

North West Rail Link

OTS Independent Certifier Deed

Transport for NSW

ABN 18 804 239 602

NRT Pty Ltd

ACN 166 610 313

SYSTRA SA

ABN 68 557 615 546

GHD Pty Limited

ABN 39 008 488 373

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OTS Independent Certifier Deed dated

16 September 2014

Parties

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

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

SYSTRA SA (ABN 68 557 615 546) of 72-76 rue Henry Farman, 75015 Paris, France

GHD Pty Limited (ABN 39 008 488 373) of Level 15, 133 Castlereagh St Sydney NSW 2000, Australia

(together the **OTS Independent Certifier**)

Background

- A. On or about the date of this deed, OpCo entered into the OTS Project Deed with TfNSW in respect of the OTS Works.
- B. The OTS Independent Certifier represents that it is experienced generally in design, construction, installation, testing and commissioning and, in particular, in the design, construction, installation, testing and commissioning of works similar to the OTS Works and offers its expertise in those fields.
- C. The Relevant Project Agreements contemplate that the OTS Independent Certifier will discharge those functions set out in Schedule 1.
- D. The OTS Independent Certifier will perform its obligations on the terms and conditions of this deed.

This deed provides

1. Definitions and interpretation

1.1 Definitions

The defined terms in clause 1.1 of the OTS Project Deed have the same meaning in this deed unless a term is defined in this deed, in which case the meaning given in this deed will prevail.

In this deed:

Certification and Monitoring Plan means the plan that the OTS Independent Certifier is required to prepare in accordance with clause 3.7, and in respect of which TfNSW has not issued a notice under clause 3.7(b)(ii), as that plan is updated from time to time in accordance with clause 3.8.

Claim means any claim, action, demand or proceeding for payment of money or any relief of any kind (including for damages or losses) arising out of or in any way connected with this deed or the performance or non-performance of the Services, including under this deed, at law, in equity, under or for breach of any statute, or in tort (including for negligence or otherwise).

Completion Phase Services means all Services related to the Completion of the OTS Works and the performance by OpCo of its obligations in respect of Completion of the OTS Works,

including those relating to testing, commissioning, operational readiness, First Passenger Service and Completion, including as specified in clauses 18 and 19 of the OTS Project Deed.

Construction Phase Services means all Services related to:

- (a) the construction and manufacture of the OTS Works and the performance by OpCo of its construction and manufacturing obligations in respect of the OTS Works, including those specified in clauses 15 and 16 of the OTS Project Deed and in the Third Party Agreements; and
- (b) the construction of the TfNSW ECRL Works and Sydney Trains' compliance with the ECRL Asset Maintenance Plan.

D&C Contractor means:

- (a) MTR Corporation (Sydney) NRT Pty Limited (ACN 166 934 121);
- (b) John Holland Pty Ltd (ABN 11 004 282 268);
- (c) Leighton Contractors Pty Limited (ABN 98 000 893 667); and
- (d) UGL Rail Services Pty Limited (ABN 58 000 003 136),

jointly and severally.

D&C OTS Independent Certifier means GHD Pty Ltd ABN 39 008 488 373.

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

Design Phase Services means all Services related to:

- (a) the design of the OTS Works and the performance by OpCo of its design obligations in respect of the OTS Works, including those specified in clause 13 of the OTS Project Deed and in the Third Party Agreements; and
- (b) the review and certification of Project Plans.

Executive Negotiator means:

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

Fee means the amount payable to the OTS Independent Certifier for the performance of the Services in accordance with the Payment Schedule.

Final Completion Phase Services means the Services related to Defects, and the performance by OpCo of its obligations to correct Defects, to the Date of Final Completion.

GST, GST law and other terms used in clause 9 have the meanings used in the A New Tax System (Goods and Services Tax) Act 1999 (Cth) (as amended from time to time) or any replacement or other relevant legislation and regulations, except that **GST law** also includes any applicable rulings. Any reference to GST payable by the Supplier (as defined in clause 9) includes any GST payable by the representative member of any GST group of which the Supplier is a member.

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

- (a) an application is made (other than for a frivolous or vexatious reason) for the winding up or deregistration of a person and, where an application has been made for the dismissal or withdrawal of the application for winding up within 10 Business Days, and the application is not dismissed or withdrawn within 30 Business Days;
- (b) an order is made for the winding up of a person, except for the purpose of a reconstruction, amalgamation, merger or consolidation on terms approved by TfNSW before that order is made where the reconstruction, amalgamation, merger or consolidation is implemented in accordance with the terms of the approval;
- (c) a person passes a resolution for its winding up or deregistration, except for the purpose of a reconstruction, amalgamation, merger or consolidation on terms approved by TfNSW before that resolution is passed where the reconstruction, amalgamation, merger or consolidation is implemented in accordance with the terms of that approval;
- (d) a receiver, receiver and manager, liquidator, provisional liquidator, compulsory manager trustee for creditors or in bankruptcy or analogous person is appointed to take possession of any property of a person;
- (e) a person or any other person appoints an administrator to the person, or takes any step to do so;
- (f) a person:
 - (i) suspends payment of its debts (other than as the result of a failure to pay a debt or claim which is the subject of a good faith dispute);
 - (ii) ceases or threatens to cease to carry on all or a material part of its business;
 - (iii) is or states that it is unable to pay its debts; or

- (iv) is deemed insolvent by virtue of its failure to comply with a statutory demand, which is not withdrawn or set aside within 10 Business Days; or
- (g) a person enters into a readjustment or rescheduling of its indebtedness or makes a general assignment for the benefit of or a composition with its creditors, without the prior consent of TfNSW, except for the purposes of a solvent reconstruction or amalgamation permitted by this deed; or
- (h) any act is done or event occurs which has an analogous or similar effect to any of the events in paragraphs (a) to (g).

Loss means any cost, expense, loss, damage, liability or other amount whether present, future, fixed, unascertained, actual or contingent.

NWRL Transition Agreement means the agreement between TfNSW, Sydney Trains and Rail Corporation New South Wales in respect of the NWRL.

Other Parties means TfNSW and OpCo.

OTS Independent Certifier's Representative means Fernand de Oliveira or any other person holding that position in accordance with clause 3.4(b)(ii).

OTS Project Deed means the deed titled "North West Rail Link - Operations, Trains and Systems Project Deed" between TfNSW and OpCo dated on or about the date of this deed.

Payment Schedule means Schedule 2 to this deed.

Project Office has the meaning given in clause 3.15(a).

Relevant Project Agreements means:

- (a) the OTS Project Deed;
- (b) the WAD;
- (c) the Council Interface Agreements; and
- (d) to the extent summarised in section 3.2 of Schedule 1, the NWRL Transition Agreement.

Services means the services listed in Schedule 1 to this deed.

Substitute Certifier has the same meaning as in clause 6(d).

Term means the term of this deed as set out in clause 3.14.

Upper Limiting Fee means each upper limiting fee specified in paragraph 3(a)(ii) - (v) of the Payment Schedule, as adjusted in accordance with this deed.

1.2 Interpretation

In this deed:

- (a) headings are for convenience only and do not affect interpretation,
- and the following rules apply in interpreting this deed unless the context makes 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 body politic, a corporation, a statutory or other 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 substitutes and assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or an additional trustee;
- (e) a reference to a document (including this deed and any other deed, agreement, instrument, guideline or code of practice) is to that document as amended, varied, novated, ratified, supplemented 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 any section or provision of either of these includes:
- (i) all ordinances, by-laws, regulations of and other statutory instruments (however described) issued under the statute or delegated legislation; and
- (ii) any consolidations, amendments, re-enactments and replacements;
- (g) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (h) a reference to 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 other 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;
- (l) where under this deed:
- (i) a notice, certificate or direction is required to be given; or
- (ii) a default must be remedied,
- within a stated number of days, only Business Days will be counted in computing the number of days;
- (m) for all purposes other than as set out in clause 1.2(l), **day** means calendar day;
- (n) a reference to a **month** is a reference to a calendar month;

- (o) a reference to a court or tribunal is to an Australian court or tribunal;
- (p) a reference to a group of persons is a reference to all of them collectively, to any two or more of them collectively and to each of them individually; and
- (q) any reference to **information** will be read as including information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, design, specifications, models, plans and other documents in all forms including the electronic form in which it was generated.

1.3 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.

1.4 No bias against drafter

In the interpretation of this deed, no rule of construction applies to the disadvantage of one party on the basis that the party or its representative put forward or drafted this deed or any provision in it.

1.5 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.

2. Appointment of the OTS Independent Certifier

2.1 Appointment

- (a) Each of TfNSW and OpCo appoint the OTS Independent Certifier under this deed to perform the Services.
- (b) The OTS Independent Certifier confirms its acceptance of the appointment referred to in clause 2.1(a).
- (c) The OTS Independent Certifier must carry out the Services in accordance with the requirements of this deed and, to the extent the Certification and Monitoring Plan is not inconsistent with the Relevant Project Agreements, the nature of the Services or the requirements of this deed, it will carry out and perform the Services in accordance with the Certification and Monitoring Plan.

2.2 Payment

TfNSW will pay the OTS Independent Certifier the Fee subject to and in accordance with the Payment Schedule.

2.3 Nature of Services

- (a) Subject to section 1 of Schedule 1, the OTS Independent Certifier and the Other Parties acknowledge and agree that the Certification and Monitoring Plan is incidental to, and does not limit or otherwise affect the Services or the OTS Independent Certifier's obligations under the deed.
- (b) Where this deed contemplates an action, agreement, decision, direction or the like by the Other Parties, and the Other Parties cannot reach agreement in respect of such action, decision, direction or the like, then the dispute resolution process in clause 56 of the OTS Project Deed will apply.

- (c) In reaching decisions in relation to this deed which may affect the Other Parties, TfNSW may take into account representations made by OpCo.

3. OTS Independent Certifier's obligations

3.1 Acknowledgement

The OTS Independent Certifier acknowledges that:

- (a) it has received a copy of the execution version of each of the Relevant Project Agreements and that it has read, and is familiar with, the terms of these documents to the extent they relate to the Services; and
- (b) its obligations extend to and include the obligations, functions, duties and services of the OTS Independent Certifier under the Relevant Project Agreements.

3.2 General representations and warranties

The OTS Independent Certifier represents and warrants that:

- (a) it is a company duly incorporated and existing under law and has the power to execute, deliver and perform its obligations under this deed and that all necessary corporate and other action has been taken to authorise that execution, delivery and performance;
- (b) the information provided by it in connection with this deed is true, accurate and complete in all material respects and not misleading in any material respect (including by omission);
- (c) its obligations under this deed are valid, legal and binding obligations enforceable against it in accordance with its terms, subject to equitable remedies and laws in respect of the enforcement of creditor's rights;
- (d) the execution, delivery and performance of this deed by it will not contravene any law to which it is subject or any deed or arrangement binding on it;
- (e) it does not (in any capacity) 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); and
- (f) no litigation, arbitration, tax claim, dispute or administrative or other proceeding has been commenced or threatened against it which is likely to have a material adverse effect upon its ability to perform its obligations under this deed.

3.3 Further acknowledgements and warranties

The OTS Independent Certifier:

- (a) acknowledges that each of the Other Parties:
- (i) is relying upon the skill, expertise and experience of the OTS Independent Certifier in the performance of its obligations under this deed; and
- (ii) may suffer loss if the OTS Independent Certifier does not perform its obligations in accordance with the requirements of this deed;

- (b) warrants to the Other Parties that in performing the Services, it will act honestly, diligently, reasonably and with the degree of professional care, knowledge, skill, expertise and experience which would be reasonably expected of a professional providing services similar to the Services within the design and construction industries generally and the design, construction, operation and maintenance of railways or rapid transit services in particular;
- (c) must, at all times, act within the time requirements for the performance of its obligations under this deed and within the times prescribed under the Relevant Project Agreements (and, where no time is prescribed, within a reasonable time) and comply with the requirements of the Payment Schedule;
- (d) without limiting clauses 3.3(a) and 3.3(b), acknowledges that the Other Parties are entitled to and will rely on any certificate or other document signed or given by the OTS Independent Certifier under or pursuant to this deed or any Relevant Project Agreement;
- (e) without limiting its obligations under any provision of this deed, warrants to the Other Parties that:
 - (i) it will carry out and perform the Services;
 - (ii) in performing the Services it will provide, as a minimum, the levels of surveillance and resources specified in Schedule 3; and
 - (iii) without limiting subparagraphs (i) and (ii), to the extent the Certification and Monitoring Plan is not inconsistent with:
 - A. the Relevant Project Agreements;
 - B. the nature of the Services; or
 - C. without limiting subparagraphs A or B, the requirements of clause 4,it will carry out and perform the Services in accordance with the Certification and Monitoring Plan;
- (f) warrants to the Other Parties that it will, in performing the Services, comply with all applicable laws and obtain any necessary approvals and licences;
- (g) must, in carrying out the Services, carry out physical inspections of the Construction Site, any Extra Land, the ECRL, the TfNSW ECRL Works, the OTS Works and OpCo's Activities when appropriate or necessary to do so (including for the purpose of determining whether Completion has been achieved by OpCo), and when reasonably requested by TfNSW or OpCo, in a manner which satisfies or exceeds the requirements of Schedule 3, Schedule 4 and the Certification and Monitoring Plan (including surveillance levels and resources) and will invite and permit TfNSW and OpCo to accompany it on all such inspections;
- (h) must carry out the Services in a manner which does not prevent, hinder, disrupt, delay or otherwise interfere with any work or services performed by any person (including OpCo) except where it is the unavoidable consequence of performing the Services;
- (i) in undertaking the Services, must comply with the reasonable site access and work health and safety procedures of OpCo and, where applicable, TfNSW and Sydney Trains; and

- (j) in undertaking the Services, must comply with TfNSW's Statement of Business Ethics, Code of Conduct, Public Interest Disclosure Policy, Conflicts of Interest Policy and Corruption Control Policy, each as made available by TfNSW to the OTS Independent Certifier from time to time.

