Fire Engineering Brief and Fire Engineering Report	Qualified Fire Engineer	4.5.4(c) of annexure 5, PSR
3A	Proof Engineer's Certificate – Fire Engineering Brief and Fire Engineering Report	Proof Engineer	4.5.2 of annexure 5, PSR
4	Designers' Certificates – Stage 2 Design Documentation	Each Designer	14.7(c)(i)
5	Operator Franchisee's Certificate – Stage 2 Design Documentation	Operator Franchisee	14.7(c)(i), 14.7(c)(iv)
6	Building Surveyor's Certificate – Stage 2 Design Documentation	Building Surveyor	14.7(c)(ii), and 4.5.7 of annexure 5, PSR
7	[Not used]		
8	Qualified Fire Engineer's Certificate – Stage 2 Design Documentation	Qualified Fire Engineer	14.7(c)(ii) and 4.5.4(e) of annexure 5, PSR
9	O&M Contractor's Certificate – Stage 2 Design Documentation	O&M Contractor	14.7(c)(iii)
10	Independent Verifier's Certificate – Stage 2 Design Documentation	Independent Verifier	14.7(g)(ii)
11	Operator Franchisee's Certificate – Returned Works	Operator Franchisee	19.2(a)(ii)
12	Returned Facility Handover Notice	12A: Property owner 12B: Authority 12C: Operator Franchisee	19.2(a)(ii)

	<b>Certificate/ Notice</b>	<b>Issuer of Certificate /Notice</b>	<b>Clause</b>
	Certificate of Returned Facility Completion	12D: Independent Verifier	19.2(c)(iii)
<b>13</b>	Designers' Certificates – Completion	Each Designer	18.1(e)(i)
<b>14</b>	Qualified Fire Engineer's Certificate – Completion	Qualified Fire Engineer	18.1(e)(i) and 4.5.4(d) of annexure 5, PSR
<b>15</b>	Operator Franchisee's Certificate – Completion	Operator Franchisee	18.1(e)(iii)
<b>16</b>	O&M Contractor's Certificate – Completion	O&M Contractor	18.1(e)(iv)
<b>17</b>	Certificate of Completion	Independent Verifier	18.1(g)
<b>18</b>	Certificate of Close out	Independent Verifier	18.2(c)
<b>19</b>	Payment Claim – D&C Phase	Operator Franchisee	38.2
<b>20</b>	Construction Payment Notice	Operator Franchisee	38.3(b)
<b>21</b>	[Not used]		
<b>22</b>	Payment Claim – Service Payment	Operator Franchisee	38.4(b)(ii)

## Part 1

### Operator Franchisee's Certificate – Compliance with Community Requirements

Gold Coast Rapid Transit Project (**Project**)

**To:** The State of Queensland (**the State**) c/- The Department of Transport and Main Roads  
Hyder Consulting Pty Limited ABN 76 104 485 289 and APP Corporation Pty Ltd ABN 29 003 764 770, trading as CERT-TRAM (**Independent Verifier**)

**From:** GoldLinQ Pty Ltd ACN 147 815 441 of Level 29, 140 William Street, Melbourne Victoria 3000 (**Operator Franchisee**)

In accordance with the terms of clause 10.2(a) of the Project Deed between the State and Operator Franchisee dated *[insert date]* with respect to the Project (**Project Deed**), I hereby confirm that between the following dates *[insert dates]* I am satisfied that the Project Activities have been undertaken in accordance with the Community Requirements.

Terms defined in the Project Deed have the same meaning in this certificate.

---

**Signed for and on behalf of**

GoldLinQ Pty Ltd ACN 147 815 441

Date:



## Part 2

### Operator Franchisee's Certificate – Rectification of non-compliance with Community Requirements

Gold Coast Rapid Transit Project (**Project**)

**To:** The State of Queensland (**the State**) c/- The Department of Transport and Main Roads  
Hyder Consulting Pty Limited ABN 76 104 485 289 and APP Corporation Pty Ltd ABN 29 003 764 770, trading as CERT-TRAM (**Independent Verifier**)

**From:** GoldLinQ Pty Ltd ACN 147 815 441 of Level 29, 140 William Street, Melbourne Victoria 3000 (**Operator Franchisee**)

In accordance with the terms of clause 10.2(j) of the Project Deed between the State and Operator Franchisee dated [*insert date*] with respect to the Project (**Project Deed**), I hereby confirm that:

- (a) Operator Franchisee has complied with the Community Audit Remediation Plan reviewed by the Independent Verifier dated [*insert date of Plan*]; and
- (b) Operator Franchisee has rectified the non-compliance identified by the Independent Verifier in the Community Audit Report in accordance with the requirements of the State Project Documents.

Terms defined in the Project Deed have the same meaning in this certificate.

---

**Signed for and on behalf of**

GoldLinQ Pty Ltd ACN 147 815 441

Date:

### Part 3

## Qualified Fire Engineer's Certificate – Fire Engineering Brief and Fire Engineering Reports

Gold Coast Rapid Transit Project (**Project**)

**To:** The State of Queensland (**the State**) c/- The Department of Transport and Main Roads

Hyder Consulting Pty Limited ABN 76 104 485 289 and APP Corporation Pty Ltd ABN 29 003 764 770, trading as CERT-TRAM (**Independent Verifier**)

**Copy:** GoldLinQ Pty Ltd ACN 147 815 441 of Level 29, 140 William Street, Melbourne Victoria 3000 (**Operator Franchisee**)

**From:** *[Insert name of Qualified Fire Engineer]* (**Qualified Fire Engineer**)

In accordance with the terms of section 4.5.4(c) of annexure 5 (Engineering Design Requirements) of the PSR which is exhibit 1 of the Project Deed between the State and Operator Franchisee dated *[insert date]* with respect to the Project (**Project Deed**), I hereby certify that the Fire Engineering Brief (FEB) and all fire engineering reports have been prepared in accordance with, and comply with the Project Deed (including the PSR).

Terms defined in the Project Deed have the same meaning in this certificate.

\_\_\_\_\_  
*[Insert name of Qualified Fire Engineer]*

RPEQ number: \_\_\_\_\_

Date:

## Part 3A

### Proof Engineer's Certificate – Fire Engineering Brief and Fire Engineering Reports

Gold Coast Rapid Transit Project (**Project**)

**To:** The State of Queensland (**the State**) c/- The Department of Transport and Main Roads

Hyder Consulting Pty Limited ABN 76 104 485 289 and APP Corporation Pty Ltd ABN 29 003 764 770, trading as CERT-TRAM (**Independent Verifier**)

**Copy:** GoldLinQ Pty Ltd ACN 147 815 441 of Level 29, 140 William Street, Melbourne Victoria 3000 (**Operator Franchisee**)

**From:** [*Insert name of Proof Engineer*] (**Proof Engineer**)

In accordance with the terms of section 4.5.2 of annexure 5 (Engineering Design Requirements) of the PSR which is exhibit 1 of the Project Deed between the State and Operator Franchisee dated [*insert date*] with respect to the Project (**Project Deed**), I hereby certify that the FEB and all fire engineering reports have been prepared in accordance with, and comply with the Project Deed (including the PSR).

Terms defined in the Project Deed have the same meaning in this certificate.

\_\_\_\_\_  
[*Insert name of Proof Engineer*]

RPEQ number: \_\_\_\_\_

Date:

## Part 4

### Designers' Certificates – Design Stage 2 Design Documentation

Gold Coast Rapid Transit Project (**Project**)

**To:** The State of Queensland (**the State**) c/- The Department of Transport and Main Roads

Hyder Consulting Pty Limited ABN 76 104 485 289 and APP Corporation Pty Ltd ABN 29 003 764 770, trading as CERT-TRAM (**Independent Verifier**)

**Copy:** GoldLinQ Pty Ltd ACN 147 815 441 of Level 29, 140 William Street, Melbourne Victoria 3000 (**Operator Franchisee**)

**From:** *[Insert name of Designer]* (**Designer**)

In accordance with the terms of clause 14.7(c)(i) of the Project Deed between the State and Operator Franchisee dated *[insert date]* with respect to the Project (**Project Deed**), I hereby certify that the attached Design Stage 2 Design Documentation:

- (a) is appropriate for construction; and
- (a) complies with the Project Deed (including the PSR), the TTA Direct Deed and the Council Direct Deed.

Terms defined in the Project Deed have the same meaning in this certificate.

\_\_\_\_\_  
*[Insert name of Designer]*

RPEQ number: \_\_\_\_\_

Date:

## Part 5

### Operator Franchisee's Certificate – Design Stage 2 Design Documentation

Gold Coast Rapid Transit Project (**Project**)

**To:** The State of Queensland (**the State**) c/- The Department of Transport and Main Roads

Hyder Consulting Pty Limited ABN 76 104 485 289 and APP Corporation Pty Ltd ABN 29 003 764 770, trading as CERT-TRAM (**Independent Verifier**)

**From:** GoldLinQ Pty Ltd ACN 147 815 441 of Level 29, 140 William Street, Melbourne Victoria 3000 (**Operator Franchisee**)

In accordance with the terms of clauses 14.7(c)(i) and 14.7(c)(iv) of the Project Deed between the State and Operator Franchisee dated *[insert date]* with respect to the Project (**Project Deed**), I hereby certify that the attached Design Stage 2 Design Documentation:

- (a) is appropriate for construction;
- (b) complies with the State Project Documents including the PSR; and
- (c) *[does not involve or constitute a Modification]\*/[involves or constitutes a Modification but that Modification has been [directed by the State by a Modification Order\*]/[approved by the State by a Modification Approval\*]/[directed by the State as Minor Works under clause 33 of the Project Deed]\*]*.

Terms defined in the Project Deed have the same meaning in this certificate.

---

**Signed for and on behalf of**

GoldLinQ Pty Ltd ACN 147 815 441

Date:

*\* delete as applicable*

## Part 6

### Building Surveyor's Certificate – Design Stage 2 Design Documentation

Gold Coast Rapid Transit Project (**Project**)

**To:** The State of Queensland (**the State**) c/- The Department of Transport and Main Roads

Hyder Consulting Pty Limited ABN 76 104 485 289 and APP Corporation Pty Ltd ABN 29 003 764 770, trading as CERT-TRAM (**Independent Verifier**)

**Copy:** GoldLinQ Pty Ltd ACN 147 815 441 of Level 29, 140 William Street, Melbourne Victoria 3000 (**Operator Franchisee**)

**From:** [*Insert name of Proof Engineer*] (**Proof Engineer**)

In accordance with the terms of clause 14.7(c)(ii) of the Project Deed between the State and Operator Franchisee dated [*insert date*] with respect to the Project (**Project Deed**) and section 4.5.7 of part 1 of annexure 5 (Engineering Design Requirements) of the PSR, I hereby certify that the fire and life safety aspects of the attached Design Stage 2 Design Documentation:

- (i) satisfy the requirements of the Building Code of Australia, relevant Australian Standards, and that consultation has occurred with the Queensland Fire and Rescue Service and their comments have been addressed in the design; and
- (ii) comply with the FEB, all fire engineering reports and the State Project Documents.

The following documentation is relied upon as supporting documentation in issuing this certificate:

Terms defined in the Project Deed have the same meaning in this certificate.

\_\_\_\_\_  
[*Insert name of Building Surveyor*]

QBSA number: \_\_\_\_\_

Date:

Part 7  
[Not used]

## Part 8

### Qualified Fire Engineer's Certificate – Design Stage 2 Design Documentation

Gold Coast Rapid Transit Project (**Project**)

**To:** The State of Queensland (**the State**) c/- The Department of Transport and Main Roads

Hyder Consulting Pty Limited ABN 76 104 485 289 and APP Corporation Pty Ltd ABN 29 003 764 770, trading as CERT-TRAM (**Independent Verifier**)

**Copy:** GoldLinQ Pty Ltd ACN 147 815 441 of Level 29, 140 William Street, Melbourne Victoria 3000 (**Operator Franchisee**)

**From:** *[Insert name of Qualified Fire Engineer]* (**Qualified Fire Engineer**)

In accordance with the terms of clause 14.7(c)(ii) of the Project Deed between the State and Operator Franchisee dated *[insert date]* with respect to the Project (**Project Deed**) and section 4.5 of annexure 5 (Engineering Design Requirements) of the PSR, I hereby certify that, in respect of the attached Design Stage 2 Design Documentation, the design of all fire and life safety elements complies with and is consistent with the FEB and all fire engineering reports.

Terms defined in the Project Deed have the same meaning in this certificate.

---

*[Insert name of Qualified Fire Engineer]*

RPEQ number: \_\_\_\_\_

Date:



Part 9  
O&M Contractor's Certificate – Design Stage 2 Design  
Documentation

Gold Coast Rapid Transit Project (**Project**)

**To:** The State of Queensland (**the State**) c/- The Department of Transport and  
Main Roads

Hyder Consulting Pty Limited ABN 76 104 485 289 and APP Corporation Pty  
Ltd ABN 29 003 764 770, trading as CERT-TRAM (**Independent Verifier**)

**Copy:** GoldLinQ Pty Ltd ACN 147 815 441 of Level 29, 140 William Street, Melbourne  
Victoria 3000 (**Operator Franchisee**)

**From:** KDR Gold Coast Pty Ltd ABN 87 150 236 936 of Level 32, 140 William Street,  
Melbourne, Victoria 3000 (**O&M Contractor**)

In accordance with the terms of clause 14.7(c)(iii) of the Project Deed between the State  
and Operator Franchisee dated *[insert date]* with respect to the Project (**Project Deed**),  
the O&M Contractor hereby certifies that the attached Design Stage 2 Design  
Documentation is acceptable from an operational perspective to enable the O&M  
Contractor to meet its obligations under the O&M Contract, including its obligations with  
respect to safety, reliability and maintenance. This certification is given by the O&M  
Contractor in its capacity as a competent operating and maintenance contractor.

Terms defined in the Project Deed have the same meaning in this certificate.

---

**Signed for and on behalf of**

KDR Gold Coast Pty Ltd ABN 87 150 236 936

Date:

Part 10  
Independent Verifier's Certificate – Design Stage 2 Design  
Documentation

Gold Coast Rapid Transit Project (**Project**)

**To:** The State of Queensland (**the State**) c/- The Department of Transport and  
Main Roads

**Copy:** GoldLinQ Pty Ltd ACN 147 815 441 of Level 29, 140 William Street, Melbourne  
Victoria 3000 (**Operator Franchisee**)

**From:** Hyder Consulting Pty Limited ABN 76 104 485 289 and APP Corporation Pty  
Ltd ABN 29 003 764 770, trading as CERT-TRAM (**Independent Verifier**)

In accordance with the terms of clause 14.7(g) of the Project Deed between the State  
and Operator Franchisee dated *[insert date]* with respect to the Project (**Project Deed**), I  
hereby certify that the attached Design Stage 2 Design Documentation complies with  
the State Project Documents.

Terms defined in the Project Deed have the same meaning in this certificate.

\_\_\_\_\_  
*[Insert name of Independent Verifier]*

RPEQ number: \_\_\_\_\_

Date:

## Part 11

### Operator Franchisee's Certificate – Returned Works Certificate

Gold Coast Rapid Transit Project (**Project**)

**To:** The State of Queensland (**the State**) c/- The Department of Transport and Main Roads  
Hyder Consulting Pty Limited ABN 76 104 485 289 and APP Corporation Pty Ltd ABN 29 003 764 770, trading as CERT-TRAM (**Independent Verifier**)

**From:** GoldLinQ Pty Ltd ACN 147 815 441 of Level 29, 140 William Street, Melbourne Victoria 3000 (**Operator Franchisee**)

In accordance with the terms of clause 19.2(a)(ii) of the Project Deed between the State and Operator Franchisee dated [*insert date*] with respect to the Project (**Project Deed**):

- (a) I attach a conformance report, compliance report and As-built Information in accordance with annexure 9 (Construction Requirements) of the PSR; and
- (b) I confirm that the Returned Works in respect of the Returned Facility described generally below being carried out by Operator Franchisee have been completed in accordance with the State Project Documents.

Returned Facility: .....

Returned Works: .....

Terms defined in the Project Deed have the same meaning in this certificate.

---

**Signed for and on behalf of**

GoldLinQ Pty Ltd ACN 147 815 441

Date:

## Part 12A

### Returned Facility Handover Notice (Property owner)

Gold Coast Rapid Transit Project (**Project**)

**To:** The State of Queensland (**the State**) c/- The Department of Transport and Main Roads

This Deed Poll is in favour of the State.

Property Address: .....

- 1 I/We confirm that the following works have been carried out and completed on my/our property to my/our satisfaction:  
*[Insert description of Returned Works]*
- 2 I/We confirm that our land has been rehabilitated and all damage and degradation on it repaired.
- 3 I/We release the State from all claims and actions which I/we may have arising out of or in connection with the works referred to in item 1.

**Signed** as a Deed Poll.

**Signed sealed and delivered** )  
by [ ] )  
in the presence of: ) .....  
Signature

.....  
Signature of Witness

.....  
Name of Witness in full

## Part 12B

### Returned Facility Handover Notice (Authority)

Gold Coast Rapid Transit Project (**Project**)

**To:** The State of Queensland (**the State**) c/- The Department of Transport and Main Roads  
Hyder Consulting Pty Limited ABN 76 104 485 289 and APP Corporation Pty Ltd ABN 29 003 764 770, trading as CERT-TRAM (**Independent Verifier**)  
GoldLinQ Pty Ltd ACN 147 815 441 of Level 29, 140 William Street, Melbourne Victoria 3000 (**Operator Franchisee**)

**From:** [*Insert name of Authority*] (**Authority**)

I/we certify that the following work has been carried out and completed in respect of the following Returned Facility to my/our satisfaction:

Returned Facility: .....

---

**Signed for and on behalf of**

[*Insert name of Authority*]

Date:

## Part 12C

### Returned Facility Handover Notice (Operator Franchisee)

Gold Coast Rapid Transit Project (**Project**)

**To:** The State of Queensland (**the State**) c/- The Department of Transport and Main Roads

Hyder Consulting Pty Limited ABN 76 104 485 289 and APP Corporation Pty Ltd ABN 29 003 764 770, trading as CERT-TRAM (**Independent Verifier**)

**From:** GoldLinQ Pty Ltd ACN 147 815 441 of Level 29, 140 William Street, Melbourne Victoria 3000 (**Operator Franchisee**)

In accordance with the terms of clause 19.2(a)(iii) of the Project Deed between the State and Operator Franchisee dated [*insert date*] with respect to the Project (**Project Deed**):

- (a) Operator Franchisee has consulted reasonably with the owner of the Unowned Parcel where the Returned Facility described generally below is located;
- (b) the owner of that Unowned Parcel has [refused to sign a Returned Facility Handover Notice / has not signed a Returned Facility Handover Notice within 30 days of being requested to do so]\*;
- (c) the Returned Works in respect of the Returned Facility described generally below have been completed in accordance with the State Project Documents; and
- (d) Operator Franchisee indemnifies subject to clauses 42.2 to 42.4 of the Project Deed, the State against any Loss or Claim by the owner or occupier of that Unowned Parcel, to the extent such Loss or Claim arises out of or in connection with the Returned Works.

Returned Facility: .....

Returned Works: .....

Unowned Parcel: .....

Terms defined in the Project Deed have the same meaning in this certificate.

---

**Signed for and on behalf of**

GoldLinQ Pty Ltd ACN 147 815 441

Date:

*\* delete as applicable*

## Part 12D

### Certificate of Returned Facility Completion

Gold Coast Rapid Transit Project (**Project**)

**To:** The State of Queensland (**the State**) c/- The Department of Transport and Main Roads  
GoldLinQ Pty Ltd ACN 147 815 441 of Level 29, 140 William Street, Melbourne Victoria 3000 (**Operator Franchisee**)

**From:** Hyder Consulting Pty Limited ABN 76 104 485 289 and APP Corporation Pty Ltd ABN 29 003 764 770, trading as CERT-TRAM (**Independent Verifier**)

In accordance with the terms of clause 19.2(c)(ii) of the Project Deed between the State and Operator Franchisee dated *[insert date]* with respect to the Project (**Project Deed**):

- (a) the Returned Facility Completion has been achieved in respect of the Returned Facility described generally below; and
- (b) the date of Returned Facility Completion in respect to that Returned Facility is *[insert date]*.

Returned Facility: .....

Terms defined in the Project Deed have the same meaning in this certificate.

---

**Signed for and on behalf of**

*[Insert name of Independent Verifier]*

Date:

*\* delete as applicable*

Part 13  
Designers' Certificates – Completion

Gold Coast Rapid Transit Project (**Project**)

**To:** The State of Queensland c/- The Department of Transport and Main Roads  
(**the State**)

Hyder Consulting Pty Limited ABN 76 104 485 289 and APP Corporation Pty  
Ltd ABN 29 003 764 770, trading as CERT-TRAM (**Independent Verifier**)

**Copy:** GoldLinQ Pty Ltd ACN 147 815 441 of Level 29, 140 William Street, Melbourne  
Victoria 3000 (**Operator Franchisee**)

**From:** [*Insert name of Designer*] (**Designer**)

In accordance with the terms of clause 18.1(e)(i) of the Project Deed between the State  
and Operator Franchisee dated [*insert date*] with respect to the Project (**Project Deed**), I  
hereby certify that the Project Works (other than the Temporary Works) set out in the  
attached Construction Documentation, have been constructed in accordance with the  
Construction Documentation.

Terms defined in the Project Deed have the same meaning in this certificate.

\_\_\_\_\_  
[*Insert name of Designer*]

RPEQ number: \_\_\_\_\_

Date:



## Part 14

### Qualified Fire Engineer's Certificate – Completion

Gold Coast Rapid Transit Project (**Project**)

**To:** The State of Queensland (**the State**) c/- The Department of Transport and Main Roads

Hyder Consulting Pty Limited ABN 76 104 485 289 and APP Corporation Pty Ltd ABN 29 003 764 770, trading as CERT-TRAM (**Independent Verifier**)

**Copy:** GoldLinQ Pty Ltd ACN 147 815 441 of Level 29, 140 William Street, Melbourne Victoria 3000 (**Operator Franchisee**)

**From:** *[Insert name of Qualified Fire Engineer]* (**Qualified Fire Engineer**)

In accordance with the terms of clause 18.1(e)(i) of the Project Deed between the State and Operator Franchisee dated *[insert date]* with respect to the Project (**Project Deed**) and section 4.5.4(d) of annexure 5 (Engineering Design Requirements) of the PSR, I hereby certify that all as-built Project Works, Acceptance Testing Plans, testing and commissioning, and operations and maintenance plans comply with and are consistent with the REB and all fire engineering reports.

Terms defined in the Project Deed have the same meaning in this certificate.

\_\_\_\_\_  
*[Insert name of Qualified Fire Engineer]*

RPEQ number: \_\_\_\_\_

Date:

## Part 15 Operator Franchisee's Certificate – Completion

Gold Coast Rapid Transit Project (**Project**)

**To:** The State of Queensland (**the State**) c/- The Department of Transport and Main Roads

Hyder Consulting Pty Limited ABN 76 104 485 289 and APP Corporation Pty Ltd ABN 29 003 764 770, trading as CERT-TRAM (**Independent Verifier**)

**From:** GoldLinQ Pty Ltd ACN 147 815 441 of Level 29, 140 William Street, Melbourne Victoria 3000 (**Operator Franchisee**)

In accordance with the terms of clause 18.1(e)(iii) of the Project Deed between the State and Operator Franchisee dated *[insert date]* with respect to the Project (**Project Deed**), I hereby certify that the Project Works (other than the Temporary Works):

- (a) comply with all the requirements of the State Project Documents including the PSR, other than the following Minor Defects:  
*[insert list of Minor Defects (if any)]*;
- (b) have been constructed in accordance with the Construction Documentation; and
- (c) *[do not involve or constitute a Modification]\*/[involve or constitute a Modification but that Modification has been [directed by the State by a Modification Order\*]/[approved by the State by a Modification Approval\*]/[directed by the State as Minor Works under clause 33 of the Project Deed]\*]* \*.

Terms defined in the Project Deed have the same meaning in this certificate.

---

**Signed for and on behalf of**

GoldLinQ Pty Ltd ACN 147 815 441

Date:

*\* delete as applicable*

## Part 16

### O&M Contractor's Certificate – Completion

Gold Coast Rapid Transit Project (**Project**)

**To:** The State of Queensland (**the State**) c/- The Department of Transport and Main Roads

Hyder Consulting Pty Limited ABN 76 104 485 289 and APP Corporation Pty Ltd ABN 29 003 764 770, trading as CERT-TRAM (**Independent Verifier**)

**Copy:** GoldLinQ Pty Ltd ACN 147 815 441 of Level 29, 140 William Street, Melbourne Victoria 3000 (**Operator Franchisee**)

**From:** KDR Gold Coast Pty Ltd ABN 87 150 236 936 of Level 32, 140 William Street, Melbourne, Victoria 3000 (**O&M Contractor**)

In accordance with the terms of clause 18.1(e)(iv) of the Project Deed between the State and Operator Franchisee dated [*insert date*] with respect to the Project (**Project Deed**), the O&M Contractor hereby certifies that the Project Works (other than the Temporary Works) are acceptable from an operational perspective to enable the O&M Contractor to meet its obligations under the O&M Contract, including its obligations with respect to safety, reliability and maintenance. This certification is given by the O&M Contractor in its capacity as a competent operations and maintenance contractor.

Terms defined in the Project Deed have the same meaning in this certificate.

---

**Signed for and on behalf of**

KDR Gold Coast Pty Ltd ABN 87 150 236 936

Date:

## Part 17 Certificate of Completion

Gold Coast Rapid Transit Project (**Project**)

**To:** The State of Queensland (**the State**) c/- The Department of Transport and Main Roads

**Copy:** GoldLinQ Pty Ltd ACN 147 815 441 of Level 29, 140 William Street, Melbourne Victoria 3000 (**Operator Franchisee**)

**From:** Hyder Consulting Pty Limited ABN 76 104 485 289 and APP Corporation Pty Ltd ABN 29 003 764 770, trading as CERT-TRAM (**Independent Verifier**)

In accordance with the terms of clause 18.1(g) of the Project Deed between the State and Operator Franchisee dated *[insert date]* with respect to the Project (**Project Deed**), I hereby certify that:

- (a) the Project Works have been constructed in accordance with the Construction Documentation;
- (b) Completion has taken place;
- (a) the Date of Completion is *[insert date]*; and
- (b) *[there are no Minor Defects]*\*/*[there are the following Minor Defects:*  
*[insert list]]\**

Terms defined in the Project Deed have the same meaning in this certificate.

---

*[Insert name of Independent Verifier]*

RPEQ number: \_\_\_\_\_

Date:

*\* delete as applicable*

## Part 18 Certificate of Close Out

Gold Coast Rapid Transit Project (**Project**)

**To:** The State of Queensland (**the State**) c/- The Department of Transport and Main Roads  
GoldLinQ Pty Ltd ACN 147 815 441 of Level 29, 140 William Street, Melbourne Victoria 3000 (**Operator Franchisee**)

**From:** Hyder Consulting Pty Limited ABN 76 104 485 289 and APP Corporation Pty Ltd ABN 29 003 764 770, trading as CERT-TRAM (**Independent Verifier**)

In accordance with the terms of clause 18.2(c) of the Project Deed between the State and Operator Franchisee dated *[insert date]* with respect to the Project (**Project Deed**), I certify that Close Out has taken place on the Date of Close Out specified below.

Date of Close Out: .....

Terms defined in the Project Deed have the same meaning in this certificate.

---

*[Insert name of Independent Verifier]*

RPEQ number: \_\_\_\_\_

Date:

Part 19  
Payment Claim – D&C Phase

Gold Coast Rapid Transit Project (**Project**)

**To:** The State of Queensland (**the State**) c/- The Department of Transport and Main Roads

**From:** GoldLinQ Pty Ltd ACN 147 815 441 of Level 29, 140 William Street, Melbourne Victoria 3000 (**Operator Franchisee**)

In accordance with the terms of clause 38.2 of the Project Deed between the State and Operator Franchisee dated [*insert date*] with respect to the Project (**Project Deed**), I hereby submit this payment claim as follows:

Date of payment claim	Payment period	Particulars of Project Works in respect of which payment is claimed	Documents or other information provided in respect of amount claimed	Amount claimed
			Total amount claimed	

The following supporting documentation and information is attached:

- (a) a statement from Operator Franchisee conforming with the requirements of clause 38.10(a) of the Project Deed;
- (b) a statement in writing signed by the D&C Contractor conforming with the requirements of clause 38.10(b) of the Project Deed; and
- (c) a statement by Operator Franchisee conforming with the requirements of clause 38.10(c) of the Project Deed.

Terms defined in the Project Deed have the same meaning in this claim.

This is not a tax invoice.

---

**Signed for and on behalf of**

GoldLinQ Pty Ltd ACN 147 815 441

Date:

Part 20  
Construction Payment Notice  
Gold Coast Rapid Transit Project (**Project**)

GoldLinQ Pty Ltd ACN 147 815 441  
Level 29, 140 William Street  
Melbourne Victoria 3000  
(Operator Franchisee)

**TAX INVOICE**

<b>Recipient:</b> [Department of Transport and Main Roads] (the State) (ABN: ** *** ***)	
<b>Attention:</b> [Mr/Ms] [****] [****] [Department of Transport and Main Roads] [ADDRESS]	Invoice No: [*****] Date of Invoice: [*****]

Description of supply	Price excluding GST	GST	Total price including GST
Project Works			

Attached is a copy of the Drawdown Notice for the corresponding drawdown under the Construction Facility.

Terms defined in the Project Deed have the same meaning in this document.

**Note:** The above amount is payable on the terms set out in clause 38.3 of the Project Deed.

Signed: \_\_\_\_\_

Print name: \_\_\_\_\_

For and on behalf of  
**GoldLinQ Pty Ltd** ACN 147 815 441

Part 21  
[Not used]



Part 22  
Payment Claim – Service Payment  
Gold Coast Rapid Transit Project (**Project**)

GoldLinQ Pty Ltd ACN 147 815 441  
Level 29, 140 William Street  
Melbourne Victoria 3000  
(**Operator Franchisee**)

**TAX INVOICE**

<b>Recipient:</b> <i>[Department of Transport and Main Roads] (the State)</i> (ABN: ** *** ***)	
<b>Attention:</b> [Mr/Ms] [****] [*****] <i>[Department of Transport and Main Roads]</i> [ADDRESS]	Invoice No: [*****] Date of Invoice: [*****]

Description of supply	Price excluding GST	GST	Total price including GST
Supply of O&M Activities to the State pursuant to the Project Deed between the State and Operator Franchisee dated <i>[insert date]</i> with respect to the Project ( <b>Project Deed</b> ) for the month ended <i>[**] [*****] 20[**]</i> .  The particulars of the Payment Claim and supporting documentation as required by clause <b>38.4(b)(iv)</b> of the Project Deed are set out in the annexure to this payment claim.			

Terms defined in the Project Deed have the same meaning in this document.

**Note:** The above amount is payable within 15 Business Days of the date of this invoice.

Signed: \_\_\_\_\_

Print name: \_\_\_\_\_

For and on behalf of  
**GoldLinQ Pty Ltd** ACN 147 815 441

## **ANNEXURE**

*[Insert particulars of the payment claim and supporting documentation as required by the Project Deed.]*

# Schedule 5

## Construction Drawdown Schedule

Drawdown Date	Drawdown Amount
31 Dec 10	
31-Jan-11	
28-Feb-11	
31-Mar-11	
30-Apr-11	
31-May-11	
30-Jun-11	
31-Jul-11	
31-Aug-11	
30-Sep-11	
31-Oct-11	
30-Nov-11	
31-Dec-11	
31-Jan-12	
28-Feb-12	
31-Mar-12	
30-Apr-12	
31-May-12	
30-Jun-12	
31-Jul-12	
31-Aug-12	
30-Sep-12	
31-Oct-12	
30-Nov-12	
31-Dec-12	
31-Jan-13	
28-Feb-13	
31-Mar-13	

30-Apr-13	
31-May-13	
30-Jun-13	
31-Jul-13	
31-Aug-13	
30-Sep-13	
31-Oct-13	
30-Nov-13	
31-Dec-13	
31-Jan-14	
28-Feb-14	
31-Mar-14	
30-Apr-14	
31-May-14	
30-Jun-14	
31-Jul-14	
31-Aug-14	
30-Sep-14	
31-Oct-14	
30-Nov-14	
31-Dec-14	
<b>Total</b>	

# Schedule 6

## Estimated Cost Effect

The Estimated Cost Effect will be determined in accordance with the provisions of this **schedule 6**.

In this **schedule 6**, references to a "section" are references to sections of this **schedule 6** and references to "clauses" and "schedules" are references to clauses and schedules of the Project Deed.

### 1 Provision of information

- (a) **(Value for money)**: In determining the Estimated Cost Effect, the overriding consideration is that the State receives value for money and that the Estimated Cost Effect is fair and reasonable and is calculated in a manner that is transparent and avoids any double counting.
- (b) **(Open Book Basis)**: Operator Franchisee must provide, and must:
  - (i) procure that each Core Contractor and each Significant Contractor provides; and
  - (ii) use reasonable endeavours to procure that each other relevant subcontractor engaged, or proposed to be engaged, in relation to the Project Activities, provides,

all information referred to in this **schedule 6** on an Open Book Basis.

- (c) **(Access to information)**: If required by the State, Operator Franchisee must provide, and must:
  - (i) procure that each Core Contractor and each Significant Contractors provides; and
  - (ii) use reasonable endeavours to procure that each other relevant subcontractor engaged, or proposed to be engaged, in relation to the Project Activities, provides,

the State with full access to internal cost estimation, programming, contingency and risk information used by Operator Franchisee and its Associates (as applicable) for their own purposes, in relation to an ECE Event and, to the extent the State reasonably considers the information relevant to its assessment of the impacts of the ECE Event, in relation to the Project Activities generally.

- (d) **(Audits)**: Operator Franchisee must allow, and must:
  - (i) procure that each Core Contractor and each Significant Contractor allows; and
  - (ii) use reasonable endeavours to procure that each other relevant subcontractor engaged, or proposed to be engaged, in relation to the Project Activities, allows,

the State (or an independent party appointed by the State) to review and undertake audits to enable it to verify compliance with this **schedule 6**.

- (e) **(Auditable process)**: If, despite having used reasonable endeavours, Operator Franchisee is not able to provide the State with:
  - (i) pricing, costing and other information on an Open Book Basis in accordance with **section 1(b)**;
  - (ii) access to information in accordance with **section 1(c)**; or
  - (iii) permission to review and audit all records and information held by Operator Franchisee in accordance with **section 1(d)**,in relation to any relevant subcontractor engaged in relation to the Project Activities (other than a Core Contractor or a Significant Contractor), Operator Franchisee must demonstrate to the State's reasonable satisfaction that an auditable and competitive process has been carried out with respect to the ECE Event and the goods or services proposed to be provided by that contractor.
- (f) **(Further information)**: If requested by the State, Operator Franchisee must (and must procure that its Associates):
  - (i) meet with the State, or attend any meetings proposed by the State; and
  - (ii) provide further details and access to appropriately qualified personnel,to enable the State to assess the Estimated Cost Effect.

## 2 Negotiations with contractors

- (a) The State reserves the right to negotiate directly with any subcontractor engaged in relation to the Project Activities in relation to any ECE Event.
- (b) Operator Franchisee must provide any reasonable assistance required by the State in negotiating with any subcontractor engaged in relation to the Project Activities.

## 3 Tender

If directed by the State:

- (a) under **clause 30.6**; or
- (b) with respect to an ECE Event for which any Capital Expenditure will be incurred,

Operator Franchisee must (as required by the State):

- (c) undertake a tender process which conforms and complies with the Queensland Government's the State Procurement Policy;
- (d) obtain three separate quotes from experienced and capable contractors reasonably acceptable to the State to carry out any work in respect of the ECE Event;
- (e) select a contractor from this process in consultation with the State;

- (f) permit the State to review all materials that are submitted in the tender process and provide any other information that the State reasonably requires (including such consents as are required by Law to carry out any probity investigations);
- (g) demonstrate to the reasonable satisfaction of the State that the contractor it intends to select and engage is the best choice having regard to:
  - (i) the price quoted in the prevailing market conditions;
  - (ii) the experience and capability of that contractor in the context of the ECE Event; and
  - (iii) the ability of the contractor to carry out the work in respect of the ECE Event in the manner required by this deed if the works are subcontracted to that contractor,
- (h) demonstrate that the contractor meets the requirements of the State under **clause 56**; or
- (i) decline any tender offer or not proceed with the work in respect of the ECE Event.

## 4 Calculation of Estimated Cost Effect

### 4.1 Costs

Subject to **sections 4.1A, 5, 6, 7 and 8**, Operator Franchisee must calculate the sum of the following items that arise or will arise as a direct result of the occurrence of the relevant ECE Event:

- (a) the following reasonable incremental costs (excluding margins and prolongation costs of Operator Franchisee and its Associates) which will be incurred by Operator Franchisee and which are the direct result of the ECE Event or its effects (including the reasonable costs incurred in avoiding, mitigating, preventing or eliminating the effects of the ECE Event):
  - (i) incremental design costs;
  - (ii) incremental construction costs;
  - (iii) incremental manufacturing costs;
  - (iv) incremental costs incurred in performing the O&M Activities including incremental life cycle costs;
  - (v) any external third party advisory costs;
  - (vi) in the case of an ECE Event arising under **clause 36.2(a)(i)** only, Operator Franchisee's own reasonable incremental administrative, overhead and out of pocket costs reasonably and properly incurred as a direct result of the ECE Event; and
  - (vii) in the case of an ECE Event arising under **clause 30.9** or **36.2(a)(ii)** only, which omits all or substantially all of the Project Works or O&M Activities, any redundancy payments for employees of Operator Franchisee or a Core Contractor reasonably and properly incurred as a direct result of the ECE Event,

adjusted:

- (viii) in the case of a Modification undertaken during the D&C Phase where incremental Capital Expenditure is incurred, in accordance with Part A of appendix 1 to this **schedule 6**;
  - (ix) in the case of a Modification undertaken during the Operations Phase where incremental Capital Expenditure is incurred, in accordance with Part B of appendix 1 to this **schedule 6**; and
  - (x) in the case of a Modification undertaken which increases the cost of delivering the O&M Activities, in accordance with Part C of appendix 1 to this **schedule 6**,
- (b) plus or minus any increase or decrease respectively in the cost of insurances required under **clause 43**, until the next adjustment in accordance with **clause 40.1**; and
- (c) plus:
- (i) any debt or equity financing costs for new financial accommodation or equity required to implement the change (if any) as a direct result of the ECE Event provided that this is calculated in accordance with **section 9.4**;
  - (ii) if, for the ECE Event, Operator Franchisee is granted:
    - (A) an extension of time to the Date for Completion; or
    - (B) after the Date for Completion, an extension of time, under **clause 16.7**;
    - (C) any net incremental debt finance costs incurred in connection with the existing financial accommodation; and
    - (D) the amount of the prolongation costs actually incurred by Operator Franchisee and the D&C Contractor,for any delay period for which Operator Franchisee has been granted an extension of time;
  - (iii) an amount equal to any Tax payable by it on the Estimated Cost Effect (net of any deductions) less any amounts which would not have been payable had it used all reasonable endeavours to minimise any Tax payable;
  - (iv) in respect of an ECE Event which omits Project Activities, if:
    - (A) the omitted Project Activities are all or substantially all of the scope of a subcontract (on arms' length terms) between a Core Contractor and a subcontractor; and
    - (B) a subcontract of the type referred to in **section 4.1(c)(iv)(A)** is terminated, or modified to remove substantially all of the Project Activities that are the scope of that subcontract, as a result of the omission of the Project Activities,any break costs reasonably and properly incurred by the relevant Core Contractor as a direct result of termination, or modification to remove substantially all of the Project Activities, of that subcontract;



- (v) in respect of an ECE Event which prevents performance of or requires suspension of the O&M Activities, any compensation for any lost Service Payments (other than lost Service Payments due to any delay to Completion); and
- (vi) in respect of an ECE Event which is a Modification arising under **clause 36.2(a)(ii)** and which omits all or substantially all of the O&M Activities, compensation for lost Service Payments of an amount equal to:
  - (A) if the ECE Event takes place on or before the 5<sup>th</sup> anniversary of the Date of Completion, [REDACTED] of the net present value of the Service Fee, using a real discount rate of [REDACTED] per annum (discounted on an end period basis), which would have been required to be paid by Operator Franchisee to the O&M Contractor under the O&M Contract in respect of the omitted O&M Activities (assuming the Minimum Services only and in accordance with the Base Case Financial Model), calculated from the date of the ECE Event to the 4<sup>th</sup> anniversary of the ECE Event (or for the first 4 years after the Date of Completion, if the ECE Event occurs before the Date of Completion), but excluding any amount in respect of the Service Fee for such period (or any component of it) which has already been paid to Operator Franchisee; or
  - (B) if the ECE Event takes place after the 5<sup>th</sup> anniversary of the Date of Completion, [REDACTED] of the net present value of the Service Fee, using a real discount rate of [REDACTED] per annum (discounted on an end period basis), which would have been required to be paid by Operator Franchisee to the O&M Contractor under the O&M Contract in respect of the omitted O&M Activities (assuming the Minimum Services only and in accordance with the Base Case Financial Model), calculated from the date of the ECE Event to the 2<sup>nd</sup> anniversary of the ECE Event (or expiry of the O&M Contract, if earlier), but excluding any amount in respect of the Service Fee for such period (or any component of it) which has already been paid to Operator Franchisee.

#### **4.1A Delays to Depot Upgrade Works**

In respect of an ECE Event under clause **26.4A**:

- (a) this section **4.1A** will apply and section **4.1** will not apply; and
- (b) subject to sections **5, 6, 7** and **8**, Operator Franchisee must calculate the incremental costs (excluding any margin or other amount on account of profit or overheads) incurred by the O&M Contractor in performing the O&M Activities that arise or will arise as a direct result of the occurrence of the relevant ECE Event for any delay period for which the 'Date for Stage 2 D&C Completion' in respect of 'Separable Portion A' (as those terms are defined in the D&C Contract (Stage 2)) has been extended pursuant to the D&C Contract (Stage 2).

## 4.2 Deductions

Operator Franchisee must calculate the sum of the following items which arise or will arise as a direct result of the occurrence of the relevant ECE Event:

- (a) any insurance proceeds or damages or other compensation or amounts that Operator Franchisee is able to recover as a result of the occurrence of the relevant ECE Event. The parties acknowledge and agree that:
  - (i) receipt (or non-receipt) of the insurance proceeds, or uncertainty as to the quantity or timing of receipt of the same, will not delay the calculation or payment of the Estimated Cost Effect;
  - (ii) the Estimated Cost Effect will be calculated on the basis of the maximum amount of proceeds that Operator Franchisee is reasonably likely to recover assuming that Operator Franchisee has complied with its insurance obligations under clause 39 of this deed (**Provisional Proceeds**) taking into account all information that is then available to the parties;
  - (iii) if following the calculation of the Estimated Cost Effect, the insurance proceeds that Operator Franchisee actually recovers (**Actual Proceeds**):
    - (A) are less than the Provisional Proceeds, the State will, immediately on notification of the Actual Proceeds by Operator Franchisee, pay to Operator Franchisee an amount equal to that by which the Provisional Proceeds exceed the Actual Proceeds (**Additional Amount**). The State will not be required to pay any interest on the Additional Amount;
    - (B) are more than the Provisional Proceeds, Operator Franchisee must immediately on receipt of the Actual Proceeds, pay to the State an amount equal to that by which the Actual Proceeds exceed the Provisional Proceeds (**Operator Franchisee Additional Amount**). Operator Franchisee will not be required to pay any interest on the Operator Franchisee Additional Amount;
    - (C) the State will not be required to make any payment under **section 4.2(a)** to the extent that the Actual Proceeds are less than the Provisional Proceeds as a result of a breach by Operator Franchisee of its obligations under the State Project Documents; and
    - (D) references to insurance proceeds in this **section 4.2(a)** are to insurance proceeds that Operator Franchisee is entitled to retain and which it has not applied and it is not obliged to apply in respect of its reinstatement obligations.
- (b) any cost avoided (including tax, financing or other benefits associated with deferred expenditure) made by or accruing to Operator Franchisee as a result of the occurrence of the relevant ECE Event provided that, in respect of an ECE Event which is a Modification, to the extent any costs avoided are of the type described in **sections 4.1(a)(i) to 4.1(a)(v)**, those costs will be adjusted in accordance with **sections 4.1(a)(viii) to**

**4.1(a)(x)** and the total costs avoided for the purposes of this **section 4.2(b)** will be those costs as adjusted; and

- (c) any other amounts received or receivable by Operator Franchisee pursuant to or in accordance with the terms of this deed as a result of the occurrence of the event(s) which gave rise to, caused or constituted the ECE Event.

#### **4.3 Determination of Estimated Cost Effect**

Subject to **section 10**, the Estimated Cost Effect will be the sum of the amounts referred to in **sections 5, 4.1, 4.1A and 7** (as applicable) minus the sum of the amounts referred to in **section 4.2**, provided that there will be no double counting, and, where an item is included once, it should not be included again in the calculation because it falls into more than one of the categories set out in **sections 5, 4.1, 4.1A, 4.2, 0 and 7** and appropriate account is taken of the timing of cash flows.

### **5 Pre-Priced Elements**

To the extent that:

- (a) an item that arises or will arise as a direct result of the occurrence of an ECE Event is a Pre-Priced Element (whether or not identified as such in a Modification Proposal, Modification Notice or notice given by Operator Franchisee under **clause 31.2**); and
  - (b) the PPE Expiry Date for that Pre-Priced Element has not passed,
- the Estimated Cost Effect with respect to that Pre-Priced Element will be the amount set out in **schedule 15** (without any additional allowance for design, construction, manufacturing, operation, maintenance, third party advisory costs or margins, or other adjustments under **section 4.1**).

### **6 Qualifying Change in Law**

If a Compensation Event is due to:

- (a) a Project-Specific Change in Law, the State will be liable for [REDACTED] of the Estimated Cost Effect; or
- (b) a General Change in Law, the State will only be liable to pay the portion of the Estimated Cost Effect (determined in accordance with **section 4.3**) as follows and on the basis that the thresholds apply cumulatively to reflect the impact of all General Changes in Law that apply in each relevant year regardless of when the General Change in Law occurred:
  - (i) **(Capital Expenditure)**: for capital cost impacts on Operator Franchisee of General Changes in Law during the Operations Phase:
    - (A) from [REDACTED] in aggregate, [REDACTED] of the capital cost component of the Estimated Cost Effect;
    - (B) from [REDACTED] in aggregate, [REDACTED] of the portion of the capital cost component of the Estimated Cost Effect from [REDACTED] and

- (C) greater than [REDACTED] in aggregate, [REDACTED] of the portion of the capital cost component of the Estimated Cost Effect from [REDACTED] and [REDACTED] of the capital cost component of the Estimated Cost Effect which is above [REDACTED]
- (ii) **(non-indexed or benchmarked operating costs):** for operating cost impacts on Operator Franchisee of the General Change in Law (which operating costs would not otherwise be expected to be incorporated into the Service Payment as a consequence of the indexation or benchmarking of Service Payments pursuant to this deed):
  - (A) from [REDACTED] in aggregate per annum, [REDACTED] of the operating cost component of the Estimated Cost Effect;
  - (B) from [REDACTED] in aggregate per annum, [REDACTED] of the portion of the operating cost component of the Estimated Cost Effect from [REDACTED]; and
  - (C) greater than [REDACTED] in aggregate per annum, [REDACTED] of the portion of the operating cost component of the Estimated Cost Effect from [REDACTED] and [REDACTED] of the portion of the operating cost component of the Estimated Cost Effect which is above [REDACTED]

and in respect of the Estimated Cost Effect (determined in accordance with **section 4.3**) of a Change in Environmental Law which is a Qualifying Change in Law, the State will be liable for [REDACTED] of the Estimated Cost Effect.

Each amount referred to in this **section 6** will be CPI Indexed.

## 7 Proximate Works

If the ECE Event arises from Proximate Works, Operator Franchisee must calculate the sum of the following items:

- (a) as Operator Franchisee's reasonable, demonstrable and incremental costs which are directly attributable to, and would not have been incurred but for, Operator Franchisee's performance of its obligations with respect to the Proximate Works, including:
  - (i) any external third party advisory costs;
  - (ii) any out of pocket expenses incurred by Operator Franchisee; and
  - (iii) the cost of any additional staff reasonably required to be engaged by Operator Franchisee calculated in accordance with the rates set out in the Schedule of Rates to the extent applicable (in the State's reasonable opinion),
 but excluding any costs incurred as a result of:
  - (iv) the failure by Operator Franchisee to comply with its obligations under any Project Document;
  - (v) the rectification of works or obligations previously performed by or on behalf of Operator Franchisee under any Project Document in

circumstances where the need to perform the rectification is caused or contributed to by the negligent act or omission, or default on the part of Operator Franchisee or its Associates;

- (vi) any default or negligent or fraudulent act or omission on the part of Operator Franchisee or its Associates; or
  - (vii) Operator Franchisee complying with its obligations under **clause 9.4 or 9.11**;
- (b) in accordance with the rates set out in the Schedule of Rates to the extent applicable (in the State's reasonable opinion);
  - (c) by adding a margin of up to [REDACTED] on the costs calculated in accordance with **section 7(a)** (provided that any costs to which the margin is applied do not already include or incorporate any other margin amounts imposed by Operator Franchisee or its Associates). Operator Franchisee will be required to demonstrate the reasonableness of the proposed margin;
  - (d) any incremental costs incurred in performing the O&M Activities including incremental life cycle costs; and
  - (e) less the deductions in **section 4.2**.

## **8 Rates and Disputes**

### **8.1 Dispute as to calculation**

If Operator Franchisee and the State are unable to agree on any part of the calculation of the Estimated Cost Effect within 20 Business Days after the calculation of the Estimated Cost Effect and its component parts and calculations are provided to the State, either party may refer the matter for resolution by expert determination in accordance with **clause 57**.

### **8.2 Rates to be used**

Each amount calculated in accordance with this **schedule 6** will be calculated on the basis of the lower of reasonable market rates for costs and (to the extent applicable, as reasonably determined by the State) the rates set out in the Schedule of Rates or the reasonable cost agreed by the State and Operator Franchisee during design development and on the assumption that the relevant parties will take reasonable and appropriate steps to reduce, mitigate, prevent or eliminate the effects of the relevant ECE Event.

### **8.3 Other Dispute**

If there is a dispute as to reasonable market rates for costs or whether the effects of the relevant ECE Event could have been reduced, mitigated, prevented or eliminated by reasonable and appropriate steps by Operator Franchisee, the matter may be referred by either party for resolution in accordance with **clause 57**.

## **9 Payment and Finance**

### **9.1 Payment**

- (a) If the Estimated Cost Effect is a positive amount, Operator Franchisee will be entitled to be compensated for the Estimated Cost Effect associated with an ECE Event.
- (b) Subject to **section 9.1(b)(ii)**, the capital component of any Estimated Cost Effect which is payable to Operator Franchisee may be paid to Operator Franchisee, at the State's discretion, by:
  - (i) lump sum within 30 Business Days of the determination of the Estimated Cost Effect in accordance with this **schedule 6**;
  - (ii) to the extent that part of the capital component relates to payments by Operator Franchisee to a subcontractor engaged in relation to the Project Activities, that part of the capital component must be paid by lump sum payments matching the payment obligations of Operator Franchisee under the relevant subcontract. The remainder of the capital component will be paid to Operator Franchisee by lump sum within 30 Business Days of the determination of the Estimated Cost Effect in accordance with this **schedule 6**;
  - (iii) if **section 9.2** or **9.4** applies, by adjustment to the Service Payment as determined in accordance with **section 9.5**; or
  - (iv) by a combination of the methods in **sections 9.1(b)(i), (ii) and (iii)**.
- (c) Subject to **clauses 29.3, 30.11, 31.7(a) and 33.5**, if the Estimated Cost Effect is a negative amount, Operator Franchisee must pay the Estimated Cost Effect to the State (except to the extent otherwise agreed by the State, acting reasonably) as follows:
  - (i) to the extent that the Estimated Cost Effect relates to the D&C Activities, the Estimated Cost Effect may be set-off against any Estimated Cost Effect for another Modification in respect of the D&C Activities, or if this is not set-off, it must be paid by Operator Franchisee to the State progressively within 10 Business Days after each month in which:
    - (A) the relevant work the subject of the Modification was performed; or
    - (B) if the Modification involved the deletion or omission of work, the relevant work which has been deleted or omitted would have been undertaken but for the Modification; or
  - (ii) to the extent that the Estimated Cost Effect relates to the O&M Activities, the State may set-off the Estimated Cost Effect against its obligations to pay the Service Payment in the manner and at the time as agreed between the State and Operator Franchisee or, to the extent that they fail to agree, as determined in accordance with **clause 57** (or as reasonably determined by the State pending determination under **clause 57**).

## 9.2 Operator Franchisee to procure finance

If the State determines that the net capital component of any Estimated Cost Effect should be compensated by way of an adjustment to the Service Payment, the State may give notice to Operator Franchisee requiring Operator

Franchisee to use all reasonable endeavours to procure finance for some or all of the amount of the Estimated Cost Effect upon terms acceptable to the State.

### **9.3 Unable to procure finance**

If Operator Franchisee is able to demonstrate to the reasonable satisfaction of the State that it is unable to finance the Estimated Cost Effect in respect of an ECE Event, compensation will be payable by the State in accordance with **section 9.1(b)(i) or 9.1(b)(ii)**.

### **9.4 Adjustment to Service Payment**

If an adjustment to the Service Payment is to be made as a result of an ECE Event, the State must calculate the adjustment required to be made to the Service Payment such that:

- (a) the recalculated Service Payment is calculated using the same principles and assumptions as that applied in the Base Case Financial Model, including the application of the Base Case Equity Return;
- (b) if debt finance is obtained, the increase to the Service Payment is calculated such that it is the minimum amount required to amortise the increased or new loan facility and interest in accordance with the amortisation schedule in the Base Case Financial Model; and
- (c) if equity finance is obtained via subscription of shares or units in Operator Franchisee or the making of loans to Operator Franchisee by Equity Investors, the increase to the Service Payment is calculated such that it is the minimum amount required to give a nominal blended post-tax internal rate of return on the equity finance that is required for the ECE Event that is not greater than the Base Case Equity Return.

### **9.5 Amendment to schedule 3 and Base Case Financial Model**

Subject to the State's agreement to the calculated adjusted Service Payment, **schedule 3** and the Base Case Financial Model will be amended in accordance with **clause 39** and Operator Franchisee will be entitled to receive, and the State must make payments based on the adjusted Service Payment.

### **9.6 Amended Finance Proposal**

- (a) In responding to an ECE Event, Operator Franchisee may propose amendments to its existing financing arrangements as an option for the State to consider and include in the net cost or benefits to the State of the proposal and any cash flow implications for the State including any payment required to address the costs of any early termination of hedging arrangements (**Amended Finance Proposal**).
- (b) The State will act reasonably in considering any Amended Finance Proposal, but is under no obligation to accept an Amended Finance Proposal.
- (c) If the State and Operator Franchisee agree to an Amended Finance Proposal, the Service Payment will be adjusted and the parties will vary such payments to each other as they agree.
- (d) If the State and Operator Franchisee agree to an Amended Finance Proposal which includes a reduction in debt, the State will pay the corresponding break costs of any early termination of hedging

arrangements, to the extent such costs were included in the Amended Finance Proposal.

## 10 Minor Works

In respect of any Minor Works the Estimated Cost Effect will be the lower of:

- (a) the amount specified in the Minor Works Quote in respect of the Minor Works;
- (b) the amount to be incurred in accordance with the Schedule of Rates (to the extent applicable, in the State's reasonable opinion); and
- (c) the amounts actually, directly and reasonably incurred by Operator Franchisee in carrying out the Minor Works.



# Appendix 1

## Part A - D&C Phase margins

If a Modification is undertaken during the D&C Phase and Operator Franchisee incurs any incremental Capital Expenditure, the incremental costs set out in **section 4.1(a)** of **schedule 6** will be adjusted by the margins set out in Table A as follows:

1. the Design Management Fee will be applied to the amount referred to in **section 4.1(a)(i)** of **schedule 6**;
2. the Construction Preliminaries will be applied to the amount referred to in **section 4.1(a)(ii)** of **schedule 6**;
3. the Manufacture Preliminaries will be applied to the amount referred to in **section 4.1(a)(iii)** of **schedule 6**;
4. the Construction Margin will be applied to the amount referred to in **section 4(a)(ii)** of **schedule 6** as adjusted in accordance with **section 2** of this **Part A**;
5. the Manufacture Margin will be applied to the amount referred to in **section 4.1(a)(iii)** of **schedule 6** as adjusted in accordance with **section 3** of this **Part A**; and
6. the Operator Franchisee Margin will be applied to the amount referred to in **sections 4.1(a)(i) to 4.1(a)(iii)** of **schedule 6**, as adjusted in accordance with **sections 1 to 5** of this **Part A**.

Table A				
Modification Components	Maximum Modification Allowance			
	incremental Capital Expenditure	incremental Capital Expenditure	incremental Capital Expenditure	aggregate incremental Capital Expenditure of all Modifications
Operator Franchisee Margin				
Construction Margin				
Construction Preliminaries				
Manufacture Margin				
Manufacture Preliminaries				
Design Management Fee				

## Part B - Operations Phase - Capital Expenditure margins

If a Modification is undertaken during the Operations Phase and Operator Franchisee incurs any incremental Capital Expenditure, the incremental costs set out in **sections 4.1(a)(i) to 4.1(a)(iii) of schedule 6** will be adjusted by the margins set out in Table B.

Table B				
Modification Components	Maximum Modification Allowance			
	incremental Capital Expenditure (CPI Indexed)	incremental Capital Expenditure (CPI Indexed)	incremental Capital Expenditure (CPI Indexed)	aggregate incremental Capital Expenditure of all Modifications (CPI Indexed)
Operator Franchisee Margin				
O&M Contractor Margin				
Subcontractor (other than O&M Contractor) Margin				

## Part C - Cost of O&M Activities

If a Modification is undertaken and increases the cost of performing the O&M Activities (excluding any incremental Capital Expenditure), the incremental costs set out in **section 4.1(a)(iv) of schedule 6** will be adjusted by the margins set out in Table C as follows:

- either the Rolling Stock Contractor Margin or the Subcontractor Margin (as applicable) will be applied to the amount referred to in **section 4.1(a)(iv) of schedule 6**; and
- the Operator Franchisee Margin will be applied to the amount referred to in **section 4.1(a)(iv) of schedule 6** as adjusted in accordance with **section 1** of this Part C.

Table C			
Modification Components	Maximum Modification Allowance		
	Operating Costs (CPI Indexed)	Operating Costs (CPI Indexed)	Costs (CPI Indexed)
Operator Franchisee			

Margin			
O&M Contractor Margin	████	████	████
Subcontractor (other than O&M Contractor) Margin	████	████	████

## Appendix 2

### Schedule of Rates

Description	Unit (eg. hour, day, etc)	Labour cost (\$)	Labour overhead (\$)	Other costs (\$)	Profit Margin (\$)	Total labour cost per unit
Project Manager	Hour	■	■	■	■	■
Engineering	Hour	■	■	■	■	■
IT Support (Software developer)	Hour	■	■	■	■	■
Supervisor	Hour	■	■	■	■	■
Technician	Hour	■	■	■	■	■
Tradesman	Hour	■	■	■	■	■
Labourer	Hour	■	■	■	■	■
Cleaner	Hour	■	■	■	■	■
Customer Service Attendant - Manager (Transit Officer)	Day	■	■	■	■	■
Senior Customer Service Attendant (Transit Officer)	N/A	■	■	■	■	■
Customer Service Attendant	Day	■	■	■	■	■
OCC Staff	Day	■	■	■	■	■
Clerical / Admin	Day	■	■	■	■	■
Security (Station, Depot & LRVs)	Hour	■	■	■	■	■

Each amount referred to in this Schedule of Rates will be CPI Indexed.

# Schedule 7

## Termination Payments

### 1 Definitions and Interpretation

#### 1.1 Interpretation

In this **schedule 7**, references to a "section" are references to sections of this **schedule 7** and references to "clauses" and "schedules" are references to clauses and schedules of the Project Deed.

#### 1.2 Definitions

For the purposes of this **schedule 7**, the following definitions will apply:

**Adjusted Post Termination Service Payment** means the Post Termination Service Payment (or part thereof based on the numbers of days in the Compensation Month for which the Adjusted Post Termination Service Payment is payable relative to the number of days in the Compensation Month) less any Rectification Costs incurred by the State during the Compensation Month (or part thereof) to which the Post Termination Service Payment relates.

**Base Case Project Return** means:

- (a) before the Date of Stage 2 Completion, the internal rate of return on Operator Franchisee cash flows before tax and financing identified as the Base Case Project Return (Stage 1) in the Model Outputs Schedule; and
- (b) after the Date of Stage 2 Completion, the internal rate of return on Operator Franchisee cash flows before tax and financing identified as the Base Case Project Return (Stage 1 and Stage 2 combined) in the Model Outputs Schedule.

**Capital Sum** means the capital sum offered by each Compliant Tenderer under the Tender Process or the capital sum which the New Operator Franchisee is to pay to the State, in each case in consideration for the State entering into the New Contract, as the context permits or requires.

**Compensation Date** means either:

- (a) if **section 3.2(b)** applies, the earlier of:
  - (i) the date that the New Contract is entered into; and
  - (ii) the date on which the State pays the Termination Payment to Operator Franchisee under **section 3.6**, where the State has re-tendered the provision of the Project Activities; or
- (b) if **section 3.3** applies, the date on which the Estimated Fair Value of this deed has been agreed or determined.

**Compensation Month** means each calendar month from the Termination Date until the Compensation Date, provided that if the Termination Date falls part

way through a calendar month, the first Compensation Month begins on the Date of Completion and ends at the end of that calendar month, and the last Compensation Month will begin on the first day of the calendar month in which the Compensation Date falls and end on the Compensation Date. Each other Compensation Month will begin on the first day of each calendar month and end on the last day of that calendar month.

**Compliant Tender** means a tender which meets all of the Qualification Criteria.

**Compliant Tenderer** means a tenderer who submits a Compliant Tender.

**Deemed New Contract** means an agreement on the same terms and conditions as this deed as at the Termination Date, but with the following amendments:

- (a) if this deed is terminated during the D&C Phase, then the relevant Date for Completion will be extended by such period as would have been granted to allow a New Operator Franchisee (had one been appointed) to achieve Completion;
- (b) if this deed is terminated after the Date of Stage 2 Completion, then the New Contract will include any residual obligations, liabilities and rights under the Stage 2 Works Deed;
- (c) any accrued Default Notices, Persistent Breach Notices and Final Persistent Breach Notices, Frequent Breach Notices and Final Frequent Breach Notices will be cancelled (and, if the termination is after the Date of Stage 2 Completion, any equivalent notices under the Stage 2 Works Deed will also be cancelled); and
- (d) the term of such contract will be equal to the period from the Termination Date to and including the Expiry Date.

**Estimated Fair Value** or **EFV** means the amount determined in accordance with **sections 3.3 and 3.4 or 3.5** (as applicable), which a third party would pay to the State as the Fair Value of the Deemed New Contract.

**Fair Value** means the amount at which an asset or liability could be exchanged in an arm's length transaction between informed and willing parties, other than in a forced or liquidation sale.

**Liquid Market** means that there are willing parties (being at least two parties, each of whom is capable of entering into and performing the New Contract with the State) in the market for public private partnership contracts or similar contracts for the provision of services (in each case the same as or similar to this deed) for a price that is likely to be achieved through a tender to be a reliable indicator of Fair Value.

**New Contract** means a contract on the same terms and conditions as this deed as at the Compensation Date, but with the following amendments:

- (a) if this deed is terminated during the D&C Phase, then the Date for Completion will be extended by a period to allow a New Operator Franchisee to complete the Works;
- (b) if this deed is terminated after the Date of Stage 2 Completion, then the New Contract will include any residual obligations, liabilities and rights under the Stage 2 Works Deed;

- (c) any accrued Default Notices, Persistent Breach Notices, Final Persistent Breach Notices, Frequent Breach Notices and Final Frequent Breach Notices will be cancelled (and, if the termination is after the Date of Stage 2 Completion, any equivalent notices under the Stage 2 Works Deed will also be cancelled);
- (d) the term of such contract will be equal to the period from the Compensation Date until the Expiry Date;
- (e) the New Operator Franchisee will pay a Capital Sum to the State on entering into the New Contract; and
- (f) any other amendments which do not materially reduce the Capital Sum which a tenderer would be prepared to pay in consideration for the State entering into the New Contract.

**New Operator Franchisee** means the person who has entered or who will enter into the New Contract with the State.

**Post Termination Service Payment** means an amount equal to the Service Payment for the relevant month, less all cost components of the Service Payment relating to the performance of the Services and the insurance.

**Qualification Criteria** means the criteria which the State requires tenderers to meet as part of the Tender Process, which will be:

- (a) criteria having substantially the same effect as the criteria applied by the State when selecting those to be invited to submit detailed proposals and any other final offers under the procurement process used in the selection of Operator Franchisee to deliver the Project;
- (b) the financial ability of the tenderers to pay the Capital Sum;
- (c) the technical ability of the tenderers to deliver the Works and/or Services;
- (d) the independence of the tenderer from Operator Franchisee and the State; and
- (e) any other relevant tender criteria selected by the State acting reasonably.

**Rectification Costs** means an amount equal to the reasonable and proper costs incurred by the State in curing, rectifying or remedying Operator Franchisee defaults, and reasonable and proper costs incurred in procuring alternative performance of the Project to the extent these costs exceed the costs of the Services and insurances in the Service Payment.

**Securitisation Refund Payment:**

- (a) prior to the Date of Stage 2 Completion, has the meaning given in the Securitisation Agreement; and
- (b) after the Date of Stage 2 Completion, the aggregate of that amount (as defined in the Securitisation Agreement) and that amount (as defined in the Stage 2 Securitisation Agreement).

**Senior Debt** means:

- (a) prior to the Date of Stage 2 Completion, amounts outstanding under the Debt Financing Documents by Operator Franchisee or Secure Co to the Debt Financiers; and

- (b) after the Date of Stage 2 Completion, the aggregate of:
  - (i) amounts outstanding under the Debt Financing Documents by Operator Franchisee or Secure Co to the Debt Financiers; and
  - (ii) amounts outstanding under the Debt Financing Documents (as defined in the Stage 2 Works Deed) by OF2 or Secure Co 2 to the Debt Financiers.

**Senior Debt Interest Rate** means the total net interest rate payable on Senior Debt (taking into account hedging and weighted in proportion to the outstanding principal under each facility) as provided in the Base Case Financial Model.

**Stage 1 Equity** means all ordinary share and ordinary unit capital in, or the subordinated debt which is, in substance, equivalent to ordinary equity of, Operator Franchisee.

**Stage 2 Equity** means all ordinary share and ordinary unit capital in, or the subordinated debt which is, in substance, equivalent to ordinary equity of, OF2.

**Subcontractor Breakage Costs** means the amount reasonably and properly payable by Operator Franchisee to the Core Contractors on termination of this deed under the Core Contracts including redundancy costs, provided such amounts are incurred under arrangements and/or agreements entered into on arms length commercial terms prior to the Termination Date and both Operator Franchisee and the relevant Core Contractor have used reasonable efforts to mitigate such amounts.

**Tender Costs** means the internal and external costs reasonably incurred or reasonably expected to be incurred by the State in carrying out the Tender Process and/or in connection with any calculation of the Estimated Fair Value (including the cost of the independent expert appointed pursuant to **section 3.3(b)**).

**Tender Documentation** means the documentation issued by the State to request tenders from any parties interested in entering into a New Contract in accordance with **section 3.2(b)**.

**Tender Process** means the process by which the State request tenders from any parties interested in entering into a New Contract, evaluates the responses from those interested parties and enters into a New Contract with a New Operator Franchisee, in accordance with **section 3.2(b)**.

**Termination Payment** means an amount calculated in accordance with this **schedule 7** (less principal payable directly to the Debt Financiers by the State following any novation of the Debt Financing Documents to the State under **section 2.1(b)(iii)**).

**Termination Senior Debt** means:

- (a) all amounts of Senior Debt outstanding at the Termination Date;
- (b) all amounts, including costs of early termination of hedging arrangements and other breakage costs, payable by Operator Franchisee to the Debt Financiers as a result of prepayment under the Debt Financing Documents, subject to Operator Franchisee and the Debt Financiers mitigating all such costs to the extent reasonably possible; and



- (c) if this deed is terminated after the Date of Stage 2 Completion, all amounts, including costs of early termination of hedging arrangements and other breakage costs, payable by OF2 to the Debt Financiers as a result of prepayment under the Debt Financing Documents (as defined in the Stage 2 Works Deed), subject to OF2 and the Debt Financiers mitigating all such costs to the extent reasonably possible,

less:

- (d) all credit balances on any bank accounts (other than the Insurance Proceeds Account and Asset Management Retention Account) held by the Debt Financiers or any of them for or on behalf of Operator Franchisee (or, if this deed is terminated after the Date of Stage 2 Completion, OF2) on the Termination Date; and
- (e) all amounts, including benefits of early termination of hedging arrangements and other breakage benefits, payable by the Debt Financiers to Operator Franchisee as a result of prepayments of amounts outstanding under the Debt Financing Documents (or, if this deed is terminated after the Date of Stage 2 Completion, to OF2 as a result of prepayments of amounts outstanding under the Debt Financing Documents (as defined in the Stage 2 Works Deed)).

**Voluntary Termination Equity Value** means:

- (a) prior to the Date of Stage 2 Completion, the amount which when taken together with dividends (or other distributions) paid, interest paid and principal repaid and any other monies paid by Operator Franchisee on the Stage 1 Equity on or before the Termination Date taking account of the actual timing of all such payments, gives an internal rate of return on Stage 1 Equity equal to the Base Case Equity Return; and
- (b) after the Date of Stage 2 Completion, the aggregate of:
  - (i) the amount which when taken together with dividends (or other distributions) paid, interest paid and principal repaid and any other monies paid by Operator Franchisee on the Stage 1 Equity on or before the Termination Date taking account of the actual timing of all such payments, gives an internal rate of return on Stage 1 Equity equal to the Base Case Equity Return; and
  - (ii) the amount which when taken together with dividends (or other distributions) paid, interest paid and principal repaid and any other monies paid by OF2 on the Stage 2 Equity on or before the Termination Date taking account of the actual timing of all such payments, gives an internal rate of return on Stage 2 Equity equal to the Base Case Equity Return (as defined in Schedule 5 of the Stage 2 Works Deed).