3.4 Key Personnel

- (a) The OTS Independent Certifier must provide experienced and skilled personnel to perform its obligations under this deed.
- (b) The OTS Independent Certifier must ensure that the nominated people referred to in Schedule 3:
 - (i) perform the services required of their respective positions;
 - (ii) are not removed without the prior written consent of the Other Parties (which consent must not be unreasonably withheld or delayed), and if any of the people are removed:
 - A. they must be replaced by people of at least equivalent skill, expertise and experience; and
 - B. there must be, prior to their removal and replacement, a proper handover to ensure that the new personnel have a reasonable understanding of the Relevant Project Agreements and the Services; and
 - (iii) are located at the Project Office for the performance of the Services and are available for consultation as any Other Party may reasonably require from time to time.
- (c) TfNSW may (with OpCo's consent) direct the OTS Independent Certifier to remove any person from the performance of the Services and the OTS Independent Certifier must comply with any such direction.
- (d) The OTS Independent Certifier must not employ any person in the performance of the Services who has had a finding of corrupt conduct made against it by the Independent Commission Against Corruption.
- (e) The OTS Independent Certifier must notify the Other Parties in writing of the names of the person or persons that are authorised to sign the certificates and documents referred to in Schedule 1 which the OTS Independent Certifier is required to execute as part of the Services, and must ensure that these certificates and documents are signed by the person or persons so notified.
- (f) The notification under clause 3.4(e) must be provided at least 30 days before the OTS Independent Certifier anticipates it will provide the relevant certificate or document.

3.5 Subcontracting

- (a) Subject to clause 3.5(c), the OTS Independent Certifier may not subcontract the performance of any of the Services without the prior written consent of the Other Parties (which consent must not be unreasonably withheld or delayed).
- (b) The OTS Independent Certifier remains responsible for the performance of the Services in accordance with this deed, notwithstanding any such subcontracting and

will be liable for the acts and omissions of any subcontractor as if they were acts or omissions of the OTS Independent Certifier.

- (c) Unless the Other Parties otherwise approve in writing, the OTS Independent Certifier must contract with the subcontractors set out in Schedule 5 for the performance of the relevant parts of the Services.
- (d) The OTS Independent Certifier must not contract with a subcontractor that has had any findings of corrupt conduct made against it by the Independent Commission Against Corruption.

3.6 Quality Assurance

- (a) The OTS Independent Certifier must implement a quality system in accordance with AS/NZS ISO9000 and AS/NZS ISO9001, and otherwise in a form reasonably acceptable to the Other Parties to ensure compliance of the Services with the requirements of this deed.
- (b) The OTS Independent Certifier will not be relieved of any requirement to perform any obligation under this deed as a result of:
 - (i) compliance with the quality assurance requirements of this deed; or
 - (ii) any acts or omissions of the Other Parties with respect to the quality assurance requirements of this deed, including any review of, comments upon, or notice in respect of, the Certification and Monitoring Plan or any audit under clause 3.10.

3.7 Certification and Monitoring Plan

- (a) The OTS Independent Certifier must prepare and submit to TfNSW and OpCo within 90 days of the date of this deed a Certification and Monitoring Plan which must:
 - (i) be based on the initial Certification and Monitoring Plan contained in Exhibit A;
 - (ii) meet or exceed the requirements of Schedule 3;
 - (iii) not reduce the effectiveness, methodology, scope, effect, resources or expertise contained in the initial Certification and Monitoring Plan;
 - (iv) comply with the requirements for the Certification and Monitoring Plan in Schedule 4 of this deed; and
 - (v) otherwise comply with the requirements of the Relevant Project Agreements.
- (b) An Other Party may:
 - (i) review the Certification and Monitoring Plan submitted under clause 3.7(a); and
 - (ii) if the Certification and Monitoring Plan does not comply with this deed, or if the Other Party believes that the Certification and Monitoring Plan does not provide the information required by Schedule 4, notify the OTS Independent Certifier of the non-compliance.

- (c) If the OTS Independent Certifier receives a notice under clause 3.7(b)(ii), the OTS Independent Certifier must promptly submit an amended Certification and Monitoring Plan to TfNSW and OpCo, after which clause 3.7(b) will reapply.
- (d) If the OTS Independent Certifier does not receive a notice under clause 3.7(b)(ii) within 15 Business Days after the submission of the relevant Certification and Monitoring Plan, the relevant Certification and Monitoring Plan submitted by the OTS Independent Certifier will be the Certification and Monitoring Plan with which the OTS Independent Certifier must comply (as it is updated under clause 3.8).

3.8 Revisions to Certification and Monitoring Plan

- (a) The OTS Independent Certifier must:
 - (i) progressively (and, as a minimum, at least on each anniversary of the date of this deed) amend, update and develop the Certification and Monitoring Plan throughout the performance of the Services as necessary to reflect the commencement of new stages of the OTS Works, any Modifications and any changes in the manner of performing the Services;
 - (ii) ensure that any amendments, updates or developments of the Certification and Monitoring Plan under clause 3.8(a) are consistent with, and provide, the information set out in Schedule 4; and
 - (iii) submit each revision of the Certification and Monitoring Plan to the Other Parties for their review and comment.
- (b) An Other Party may:
 - (i) review the Certification and Monitoring Plan submitted under clause 3.8(a)(iii); and
 - (ii) if the Certification and Monitoring Plan does not comply with this deed or the Other Party believes that the revised Certification and Monitoring Plan will lead to a reduction in the effectiveness, methodology, scope, effort, resources or expertise contained in the Certification and Monitoring Plan, notify the OTS Independent Certifier of that non-compliance or reduction.
- (c) If the OTS Independent Certifier receives a notice under clause 3.8(b)(ii), the OTS Independent Certifier must promptly submit an amended Certification and Monitoring Plan to the Other Parties after which clause 3.8(b) will reapply.
- (d) The Other Parties owe no duty to the OTS Independent Certifier to review the Certification and Monitoring Plan for errors, omissions or compliance with this deed.
- (e) Without limiting clauses 2.1(c) or 3.3(e), the OTS Independent Certifier must not, either in the preparation of the Certification and Monitoring Plan required by clause 3.7 or the amending, updating and development of the Certification and Monitoring Plan required by clauses 3.8(a) and 3.8(c), decrease or otherwise reduce the effectiveness, methodology, performance and timing requirements, scope, effort, resources or expertise from that set out in the initial Certification and Monitoring Plan or the then existing Certification and Monitoring Plan without the written approval of the Other Parties.

- (f) The OTS Independent Certifier may not amend the Certification and Monitoring Plan other than in accordance with this clause 3.8.

3.9 Progress Reports by the OTS Independent Certifier

Throughout the Term, the OTS Independent Certifier must provide a monthly progress report to TfNSW's Representative and OpCo by the seventh day of the following month and in such format as is required by TfNSW's Representative and OpCo, containing, identifying or setting out:

- (a) a description of the Services undertaken during the reporting period;
- (b) a list or schedule of design and construction surveillance, monitoring and audits undertaken by the OTS Independent Certifier during the reporting period;
- (c) a comprehensive schedule of the status of all correspondence and documentation exchanged between the OTS Independent Certifier, the Other Parties and other key stakeholders including RMS, Hills Shire Council, Blacktown City Council, Hornsby Shire Council and Sydney Trains;
- (d) a summary of key risks and issues relating to the Services;
- (e) details of any OpCo non-conformances raised by the OTS Independent Certifier or TfNSW and details on the verification of the rectification by OpCo of non-conformances;
- (f) details of the surveillance, monitoring and auditing proposed to be undertaken by the OTS Independent Certifier in the forthcoming reporting period, including the outcomes of the risk management processes used to determine the levels and scope of the surveillance activities;
- (g) certificates or similar documentation anticipated to be developed or provided in the next month;
- (h) significant departures from the indicative monthly payments contained in paragraph 5 of the Payment Schedule that occurred during the previous month or are expected in the next month; and
- (i) details of the current version of the Certification and Monitoring Plan and a summary of any amendments, updates and developments to the Certification and Monitoring Plan during the reporting period.

3.10 Audit and surveillance

- (a) The OTS Independent Certifier must:
 - (i) allow any audit of its activities under this deed by a third party, at the request of the Other Parties or any one of the Other Parties; and
 - (ii) fully co-operate with that third party in respect of the carrying out of the audit.
- (b) Without limiting the foregoing, the OTS Independent Certifier must, at all times:
 - (i) give to the third party access to premises occupied by the OTS Independent Certifier where the Services are being undertaken; and
 - (ii) permit the third party to inspect applicable information relevant to the audit.

3.11 Access to records

The OTS Independent Certifier must, within a reasonable time of any request, give the Other Parties access to any records or other documents received, prepared or generated by the OTS Independent Certifier in the course of carrying out the Services.

3.12 Copies of notices and documents

All notices and documents:

- (a) provided by the OTS Independent Certifier to an Other Party must be copied to the other party;
- (b) provided by an Other Party to the OTS Independent Certifier must be provided by the OTS Independent Certifier to the other party; and
- (c) provided by the OTS Independent Certifier to, or received by the OTS Independent Certifier from, a counterparty to a Third Party Agreement in connection with the Services must be copied to the Other Parties.

3.13 OTS Independent Certifier deed poll

Within 5 Business Days of the date of this deed, the OTS Independent Certifier must deliver to TfNSW's Representative deed polls in favour of:

- (a) RMS, in the form of Schedule 2 to the WAD; and
- (b) each Council, in the form of Schedule 1 to the relevant Council Interface Agreement.

3.14 Term

The Term of this deed commences on the date of this deed and continues until the earlier of:

- (a) completion of the Services; or
- (b) termination in accordance with clause 8.

3.15 Project Office

The OTS Independent Certifier must:

- (a) establish a project office within the accommodation provided by TfNSW on the NWRL Site, as described in SPR Appendix 7 (**Project Office**);
- (b) keep written records of the performance of the Services at the Project Office;
- (c) provide all transport required for the use of its personnel (including on the NWRL Site) in connection with the Services; and
- (d) provide any equipment and software to support the OTS Independent Certifier's surveillance, monitoring and certification activities.

3.16 Conflicts in Documents

- (a) The Other Parties agree that, notwithstanding any other term of this deed, the OTS Independent Certifier is under no obligation to identify or resolve any ambiguity, discrepancy or inconsistency in, or between, the documents comprising the OTS Project Deed.

- (b) OpCo must provide the OTS Independent Certifier with a copy of any notice given by it under clause 1.5(c) of the OTS Project Deed within 1 Business Day of giving the notice under that clause.
- (c) TfNSW must provide the OTS Independent Certifier with a copy of any instruction given by TfNSW's Representative under clause 1.5(d) of the OTS Project Deed within 1 Business Day of giving the instruction under that clause.
- (d) If the OTS Independent Certifier discovers any ambiguity, discrepancy or inconsistency in, or between, the documents comprising the OTS Project Deed it shall promptly give notice of that fact to TfNSW and OpCo.
- (e) TfNSW's Representative must, within 10 Business Days of receipt of a notice under clause 3.16(d), instruct both OpCo and OTS Independent Certifier as to the interpretation to be followed so as to resolve the ambiguity, discrepancy or inconsistency in accordance with the rules set out in this clause 1.5 of the OTS Project Deed.
- (f) The Other Parties agree that the OTS Independent Certifier will not be liable for any Claim in connection with the OTS Independent Certifier failing to identify any ambiguity, discrepancy or inconsistency or adopting (or otherwise acting in accordance with) any instruction given under clause 1.5 of the OTS Project Deed or given under this clause 3.16.

4. Independence, confidentiality and exclusivity

4.1 OTS Independent Certifier to be independent

The OTS Independent Certifier warrants to the Other Parties that in performing the Services, it will act:

- (a) independently of the Other Parties;
- (b) honestly and reasonably;
- (c) with the degree of professional care, knowledge, skill, expertise, experience and diligence which would be reasonably expected of a professional providing services similar to the Services within the design and construction industry generally and the design, construction, operation and maintenance of railways or rapid transit services in particular; and
- (d) within the times prescribed under the Relevant Project Agreements or as anticipated by the Delivery Program in line with the following sections of the Design Management Plan:
 - (i) section 10 Design Review Process; and
 - (ii) Appendix 10.4B Design Packages.

4.2 Confidentiality

The OTS Independent Certifier must:

- (a) keep confidential (and ensure that its employees and agents keep confidential) details of this deed and all information and documents provided to, or by, the OTS Independent Certifier relating to the Services, the OTS Works, this deed, the Relevant Project Agreements or the North West Rail Link and not provide, disclose or use the information or documents except:

- (i) to disclose them to the Other Parties;
 - (ii) for the purposes of performing the Services;
 - (iii) where required by law or to obtain legal advice on this deed; or
 - (iv) with the prior written consent of the Other Parties; and
- (b) ensure that its subcontractors comply with the terms of clause 4.2(a).

This obligation will survive completion of the Services or the termination of this deed.

4.3 Exclusivity

- (a) The OTS Independent Certifier must not, and must procure that:
- (i) any related body corporate (as defined by sections 9 and 50 of the *Corporations Act 2001 (Cth)*) of the OTS Independent Certifier does not; and
 - (ii) any of its employees, agents, subcontractors and consultants who are involved in the provision of the Services do not,

from the date of execution of this deed until the date of expiry of the Term in accordance with clause 3.14:

- (iii) have any direct or indirect involvement (whether under contract or any other arrangement):
 - A. with OpCo; or
 - B. with any of OpCo's contractors, consultants or providers in relation to the OTS PPP; or
 - C. in the Relevant Project Agreements; or
- (iv) provide services to or advise any other person in relation to the Relevant Project Agreements,

other than the provision of the Services under this deed and the provision of the services under the D&C OTS Independent Certifier Deed, except with the prior written consent of TfNSW which may be withheld or granted in its absolute discretion.

- (b) The OTS Independent Certifier agrees that:
- (i) having regard to the Relevant Project Agreements and the Services, clause 4.3(a) is reasonable as regards the nature of the involvement restrained and the duration and scope of the restraint and that the restraints are reasonably necessary for the probity of the Relevant Project Agreements and to ensure the best value for money of the Relevant Project Agreements; and
 - (ii) damages may not be a sufficient remedy for a breach of clause 4.3(a) and TfNSW may be entitled to specific performance or injunctive relief (as appropriate) as a remedy for any breach or threatened breach by the OTS Independent Certifier, in addition to any other remedies available at law or in equity.