## 2 Termination Payment

### 2.1 Payment obligation

- (a) If this deed is terminated under **clause 45**, the State must pay to Operator Franchisee the Termination Payment (if applicable) on or before the date which is 90 days after the Termination Date (or if

termination is pursuant to **clause 45.4**, 30 days after the Compensation Date if this is later).

- (b) If Operator Franchisee is entitled to a Termination Payment in accordance with **clause 45** and this **schedule 7**, the State will pay the Termination Payment by lump sum, provided that if the State determines to retender for the Project, it will be under no obligation to make any payment to Operator Franchisee until it is in receipt of the lump sum payment from the retender for the Project.
- (c) From the Termination Date (or the Compensation Date in the case of a Termination Payment made under **section 3.2**) until the date on which the Termination Payment is made, interest will accrue (calculated daily and compounded quarterly) on any unpaid element of the Termination Payment at the Senior Debt Interest Rate.
- (d) Notwithstanding any term of this deed, if the calculation of the Termination Payment requires the parties to take into account insurance proceeds that have not yet been received by Operator Franchisee, then receipt (or non-receipt) of the insurance proceeds, or uncertainty as to the quantity or timing of receipt of the same, will not delay the calculation or payment of the Termination Payment and instead the parties will calculate the Termination Payment on the basis of the maximum amount of proceeds that Operator Franchisee is reasonably likely to recover assuming that Operator Franchisee has complied with its insurance obligations under **clause 43 (Provisional Proceeds)** taking into account all information that is then available to the parties.
- (e) If following the calculation of the Termination Payment, the insurance proceeds that Operator Franchisee actually recovers (**Actual Proceeds**):
  - (i) are less than the Provisional Proceeds, the State will, immediately on notification of the Actual Proceeds by Operator Franchisee, pay to Operator Franchisee an amount equal to that by which the Provisional Proceeds exceed the Actual Proceeds (**Additional Amount**). The State will not be required to pay any interest on the Additional Amount;
  - (ii) are more than the Provisional Proceeds, Operator Franchisee must, immediately on receipt of the Actual Proceeds, pay to the State an amount equal to that by which the Actual Proceeds exceed the Provisional Proceeds (**Operator Franchisee Additional Amount**). Operator Franchisee will not be required to pay any interest on the Operator Franchisee Additional Amount;
  - (iii) the State will not be required to make any payment under **section 2.1(i)(ii)** to the extent that the Actual Proceeds are less than the Provisional Proceeds as a result of a breach by Operator Franchisee of its obligations under the State Project Documents; and
  - (iv) references to insurance proceeds in this **section 2.1(i)** are to insurance proceeds that Operator Franchisee is entitled to retain and which it has not applied and it is not obliged to apply in respect of its reinstatement obligations.

If this deed is terminated after the Date of Stage 2 Completion, references to Operator Franchisee in this **section 2.1(e)** will be deemed to also include OF2.

- (f) Operator Franchisee must use all reasonable endeavours to mitigate any losses or costs forming part of any Termination Payment. If this deed is terminated after the Date of Stage 2 Completion, Operator Franchisee must procure that OF2 uses all reasonable endeavours to mitigate any losses or costs forming part of any Termination Payment.
- (g) Any Termination Payment payable to Operator Franchisee must be calculated in accordance with this schedule 7 without any double counting, nor taking into account any item in any formula more than once in the calculation of any Termination Payment.

### 3 Termination for Operator Franchisee Default

#### 3.1 Termination for Operator Franchisee Default

If the State terminates this deed following an Operator Franchisee Termination Event in accordance with **clause 45.4** and a Termination Payment is payable in respect of that termination (regardless of whether the State otherwise has the right to terminate for any other reason), the State may elect to:

- (a) re-tender the provision of the Project Activities in accordance with **section 3.2**; or
- (b) require an expert determination in accordance with **section 3.3**.

#### 3.2 Re-tendering process

- (a) The State will be entitled to elect to retender the provision of the Project Activities in accordance with **section 3.1(a)** if:
  - (i) the State notifies Operator Franchisee on or before the date falling 20 Business Days after the Termination Date;
  - (ii) Operator Franchisee or the Debt Financiers have not procured the transfer of Operator Franchisee's rights and liabilities under this deed to a suitable substitute contractor and have failed to use all reasonable efforts to do so; and
  - (iii) there is a Liquid Market,in which case the amount of compensation payable by the State will be agreed or determined in accordance with **section 3.2(b)**.
- (b) If the State elects to re-tender the provision of the Project Activities, the following provisions will apply:
  - (i) the objective of the Tender Process will be to identify a new project entity and the highest Capital Sum offered by a Compliant Tenderer;
  - (ii) the State will use its reasonable endeavours to complete the Tender Process as soon as practicable having regard to the assistance given by Operator Franchisee in connection with the Tender Process;

- (iii) the State will notify Operator Franchisee of the Qualification Criteria and the other requirements and terms of the Tender Process, including the timing of the Tender Process, and will act reasonably in setting such requirements and terms;
- (iv) for each Compensation Month during the period from the Termination Date until the Compensation Date (and any part of a Compensation Month prior to the Compensation Date) the State will pay to Operator Franchisee the Adjusted Post Termination Service Payment. Each Adjusted Post Termination Service Payment will be payable monthly in arrears on or before the date falling 20 Business Days after the end of each Compensation Month or after the Compensation Date (as the case may be). If any Adjusted Post Termination Service Payment is less than zero then it will be carried forward and will be set off against any future positive Adjusted Post Termination Service Payments. If any such Adjusted Post Termination Service Payment has not been set off on or before the Compensation Date then it will be taken into account as an amount which the State is entitled to deduct in the calculation of the Termination Payment;
- (v) as soon as practicable after tenders have been received, the State will determine the Compliant Tenders and will notify Operator Franchisee of:
  - (A) the highest Capital Sum offered by a Compliant Tenderer; and
  - (B) the Tender Costs,
 and the Termination Payment will then be calculated in accordance with **section 3.6**;
- (vi) if the State receives less than 2 Compliant Tenders in response to the Tender Process, the provisions of **section 3.3** will apply;
- (vii) the State may elect at any time to follow the no re-tendering procedure under **section 3.1(b)** by notifying Operator Franchisee that this election has been made and upon the making of such an election, the provisions of **section 3.3** will apply; and
- (viii) in the event that the Tender Process is not completed within 12 months from the date of issue of the Tender Documentation, the provisions of **section 3.3** will apply.

### **3.3 Expert Determination**

If the State elects to require expert determination pursuant to **section 3.1** or **3.2(b)(vii)**, the provisions of **section 3.2(b)(vi)** or **3.2(b)(vii)** are satisfied, or the conditions set out in **section 3.2(a)** are not satisfied, the following provisions apply:

- (a) for each Compensation Month during the period from the Termination Date until the Compensation Date (and any part of a Compensation Month prior to the Compensation Date), the State will pay to Operator Franchisee the Adjusted Post Termination Service Payment, in accordance with **section 3.2(b)**;

- (b) the parties will procure the services of an independent expert to determine the Estimated Fair Value of this deed based on the formula set out in **sections 3.4 and 3.5** (as applicable) and agree that the Estimated Fair Value as determined by the independent expert will be final and binding; and
- (c) all forecast amounts of revenues and costs must be calculated by the independent expert on a nominal basis as at the Termination Date, whereby future amounts are indexed at the indexation rates in the Base Case Financial Model.

### **3.4 Estimated Fair Value before Completion**

The Estimated Fair Value before Completion will be determined by the independent expert, based on the following formula:

EFV = the lower of:

- (a) the costs (including capitalised interest and fees) properly incurred by Operator Franchisee in accordance with the Base Case Financial Model, referable to the D&C Activities up to and including the Termination Date; and
- (b) the total costs (including capitalised interest and fees) forecast to be incurred in respect of the D&C Activities (as set out in the Base Case Financial Model and D&C Program), less the independent expert's determination of the costs to be incurred by the State (including a reasonable assessment of the risk of costs overruns) from the Termination Date to achieve Completion by the Date for Completion (as extended under the Deemed New Contract).

### **3.5 Estimated Fair Value after Completion**

The Estimated Fair Value after Completion will be determined by the independent expert, based on the following formula:

EFV = A - B

Where:

- |     |   |  |
|-----|---|--|
| EFV | = | Estimated Fair Value;  |
| A   | = | the total of all payments of the Service Payments forecast to be made over the term of the Deemed New Contract calculated and discounted as at the Termination Date by the Base Case Project Return;   |
| B   | = | the total of all costs reasonably forecast to be incurred by the State as a direct result of termination of this deed, calculated and discounted at the Base Case Project Return, such costs to include (without double counting):   |
|     |   | <ul style="list-style-type: none"> <li>(a) the costs reasonably forecast to be incurred by the State over the term of the Deemed New Contract in connection with providing the Project Activities to the standard required by the Deemed New Contract;</li> <li>(b) a reasonable risk assessment of any cost overruns that will arise whether or not forecast in the Base Case Financial Model; and</li> </ul> |

- (c) any rectification costs required to deliver services under the Deemed New Contract to the standard required in the Deemed New Contract and any additional operating costs required to restore operating service standards.

### 3.6 Operator Franchisee Termination Event Payment Amount

If this deed is terminated pursuant to **clause 45.4** and a Termination Payment is payable in respect of that termination, the Termination Payment will be calculated as follows:

Termination Payment or TP means:

$$TP = A - AA - B - C - D - E - F - G + H - I - J - K - L$$

Where:

- A = the highest Capital Sum offered by a Compliant Tenderer if **section 3.2** applies, or the Estimated Fair Value if **section 3.3** applies;
- AA = if the Termination Date is before the Date of Completion and "A" is the Estimated Fair Value calculated in accordance with determined in accordance with **sections 3.3** and **3.4**, an amount equal to the sum of all Construction Payments paid by the State to Operator Franchisee under this deed prior to the Termination Date;
- B = if **section 3.3** applies, the aggregate of the Adjusted Post Termination Service Payments paid to Operator Franchisee for the period from the Termination Date to the Compensation Date;
- C = the Tender Costs;
- D = amounts that the State is entitled to set off or deduct under this deed including, for the avoidance of doubt, the costs of carrying out any works to ensure that the Works or the Project is in accordance with the requirements of this deed and all other reasonable costs incurred by the State in connection with the relevant Operator Franchisee Termination Event and as a direct result of terminating this deed and the Stage 2 Works Deed (including any amount which is owing by OF2 to the State under the State Stage 2 Documents as at the Termination Date which will not be satisfied as part of the termination payment under the Stage 2 Works Deed, but excluding the "Termination Payment" (as defined in, and calculated in accordance with, the Stage 2 Works Deed) payable under the Stage 2 Works Deed);
- E = any amounts owing by Operator Franchisee (or, after the Date of Stage 2 Completion, OF2) to the State under the State Project Documents as at the Termination Date;
- F = any gains which have or will accrue to Operator Franchisee (or, after the Date of Stage 2 Completion, OF2) as a result of the termination of this deed and any other Project Documents;
- G = the net amount (which, for the avoidance of doubt, will be net of any amount deductible under the relevant insurance policy) Operator Franchisee is entitled to retain, or would be entitled to retain had

Operator Franchisee complied with the requirements of **clause 43** and the relevant insurance policy, under any insurance policy;

H = any amounts due and payable as at the Termination Date by the State to Operator Franchisee or Secure Co (or, after the Date of Stage 2 Completion, OF2 or Secure Co 2) in accordance with the terms of the State Project Documents which remain unpaid as at the Compensation Date;

I = the total of all cash on deposit or otherwise held to the benefit of Operator Franchisee or Secure Co (or, after the Date of Stage 2 Completion, OF2 or Secure Co) and any other amounts owing to Operator Franchisee (or, after the Date of Stage 2 Completion, OF2) as at the Termination Date (other than in the Insurance Proceeds Account or Asset Management Retention Account), in each case only to the extent it has been taken into account in determination of the highest Capital Sum offered by a Compliant Tenderer;

J = the total of all amounts standing to the credit of the Insurance Proceeds Account or Asset Management Retention Account as at the Termination Date, to the extent released to Operator Franchisee by the State;

K = any amounts paid to Operator Franchisee by the State (including as a component of the Service Payment) for maintenance, refurbishment or capital replacement where that maintenance, refurbishment or capital replacement has not been carried out by Operator Franchisee; and

L = the Securitisation Refund Payment.

If the Termination Payment as calculated above is zero or a negative number, the State will have no obligation to make any payment to Operator Franchisee and the State will be released from all liability to Operator Franchisee for breaches and/or termination of this deed and any other Project Documents. If the Termination Payment amount is a negative number, Operator Franchisee must reimburse the State for this amount in accordance with **paragraph 6**.

## 4 Voluntary Termination

If this deed is terminated pursuant to **clause 45.5**, the Termination Payment will be calculated as follows:

Termination Payment or TP means:

$$TP = A + B + C - D - E - F + G - H + I - J$$

Where:

A = an amount equal to the Termination Senior Debt;

B = the Voluntary Termination Equity Value;

C = an amount equal to the Subcontractor Breakage Costs;

D = any amounts owing by Operator Franchisee (or, after the Date of Stage 2 Completion, OF2) to the State, under the State Project Documents as at the Termination Date;

- E = any gains which have or will accrue to Operator Franchisee (or, after the Date of Stage 2 Completion, OF2) as a result of the termination of this deed and any other Project Documents, not included in the definition of Termination Senior Debt;
- F = the net amount (which, for the avoidance of doubt, will be net of any amount deductible under the relevant insurance policy) Operator Franchisee is entitled to retain, or would be entitled to retain had Operator Franchisee complied with the requirements of **clause 43** and the relevant insurance policy, under any insurance policy;
- G = any amounts due and payable by the State to Operator Franchisee (or, after the Date of Stage 2 Completion, OF2) in accordance with the terms of the State Project Documents as at the Termination Date, and only to the extent that such amounts should have been paid prior to the Termination Date but remained unpaid at the Termination Date, plus the amount of any Service Payment accrued (subject to **schedule 3**) but not yet paid, as at the Termination Date;
- H = the total of all amounts standing to the credit of the Insurance Proceeds Account or Asset Management Retention Account as at the Termination Date, to the extent released to Operator Franchisee by the State;
- I = the total of all redundancy payments for employees of Operator Franchisee (or, after the Date of Stage 2 Completion, OF2) which have been or will be reasonably and properly incurred and arise as a direct result of the termination of this deed; and
- J = the Securitisation Refund Payment.

## 5 Termination for Force Majeure and Uninsurable Risks

If this deed is terminated pursuant to **clause 45.6**, the Termination Payment will be calculated as follows:

$$TP = A - B - C - D + E - F + G - H - I$$

Where:

- A = Termination Senior Debt;
- B = any gains which have or will accrue to Operator Franchisee (or, after the Date of Stage 2 Completion, OF2) as a result of the termination of this deed and any other Project Documents;
- C = any amounts owing by Operator Franchisee (or, after the Date of Stage 2 Completion, OF2) to the State under the State Project Documents as at the Termination Date (including any amount which is owing by OF2 to the State under the State Stage 2 Documents as at the Termination Date which will not be satisfied as part of the termination payment under the Stage 2 Works Deed);
- D = the net amount (which, for the avoidance of doubt, will be net of any amount deductible under the relevant insurance policy) Operator Franchisee is entitled to retain, or would be entitled to retain had



Operator Franchisee complied with the requirements of **clause 43** and the relevant insurance policy, under any insurance policy;

- E = any amounts due and payable by the State to Operator Franchisee (or, after the Date of Stage 2 Completion, OF2) in accordance with the terms of the State Project Documents as at the Termination Date, and only to the extent that such amounts should have been paid prior to the Termination Date but remained unpaid at the Termination Date, plus the amount of any Service Payment accrued (subject to **schedule 3**) but not yet paid, as at the Termination Date;
- F = the total of all amounts standing to the credit of the Insurance Proceeds Account or Asset Management Retention Account as at the Termination Date, to the extent released to Operator Franchisee by the State;
- G = any amounts due and payable by Operator Franchisee to a Core Contractor in respect of Project Works, Stage 2 Works or O&M Activities which have been performed or provided, or have not yet been performed or provided, but will be performed or provided prior to the Termination Date and which amounts have not yet been drawn down under the Debt Financing Documents;
- H = the Securitisation Refund Payment; and
- I = if the Termination Date occurs before the Date of Completion, amounts of Equity proposed to be contributed on a deferred basis in accordance with the Base Case Financial Model, to the extent that those amounts have not been contributed as at the Termination Date.

## 6 Negative Termination Amount

If the Termination Payment calculated under this **schedule 7** is a negative amount, the State will be entitled to deduct the negative amount from the Securitisation Refund Payment payable by the State to Secure Co under the Securitisation Agreement and Secure Co 2 under the Stage 2 Securitisation Agreement, following the termination of this deed, provided that if the negative amount is equal to or greater than the Securitisation Refund Payment, the amount of the Securitisation Refund Payment will be deemed to be zero.

# Schedule 8

## Handback Packages

1. Premises

A list of the premises owned, leased or operated by Operator Franchisee, showing the status, address, telephone number, facsimile number, responsible manager and use of each and the contact name, name, address, telephone number and facsimile number for the organisation which provides security services for those premises.

2. Contracts

A list of all agreements, permits, licences and other relevant documents relating to the operation of the System showing (as appropriate) the contact number, name, address, telephone and facsimile numbers of counterparties, contract price, value, subject matter and terms. Copies of all Project Documents (excluding Debt Financing Documents and Equity Documents) must be included separately in the handback package.

3. Systems

A list of systems used (computer and otherwise) for the operation and maintenance of the System together with a description of the systems and master passwords where applicable and the names and home telephone numbers of the holders of the master passwords.

4. Daily Operations

Any other information key to the daily operation of the System, including:

- (a) cash floats by location;
- (b) the names, work and home telephone numbers of each person in possession of keys accessing the premises owned, leased or operated by Operator Franchisee;
- (c) location of the asset register for the Project;
- (d) the Operator Franchise Employee roster; and
- (e) bank account details for Operator Franchisee.

5. Organisational Structure

A detailed diagrammatical representation of the organisational structure of Operator Franchisee and its Related Bodies Corporate to front line management level.

6. Employees

- (a) To the extent permitted by Law, a list of all Operator Franchise Employees to front line manager level showing name, address, home and work telephone numbers, role and responsibilities.
- (b) Full particulars of each Operator Franchise Employee, including casual employees, including name and the date on which his or her of employment began.

- (c) To the extent permitted by Law, names, address, home and work telephone numbers and safety function of all Accreditation officers of Operator Franchisee, including the holder of the Accreditation.
- (d) Terms and conditions of employment of each Operator Franchise Employee.
- (e) All payments, benefits or changes to terms and conditions of employment promised to each Operator Franchise Employee.
- (f) All agreements or arrangements (whether legally enforceable or not) relating to any Operator Franchise Employees entered into between Operator Franchisee or any Related Body Corporate of Operator Franchisee and any trade union or association of trade unions or organisation or body of employees including elected representatives.
- (g) A list of key personnel whose work is critical to the ongoing operation of the System who are not Operator Franchise Employees.
- (h) Details of the gross value, frequency and timing of payroll and amount of monthly superannuation contributions.

7. Safety

- (a) Names and locations of all safety manuals and procedures used for the Project.
- (b) If available, electronic copies of safety manuals and procedures.
- (c) A copy of the most recent safety audit.

## Schedule 9

### Expert Determination

#### Part A: Expert Determination Agreement

---

The State of Queensland

---

GoldLinQ Pty Ltd

---

[Expert]

---

Gold Coast Light Rail

## Expert Determination Agreement

## Expert Determination Agreement dated .....

### Parties

The State of Queensland (**the State**) c/- The Department of Transport and Main Roads

GoldLinQ Pty Ltd ACN 147 815 441 of Level 29, 140 William Street, Melbourne Victoria 3000 (**Operator Franchisee**)

[ ] ABN [ ] of [ ] (**Expert**)

### Background

- A. The State and Operator Franchisee are parties to the Project Deed.
- B. By notice dated *[insert date]*, [the State]/[Operator Franchisee] requires that the Dispute is determined by an Expert appointed under clause **57.4** of the Project Deed.
- C. The Expert has been appointed to determine the Dispute in accordance with the Expert Determination Process.

### Operative provisions

## 1. Definitions and Interpretation

### 1.1 Definitions

In this agreement:

**Determination** means the determination of the Dispute in accordance with the Expert Determination Process.

**Dispute** means the dispute described in **schedule 1**.

**Expert Determination Process** means the process for determining the Dispute as set out in the Project Deed, this agreement and the Rules.

**Expert's Fees and Disbursements** means the Expert's fees and disbursements calculated in accordance with **schedule 2**.

**Project Deed** means the deed entitled "Gold Coast Light Rail Project Deed" between the State and Operator Franchisee.

**Rules** means the rules for the Expert Determination Process set out in Part B.

### 1.2 Terms defined in Project Deed

Except as otherwise defined in **clause 1.1**, terms used in this agreement that are defined in the Project Deed will have the same meanings in this agreement.

### 1.3 Interpretation

In this agreement:

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

and the following rules apply in interpreting this agreement unless the context makes it clear that a rule is not intended to apply:

- (b) an obligation or a liability assumed by, or a right conferred on, 2 or more persons binds or benefits them jointly and severally;
- (c) person includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (d) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation;
- (e) a reference to a document (including this agreement) is to that document as varied, novated, ratified or replaced from time to time;
- (f) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re enactments and replacements;
- (g) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (h) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this agreement, and a reference to this agreement includes all schedules, exhibits, attachments and annexures to it;
- (i) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (j) the term "may" when used in the context of a power or right exercisable by the State means that the State can exercise that power or right in its absolute and unfettered discretion and the State has no obligation to Operator Franchisee to do so;
- (k) if a right or remedy is conferred on the State under this agreement, that right or remedy is in addition to, and not in substitution of, any other right or remedy conferred on the State under this agreement or otherwise according to Law;
- (l) includes in any form is not a word of limitation;
- (m) a reference to \$ or dollar is to Australian currency; and
- (n) references to a submission, statement, response, notice, notification, record, report, consent, waiver, agreement, demand, evidence, details or approval (or any variations of those words), are references to a submission, statement, response, notice, notification, record, report, consent, waiver, agreement, demand, evidence, details or approval (or any variations of those words) in writing.

## 2. Appointment and Role of Expert

- (a) The parties appoint the Expert to determine the Dispute in the manner and within the times set out in this agreement and the Rules, and the Expert accepts the appointment on the basis set out in this agreement.
- (b) The parties and the Expert agree that:
  - (i) the Expert will act as an expert and not as an arbitrator;
  - (ii) neither the Determination, nor the Expert Determination Process is an arbitration and any conference conducted during the Expert Determination Process is not a hearing conducted under any legislation or rules relating to any form of arbitration;
  - (iii) the rules of evidence do not apply to the Expert Determination Process or to the Determination; and
  - (iv) in making the Determination or conducting the Expert Determination process the Expert must proceed in accordance with:
    - (A) the Law;
    - (B) the Project Deed;
    - (C) this agreement;
    - (D) the Rules; and
    - (E) the requirements of procedural fairness.
- (c) The Expert:
  - (i) warrants that it has no conflict of interest that might reasonably be considered to adversely affect the Expert's capacity to act independently or impartially; and
  - (ii) must take all reasonable steps to avoid any conflict of interest, potential conflict of interest or other circumstances that might reasonably be considered to adversely affect the Expert's capacity to act independently or impartially.
- (d) If, at any time during the Expert Determination Process, the Expert becomes aware of any circumstances that might reasonably be considered to adversely affect the Expert's capacity to act independently or impartially in relation to the Dispute, the Expert must inform the parties immediately.
- (e) This agreement will terminate 7 days after the notice is provided by the Expert under **clause 2(d)** or a notice is provided under clause 5.2 of the Rules, unless the parties agree otherwise.

## 3. Confidentiality

All proceedings and submissions relating to the Expert Determination Process (including the fact that any step in the Expert Determination Process is occurring), and all documents prepared for the purposes of the Expert Determination Process (including the Determination), must be kept

confidential between the parties and the Expert. No such proceedings, submissions or documents, nor any other information relating to or arising out of the Expert Determination Process, may be divulged to any other person, except with the prior consent of both parties or as may be required by law or to the extent necessary to give effect to or enforce the Determination.

#### 4. Costs and fees

- (a) As between the parties and the Expert, the parties are jointly and severally liable for the payment of the Expert's Fees and Disbursements. The parties agree to comply with any reasonable direction from the Expert as to the provision of security deposits in respect of the Expert's Fees and Disbursements.
- (b) The parties agree as between themselves that:
  - (i) they will each pay one half of:
    - (A) the Expert's Fees and Disbursements; and
    - (B) any third party costs incurred in holding the conference referred to in clause 3 of the Rules, including any booking fee, room hire and transcript costs; and
  - (ii) they will each bear their own costs of and incidental to the preparation of this agreement and their participation in the Expert Determination Process, including their legal costs and the costs of any consultants they engage.

#### 5. Exclusion of liability

Except in the case of fraud, wilful default or a breach of the warranty in **clause 2(c)(i)**, the Expert will not be liable to either party for any act or omission by the Expert in the performance or purported performance of this agreement.

#### 6. Co-operation of the Parties

- (a) Each party agrees to:
  - (i) do all things reasonably necessary for the proper, expeditious and cost effective conduct of the Expert Determination Process;
  - (ii) to comply with the reasonable requests and directions of the Expert in relation to the conduct of the Expert Determination Process; and
  - (iii) be represented at any conference convened by the Expert by a person or persons with authority to agree on procedural matters;
- (b) If a party does not comply with the Expert's reasonable directions, the Expert may continue with the Expert Determination Process and determine the Dispute despite the non-compliance.



## 7. Subsequent Proceedings

The Expert will not accept an appointment as an arbitrator, advocate or adviser to a Party in any arbitral, judicial or adjudication proceedings relating to the Dispute or any part of it. Neither party will take action to cause the Expert to breach this **clause 7**.

## 8. Governing law

This agreement is governed by and must be construed according to the Law applying in Queensland.

## 9. Urgent relief

Nothing in this agreement or the Rules will prejudice the right of a party to seek urgent interlocutory relief in respect of the Dispute.

## 10. Jurisdiction

The parties and the Expert irrevocably:

- (a) submit to the non-exclusive jurisdiction of the courts of the State of Queensland and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this agreement; and
- (b) waive any objection they may now or in the future have to the venue of any proceedings, and any claim they may now or in the future have that any proceeding has been brought in an inconvenient forum, if that venue falls within **clause 10(a)**.

## 11. GST

### 11.1 Interpretation

- (a) Except if the context suggests otherwise, terms used in this **clause 11** have the meanings given to those terms by the GST Law (as amended from time to time).
- (b) Unless otherwise expressly stated, all consideration to be provided under this agreement is exclusive of GST. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purpose of this **clause 11**.
- (c) references to GST payable and input tax credit entitlement include GST payable by, and the input tax credit entitlement of, the representative member for a GST group of which the entity is a member.

## 11.2 Reimbursements

Where a party is required under this agreement to pay or reimburse an expense or outgoing of another party, the amount to be paid or reimbursed by the first party will be the sum of:

- (a) the amount of the expense or outgoing less any input tax credits in respect of the expense or outgoing to which the other party is entitled; and
- (b) if the payment or reimbursement is subject to GST, an amount equal to that GST.

## 11.3 Additional amount of GST payable

If GST becomes payable on any supply made by a party (Supplier) under or in connection with this agreement:

- (a) any party (**Recipient**) that is required to provide consideration to the Supplier for that supply must pay an additional amount to the Supplier equal to the amount of the GST payable on that supply (**GST Amount**), at the same time as any other consideration is to be first provided for that supply; and
- (b) the Supplier must provide a Tax Invoice to the Recipient for that supply, no later than the time at which the GST Amount for that supply is to be paid in accordance with **clause 11.3(a)**.

## 11.4 Adjustment events

If an adjustment event arises in respect of a taxable supply made by a Supplier under this agreement, the amount payable by the recipient under **clause 11.3(a)** will be recalculated to reflect the adjustment event and a payment will be made by the recipient to the Supplier or by the Supplier to the recipient as the case requires.

# 12. General

## 12.1 Notices

Each communication (including each notice, consent, approval, request and demand) under or in connection with this agreement:

- (a) must be in writing;
- (b) must be addressed as follows (or as otherwise notified by that party to each other party from time to time):

### The State

Name:	[ ]
Address:	[ ]
Fax:	[ ]
For the attention of:	[ ]

**Operator Franchisee**

Name: [ ]  
Address: [ ]  
Fax: [ ]  
For the attention of: [ ]

**Expert**

Name: [ ]  
Address: [ ]  
Fax: [ ]  
For the attention of: [ ]

- (c) must be signed by the party making it or (on that party's behalf) by the solicitor for, or any attorney, director, secretary or authorised agent of, that party;
- (d) must be delivered by hand or posted by prepaid post to the address, or sent by fax to the number, of the addressee, in accordance with **clause 12.1(b)**; and
- (e) is taken to be received by the addressee:
  - (i) (in the case of prepaid post sent to an address in the same country) on the third day after the date of posting;
  - (ii) (in the case of prepaid post sent to an address in another country) on the fifth day after the date of posting by airmail;
  - (iii) (in the case of fax) at the time in the place to which it is sent equivalent to the time shown on the transmission confirmation report produced by the fax machine from which it was sent; and
  - (iv) (in the case of delivery by hand) on delivery,but if the communication is taken to be received on a day that is not a Business Day or after 5.00 pm, it is taken to be received at 9.00 am on the next Business Day.

**12.2 Further acts and documents**

Each party and the Expert must promptly do all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to that party or the Expert) required by Law or reasonably requested by another party or the Expert to give effect to this agreement.

**12.3 Counterparts**

This agreement may be executed in any number of counterparts and by each of the parties and the Expert on separate counterparts. Each counterpart constitutes an original of this agreement, and all together constitute one agreement.

## **Schedule 1**

### **The Dispute**

*[Insert description of the Dispute]*

## Part B: Rules

### 1. Commencement

The Expert Determination Process commences when the parties and the Expert enter into the agreement to which these Rules form a part.

### 2. Submissions

2.1 Within 7 days of the commencement of the Expert Determination Process, the party that gave the Notice of Dispute under clause 60 of the Project Deed (**Claimant**) must give the other party (**Respondent**) and the Expert:

- (a) a statement setting out the particulars of the Dispute referred for Determination;
- (b) any agreed statement of facts;
- (c) a submission on the legal and factual issues of its claim; and
- (d) all documents and other evidentiary material on which it relies.

(together, the **Claimant's Submissions**).

2.2 Within 7 days of receiving the Claimant's Submissions, the Respondent must give the Claimant and the Expert a response to the Claimant's Submissions including any cross-claim (**Respondent's Submissions**).

2.3 Within 7 days of receiving the Respondent's Submissions the Claimant must give the Respondent and the Expert a response to the cross-claim and if the Expert considers it appropriate may reply to matters (other than the cross-claim (if any)) addressed in the Respondent's Submissions (**Claimant's Submissions in Reply**). The Claimant's Submissions in Reply must not raise new matters.

2.4 If the Expert considers it appropriate, within 7 days of receiving the Claimant's Submissions in Reply (if any) the Respondent may reply to the claimant's submissions in respect of the cross-claim (if any) and the other matters addressed in the Claimant's Submissions in Reply (if any) (**Respondent's Submissions in Reply**). The Respondent's Submissions in Reply must not raise new matters.

2.5 If the Expert decides further information or documentation (including submissions) is required for the Determination, the Expert may direct the parties to provide such further information or documentation (including submissions) as the Expert may require.

2.6 The Expert must disclose to both parties all information or documentation (including submissions) received by the Expert on a private and confidential basis.

2.7 Any times fixed pursuant to these Rules may be varied by agreement of the parties. In the absence of such agreement, or proper cause being shown by a party, the Expert may vary the times fixed on such terms as he or she considers reasonable in the circumstances.

### **3. Conference**

- 3.1 The Expert may, if he or she thinks appropriate, call a conference of the parties. Unless the parties agree otherwise, the conference will be held at the Gold Coast, Queensland, Australia.
- 3.2 At least 14 days before the conference, the Expert must inform the parties in writing of the date, venue and agenda for the conference.
- 3.3 The parties must appear at the conference and may make submissions on the subject matter of the conference. If a party fails to appear at a conference of which that Party had been notified under **clause 3.1**, the Expert and the other party may nevertheless proceed with the conference.
- 3.4 The parties:
  - (a) may be accompanied but not represented at a conference by legal or other advisers; and
  - (b) will be bound by any procedural directions as may be given by the Expert in relation to the conference both before and during the course of the conference.
- 3.5 The conference must be held in private.
- 3.6 If required by either party, transcripts of the conference proceedings must be taken and made available to the Expert and the parties on a private and confidential basis.

### **4. View**

- 4.1 Upon the application of a party or at the Expert's own volition, the Expert may direct that a view be conducted of any place or thing relevant to the Dispute by the Expert in the presence of the parties.
- 4.2 The Expert may draw any reasonable inference from what the Expert sees, hears or otherwise observes during a view.
- 4.3 If a party fails to attend a view, the Expert may nevertheless proceed with the view.

### **5. Engagement of advisers and consultants by Expert**

- 5.1 The Expert may engage his or her own advisers and consultants, including lawyers, accountants, bankers, engineers or other technical consultants, to provide information to assist the Expert in his or her Determination, unless both parties object to the engagement, and subject to the following process:
  - (a) the Expert must notify the parties of any proposed engagement;
  - (b) the parties may make submissions to the Expert on the selection of such a person, including any qualifications and expertise that may be required;
  - (c) the Expert must obtain the parties prior consent to provide any information relating to the Expert Determination to the persons to be engaged by the Expert;
  - (d) before disclosure of any information relating to the Expert Determination to the persons engaged by the Expert under this clause, the Expert must obtain a confidentiality undertaking from those persons with respect to that information on the same terms as clause 3 of the agreement;

- (e) the Expert must disclose to both parties any request for advice and any advice received from any persons engaged by the Expert under this clause; and
- (f) the Parties may make submissions to the Expert, within the time prescribed by the Expert, on the weight (if any) to be given by the Expert to any advice such a person may give.

5.2 The Expert must inform the parties of:

- (a) any relationship or interest which the Expert has, or the persons engaged by the Expert under **clause 5.1** have, with a party or its officers, employees, consultants or agents;
- (b) any interest the Expert has, or the persons engaged by the Expert under **clause 5.1** have, in the Dispute; and
- (c) any circumstance which might reasonably be considered to adversely affect the capacity of the Expert, or the persons engaged by the Expert under **clause 5.1**, to act independently or impartially in relation to the Dispute,

immediately upon becoming aware of any such circumstances.

5.3 This agreement will terminate 7 days after the notice is provided by the Expert under **clause 5.2**, unless the parties agree otherwise.

## 6. General

6.1 Except where otherwise required by these Rules, the Expert may receive information in any way the Expert thinks fit (including as inquisitor).

6.2 Any dispute arising between the parties in respect of any matter concerning these Rules or the Expert Determination Process, (including the Expert's jurisdiction) will be submitted to and determined by the Expert.

6.3 Subject to **clause 3.3**, meetings and discussions with the Expert in respect of the Dispute or the submissions of either party must only take place in the presence of both parties.

6.4 The Expert Determination Process will not terminate or discontinue because of the failure of a party to:

- (a) serve a submission, statement or response within the prescribed time;
- (b) appear at a conference of which that party had been notified under **clause 3.2**; or
- (c) attend a view.

6.5 The Expert Determination Process may be terminated at any time prior to the issue of the Determination by the parties giving joint notice to the Expert terminating the Expert Determination Process.

## 7. The Determination

7.1 As soon as possible after receipt of the submissions or after any conference and, in any event not later than 90 days after the commencement of the Expert Determination Process (or such other period as the parties may agree), the Expert must:

- (a) determine the Dispute between the parties, and

(b) provide the Determination to the parties.

7.2 The Determination must:

- (a) be in writing stating the Expert's determination and giving reasons;
- (b) be made in accordance with:
  - (i) the Law;
  - (ii) the Project Deed;
  - (iii) this agreement (including these Rules);
  - (iv) the Institute for Arbitrators and Mediators Australia Expert Determination Rules (to the extent that they are not inconsistent with these Rules); and
  - (v) the requirements of procedural fairness;
- (c) be made on the basis of:
  - (i) the submissions, statements and responses (if any) of the parties (subject to **clause 2.6**);
  - (ii) the further information and documentation (including submissions) received by the Expert under **clause 2.5** (if any);
  - (iii) the conference (if any);
  - (iv) the view (if any);
  - (v) the Expert's own expertise (as supplemented by any advice which the Expert obtains from his or her own advisers and consultants); and
  - (vi) the submissions received by the Expert under clause 5.1(f) (if any).

7.3 To the extent permitted by law, the Expert will have no power to apply or have regard to the provisions of Part 2 of the *Civil Liability Act 2003* (Qld) (and any equivalent statutory provision in any other state or territory).

Subject to **clause 7.4**, the Determination is to be given effect to and will be final and binding on the parties unless a notice of appeal is given in accordance with **clause 57.4(f)** of the Project Deed. If such a notice is given, the Determination will be binding on the parties unless and until it is overturned, reversed, varied or otherwise changed by an award of an arbitrator or court.

7.4 If the Determination contains a clerical mistake, an error arising from an accidental slip or omission, a material miscalculation of figures, a material mistake in the description of any person, matter or thing, or a defect of form, then the Expert must correct the Determination.

**8. Modification**

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



## **Schedule 2**

### **The Expert's Fees and Disbursements**

*[To be inserted. Disbursements should include fees paid to consultants and advisors engaged by the Expert pursuant to section 5 of the Rules.]*

# Schedule 10

## Insurances

### Part A: D&C Phase - GCRT (Stage 1)

Insurance	Minimum Sum Insured and Policy Requirements	Deductible/ Excess
Professional Indemnity Insurance	<p>\$50,000,000 for any one claim and \$50,000,000 in the aggregate for a period from Financial Close until at least 7 years from Date of Completion. Such policy limit must not be able to be exhausted by any claim in respect of any other project or any other non-Project related activities of Operator Franchisee or any Group Member.</p> <p>The policy should be issued in the name of Operator Franchisee and extend to include the professional activities of all other parties and persons who supply professional services to the Project during the D&amp;C Phase.</p> <p>The policy should cover all professional services involved in the Project and extend to include all D&amp;C Phase professional services such as project management, engineering supervision and procurement.</p>	\$1 million per claim
Employers Liability and Workers' Compensation Insurance	As required by Law.	As required by Law
Motor Vehicle Insurance	<p>Third Party Property Damage: \$30,000,000 for any one occurrence and unlimited in the aggregate.</p> <p>Compulsory Third Party: as required by Law.</p>	<p>Third Party Property Damage: \$5,000</p> <p>Compulsory Third Party: as required by Law.</p>
Contract Works Material Damage Insurance	The full build value of the Project. The policy may include a sub limit for Plant and Equipment Insurance (as otherwise specified below) if the Contract Works Material Damage policy is proffered by Operator Franchisee to comply with the insurance requirement for Plant and Equipment Insurance.	Major perils, testing & commissioning and LEG2/DE4: \$200,000

Insurance	Minimum Sum Insured and Policy Requirements	Deductible/ Excess
	<p>The Interest (or Property) Insured of such policy should also include a minimum \$1,000,000 sub limit for Existing Property.</p> <p>All sub limits for additional policy coverage should be sufficient for all expected additional costs following an insurable event such as demolition and removal of debris, consultants fees, expenses to expedite repair, mitigation costs, restoration of records costs, costs to comply with local authority orders, costs to provide temporary protection to works and cover for loss or damage to materials stored off site or during transportation from supplier to the Project Area.</p> <p>The policy should include both a:</p> <p>a) LEG2 or DE4; and</p> <p>b) LEG3 or DE5,</p> <p>faulty design/workmanship exclusion that allows the insured to choose which exclusion applies after a claim occurs.</p> <p>The policy should extend to include as insured:</p> <ul style="list-style-type: none"> <li>• Operator Franchisee and its Associates;</li> <li>• the State and its Associates; and</li> <li>• any other party with an insurable interest in the Project,</li> </ul> <p>for their respective rights and interests in the Project.</p> <p>The policy should specify a defects liability period for Project Works and Returned Works of 24 months from the Date of Completion plus the testing and commissioning period.</p> <p>The policy should include a marine 50/50 clause for damage sustained during transportation or on the Project Area.</p>	<p>Leg 3/DE5: \$300,000</p> <p>All other claims: \$100,000</p>
Contract Works Legal Liability Insurance	<p>\$200,000,000 for any one Occurrence and \$200,000,000 in the aggregate for completed operations and product liability claims.</p> <p>Policy to include completed operations/completed works insurance and must not be able to be eroded by any claim in respect of any other project or any other non Project related activities of Operator Franchisee or any Group Member.</p> <p>Policy to respond to any occurrence in the period of insurance not a claim happening in the period of insurance resulting from an occurrence.</p>	<p>Damage/Int erruption: \$150,000</p> <p>Worker Recourse: \$100,000</p> <p>All other claims: \$50,000</p>

Insurance	Minimum Sum Insured and Policy Requirements	Deductible/ Excess
	<p>Policy to include Rolling Stock testing and commissioning on public thoroughfares.</p> <p>The policy should extend to include Operator Franchisee's office occupiers for liability for any project off-site tenancies.</p> <p>The policy should extend to include as insured:</p> <ul style="list-style-type: none"> <li>• Operator Franchisee and its Associates;</li> <li>• the State and its Associates; and</li> <li>• any other party with an insurable interest in the Project (including the Independent Verifier),</li> </ul> <p>for their respective rights and interests in the Project.</p>	
Plant and Equipment Insurance	Not less than current market value for any one item and not less than \$10,000,000 any one occurrence, any one location.	\$100,000
Advanced Business Interruption Insurance	<p>Not less than an amount equivalent to 12 months Service Payments (without applying any reduction to these Service Payments) and the policy to have a minimum 12 month Indemnity period.</p> <p>The policy should respond to interruption caused by either loss or damage under the Contract Works Material Damage Insurance or Marine Insurance and may be separate or combined policies.</p> <p>The policy should name Operator Franchisee as insured.</p>	60 days (or monetary equivalent)
Marine Insurance	<p>A limit of indemnity equivalent to not less than the maximum total value of the property to be transferred in any one shipment, plus a provision for the costs of freight, insurance, taxes and duties as may be applicable.</p> <p>The policy should include a marine 50/50 clause for damage sustained either during transportation or on the Project Area.</p> <p>The policy should extend to include as insured:</p> <ul style="list-style-type: none"> <li>• Operator Franchisee and its Associates;</li> <li>• the State and its Associates; and</li> <li>• any other party with an insurable interest in the Project,</li> </ul> <p>for their respective rights and interests in the Project.</p>	10% of the maximum limit of indemnity for any one shipment, or \$100,000, whichever is the lesser.

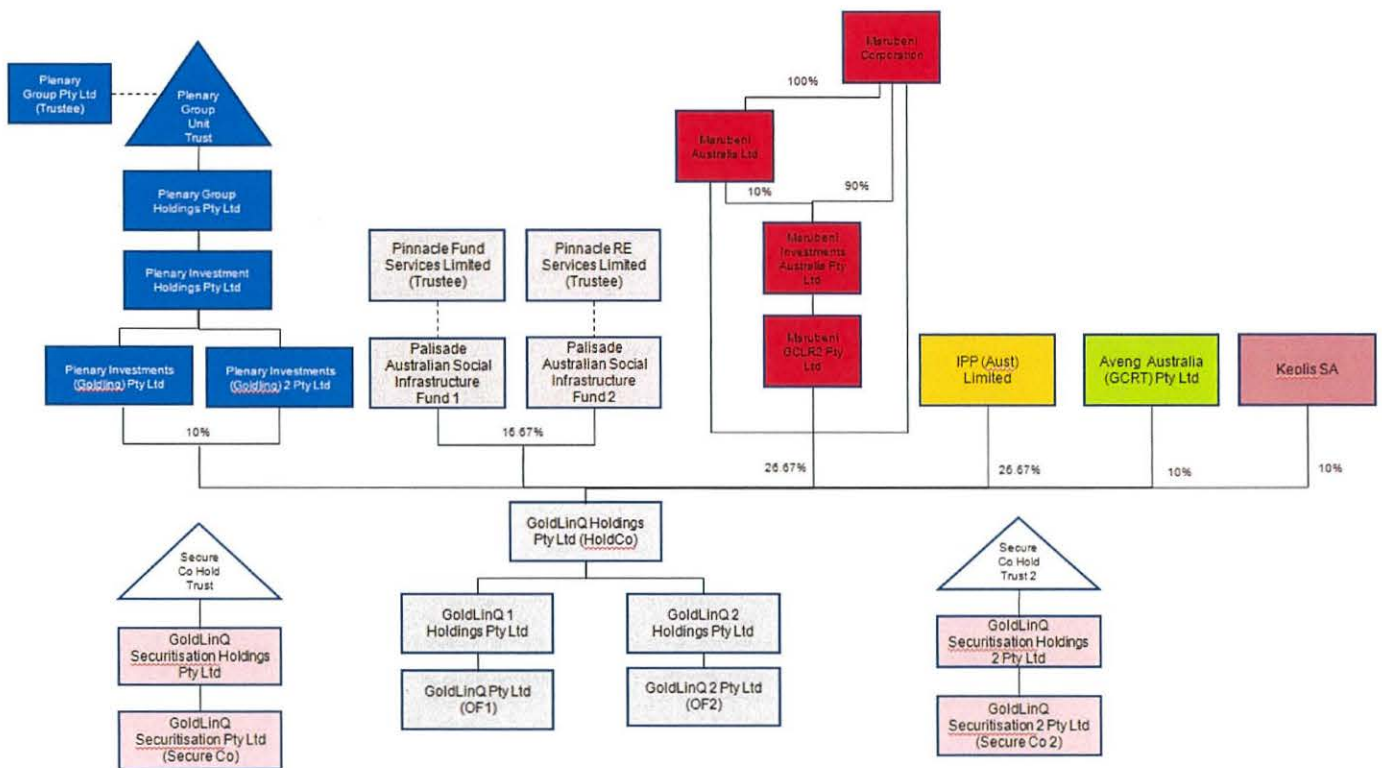
## Part B: Operations Phase

Insurance	Minimum Sum Insured	Maximum Deductible
Employers Liability and Workers' Compensation Insurance	As required by Law.	As required by Law.
Motor Vehicle Insurance	Third Party Property Damage: \$30,000,000 for any one occurrence and unlimited in the aggregate. Compulsory Third Party: as required by Law.	Third Party Property Damage: \$2,000 Compulsory Third Party: as required by Law
Rolling Stock Insurance	Own damage: Full replacement value of all Rolling Stock on a full sum insured per unit. The policy should extend to include as insured: <ul style="list-style-type: none"> <li>• Operator Franchisee and its Associates;</li> <li>• the State and its Associates; and</li> <li>• any other party with an insurable interest in the Project,</li> </ul> for their respective rights and interests in the Project. Third Party Property Damage: \$100,000,000 for any one occurrence and unlimited in the aggregate. The policy should extend to include as insured and additional insureds: <ul style="list-style-type: none"> <li>• Operator Franchisee and its Associates;</li> <li>• the State and its Associates; and</li> <li>• any other party with an insurable interest in the Project,</li> </ul> for their respective rights and interests in the Project.	Own Damage: \$50,000  Third Party Property Damage: \$25,000
Industrial Special Risks Insurance	Full replacement value (excluding the full replacement value of all Rolling Stock) plus an additional amount sufficient to cover costs of demolition and removal of debris, fees for project managers and other consultants, and an amount to cover additional costs and expenses to expedite the commencement and repair, replacement or reinstatement of GCRT (Stage	\$100,000

Insurance	Minimum Sum Insured	Maximum Deductible
	<p>1).</p> <p>The policy should extend to include as insured:</p> <ul style="list-style-type: none"> <li>• Operator Franchisee and its Associates;</li> <li>• the State and its Associates; and</li> <li>• any other party with an insurable interest in the Project,</li> </ul> <p>for their respective rights and interests in the Project.</p>	
Business Interruption Insurance	<p>Not less than an amount equivalent to 12 months Service Payments (without applying any reduction to those Service Payments) and the policy to have a minimum 12 month indemnity period.</p> <p>Additional policy extensions should also include customers and suppliers and public utilities including electric power, each sub limited to at least 25% of the full policy limit.</p> <p>The policy should extend to include as insured:</p> <ul style="list-style-type: none"> <li>• Operator Franchisee and its Associates,</li> </ul> <p>for their respective rights and interests in the Project.</p>	14 days
Products and Public Liability Insurance	<p>\$250,000,000 each and every occurrence and in the annual aggregate for products claims.</p> <p>This insurance must include third party liability in respect of operation of the System and Rolling Stock including third party personal injury.</p> <p>The policy should extend to include as insured:</p> <ul style="list-style-type: none"> <li>• Operator Franchisee and its Associates;</li> <li>• the State and its Associates; and</li> <li>• any other party with an insurable interest in the Project,</li> </ul> <p>for their respective rights and interests in the Project.</p>	\$25,000

# Schedule 11

## Group Structure



# Schedule 12

## Information Documents

This Schedule 12 is deemed to be the version included in the executed Project Deed dated 5 May 2011.



# Schedule 13

## Pro Forma Documents

### Part A: Form of Escrow Deed

---

The State of Queensland

---

GoldLinQ Pty Ltd

---

[Escrow Agent]

---

# Gold Coast Rapid Transit Escrow Deed

# Contents

---

## **1 Definitions and interpretation**

- 1.1 Project Deed
- 1.2 Definitions
- 1.3 Interpretation
- 1.4 Inconsistency
- 1.5 Recognition of rights and obligations under State Project Documents

---

## **2 Term**

---

## **3 Representatives**

- 3.1 State Representative
- 3.2 Operator Franchisee Representative

---

## **4 Representations and warranties**

---

## **5 Deposit, access, loss and release of Escrow Material**

- 5.1 Deposit of Escrow Material
- 5.2 Access to Escrow Material
- 5.3 Loss of Escrow Material
- 5.4 Release of Escrow Material

---

## **6 Escrow Agent's further obligations**

- 6.1 General
- 6.2 Insurance
- 6.3 Confidentiality
- 6.4 Subcontracting

---

## **7 Escrow fees and charges**

- 7.1 Payment
- 7.2 Late Payment
- 7.3 Other charges

---

## **8 Disputes**

---

## **9 GST**

- 9.1 Interpretation
- 9.2 Additional amount of GST payable
- 9.3 Reimbursements
- 9.4 Adjustment events

---

## **10 Termination**

- 10.1 Termination
- 10.2 Release of Escrow Material on termination

---

## **11 Notices**

---

## **12 General**

- 12.1 The State and Authorities
- 12.2 Replacement Body
- 12.3 Business Day
- 12.4 Disclosure, confidentiality and publicity

- 12.5 No bias against drafter
- 12.6 Cost of performing obligations
- 12.7 Governing Law and jurisdiction
- 12.8 Amendments
- 12.9 Assignment
- 12.10 Waiver
- 12.11 Survival of certain provisions; no merger
- 12.12 Further acts and documents
- 12.13 Consents
- 12.14 No representation or reliance
- 12.15 Severance
- 12.16 Indemnities
- 12.17 Counterparts
- 12.18 Attorneys
- 12.19 Relationship between parties

**Schedule 1 - Form of Register**

---

**Date**

## Parties

The State of Queensland (**the State**) c/- The Department of Transport and Main Roads

GoldLinQ Pty Ltd ACN 147 815 441 of Level 29, 149 William Street, Melbourne, Victoria 3000 (**Operator Franchisee**)

[ ] ABN [ ] of [ ] (**Escrow Agent**)

## Background

- A The background to the Project is set out in the Project Deed.
  - B The Escrow Agent has been appointed by the State and Operator Franchisee to hold the Escrow Material in escrow.
- 

## Agreed terms

### 1 Definitions and interpretation

#### 1.1 Project Deed

Definitions in the Project Deed apply in this deed unless the relevant term is defined in this deed.

#### 1.2 Definitions

In this deed:

**Commencement Date** means the date of this deed.

**Container** means an air tight, moisture-free container approved by the State.

**Escrow Fee** means \$[#].

**Escrow Material** means the data and material provided by Operator Franchisee to the Escrow Agent as varied, added to or replaced from time to time.

**Project Deed** means the document entitled "Gold Coast Rapid Transit – Project Deed" dated on or about the date of this deed between the State and Operator Franchisee.

#### 1.3 Interpretation

In this deed:

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

and the following rules apply in interpreting this deed unless the context makes it clear that a rule is not intended to apply:

- (b) if a party to this deed comprises more than one person an obligation or a liability assumed by, or a right conferred on that party binds or benefits the persons comprising that party jointly and severally;
- (c) person includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (d) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation;
- (e) a reference to a document (including this deed) is to that document as varied, novated, ratified or replaced from time to time;
- (f) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re enactments and replacements;
- (g) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (h) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this deed, and a reference to this deed includes all schedules, exhibits, attachments and annexures to it;
- (i) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (j) the term "may" when used in the context of a power or right exercisable by the State means that the State can exercise that power or right in its absolute and unfettered discretion and the State has no obligation to any other party to do so;
- (k) where a right or remedy is conferred on the State under this deed, that right or remedy is in addition to, and not in substitution of, any other right or remedy conferred on the State under this deed or otherwise according to Law;
- (l) includes in any form is not a word of limitation;
- (m) a reference to \$ or dollar is to Australian currency; and
- (n) references to a notice, notification, record, report, consent, waiver, agreement, demand, evidence, details or approval (or any variations of those words), are references to a notice, notification, record, report,

consent, waiver, agreement, demand, evidence, details or approval (or any variations of those words) in writing.

#### **1.4 Inconsistency**

To the extent of any inconsistency between this deed and the Project Deed, the Project Deed will prevail.

#### **1.5 Recognition of rights and obligations under State Project Documents**

- (a) Operator Franchisee agrees that nothing in this deed will in any way operate as a bar to the exercise by the State of, or a waiver or modification to, the State's rights under any State Project Document.
- (b) The giving of any approval or the making of any direction or appointment or the exercise of any authority or discretion or the exercise, giving or making of any other matter or thing of any nature by the State under this deed will not relieve Operator Franchisee from its obligations under the State Project Documents, unless expressly stated otherwise.

### **2 Term**

This deed commences on the Commencement Date and will remain in force until all Escrow Material is released in accordance with this deed or this deed is otherwise terminated under **clause 10**.

### **3 Representatives**

#### **3.1 State Representative**

- (a) The State has appointed the State Representative in accordance with clause 6.4 of the Project Deed.
- (b) The State Representative will carry out all of its functions under this deed as the agent of the State (and not as an independent verifier, reviewer, certifier, assessor or valuer).
- (c) The State may at any time by notice to the other parties, replace the State Representative with another person.

#### **3.2 Operator Franchisee Representative**

- (a) Operator Franchisee has appointed or will appoint an Operator Franchisee Representative in accordance with clause 6.6 of the Project Deed.
- (b) Any communication with or information given to the Operator Franchisee Representative by or on behalf of another party will be deemed to be made or given to Operator Franchisee.
- (c) Operator Franchisee may revoke the authority or appointment of the Operator Franchisee Representative at any time by notice to the State,

provided that it appoints another natural person as an alternate or substitute Operator Franchisee Representative by notice to the State.

## 4 Representations and warranties

Each party represents and warrants to each other party that:

- (a) **(Power)**: it has the power to execute, deliver and perform its obligations under or as contemplated by this deed and all necessary action has been taken to authorise its execution, delivery and performance;
- (b) **(Obligations binding)**: this deed constitutes its valid and binding obligations enforceable against it in accordance with its terms, subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar laws affecting creditors rights generally and subject to the availability of equitable remedies; and
- (c) **(No contravention)**: the execution by it of, the performance by it of its obligations under, and the compliance by it with the provisions of this deed does not and will not contravene any existing Law to which it is subject.

## 5 Deposit, access, loss and release of Escrow Material

### 5.1 Deposit of Escrow Material

- (a) **(Deposit)**: Operator Franchisee must deposit Escrow Material with the Escrow Agent from time to time as required by the Project Deed and the Escrow Agent must accept custody of the Escrow Material.
- (b) **(Confirmation of receipt)**: Immediately upon receiving any Escrow Material, the Escrow Agent must notify the State and Operator Franchisee and confirm receipt of that Escrow Material.
- (c) **(Storage)**: The Escrow Agent must:
  - (i) place the Escrow Material in a Container; and
  - (ii) store the Container in a safe and secure place at the Escrow Agent's premises in Brisbane.
- (d) **(Register)**: The Escrow Agent must maintain a register of Escrow Material deposited, stored and released under this deed in the form set out in **schedule 1**.
- (e) **(Information and inspection of register)**:
  - (i) The Escrow Agent must promptly comply with a request of the State or Operator Franchisee to inspect and be furnished with:
    - (A) a copy of the register referred to in **clause 5.1(d)**; or



- (B) information about storage, safety and security procedures relating to the Escrow Material.
- (ii) The reasonable costs of the Escrow Agent complying with a request under **clause 5.1(e)(i)** will be borne by Operator Franchisee. The State will promptly reimburse Operator Franchisee for the costs of the Escrow Agent borne by Operator Franchisee arising from a request by the State under this **clause 5.1(e)(i)**.
- (iii) The Escrow Agent must release the Escrow Material to the State's auditor upon presentation of a notice issued by the State under clause 5.1.7(e) of the Project Deed. The State's auditor will conduct the audit at the Escrow Agent's premises. If the Escrow Agent does not have the required equipment or facilities, the Escrow Agent must release the Escrow Material to the State's auditor at Operator Franchisee's premises to enable the auditor to conduct the audit at those premises, and to return the Escrow Material to the Escrow Agent at those premises.

## 5.2 Access to Escrow Material

- (a) The Escrow Agent must authorise its relevant personnel to perform maintenance, security or supervisory activities relating to storage of the Escrow Material or to the Escrow Agent's premises generally. Subject to this deed and unless required by Law, no other person may have access to the Escrow Material unless the Escrow Agent has been notified in advance by Operator Franchisee and the State.

## 5.3 Loss of Escrow Material

- (a) **(Loss of Escrow Material):** If the Escrow Material or any medium containing the Escrow Material is lost, destroyed or damaged while in the possession, custody or control of the Escrow Agent:
  - (i) the Escrow Agent must promptly notify Operator Franchisee and the State; and
  - (ii) Operator Franchisee must within 30 Business Days replace the lost, damaged or destroyed Escrow Material at:
    - (A) Operator Franchisee's cost if the loss, damage or destruction was caused by Operator Franchisee's negligence, recklessness, act or omission or breach of this deed; or
    - (B) the Escrow Agent's cost in all other circumstance.
- (b) **(Specific performance):** Without limiting any other right to obtain specific performance, Operator Franchisee acknowledges that the State is entitled to specific performance of Operator Franchisee's obligations in **clause 5.3(a)**.

#### 5.4 Release of Escrow Material

- (a) **(Release to any person):** The Escrow Agent must immediately release the Escrow Material to any person nominated by notice signed by both the State and Operator Franchisee.
- (b) **(Release to the State):** The Escrow Agent must release the Escrow Material to the State immediately on request from the State following the occurrence of any of the following events:
  - (i) in respect of the Escrow Material which is not the Vehicle Escrow Material and the Signalling System Escrow Material:
    - (A) the Project Deed is terminated for any Operator Franchisee Termination Event;
    - (B) the Term expires;
    - (C) the State exercises any Step-In Right in accordance with the Project Deed, but only to the extent, and for the period, required for the State to exercise its Step-In Rights; or
    - (D) the parties otherwise agree to release the Escrow Material; and
  - (ii) in respect of the Vehicle Escrow Material and Signalling System Escrow Material:
    - (A) the Project Deed is terminated for any Operator Franchisee Termination Event or Force Majeure Event;
    - (B) the date which is 25 years from the date of the Project Deed;
    - (C) the State exercises any Step-In Rights in accordance with the Project Deed, but only to the extent, and for the period, required for the State to exercise its Step-In Rights;
    - (D) the parties otherwise agree to the release of the Escrow Material; or
    - (E)
      - (1) the State wishes to interface or integrate the Project, Project Works or the System, or the Project Activities, with the broader GCRT Network (including any Future Stage);
      - (2) access to the Vehicle Escrow Material and/or Signalling System Escrow Material is necessary to design or implement such interface or integration; and
      - (3) the Vehicle Supplier or the Signalling System Supplier cannot or will not agree to support the State with such interface or integration on reasonable commercial terms,

in which case the Vehicle Escrow Material and/or Signalling System Escrow Material will be released to the State to the extent and for the period reasonably required by the State.

- (c) **(Release to new escrow agent):** If:
- (i) an Event of Insolvency occurs in respect of the Escrow Agent, or the Escrow Agent threatens to become, or is in jeopardy of becoming subject to any form of insolvency administration; or
  - (ii) the Escrow Agent is in breach of this deed,
  - (iii) the Escrow Agent must release the Escrow Material:
  - (iv) to a new escrow agent appointed by the State and Operator Franchisee, immediately upon notice from the State to the Escrow Agent of the identity of the new escrow agent;
  - (v) to a third party agreed by the State and Operator Franchisee, immediately upon notice from the State to the Escrow Agent of the identity of that third party; or
  - (vi) if the State and Operator Franchisee are unable to agree on a new escrow agent or third party within 2 Business Days of any communication between the parties relating to this **clause 5.4(c)**, to an independent third party nominated by the State, immediately on notice from the State to the Escrow Agent of the identity of that third party.

## 6 Escrow Agent's further obligations

### 6.1 General

- (a) The Escrow Agent must:
- (b) retain the Escrow Material in a safe and secure manner and in an environment that minimises degradation of the Escrow Material;
- (c) subject to **clause 5.3(a)(ii)(A)**, bear the costs of any loss or destruction of or damage to the Escrow Material while in its possession or control; and
- (d) ensure the Escrow Material remains in the same condition it was in at the time of deposit with the Escrow Agent.

### 6.2 Insurance

- (a) During the term of this deed, the Escrow Agent must:
- (b) insure the Escrow Material in favour of the State and Operator Franchisee for their respective interests under this deed against loss of or damage to the Escrow Material due to any cause; and
- (c) provide both the State and Operator Franchisee with a copy of the insurance policy upon request by either of them.

### 6.3 Confidentiality

- (a) **(Confidentiality):** The Escrow Agent:
  - (i) acknowledges that the Escrow Material is the property of Operator Franchisee or its Associates in which the State has an interest; and
  - (ii) must treat the Escrow Material which comes into its possession, control or custody under this deed as confidential.
- (b) **(Prohibited Acts):** The Escrow Agent must not:
  - (i) copy, reproduce, deal with or in any way use the Escrow Material without the permission of both the State and Operator Franchisee; or
  - (ii) disclose the Escrow Material to any person without the permission of Operator Franchisee,
  - (iii) except as permitted under this deed (including under **clause 5.1(e)(iii)**).
- (c) **(Access by other persons):** The Escrow Agent must ensure any person to whom the Escrow Agent grants access to the Escrow Material will, if requested by the State or Operator Franchisee, execute an agreement with the State and Operator Franchisee undertaking the same obligations as are imposed on the Escrow Agent under this **clause 6.3**.

### 6.4 Subcontracting

- (a) The Escrow Agent must not subcontract or otherwise arrange for another person to perform any part of this deed or to discharge any of its obligations under this deed without the prior consent of the State.

## 7 Escrow fees and charges

### 7.1 Payment

- (a) Operator Franchisee will pay the Escrow Fee to the Escrow Agent without demand on the Commencement Date and on each anniversary of the Commencement Date.

### 7.2 Late Payment

- (a) The Escrow Agent must notify the State within a reasonable period if Operator Franchisee fails to make any payment to the Escrow Agent by the due date. On receipt of such notice, the State may pay to the Escrow Agent all amounts for which Operator Franchisee is in arrears.
- (b) The State may deduct amounts paid by the State under **clause 7.2(a)** from any money otherwise due from the State to Operator Franchisee or recover such amounts from Operator Franchisee as a debt due and payable.

### 7.3 Other charges

- (a) The Escrow Fee is inclusive of all taxes, duties, fees or other government charges which may be imposed on the storage of the Escrow Material under this deed or otherwise.

## 8 Disputes

Any disputes arising between the parties concerning the subject matter of this deed will must be resolved in the same manner that disputes or differences of opinion are resolved under clause 57 (Dispute Resolution) of the Project Deed. Accordingly, the provisions of clause 57 (Dispute Resolution) of the Project Deed are incorporated into this deed, such that:

- (a) the parties to the relevant dispute will be the parties who have referred the dispute or difference under this deed for dispute resolution;
- (b) the parties to the relevant dispute will be the parties whose representatives will comprise the Senior Project Group for the purposes of clause 57 (Dispute Resolution) of the Project Deed; and
- (c) the only matters for resolution under the provisions of the Project Deed are the disputes or differences referred for resolution under this deed.

## 9 GST

### 9.1 Interpretation

- (a) Except if the context suggests otherwise, terms used in this **clause 9** have the meanings given to those terms by the GST Law (as amended from time to time).
- (b) Unless otherwise expressly stated, all consideration to be provided under this deed is exclusive of GST. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purpose of this **clause 9**.
- (c) References to GST payable and input tax credit entitlement include GST payable by, and the input tax credit entitlement of, the representative member for a GST group of which the entity is a member.

### 9.2 Additional amount of GST payable

If GST becomes payable on any supply made by a party (**Supplier**) under or in connection with this deed:

- (a) any party (**Recipient**) that is required to provide consideration to the Supplier for that supply must pay an additional amount to the Supplier equal to the amount of the GST payable on that supply (**GST Amount**), at the same time as any other consideration is to be first provided for that supply; and

- (b) the Supplier must provide a tax invoice to the Recipient for that supply, no later than the time at which the GST Amount for that supply is to be paid in accordance with **clause 9.2(a)**.

### **9.3 Reimbursements**

Where a party is required under this deed to pay or reimburse an expense or outgoing of another party, the amount to be paid or reimbursed by the first party will be the sum of:

- (a) the amount of the expense or outgoing less any input tax credits in respect of the expense or outgoing to which the other party is entitled; and
- (b) if the payment or reimbursement is subject to GST, an amount equal to that GST.

### **9.4 Adjustment events**

If an adjustment event arises in respect of a taxable supply made by a Supplier under this deed, the amount payable by the recipient under **clause 9.2(a)** will be recalculated to reflect the adjustment event and a payment will be made by the recipient to the Supplier or by the Supplier to the recipient as the case requires and the Supplier must issue an adjustment note.

## **10 Termination**

### **10.1 Termination**

- (a) This deed will terminate if:
- (b) the Project Deed terminates; or
- (c) the State and Operator Franchisee terminate this deed on 10 Business Days' notice to the Escrow Agent.

The termination of this deed does not affect the rights of any party which have accrued to that party before the date of termination or as a consequence of the termination of the Project Deed.

### **10.2 Release of Escrow Material on termination**

- (a) Following termination of this deed, the Escrow Agent must immediately release the Escrow Material:
- (b) upon receipt of a request or a notice from the State (jointly with Operator Franchisee, if applicable) under **clause 5.4**, in accordance with that request or notice; or
- (c) with the consent of the State (such consent not to be unreasonably withheld or delayed (without limiting the State's right to issue a request or notice in accordance with **clause 5.4**)), to the Operator Franchisee.

## 11 Notices

Each communication (including each notice, consent, approval, request and demand) under or in connection with this deed:

- (a) must be in writing;
- (b) must be addressed as follows (or as otherwise notified by that party to each other party from time to time):

### **The State**

Name: Department of Transport and Main Roads  
Address: Gold Coast Rapid Transit Project  
Locked Bag 60  
Southport BC Queensland 4215  
Email: tim.r.poole@tmr.qld.gov.au  
For the attention of: Tim Poole, Project Director

### **Operator Franchisee**

Name: GoldLinQ Pty Ltd  
Address: Level 29, 149 William Street  
Melbourne, Victoria 3000  
Email: morne.swanepoel@plenarygroup.com.au  
For the attention of: Company Secretary

### **Escrow Agent**

Name: [            ]  
Address: [            ]  
Email: [            ]  
For the attention of: [            ]

- (c) must be signed by the party making it or (on that party's behalf) by the solicitor for, or any attorney, director, secretary or authorised agent of, that party;
- (d) must be delivered by hand or posted by prepaid post to the address, or sent by email to the email address, of the addressee, in accordance with **clause 11(b)**; and
- (e) is taken to be received by the addressee:
  - (i) (in the case of prepaid post sent to an address in the same country) on the third day after the date of posting;
  - (ii) (in the case of prepaid post sent to an address in another country) on the fifth day after the date of posting by airmail;
  - (iii) (in the case of email) upon the first to occur of:
    - (A) receipt by the sender of an email acknowledgement from the intended recipient's information system showing that the email has been delivered to the email address of that recipient;

- (B) the time that the email enters an information system which is under the control of the intended recipient; and
  - (C) the time that the email is first opened or read by an employee or officer of the intended recipient; and
  - (iv) (in the case of delivery by hand) on delivery,
- but if the communication is taken to be received on a day that is not a Business Day or after 5.00pm, it is taken to be received at 9.00am on the next Business Day.

## 12 General

### 12.1 The State and Authorities

- (a) **(The State as an Authority):**
  - (i) Subject to **clause 12.1(a)(ii)**, each party to this deed acknowledges and agrees that:
    - (A) nothing in the State Project Documents will in any way restrict or otherwise affect the unfettered discretion of the State to exercise any of its statutory functions or powers; and
    - (B) anything the State does, fails to do, or purports to do, pursuant to its statutory functions or powers, will be deemed not to be an act or omission of the State under this deed and will not any party to this deed to make any Claim against the State arising out of the subject matter of any State Project Document.
  - (ii) **Clause 12.1(a)(i)** does not, however, limit any liability which the State would have had to a party to this deed, to the extent that it is expressly provided for in this deed or as a result of a breach by the State of this deed, but for **clause 12.1(a)(i)**.
- (b) **(Other Authorities):** Each party to this deed acknowledges that:
  - (i) it bears the risk of Authorities exercising their statutory functions and powers in a manner which disrupts, interferes with or otherwise affects the Project Activities, except as otherwise stated in this deed; and
  - (ii) the State, in performing any of its duties and obligations, is not obliged to exercise any power, function or duty within the responsibility of any other Authority or to influence, override or direct any other Authority in the proper exercise of its legal duties and functions.
- (c) **(Reasonable endeavours):** If the State is required under the terms of this deed to exercise best or reasonable endeavours:



- (i) the State 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;
- (ii) the State cannot guarantee the relevant outcome; and
- (iii) the State, by undertaking to exercise reasonable endeavours, does not agree to:
  - (A) interfere with or influence the exercise by itself or any other person of a statutory power or discretion;
  - (B) exercise a power or discretion or otherwise act in a manner that promotes the objectives and expected outcomes of the Project Documents if the State regards that exercise as not in the public interest;
  - (C) develop policy or legislate by reference only or predominantly to the interests of the Project Documents;
  - (D) procure legislation in the future in a manner that is only consistent with the objectives and expected outcomes of the Project Documents; or
  - (E) act in any other way that the State regards as not in the public interest.