5. Obligations of the Other Parties

5.1 No interference or influence

- (a) The Other Parties will not interfere with or attempt to improperly influence the OTS Independent Certifier in the performance of any of the Services. The parties acknowledge that any communication allowed by this deed will not of itself constitute a breach of this clause.
- (b) Clause 5.1(a) will not prevent the Other Parties from providing written comments to the OTS Independent Certifier in respect of the Design Documentation, the Project Plans or any other aspect of OpCo's Activities (including in connection with the OTS Independent Certifier's determination of whether Completion has been achieved by OpCo) and the OTS Independent Certifier must consider any comments received from the Other Parties.

5.2 Co-operation

- (a) Without limiting or otherwise affecting any of the Other Parties' obligations under this deed or the Relevant Project Agreements:
 - (i) the Other Parties must co-operate with and provide the OTS Independent Certifier with all information and documents necessary or reasonably required by the OTS Independent Certifier, or otherwise requested by the OTS Independent Certifier or directed by TfNSW; and
 - (ii) OpCo must allow the OTS Independent Certifier to attend all meetings and procure for the OTS Independent Certifier access to such premises as may be reasonably necessary to enable the OTS Independent Certifier to perform the Services or as requested by the OTS Independent Certifier or directed by TfNSW, including allowing access to the NWRL Site and any Extra Land and all areas where the OTS Works are being performed, subject to the OTS Independent Certifier complying with OpCo's reasonable site safety and security procedures; and
 - (iii) TfNSW must procure for the OTS Independent Certifier access to such premises as may be reasonably necessary to enable the OTS Independent Certifier to perform the Services in relation to the TfNSW ECRL Works and the ECRL Asset Maintenance Plan, subject to the OTS Independent Certifier complying with TfNSW's and Sydney Trains' reasonable site safety and security procedures.
- (b) OpCo must ensure that any Hold Points and Witness Points required by the OTS Independent Certifier are included in the Delivery Program to enable the OTS Independent Certifier to perform the Services.
- (c) OpCo promises for the benefit of the OTS Independent Certifier to comply with its obligations under clauses 13.4 and 17.3 of the OTS Project Deed and both OpCo and TfNSW must not amend those obligations without the prior written consent of the OTS Independent Certifier, whose consent will not be unreasonably withheld.
- (d) The OTS Independent Certifier will not be liable for any Claim in connection with any failure by the OTS Independent Certifier to perform the Services in accordance with this deed to the extent such failure has been caused by a breach of clause 5.2(c).

6. Change to Services, suspension of Services and appointment of Substitute Certifier

- (a) The Other Parties may, by joint written notice to the OTS Independent Certifier, direct the OTS Independent Certifier to carry out a change to the Services (including an addition or omission) and the OTS Independent Certifier must comply with that direction.
- (b) The Fee to be paid to the OTS Independent Certifier in relation to a change to the Services referred to in clause 6(a) will be determined in accordance with the schedules of rates set out in the Payment Schedule. If an amount for the change to the Services cannot be determined by reference to the schedules of rates, the amount will be a reasonable amount as stated in writing by TfNSW.
- (c) The Other Parties may, by joint written notice to the OTS Independent Certifier, direct the OTS Independent Certifier to suspend any or all of the Services for the period of time specified in the notice in which case the OTS Independent Certifier may be entitled to an adjustment to the Fee for causes other than as a result of the OTS Independent Certifier's failure to comply with its obligations, including the costs of demobilisation and remobilisation which are reasonable having regard to the nature and period of time for which the notice applies.
- (d) The OTS Independent Certifier acknowledges and agrees that the Other Parties may appoint another certifier (**Substitute Certifier**) to carry out any Services which are omitted as a result of a change to the Services as directed under clause 6(a), and any decision of a Substitute Certifier appointed shall be treated (between TfNSW, OpCo and the OTS Independent Certifier) as if it were a decision of the OTS Independent Certifier, and the Substitute Certifier shall have all of the rights and powers of the OTS Independent Certifier under the Relevant Project Agreements in connection with those Services.
- (e) Notwithstanding a change to the Services or the appointment of a Substitute Certifier, the OTS Independent Certifier must continue to perform the Services, as varied in accordance with this clause 6, in accordance with this deed. Without prejudice to any claim in respect of the performance of the OTS Independent Certifier, the OTS Independent Certifier is not responsible for the performance of the Substitute Certifier.

7. Liability, insurance and indemnity

8. Termination of appointment

8.1 Notice of termination

- (a) The Other Parties may terminate the appointment of the OTS Independent Certifier under this deed by joint notice in writing served on the OTS Independent Certifier if:
- (i) the OTS Independent Certifier is in breach of this deed and the breach is not remediable in the reasonable opinion of the Other Parties;
 - (ii) the OTS Independent Certifier is in breach of this deed and the breach, being remediable in the reasonable opinion of the Other Parties, has not been remedied within 7 days of the service by the Other Parties of a notice specifying the breach and requiring the breach to be remedied;
 - (iii) an Insolvency Event occurs in relation to the OTS Independent Certifier; or
 - (iv) a Change in Control of the OTS Independent Certifier occurs which adversely affects the ability of the OTS Independent Certifier to perform the Services.
- (b) The Other Parties may terminate the appointment of the OTS Independent Certifier in their absolute discretion for any reason whatsoever by serving on the OTS Independent Certifier a joint notice of termination of the appointment of the OTS Independent Certifier in respect of the Services, on a date specified in the notice, being not less than 15 Business Days after the date of issue of the notice.

8.2 Termination

Where a notice is served on the OTS Independent Certifier under clause 8.1, the appointment of the OTS Independent Certifier will terminate upon the earlier of:

- (a) the date specified in the notice issued under clause 8.1; or
- (b) the appointment of a replacement for the OTS Independent Certifier.

8.3 Delivery of documents

Upon the earlier of the date of termination of the appointment of the OTS Independent Certifier and the date of completion of the Services, the OTS Independent Certifier:

- (a) must deliver up to the Other Parties or to such other person as the Other Parties may direct, all books, records, drawings, specifications and other documents in the possession, custody or control of the OTS Independent Certifier relating to the Services; and
- (b) acknowledges that the Other Parties have the right to use all such documents for any purposes in connection with the North West Rail Link, the OTS Works, OpCo's Activities or the Relevant Project Agreements.

8.4 Reasonable assistance

Where the Other Parties give a notice under clause 8.1 of termination of the appointment of the OTS Independent Certifier, the OTS Independent Certifier must provide full assistance to the Other Parties and any appointed replacement for the OTS Independent Certifier in order to enable such replacement to be in a position to perform the Services with effect from the appointment of such replacement.

8.5 Payment until date of termination

Where the appointment of the OTS Independent Certifier is terminated under clause 8.1(b), the OTS Independent Certifier is only entitled to be paid the proportion of the Fee for Services performed up to the date of the termination and any reasonable costs arising from or in connection with the termination including demobilisation costs.

8.6 Termination without prejudice

Termination of the appointment of the OTS Independent Certifier will be without prejudice to any claim which any of the Other Parties may have in respect of any breach of the terms of this deed which occurred prior to the date of termination.

8.7 Survive termination

This clause 8 will survive the termination of this deed under clause 8.1.

8.8 Rights upon termination

If the appointment of the OTS Independent Certifier is terminated pursuant to clause 8.1(a), the parties' remedies, rights and liabilities shall be the same as they would have been under the law governing the deed had the OTS Independent Certifier repudiated the deed and the Other Parties elected to treat the deed as at an end and recover damages.

9. GST

- (a) Except where the context suggests otherwise, terms used in this clause 9 have the meaning given to those terms by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (as amended from time to time).
- (b) Any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause 9.
- (c) Unless otherwise expressly stated, all consideration to be provided under this deed (other than under this clause 9) 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.

- (d) Any payment or reimbursement required to be made under this deed that is calculated by reference to a cost, expense or other amount paid or incurred will be limited to the total costs, expense or amount less the amount of any input tax credit to which an entity is entitled for the acquisition to which the cost, expense or amount relates.
- (e) If GST is payable in relation to a supply made under or in connection with this deed, then any party (**Recipient**) that is required to provide consideration to another party (**Supplier**) for that supply must pay an additional amount to the Supplier equal to the amount of that GST at the same time as any other consideration is to be first provided for that supply.
- (f) The Supplier must provide a tax invoice to the Recipient at the same time as any consideration is to be first provided for that supply.
- (g) If the GST payable in relation to a supply made under or in connection with this deed varies from the additional amount paid by the Recipient under clause 9(e), then the Supplier will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient. Any payment, credit or refund under this clause 9(g) is deemed to be a payment, credit or refund of the additional amount payable under clause 9(e). If any adjustment event occurs in relation to a supply, the Supplier must give the Recipient an adjustment note event within 7 days after the date of the adjustment event.

10. General

10.1 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):

Name: **Transport for NSW**

Address: Level 7
8-12 Castlereagh Street
Sydney NSW 2000

Fax: (02) 8265 6470

For the attention of: Stuart Southern-Brunt, TfNSW's Representative

Name: **OpCo**

Address: Level 29
140 William Street
Melbourne VIC 3000

Fax: (03) 8888 7701

For the attention of: Patrick Lauren, OpCo's Representative

Name: **OTS Independent Certifier**

Address: Level 15
133 Castlereagh Street
Sydney 2000 NSW

Fax: (02) 9239 7199

For the attention of: Fernand de Oliveira, OTS Independent Certifier's Representative

- (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, of the addressee, in accordance with clause 10.1(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; and
 - (iii) (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.

10.2 Governing law

This deed is governed by and must be construed according to the law applying in New South Wales.

10.3 Jurisdiction

- (a) Each party irrevocably:
 - (i) submits to the non-exclusive jurisdiction of the courts of New South Wales and the courts competent to determine appeals from those courts, with respect to any action or proceedings which may be brought at any time relating in any way to this deed; and
 - (ii) waives any objection it may now or in the future have to the venue of any action or proceedings, and any claim it may now or in the future have that any action or proceedings have been brought in an inconvenient forum, if that venue falls within clause 10.3(a)(i).
- (b) Nothing in clause 10.3(a) limits the operation of clause 56 of the OTS Project Deed where a dispute, difference or controversy arises between TfNSW and OpCo in relation to this deed which is not also a dispute, difference or controversy between one or both Other Parties and the OTS Independent Certifier.

10.4 TfNSW as a public authority

- (a) This deed will not in any way unlawfully restrict or otherwise unlawfully affect the unfettered discretion of TfNSW to exercise any of its functions and powers pursuant to any law.
- (b) The OTS Independent Certifier and OpCo acknowledge and agree that, without limiting clause 10.4(a), anything which TfNSW does, fails to do or purports to do pursuant to its functions and powers under any law (but to avoid doubt, excluding the *Public Authorities (Financial Arrangements) Act 1987* (NSW) insofar as it authorises the execution of an exercise of powers under this deed) will be deemed not to be an act or omission by TfNSW under this deed and will not entitle the OTS Independent Certifier or OpCo to make any claim against TfNSW.
- (c) The parties agree that clauses 10.4(a) and 10.4(b) are taken not to limit any liability which TfNSW would have had to the OTS Independent Certifier or OpCo under this deed as a result of a breach by TfNSW of a term of this deed but for clauses 10.4(a) and 10.4(b).

10.5 Amendments

This deed may only be varied by a deed executed by or on behalf of each of the parties.

10.6 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.

10.7 Cost of performing obligations

Each party must, unless this deed expressly provides otherwise, pay its own costs and expenses in connection with performing its obligations under this deed.

10.8 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.

10.9 Consents

A consent required under this deed from a party may be given or withheld, or may be given subject to any conditions, as that party (in its absolute discretion) thinks fit, unless this deed expressly provides otherwise.

10.10 Assignment

- (a) Subject to clause 10.10(b), a party cannot assign, novate or otherwise transfer any of its rights or obligations under this deed without the prior consent of each other party unless this deed expressly provides otherwise.
- (b) OpCo may grant security over its rights under and interests in this deed in favour of its financiers.

10.11 Replacement body

Where a reference is made to any Authority, institute, association, body, person or organisation (**Former Body**) which is reconstituted, renamed, replaced, ceases to exist or has its powers or functions transferred to another Authority, institute, association, body, person or organisation, that reference will be deemed to refer to the Authority, institute, association, body, person or organisation (**Replacement Body**) which then serves substantially the same powers, functions or objects 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.

10.12 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.

10.13 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.

10.14 Expenses

Except as otherwise provided in this deed, each party must pay its own costs and expenses in connection with negotiating and preparing this deed.

10.15 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.

10.16 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.

10.17 No agency, partnership, joint venture or other fiduciary relationship

Nothing in this deed will be construed or interpreted as:

- (a) conferring a right in favour of any party to enter into any commitment on behalf of another party or otherwise to act as agent of another party; or
- (b) constituting the relationship between any two or more of the parties (or all of the parties) as that of partners, joint venturers or any other fiduciary relationship.

10.18 Severance

If at any time any provision of this deed is or becomes void, illegal, invalid or unenforceable in any respect under the law of any jurisdiction, then that will not affect or impair:

- (a) the legality, validity or enforceability in that jurisdiction of any other provision of this deed; or
- (b) the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of this deed.

10.19 Moratorium legislation

To the fullest extent permitted by law, the provisions of all laws which at any time operate directly or indirectly to lessen or affect in favour of a party any obligation under this deed, or to delay or otherwise prevent or prejudicially affect the exercise by a party of any right, power or remedy under this deed or otherwise, are expressly waived.

10.20 Exclusion of proportionate liability scheme

- (a) To the extent permitted by law, Part 4 of the *Civil Liability Act 2002* (NSW) (and any equivalent statutory provision in any other state or territory) is excluded in relation to all and any rights, obligations or liabilities of any party under this deed whether these rights, obligations or liabilities are sought to be enforced in contract, tort or otherwise.
- (b) Without limiting the above, the rights, obligations and liabilities of the parties under this deed with respect to proportionate liability are as specified in this deed and not otherwise, whether these rights, obligations or liabilities are sought to be enforced by a claim in contract, in tort or otherwise.

10.21 Joint and several liability

- (a) The obligations of the OTS Independent Certifier, if more than one person, under this deed, are joint and several and each person constituting the OTS Independent Certifier acknowledges and agrees that it will be causally responsible for the acts and omissions (including breaches of this deed) of the other as if those acts or omissions were its own and the Other Parties may proceed against any one or all of them.
- (b) The rights of the OTS Independent Certifier, if more than one person, under this deed (including the right to payment) jointly benefit each person constituting the OTS Independent Certifier (and not severally or jointly and severally).