## 12.2 Replacement Body

Where a reference is made to any body or authority which ceases to exist (**Former Body**), that reference will be to that body or authority (**Replacement Body**) which then serves substantially the same functions as the Former Body. Any reference to any senior officer of the Former Body will be to the equivalent senior officer of the Replacement Body.

## 12.3 Business Day

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

## 12.4 Disclosure, confidentiality and publicity

- (a) (**Disclosure by the State**): Subject to clause 50.1 (Disclosure by the State) of the Project Deed, the State may publish or disclose (on the internet or otherwise):
  - (i) the terms and conditions of any Project Document; and
  - (ii) any document or information arising under, out of or in connection with any Project Document or relating to the performance of any Project Document.
- (b) (**Public disclosure**):

- (i) Each party to this deed acknowledges and agrees that disclosures regarding the Project by the State, the State or any Authority may be required:
  - (A) under the *Right to Information Act 2009* (Qld) or any similar or replacement legislation; and
  - (B) to satisfy the disclosure requirements of the Auditor General and to satisfy the requirements of Parliamentary accountability, including tabling information concerning the Project Documents in Parliament,
- (c) **(Public Disclosure Obligations).**
  - (i) Each party must, at its own cost and expense, use all reasonable endeavours to assist the State, the State or an Authority in meeting its Public Disclosure Obligations.
- (d) **(Publicity):** Except for notices which a party is required to disclose to any recognised stock exchange, each party (other than the State) must:
  - (i) not make any public announcements or statements in relation to the Project (including by posting any information relating to the Project on any website) without the State's prior consent;
  - (ii) use reasonable endeavours to agree with the State the wording and timing of all public announcements and statements by it or its Associates relating to the Project before the relevant announcement or statement is made;
  - (iii) give the State a draft of any proposed media release relating to the Project and obtain the State's approval of the media release before distributing it;
  - (iv) give the State a copy of any announcement or media release as soon as practicable after it is made or distributed; and
  - (v) ensure that all of its Associates comply with the requirements referred to in this **clause 12.4(c)**.

## **12.5 No bias against drafter**

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

## **12.6 Cost of performing obligations**

Each party must perform its obligations under this deed at its own cost, unless expressly provided otherwise.

## **12.7 Governing Law and jurisdiction**

- (a) This deed is governed by and must be construed according to the Law applying in Queensland.
- (b) Each party irrevocably:

- (i) submits to the non exclusive jurisdiction of the courts of Queensland, and the courts competent to determine appeals from those courts, with respect to any proceedings which may be brought at any time relating to this deed; and
- (ii) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within **clause 12.7(b)(i)**.

## **12.8 Amendments**

This deed may only be varied by a deed executed by or on behalf of each party.

## **12.9 Assignment**

- (a) Subject to **clause 12.9(b)**, no party may assign, transfer or otherwise dispose of all or any part of its rights, benefits or obligations under this deed without the prior consent of the other parties (such consent not to be unreasonably withheld).
- (b) Nothing will prevent the assignment or transfer by the State to an assignee of the rights or obligations of the State under the Project Deed to the extent permitted by the Project Deed.

## **12.10 Waiver**

- (a) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy provided by Law or under this deed by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by Law or under this deed.
- (b) A waiver or consent given by a party under this deed is only effective and binding on that party if it is given or confirmed in writing by that party.
- (c) No waiver of a breach of a term of this deed operates as a waiver of another breach of that term or of a breach of any other term of this deed.

## **12.11 Survival of certain provisions; no merger**

- (a) **Clauses 6.3** (Confidentiality), **8** (Disputes), **9** (GST) and **11** (Notices), this **clause 12** (General), the representations and warranties given by Operator Franchisee and the Escrow Agent under this deed and any other provisions which are expressed to survive termination (together, the **Surviving Clauses**) will survive rescission, termination or expiration of this deed.
- (b) If this deed is rescinded or terminated, no party will be liable to any other party except:
  - (i) under the Surviving Clauses; or

- (ii) in respect of any breach of this deed occurring before such rescission or termination.
- (c) No right or obligation of any party will merge on completion of any transaction under this deed. All rights and obligations under this deed survive the execution and delivery of any transfer or other document which implements any transaction under this deed.

#### **12.12 Further acts and documents**

Each party must promptly do all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to that party) required by Law or reasonably requested by another party to give effect to this deed.

#### **12.13 Consents**

A consent required under this deed from a party may be given or withheld, or may be given subject to any conditions, as that party thinks fit, unless this deed expressly provides otherwise.

#### **12.14 No representation or reliance**

- (a) Each party acknowledges that no party (nor any person acting on a party's behalf) has made any representation or other inducement to it to enter into this deed, except for representations or inducements expressly set out in this deed.
- (b) Each party acknowledges and confirms that it does not enter into this deed in reliance on any representation or other inducement by or on behalf of any other party, except for representations or inducements expressly set out in this deed.

#### **12.15 Severance**

If at any time any provision of this deed is or becomes illegal, invalid or unenforceable in any respect under applicable Law, that provision is to be severed to the extent necessary to make this deed enforceable, and it will not affect or impair the legality, validity or enforceability of any other provision of this deed.

#### **12.16 Indemnities**

- (a) Each indemnity in this deed is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiration of this deed.
- (b) It is not necessary for a party to incur expense or to make any payment before enforcing a right of indemnity conferred by this deed.
- (c) A party must pay on demand any amount it must pay under an indemnity in this deed.

### **12.17 Counterparts**

This deed may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes the deed of each party who has executed and delivered that counterpart.

### **12.18 Attorneys**

Each person who executes this deed on behalf of a party under a power of attorney declares that he or she is not aware of any fact or circumstance that might affect his or her authority to do so under that power of attorney.

### **12.19 Relationship between parties**

Nothing in, or contemplated by, any State Project Document will be construed or interpreted as:

- (a) constituting a relationship between the State and Operator Franchisee, the Escrow Agent, or any other person, of partners, joint venturers, fiduciaries, employer and employee or principal and agent; or
- (b) imposing any general duty of good faith on the State to Operator Franchisee, the Escrow Agent or any of their respective Associates in relation to or arising out of this deed, other than to comply with the obligations (if any) expressly stated to be assumed by the State under the State Project Documents on a good faith basis; or
- (c) unlawfully restricting or otherwise unlawfully affecting the unfettered discretion of the State to exercise any of its executive or statutory powers or functions under any Law.

# Schedule 1

## Form of Register

**Executed** as a deed.

**Executed** for and on behalf of the **State of** )  
**Queensland** by Annastacia Palaszczuk, )  
Minister for Transport and Multicultural )  
Affairs, in the presence of: )

.....  
Signature of Witness

.....  
Signature

.....  
Name of Witness (print)

**Executed by GoldLinQ Pty Ltd** ACN 147 )  
815 441 by the party's attorney pursuant to )  
power of attorney dated ..... who )  
states that no notice of revocation of the )  
power of attorney has been received in the )  
presence of: )

.....  
Signature of Witness

.....  
Signature of Attorney

.....  
Name of Witness (print)

.....  
Name of Attorney (print)

**Executed by [Escrow Agent]** by the party's )  
attorney pursuant to power of attorney dated )  
..... who states that no notice of )  
revocation of the power of attorney has )  
been received in the presence of: )  
)

.....  
Signature of Witness

.....  
Signature of Attorney

.....  
Name of Witness (print)

.....  
Name of Attorney (print)



## Part B: Form of Deed of Assurance

---

The State of Queensland

---

GoldLinQ Pty Ltd

---

[Licensed IP Owner]

---

# Gold Coast Rapid Transit Deed of Assurance

# Contents

---

## **1 Definitions and interpretation**

- 1.1 Definitions
- 1.2 Interpretation

---

## **2 Licensed Intellectual Property**

---

## **3 Notices**

---

## **4 General**

- 4.1 Business Day
- 4.2 Disclosure, confidentiality and publicity
- 4.3 No bias against drafter
- 4.4 Cost of performing obligations
- 4.5 Governing Law and jurisdiction
- 4.6 Amendments
- 4.7 Assignment
- 4.8 Waiver
- 4.9 Survival of certain provisions; no merger
- 4.10 Further acts and documents
- 4.11 Consents
- 4.12 No representation or reliance
- 4.13 Severance
- 4.14 Counterparts
- 4.15 Attorneys
- 4.16 Relationship between parties

---

## **Schedule 1 - Licensed Intellectual Property**

---

**Date**

## Parties

The State of Queensland (**the State**) c/- The Department of Transport and Main Roads

GoldLinQ Pty Ltd ACN 147 815 441 of Level 29, 149 William Street, Melbourne, Victoria 3000 (**Operator Franchisee**)

[ ] ABN [ ] of [ ] (**Licensed IP Owner**)

## Background

- A The State has entered into the Project Deed with Operator Franchisee.
  - B Operator Franchisee's obligations under the Project Deed include the licensing of the Licensed Intellectual Property to the State, with the right to sublicense.
  - C The Licensed IP Owner owns all Intellectual Property in the Licensed Intellectual Property, and has authorised Operator Franchisee to grant the Project Deed Licence to the State.
  - D By this deed, the Licensed IP Owner assures the State that the State may continue exercising its rights under the Project Deed Licence, notwithstanding any change affecting the Licensed IP Owner's direct or indirect relationship with Operator Franchisee.
- 

## Agreed terms

### 13 Definitions and interpretation

#### 13.1 Definitions

In this deed:

**Intellectual Property** includes any and all intellectual and industrial property rights throughout the world, whether subsisting now or in the future, including rights of any kind in:

- (a) inventions, discoveries and novel designs, whether or not registered or registrable as patents, innovation patents or designs, including developments or improvements of equipment, technology, processes, methods or techniques;
- (b) literary works, dramatic works, musical works, artistic works, cinematograph films, television broadcasts, sound broadcasts, published editions of works and any other subject matter in which copyright (including future copyright and rights

in the nature of or analogous to copyright) may, or may upon creation of the subject matter, subsist anywhere in the world;

- (c) registered and unregistered trade marks and service marks, including goodwill in the business concerned in the relevant goods or services;
- (d) trade, business or company names;
- (e) internet domain names; and
- (f) proprietary rights under the *Circuit Layouts Act 1989* (Cth),

whether created or in existence before or after the date of this deed (and whether developed or created for the purposes of the Project or for any other purpose) and includes any thing, whether tangible or intangible, which incorporates, embodies or is based on any of the things referred to in **paragraphs (a) to (f)** inclusive of this definition.

**Licensed Intellectual Property** means the Intellectual Property described in **schedule 1**.

**Project** means the Gold Coast Rapid Transit project more particularly described in the Project Deed.

**Project Deed** means the document entitled "Gold Coast Rapid Transit – Project Deed" dated on or about the date of this deed between the State and Operator Franchisee.

**Project Deed Licence** means a licence in respect of the Licensed Intellectual Property in favour of the State (including a right to sublicense), as contemplated by clause 51.5 (Rights granted to the State) of the Project Deed. ***[Clause reference to be amended as appropriate if this deed is provided in respect of Third Party Software or Equipment IP, rather than Licensed Intellectual Property (within the meaning given to those terms in the Project Deed).]***

## 13.2 Interpretation

In this deed:

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

and the following rules apply in interpreting this deed unless the context makes it clear that a rule is not intended to apply:

- (b) if a party to this deed comprises more than one person an obligation or a liability assumed by, or a right conferred on that party binds or benefits the persons comprising that party jointly and severally;
- (c) person includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (d) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation;
- (e) a reference to a document (including this deed) is to that document as varied, novated, ratified or replaced from time to time;

- (f) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re enactments and replacements;
- (g) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (h) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this deed, and a reference to this deed includes all schedules, exhibits, attachments and annexures to it;
- (i) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (j) the term "may" when used in the context of a power or right exercisable by the State means that the State can exercise that power or right in its absolute and unfettered discretion and the State has no obligation to any other party to do so;
- (k) where a right or remedy is conferred on the State under this deed, that right or remedy is in addition to, and not in substitution of, any other right or remedy conferred on the State under this deed or otherwise according to Law;
- (l) includes in any form is not a word of limitation;
- (m) a reference to \$ or dollar is to Australian currency; and
- (n) references to a notice, notification, record, report, consent, waiver, agreement, demand, evidence, details or approval (or any variations of those words), are references to a notice, notification, record, report, consent, waiver, agreement, demand, evidence, details or approval (or any variations of those words) in writing.

## 14 Licensed Intellectual Property

- (a) The Licensed IP Owner warrants that it owns all Intellectual Property in the Licensed Intellectual Property and is entitled to enter into this deed.
- (b) If the Licensed IP Owner's relationship with Operator Franchisee concerning the Licensed Intellectual Property changes, or is likely to change (including if there is a termination of any licensing arrangement or an inability to pay debts), then:
  - (i) the Licensed IP Owner and Operator Franchisee must immediately notify the State, including a reasonable level of detail as to the nature and circumstances of the change or likely change and its effect or likely effect on the State; and
  - (ii) the State may continue exercising its rights under the Project Deed Licence as though such a change or those circumstances had not occurred or will not occur (as the case may be).
- (c) The Licensed IP Owner must ensure that any entity which succeeds to, is assigned or otherwise becomes the owner of, any of the Intellectual Property in

respect of the Licensed Intellectual Property agrees to be bound by the terms of this deed as if it were named in this deed as the Licensed IP Owner.

- (d) The Licensed IP Owner must at its cost and expense promptly following a demand by the State, execute all agreements, assurances and other documents and instruments, and provide all such information in its possession or control, as the State reasonably requests to perfect or give effect to the rights and powers of the State created or to be created under this deed.

## 15 Notices

Each communication (including each notice, consent, approval, request and demand) under or in connection with this deed:

- (a) must be in writing;
- (b) subject to **clause 4.5(d)**,] must be addressed as follows (or as otherwise notified by that party to each other party from time to time):

### **The State**

Name: Department of Transport and Main Roads  
Address: Gold Coast Rapid Transit Project  
Locked Bag 60  
Southport BC Queensland 4215  
Email: tim.r.poole@tmr.qld.gov.au  
For the attention of: Tim Poole, Project Director

### **Operator Franchisee**

Name: GoldLinQ Pty Ltd  
Address: Level 29, 149 William Street  
Melbourne, Victoria 3000  
Email: morne.swanepoel@plenarygroup.com.au  
For the attention of: Company Secretary

### **Licensed IP Owner**

Name: [            ]  
Address: [            ]  
Email: [            ]  
For the attention of: [            ]

- (c) must be signed by the party making it or (on that party's behalf) by the solicitor for, or any attorney, director, secretary or authorised agent of, that party;
- (d) must be delivered by hand or posted by prepaid post to the address, or sent by email to the email address, of the addressee, in accordance with **clause 11(b)**; and
- (e) is taken to be received by the addressee:
  - (i) (in the case of prepaid post sent to an address in the same country) on the third day after the date of posting;

- (ii) (in the case of prepaid post sent to an address in another country) on the fifth day after the date of posting by airmail;
  - (iii) (in the case of email) upon the first to occur of:
    - (A) receipt by the sender of an email acknowledgement from the intended recipient's information system showing that the email has been delivered to the email address of that recipient;
    - (B) the time that the email enters an information system which is under the control of the intended recipient; and
    - (C) the time that the email is first opened or read by an employee or officer of the intended recipient; and
  - (iv) (in the case of delivery by hand) on delivery,
- but if the communication is taken to be received on a day that is not a Business Day or after 5.00pm, it is taken to be received at 9.00am on the next Business Day.

## 16 General

### 16.1 Business Day

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

### 16.2 Disclosure, confidentiality and publicity

- (a) **(Disclosure by the State):** Subject to clause 50.1 (Disclosure by the State) of the Project Deed, the State may publish or disclose (on the internet or otherwise):
  - (i) the terms and conditions of this deed; and
  - (ii) any document or information arising under, out of or in connection with any this deed or relating to the performance of this deed,
- (b) **(Public disclosure):**
  - (i) Each party to this deed acknowledges and agrees that disclosures regarding the Project by the State, the State or any Authority may be required:
    - (A) under the *Right to Information Act 2009* (Qld) or any similar or replacement legislation; and
    - (B) to satisfy the disclosure requirements of the Auditor General and to satisfy the requirements of Parliamentary accountability, including tabling information concerning this deed in Parliament,
- (c) **(Public Disclosure Obligations).**



- (i) Each party must, at its own cost and expense, use all reasonable endeavours to assist the State, the State or an Authority in meeting its Public Disclosure Obligations.
- (d) **(Publicity):** Except for notices which a party is required to disclose to any recognised stock exchange, each party (other than the State) must:
  - (i) not make any public announcements or statements in relation to the Project (including by posting any information relating to the Project on any website) without the State's prior consent;
  - (ii) use reasonable endeavours to agree with the State the wording and timing of all public announcements and statements by it or its Associates relating to the Project before the relevant announcement or statement is made;
  - (iii) give the State a draft of any proposed media release relating to the Project and obtain the State's approval of the media release before distributing it;
  - (iv) give the State a copy of any announcement or media release as soon as practicable after it is made or distributed; and
  - (v) ensure that all of its Associates comply with the requirements referred to in this **clause 12.4(c)**.

### **16.3 No bias against drafter**

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

### **16.4 Cost of performing obligations**

Each party must perform its obligations under this deed at its own cost, unless expressly provided otherwise.

### **16.5 Governing Law and jurisdiction**

- (a) This deed is governed by and must be construed according to the Law applying in Queensland.
- (b) Each party irrevocably:
  - (i) submits to the non exclusive jurisdiction of the courts of Queensland, and the courts competent to determine appeals from those courts, with respect to any proceedings which may be brought at any time relating to this deed; and
  - (ii) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within **clause 12.7(b)(i)**.
- (c) The Licensed IP Owner agrees that, subject to any rights of appeal which the Licensed IP Owner may have in Queensland or to the High Court of Australia, a judgment or order of a court of Queensland in connection with this deed is conclusive and binding on the Licensed IP Owner and may be enforced against the Licensed IP Owner in the courts of any other jurisdiction.

- (d) [The Licensed IP Owner irrevocably appoints Operator Franchisee as its agent to receive service of process or other documents in any action in connection with this deed and irrevocably agrees that service on Operator Franchisee as agent will be sufficient service on it.] ***[This paragraph may be deleted if the Licensed IP Owner has its registered office in Australia.]***

## **16.6 Amendments**

This deed may only be varied by a deed executed by or on behalf of each party.

## **16.7 Assignment**

- (a) Subject to **clause 12.9(b)**, no party may assign, transfer or otherwise dispose of all or any part of its rights, benefits or obligations under this deed without the prior consent of the other parties (such consent not to be unreasonably withheld).
- (b) Nothing will prevent the assignment or transfer by the State to an assignee of the rights or obligations of the State under the Project Deed to the extent permitted by the Project Deed.

## **16.8 Waiver**

- (a) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy provided by Law or under this deed by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by Law or under this deed.
- (b) A waiver or consent given by a party under this deed is only effective and binding on that party if it is given or confirmed in writing by that party.
- (c) No waiver of a breach of a term of this deed operates as a waiver of another breach of that term or of a breach of any other term of this deed.

## **16.9 Survival of certain provisions; no merger**

- (a) This **clause 12** and each warranty given by the Licensed IP Provider under this deed will survive rescission, termination or expiration of this deed (**Surviving Clauses**).
- (b) If this deed is rescinded or terminated, no party will be liable to any other party except under the Surviving Clauses, or in respect of any breach of this deed occurring before such rescission or termination.
- (c) No right or obligation of any party will merge on completion of any transaction under this deed. All rights and obligations under this deed survive the execution and delivery of any transfer or other document which implements any transaction under this deed.

## **16.10 Further acts and documents**

Each party must promptly do all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to that party) required by Law or reasonably requested by another party to give effect to this deed.

#### **16.11 Consents**

A consent required under this deed from a party may be given or withheld, or may be given subject to any conditions, as that party thinks fit, unless this deed expressly provides otherwise.

#### **16.12 No representation or reliance**

- (a) Each party acknowledges that no party (nor any person acting on a party's behalf) has made any representation or other inducement to it to enter into this deed, except for representations or inducements expressly set out in this deed.
- (b) Each party acknowledges and confirms that it does not enter into this deed in reliance on any representation or other inducement by or on behalf of any other party, except for representations or inducements expressly set out in this deed.

#### **16.13 Severance**

If at any time any provision of this deed is or becomes illegal, invalid or unenforceable in any respect under applicable law, that provision is to be severed to the extent necessary to make this deed enforceable, and it will not affect or impair the legality, validity or enforceability of any other provision of this deed.

#### **16.14 Counterparts**

This deed may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes the deed of each party who has executed and delivered that counterpart.

#### **16.15 Attorneys**

Each person who executes this deed on behalf of a party under a power of attorney declares that he or she is not aware of any fact or circumstance that might affect his or her authority to do so under that power of attorney.

#### **16.16 Relationship between parties**

Nothing in, or contemplated by, this deed will be construed or interpreted as:

- (a) constituting a relationship between the State and Operator Franchisee, the Licensed IP Provider, or any other person, of partners, joint venturers, fiduciaries, employer and employee or principal and agent; or
- (b) imposing any general duty of good faith on the State to Operator Franchisee or the Licensed IP Provider in relation to or arising out of this deed, other than to comply with the obligations (if any) expressly stated to be assumed by the State under the this deed on a good faith basis; or
- (c) unlawfully restricting or otherwise unlawfully affecting the unfettered discretion of the State to exercise any of its executive or statutory powers or functions under any law.

# Schedule 1

## Licensed Intellectual Property

*[Insert a description of the component of the Licensed Intellectual Property (as defined in the Project Deed) in which the Licensed IP Owner owns the Intellectual Property].*

**Executed** as a deed.

**Executed** for and on behalf of the **State of** )  
**Queensland** by Annastacia Palaszczuk, )  
Minister for Transport and Multicultural )  
Affairs, in the presence of: )

.....  
Signature of Witness

.....  
Signature

.....  
Name of Witness (print)

**Executed** by **GoldLinQ Pty Ltd** ACN 147 )  
815 441 by the party's attorney pursuant to )  
power of attorney dated ..... who )  
states that no notice of revocation of the )  
power of attorney has been received in the )  
presence of: )

.....  
Signature of Witness

.....  
Signature of Attorney

.....  
Name of Witness (print)

.....  
Name of Attorney (print)

**Executed** by **[Licensed IP Owner]** by the )  
party's attorney pursuant to power of )  
attorney dated ..... who states that )  
no notice of revocation of the power of )  
attorney has been received in the presence )  
of: )

.....  
Signature of Witness

.....  
Signature of Attorney

.....  
Name of Witness (print)

.....  
Name of Attorney (print)

## Part C: Form of Direct Deed for Designers and Qualified Fire Engineer

---

The State of Queensland

---

GoldLinQ Pty Ltd

---

Bombardier Transportation Australia Pty Ltd

---

McConnell Dowell Constructors (Aust) Pty Ltd

---

Hyder Consulting Pty Limited

---

APP Corporation Pty Ltd

---

[Consultant]

---

Gold Coast Rapid Transit

[QFE Direct  
Deed/Designer Direct  
Deed]

# Contents

<b>1</b>	<b>Defined terms &amp; interpretation</b>	
1.1	Defined terms	
1.2	Interpretation	
<b>2</b>	<b>Provision of Certificates</b>	
<b>3</b>	<b>The State's, the Independent Verifier's, Operator Franchisee's and D&amp;C Contractor's obligations</b>	
<b>4</b>	<b>Liability</b>	
<b>5</b>	<b>General</b>	
5.1	Business Day	
5.2	Disclosure, confidentiality and publicity	
5.3	No bias against drafter	
5.4	Cost of performing obligations	
5.5	Governing Law and jurisdiction	
5.6	Amendments	
5.7	Assignment	
5.8	Waiver	
5.9	Survival of certain provisions; no merger	
5.10	Further acts and documents	
5.11	Consents	
5.12	No representation or reliance	
5.13	Severance	
5.14	Counterparts	
5.15	Attorneys	
5.16	Relationship between the parties	
5.17	Notices	



Date

## Parties

The State of Queensland (**the State**) c/- The Department of Transport and Main Roads

**GoldLinQ Pty Ltd** ACN 147 815 441 of Level 29, 149 William Street, Melbourne, Victoria 3000 (**Operator Franchisee**)

**Bombardier Transportation Australia Pty Ltd** ABN 73 010 699 804 of 35-45 Frankston-Dandenong Road, Dandenong, Victoria, 3171 and **McConnell Dowell Constructors (Aust) Pty Ltd** ABN 71 002 929 017 of Level 3, 109 Burwood Road, Hawthorn, Victoria, 3122 (an unincorporated joint venture, jointly and severally the **D&C Contractor**)

**Hyder Consulting Pty Limited** ABN 76 104 485 289 of Level 5, 141 Walker Street, North Sydney, NSW, 2060 and **APP Corporation Pty Ltd** ABN 29 003 764 770 of Level 10, 111 Pacific Highway, North Sydney, NSW, 2060 (an unincorporated joint venture, jointly and severally the Independent Verifier, trading as CERT-TRAM) (**Independent Verifier**)

[ ] ABN [ ] of [ ] (**Consultant**)

---

## Background

- A. The D&C Contractor has engaged the Consultant as the [Designer/Qualified Fire Engineer] on the terms and conditions of the Deed of Appointment.
  - B. The State requires that Operator Franchisee provide the State and the Independent Verifier with the Certificates in accordance with the Project Deed.
  - C. Pursuant to the D&C Contract, the D&C Contractor must provide the Certificates to the State, Operator Franchisee and the Independent Verifier.
  - D. [Pursuant to the Deed of Appointment, the Consultant must provide the Certificates to the D&C Contractor.]
  - E. The State, the Independent Verifier, the D&C Contractor and the Consultant have agreed to limit the Consultant's liability in respect of the Services in accordance with the terms of this deed.
-

---

## Agreed terms

### 17 Defined terms & interpretation

#### 17.1 Defined terms

In this deed any word, expression, reference or term used which is defined in the Project Deed and is not specifically defined in this **clause 5.1** or elsewhere in this deed will, unless the context requires otherwise, have the same meaning in this deed as in the Project Deed.

The following words or phrases, where they appear in this deed, have the following meaning unless the context requires otherwise:

**Certificate** means any certificate provided by the Consultant to the State and the Independent Verifier in accordance with the Project Deed.

**Claim** has the meaning given to it in **clause 4(a)**.

**D&C Contract** means the document entitled "D&C Contract" between Operator Franchisee and the D&C Contractor dated *[insert date]*.

***[[[ Delete for Designer Direct Deed ]]*** Designer Direct Deed means the direct deed between the State, Operator Franchisee, the D&C Contractor, the Independent Verifier and the Consultant dated *[insert date]*, setting out the rights and obligations of the Consultant in connection with the performance of design certification services.

***[[[ Delete for QFE Direct Deed ]]*** QFE Direct Deed means the direct deed between the State, Operator Franchisee, the D&C Contractor, the Independent Verifier and the Consultant dated *[insert date]*, setting out the rights and obligations of the Consultant in connection with the performance of the services required of the Qualified Fire Engineer.

**Deed of Appointment** means the agreement between the Consultant and the D&C Contractor dated *[insert date]*, setting out the rights and obligations of the Consultant in connection with the performance of the Services.

**Services** means those services provided by the Consultant under the Deed of Appointment.

**Public Disclosure Obligations** has the meaning given to it in **clause 9.2(b)**.

**Project Deed** means the document entitled "Gold Coast Rapid Transit – Project Deed" dated *[insert date]* between the State and Operator Franchisee.

**Wilful Default** means fraud or a failure to discharge the Services by the Consultant in circumstances in which the Consultant acts with an intentional, conscious or reckless disregard of those obligations.

#### 17.2 Interpretation

In this deed:

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

and the following rules apply in interpreting this deed unless the context makes it clear that a rule is not intended to apply:

- (b) if a party to this deed comprises more than one person an obligation or a liability assumed by, or a right conferred on that party binds or benefits the persons comprising that party jointly and severally;
- (c) person includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (d) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation;
- (e) a reference to a document (including this deed) is to that document as varied, novated, ratified or replaced from time to time;
- (f) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re enactments and replacements;
- (g) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (h) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this deed, and a reference to this deed includes all schedules, exhibits, attachments and annexures to it;
- (i) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (j) the term "may" when used in the context of a power or right exercisable by the State means that the State can exercise that power or right in its absolute and unfettered discretion and the State has no obligation to any other party to do so;
- (k) where a right or remedy is conferred on the State under this deed, that right or remedy is in addition to, and not in substitution of, any other right or remedy conferred on the State under this deed or otherwise according to Law;
- (l) includes in any form is not a word of limitation;
- (m) a reference to \$ or dollar is to Australian currency; and
- (n) references to a notice, notification, record, report, consent, waiver, agreement, demand, evidence, details or approval (or any variations of those words), are references to a notice, notification, record, report, consent, waiver, agreement, demand, evidence, details or approval (or any variations of those words) in writing.

## 18 Provision of Certificates

- (a) In providing the Certificates, the Consultant must exercise the standard of skill, care and diligence in the performing its obligations under this deed that would be reasonably expected of a large multidisciplinary, international consultant familiar with local conditions, practices and requirements and experienced in all areas of design review, required for provision of [design/fire engineer] certification services. The Consultant must carry out all responsibilities in a thorough, skilful, and professional manner and in accordance with professional standards including relevant Australian and internationally recognised standards.
- (b) The Consultant will provide each Certificate to the State, Operator Franchisee, the D&C Contractor and the Independent Verifier under cover of a notice in the following form:
- (c) *Attached is a certificate in accordance with clause [## insert Project Deed clause reference under which the certificate is issued] issued pursuant to the [## Designer / QFE Direct Deed] between the State, Operator Franchisee, the D&C Contractor, the Independent Verifier and the [## Designer / QFE] dated [## insert date].*

## 19 The State's, the Independent Verifier's, Operator Franchisee's and D&C Contractor's obligations

- (a) The State, the Independent Verifier, Operator Franchisee and the D&C Contractor acknowledge that nothing in, or done or omitted to be done under, this deed will be a precedent for, limit or otherwise affect, or be construed in any way as an aid to the interpretation of, the obligations of Operator Franchisee under the Project Deed or the D&C Contractor under the D&C Contract.
- (b) The State, the Independent Verifier, Operator Franchisee and the D&C Contractor will not provide a copy of a Certificate to any third party in circumstances where that third party may reasonably be expected to rely on the Certificate other than where it may be entitled to in accordance with the terms of the Project Deed.
- (c) Without limiting **clause 7(b)**, at the same time the State, the Independent Verifier, Operator Franchisee or the D&C Contractor provides a copy of a Certificate to any third party for any reason, the State, the Independent Verifier, Operator Franchisee or the D&C Contractor (as applicable) must advise the third party that it may not rely on the Certificate.
- (d) The State, the Independent Verifier, Operator Franchisee and the D&C Contractor agree that, by the provision of the Certificate, and its obligations in relation to the certificate, the Consultant does not assume any duty, whether in contract, tort (including negligence) or otherwise, to, or in relation to, any person other than those expressly named in the certificate.

## 20 Liability

- (a) Notwithstanding any other provision of this deed, and to the maximum extent permitted by law:
- (b) the Consultant's total liability (in aggregate) to the State, the Independent Verifier and Operator Franchisee in respect of all claims, actions, demands or proceedings (**Claim**) which the State, the Independent Verifier or Operator Franchisee might have (whether jointly or severally) against the Consultant:
  - (i) in respect of the Services:
  - (ii) under, arising out of, or in connection with a Certificate, the Project Deed, the Independent Verifier Deed, the ***### Designer Direct Deed / QFE Direct Deed – delete if same entity not appointed as designer and QFE*** or this deed; or
  - (iii) otherwise at law or in equity including:
    - (A) any statute (insofar as it is possible to exclude such liability); or
    - (B) in tort for negligence or otherwise, including negligent misrepresentation, under contract, under any indemnity or under any warranty,
    - (C) in respect of any fact, matter or thing under, arising out of or in connection with the Certificates, the Project Deed, Independent Verifier Deed or this deed, (other than to the extent such Claim is in respect of Wilful Default by the Consultant), is limited in aggregate to the greater of:
  - (iv) \$10,000,000; or
  - (v) the proceeds recovered under any D&C Phase Insurances that Operator Franchisee must obtain and maintain (or cause to be obtained and maintained) under clause 43.1(a) (Insurance) of the Project Deed,
- (c) the Consultant's liability to the D&C Contractor under this deed and the Deed of Appointment is set out in the Deed of Appointment; and
- (d) the Consultant will not be liable to any party to this deed in respect to any loss for which Operator Franchisee is not liable in accordance with clause 42.4(b) of the Project Deed.

## 21 General

### 21.1 Business Day

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

## 21.2 Disclosure, confidentiality and publicity

- (a) **(Disclosure by the State):** Subject to clause 50.1 (Disclosure by the State) of the Project Deed, the State may publish or disclose (on the internet or otherwise):
  - (i) the terms and conditions of any Project Document; and
  - (ii) any document or information arising under, out of or in connection with any Project Document or relating to the performance of any Project Document.
- (b) **(Public disclosure):**
  - (i) Each party to this deed acknowledges and agrees that disclosures regarding the Project by the State, the State or any Authority may be required:
    - (A) under the *Right to Information Act 2009* (Qld) or any similar or replacement legislation; and
    - (B) to satisfy the disclosure requirements of the Auditor General and to satisfy the requirements of Parliamentary accountability, including tabling information concerning the Project Documents in Parliament,
- (c) **(Public Disclosure Obligations).**
  - (i) Each party must, at its own cost and expense, use all reasonable endeavours to assist the State, the State or an Authority in meeting its Public Disclosure Obligations.
- (d) **(Publicity):** Except for notices which a party is required to disclose to any recognised stock exchange, each party (other than the State) must:
  - (i) not make any public announcements or statements in relation to the Project (including by posting any information relating to the Project on any website) without the State's prior consent;
  - (ii) use reasonable endeavours to agree with the State the wording and timing of all public announcements and statements by it or its Associates relating to the Project before the relevant announcement or statement is made;
  - (iii) give the State a draft of any proposed media release relating to the Project and obtain the State's approval of the media release before distributing it;
  - (iv) give the State a copy of any announcement or media release as soon as practicable after it is made or distributed; and
  - (v) ensure that all of its Associates comply with the requirements referred to in this **clause 9.2(c)**.

## 21.3 No bias against drafter

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

#### **21.4 Cost of performing obligations**

Each party must perform its obligations under this deed at its own cost, unless expressly provided otherwise.

#### **21.5 Governing Law and jurisdiction**

- (a) This deed is governed by and must be construed according to the Law applying in Queensland.
- (b) Each party irrevocably:
  - (i) submits to the non exclusive jurisdiction of the courts of Queensland, and the courts competent to determine appeals from those courts, with respect to any proceedings which may be brought at any time relating to this deed; and
  - (ii) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within **clause 12.7(b)(i)**.

#### **21.6 Amendments**

This deed may only be varied by a deed executed by or on behalf of each party.

#### **21.7 Assignment**

- (a) Subject to **clause 12.9(b)**, except as expressly contemplated by this deed, no party may assign, transfer or otherwise dispose of all or any part of its rights, benefits or obligations under this deed or the Deed of Appointment without the prior consent of the other parties (such consent not to be unreasonably withheld).
- (b) Nothing will prevent the assignment or transfer by the State to an assignee of the rights or obligations of the State under this deed to the extent permitted by the Project Deed.

#### **21.8 Waiver**

- (a) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy provided by Law or under this deed by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by Law or under this deed.
- (b) A waiver or consent given by a party under this deed is only effective and binding on that party if it is given or confirmed in writing by that party.
- (c) No waiver of a breach of a term of this deed operates as a waiver of another breach of that term or of a breach of any other term of this deed.

#### **21.9 Survival of certain provisions; no merger**

- (a) The representations and warranties given by the parties under this deed and any other provisions which are expressed to survive termination

(together, the **Surviving Clauses**) will survive rescission, termination or expiration of this deed.

- (b) If this deed is rescinded or terminated, no party will be liable to any other party except:
  - (i) under the Surviving Clauses; or
  - (ii) in respect of any breach of this deed occurring before such rescission or termination.
- (c) No right or obligation of any party will merge on completion of any transaction under this deed. All rights and obligations under this deed survive the execution and delivery of any transfer or other document which implements any transaction under this deed.

#### **21.10 Further acts and documents**

Each party must promptly do all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to that party) required by Law or reasonably requested by another party to give effect to this deed.

#### **21.11 Consents**

A consent required under this deed from a party may be given or withheld, or may be given subject to any conditions, as that party thinks fit, unless this deed expressly provides otherwise.

#### **21.12 No representation or reliance**

- (a) Each party acknowledges that no party (nor any person acting on a party's behalf) has made any representation or other inducement to it to enter into this deed, except for representations or inducements expressly set out in this deed.
- (b) Each party acknowledges and confirms that it does not enter into this deed in reliance on any representation or other inducement by or on behalf of any other party, except for representations or inducements expressly set out in this deed.

#### **21.13 Severance**

If at any time any provision of this deed is or becomes illegal, invalid or unenforceable in any respect under applicable Law, that provision is to be severed to the extent necessary to make this deed enforceable, and it will not affect or impair the legality, validity or enforceability of any other provision of this deed.

#### **21.14 Counterparts**

This deed may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes the deed of each party who has executed and delivered that counterpart.

#### **21.15 Attorneys**

Each person who executes this deed on behalf of a party under a power of attorney declares that he or she is not aware of any fact or circumstance that might affect his or her authority to do so under that power of attorney.



## 21.16 Relationship between the parties

Nothing in, or contemplated by, any State Project Document will be construed or interpreted as:

- (a) constituting a relationship between the State and Operator Franchisee, the D&C Contractor, the Consultant, the Independent Verifier or any other person, of partners, joint venturers, fiduciaries, employer and employee or principal and agent;
- (b) imposing any general duty of good faith on the State to Operator Franchisee, the D&C Contractor, the Consultant, the Independent Verifier or any of their respective Associates in relation to or arising out of the Project, other than to comply with the obligations (if any) expressly stated to be assumed by the State under the State Project Documents on a good faith basis; or
- (c) unlawfully restricting or otherwise unlawfully affecting the unfettered discretion of the State to exercise any of its executive or statutory powers or functions under any Law.

## 21.17 Notices

Each communication (including each notice, consent, approval, request and demand) under or in connection with this deed:

- (a) must be in writing;
- (b) must be addressed as follows (or as otherwise notified by that party to each other party from time to time):

### **The State**

Name: Department of Transport and Main Roads  
Address: Gold Coast Rapid Transit Project  
Locked Bag 60  
Southport BC Queensland 4215  
Email: tim.r.poole@tmr.qld.gov.au  
For the attention of: Tim Poole, Project Director

### **Operator Franchisee**

Name: GoldLinQ Pty Ltd  
Address: Level 29, 149 William Street  
Melbourne, Victoria 3000  
Email: morne.swanepoel@plenarygroup.com.au  
For the attention of: Company Secretary

### **D&C Contractor**

Name: Bombardier Transportation Australia Pty Ltd and McConnell Dowell Constructors (Aust) Pty Ltd (an unincorporated joint venture)  
Address: Level 7, Tower B, 799 Chatswood Highway  
Chatswood NSW 2067  
Email: paul.crosetta@macdow.com.au  
For the attention of: Paul Crosetta, D&C Project Director

**Independent Verifier**

Name: CERT-TRAM c/o Hyder Consulting  
Address: 45 Nerang Street, Southport, QLD, 4215  
P.O Box 1653, Southport, QLD, 4215  
Email: andrew.bennet@app.com.au  
For the attention of: Andrew Bennet

**Consultant**

Name: [            ]  
Address: [            ]  
Email: [            ]  
For the attention of: [            ]

- (c) must be signed by the party making it or (on that party's behalf) by the solicitor for, or any attorney, director, secretary or authorised agent of, that party;
- (d) must be delivered by hand or posted by prepaid post to the address, or sent by email to the email address, of the addressee, in accordance with **clause 5.17(b)**; and
- (e) is taken to be received by the addressee:
  - (i) (in the case of prepaid post sent to an address in the same country) on the third day after the date of posting;
  - (ii) (in the case of prepaid post sent to an address in another country) on the fifth day after the date of posting by airmail;
  - (iii) (in the case of email) upon the first to occur of:
    - (A) receipt by the sender of an email acknowledgement from the intended recipient's information system showing that the email has been delivered to the email address of that recipient;
    - (B) the time that the email enters an information system which is under the control of the intended recipient; and
    - (C) the time that the email is first opened or read by an employee or officer of the intended recipient; and
  - (iv) (in the case of delivery by hand) on delivery,

but if the communication is taken to be received on a day that is not a Business Day or after 5.00pm, it is taken to be received at 9.00am on the next Business Day.

**Executed** as a deed.

**Executed** for and on behalf of the **State of** )  
**Queensland** by Annastacia Palaszczuk, )  
Minister for Transport and Multicultural )  
Affairs, in the presence of: )

.....  
Signature of Witness

.....  
Signature

.....  
Name of Witness (print)

**Executed** by **GoldLinQ Pty Ltd** ACN 147 )  
815 441 by the party's attorney pursuant to )  
power of attorney dated ..... who )  
states that no notice of revocation of the )  
power of attorney has been received in the )  
presence of: )

.....  
Signature of Witness

.....  
Signature of Attorney

.....  
Name of Witness (print)

.....  
Name of Attorney (print)

**Executed** by **McConnell Dowell** )  
**Constructors (Aust) Pty Ltd** ABN 71 002 )  
929 017 by the party's attorney pursuant to )  
power of attorney dated ..... who )  
states that no notice of revocation of the )  
power of attorney has been received in the )  
presence of:: )

**Executed by Bombardier Transportation** )  
**Australia Pty Ltd** ABN 73 010 699 804 )

.....  
Signature of Director/Company Secretary

.....  
Signature of Director

.....  
Name of Director/Company Secretary (print)

.....  
Name of Director (print)

.....  
Signature of Witness

.....  
Signature of Attorney

.....  
Name of Witness (print)

.....  
Name of Attorney (print)

**Executed by Hyder Consulting Pty** )  
**Limited** ABN 76 104 485 289 by: )

.....  
Signature of Director/Company Secretary

.....  
Signature of Director

.....  
Name of Director/Company Secretary (print)

.....  
Name of Director (print)

**Executed by APP Corporation Pty Ltd** )  
ABN 29 003 764 770 by the party's attorney )  
pursuant to power of attorney dated )  
..... who states that no notice of )  
revocation of the power of attorney has )  
been received in the presence of: )

.....  
Signature of Witness

.....  
Signature of Attorney

.....  
Name of Witness (print)

.....  
Name of Attorney (print)

Executed by [Consultant] by: )  
)

.....  
Signature of Director/Company Secretary

.....  
Signature of Director

.....  
Name of Director/Company Secretary (print)

.....  
Name of Director (print)

# Schedule 14

## Pre-Agreed Modifications

<b>Pre-Agreed Modification #1</b>	<b>Nerang River Shared Use Bridge</b>
<b>Description</b>	Design and construction of a shared pathway bridge for the use of pedestrians and cyclists across the Nerang River from Southport to Main Beach in the immediate vicinity of and to the east of the existing Gold Coast Highway.
<b>Election Date</b>	1 September 2011
<b>Pre-Agreed Modification Cost</b>	
<b>Amendments to State Project Documents</b>	<p><b>Project Deed</b></p> <p>Insert new definitions in <b>clause 1.1</b>:</p> <p><u><b>Bridge Works</b> means all things, works and Materials that Operator Franchisee must design, construct, manufacture, install, supply, test and commission in accordance with the State Project Documents for the Nerang River Shared Use Bridge.</u></p> <p><u><b>Bridge Works Price</b> means</u></p> <p><u><b>Nerang River Shared Use Bridge</b> means a shared pathway bridge for the use of pedestrians and cyclists across the Nerang River from Southport to Main Beach in the immediate vicinity of and to the east of the existing Gold Coast Highway.</u></p> <p><u><b>Nerang River Shared Use Bridge Works Progress Certificate</b> means a certificate substantially in the form required by the Certification Schedule certifying that Bridge Works have been performed in accordance with the State Project Documents, and the extent of Bridge Works performed, in a relevant month.</u></p> <p>Amend definitions in <b>clause 1.1</b> as follows:</p> <p><u><b>Returned Works</b> means any Project Works which Operator Franchisee is required to complete and handover prior to Completion to the State, an Authority or a property owner, including the PUP Works, and the Accommodation Works, the PAM (Works Completion) Returned Works and the Bridge Works (but not including the PAM (Works Completion) System Works).</u></p> <p>Amend <b>clause 38</b> as follows:</p> <p><b>38.1 State payment obligation</b></p> <p>Subject to this <b>clause 38</b>, the State must pay Operator Franchisee:</p> <p>(a) the Construction Payments;</p>

- (ab) the Service Payment;
- (c) the PAM (Works Completion) Payment;
- (~~bd~~) any other amounts which are payable by the State to Operator Franchisee under this deed; and
- (e) the Bridge Works Price.

### **38.2 Payments during D&C Phase**

- (a) (**Payment claim**): Operator Franchisee must give the State claims for payment on account of any amounts payable by the State to Operator Franchisee in respect of the D&C Activities (such as any Estimated Cost Effect payable in respect of any ECE Event) (other than the Construction Payments, the PAM (Works Completion) Payments and the Bridge Works Price):

[...]

### **38.3B Bridge Works Payment**

- (a) (**Payment claim**): Operator Franchisee may give the State a claim for payment of such part of the Bridge Works Price that relates to the Bridge Works undertaken in the preceding month:
  - (i) within 5 Business Days of the end of each month in which Bridge Works have been undertaken;
  - (ii) in the form set out in the Certification Schedule or such other form as the State reasonably requires;
  - (iii) which is a valid Tax Invoice; and
  - (iv) which includes:
    - (A) the documentation required under **clause 38.10**;
    - (B) the Nerang River Shared Use Bridge Works Progress Certificate; and
    - (C) any evidence reasonably required by the State of the amount claimed.
- (b) (**Payment after payment claim**): Subject to **clause 38.3B(c)** and **clause 38.9**, the State must within 15 Business Days of receiving a payment claim which complies with requirements of **clause 38.3B(a)**:
  - (i) pay Operator Franchisee:
    - (A) the amount claimed;
    - (B) such lesser amount as the State reasonably determines is due in accordance with this deed; and
  - (ii) if the State determines that a lesser amount is due, give Operator Franchisee a statement of the reasons why.

If the State gives a notice under **clause 38.3B(b)(i)(B)**,

Operator Franchisee must promptly issue a revised Tax Invoice or Adjustment Note, as the case may be.

(c) (Retention amounts): The State may deduct from each payment to be made under clause 38.3B(b)(i) an amount equal to up to 5% of the value of each such payment, until a total amount equal to 5% of the Bridge Works Price has been reached in retention moneys deducted under this clause 38.3B(c). The State will accept a bond provided by or procured by Operator Franchisee in lieu of cash retention. If a bond is provided in lieu of cash retention, the cost of the bond will be borne by Operator Franchisee.

(d) (Release of retention amounts): Within 14 days after the Date of Completion, the State shall release to Operator Franchisee or the relevant third party provider (as applicable) any bond or retention moneys deducted pursuant to clause 38.3B(c) then held by the State.

[...]

**38.6 Payment on account**

(a) Any payment of moneys (including any Construction Payment, any PAM (Works Completion) Payment, any payment in respect of Bridge Works or any Service Payment) by the State [...]

**38.7 Payment disputes**

(a) [...]

(iii) any matter arising in respect of any payment claim (including the calculation of any Construction Payment, any PAM (Works Completion) Payment, any amount payable in respect of Bridge Works or any Service Payment), [...]

(b) Operator Franchisee may refer any dispute for resolution in accordance with **clause 57** in relation to the calculation of:

(i) any payment during the D&C Phase (other than in respect of any Construction Payment, any PAM (Works Completion) Payment or any payment in respect of Bridge Works), if, and only if, the dispute is notified within 30 Business Days after the issue of the statement under **clause 38.2(b)(i)(B)**;

(ii) any PAM (Works Completion) Payment if, and only if, the dispute is notified within 30 Business Days after the issue of the statement under **clause 38.3A(b)(i)(B)**;

(iii) any Service Payment if, and only if, the dispute is notified within 30 Business Days after the issue of the statement under **clause 38.4(c)(ii)**; or

(iv) any payment in respect of the Bridge Works, if,



and only if, the dispute is notified within 30 Business Days of the issue of the statement under clause 38.3B(a); or

(v) [...]

[...]

**38.10 Payment of workers and subcontractors**

Operator Franchisee is not entitled to give the State a payment claim under **clause 38.2, 38.3A, 38.3B or 38.4(b)**, and the State is not obliged to make any payment under **clause 38.2, 38.3A, 38.3B or 38.4(c)**, unless Operator Franchisee has provided the State with:

(a) [...]

(b) in respect of a payment claim under **clause 38.2, 38.3A or 38.3B**, a statement from the D&C Contractor [...],

**Nerang River Shared Use Bridge Works Progress Certificate** means a certificate substantially in the form required by the Certification Schedule certifying the extent of Bridge Works performed in the relevant month.

[...]

Insert new form of certificate in **schedule 4** as follows:

**Part 10A**

**Nerang River Shared Use Bridge Works Progress Certificate**

**Gold Coast Rapid Transit Project (Project)**

**To:** The State of Queensland c/- The Department of Transport and Main Roads (**the State**)

GoldLinQ Pty Ltd ACN 147 815 441 of Level 29, 140 William Street, Melbourne Victoria 3000 (**Operator Franchisee**)

**From:** Hyder Consulting Pty Limited ABN 76 104 485 289 and APP Corporation Pty Ltd ABN 29 003 764 770, trading as CERT-TRAM (**Independent Verifier**)

In accordance with the terms of clause 38.3B(a)(iv) of the Project Deed between the State and Operator Franchisee dated [insert date] with respect to the Project (Project Deed), I certify that the following Bridge Works have been undertaken in accordance with the requirements of the State Project Documents in the following month:

Month in which Bridge Works undertaken	Particulars of Bridge Works undertaken	Documents or other information provided in respect of Bridge Works undertaken

--	--	--

Terms defined in the Project Deed have the same meaning in this certificate.

-----  
**Signed for and on behalf of**

[Insert name of Independent Verifier]

Date:

\* delete as applicable

.....

**PSR – annexure 5, part 1 (Engineering Design Requirements)**

Amend section 4.3.2 as follows:

4.3.2 Operator Franchisee must [...] as a minimum provide the following additional pedestrian and cycle facilities: [...]

(c) northbound on-road bicycle lane on the Gold Coast Highway between Ferny Avenue and the Nerang River, including connections to the new Nerang River Shared Use Bridge;

[...]

(f) [...]; and

(g) [...]; and

(h) the Nerang River Shared Use Bridge.

Amend section 9.3.20(b) as follows:

9.3.20(b) for Project Works north of Nerang River including the New Nerang River LRV Bridge and the Nerang River Shared Use Bridge, the Project Works must be designed so that the LRV corridor is protected by non-mechanical fixed means from external catchment runoff under 50 year ARI design rainfall events;

Insert new section 11.11 as follows:

11.1.1 The Nerang River Shared Use Bridge must:

(a) provide easy and direct connection for pedestrians and cyclists from pedestrian and cyclist networks at Southport to the north, and Main Beach and Tedder Avenue to the south, including a connection to the shared use pathway required beside the LRV tracks to the south of Nerang River, and the existing link under the existing Nerang River bridge to the network alongside Waterways Drive, and at the northern end to

	<p><u>the existing network alongside the Broadwater;</u></p> <p><u>(b) provide easy and direct access for on-road cyclists travelling in both a northbound and southbound direction to access and use the bridge at its northern and southern ends. Connections to existing roadways to and from the Nerang River Shared Use Bridge must be suitably designed and comply with all relevant design standards;</u></p> <p><u>(c) comply with Austroads Part 14 – Bicycles;</u></p> <p><u>(d) comply with AS 1428 for equitable access for all users;</u></p> <p><u>(e) provide a minimum clear width between handrails of 5.5m;</u></p> <p><u>(f) allow, as a minimum, a 9 metre separation between the western edge of the Nerang River Shared Use Bridge and the eastern edge of the Existing Nerang River Bridge;</u></p> <p><u>(g) include signage and linemarking complying with the MUTCD and Austroads and must include for broader cycling and pedestrian network information;</u></p> <p><u>(h) provide lighting to AS 1158 requirements;</u></p> <p><u>(i) provide barriers, handrails and balustrades complying with Austroads, AS 5100 and the BCA for balustrade infill requirements;</u></p> <p><u>(j) allow easy and efficient access to the shared pathway for Emergency Services vehicles and for maintenance vehicles; and</u></p> <p><u>(k) comply with the road safety audit and CPTED audit requirements under annexure 5 of the PSR.</u></p> <p><u>11.1.2 Operator Franchisee must handover the completed Bridge Works to CoGC in accordance with <b>clause 19.2</b> of the Project Deed.</u></p> <p><b>PSR – annexure 6, part 1 (Urban Landscape and Design Requirements)</b></p> <p>Insert new section 5.5 as follows:</p> <p><b><u>5.5 NERANG RIVER SHARED USE BRIDGE</u></b></p> <p><b><u>5.5.1 Operator Franchisee must address the following principles:</u></b></p> <p><u>(a) maximise opportunities to provide a high level of connectivity for pedestrians and cyclists to key activity points on either side of the Nerang River; and</u></p> <p><u>(b) match the architectural language and profile of the New Nerang River LRV Bridge so that the two new bridges create an improved setting for the Existing Nerang River Bridge.</u></p> <p><b><u>5.5.2 Operator Franchisee must ensure the design achieves the</u></b></p>
--	---

	<p><u>following specific requirements:</u></p> <p><u>(a) ensures the bridge operates as a shared use path in accordance with the Austroads Guide to Road Design Part 6A – Pedestrian and Cyclists Paths (A6DO6A/09):</u></p> <p><u>(b) ensures the existing maritime clearances below the Existing Nerang River Bridge are not reduced either in width or air-draft for the Nerang River Shared Use Bridge:</u></p> <p><u>(c) employs a distinctive and contemporary bridge architecture that responds to the amenity and drama of the setting; and</u></p> <p><u>(d) ensures that every aspect of the bridge architecture provides a positive and well integrated image when viewed from all angles.</u></p> <p><b>Agreement to Lease – Annexure B (Site Access Schedule)</b></p> <p>Amend the Construction Site Plans by replacing sheets 19 and 20 with the following sheets, and amend the SAS Table as follows:</p>
--	--

Construction Site Plans – Replacement Sheets 19 and 20:

Suburb	Type of Limited Access	Provisional Access Date	Conditions	Special Conditions	Nominated Accommodation Works	Volume
<u>SOUTHPORT</u>	<u>Limited Access (Survey)</u>  <u>and</u>  <u>Limited Access (Geotechnical)</u>	<u>10/01/2012</u>	<u>D. E2*</u>	<p>*Condition E2 applies to the extent that this land is permitted to be used by Operator Franchisee as a Temporary Works Area.</p> <p><u>In using and accessing this land, Operator Franchisee must ensure that it does not restrict or impede access (other than temporary impediment necessary for reasons of safety) to the pedestrian and cycle path on the existing Nerang River Bridge.</u></p>		From a depth below ground of approximately 1.5 meters to a reasonable height above ground for the Project Works.

<u>SOUTHPORT</u>	<u>Limited Access (Survey)</u>  <u>and</u>  <u>Limited Access (Geotechnical)</u>	<u>10/01/2012</u>	<u>C2, D, H, E2*</u>	<p>*Condition E2 applies to the extent that this land is permitted to be used by Operator Franchisee as a Temporary Works Area.</p> <p><u>In using and accessing this land, Operator Franchisee must ensure that it does not restrict or impede access (other than temporary impediment necessary for reasons of safety) to the pedestrian and cycle path on the existing Nerang River Bridge.</u></p>		From a depth below ground of approximately 1.5 meters to a reasonable height above ground for the Project Works.
<u>SOUTHPORT</u>	<u>Limited Access (Survey)</u>  <u>and</u>	<u>10/01/2012</u>	<u>B</u>			<u>From a depth below ground of 16m (and a deeper depth if rock is not encountered at</u>

	<u>Limited Access (Geotechnical)</u>					<u>16m) to the highest above ground reasonably necessary for the Project Works.</u>
SOUTHPORT	<u>Limited Access (Survey)</u>  <u>and</u> <u>Limited Access (Geotechnical)</u>	10/01/2012	C2, D, H, <u>E2*</u>	*Condition E2 applies to the extent that this land is permitted to be used by Operator Franchisee as a Temporary Works Area.		From a depth below ground of approximately 1.5 meters to a reasonable height above ground for the Project Works.

<u>SOUTHPORT</u>	<u>Limited Access (Survey)</u>  <u>and</u>  <u>Limited Access (Geotechnical)</u>	<u>10/01/2012</u>	<u>C2, D, E2*</u>	<u>*Condition E2 applies to the extent that this land is permitted to be used by Operator Franchisee as a Temporary Works Area.</u>  <u>In using and accessing this land, Operator Franchisee must not restrict public access to the facilities block (subject to public observance of Operator Franchisee's reasonable rules of safety applied on the Construction Site in accessing the facilities block).</u>		<u>From a depth below ground of approximately 1.5 meters to a reasonable height above ground for the Project Works.</u>
<u>SOUTHPORT</u>		<u>10/01/2012</u>	<u>C2, D, E2*</u>	<u>*Condition E2 applies to the extent that this land is permitted to be used by Operator</u>	<u>In using and accessing this land, Operator Franchisee must allow access to</u>	



				Franchisee as a Temporary Works Area.	<u>property A04B by the registered lessee (pursuant to registered lease 40021594 ("Lease") of A04B), subject to the lessee's observance of Operator Franchisee's reasonable rules of safety applied on the Construction Site. Operator Franchisee must not do anything which will result in or cause the State to be in default or breach of its obligations under the Lease.</u>	
<u>SOUTHPORT</u>		Access is not permitted to this property	Not applicable			

<b>Pre-Agreed Modification #2</b>	<b>Future PUP services across Nerang River</b>
<b>Description</b>	Design, construction, installation and testing of a recycled water pipe on the New Nerang River LRV Bridge
<b>Election Date</b>	1 September 2011
<b>Pre-Agreed Modification Cost</b>	
<b>Amendments to State Project Documents</b>	<p><b>Project Deed</b></p> <p>Amend definitions in clause 1.1 as follows:</p> <p><b>PAM (Works Completion)</b> means each of:</p> <p><i>(a) Pre-Agreed Modification #2 (Future PUP services across Nerang River) ...</i></p> <p><b>PAM (Works Completion) Price</b> means:</p> <p><i>(a) in respect of Pre-Agreed Modification #2 (Future PUP services across Nerang River), \$[REDACTED]...</i></p> <p><b>PAM (Works Completion) Returned Works</b> means each of:</p> <p><i>(a) all things, works and Materials that Operator Franchisee must design, construct, manufacture, install, supply, test and commission in accordance with the State Project Documents for Pre-Agreed Modification #2 (Future PUP services across Nerang River) ....</i></p> <p><b>PSR – annexure 5, part 2 (Engineering Design Requirements)</b></p> <p>Include new text at section 2.5.5 as follows:</p> <p><b>Future PUP services across Nerang River</b></p> <p><i>Operator Franchisee will design and construct a 350mm diameter recycled water pipe across the Nerang River. If there is an option of installing this pipe on either the Nerang River LRV Bridge or the Nerang River Shared Use Bridge, the Nerang River Shared Use Bridge will prevail. Operator Franchisee's design and construction of the New Nerang River LRV Bridge or Nerang River Shared Use Bridge, as relevant, will include, as a minimum:</i></p> <ul style="list-style-type: none"> <li><i>structural loading from the recycled water pipe,</i></li> <li><i>support for the recycled water pipe,</i></li> <li><i>construction of the recycled water pipe within the approach embankments and retaining walls, transitions slabs, abutments, headstocks and piers, and</i></li> <li><i>mitigation proposals for the visual impact of the recycled water pipe.</i></li> </ul>

<b>Pre-Agreed Modification #3A</b>	<b>Provision for future drainage requirements (Scarborough Street – between Nerang Street and Queen Street)</b>
<b>Description</b>	Design, construction, installation and testing of drainage works along and across Scarborough Street, Southport
<b>Election Date</b>	10 August 2012
<b>Pre-Agreed Modification Cost</b>	
<b>Amendments to State Project Documents</b>	<p><b>Project Deed</b></p> <p>Amend definitions in clause 1.1 as follows:</p> <p><b>PAM (Works Completion)</b> means each of:</p> <p><i>(b) Pre-Agreed Modification #3A (Provision for future drainage requirements (Scarborough Street – between Nerang Street and Queen Street) ...</i></p> <p><b>PAM (Works Completion) Price</b> means:</p> <p><i>(b) in respect of Pre-Agreed Modification #3A (Provision for future drainage requirements (Scarborough Street – between Nerang Street and Queen Street).</i></p> <p><b>PAM (Works Completion) Returned Works</b> means each of:</p> <p><i>(b) all things, works and Materials that Operator Franchisee must design, <u>construct</u>, manufacture, install, supply, test and commission in accordance with the State Project Documents for Pre-Agreed Modification #3A (Provision for future drainage requirements (Scarborough Street – between Nerang Street and Queen Street)) ...</i></p> <p><b>PSR – annexure 5, part 2 (Engineering Design Requirements)</b></p> <p>Include new text at section 2.5.5 as follows:</p> <p><b><u>Drainage</u></b></p> <p><u>Location: Scarborough Street – between Nerang Street and Queen Street</u></p> <p><u>Provision for Future Drainage Requirements: Drainage systems along and across Scarborough Street will allow for GCCC's required drainage improvements works for the fully developed upstream catchments. Drainage systems will be in accordance with drawing GL-A-30CDR01-AA-D-0158[3].</u></p>

<b>Pre-Agreed Modification #3B</b>	<b>Provision for future drainage requirements (Staghorn Avenue)</b>
<b>Description</b>	Design, construction, installation and testing of drainage works at Staghorn Avenue, Surfers Paradise
<b>Election Date</b>	7 January 2013
<b>Pre-Agreed Modification Cost</b>	██████████
<b>Amendments to State Project Documents</b>	<p><b>Project Deed</b></p> <p>Amend definitions in clause 1.1 as follows:</p> <p><b>PAM (Works Completion)</b> means each of:</p> <p><i>(c) Pre-Agreed Modification #3B (Provision for future drainage requirements (Staghorn Avenue)) ...</i></p> <p><b>PAM (Works Completion) Price</b> means:</p> <p><i>(c) in respect of Pre-Agreed Modification #3B (Provision for future drainage requirements (Staghorn Avenue)), ██████████</i></p> <p><b>PAM (Works Completion) Returned Works</b> means each of:</p> <p><i>(c) all things, works and Materials that Operator Franchisee must design, construct, manufacture, install, supply, test and commission in accordance with the State Project Documents for Pre-Agreed Modification #3B (Provision for future drainage requirements (Staghorn Avenue)) ...</i></p> <p><b>PSR – annexure 5, part 2 (Engineering Design Requirements)</b></p> <p>Include new text at section 2.5.5 as follows:</p> <p><b><u>Drainage</u></b></p> <p><u>Location: Staghorn Avenue, between drainage lines EX2/14Q and M1/4Q</u></p> <p><u>Provision for Future Drainage Requirements: A minimum pipe size of 1050mm diameter and appropriate manholes will be provided between EX2/14Q and M1/4Q</u></p>

<b>Pre-Agreed Modification #3C</b>	<b>Provision for future drainage requirements (Intersection of Elkhorn Avenue and Surfers Paradise Boulevard)</b>
<b>Description</b>	Design, construction, installation and testing of drainage works at the intersection of Elkhorn Avenue and Surfers Paradise Boulevard, Surfers Paradise
<b>Election Date</b>	13 March 2013
<b>Pre-Agreed Modification Cost</b>	██████████
<b>Amendments to State Project Documents</b>	<p><b>Project Deed</b></p> <p>Amend definitions in clause 1.1 as follows:</p> <p><b>PAM (Works Completion)</b> means each of:</p> <p><i>(d) <u>Pre-Agreed Modification #3C (Provision for future drainage requirements (Intersection of Elkhorn Avenue and Surfers Paradise Boulevard) ...</u></i></p> <p><b>PAM (Works Completion) Price</b> means:</p> <p><i>(d) <u>in respect of Pre-Agreed Modification #3C (Provision for future drainage requirements (Intersection of Elkhorn Avenue and Surfers Paradise Boulevard), \$</u> ██████████</i></p> <p><b>PAM (Works Completion) Returned Works</b> means each of:</p> <p><i>(d) <u>all things, works and Materials that Operator Franchisee must design, construct, manufacture, install, supply, test and commission in accordance with the State Project Documents for Pre-Agreed Modification #3C (Provision for future drainage requirements (Elkhorn Avenue and Surfers Paradise Boulevard)) ...</u></i></p> <p><b>PSR – annexure 5, part 2 (Engineering Design Requirements)</b></p> <p>Include new text at section 2.5.5 as follows:</p> <p><u>Location: Intersection of Elkhorn Avenue and Surfers Paradise Boulevard</u></p> <p><u>Provision for Future Drainage Requirements: Drainage systems at this intersection will allow for GCCC's required drainage improvements works for the fully developed upstream catchments. Drainage systems will be in accordance with drawing GL-A-40CDR01-AA-D-0160[3].</u></p>

<b>Pre-Agreed Modification #3D</b>	<b>Provision for future drainage requirements (Intersection of Thornton Avenue and Surfers Paradise Boulevard)</b>
<b>Description</b>	Design, construction, installation and testing of drainage works at the intersection of Thornton Avenue and Surfers Paradise Boulevard, Surfers Paradise
<b>Election Date</b>	4 September 2012
<b>Pre-Agreed Modification Cost</b>	██████████
<b>Amendments to State Project Documents</b>	<p><b>Project Deed</b></p> <p>Amend definitions in clause 1.1 as follows:</p> <p><b>PAM (Works Completion)</b> means each of:</p> <p><i>(e) <u>Pre-Agreed Modification #3D (Provision for future drainage requirements (Intersection of Thornton Avenue and Surfers Paradise Boulevard) ...</u></i></p> <p><b>PAM (Works Completion) Price</b> means:</p> <p><i>(e) <u>in respect of Pre-Agreed Modification #3D (Provision for future drainage requirements (Intersection of Thornton Avenue and Surfers Paradise Boulevard),</u> ██████████</i></p> <p><b>PAM (Works Completion) System Works</b> means each of:</p> <p><i>(a) <u>all things, works and Materials that Operator Franchisee must design, construct, manufacture, install, supply, test and commission in accordance with the State Project Documents for Pre-Agreed Modification #3D (Provision for future drainage requirements (Intersection of Thornton Avenue and Surfers Paradise Boulevard) ..</u></i></p> <p><b>PSR – annexure 5, part 2 (Engineering Design Requirements)</b></p> <p>Include new text at section 2.5.5 as follows:</p> <p><u>Location: Intersection of Thornton Avenue and Surfers Paradise Boulevard</u></p> <p><u>Provision for Future Drainage Requirements: A future 1800mm diameter stormwater pipe is required across Surfers Paradise Boulevard in the vicinity of Thornton Avenue, between the existing park on the corner of Remembrance Drive and Surfers Paradise Boulevard and Thornton Street.</u></p> <p><u>Operator Franchisee will provide necessary strengthening / bridging of the LRV trackform, locate all OHL supports and other road furniture, and locate PUPs so as to avoid the future stormwater pipe and make allowances for future pipe jacking of the stormwater pipe under the System Site.</u></p>

<b>Pre-Agreed Modification #3E</b>	<b>Provision for future drainage requirements (Gold Coast Highway, Broadbeach)</b>
<b>Description</b>	Design, construction, installation and testing of drainage works at the Gold Coast Highway, Broadbeach
<b>Election Date</b>	28 November 2012
<b>Pre-Agreed Modification Cost</b>	██████████
<b>Amendments to State Project Documents</b>	<p><b>Project Deed</b></p> <p>Amend definitions in clause 1.1 as follows:</p> <p><b>PAM (Works Completion)</b> means each of:</p> <p><i>(f) <u>Pre-Agreed Modification #3E (Provision for future drainage requirements (Gold Coast Highway, Broadbeach)) ...</u></i></p> <p><b>PAM (Works Completion) Price</b> means:</p> <p><i>(f) <u>in respect of Pre-Agreed Modification #3E (Provision for future drainage requirements (Gold Coast Highway, Broadbeach))</u></i></p> <p>██████████</p> <p><b>PAM (Works Completion) Returned Works</b> means each of:</p> <p><i>(e) <u>all things, works and Materials that Operator Franchisee must design, construct, manufacture, install, supply, test and commission in accordance with the State Project Documents for Pre-Agreed Modification #3E (Provision for future drainage requirements (Gold Coast Highway, Broadbeach)) ...</u></i></p> <p><b>PSR – annexure 5, part 2 (Engineering Design Requirements)</b></p> <p>Include new text at section 2.5.5 as follows:</p> <p><i><u>Location: Gold Coast Highway – Drainage Line G2/6I – OUT/6I</u></i></p> <p><i><u>Provision for Future Drainage Requirements: A minimum pipe size of 1800mm diameter and appropriate manholes/outlet structure will be provided between G2/6I – OUT/6I</u></i></p>

<b>Pre-Agreed Modification #4</b>	<b>MacIntosh Island North Single Span Bridge</b>
<b>Description</b>	Design, construction, installation, testing, commissioning, operation and maintenance of a single span bridge at MacIntosh Island North, Surfers Paradise (in place of a bridge with piers between abutments at this location)
<b>Election Date</b>	31 December 2011
<b>Pre-Agreed Modification Cost</b>	██████████
<b>Amendments to State Project Documents</b>	<p><b>Project Deed</b></p> <p>Insert new definitions in <b>clause 1.1</b> as follows:</p> <p><u><b>Single Span Bridge Structural Completion</b> means the stage at which all structural works required for the MacIntosh Island North Single Span Bridge have been completed.</u></p> <p><u><b>Single Span Bridge Structural Completion Certificate</b> means a certificate substantially in the form required by the Certification Schedule certifying that Single Span Bridge Structural Completion has been achieved.</u></p> <p><u><b>Date of Single Span Bridge Structural Completion</b> means the date set out in the Single Span Bridge Structural Completion Certificate.</u></p> <p><u><b>MacIntosh Island North Single Span Bridge</b> means an LRV bridge with a single span located at MacIntosh Island North, Surfers Paradise and described in section 2.11.3 of annexure 5, part 2 of the PSR (rather than an LRV bridge with piers between abutments at this location).</u></p> <p>Amend definitions in <b>clause 1.1</b> as follows:</p> <p><b>PAM (Works Completion)</b> means each of:</p> <p><u>(g) MacIntosh Island North Single Span Bridge...</u></p> <p><b>PAM (Works Completion) Price</b> means:</p> <p><u>(g) in respect of the MacIntosh Island North Single Span Bridge,</u> ██████████</p> <p><b>PAM (Works Completion) System Works</b> means each of:</p> <p><u>(b) all things, works and Materials that Operator Franchisee must design, construct, manufacture, install, supply, test and commission in accordance with the State Project Documents in respect of the MacIntosh Island North Single Span Bridge to achieve Single Span Bridge Structural Completion.</u></p> <p>Amend clause 38.3A as follows:</p>



### **38.3A PAM (Works Completion) Payment**

(a) **(Payment claim):** *In relation to each PAM (Works Completion), Operator Franchisee may give the State a claim for payment of the PAM (Works Completion) Price which relates to that PAM (Works Completion):*

(i) on or after:

(A) in relation to a PAM (Works Completion) other than the MacIntosh Island Single Span Bridge, the date of the State receiving a certificate in the form of Certificate of Returned Facility Completion in relation to that PAM (Works Completion); and

(B) in relation to the MacIntosh Island North Single Span Bridge, on or after the Date of Single Span Bridge Structural Completion;

(ii) in the form set out in the Certification Schedule or such other form as the State reasonably requires;

(iii) which is a valid Tax Invoice; and

(iv) in respect of the MacIntosh Island North Single Span Bridge, which includes a copy of the Single Span Bridge Structural Completion Certificate and the documentation required under clause 38.10.