- (c) Any payment by the Other Parties under this deed to any account nominated in writing by the OTS Independent Certifier, or failing such nomination, to any one or more persons constituting the OTS Independent Certifier, will be deemed to be payment to all persons constituting the OTS Independent Certifier.
- (d) The OTS Independent Certifier may not exercise any right under this deed unless that right is exercised concurrently by all persons constituting the OTS Independent Certifier.

11. Disputes

11.1 Dispute or Difference

Any dispute or difference arising out of, relating to, or in connection with this deed or the conduct of the parties in relation to this deed, or its subject matter (including any question regarding the existence, validity or termination of this deed), or the Services, **(Dispute)**, must be resolved in accordance with the procedure in this clause 11.

11.2 Notice of Dispute

Where a Dispute arises, either party may serve a notice in writing on the other party specifying:

- (a) the Dispute;
- (b) particulars of the Dispute; and
- (c) the position which the party believes is correct.

(Notice of Dispute).

11.3 Negotiation

If a Notice of Dispute is served, the Executive Negotiators must meet and undertake genuine and good faith negotiations with a view to resolving the Dispute.

11.4 Mediation

- (a) If the Dispute is not resolved within 14 days of the date of service of the Notice of Dispute, the Dispute must be referred to mediation in accordance with, and subject to, the Australian Centre for International Commercial Arbitration (ACICA) Mediation Rules.
- (b) The mediation shall take place in Sydney, Australia and be administered by ACICA.

11.5 Referral to arbitration

If the Dispute is not resolved within 42 days of the date of service of the Notice of Dispute (or such other period as the parties may agree in writing) then, whether or not a meeting under clause 11.3 has occurred and whether or not a mediation under clause 11.4 has occurred, the Dispute must be referred to arbitration under clause 11.6.

11.6 Arbitration

- (a) If any Dispute is referred to arbitration pursuant to this clause 11:
 - (i) the language of the arbitration shall be English;

- (ii) the seat of the arbitration shall be Sydney, Australia;
 - (iii) the arbitration shall be conducted in accordance with the ACICA Arbitration Rules, which are deemed to be incorporated into this clause 11.6; and
 - (iv) the arbitration shall be administered by ACICA.
- (b) The parties agree that sections 23C, 23D, 23E, 23F, 23G and 24 of the International Arbitration Act 1974 (Cth) will apply to any arbitration pursuant to this clause 11 which is subject to that Act.
- (c) This clause 11.6 is governed by the laws of New South Wales, Australia.

11.7 Urgent relief

Nothing in this clause 11 will prejudice any right a party may have to seek urgent interlocutory relief from a court in respect of a Dispute. The application of a party to a court for such relief or for the implementation of such relief will not be deemed to be an infringement or waiver of the arbitration agreement.

11.8 Survive termination

This clause 11 will survive termination of this deed.

11.9 Severance

If at any time any provision of this clause 11 is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, that will not affect or impair:

- (a) the legality, validity or enforceability in that jurisdiction of any other provision of this clause 11; or
- (b) the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of this clause 11.

11.10 Continuation of contractual obligations

Despite the existence of a Dispute between the parties to this deed, the parties must continue to comply with and perform their obligations under this deed.

Schedule 1 - Services

1. General

The Services include all the functions, obligations, duties and services which the Relevant Project Agreements contemplate will be discharged by the OTS Independent Certifier including providing various certificates required under the Relevant Project Agreements.

2. Initial Certification and Monitoring Plan

The OTS Independent Certifier must provide the Services to no lesser effort, quality or standard than that detailed in Schedule 3 and the initial Certification and Monitoring Plan included as Exhibit A.

3. Indicative list of Services

An indicative, but not exhaustive or complete list of the Services is set out in this paragraph 3. To the extent of any discrepancy between this Schedule 1 and a Relevant Project Agreement, the Relevant Project Agreement will prevail.

3.1 General

- (a) The OTS Independent Certifier will be closely involved in the delivery of the NWRL from its commencement, including throughout the design and construction phases of the OTS Works and through until the correction of all Defects in the OTS Works up to the Date of Final Completion.
- (b) The OTS Independent Certifier is obliged to act independently of TfNSW, OpCo and their Associates.
- (c) The specific tasks and functions of the OTS Independent Certifier are those contemplated by the Relevant Project Agreements, including those in this paragraph 3.
- (d) The Other Parties consider the role of the OTS Independent Certifier to be vital and therefore are keen to ensure that the entity appointed to the role and the entity's personnel have the skills and experience and independence appropriate for the role as well as providing the best value for money to the Other Parties.
- (e) The OTS Independent Certifier must:
 - (i) become familiar with the role, functions, obligations, duties and services (express or implied) under the Relevant Project Agreements of the "OTS Independent Certifier" and review information made available to the

OTS Independent Certifier by the Other Parties in order to become fully acquainted with the OTS Works;

- (ii) attend meetings and report as required from time to time by the Other Parties;
- (iii) carry out any additional services in relation to the OTS Works as directed in writing by the Other Parties;
- (iv) undertake the surveillance listed in the Certification and Monitoring Plan which, as a minimum, must include the surveillance in Schedule 3 in the initial Certification and Monitoring Plan in Exhibit A and in any Certification and Monitoring Plan; and
- (v) provide the surveillance resources in the performance of the Services listed in the Certification and Monitoring Plan which, as a minimum, must include the surveillance resources in Schedule 3, in the initial Certification and Monitoring Plan in Exhibit A and in any Certification and Monitoring Plan.

The OTS Independent Certifier must discharge the functions, obligations, duties and services which the Relevant Project Agreements contemplate will be discharged by the OTS Independent Certifier, including providing various certifications under the OTS Project Deed. Indicatively, the Services include:

OTS Project Deed functions

Clause 5.4(b)(i) - Independently certify in accordance with this deed:

- (a) that the Project Plans comply with the requirements of the OTS Project Deed;
- (b) that the Design Documentation complies with the requirements of the OTS Project Deed;
- (c) whether or not Sydney Trains has complied with the Sydney Trains ECRL Asset Maintenance Plan;
- (d) that each of the Pre-Shutdown TfNSW ECRL Works and post-Shutdown TfNSW ECRL Works have achieved completion;
- (e) that the OpCo ETS Works have been completed, tested and commissioned in accordance with the SPR and the Delivery Program;
- (f) that the Tests required by the Testing and Commissioning Plan will, if satisfied, allow it to certify that Completion has been achieved;
- (g) the completion of Local Area Works;
- (h) that the requirements for First Passenger Service have been satisfied;
- (i) the achievement of Completion; and
- (j) the achievement of Final Completion;

Clause 5.4(b)(ii) - Participate in meetings as specified in the Design Management Plan;

Clause 5.4(b)(iii) – Attend Tests;

Clause 5.4(b)(iv) – Make determinations on matters that the OTS Project Deed (including the SPR) expressly requires be determined by the OTS Independent Certifier;

Clause 5.4(b)(v) - Issue certificates as contemplated by the OTS Project Deed;

Clause 5.4(c) - Act independently of TfNSW, OpCo and OpCo's Contractors;

Clause 5.4(e) – Receive all information and documents and:

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

all as may be necessary or required to perform its obligations under the OTS Project Deed;

Clause 5.4(g) – Receive comments from TfNSW in respect of OpCo's Activities;

Clause 8.3(c) - Receive each updated Project Plan during the Delivery Phase;

Clause 8.5(a)(i) - Receive any comments from TfNSW's Representative on submitted Project Plans;

Clause 8.5(a)(ii) – Review each Project Plan submitted during the Delivery Phase and either notify OpCo of any non-compliances with the OTS Project Deed (including reasons) or certify that the Project Plan complies with the deed, within 20 Business Days following submission of the Project Plan to the OTS Independent Certifier;

Clause 8.5(a)(iii) - If not including TfNSW comments in relation to its notice or certification under clause 8.5(a)(ii), provide TfNSW with detailed written reasons.

Clause 8.5(c) – Receive any revised Project Plan during the Delivery Phase and 8.5(a)(ii) of the OTS Project Deed will re-apply;

Clause 13.4(b) – Receive all Design Documentation (not including any Design Documentation to the extent that it relates solely to Non-Reviewable Temporary Works) during the Delivery Phase;

Clause 13.4(c) - Request and receive any Design Documentation to the extent that it relates solely to Non-Reviewable Temporary Works;

Clause 13.7(b) - Require OpCo to make available the appropriate design personnel to explain, or provide information regarding, the submitted Design Documentation;

Clause 13.8(a) – Receive any comments from TfNSW's Representative on submitted Design Documentation;

Clause 13.8(b) – Review all Design Documentation submissions within the IC Design Review Period and:

- (a) consider any comments received from TfNSW under clause 13.8(a) or from any Authorities;
- (b) in respect of Design Stage 1 or Design Stage 2, notify OpCo of any actual non-compliance with the requirements of the OTS Project Deed (with reasons) or any other observation or comment which the OTS Independent Certifier has on the Design Documentation;

- (c) in respect of Design Stage 3, determine whether or not the Design Documentation complies with the requirements of the OTS Project Deed and either certify that the Design Documentation complies with the deed by including a notation on each document forming part of the Design Documentation and issuing the required certificates (including those required by the WAD and the Council Interface Agreements) or reject the Design Documentation (with reasons) if it:
- (i) does not comply with the requirements of the deed (minor errors and omissions excepted); or
 - (ii) is not sufficiently complete to enable the OTS Independent Certifier to form a view on whether it is compliant;

Clause 13.8(d)(i) - Receive written responses from OpCo in relation to non-compliance in Stage 1 or Stage 2 Design Documentation explaining how OpCo will address non-compliance in any Design Stage 1 or Design Stage 2 Design Documentation to ensure compliance will be achieved in Design Stage 3 Design Documentation;

Clause 13.8(d)(ii) - Receive a written statement from OpCo which explains how the non-compliance has been addressed;

Clause 13.8(e)(i) – Receive any revised Design Stage 3 Design Documentation and clause 13.8 will re-apply to the amended Design Documentation;

Clause 13.8(e)(iii) - If any Design Stage 3 Design Documentation is rejected, may receive any notice from OpCo setting out any matters in relation to which it disagrees with the OTS Independent Certifier's opinion;

Clause 13.8(f)(ii) - If OpCo gives a notice under clause 13.8(e)(iii), within 10 Business Days of receipt of the notice, determine whether or not the notice satisfactorily addresses the OTS Independent Certifier's concerns and either:

- (a) notify the parties that OpCo's notice satisfactorily addresses the OTS Independent Certifier's concerns, providing the certification under clause 13.8(b)(iii)B of the OTS Project Deed as part of its notice; or
- (b) notify the parties that OpCo's notice does not satisfactorily address the OTS Independent Certifier's concerns.

Clause 13.8(i) - In its certification of Design Stage 3 Design Documentation, may recommend action OpCo could take to address minor errors or omissions;

Clause 13.8(j) - Must, within 5 Business Days of:

- (a) providing a notice to OpCo under clause 13.8(b)(ii), to the extent that comments received from TfNSW were not included in its notice, provide TfNSW with detailed written reasons of why it did not include such comments;
- (b) rejecting Design Stage 3 Design Documentation under clause 13.8(b)(iii)A, to the extent comments received by TfNSW regarding non-compliance were not included in its notice, provide TfNSW with detailed written reasons of why it did not include such comments; and
- (c) certifying Design Stage 3 Design Documentation under clause 13.8(b)(iii)B, provide TfNSW with detailed written reasons of why it certified Design Stage 3 Design Documentation despite any TfNSW comments regarding non-compliance.

Clause 13.11 - Receive amended Final Design Documentation (and clause 13.8 will apply as if the Design Documentation is Design Stage 3 Design Documentation);

Clause 17.3(b)(v) and (b)(vi) – Receive and review any updates, and copies of each update, of the Delivery Program;

Clause 18.2(a) and (b) – Receive Test Procedures and any comments from TfNSW's Representative on Test Procedures;

Clause 18.2(c) and (d) - Within 20 Business Days of receiving a Test Procedure (or any amended Test Procedure), review each Test Procedure (taking into account any comments received from TfNSW's Representative) and either:

- (a) notify OpCo and TfNSW of any non-compliances with the deed (with detailed reasons); or
- (b) certify the Test Procedure (providing OpCo and TfNSW with a certificate in the form of Schedule 14).

Clause 18.2(g) - Within 5 Business Days, provide TfNSW with detailed reasons:

- (a) if the OTS Independent Certifier did not include in its notice to OpCo under clause 18.2(c) of the OTS Project Deed any comments received from TfNSW regarding non-compliances in OpCo's Test Procedure, why it did not include such comments; and
- (b) to the extent comments were received from TfNSW under clause 18.2(b)(ii) regarding non-compliance, why the OTS Independent Certifier certified the Test Procedure despite any TfNSW comments regarding non-compliances.

Clause 18.2(h) - In its certification of the Test Procedure, may recommend the action OpCo could take to address minor errors or omissions;

Clause 18.3 – Receive 20 Business Days' notice of each Test, receive 5 Business Days' notice of any rescheduled Test and receive Test Programs and updated Test Programs, from OpCo;

Clause 18.4(b) – May (but not obliged to) attend and witness the conduct of all Tests;

Clause 18.5(a) and (c) – Receive Test Reports from OpCo and, within 10 Business Days, either:

- (a) certify that the Test has been passed in accordance with the Test Procedure (issuing a certificate in the form of Schedule 15); or
- (b) notify OpCo that the Test has been failed and/or the Test Report does not comply with the requirements of the deed;

Clause 18.5(d) - If the certificate lists minor errors or omissions, may recommend the actions that could be taken by OpCo to address the minor error or omission;

Clause 18.8 – Receive notice from TfNSW's Representative of additional tests required by TfNSW;

Clause 19.1(d) – Receive from OpCo copies of all Approvals which the deed requires OpCo to obtain prior to First Passenger Service;

Clause 19.1(e) – Receive from OpCo a certificate in the form of Schedule 17 of the OTS Project Deed;

Clause 19.2 – Receive notice of the date on which OpCo expects to satisfy the requirements for the First Passenger Service;

Clause 19.2 and 19.3 – Receive a written request from OpCo for a Certificate of Readiness for First Passenger Service and, within 5 Business Days, either:

- (a) issue a Certificate of Readiness for First Passenger Service to OpCo and TfNSW; or
- (b) issue a notice to OpCo and TfNSW which:
 - (i) lists the items which remain to be completed to satisfy the requirements for the First Passenger Service; or
 - (ii) states that OpCo is so far from satisfying the requirements for the First Passenger Service that it is not practicable to provide the list;

Clause 19.4(a) - Certify that the OTS Works have passed the Final Performance Test;

Clause 19.4(b) – Receive from OpCo a certificate in the form of Schedule 17A of the OTS Project Deed;

Clause 19.5 (a) – (c) – Receive notification from OpCo that it considers that a discrete part of the Local Area Works is complete, inspect the relevant Local Area Works, determine whether the discrete part of the Local Area Works has been completed in accordance with the deed and the WAD or the relevant Council Interface Agreement (if applicable) and within 5 Business Days of the inspection:

- (a) if the discrete part is complete, execute and provide a certificate in the form of Schedule 18 to TfNSW's Representative and OpCo stating the date on which OpCo has completed the discrete part of the Local Area Works in accordance with the OTS Project Deed and execute and provide TfNSW's Representative with a certificate in the form of Schedule 18 of the OTS Project Deed; or
- (b) if the discrete part is not complete, the items which remain to be completed (after which the procedure in clause 19.5(b) and 19.5(c) will reapply);

Clause 19.5(d)(i) - Execute and provide to TfNSW's Representative a certificate in the form of Schedule 18 with respect to each discrete part of the Local Area Works;

Clause 19.5(d)(iii) – To the extent that the discrete part of the Local Area Works constitutes WAD Road Works, execute and provide to TfNSW's Representative and RMS a certificate in the form of Schedule 4 of the WAD;

Clause 19.5(d)(iv) - To the extent that the discrete part of the Local Area Works constitutes Council Road Works, execute and provide to TfNSW's Representative and the relevant Council a certificate in the form of Schedule 3 of the relevant Council Interface Agreement;

Clause 19.9 – Receive from OpCo:

- (a) at least 5 Business Days' notice of the date on which it expects to achieve Completion; and
- (b) a written request for a Certificate of Completion;

Clause 19.10 - Within 1 Business Day of receipt of OpCo's request, either:

- (a) if Completion has been achieved, issue a Certificate of Completion to TfNSW and OpCo stating the Date of Completion and specifying any Minor Defects; or
- (b) if Completion has not been achieved, issue a notice to OpCo and TfNSW which:
 - (i) lists the items which remain to be completed before Completion; or

- (ii) states that the OTS Works are so far from achieving Completion that it is not practicable to provide the list of remaining works;

Clause 19.12(b) - Receive from OpCo evidence that it has taken steps to procure the ISCA "As Built" rating referred to in clause 9.21(b)(ii) of the Project Deed;

Clause 19.12(c) - Receive from OpCo:

- (a) notice from OpCo that it considers that Final Completion has been achieved; and
- (b) a request to issue a Certificate of Final Completion;

Clause 19.12(d) - Within 15 Business Days of receipt of OpCo's request, determine whether Final Completion has been achieved and either:

- (a) if Final Completion has been achieved, issue to TfNSW and OpCo a Certificate of Final Completion; or
- (b) if Final Completion has not been achieved, issue a notice to the TfNSW and OpCo listing the work remaining to be performed to achieve Final Completion (after which the procedure in clause 19.12 of the OTS Project Deed will re-apply)

Schedule 3 clause 7.3(a) - Receive from TfNSW:

- (a) notice when TfNSW considers it has completed the Pre-Shutdown TfNSW ECRL Works; and
- (b) notice when TfNSW considers it has completed the Post-Shutdown TfNSW ECRL Works;

Schedule 3 clause 7.3(b) - Promptly after receiving notice from TfNSW, inspect the relevant TfNSW ECRL Works and determine whether they have been completed and either:

- (a) if satisfied that the relevant TfNSW ECRL Works have been completed (except for minor defects), issue a notice to OpCo and TfNSW accordingly; or
- (b) if not satisfied that the relevant TfNSW ECRL Works have been completed (except for minor defects), issue a notice to OpCo and TfNSW which lists the items which remain to be completed;

Schedule 3 clause 12.1(b) - Undertake and complete an inspection (consisting of a desktop review and physical inspections) to determine Sydney Trains' compliance with the Sydney Trains ECRL Asset Maintenance Plan (which will include targeted physical inspections where non-conformances with the Sydney Trains ECRL Asset Maintenance Plan have been identified) (each an **ERCL Inspection**) no earlier than 2 months and no later than 1 month before:

- (a) each anniversary of the date of the OTS Project Deed;
- (b) the date falling 12 months before the Date for Handover; and
- (c) the date falling 6 months before the Date for Handover; and
- (d) Handover (**Handover Inspection**).

Schedule 3 clause 12.1(ba) - Notify OpCo and Sydney Trains at least 20 Business Days in advance of the date it proposes to carry out any inspection as part of an ECRL Inspection (and permit OpCo and Sydney Trains to attend any such inspection).

Schedule 3 clause 12.1(bb) - Issue a notice to TfNSW, Sydney Trains and OpCo:

- (a) certifying either that Sydney Trains has:
 - (i) complied with the Sydney Trains ECRL Asset Maintenance Plan; or
 - (ii) not complied with the Sydney Trains ECRL Asset Maintenance Plan and any rectification and/or maintenance works required to be carried out by Sydney Trains to comply with the Sydney Trains ECRL Asset Maintenance Plan (including rectifying any non-conformances with the Sydney Trains ECRL Asset Maintenance Plan) and the reasons for that finding; and
- (b) certifying in the case of the Handover Inspection, whether any non-conformances with the Sydney Trains ECRL Asset Maintenance Plan have been rectified.

Schedule 3 clause 12.1(c) and (d) - If the OTS Independent Certifier certifies that Sydney Trains has not complied with the Sydney Trains ECRL Asset Maintenance Plan, may receive a notice from Sydney Trains setting out any matters in relation to which it disagrees with the OTS Independent Certifier's opinion and, within 10 Business Days of receipt of the notice, determine whether or not the notice satisfactorily addresses the OTS Independent Certifier's concerns and either:

- (a) notify TfNSW, Sydney Trains and OpCo that Sydney Trains' notice satisfactorily addresses the OTS Independent Certifier's concerns together with its reasons for forming that opinion and provide the certification under clause 12.1(bb)(i)(A) of Schedule 3 of the OTS Project Deed; or
- (b) notify TfNSW, Sydney Trains and OpCo that Sydney Trains' notice does not satisfactorily address the OTS Independent Certifier's concerns, together with its reasons for forming that opinion.

Schedule 4 clause 5(c)(i) - Certify parts of the OpCo ETS Works that have been completed, tested and commissioned in accordance with the OTS Project Deed (including the SPR) and the ETS Program.

SPR functions

Section 3.5(k) - Progressively receive from OpCo:

- (a) analysis and determinations, including any revisions and re-evaluations, of the Predicted Effects and the Acceptable Effects;
- (b) results of monitoring the actual effects of OpCo's Activities, in a form which is directly comparable to the Acceptable Effects and Predicted Effects;
- (c) details of any adjustments to the manner in which OpCo's Activities are carried out which are necessary as a consequence of any re-evaluation of Predicted Effects; and
- (d) details of designs and materials for the repair and reinstatement of infrastructure required by section 3.5(j) of the SPR;

Section 3.15(j) – Receive from OpCo two copies of all site investigation reports within 5 Business Days of OpCo receiving such reports;

Section 3.16(c) - Receive hard and electronic copies of pre-construction ground and infrastructure condition surveys within 5 Business Days of OpCo receiving such reports;

Section 3.16(g) - Receive hard and electronic copies of post-construction ground and infrastructure condition surveys within 5 Business Days of OpCo receiving such reports;

Section 3.17(b) - Receive from OpCo two copies of all property and land surveys;

Section 3.18(c) - Receive from OpCo each update of the Delivery Program;

Section 4.1(d) - Receive evidence of Approvals from Authorities in relation to Local Area Works (in accordance with the OTS Project Deed);

Section 4.3(i) - Receive notice from OpCo of and may attend Utility Service owner or Authority meetings as may be required from time to time;

Section 4.3(j) - Receive details of the locations of Utility Services as constructed on completion of each section of the OTS Works;

Section 5.5.3(b) – May nominate Hold Points and Witness Points for inclusion in the Project Plans;

Section 5.5.3(d) - May nominate persons to attend or witness the release of any Hold Point or to attend any Witness Point;

Section 5.5.4(a) - Approve the designated authority assigned by OpCo to each Hold Point for the purpose of releasing the Hold Point;

Section 5.5.4(e) - May witness any inspections and tests preceding the release of any Hold Points and the release of any Hold Points;

Section 5.5.5 - May advise OpCo of apparent quality non-conformances, receive details of such corrective actions from OpCo, receive reports of non-conformances by OpCo and receive and review proposals for rectification work;

Section 5.5.6(b) - May attend any audits by an independent auditor of compliance with the Quality Plan and other Project Plans;

Section 5.5.6(c) - Receive copies of audit reports in respect of the Quality Plan and other Project Plans within 5 Business Days of its completion;

Section 5.12(a) – Receive from OpCo copies of notices, reports and submissions it gives to Authorities as well as any responses from, and details of any consultations with, Authorities;

Section 5.12(b) - Receive copies of Approvals obtained by OpCo;

Section 5.12(c) - Receive progress reports, updates of the Delivery Program, durability assessment reports, Design Documentation, as constructed documentation, construction completion reports, site investigation reports, property and land surveys, ground and infrastructure condition surveys, geotechnical mapping records and inferred ground condition reports and other documents in accordance with the OTS Project Deed;

Section 6.4.1(c) – Attend design presentations from OpCo;

Section 6.4.2/6.4.7 – Receive Design Documentation and additional submissions from OpCo for each Design Stage;

Section 6.4.4 – May reasonably request any other details, calculations, models, drawings, reports or other information to be provided with Design Stage 1 Design Documentation;

Section 6.4.6(c) - May inspect Design Stage 3 Design Documentation during the Delivery Phase;

Section 6.4.8(c) - Receive Design Documentation;

Section 6.4.8(d) - May request copies of references standards;

Section 6.4.9(b) – Receive project specific quality samples and prototype installations of all customer and staff facing aspects of the NWRL as part of the design submission and review process;

Section 6.4.9(d) - certify that the submitted prototype is at least equivalent to the Quality Benchmark prior to OpCo proceeding with any equivalent permanent work;

Section 6.5.2 – receive from OpCo details of all proposed design changes and actions to address non-conformances no less than 7 days prior to inclusion within the OTS Works;

Section 6.5.9 – Receive from OpCo sample work as executed Design Documentation for all NWRL Assets for review and acceptance by the OTS Independent Certifier prior to production of any work-as-executed Design Documentation

Section 6.5.18(d) – Receive from OpCo copies of any traffic control plans approved by relevant Authorities; and

Appendices 1 to 62 inclusive to the SPR – Must discharge the role, functions, obligations and duties of the Independent Certifier identified within the Appendices, including but not limited to:

Appendix 8, Clause 3.1(a)(ii) - Receive and review stakeholder and community engagement programs from OpCo for the Cheltenham community facilities and Arthur Whitting Park;

Appendix 22, Clause 2.12.1(b) - Receive a report from OpCo on the management of contaminated land, and provide certification;

Appendix 22, Clause 2.12.2(a) - Where OpCo's report determines the presence of contamination, receive a remediation plan from OpCo;

Appendix 43, Clause 2.3(b)(vii) - Receive regular written reports from the Proof engineer (fire);

Appendix 43, Clause 3.1(f) - Receive certificates (and any supporting documentation) regarding fire engineering design and documentation;

Appendix 48, Clause 1.2(a) - Receive:

- (i) draft Railway Operating Manuals and Operations and Maintenance Manuals 120 days prior to any training on the manuals content;
- (ii) initial Railway Operating Manuals and Operations and Maintenance Manuals 120 days prior to the commencement of Trial Running; and
- (iii) final Railway Operating Manuals and Operations and Maintenance Manuals at the conclusion of Trial Running;

Appendix 53, Clause 1.2(e) - Receive Delivery Phase Progress Reports from OpCo;

Appendix 53, Clause 2.2(a) - Receive a First Passenger Service gateway report;

Appendix 54, Clause 2(b) - Receive Project Plans during the Delivery Phase, as required by clause 8 of the Operative Provisions;

Appendix 55, Clause 2.1 - Comment on design outputs;

Appendix 55, Clause 3.5(e) - Receive report from OpCo regarding any issues identified by the independent safety assessment as requiring rectification;

Appendix 56, Clause 2.4(d) - Receive Test Records for all Tests;

Appendix 56, Clause 3.5.1 - Certify the Site Tests and Initial Performance Test 1 for Greenfield Railway;

Appendix 56, Clause 3.8.1 - Certify Trial Running of the NWRL; and

Appendix 56, Clause 3.8.4 - Certify the System Performance Test and the Capacity Performance Test, in accordance with clause 18.5 of the Operative Provisions.