[...]

Insert new form of certificate in **schedule 4** as follows:

#### **Part 10B**

#### **Certificate of Single Span Bridge Structural Completion**

Gold Coast Rapid Transit Project (Project)

**To:** The State of Queensland c/- The Department of Transport and Main Roads (the State)

GoldLinQ Pty Ltd ACN 147 815 441 of Level 29, 140 William Street, Melbourne Victoria 3000 (Operator Franchisee)

**From:** Hyder Consulting Pty Limited ABN 76 104 485 289 and APP Corporation Pty Ltd ABN 29 003 764 770, trading as CERT-TRAM (Independent Verifier)

In accordance with the terms of clause 38.3A(a) of the Project Deed between the State and Operator Franchisee dated [insert date] with respect to the Project (Project Deed):

(a) Single Span Bridge Structural Completion has been achieved in respect of the MacIntosh Island North Single Span Bridge; and

(b) the date of Single Span Bridge Structural Completion in respect to that MacIntosh Island North Single Span Bridge is

[insert date].

Terms defined in the Project Deed have the same meaning in this certificate.

Signed for and on behalf of

[Insert name of Independent Verifier]

Date:

\* delete as applicable

\*\*\*\*\*

**PSR – annexure 5, part 2 (Engineering Design Requirements)**

Include new text at section 2.11.3 as follows:

**MacIntosh Island North Single Span Bridge**

Operator Franchisee will design and construct the MacIntosh Island North Bridge (for LRV and shared pathway) to be clear span over the waterway without any piers between abutments. The soffit of the MacIntosh Island North Single Span Bridge will maintain the existing navigation clearances, for the width of the waterway, above Mean High Water Spring (MHWS) tide or be a minimum of 2.5m above MHWS, whichever is the higher.





(d) rail grinding

excluding Preventative Infrastructure Maintenance Works.

**Effective Date** means the expected timing of maintenance works 'Expected Date' in respect of Bridge Condition Assessment, Tamping and Rail Grinding Infrastructure Maintenance Works set out in **schedule 14**, as adjusted from time to time in accordance with **clause 32B**.

**Indexation Factor** means 'Indexation Factor 1' as described in section 3.1, part A of **schedule 3** in the Project Deed.

**Maintenance Trigger** means any of the following indicators of declining Asset condition of the Stage 2 Works, identified in accordance with the Asset Management Strategy, and which indicate the need for Bridge Condition Assessment, Tamping & Rail Grinding Infrastructure Maintenance Works, being:

(a) in respect of ballast tamping:

- (i) track geometry parameters reasonably assessed to be equal to or exceed the tolerances specified in the O&M manuals or relevant maintenance standards; and
- (ii) ride quality reasonably assessed to be equal to or exceed the levels specified in the PSR; and

(b) in respect of rail grinding:

- (i) line side noise levels reasonably assessed to be equal to or exceed the levels specified in the PSR;
- (ii) on-board noise levels reasonably assessed to be equal to or exceed the levels specified in the PSR;
- (iii) ride quality reasonably assessed to be equal to or exceed the levels specified in the PSR; and
- (iv) increase in rail wear or damage identified by inspection, evidenced by the appearance of corrugations, gauge corner cracking or other rail head defects; and

(c) in respect of bridge condition assessment and repair, the condition of the bridge reasonably assessed to have failed the relevant Level 1 and/or Level 2 bridge condition assessment, as described in the Asset Management Plan.

**Maximum Aggregate Amount** means the amount of [REDACTED]

**Pre-Agreed Modification (Bridge Condition Assessment, Tamping & Rail Grinding Infrastructure Maintenance)** means a Modification in respect of Pre-Agreed Modification (Bridge Condition Assessment, Tamping and Rail Grinding Infrastructure Maintenance) on the terms set out in **schedule 14**.

**Pre-Agreed Modification Pricing (Bridge Condition Assessment, Tamping & Rail Grinding Infrastructure Maintenance)** means the amounts shown in **schedule 14** multiplied by the Indexation Factor, where the date of the notice issued to the State by the Operator Franchisee that the Tamping & Rail Grinding Infrastructure Maintenance Works have been carried out for relevant Pre-Agreed

Tamping & Rail Grinding Infrastructure Maintenance Activity determines the relevant date of indexation.

**Preventative Infrastructure Maintenance Works** means the remedial or planned works in relation to ballast tamping, rail grinding and bridge condition assessment of the Stage 2 Works, including the following activities:

- (a) Ballast Tamping Year 9-12;
- (b) Ballast Tamping Year 12-13;
- (c) Ballast Tamping Year 15;
- (d) Rail Grinding Year 8-9;
- (e) Rail Grinding Year 11-12;
- (f) Rail Grinding Year 14-15; and
- (g) Level 1 and/or Level 2 bridge condition assessments

as described in the Asset Management Plan, and excludes the Bridge Condition Assessment, Tamping & Rail Grinding Infrastructure Maintenance Works.

2. Amend **clause 32.1(a)** as follows:

- (d) If:
  - (i) a Pre-Agreed Modification Election is issued on or before the relevant Election Date, from the date of the Pre-Agreed Modification Election; or
  - (ii) a Pre-Agreed Modification (Preventative Maintenance) is deemed to be implemented in accordance with **clause 32.1A**, from the date the Pre-Agreed Modification (Preventative Maintenance) is deemed to be implemented; or
  - (iii) a Pre-Agreed Modification (Bridge Condition Assessment, Tamping and Rail Grinding Infrastructure Maintenance) is deemed to be implemented in accordance with **clause 32.1B**, from the date the Pre-Agreed Modification (Bridge Condition Assessment, Tamping and Rail Grinding Infrastructure Maintenance) is deemed to be implemented  
the State Project Documents will be deemed to be amended in accordance with the relevant amendments set out in **schedule 14**.

3. Insert new **clause 32.1B** as follows:

**Clause 32.1B Pre-Agreed Modification (Bridge Condition Assessment, Tamping & Rail Grinding Infrastructure Maintenance)**

- (a) Nothing in this **clause 32.1B** will:
  - (i) prevent the Operator Franchisee from carrying out the Bridge Condition Assessment, Tamping & Rail Grinding Infrastructure Maintenance Works at any time during the Term;
  - (ii) affect the Operator Franchisee's obligations to comply with **clause 46** or otherwise reduce the requirements for the Handback Condition; or
  - (iii) affect the operation of **schedule 3**, unless expressly provided in that

	<p><u>schedule.</u></p> <p>(b) <u>The Operator Franchisee must notify the State 20 Business Days prior to commencing any Bridge Condition Assessment, Tamping &amp; Rail Grinding Infrastructure Maintenance Works under this clause 32.1B, and the parties acknowledge that the State may exercise its rights under clause 48 if it wishes to observe those works or inspect the Stage 2 Project Area prior to commencement of those works.</u></p> <p>(c) <u>If, with respect to any section of the Stage 2 Works, before or after an Effective Date,</u></p> <p>(i) <u>the Operator Franchisee identifies at least one of the Maintenance Triggers;</u></p> <p>(ii) <u>a suitably qualified independent expert, approved by the State (such approval not to be unreasonably withheld or delayed and if approval is not provided or a reasonable alternative expert is not proposed within 20 Business Days such approval will be deemed to have been given) and appointed and paid for by the Operator Franchisee, provides a brief in accordance with clause 32.1B(d) that supports the Operator Franchisee's recommendation that additional Bridge Condition Assessment, Tamping &amp; Rail Grinding Infrastructure Maintenance Works are required; and</u></p> <p>(iii) <u>three months prior to the planned Bridge Condition Assessment, Tamping &amp; Rail Grinding Infrastructure Maintenance Works, the Operator Franchisee notifies the State of its recommendation and provides a copy of the expert's report</u></p> <p><u>a Pre-Agreed Modification (Bridge Condition Assessment, Tamping &amp; Rail Grinding Infrastructure Maintenance) will be deemed to be implemented with respect to those works, and the State will pay the Operator Franchisee in accordance with the Pre-Agreed Modification Pricing (Bridge Condition Assessment, Tamping &amp; Rail Grinding Infrastructure Maintenance), within [20] Business Days of the State receiving notice from the Operator Franchisee that the Bridge Condition Assessment, Tamping &amp; Rail Grinding Infrastructure Maintenance Works have been carried out.</u></p> <p>(d) <u>The independent expert's brief provided under clause 32.1B(c)(ii) must include an assessment of whether or not the Bridge Condition Assessment, Tamping &amp; Rail Grinding Infrastructure Maintenance Works are required as a result of:</u></p> <p>(i) <u>a construction Defect or a Defect in the Materials used during construction of the Stage 2 Works; and/or</u></p> <p>(ii) <u>the Operator Franchisee or the O&amp;M Contractor failing to undertake the remedial Preventative Infrastructure Maintenance Works in accordance with Asset Management Plan.</u></p> <p>(e) <u>Subject to clause 32.1B(g), the Operator Franchisee will claim the cost of the independent expert paid by the Operator Franchisee under clause 32.1B(c)(ii) as part of the amount claimed for the Pre-Agreed Modification (Bridge Condition Assessment, Tamping &amp; Rail Grinding Infrastructure</u></p>
--	--

	<p><u>Maintenance) Works.</u></p> <p>(f) <u>If any Bridge Condition Assessment, Tamping &amp; Rail Grinding Infrastructure Maintenance Works is required either prior to or after the Effective Date in relation to those works the remaining Effective Dates will be adjusted so that the intervals between Expected Dates continue to reflect industry best practice and are in accordance with the Asset Management Strategy.</u></p> <p>(g) <u>The Operator Franchisee will have no entitlement to payment for any Bridge Condition Assessment, Tamping &amp; Rail Grinding Infrastructure Maintenance Works except in accordance with <b>clause 32.1B(c)</b>:</u></p> <p>(i) <u>if the Operator Franchisee does not carry out the Bridge Condition Assessment, Tamping &amp; Rail Grinding Infrastructure Maintenance Works;</u></p> <p>(ii) <u>in relation to <b>clause 32.1B(c)</b>, unless the independent expert's brief expressly provides that the Bridge Condition Assessment, Tamping &amp; Rail Grinding Infrastructure Maintenance Works are not the result of the causes set out in <b>clause 32.1B(d)(i)</b> or <b>32.1B(d)(ii)</b>; and</u></p> <p>(iii) <u>until the Operator Franchisee has demonstrated that the Bridge Condition Assessment, Tamping &amp; Rail Grinding Infrastructure Maintenance Works have rectified the declining Asset condition that triggered the Pre-Agreed Modification (Bridge Condition Assessment, Tamping &amp; Rail Grinding Infrastructure Maintenance).</u></p> <p>(h) <u>For the avoidance of doubt, the Operator Franchisee's entitlement to claim payment for Bridge Condition Assessment, Tamping &amp; Rail Grinding Infrastructure Maintenance Works will:</u></p> <p>(i) <u>not be triggered unless the Operator Franchisee undertake Bridge Condition Assessment, Tamping &amp; Rail Grinding Infrastructure Maintenance Works in accordance with <b>clause 32.1B(c)</b>; and</u></p> <p>(ii) <u>not exceed the Maximum Aggregate Amount for Pre-Agreed Modification Pricing (Bridge Condition Assessment, Tamping &amp; Rail Grinding Infrastructure Maintenance) set out in <b>schedule 14</b>.</u></p>
--	--



# Schedule 15

## Pre-Priced Elements

Table 1: Pre-Priced Elements for acquisition of additional LRVs

<b>Description</b>	Pre-Priced Elements for the acquisition of additional LRVs, for LRVs of the standard and type required by the PSR.
<b>PPE Expiry Date</b>	The date which is 8 years after Financial Close.
<b>Order and manufacturing lead times</b>	Additional LRVs can be ordered at any time before the PPE Expiry Date subject to the manufacturing set up costs provided below.  Delivery of the additional LRVs is estimated to be 18 months plus an additional 3 months for testing and commissioning. The delivery program will depend in part on the LRV order quantity and timing of the order, and will be confirmed at the time the order is placed.
<b>Minimum number of LRVs per order</b>	Minimum number of 3 (three) LRVs per order. Scaling differences may apply for increased order sizes.
<b>Escalation factors</b>	[REDACTED]
[REDACTED]	[REDACTED]
<b>Capital costs</b>	(EUR Real as at 30 June 2010)
<b>Price per LRV</b>	[REDACTED]  Conditions to pricing: Excludes shipping. [REDACTED] [REDACTED]  Excludes production interruption costs as set out under "manufacturing set up costs" below.
<b>Manufacturing set up costs</b>	Production interruption costs:  For the period in which the option order is placed. The interruption costs apply for each order of Additional Vehicles and not per LRV. [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

	<div></div> <div></div>
<b>Manufacturing costs</b>	<div></div>
<b>Commissioning costs</b>	<div></div>
<b>Other fixed costs</b>	N/A (included in the above)
<b>Operations and maintenance costs</b>	As approved by the State in a Modification Order or Modification Approval.

Table 2: Pre-Priced Elements for track realignment around V8SE Area

<b>Description</b>	Pre-Priced Elements that will apply to the extent that the State notifies Operator Franchisee that a change to the V8 Supercar Event Requirements has been agreed with the V8 Supercar Event Promoter as depicted on the Modified V8SE Area Layout.
<b>PPE Expiry Date</b>	<p>1 July 2011, to the extent that Operator Franchisee is responsible for additional Accommodation Works to mitigate impacts to property CP on BUP 2457 (Golden Gate Apartments).</p> <p>Date later than 1 July 2011, to be determined by the parties, to the extent that the State is responsible for undertaking or separately procuring additional Accommodation Works to mitigate impacts to property CP on BUP 2457 (Golden Gate Apartments).</p>
<b>Amendments to State Project Documents</b>	<p><b>Project Deed</b></p> <p>Insert new definition in <b>clause 1.1</b> as follows:</p> <p><u><b>Modified V8SE Area Layout</b> means the drawing s identified as GL-A-40CAL01-AA-X-0131, GL-A-40CAL01-AA-D0157 and GL-A-40CAL01-AA-D-0158 and attached to table 2 of schedule 15 of this deed.</u></p> <p>Amend <b>clause 1.1</b> as follows:</p> <p><b>Compensation Event</b> means each of: [...]</p> <p>(o) an exercise of a power or an instruction by the State or the V8 Supercar Event Promoter under or in connection with the <i>Motor Racing Events Act 1990</i> (Qld) occurring after the date of this deed or an act or omission of the V8 Supercar Event Promoter on the Project Area that:</p> <p>(i) materially differs from the V8 Supercar Event Requirements as at the date of this deed (or as otherwise modified in accordance with the Pre-Priced Elements set out in table 2 of <b>schedule 20</b>); and</p> <p>(ii) delays or disrupts Operator Franchisee or prevents Operator Franchisee from performing a material part of its obligations.</p> <p><b>V8 Supercar Event Requirements</b> means the following provisions of the State Project Documents in so far as they relate to the V8 Supercar Event:</p> <p>[...]</p> <p>(n) <u>the Modified V8SE Area Layout.</u></p>
<b>Impacts to D&amp;C Program</b>	Program impact to be determined in accordance with <b>clause 30</b> .
<b>Operations and Maintenance costs</b>	<p>Project Deed schedule 3, Appendix A, section 1 (Base Service Payment Components) – no change to BSPC1, BSPC2 or BSPC3</p> <p>Project Deed schedule 3, Appendix A, section 2 (Additional Service Pricing) – no change to PAS1 to PAS7</p> <p>Changes to Project Deed schedule 3, Appendix A, section 3 (Special</p>

	Event Service Pricing) as approved by the State in a Modification Order or Modification Approval.
<b>Other costs</b>	As approved by the State in a Modification Order or Modification Approval.
<b>Other</b>	<p>(a) The Modified V8SE Area Layout forms part of the Concept Design. The Modified V8SE Area Layout allows for:</p> <ul style="list-style-type: none"> <li>(i) a V8 Supercar Event configuration of a minimum 14.7m overall width, which includes the space provisions in sections 15.1.2 and 15.1.3 of annexure 5, part 1 of the PSR, and the space provision for minimum 0.6m wide concrete barriers either side of the race circuit;</li> <li>(ii) no light rail tracks being located within the space provision in section 15.1.2 annexure 5, part 1 of the PSR;</li> <li>(iii) no relocation of the V8 Supercar Event VIP grandstand;</li> <li>(iv) clearance to the debris fence located above the western side concrete barrier to the OHL and any supports; and</li> <li>(v) space provision for a temporary fence between the Single Line Operation and the western side marshal area,</li> </ul> <p>and the State shall in a Modification Order or Modification Approval direct such changes to the requirements of the PSR as are necessary to capture these features.</p> <p>(b) The State accepts that the principal technical impacts of the Modified V8SE Area Layout are:</p> <ul style="list-style-type: none"> <li>(i) the marshal area on the western side of the race circuit in and around Surfers Paradise Boulevard (from SIG-18 to intersection with Main Beach Parade) is a minimum width of 1.5m;</li> <li>(ii) the alignment of the light rail tracks suits cantilevering OHL poles on the western side;</li> <li>(iii) the rail crossover has been relocated to the south of Ocean Avenue (on Surfers Paradise Boulevard);</li> <li>(iv) a footpath at the loading bay (south east of Ocean Avenue) of minimum 3.0m width for a length of approximately 25m;</li> <li>(v) a footpath behind Surfers Paradise North Station platform of minimum 3.0m width;</li> <li>(vi) a southbound lane width of 3.3m minimum over a 100m length adjacent to the loading bay;</li> <li>(vii) a footpath width of approximately 5.0m on the western side south of Ocean Avenue; and</li> <li>(viii) a central median with a maximum width of 1.5m at Ocean Avenue,</li> </ul>

	<p>and the State shall in a Modification Order or Modification Approval direct such changes to the requirements of the PSR as are necessary to permit these impacts.</p> <p>(c) The State also accepts that the Modified V8SE Area Layout will result in encroachment to property CP on BUP 2457 (Golden Gate Apartments) and potentially impacts the underground carpark of that property by up to 290mm from the inside face of the underground carpark. The State shall address these impacts separately or shall direct Operator Franchisee to address them in a Modification Order or Modification Approval.</p>
--	---

Table 3: Pre-Priced Elements for GCUH Station canopy (Griffith University entrance)

<b>Description</b>	Pre-Priced Elements for provision of a canopy structure above GCUH Station on the Griffith University side (land identified as 001 in the Site Access Schedule)
<b>PPE Expiry Date</b>	31 December 2011
<b>Amendments to State Project Documents</b>	As approved by the State in a Modification Order or Modification Approval.
<b>Impacts to D&amp;C Program</b>	None
<b>D&amp;C costs</b>	<p>Delivery of canopy structure in accordance with the design provided by Operator Franchisee to the State prior to the date of this deed but not forming part of the Concept Design [REDACTED]</p> <p>Delivery of a canopy structure in accordance with any other canopy design: As approved by the State in a Modification Order or Modification Approval.</p>
<b>Operations and Maintenance costs</b>	No impacts

# Schedule 16

## Commercially Sensitive Information

1. The Base Case Financial Model and the Day 1 Base Case Financial Model.
2. The Financial Close Adjustment Protocol.
3. The dollar value in the definition of "Construction Payment Maximum Amount"
4. The percentages and numbers of points (as applicable) set out in **clauses 44.3(d), 45.1(a) and 45.1(b)**.
5. The dollar value in the definition of "Base Performance Adjustment" in paragraph 1.1 of **schedule 3**.
6. The amounts "BEC" and "VEC" set out in section 6.1 of **schedule 3**.
7. The percentage value of the index weighting ("W") set out in paragraph 3.3 of **schedule 3**.
8. The "Performance Points (PP)" column in respect of the Key Performance Indicators set out in Table 2 of Part B of **schedule 3**.
9. The numbers set out in columns (c) and (d) in section 1 (Base Service Payment Components), the prices set out in the final column in section 2 (Additional Service pricing), the price per Special Event (PSES) and the prices set out in the fourth, fifth and sixth columns of section 3 (Special Event Service pricing), the maximum and minimum number of services set out in the third and fourth columns in section 4 (Service levels) and the lifecycle payment values set out in column two of section 5 (Lifecycle Payment), each as set out in Appendix A to **schedule 3**.
10. The Construction Drawdown Schedule set out in **schedule 5**.
11. The percentages of compensation payable in respect of the lost Service Fee set out in paragraph 4.1(c)(vi) of **schedule 6** and the Qualifying Change in Law dollar value thresholds set out in paragraph 6 of **schedule 6**.
12. Each margin set out in Appendix 1 to **schedule 6** and the dollar values in the schedule of rates set out in Appendix 2 to **schedule 6**.
13. Each "Pre-Agreed Modification Cost" set out in **schedule 14**.
14. Any rates, escalation factors or costs set out in **schedule 15**.
15. The Lease Rent Side Letter.
16. The "Contract Price", "LDs Cap", Liability Cap" and "Liquidated Damages" under the D&C Contract, the amounts set out in clause 5.1 of the D&C Contract and clauses 5.7(a) and 5.12A of the D&C Contract.
17. Each margin set out in Appendix 1 to schedule 6 and the dollar values in the schedule of rates set out in Appendix 2 to schedule 6 of the D&C Contract.
18. The Group Structure set out in schedule 11 to the D&C Contract to the extent in relates to Bombardier Transportation Australia Pty Ltd and its related companies.
19. Each "Pre-Agreed Modification Cost" set out in schedule 14 of the D&C Contract.

20. The Drawdown Schedule set out in schedule 17 of the D&C Contract.
21. The dollar values in the Milestone Schedule set out in Part B of Schedule 17 of the D&C Contract.
22. Any rates, escalation factors or costs set out in schedule 20 of the D&C Contract.
23. The "Abatement Limit of Liability", "Limit of Liability" and "Remaining Services Payment Portion" under the O&M Contract.
24. The percentages and numbers of points (as applicable) set out in clauses 44.3(d), 45.1(b) and 45.1(c) of the O&M Contract.
25. The amounts set out in paragraphs 2 and 6 of schedule 3 of the O&M Contract, being the Base Service Fee and Life Cycle Payment.
26. The Base Service Payment Components set out in Appendix A to schedule 3 of the O&M Contract.
27. The amounts set out in Appendix B to schedule 3 of the O&M Contract, being the Mobilisation Costs.
28. The Lifecycle Payments set out in Appendix C to schedule 3 of the O&M Contract.
29. The percentages of compensation payable in respect of the lost Service Fee set out in paragraph 4.1(c)(v) of schedule 6 and the Qualifying Change in Law dollar value thresholds set out in paragraph 6 of schedule 6 of the O&M Contract.
30. Each margin set out in Appendix 1 to schedule 6 and dollar values in the schedule of rates set out in Appendix 2 to schedule 6 of the O&M Contract.
31. The capital cost and operating and maintenance costs set out in Table 1 of schedule 15 of the O&M Contract.
32. The dollar value of the liability caps set out in clause 18 of the D&C Interface Deed.
33. The "Abatement Limit of Liability", "Limit of Liability" and "Remaining Services Payment Portion" under the Rolling Stock Sub-Contract.
34. The percentages and numbers of points (as applicable) set out in clauses 44.3(d), 45.1(b) and 45.1(c) of the Rolling Stock Sub-Contract.
35. The amounts set out in paragraphs 2 and 6 of schedule 3 of the Rolling Stock Sub-Contract, being the Base Service Fee and Life Cycle Payment.
36. The Base Service Payment Components set out in Appendix A to schedule 3 of the Rolling Stock Sub-Contract.
37. The Mobilisation Payments set out in Appendix B to schedule 3 of the Rolling Stock Sub-Contract.
38. The Lifecycle Payments set out in Appendix C to schedule 3 of the Rolling Stock Sub-Contract.
39. The rates set out in Appendix D to schedule 3 of the Rolling Stock Sub-Contract.
40. The percentages of compensation payable in respect of the lost Service Fee set out in paragraph 4.1(c)(v) of schedule 6 and the Qualifying Change in Law dollar value thresholds set out in paragraph 6 of schedule 6 of the Rolling Stock Sub-Contract.
41. Each margin set out in Appendix 1 to schedule 6 and dollar values in the schedule of rates set out in Appendix 2 to schedule 6 of the Rolling Stock Sub-Contract.



42. The capital cost and operating and maintenance costs set out in Table 1 of schedule 15 of the Rolling Stock Sub-Contract.
43. The pricing and amount or percentages in relation to security arrangements in relation to supply contracts.
44. The margins, ratios and other pricing information set out in the Debt Financing Documents.
45. Each percentage set out in the Shareholders Agreement, each amount set out in paragraph 10 of schedule 3 and schedule 6 to the Shareholders Agreement, and Part B of schedule 4 to the Shareholders Agreement.
46. Each percentage and each credit rating set out in the Deferred Equity Commitment Deed.
47. The pricing information set out in the Equity Documents.
48. Any information listed as "Commercially Sensitive Information" in schedule 11 of the Stage 2 Works Deed.

# Schedule 17

## Vehicle IP

### Part A: Vehicle Third Party Subsystem

1. Passenger information system
2. Thermal and sound insulation
3. Event log recording system
4. Climate systems (passenger and driver cabs)
5. Braking systems
6. Access doors
7. Passenger counting system
8. Rear view camera system
9. Drivers cab touch screen
10. Wiper system
11. Coupling/transmission
12. Lighting system (interior and exterior)
13. Gangways - bellows
14. Pantograph
15. Driver seats and passenger seats
16. Sand boxes / sanding system
17. Oil lubrication system
18. Inner trims
19. Exterior destination displays
20. Interior displays (optical and acoustic)
21. Windows (driver's cab and passengers)

## Part B: Vehicle Escrow Material

- (a) Design calculation reports for, and finite element analysis of, main structural components of the bodysell design in relation to the vehicles.
- (b) Design calculation reports for, and finite element analysis of, main structural components of the bogie design in relation to the vehicles.
- (c) The source code for the tram operating system (together with software tools and compilers, test procedures and reports) owned by the Vehicle Supplier.
- (d) Design of relevant interfaces between the Third Party Supplied Components and the LRVs, including details of:
  - (i) the physical mounting arrangements of the component to the vehicles (to the extent these details are not provided outside of escrow); and
  - (ii) electrical, hydraulic, pneumatic or other exchange or control mechanisms, necessary to ensure the LRVs function in accordance with the Vehicle Specification.
- (e) The component specification (incl. Interface information) agreed between the Vehicle Supplier and the relevant third party in relation to each Third Party Supplied Component.
- (f) For the purposes of this schedule 17B, 'Third Party Supplied Components' means:
  - 1. passenger information system;
  - 2. digital video recorder;
  - 3. event recorder;
  - 4. saloon and cab HVAC;
  - 5. brake system;
  - 6. door system;
  - 7. passenger counting system;
  - 8. forward and rear review camera system;
  - 9. drivers cab touch screen; and
  - 10. aux. converter.

# Schedule 18

## Assumed Legislative Amendments

Assumed Legislative Amendment	Assumed Legislative Amendment Date
<p>The <i>Transport Infrastructure Act 1994</i> (Qld) (<b>TI Act</b>) will be amended so that the definition of "light rail land" for the purposes of s355A includes:</p> <ul style="list-style-type: none"> <li>• unallocated State land;</li> <li>• road;</li> <li>• trust land under the <i>Land Act 1994</i> (Qld);</li> <li>• watercourse crossings;</li> <li>• other land held by or vested in the State, including land occupied by a tenant; and</li> <li>• land owned by a person other than the State who has entered an agreement for use of the land.</li> </ul>	30 June 2011
<p>The TI Act will be amended so that the chief executive may require a person to whom a construction licence under section 355A of the TI Act is granted or is proposed to be granted to submit a plan or plans addressing certain matters which require approval or are regulated under an Act. These matters may include emission of noise, dust, odour and light from construction activities and temporary closure of roads or parts of roads.</p> <p>The chief executive may approve such a plan at the time of or following the grant of the licence. The chief executive must consult with a relevant agency about the plan before approving the plan.</p> <p>Following approval of the plan:</p> <ul style="list-style-type: none"> <li>• the licensee is not required to obtain approval under a relevant law (including the <i>Environmental Protection Act 1994</i>) for a matter dealt with by the plan; and</li> <li>• if the licensee complies with the terms of the plan, the licensee is taken to comply with the relevant law (including the <i>Environmental Protection Act 1994</i>) to the extent that the relevant law regulates matters dealt with by the plan.</li> </ul>	30 June 2011
The <i>Electrical Safety Act 2002</i> will be amended so that Operator Franchisee is an 'electricity entity' and a 'prescribed electricity entity' under that Act.	30 June 2011
The <i>Electricity Act 1994</i> will be amended to extend the ambit of Chapter 4, Part 4, Division 3 of the <i>Electricity Act 1994</i> to	30 June 2011

include light rail.	
The <i>Sustainable Planning Regulation 2009</i> (Qld) will be amended to include works for constructing GCRT (Stage 1) at schedule 4.	1 October 2011
The <i>Transport Operations (Passenger Transport Act) 1994</i> (Qld) ( <b>TOPT Act</b> ) will be amended so that the definition of 'public transport infrastructure' will include light rail and a light rail vehicle.	Date of Completion
<p>The <i>Transport Operations (Passenger Transport) Regulation 2005</i> (Qld) (<b>TOPT Regulation</b>) will be amended, or a new Regulation made pursuant to the TOTP Act to:</p> <ul style="list-style-type: none"> <li>• provide a definition of GCRT (Stage One) which includes the LRVs and Stations;</li> <li>• provide that certain powers of an 'authorised person' under the TOTP Act may: <ul style="list-style-type: none"> <li>○ only be exercised with limitations (including powers under sections 127 - 128); or</li> <li>○ not be exercised (including powers under sections 120 – 126OA and powers authorising use of reasonable force),</li> </ul> </li> </ul> <p>by an authorised person appointed in respect of GCRT (Stage One).</p>	Date of Completion
The TOPT Act will be amended so that s12(1) of the Act does not apply to a light rail manager (as defined in the TI Act).	Date of Completion
The TOPT Act will be amended so that s24(1) does not apply to a light rail manager (as defined in the TI Act).	Date of Completion

# Schedule 19

## Advertising Requirements

### 1 GENERAL

- (a) Advertising may only be affixed or displayed on the following parts of the System:
  - (i) LRVs, including:
    - (A) full body external advertising wraps;
    - (B) exterior panel advertising;
    - (C) interior panel and floor advertising; and
    - (D) back of seats,
  - (ii) on Wi-Fi available on the LRVs;
  - (iii) on six PID screens per LRV;
  - (iv) Stations, including panel advertising, station domination and sampling; and
  - (v) other areas with the approval of the State.
- (b) Any advertising placed on any part of the System must:
  - (i) not depict political, religious, racist, sexually explicit, offensive or other subject matter which may reasonably be considered contentious or offensive;
  - (ii) not adversely comment on, mock or denigrate the State, Operator Franchisee, their respective Associates, Passengers or public transport users;
  - (iii) not demean or discourage the use of public transport. For the avoidance of doubt, advertising a car parking facility not associated with the System is considered to discourage use;
  - (iv) not impact upon Passenger use of, or security and safety on, the System;
  - (v) not obscure any Passenger information;
  - (vi) not obscure or deface any logo of the State, the Operator Franchisee or their Associates unless approved by the State;
  - (vii) not resemble or be capable of confusion with directional or informational signs either by shape, size or colour;
  - (viii) comply with codes of conduct, codes of ethics, codes of advertising or accepted industry standards for the advertising industry, including those prepared or adopted by the Advertising Standards Bureau of Australia, Office of Film and Literature

Classification, Australian Association of National Advertising and Outdoor Media Association;

- (ix) comply with any other reasonable policies or procedures of the State regarding advertising content including (where applicable) the Roadside Advertising Guide published by DTMR; and
  - (x) not interfere with the Project Activities.
- (c) All advertising assets and materials must be maintained in good condition.
- (d) Advertising assets or materials must be removed (and the party responsible for placing the Advertising on the System will be responsible for procuring the removal of such Advertising assets or materials):
- (i) if it poses a risk to safety of any person, as soon as reasonably practical, and in any event within 24 hours after it becomes aware (or ought to have become aware) of the risk;
  - (ii) if it is damaged, whether by vandalism, graffiti, accident or in any other way, within 48 hours after it becomes aware (or ought to have become aware) of that damage;
  - (iii) if it has otherwise ceased to be in a condition or of a standard which is suitable for continued application or display, within 48 hours after it becomes aware (or ought to have become aware) of that condition or standard; or
  - (iv) if it ceases to be current within 5 Business Days after it ceases to be current,

and any damage to the System caused by the removal of Advertising must be promptly rectified (and the party responsible for procuring the placement of Advertising on the System will be responsible for procuring the rectification of such damage).

- (e) For the purposes of **section 1(d)(iv)**, advertising ceases to be current when:
- (i) any event referred to in the advertising has finished;
  - (ii) any period referred to in the advertising has elapsed; or
  - (iii) any offer or arrangement referred to in the advertising has ceased to be available.
- (f) To the extent a party causes advertising structures to be erected in accordance with **clause 22.4** and this schedule 19, that party will be responsible for procuring the maintenance of such advertising structures and (to the extent such advertising structures are the responsibility of the State), **clause 22.4(a)(ii)** will extend to access to the System for the purposes of maintaining such advertising structures.

## **2 LRV ADVERTISING**

### **2.1 Exterior Advertising**

At any time up to 70% of the total number of LRVs may have exterior advertising (full wrapping or panel) applied as follows:

- (a) Up to 40% of LRVs will be available for full body advertising wrap provided that::
  - (i) advertising decals may be placed on the windows and doors (excluding single ends doors adjacent to the driver's cab),
  - (ii) for doors and windows, contrast ratio requirements of the DDA Code of Practice (currently 30%) are maintained;
  - (iii) the drivers cabs including all glass are not covered by any decals.
- (b) Up to a further 30% of all LRVs (plus any of the LRVs not being used for full body advertising wrap) will be available for external panel advertising wraps provided that:
  - (i) decals may only be applied to modules 3, 4 and 5 of each LRV (including windows and doors); and
  - (ii) for doors and windows, contrast ratio requirements of the DDA Code of Practice (currently 30%) are maintained.