Works Authorisation Deed

Clause 5.2(d) - Receive all necessary information and documents from TfNSW to:

- (a) perform the Independent Certifier Services;
- (b) attend any meetings in connection with the Works;
- (c) access to any part of the Site; and
- (d) inspect the records of TfNSW and its contractors;

Clause 12.1(a) - Receive and review the Design Documents at each Review Stage;

Clause 12.1(c) – May request additional information to be included in Design Documents;

Clause 12.2(a) - Receive written comments from RMS on each set of Design Documents;

Clause 12.3(a) - Review the Design Documents for the Design Stage 1 and the Design Stage 2 within the specified time periods and may make comments in writing to TfNSW and RMS (with a copy to OpCo) in relation to the compliance of the Design Documentation with the Works Authorisation Deed;

Clause 12.3(b) - Review the Design Documents for the Design Stage 3 within the specified time periods and, in writing to TfNSW and RMS (with a copy to OpCo) either:

- (a) reject the Design Documents and provide reasons; or
- (b) certify the Design Documents in the form set out in Schedule 3 of the Works Authorisation Deed;

Clause 12.3(c) - In formulating a notice to TfNSW under clause 12.3(a) or clause 12.3(b), consider any comment made by RMS and provide written reasons to RMS where full effect is not given to comments made by RMS in the written notice to TfNSW;

Clause 12.3(e) - Repeat the process outlined in clauses 12.1 and 12.2 of the Works Authorisation Deed if Design Documentation is amended and updated by TfNSW;

Clause 12.4 - Attend Risk Management Workshops to identify any deficiency in Design Documents in addressing hazards and associated risks where RMS requires TfNSW to convene such a workshop;

Clause 13.9 - Receive notice of and may attend any test and forward to RMS a certified summary of the results of all inspections and tests described in the monthly Inspection and

Testing Plans, carried out within a particular month during the course of the Works, along with a Certificate of Inspection, Testing and Quality Systems;

Clause 15.2 - Provide a Certificate of Construction Completion for the NWRL Works (in the form of Schedule 7 of the Works Authorisation Deed) when the NWRL Works reaches Construction Completion;

Clause 16.1 - Determine whether TfNSW has reasonable grounds for not rectifying minor omission and defects prior to public use and occupation;

Clause 16.2 – Receive at least 10 Business Days written notice of the date upon which TfNSW anticipates that Practical Completion of the Road Works will be reached, and notice from TfNSW when it considers that Practical Completion of the Road Works has been achieved;

Clause 16.3(a) – Promptly inspect the Road Works and determine whether or not Practical Completion of the Road Works has been achieved, and either:

- (a) issue a certificate in the form of Schedule 4 of the Works Authorisation Deed; or
- (a) issue a notice to RMS and TfNSW containing a comprehensive list of all items that the Independent Certifier considers necessary to be completed to achieve Practical Completion;

Clause 16.3(b) - If not satisfied that Practical Completion has been achieved, receive written notice from TfNSW once Road Works have been brought to Practical Completion;

Clause 16.4 – May issue a Notice of Practical Completion for the Works unilaterally;

Clause 16.8(b) - Receive a notice from RMS regarding the rectification of defects or non-conforming work;

Clause 17.1(a) - Receive notice from TfNSW that all defects have been rectified and issue a Certificate of Final Completion - Road Works (in the form set out in Schedule 5 to the Works Authorisation Deed);

Clause 24.1(b)(i) – Continually monitor the integrity and efficiency of the Quality System of the OTS Contractor and certify the quality system of OpCo;

Clause 24.1(b)(ii) - Continually monitor and verify the compliance of the design and construction of the Works and the Temporary Works with the Works Authorisation Deed; and

Clause 24.1(b)(iii) - Issue a Certificate of Inspection, Testing and Quality Systems (in the form set out in Schedule 6 to the Works Authorisation Deed) within 10 Business Days of the end of each month in which the Works were carried out to certify and verify the matters referred to in clause 24.1(b)(i) and clause 24.1(b)(ii) of the Works Authorisation Deed.

Hills Shire Council Interface Agreement

Clause 4.2(c) - Receive from TfNSW all necessary information and documents to perform the OTS Independent Certifier Services;

Clause 4.2(d) - Act independently of the Council, TfNSW and OpCo;

Clause 5.2(a) - Receive Design Documentation from TfNSW;

Clause 5.3(a) - Within 20 Business Days after submission of the Design Documentation, review the Design Documentation for Design Stage 1 and Design Stage 2 and may make comments in writing to TfNSW in relation to the compliance of the Design Documentation with the Interface Agreement;

Clause 5.3(b) - Within 20 Business Days after submission of the Design Documentation, review the Design Documentation for Design Stage 3 and, in writing to TfNSW, either:

- (a) reject the Design Documentation and provide reasons for the rejection; or
- (b) certify that the Design Documentation complies with the requirements of the Interface Agreement (by providing a certificate in the form of Schedule 3 to the Interface Agreement);

Clause 5.3(c) - Receive comments from Council if Council considers that the Design Documentation for an Design Stage:

- (a) does not comply with the requirements of the Interface Agreement; or
- (b) in respect of any road works which form part of the Council Works, will prejudice the safe operation or maintenance of the roads;

Clause 5.3(d) - If any of Council's comments under clause 5.3(c) are not accepted, respond to the Council in writing, identifying the comment that is not accepted and provide reasons;

Clause 5.3(f) - If the Design Documentation is amended or updated, review the amended or updated Design Documentation, in accordance with the process in clause 5.3(a) to 5.3(e);

Clause 9.2 - Receive from TfNSW a notice that TfNSW considers that a Package of Council Works has reached Practical Completion;

Clause 9.3 - Receive Council comments on whether or not Practical Completion has been achieved, inspect the Package of Council Works and, if satisfied that Practical Completion of the Package of Council Works has been achieved, issue a certificate in the form set out in Schedule 4 to the Interface Agreement;

Clause 9.6 - Receive a copy of any Council notice to TfNSW requiring the rectification of defects or non-conforming work at any time before the end of the Defects Liability Period;

Clause 9.7 - Receive notice from TfNSW once all defects in respect of the Council Works have been rectified and, if satisfied that all defects have been rectified, issue a certificate in the form set out in Schedule 5 to the Interface Agreement; and

Clause 10 - Provide a certificate in the form of Schedule 6 to the Interface Agreement once the OpCo Works reach Completion.

Blacktown City Council Interface Agreement

Clause 4.2(c) - Receive from TfNSW all necessary information and documents to perform the OTS Independent Certifier Services;

Clause 4.2(d) - Act independently of the Council, TfNSW and OpCo;

Clause 5.2(a)(ii) - Receive copy of the comprehensive report undertaken by the Proof Engineer relating to the assessment of all factors influencing the final integrity of all Proof Engineered Structures;

Clause 6.2(a) - Receive Design Documentation from TfNSW;

Clause 6.3(a) - Within 20 Business Days after the Design Documentation is submitted, review the Design Documentation for Design Stage 1 and Design Stage 2 and may make comments in writing to TfNSW in relation to the compliance of the Design Documentation with the Interface Agreement;

Clause 6.3(b) - Within 20 Business Days after the Design Documentation is submitted, review the Design Documentation for Design Stage 3 and, in writing to TfNSW, either:

- (a) reject the Design Documentation and provide reasons for the rejection; or
- (b) certify that the Design Documentation complies with the requirements of the Interface Agreement (by providing a certificate in the form of Schedule 3 to the Interface Agreement);

Clause 6.3(c) - Receive comments from Council if Council considers that the Design Documentation for an Design Stage:

- (a) does not comply with the requirements of the Interface Agreement; or
- (b) in respect of any road works which form part of the Council Works, will prejudice the safe operation or maintenance of the roads;

Clause 6.3(d) - If any of Council's comments under clause 5.3(c) are not accepted, respond to the Council in writing, identifying the comment that is not accepted and provide reasons;

Clause 6.3(f) - If the Design Documentation is amended or updated, review the amended or updated Design Documentation, in accordance with the process in clause 5.3(a) to 5.3(e);

Clause 10.2 - Receive from TfNSW a notice that TfNSW considers that a Package of Council Works has reached Practical Completion;

Clause 10.3 - Receive Council comments on whether or not Practical Completion has been achieved, inspect the Package of Council Works and, if satisfied that Practical Completion of the Package of Council Works has been achieved, issue a certificate in the form set out in Schedule 4 to the Interface Agreement;

Clause 10.6 - Receive a copy of any Council notice to TfNSW requiring the rectification of defects or non-conforming work at any time before the end of the Defects Liability Period;

Clause 10.7 - Receive notice from TfNSW once all defects in respect of the Council Works have been rectified and, if satisfied that all defects have been rectified, issue a certificate in the form set out in Schedule 5 to the Interface Agreement; and

Clause 11 - Provide a certificate in the form of Schedule 6 to the Interface Agreement once the OpCo Works reach Completion.

Hornsby Shire Council Interface Agreement

Clause 4.2(c) - Receive from TfNSW all necessary information and documents to perform the OTS Independent Certifier Services;

Clause 4.2(d) - Act independently of the Council, TfNSW and OpCo;

Clause 5.2(a) - Receive Design Documentation from TfNSW;

Clause 5.3(a) - Within 20 Business Days after receipt of the Design Documentation, review the Design Documentation for Design Stage 1 and Design Stage 2 and may make comments in writing to TfNSW in relation to the compliance of the Design Documentation with the Interface Agreement;

Clause 5.3(b) - Within 20 Business Days after receipt of the Design Documentation, review the Design Documentation for Design Stage 3 and, in writing to TfNSW, either:

- (a) reject the Design Documentation and provide reasons for the rejection; or

- (b) certify that the Design Documentation complies with the requirements of the Interface Agreement (by providing a certificate in the form of Schedule 3 to the Interface Agreement);

Clause 5.3(c) - Receive comments from Council if Council considers that the Design Documentation for an Design Stage:

- (a) does not comply with the requirements of the Interface Agreement; or
- (b) in respect of any road works which form part of the Council Works, will prejudice the safe operation or maintenance of the roads;

Clause 5.3(d) - If any of Council's comments under clause 5.3(c) are not accepted, respond to the Council in writing, identifying the comment that is not accepted and provide reasons;

Clause 5.3(f) - If the Design Documentation is amended or updated, review the amended or updated Design Documentation, in accordance with the process in clause 5.3(a) to 5.3(e);

Clause 9.2 - Receive from TfNSW a notice that TfNSW considers that a Package of Council Works has reached Practical Completion;

Clause 9.3 - Receive Council comments on whether or not Practical Completion has been achieved, inspect the Package of Council Works and, if satisfied that Practical Completion of the Package of Council Works has been achieved, issue a certificate in the form set out in Schedule 4 to the Interface Agreement;

Clause 9.6 - Receive a copy of any Council notice to TfNSW requiring the rectification of defects or non-conforming work at any time before the end of the Defects Liability Period;

Clause 9.7 - Receive notice from TfNSW once all defects in respect of the Council Works have been rectified and, if satisfied that all defects have been rectified, issue a certificate in the form set out in Schedule 5 to the Interface Agreement; and

Clause 10 - Provide a certificate in the form of Schedule 6 to the Interface Agreement once the OpCo Works reach Completion.

3.2 NWRL Transition Agreement

Clause 7 - Receive all Sydney Trains Design Documentation from OpCo (being Design Documentation required for OpCo ECRL Works which will interface with or otherwise affect:

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

Clause 7.2(b) - Receive comments from Sydney Trains if Sydney Trains reasonably considers that the Relevant OpCo Design Documentation will prejudice the safe operation or maintenance of Sydney Trains Facilities, Sydney Trains' operations or activities or the operations of third party operators using Sydney Trains' Facilities.

Clause 7.2(c) - Review Sydney Trains Design Documentation for Design Stage 1 and Design Stage 2 within 20 Business Days and notify OpCo of any actual non-compliance with the OTS Project Deed. The OTS Independent Certifier may make comments in writing to TfNSW and Sydney Trains (with a copy to OpCo) of any potential non-compliance.

Clause 7.2(d) - Within 20 Business Days of receipt, review Sydney Trains Design Documentation for Design Stage 3 and, in writing to TfNSW and Sydney Trains (with a copy to OpCo), either:

- (a) reject the Sydney Trains Design Documentation and provide reasons for the rejection; or
- (b) certify the Sydney Trains Design Documentation in the form set out in Schedule 13 of the OTS Project Deed.

Clause 7.2(f) - If any of Sydney Trains' comments under clause 7.2(b) of the NWRL Transition Agreement are not accepted, respond to Sydney Trains in writing (with a copy to TfNSW), identifying the comment that is not accepted and provide reasons.

Clause 7.2(h)(iii) - If any Sydney Trains Design Documentation for Design Stage 3 is rejected, receive a notice from OpCo setting out any matters in relation to which it disagrees with the OTS Independent Certifier's opinion.

Clause 7.2(i) - Within 10 Business Days of receiving a notice from OpCo under clause 7.2(h)(iii), determine and notify TfNSW, Sydney Trains and OpCo as to whether or not the notice satisfactorily addresses the OTS Independent Certifier's concerns and provide reasons. If the OTS Independent Certifier considers that the notice satisfactorily addresses the OTS Independent Certifier's concerns, provide the certification in the form set out in Schedule 13 of the OTS Project Deed as part of the notice.

Clause 7.2(j)(iii) - If the OTS Independent Certifier notifies TfNSW, Sydney Trains and OpCo under clause 7.2(i) that it does not consider that OpCo's notice satisfactorily addresses the OTS Independent Certifier's concerns, receive amended relevant non-compliant element of the Sydney Trains Design Documentation (and the process in clause 7.2 reapplies).

Clause 7.2(k) - In its certification of the Sydney Trains Design Documentation under clause 7.2(d), may identify minor errors or omissions and may recommend actions that could be taken by OpCo to address those minor errors or omissions.

Clause 22.1(b) - Must undertake and complete an inspection (consisting of a desktop review and physical inspections) to determine whether Sydney Trains has complied with the Sydney Trains ECRL Asset Maintenance Plan (which will include targeted physical inspections where non-conformances with the Sydney Trains ECRL Asset Maintenance Plan have been identified) (each an **ERCL Inspection**) no earlier than 2 months and no later than 1 month before:

- (a) on each anniversary of the date of the OTS Project Deed;
- (b) the date falling 12 months before the Date for Handover; and
- (c) the date falling 6 months before the Date for Handover; and
- (d) Handover (**Handover Inspection**).

Clause 22.1(c) - Notify OpCo and Sydney Trains at least 20 Business Days in advance of the date it proposes to carry out any inspection as part of an ECRL Inspection (and permit OpCo and Sydney Trains to attend such inspection).

Clause 22.1(d) - Upon completion of an ECRL Inspection, issue a notice to TfNSW, Sydney Trains and OpCo:

- (a) certifying either that Sydney Trains has:
 - (i) complied with the Sydney Trains ECRL Asset Maintenance Plan; or

- (ii) not complied with the Sydney Trains ECRL Asset Maintenance Plan and any rectification and/or maintenance works required to be carried out by Sydney Trains to comply with the Sydney Trains ECRL Asset Maintenance Plan (including rectifying any non-conformances with the Sydney Trains ECRL Asset Maintenance Plan) and the reasons for that finding; and
- (b) certifying in the case of the Handover Inspection, whether any non-conformances with the Sydney Trains ECRL Asset Maintenance Plan have been rectified.

Clause 22.1(e) - If the OTS Independent Certifier has determined that Sydney Trains has not complied with the Sydney Trains ECRL Asset Maintenance Plan, may receive a notice from Sydney Trains setting out any matters in relation to which it disagrees with the OTS Independent Certifier's opinion.

Clause 22.1(f) - Within 20 Business Days of receiving a notice from Sydney Trains under clause 22.1(c), determine and notify TfNSW, Sydney Trains and OpCo as to whether or not the notice satisfactorily addresses the OTS Independent Certifier's concerns and provide reasons. If the OTS Independent Certifier considers that the notice satisfactorily addresses the OTS Independent Certifier's concerns, issue a notice to TfNSW, Sydney Trains and OpCo stating that Sydney Trains has complied with the Sydney Trains ECRL Asset Maintenance Plan.

Schedule 7, clause 6(b) - Inspect and determine whether the Pre-Shutdown Sydney Trains ECRL Works or the remainder of the Sydney Trains ECRL Works (as the case may be) have been completed (except for minor defects) and issue a notice accordingly. If the relevant Sydney Trains ECRL Works have not been completed (except for minor defects), issue a notice which lists the items which remain to be completed (TfNSW to provide Sydney Trains with a copy of the notice).

Schedule 2 - Payment Schedule

Schedule 3 - Minimum resources and surveillance levels

1. Minimum resources commitment

The OTS Independent Certifier acknowledges and agrees that the minimum levels of resources, including man-days, set out in this Schedule 3 are minimum requirements only and do not in any way limit or otherwise affect the obligations of the OTS Independent Certifier to perform the Services in accordance with this deed.

1.1 Core services

The OTS Independent Certifier must provide at least the following key personnel to perform the Services throughout the Term with the minimum days to be committed to the Services as set out below:

Role/Position	Name(s)	Minimum commitment
OTS Independent Certifier's project director		Full time throughout the Term
Lead document controller		Full time throughout the Term
IC Contract Manager		8 Hours / day and 5 days a week

1.2 Design Phase Services

The OTS Independent Certifier must provide at least the following key personnel to perform the Design Phase Services with the minimum days to be committed to the OTS Works at each phase as set out below:

Position	Name	Minimum commitment	
		During performance of OpCo's Activities relating to design, until all discrete design elements/ components have passed Design Stage 3	During performance of OpCo's Activities relating to construction / manufacturing, until the Date of Final Completion
Lead design manager		Full time	Part time, 2 days full time equivalent
Design manager - rail systems		Full time	Part time, 2 days per week
Design manager - civils and structures		Full time	Part time, 2 days full time equivalent

Systems Definition and Technical Support		8 Hours / day and 5 days a week	Part time, 8 hours / day for 2 days a week
IC Contract Manager, Reporting Manager, Administration manager		8 Hours / day and 5 days a week	Part time, 8 hours / day for 2 days a week
Discipline Leader - Operations and Maintenance		8 Hours / day and 5 days a week	Part time, 8 hours / day for 2 days a week
Discipline Leader - Rolling Stock		8 Hours / day and 5 days a week	Part time, 8 hours / day for 2 days a week
Discipline Leader - Workshop and Depot		8 Hours / day and 5 days a week	Part time, 8 hours / day for 2 days a week
Discipline Leader - Traction Power and OHW		8 Hours / day and 5 days a week	Part time, 8 hours / day for 2 days a week
Discipline Leader - Stations, Buildings and Precincts		8 Hours / day and 5 days a week	Part time, 8 hours / day for 2 days a week

1.3 Construction and Completion Phase Services

The OTS Independent Certifier must provide the following personnel, as a minimum, in the roles/positions for the durations and at the locations set out below, to perform the relevant aspects of the Construction Phase Services:

Role/Position	Name(s)	Minimum Attendance and Location
Engineering and Surveillance Manager		8 Hours / day and 5 days a week
System Definition and Technical Support Manager		8 Hours / day and 3 days a week
Construction manager		Full time during the performance of OpCo's Activities and based on the Construction Site at least two days per week during construction of the OTS Works.
Manufacturing manager		Full time
Rail Systems		8 Hours / day and 5 days a week

Discipline Leader		
Testing and Commissioning Manager		8 Hours / day and 5 days a week

1.4 Completion Phase Services

The OTS Independent Certifier must provide the following personnel, as a minimum, for the durations set out below to perform the relevant aspects of the Completion Phase Services:

Position	Name	Minimum man-days to be committed to the OTS Works
Completion phase is included in the combined Construction and Completion phase above		

1.5 Final Completion Phase Services

The OTS Independent Certifier must provide the following personnel, as a minimum, for the durations set out below to perform the relevant aspects of the Final Completion Phase Services:

Position	Name	Minimum man-days to be committed to the OTS Works
Testing and Commissioning Manager		Part time, 2 days full time equivalent
Rail Systems Discipline Leader		Part time, 8 hours / day for 2 days a week
Civils and Structures Discipline Leader		Part time, 8 hours / day for 2 days a week

Note: In relation to the tables in paragraphs 1.3 and 1.4 above, full time means a minimum of 10 hours per day Monday to Friday and a minimum of 6 hours on Saturday. The OTS Independent Certifier's personnel must also be available, as required to perform the Services, outside of those hours.¹

2. Minimum ability, knowledge, skill, expertise and experience of OTS Independent Certifier's personnel

2.1 OTS Independent Certifier's project director

- (a) The OTS Independent Certifier's project director must possess a recognised qualification relevant to the position and the Services and have extensive experience in the project certification of large projects similar to the OTS Works and OpCo's Activities.
- (b) The OTS Independent Certifier's project director must at all times have authority to act on behalf of the OTS Independent Certifier in respect of the Services.

2.2 OTS Independent Certifier's lead design manager

The OTS Independent Certifier's lead design manager must possess a recognised qualification relevant to the position and the Services and have at least five years' experience in the design certification of large projects similar to the OTS Works and OpCo's Activities and at least 20 years of experience in the design of major infrastructure projects.

2.3 OTS Independent Certifier's design manager - rail systems

The OTS Independent Certifier's design manager - rail systems must possess a recognised engineering qualification relevant to the position and the Services and have at least five years' experience in the design certification of rail systems on large projects similar to the OTS Works and OpCo's Activities and at least 10 years of experience in the design of rail systems on major infrastructure projects.

2.4 OTS Independent Certifier's design manager - civils and structures

The OTS Independent Certifier's design manager - civils and structures must possess a recognised civil or structural engineering qualification relevant to the position and the Services and have at least five years' experience in the design certification of civil and structural elements on large projects similar to the OTS Works and OpCo's Activities and at least 10 years of experience in the design of civil and or structural elements on major infrastructure projects.

2.5 OTS Independent Certifier's design manager - rolling stock

The OTS Independent Certifier's design manager - Rolling Stock must possess a recognised engineering qualification relevant to the position and the Services and have at least five years' experience in the design certification of rolling stock on large projects similar to the OTS Works and OpCo's Activities and at least 10 years of experience in the design of rolling stock on major infrastructure projects.

2.6 OTS Independent Certifier's construction manager

The OTS Independent Certifier's construction manager must possess a recognised qualification relevant to the position and the Services and have at least five years' experience in the construction certification of large projects similar to the OTS Works and OpCo's Activities and at least 10 years of experience in construction including strong experience in infrastructure construction.

2.7 OTS Independent Certifier's manufacturing manager

The OTS Independent Certifier's manufacturing manager must possess a recognised qualification relevant to the position and the Services and have at least five years' experience in the manufacturing certification of manufactured elements on large projects similar to the OTS Works and OpCo's Activities and at least 10 years of experience in manufacturing related to infrastructure construction.

2.8 OTS Independent Certifier's testing and commissioning manager

The OTS Independent Certifier's Testing and Commissioning Manager must possess a recognised qualification relevant to the position and the Services and have at least five years' experience in the testing and commissioning certification on large projects similar to the OTS Works and OpCo's Activities and at least 20 years of experience in testing and commissioning on infrastructure construction projects.

2.9 Lead document controller

The lead document controller must have at least five years' experience in document control on large projects similar to the OTS Works and OpCo's Activities.

3. Minimum surveillance commitment

<i>Phase / Activity</i>	<i>Minimum Frequency</i>
ADMINISTRATION	
<i>Develop / update Certification and Monitoring Plan</i>	<i>Annual</i>
<i>Progress reports</i>	<i>Monthly</i>
<i>Review delivery program</i>	<i>Monthly</i>
<i>Meeting attendance (with Other Parties)</i>	<i>Weekly</i>
DESIGN	
<i>Attend Working Group meetings</i>	<i>All</i>
CONSTRUCTION / MANUFACTURE	
<i>TfNSW ECRL Works (Exhibit 1 Appendix 5)</i> <ul style="list-style-type: none"> <i>• Trackwork at Epping and Chatswood</i> <i>• High Voltage Electrical Works</i> <i>• Traction Electrical Works</i> <i>• Electrical earthing and bonding</i> <i>• Low Voltage Electrical Works</i> <i>• Signalling</i> <i>• Telecommunications Systems</i> <i>• ECRL Central Control System</i> <i>• Voice Control System</i> 	Monthly for non possession works Per possession for possession works

Phase / Activity	Minimum Frequency
<ul style="list-style-type: none"> • <i>PI Control System</i> • <i>CCTV System</i> • <i>Help Points</i> • <i>PA System</i> • <i>Audio Frequency Induction Loops</i> • <i>Digital Voice announcement system</i> • <i>Emergency Sound System and Intercom</i> • <i>Station Passenger Information System</i> • <i>Electronic Ticketing System</i> • <i>Time of Day Clocks at Epping and Chatswood</i> • <i>Electronic Security System</i> • <i>General Administration and Emergency Telephone PABX</i> • <i>OCS ,Signal Post, EOL and X-Ring Telephones</i> • <i>Digital Train Radio System</i> • <i>Government Radio and Police Radio Network</i> • <i>Station Security Radio</i> • <i>Station, Security and SPI, Ticketing, FIP, Traction, Signalling LAN</i> • <i>DC Power Supply and Battery Backup</i> • <i>Operations Critical Data Network</i> • <i>SDH Network</i> • <i>TDM and Serial Data Links</i> • <i>Trunk Copper Telecommunications network</i> • <i>Trunk Fibre Network</i> • <i>Tunnel Ventilation</i> • <i>Environmental Controls</i> • <i>Hydraulic Systems</i> • <i>Lifts and Escalators</i> • <i>Fire Systems</i> 	
<p>Local Area Works (Exhibit 1, Appendix 6)</p> <p><i>Modification to existing and establishment of new works:</i></p> <ul style="list-style-type: none"> • <i>Roadworks</i> • <i>Overbridge works</i> • <i>Stormwater infrastructure</i> • <i>Interfaces with Utility Services</i> • <i>Street Furniture</i> • <i>Street Lighting</i> • <i>Landscaping</i> 	<p><i>Monthly</i></p>

Phase / Activity	Minimum Frequency
<ul style="list-style-type: none"> • Footpaths • Signage and linemarking 	
<p>Arthur Whitling Park and Cheltenham Community Facilities (Exhibit 1, Appendix 8)</p> <p><i>Arthur Whitling Park Cheltenham community facilities</i></p> <ul style="list-style-type: none"> • Multi-use courts and hard stand • Soccer practise facilities • Cricket practise nets • Children's playground • Car parking 	Upon completion
<p>Station and Precinct Architectural Works (Exhibit 1, Appendices 12, 13 & 14)</p> <p><i>Finishes, Fixtures, Fittings and material for each station precinct and public domain area including:</i></p> <ul style="list-style-type: none"> • Primary Plazas • Secondary Plazas • Pavements and footpaths • Street furniture • Shelters • Fencing • Landscaping <p><i>Finishes, Fixtures, Fittings and material for each station including:</i></p> <ul style="list-style-type: none"> • Station entries • Entry structures • Paid concourses • Station mezzanine and circulation areas • Platforms • Back of house and plant areas • Service Buildings 	Monthly
Public Art (Exhibit 1, Appendix 15)	Upon completion
Lighting (Exhibit 1, Appendix 17)	Upon completion
Branding, Wayfinding, Signage and Customer Information (Exhibit 1, Appendix 18)	Upon completion
<p>Rolling Stock (Exhibit 1, Appendix 20)</p> <ul style="list-style-type: none"> • Electromagnetic Compatibility • Train management system • Propulsion (traction) system 	

Phase / Activity	Minimum Frequency
<ul style="list-style-type: none"> • Roll back prevention • Wheel spin/slide protection • Brake system • Bodyshell and structure • Fire and smoke detection systems • Bogies and suspension • Earthing • Door system • Exterior lighting • Passenger environment • Communications System • Signalling and train control • Closed circuit television • Event recorder • Driver Machine Interface • Auxiliary supply • Protection and sealing 	Monthly
<p>Trackwork (Exhibit 1, Appendix 21)</p> <ul style="list-style-type: none"> • Installation of Rail including rail fastening system • Turnouts • Trackform (further definition) • Buffer Stops • Walkways, track crossings and high rail pads • Non destructive testing of rail • No destructive testing of welds 	Three times per week
<p>Civil and Structural Works (Exhibit 1, Appendix 22)</p> <p><i>Structural Works</i></p> <ul style="list-style-type: none"> • Structural works for Cut and Cover stations, Open Cut Stations and services facility structures • Fit out works for infrastructure handed over by the TSC Contractor including tunnels, cross passages, crossover cavern and nozzle enlargements • Fitout works for infrastructure handed over by the SVC Contractor including viaducts, Stations, Overbridges 1&2, Balmoral Road overbridge • New Bridges • Multi-deck car park structures <p><i>Civil Works</i></p> <ul style="list-style-type: none"> • Earthworks • Retaining Walls • Roadworks • Drainage Works • Site Contamination remediation 	Weekly
<p>Stabling and Maintenance Facility (Exhibit 1, Appendix 23)</p> <ul style="list-style-type: none"> • Main Maintenance Building • Servicing Tracks • Component Exchange Facility 	Weekly