In addition to the above arrangements as outlined in (a) and (b), additional LRVs may have external panel advertising applied if and when a commercial opportunity arises. Such additional external panel advertising will be in accordance with (b) above and will be by agreement between the parties, such agreement will not be reasonably withheld by Operator Franchisee.

## **2.2 Interior Advertising**

In respect of advertising placed in the interiors of LRVs:

- (a) advertising decals may be placed on the interior of LRVs including on the floors and backs of seats of all LRVs;
- (b) Operator Franchisee must display the advertising material provided to it by the State or the State's Associates subject to the Operator Franchisee's obligations under section 10.2 of annexure 14, part 1 of the PSR; and
- (c) the State may, subject to agreement between the State and the Operational Franchisee (which agreement will not be unreasonably withheld), place other internal advertising that does not adversely affect the customer experience or normal operation of the LRVs.

## **3 STATION ADVERTISING**

In respect of advertising placed on Stations:

- (a) the maximum number of advertising display units (including 'street furniture' style advertising display light-boxes) must not exceed 8 per Station other than at the GCUH Station where the maximum number of display units must to exceed 18;
- (b) station domination is permitted at the Station but may be limited to four Stations at any one time;
- (c) where station domination occurs at the GCUH Station, it will be permitted in all areas including the stairs, supporting piers, escalators, platforms (where space available) and lift; and



- (d) sampling can occur at will be permitted at any Station where there is a commercial revenue opportunity, such as GCUH Station and Broadbeach South Station; and
- (e) the configuration of advertising display units (including 'street furniture' style advertising display light-boxes) must not unduly interfere with movement of Passengers or line-of-sight to PIDS.

## Schedule 20

### Existing Private Development Applications and Private Development Approvals

The lodgement date of each Private Development Application or Private Development Approval is provided for reference.

Lot on Plan reference	Private Development Application or Private Development Approval
LOT 1 SP227574	OPW201100207 (24/01/2011) OPW201100208 (24/01/2011) OPW201000479 (12/04/2010)
Parklands Drive, Southport	Public Utility Permit – Excavate & expose 150mm watermain, install new 150mm DCV water meter, disconnect exist 150mm water meter (11/10/2010) Permit Holder: Allconnex
Parklands Drive, Southport	Public Utility Permit - Excavate, core drill access chamber 8/11, temp connection point (30/11/2010) Permit Holder: Allconnex
Parklands Drive, Southport	Manage construction vehicles for concrete pour on boundary to hospital site (Traffic control) Permit Holder: LEND LEASE C/ GLOBAL HR PTY LTD Application valid from 16/03/2011 to 20/04/2011
LOT 29 SP202002	MCU2900895 (09/12/2009) OPW2901891 (09/12/2009)
LOT 393 CP860178	BLD201000744 (22/01/2010) BLD201000151 (11/01/2010)
LOT 15 WD6503	BLD2805343 (20/03/2008)
LOT 0 BUP10088	OPW201000762 (31/05/2010)
LOT 8 WD6502	BLD201016545 (20/12/2010)
LOT 6 WD6504	MCU2700507 (26/06/2007)
LOT 15S182154	BLD 201101263 (16/02/2011)
LOT 2RP4774	MCU 201000178 (01/04/2010)

<b>Lot on Plan reference</b>	<b>Private Development Application or Private Development Approval</b>
LOT 1RP4774	MCU 201000178 (01/04/2010)
LOT 15RP4774	BLD 201101264 (16/02/2011)
LOT 1RP99237	BLD 201101265 (16/02/2011)
LOT 37 S182153	BLD 201101266 (16/02/2011)
Wardoo & Terrigal Crescent, Southport	Public Utility Permit - Excavate, expose 100mm watermain, cap off then reconnect at completion of stormwater works (8/09/2010) Permit Holder: Allconnex
1 Olympic Circuit, Southport	Public Utility Permit (Energy) Permit Holder: Energex Application valid from 28/02/2011 to 31/05/2011
Queen St, Salmon St, Nerang St, Beal St & Bambarra St, Southport	Public Utility Permit (Energy) Permit Holder: GS & A Technical Services Pty Ltd Application valid from 18/02/2011 to 31/10/2011
LOT 40 S182153	BLD2819723 (05/12/2008)
LOT 397 WD810502	BLD201005917 (29/04/2010)
LOT 12RP28685	OPW2702933 (21/12/2007) BLD2626701 (22/12/2006) BLD2512496 (08/07/2005)
LOT 6 RP28685	BLD2603411 (28/02/2006)
16 Prince Street, Southport	Public Utility Permit - Gravity main reline (31/08/2010) Permit Holder: Allconnex
LOT 1 WD839682	BLD2912141 (29/09/2009)
LOT 26 RP 844053	BLD2606281 (11/04/2006) BLD2705669 (21/03/2007) BLD2705670 (21/03/2007) MCU2500249 (01/04/2005)
LOT 2 SP 151460	BLD201010173 (29/07/2010)

Lot on Plan reference	Private Development Application or Private Development Approval
	OPW2901603 (04/11/2009) OPW2900940 (07/07/2009) BLD2811753 (03/07/2008) OPW2602516 (24/11/2006) BLD2618246 (15/09/2006) OPW2601081 (14/06/2006) BLD2605836 (04/04/2006)
Queen St, Bambarra St & Carey Lane, Southport	Public utility Permit (Energy) Permit Holder: Energex Application valid from 26/11/2010 to 30/06/2011
LOT 211 SP180539	BLD2720255 (17/09/2007) BLD2700178 (10/01/2007) BLD2607420 (02/05/2006)
LOT 147 SP104000	BLD2907323 (25/06/2009) BLD2818795 (14/11/2008)
134 High St Southport	Public Utility Permit - Excavate base of exist ww access chamber reset 150mm stub, excavate & lay 150mm grav ww line to lot2 & join to 150mm grav ww line from units (19/10/2010) Permit Holder: Allconnex
120-122 Queen St Southport	Public Utility Permit - Excavate, live tap, band, cock, water meter, fire service, water meter (31/08/2010) Permit Holder: Allconnex
LOT 2 RP4820	BLD2618854 (25/09/2006)
10 Lawson St Southport	Public Utility Permit - Excavate, construct 1100mm access chamber, Excavate lay 150mm PVC waste line to bdy, 150mm connection point (31/08/2010) Permit Holder: Allconnex
10 Lawson St Southport	Public Utility Permit – Excavate, Live tap, lay 18m 100mm main across Lawson St, 100mm hydrant connection point, 40mm DCV meter (31/08/2010) Permit Holder: Allconnex
LOT 6 SP150945	MCU2800732 (01/09/2008)
LOT 115 SP 144203	BLD201015224 ( 18/11/2010) MCU2500004 (07/01/2005)

<b>Lot on Plan reference</b>	<b>Private Development Application or Private Development Approval</b>
LOT 1 RP 804689	BLD20101553 (16/11/2010) BLD201015220 (17/11/2010) BLD201015498 (24/11/2010)
LOT 12 RP211813	BLD2800006 (02/01/2008) BLD2515961 (24/08/2005)
LOT 10 RP4769	MCU201000889 (07/12/2010) MCU2800814 (22/09/2008) MCU2800476 (30/05/2008)
LOT 2 RP90784	MCU2800814 (22/09/2008) MCU2800476 (30/05/2008)
LOT 1 RP90784	MCU2800814 (22/09/2008) MCU2800476 (30/05/2008)
LOT 4 RP227962	MCU2800814 (22/09/2008) MCU2800476 (30/05/2008)
LOT 1 RP114733	BLD201015917 (06/12/2010)
LOT 1 RP4769	BLD2805582 (27/03/2008) BLD2615485 (15/08/2006)
LOT 1 RP68362	BLD2908092 (10/07/2009)
LOT 6 RP226428	BLD201011000 (17/08/2010) MCU201000303 (20/05/2010)
LOT 5 RP110370	BLD2908796 (27/07/2009)
LOT 2 RP221030	BLD201010158 (29/07/2010) BLD2723317 (23/10/2007)
LOT 1 RP45502	BLD2715405 (20/07/2007)
LOT 10 RP900212	BLD2707003 (10/04/2007) BLD2617698 (11/09/2006)
LOT 1 RP180080	BLD201016476 (17/12/2010) BLD201010652 (09/08/2010) BLD2909970 (19/08/2009) BLD2814744 (01/09/2008) BLD2714782 (12/07/2007)

Lot on Plan reference	Private Development Application or Private Development Approval
	BLD2620144 (10/10/2006) MCU2600476 (30/06/2006) BLD2610760 (15/06/2006) BLD2521795 (08/11/2005) BLD2500613 (18/01/2005)
LOT 18 S182132	BLD201005425 (20/04/2010) BLD201000403 (15/01/2010)
LOT 0 SP182353	BLD2608933 (22/05/2006)
34 Scarborough St Southport	Public Utility Permit – Excavate & expose exist 150mm type 3 fire service, reassemble to a 150 x 150 dual check valve meter service type 2, excavate & install 40mm dual check valve as extra to west side (27/09/2010) Permit Holder: Allconnex
4/130 Scarborough St Southport	Public Utility Permit - Excavate, 150 x 100mm GRP junction, 100mm waste connection point (31/08/2010) Permit Holder: Allconnex
217 - 219 Scarborough St Southport	Public Utility Permit – Replace meter (8/11/2010) Permit Holder: Allconnex
LOT 3 RP122602	BLD2508588 (17/05/2005)
LOT 1 RP97209	MCU201000287 (17/05/2010) BLD201003485 (10/03/2010)
LOT 5 RP840736	MCU2800073 (06/02/2008) BLD2707504 (17/04/2007)
LOT 1 RP78575	BLD201016002 (07/12/2010)
LOT 1 RP107165	BLD2705653 (21/03/2007)
LOT 1 RP198959	BLD201013700 (18/10/2010) BLD201011300 (24/08/2010) BLD201007003 (24/05/2010) BLD2908195 (14/07/2009) BLD2903491 (03/04/2009) BLD2814974 (04/09/2008)

Lot on Plan reference	Private Development Application or Private Development Approval
	BLD2810777 (18/06/2008) BLD2806644 (11/04/2008) BLD2803307 (20/02/2008) BLD2802803 (14/02/2008) BLD2800838 (21/01/2008) BLD2709895 (17/05/2007) BLD2707450 (16/04/2007) BLD2623348 (15/11/2006) BLD2622572 (07/11/2006) BLD2622364 (03/11/2006) BLD2620969 (18/10/2006) BLD2619537 (03/10/2006) BLD2617927 (13/09/2006) BLD2617786 (12/09/2006) BLD2616617 (28/08/2006) BLD2614911 (08/08/2006) BLD2612998 (17/07/2006) BLD2608667 (18/05/2006) BLD2600007 (03/01/2006) BLD2511090 (20/06/2005)
7 Short Street, Southport	Road closure permit - Washing & painting building from cherry picker (Footpath/parking bays closure) Permit Holder: PAULYN INVESTMENTS C/ SENTINEL Application valid from 27/03/2011 to 30/06/2011
LOT 1 SP 136103	BLD2703023 (19/02/2007)
900 SP 201987	BLD201016675 (23/12/2010) MCU201000893 (07/12/2010) OPW201001669 (12/11/2010) OPW201001265 (26/08/2010) ROL201000168 (16/08/2010) OPW201000693 (17/05/2010) MCU201000283 (12/05/2010)

Lot on Plan reference	Private Development Application or Private Development Approval
	MCU201000198 (09/04/2010) BLD201003918 (18/03/2010) BLD2914496 (12/11/2009) MCU2900617 (14/09/2009) BLD2905419 (19/05/2009) MCU2900240 (29/04/2009) OPW2900536 (28/04/2009) OPW2900420 (01/04/2009) OPW2900430 (01/04/2009) MCU2900082 (19/02/2009) BLD2820209 (16/12/2008) OPW2801856 (03/11/2008) MCU2800589 (30/06/2008)
LOT 2 RP63324	MCU2700343 (04/05/2007) BLD2705815 (23/03/2007)
LOT 4 RP4780	MCU2700343 (04/05/2007)
LOT 1 RP50804	BLD2718009 (21/08/2007)
LOT 1 RP222198	BLD2710249 (21/05/2007) OPW2601417 (25/07/2006) BLD2613189 (18/07/2006)
LOT 17 SP165112	BLD2609092 (24/05/2006) BLD2405819 (23/03/2004)
LOT 15 SP123222	BLD201005428 (20/04/2010) BLD2722416 (11/10/2007)
LOT 3 RP186496	MCU2900277 (12/05/2009) ROL2900082 (12/05/2009)
LOT 1 RP48098 LOT 3 RP54548 LOT 1 RP88371 LOT 2 RP51475	MCU2900277 (12/05/2009) ROL2900082 (12/05/2009)
LOT 1 RP 51401	BLD201014981 (12/11/2010)
LOT 2 RP	BLD201014982 (12/11/2010)



Lot on Plan reference	Private Development Application or Private Development Approval
51401	
LOT 5 RP 4671	BLD201014983 (12/11/2010) BLD2309940 (27/05/2003)
LOT 1 RP 4672	BLD201101261 (16/02/2011)
LOT 2 RP 50463	BLD201101385 (18/02/2011) BLD2907294 (25/06/2009)
LOT0BUP2016	BLD201101386 (18/02/2011)
LOT 18 RP210553	MCU2600423 (21/06/2006)
LOT 1 RP 28617	MCU2600423 (21/06/2006)
LOT 13 WD6742	MCU2900277 (12/05/2009) ROL2900082 (12/05/2009)
LOT 2 SP165600	MCU2500568 (24/06/2005)
GOLD COAST HIGHWAY, Southport	Road closure permit - Maintenance works to pivotal point (Footpath closure) Permit Holder: BROOKFIELD MULTIPLEX Application valid from 23/03/2011 to 30/04/2011
LOT 4 SP182229	MCU201000918 (15/12/2010) MCU2800030 (18/01/2008) BLD2714615 (10/07/2007) MCU2700413 (28/05/2007) BLD2709473 (11/05/2007) MCU2600902 (22/11/2006) MCU2500539 (16/06/2005)
LOT 580WD 6742	BLD2001950 (15/02/2000)
Surfers Paradise	Public Utility Permit - Gravity main reline (17/09/2010) Permit Holder: Allconnex
Tedder Ave, Surfers Paradise	Public Utility Permit (Energy) Permit Holder: Energex Southport Application valid from 24/01/2011 to 30/04/2011

<b>Lot on Plan reference</b>	<b>Private Development Application or Private Development Approval</b>
LOT 900 RP139176	BLD9812934 (17/09/1998) MCU9800282 (25/08/1998)
LOT 0 BUP5451	BLD201013594 (15/10/2010) BLD2705619 (21/03/2007) BLD2405018 (11/03/2004) OPW2302175 (22/12/2003)
LOT BUP 2457	MCU2700598 (05/07/2007)
LOT 2 SP129328	BLD201007482 (31/05/2010)
LOT 2 SP141000	MCU2900282 (12/05/2009)
LOT1 SP141001	MCU2900282 (12/05/2009)
LOT 1 RP811673	BLD201016247 (14/12/2010) OPW201001096 (30/07/2010) MCU201000449 (29/06/2010) BLD201008365 (22/06/2010) BLD201006558 (14/05/2010) BLD2816761 (07/10/2008)
1 RP 168447	MCU2800797 (17/09/2008) MCU2400580 (08/07/2004) MCU2300306 (06/05/2003) BLD2307936 (30/04/2003) MCU2100676 (30/11/2001) BLD2015449 (28/11/2000) MCU2000456 (08/08/2000)
LOT 277 S9538	BLD2602482 (15/02/2006)
LOT 0 BUP4327	BLD2504477 (14/03/2005)
LOT 1RP 51065	BLD2308407 (07/05/2003)
LOT 2 RP894845	BLD201014849 (10/11/2010) BLD2818518 (11/11/2008) BLD2814161 (19/08/2008)

Lot on Plan reference	Private Development Application or Private Development Approval
	BLD2514445 (03/08/2005)
LOT 0 SP155609	BLD2424057 (12/11/2004) BLD2423966 (11/11/2004) OPW2402094 (28/10/2004) BLD2418200 (03/09/2004)
LOT 15 RP80088	MCU20110091 (28/2/2011)
LOT 2 SP180107	BLD201015618 (26/11/2010) BLD2815334 (10/09/2008) MCU2800040 (24/01/2008) BLD2712836 (20/06/2007) MCU2700341 (30/04/2007) BLD2704167 (06/03/2007) BLD2624686 (30/11/2006) OPW2601684 (18/08/2006) BLD2604431 (15/03/2006) MCU2600180 (08/03/2006) MCU2500868 (07/10/2005) ROL2400510 (21/12/2004) BLD2400526 (13/01/2004)
LOT 1 RP216103	BLD201009126 (06/07/2010) BLD2415952 (06/08/2004)
LOT 1&2&3 RP 9748	BLD201003147 (02/03/2010) BLD2818496 (10/11/2008) BLD2816369 (29/09/2008) MCU2800556 (25/06/2008) BLD2623257 (14/11/2006)
LOT 3 RP RP90910	BLD2623697 (20/11/2006) BLD2623702 (20/11/2006)
4RP170247	BLD2716240 (31/07/2007) MCU2400527 (22/06/2004)
LOT 3 RP 52508	BLD201003147 (02/03/2010) BLD2818496 (10/11/2008)

Lot on Plan reference	Private Development Application or Private Development Approval
	BLD2816369 (29/09/2008) MCU2800556 (25/06/2008) BLD2623257 (14/11/2006)
LOT 1 RP101055	BLD2718939 (03/09/2007)
LOT 2RP101055	BLD2718939 (03/09/2007)
LOT 0 BUP5634	BLD2322645 (09/10/2003)
LOT 0 BUP4259	MCU201000788 (03/11/2010) BLD201007618 (03/06/2010) MCU2900778 (20/11/2009) MCU2900690 (13/10/2009)
Waste Water Pump Station A05, cnr Via Roma & Remembrance Dr Surfers Paradise	Public Utility Permit - removal of masonry block wall to install a 400 kVA fixed generator (22/12/2010) Permit Holder: Allconnex
LOT 1 SP20754	SUR201000264 (06/08/2010) OPW201001014 (15/07/2010) MCU201000411 (22/06/2010) ROL201000115 (26/05/2010) MCU201000296 (13/05/2010) OPW201000675 (13/05/2010) OPW201000632 (06/05/2010) MCU201000201 (07/04/2010) BLD201004245 (24/03/2010) MCU201000090 (25/02/2010) ROL2900239 (25/11/2009) MCU2900250 (01/05/2009) ROL2800153 (02/06/2008) MCU2800455 (22/05/2008)
2A Cavill Ave Surfers	Public Utility Permit – Excavate, tap band & cock, excavate lay pipe across The Esplanade (1/12/2010)

<b>Lot on Plan reference</b>	<b>Private Development Application or Private Development Approval</b>
Paradise	Permit Holder: Allconnex
3113 Surfers Paradise Blvd Surfers Paradise	Public Utility Permit - raise WW access chamber to new level (23/11/2010)  Permit Holder: Allconnex
Hilton Hotel, Surfers Paradise Blvd, Surfers Paradise	Public Utility Permit (gas) (27/05/2010)  Permit Holder: Australian Pipeline Trust
3113 Surfers Paradise Blvd Surfers Paradise	Public Utility Permit - Excavate, remove tee, valve + meter reinstate with pipe + gibaults (Surfers Paradise Blvd & Orchid Ave) (31/08/2010)  Permit Holder: Allconnex
LOT 2 SP20754	SUR201000264 (06/08/2010) MCU201000411 (22/06/2010) ROL201000115 (26/05/2010) MCU201000296 (13/05/2010) OPW201000675 (13/05/2010) OPW201000632 (06/05/2010) MCU201000201 (07/04/2010) BLD201004245 (24/03/2010) MCU201000090 (25/02/2010) ROL2900239 (25/11/2009) MCU2900250 (01/05/2009) ROL2800153 (02/06/2008) MCU2800455 (22/05/2008)
LOT 0 BUP71	BLD9814431 (20/10/1998)
LOT 464 WD5504	BLD2914453 (11/11/2009) MCU2600449 (29/06/2006) BLD2000485 (17/01/2000)
Surfers Paradise Blvd Surfers Paradise	Public Utility Permit - Watermain valve insertion program (Access start date 30 August 2010)  Permit Holder: Allconnex
Appel St , Aubrey St	Public Utility Permit - Water service connection replacement (Access

<b>Lot on Plan reference</b>	<b>Private Development Application or Private Development Approval</b>
Surfers Paradise	start date 30 August 2010) Permit Holder: Allconnex
LOT 5 RP55311	BLD2513227 (19/07/2005) MCU2500178 (09/03/2005)
LOT 6 RP55311	BLD2513227 (19/07/2005)
LOT 8 RP55311	BLD2800287 (11/01/2008) BLD2728468 (20/12/2007)
LOT 0 SP191989	BLD201012699 (23/09/2010) BLD201005472 (20/04/2010) MCU201000056 (09/02/2010) BLD2913052 (15/10/2009) MCU2800316 (07/04/2008) MCU2701015 (05/11/2007) OPW2702079 (17/09/2007) OPW2700761 (20/04/2007) MCU2600164 (07/03/2006)
LOT 0 BUP5349	OPW2900031 (13/01/2009)
LOT 1 RP 196	OPW2700418 (07/03/2007) BLD2001004 (27/01/2000) MCU9900560 (18/10/1999)
LOT 0 SP170410	BLD201008229 (17/06/2010) MCU2501045 (08/12/2005) BLD2513370 (21/07/2005) BLD2513372 (21/07/2005) BLD2513334 (20/07/2005) OPW2500832 (19/05/2005) OPW2500594 (13/04/2005) BLD2501305 (27/01/2005)
LOT 1 RP 48704	MCU2800442 (16/05/2008)
LOT 1 RP 59972	MCU2800442 (16/05/2008)
LOT 2 RP	MCU2400765 (08/09/2004)

Lot on Plan reference	Private Development Application or Private Development Approval
59972	
LOT 170 RP21845	MCU2400765 (08/09/2004)
Fern St, Surfers Paradise	Public Utility Permits (Energy) Permit Holder: Energex Southport Application valid from 15/03/2011 to 29/04/2011
LOT 0 BUP4404	OPW2701885 (29/08/2007) OPW2701302 (28/06/2007)
LOT 1&2 RP 77296	BLD201100982 (08/02/2011) OPW2501248 (22/07/2005)
LOT 0 BUP 4225	BLD201100982 (08/02/2011) OPW2501248 (22/07/2005)
LOT SP 161863	BLD201012946 (30/09/2010)
LOT 1 RP 50080	BLD201012946 (30/09/2010)
2 RP 50080	BLD201012946 (30/09/2010)
3 RP 50080	BLD201012946 (30/09/2010)
4 RP 50080	BLD201012946 (30/09/2010)
LOT 123 RP 210110	BLD2014552 (04/11/2010)
LOT 4 RP 209406	MCU 2011000852 (24/11/2010) MCU 2011000230 (28/04/2010) MCU 2011000643 (10/09/2010)
LOT 0 BUP 3149	OPW 201100092 ( 15/02/2011)
LOT 0 BUP 3769	BLD201100984 (08/02/2011)
LOT 0 BUP 1873	BLD201101095 (11/02/2011)50080
LOT 306 WD 3855	BLD2704057 (05/03/2007)
LOT 1RP 155150	BLD2704057 (05/03/2007)
23 First Ave	Public Utility Permits - Core drill - new 150 mm stub (16/11/2010)

<b>Lot on Plan reference</b>	<b>Private Development Application or Private Development Approval</b>
Surfers Paradise	Permit Holder: Allconnex
3 RP 155150	BLD2704057 (05/03/2007)
LOT 23 RP811786	BLD201002741 (23/02/2010)
Broadbeach Blvd & Australia Ave, Broadbeach	Public Utility Permits (Energy) Permit Holder: Energex Southport Application valid from 22/07/2010 to 11/08/2011
Broadbeach Blvd & Australia Ave. Broadbeach	Road closure permit - Manage construction vehicles entering & exiting site (Half Road/footpath closure) Permit Holder: GREENDAY CONSTRUCTION CORPORATION Application valid from 27/01/2011 to 10/06/2011
LOT 30 RP907703	BLD201004780 (07/04/2010) BLD2723827 (29/10/2007)
LOT 393 SP144206	OPW201100131 (31/01/2011) OPW201001635 (04/11/2010) BLD201014086 (26/10/2010) BLD2817995 (30/10/2008)
LOT 2 RP 74800	MCU 2011000889 (07/12/2010)
LOT 2 RP 59487	MCU 2011000889 (07/12/2010)
LOT 8 SP 152496	MCU201000955 (24/12/2010)
LOT 21 B83814	MCU201000030 (28/01/2010)
LOT 19 RP223252	MCU201000509 (23/07/2010) MCU201000030 (28/01/2010)
LOT 1 B83818	MCU201000318 (25/05/2010) ROL2900180 (23/09/2009) BLD9814571 (23/10/1998)
LOT 100 SP 176224	MCU 2011000372 (09/06/2010)
LOT 0 SP 156250	MCU 2011000494 (16/07/2010)
LOT 120 SP	MCU 2011000494 (16/07/2010)



<b>Lot on Plan reference</b>	<b>Private Development Application or Private Development Approval</b>
156250	
LOT 121SP 156250	MCU 2011000494 (16/07/2010)
LOT 1 RP 119599	MCU 2011000218 (25/05/2010)
LOT 2 RP 119599	MCU 2011000218 (25/05/2010)
LOT 28/27/25/24 B83818	MCU201000318 (25/05/2010) ROL2900180 (23/09/2009)
LOT 23 B83818	MCU201000318 (25/05/2010)
LOT 825 WD6618	BLD2400604 (15/01/2004)
Charles Ave Broadbeach	Public Utility Permit - Excavate & expose 100mm watermain, replace exist hydrant tee 200mm lower than existing (28/09/2010) Permit Holder: Allconnex
LOT 1 SP202705	BLD2912919 (13/10/2009) BLD2818366 (06/11/2008) BLD2817579 (21/10/2008)
LOT 1 RP199405	MCU2900647 (25/09/2009) ROL2900189 (25/09/2009) BLD2403382 (19/02/2004) MCU2400096 (06/02/2004)
COUNCIL CONTROLLED ROADS	Road closure permit – Allconnex works (Partial road closure) Permit Holder: NATIONAL TAPPING SERVICE PTY LTD Application from 10/03/2011 to 10/06/2011
COUNCIL CONTROLLED ROADS	Road closure permit Painting works for GCCC(Partial road closure) Permit Holder: PIERIS PTY LTD Application from 18/02/2011 to 30/07/2011
COUNCIL CONTROLLED ROADS	Road closure permit Graffiti removal(Partial road closure) Permit Holder: GRAFFITI GONE C/ DOWNER EDI WORKS Application from 01/02/2011 to 01/07/2011
COUNCIL CONTROLLED ROADS	Road closure permit - Bus shelter installations (Footpath closure) Permit Holder: ALUIMAGE INTERNATIONAL

<b>Lot on Plan reference</b>	<b>Private Development Application or Private Development Approval</b>
	Application from 27/01/2011 to 27/06/2011
COUNCIL CONTROLLED ROADS	Road closure permit - Allconnex works (Partial road/parking lane/footpath closure) Permit Holder: JFM CONTRACTING Application from 10/01/2011 to 30/06/2011
COUNCIL CONTROLLED ROADS	Road closure permit - Weed spraying on median strips and side roads (Partial road closure) Permit Holder: AUSTSPRAY C/ WORKFORCE INTERNATIONAL Application valid from 29/11/2010 to 29/05/2011
COUNCIL CONTROLLED ROADS	Road closure permit - Tree trimming (Partial road/Pathway closure) Permit Holder: REACH FORCE Application valid from 10/11/2010 to 10/05/2011
COUNCIL CONTROLLED ROADS	Road closure permit - Energex works (Partial road closure) Permit Holder: JEMENA C/ WORKFORCE INTERNATIONAL Application valid from 24/11/2010 to 24/05/2011
COUNCIL CONTROLLED ROADS	Road closure permit - Energex works (Partial road closure) Permit Holder: ALTUS TRAFFIC Application valid from 27/10/2010 to 27/04/2011
COUNCIL CONTROLLED ROADS	Road closure permit - Energex works (Partial road closure) Permit Holder: SKILDTRAFFIC PTY LTD Application valid from 27/07/2010 to 27/07/2011
COUNCIL CONTROLLED ROADS	Road closure permit - Energex works ACQUIRED AWARENESS TRAFFIC MANAGEMENT Application valid from 1/04/11 to 1/06/11

# Schedule 21

## ETS Interface Requirements

### 1 Introduction

This schedule describes the access requirements, schedule of access and associated processes required for the installation and maintenance of the ETS on the System.

### 2 Access Requirements

- (a) During the D&C Phase, the State and its Associates will require access to the Project Area and Project Works to undertake the following activities:
  - (i) survey;
  - (ii) installation; and
  - (iii) commissioning.
- (b) During the Operations Phase, the State and its Associates will require access to the Project Area and System to undertake maintenance.

### 3 Survey Access

#### 3.1 Purpose

6 months prior to installation of the ETS, the State and its Associates require access to all Stations and facilities to determine the installation detail, namely cable routes/paths, cabinet locations, device locations and device mounting.

#### 3.2 Process

- (a) Operator Franchisee must nominate and advise the State or its Associate of its representative who will arrange survey access to the Project Area and Project Works.
- (b) At least 8 weeks prior to survey access to the Project Area and Project Works nomination forms requesting contact details will be forwarded by the State or its Associate to Operator Franchisee.
- (c) Operator Franchisee must return the completed nomination forms and advise the State:
  - (i) of the availability of soft copies or "second original" vellum of station floor plans to the State or its Associate; and

- (ii) of any safety training required prior to access being given to the State or its Associate to undertake the survey and the State and its Associates will undertake such training, within 10 Business Days of receipt of the nomination forms.
- (d) At least 10 Business Days notice will be given by the State or its Associate to the nominated Operator Franchisee representative prior to survey access.
- (e) Transmittal notes accompanying the letter of notice must be signed by the Operator Franchisee and returned to the State or its Associate within 5 Business Days of receipt.
- (f) Access to platforms and station buildings/facilities where network components (routers, hubs, etc), and ETS equipment will reside will be provided on an as required basis in the timeframes set out in the agreed site access plan developed under **clause 20.11(c)**, or as otherwise agreed from time to time by the State, its Associates and Operator Franchisee.
- (g) Notionally 4 hours on average will be required per Station.
- (h) The Operator Franchisee representative(s) must be present and provide input and advise suitability of installation approach/detail.
- (i) Draft installation drawings/documentation will be provided by the State or its Associate to Operator Franchisee no later than 20 Business Days after a site visit.
- (j) Operator Franchisee may provide feedback to the State or its Associate within 10 days of receipt of the drawings/documentation from the State or its Associate.
- (k) The State or its Associates may store devices and materials on site for short periods prior to installation. Operator Franchisee must advise of the availability of secure storage at Stations or such other area as agreed between the parties.

## 4 Installation Access

### 4.1 Purpose

- (a) Access to all Operator Franchisee's Station platforms and facilities hosting network devices, and ETS devices will be required during the installation phase.
- (b) Installation will be scheduled at times set out in the agreed site access plan developed under **clause 20.11(c)**, or as otherwise agreed from time to time by the State, its Associate and Operator Franchisee. Installation may be staged with cable routing for a particular Station being completed on a preliminary visit and device install executed on a subsequent visit.

### 4.2 Process

- (a) Provisional dates for installation will be as set out in the agreed site access plan developed under **clause 20.11(c)**, or as otherwise agreed

from time to time by the State or its Associate and Operator Franchisee (the dates will be subject to change).

- (b) At least 3 months prior to commencement of installation a detailed installation schedule will be distributed to Operator Franchisee in Adobe .pdf format.
- (c) At least 12 weeks prior to install access:
  - (i) the State or its Associate will confirm with Operator Franchisee the representative nominated for survey access. If this representative is no longer appropriate, Operator Franchisee must submit a revised nomination form; and
  - (ii) Operator Franchisee must advise the State of any safety training required prior to access being given to the State or its Associate to install the ETS and the State and its Associates will undertake such training.
- (d) Operator Franchisee must return any revised completed nomination forms to the State or its Associate within 10 Business Days of receipt.
- (e) At least 20 Business Days notice will be given by the State or its Associate to the nominated Operator Franchisee representative prior to install access.
- (f) Transmittal notes accompanying the letter of notice must be signed by Operator Franchisee and returned to the State or its Associate within 5 Business Days of receipt. The State or its Associate will assume that the receipt by the State or its Associate of a signed transmittal note from Operator Franchisee constitutes access permission of Operator Franchisee to the specific premises nominated in the notice on the dates and in the manner proposed.
- (g) The State or its Associate will be provided with access to the specific premises nominated in the notice on the dates and in the manner proposed. Installation works will be scheduled on weekdays wherever possible. However the State understands that night and weekend access may be required to enable Operator Franchisee to meet its obligations under the Project Deed. Where practical, non-disruptive activities on the Project Works and System may be undertaken during weekdays.
- (h) The State and its Associate will assume that access is readily available to at least one 240-Vac GPO.
- (i) The State and its Associate will assume that normal station lighting or the equivalent will be made available if required.
- (j) Devices shall be equipped with software that facilitates testing the correctness of the installation activity.
- (k) Both Operator Franchisee's representative and the State will audit workmanship and act as signatory on install certificates. The lack of an authorised Operator Franchisee representative will not preclude nor delay completion of installation and installation acceptance testing.

## **5 Commissioning and Maintenance Access**

### **5.1 Purpose**

- (a) Immediately prior to the Operations Phase and ongoing throughout the Operations Phase, access will be required to the Project Area and the System for various reasons ranging from commissioning to “settling in” through to maintenance.
- (b) It is envisaged that the bulk of this access will be required during the initial settling in period and access required after the ETS is placed into service should be minimal.
- (c) Tasks to be undertaken may include:
  - (i) device interrogation—software verification for asset management and audit purposes;
  - (ii) device interrogation—hardware verification for asset management and audit purposes;
  - (iii) usage data and transaction generation;
  - (iv) failure corrections—module or complete device replacement;
  - (v) software updates;
  - (vi) hardware Upgrades; and
  - (vii) ETS Maintenance.

### **5.2 Process**

- (a) Operator Franchisee must advise the State of any safety training required prior to access being given to the State or its Associate to commission or maintain the ETS and the State and its Associates will undertake such training.
- (b) Immediately after the Date of Completion and immediately after the Date of Stage 2 Completion, access will be required to the Project Area to facilitate debug, rectification of faults and commissioning with the worst case being less than 1 day's notice. Every attempt will be made to visit during normal business hours. Access will only be required outside of normal business hours due to exceptional circumstances.
- (c) Access will be requested and secured either via email or telephone.
- (d) The State and its Associate will assume that access is readily available to at least one 240-Vac GPO.
- (e) The State and its Associate will assume that normal station lighting or the equivalent will be made available if required.
- (f) Preventative Maintenance will be executed via a mutually agreed schedule aligned with the State or its Associates' recommendations.
- (g) Notice for access to install critical bug fixes will in all likelihood be less than 1 day. Every attempt shall be made to visit during normal business hours. Access will only be required outside of normal business hours due to exceptional circumstances.

- (h) At least 4 weeks notice will be provided by the State or its Associate requesting access associated with system upgrades.