Phase/ Activity	Minimum Frequency
<ul style="list-style-type: none"> • Automatic Train Wash • Automatic Wheel Monitoring • Bulk Power Supply • Vehicle access, internal roads, car parking and stormwater drainage • Permanent Utility Connections • Administration Building • Landscaping • Security and Outdoor Lighting 	
<p>Operations Control Centre (Exhibit 1, Appendix 24)</p> <ul style="list-style-type: none"> • Management and Control facilities • Administration Offices and data storage rooms • Equipment Rooms • Security • Staff amenities including toilets, kitchens and break out areas • Furniture, Fixtures and Fittings 	Weekly
<p>OpCo ECRL Works (Exhibit 1, Appendix 25)</p> <ul style="list-style-type: none"> • Replacement of existing trackwork • Provide new track bed and Hi-rail pads • Modifications to Chatswood North Substation • Disconnect feeders to Epping West Station • Upgrade existing OHW structures • Isolation of traction return and Bonding Structures in the Chatswood shared corridor • Modifications to existing Low Voltage Systems • Power supply and connection to PSDs at all stations • Provision of new communication systems, equipment and enclosures including interfaces with Sydney Trains • Implementation of any changes to meet Fire Life and Safety requirements • Modifications to existing ECRL tunnel ventilation system • Provision of spot cooling to existing platforms • Upgrading of Chatswood Portal Stormwater Sump • Upgrading of Lady Game Drive Treatment Plant • Modifications to ECRL hydraulic systems • Replacement of existing Tunnel and Station Fire Indication Panels and input devices • Replacement or modification of existing SSISEPs • Provision of new Station Manager mimic panel at Epping Station • Interfaces and connection to Chatswood Station fire system • Replacement of all gaseous fire suppression systems • Works associated with Building Management Systems at all ECRL stations • Chatswood Station Platform Level Works • Macquarie University, Macquarie Park and North Ryde Station Unpaid and Paid areas works • Macquarie University, Macquarie Park and North Ryde Station Platform Level works 	<p>Weekly for non possession works</p> <p>Per possession for possession works</p>

Phase / Activity	Minimum Frequency
<ul style="list-style-type: none"> Removal of temporary bulkhead near the Epping Stub and making good substrate Excavation of existing tunnel floor near Epping Stub Modify track drainage at the connection with NWRL 	
Central Control System (Exhibit 1, Appendix 27)	Monthly
Signalling and Train Control Systems (Exhibit 1, Appendix 28)	Monthly
Power Control and Building Management Systems (Exhibit 1, Appendix 29)	Monthly
Environmental Control Systems (Exhibit 1, Appendix 30)	Monthly
Fire Services Systems (Exhibit 1, Appendix 31)	Monthly
Communications Systems (Exhibit 1, Appendix 32)	Monthly
Ticketing System (Exhibit 1, Appendix 33) <ul style="list-style-type: none"> Civil and Cabling works for power supply to ETS equipment at stations Secure storage for rotables and consumables Storage and charging of portable card readers Civil works for ETS equipment Data communications infrastructure 	Three times per week
Tunnel Ventilation System (Exhibit 1, Appendix 34) <ul style="list-style-type: none"> Tunnel Ventilation System Trackway Exhaust system for enclosed station track areas Environmental Control system Smoke Management System 	Twice per week
Low Voltage Distribution and Electrical Building Services (Exhibit 1, Appendix 36) <ul style="list-style-type: none"> Switchboards and Distribution Boards Electrical Works for Car Parks and Precincts UPS and facilities Cable installation 	Twice per week
Bulk Power Supply and High Voltage Reticulation (Exhibit 1, Appendix 37) <ul style="list-style-type: none"> Bulk Power Supply equipment and cables including protection and control equipment HV reticulation equipment and cables including protection and control equipment SCADA and communications equipment Auxiliary systems and backup power supply Lighting and surge protection equipment Harmonic suppression and filtering Isolation and earthing equipment 	Weekly
Earthing, Bonding, Electrolysis and Electromagnetic	Twice per week

Phase / Activity	Minimum Frequency
Compatibility (Exhibit 1, Appendix 38)	
Traction Power System (Exhibit 1, Appendix 39) <ul style="list-style-type: none"> • Traction Power Supply equipment and cables, including Traction Return, rectification, protection and control equipment • overhead wiring systems • SCADA and communications equipment for operational control and monitoring by a Power Control System (PCS) • auxiliary systems and backup power supply for operations critical and safety service components including protection, control and monitoring devices • lightning and surge protection equipment • harmonic suppression and filtering • rail voltage limiting devices • isolation and earthing equipment. 	Weekly
Hydraulic Services (Exhibit 1, Appendix 40) <ul style="list-style-type: none"> • water services systems <ul style="list-style-type: none"> ○ potable domestic cold water ○ potable domestic heated water ○ recycled non-potable cold water, where external supply is available ○ rainwater service and supply • drainage systems <ul style="list-style-type: none"> ○ sewer drainage, including tradewaste management ○ rainwater capture and drainage ○ tunnel drainage of all tunnel water inflows, including seepage water • associated equipment and system component supports, connections, discharge points, risers, civil and structural works, and acoustic treatments • respective power supply, control, and monitoring systems and interfaces • respective fire separation, fire stopping, fire proofing, and fire system interfaces 	Weekly
Lifts and Escalators (Exhibit 1, Appendix 41)	Weekly
Platform Screen Doors (Exhibit 1, Appendix 42) <ul style="list-style-type: none"> • Customer interface • Obstacle Detection • Emergency trackside release • PSD sliding screen door isolation • PSD sliding screen door indications • Emergency Escape Doors • End walkway doors • Interlocking with Train movements • Local control panels • Power supply requirements • Remote Monitoring and Control Facilities 	Weekly

Phase / Activity	Minimum Frequency
<ul style="list-style-type: none"> • Structural integrity 	
Fire and Life Safety (Exhibit 1, Appendix 43) <ul style="list-style-type: none"> • Stations • Tunnels • Viaduct • Rolling Stock 	Weekly
Work Health and Safety Observation	At all times when on site
Quality Product Surveillance Monitoring <ul style="list-style-type: none"> • Monitor structure foundation and subgrade preparation and treatments • Monitor compaction of earthworks and spoil • Monitor manufacture of off-site elements • Monitor concreting and associated works <ul style="list-style-type: none"> ○ preparation ○ formwork ○ bracing ○ reinforcement ○ placing ○ stressing ○ finishing ○ curing ○ stripping formwork • Sprayed concrete <ul style="list-style-type: none"> ○ Batching and mixing ○ Application ○ Depth control ○ Curing ○ Production tests • Monitor steel fabrication <ul style="list-style-type: none"> ○ reviews of welding procedures ○ monitoring of the fabrication and welding processes for major members (off-site). • Monitor protective treatment systems (off-site) • Monitor ground movement equipment monitors including <ul style="list-style-type: none"> ○ audits of equipment ○ review of results 	Initial preparation and treatment Weekly Weekly Initial activity and twice weekly thereafter Each procedure twice weekly Twice per week Monthly Daily
General site attendance	Weekly per site
COMPLETION (INCLUDES TESTING AND COMMISSIONING)	
TfNSW ECRL Works (Exhibit 1, Appendix 5)	Monthly

<i>Phase / Activity</i>	<i>Minimum Frequency</i>
<ul style="list-style-type: none"> • <i>Trackwork at Epping and Chatswood</i> • <i>High Voltage Electrical Works</i> • <i>Traction Electrical Works</i> • <i>Electrical earthing and bonding</i> • <i>Low Voltage Electrical Works</i> • <i>Signalling</i> • <i>Telecommunications Systems</i> • <i>ECRL Central Control System</i> • <i>Voice Control System</i> • <i>PI Control System</i> • <i>CCTV System</i> • <i>Help Points</i> • <i>PA System</i> • <i>Audio Frequency Induction Loops</i> • <i>Digital Voice announcement system</i> • <i>Emergency Sound System and Intercom</i> • <i>Station Passenger Information System</i> • <i>Electronic Ticketing System</i> • <i>Time of Day Clocks at Epping and Chatswood</i> • <i>Electronic Security System</i> • <i>General Administration and Emergency Telephone PABX</i> • <i>OCS ,Signal Post, EOL and X-Ring Telephones</i> • <i>Digital Train Radio System</i> • <i>Government Radio and Police Radio Network</i> • <i>Station Security Radio</i> • <i>Station, Security and SPI, Ticketing, FIP, Traction, Signalling LAN</i> • <i>DC Power Supply and Battery Backup</i> • <i>Operations Critical Data Network</i> • <i>SDH Network</i> • <i>TDM and Serial Data Links</i> • <i>Trunk Copper Telecommunications network</i> • <i>Trunk Fibre Network</i> • <i>Tunnel Ventilation</i> • <i>Environmental Controls</i> • <i>Hydraulic Systems</i> 	

Phase / Activity	Minimum Frequency
<ul style="list-style-type: none"> • Lifts and Escalators • Fire Systems 	
<p>Local Area Works (Exhibit 1, Appendix 6)</p> <p><i>Modification to existing and establishment of new works:</i></p> <ul style="list-style-type: none"> • Roadworks • Overbridge works • Stormwater infrastructure • Interfaces with Utility Services • Street Furniture • Street Lighting • Landscaping • Footpaths • Signage and linemarking 	Monthly
Lighting (Exhibit 1, Appendix 17)	Upon completion at each site
Branding, Wayfinding, Signage and Customer Information (Exhibit 1, Appendix 18)	Upon completion at each site
<p>Rolling Stock (Exhibit 1, Appendix 20)</p> <ul style="list-style-type: none"> • Static Testing including: <ul style="list-style-type: none"> ○ Detrainment ○ Train control ○ Fire system ○ Torsional stiffness ○ Static wheel loading ○ Waterproofing ○ Bogie rotation ○ Static interior and exterior noise ○ Climatic testing • Dynamic Testing • Integrated Factory Acceptance Tests for trains, signalling, control systems and platform screen doors 	<p>Each test event for first train and every 5 trains thereafter.</p> <p>Each test event</p> <p>Each test event for first train and every 5 trains thereafter</p>
<p>Trackwork (Exhibit 1, Appendix 21)</p> <ul style="list-style-type: none"> • SAT - Non destructive testing of rail • SAT - No destructive testing of welds 	50% of tests
<p>Civil and Structural Works (Exhibit 1, Appendix 22)</p> <p><i>Structural Works</i></p> <ul style="list-style-type: none"> • Structural works for Cut and Cover stations, Open Cut Stations and services facility structures • Fit out works for infrastructure handed over by the TSC Contractor including tunnels, cross passages, crossover cavern and nozzle enlargements • Fitout works for infrastructure handed over by the SVC Contractor including viaducts, Stations, Overbridges 	Twice per week

Phase / Activity	Minimum Frequency
<p><i>1&2, Balmoral Road overbridge</i></p> <ul style="list-style-type: none"> • <i>New Bridges</i> • <i>Multi-deck car park structures</i> <p><i>Civil Works</i></p> <ul style="list-style-type: none"> • <i>Earthworks</i> • <i>Retaining Walls</i> • <i>Roadworks</i> • <i>Drainage Works</i> • <i>Site Contamination remediation</i> 	
<p><i>Stabling and Maintenance Facility (Exhibit 1, Appendix 23)</i></p> <ul style="list-style-type: none"> • <i>Main Maintenance Building</i> • <i>Servicing Tracks</i> • <i>Component Exchange Facility</i> • <i>Automatic Train Wash</i> • <i>Automatic Wheel Monitoring</i> • <i>Bulk Power Supply</i> • <i>Vehicle access, internal roads, car parking and stormwater drainage</i> • <i>Permanent Utility Connections</i> • <i>Administration Building</i> • <i>Landscaping</i> • <i>Security and Outdoor Lighting</i> 	<i>Weekly</i>
<p><i>Operations Control Centre (Exhibit 1, Appendix 24)</i></p> <ul style="list-style-type: none"> • <i>Management and Control facilities</i> • <i>Administration Offices and data storage rooms</i> • <i>Equipment Rooms</i> • <i>Security</i> • <i>Staff amenities including toilets, kitchens and break out areas</i> • <i>Furniture, Fixtures and Fittings</i> 	<i>Monthly</i>
<p><i>OpCo ECRL Works (Exhibit 1, Appendix 25)</i></p> <ul style="list-style-type: none"> • <i>Replacement of existing trackwork</i> • <i>Provide new track bed and Hi-rail pads</i> • <i>Modifications to Chatswood North Substation</i> • <i>Disconnect feeders to Epping West Station</i> • <i>Upgrade existing OHW structures</i> • <i>Isolation of traction return and Bonding Structures in the Chatswood shared corridor</i> • <i>Modifications to existing Low Voltage Systems</i> • <i>Power supply and connection to PSDs at all stations</i> • <i>Provision of new communication systems, equipment and enclosures including interfaces with Sydney Trains</i> • <i>Implementation of any changes to meet Fire Life and Safety requirements</i> • <i>Modifications to existing ECRL tunnel ventilation system</i> • <i>Provision of spot cooling to existing platforms</i> • <i>Upgrading of Chatswood Portal Stormwater Sump</i> 	<i>Twice per week</i>

Phase / Activity	Minimum Frequency
<ul style="list-style-type: none"> • <i>Upgrading of Lady Game Drive Treatment Plant</i> • <i>Modifications to ECRL hydraulic systems</i> • <i>Replacement of existing Tunnel and Station Fire Indication Panels and input devices</i> • <i>Replacement or modification of existing SSISEPs</i> • <i>Provision of new Station Manager mimic panel at Epping Station</i> • <i>Interfaces and connection to Chatswood Station fire system</i> • <i>Replacement of all gaseous fire suppression systems</i> • <i>Works associated with Building Management Systems at all ECRL stations</i> • <i>Chatswood Station Platform Level Works</i> • <i>Macquarie University, Macquarie Park and North Ryde Station Unpaid and Paid areas works</i> • <i>Macquarie University, Macquarie Park and North Ryde Station Platform Level works</i> • <i>Removal of temporary bulkhead near the Epping Stub and making good substrate</i> • <i>Excavation of existing tunnel floor near Epping Stub</i> • <i>Modify track drainage at the connection with NWRL</i> 	
Central Control System (Exhibit 1, Appendix 27)	<i>Three times per area as part of pre-completion activities</i>
Signalling and Train Control Systems (Exhibit 1, Appendix 28) <ul style="list-style-type: none"> • <i>Factory Acceptance Tests</i> • <i>Integrated Factory Acceptance Tests</i> • <i>Site Tests</i> <ul style="list-style-type: none"> ○ <i>commissioning static tests</i> ○ <i>commissioning dynamic tests (low and full speed)</i> ○ <i>system interface / type tests</i> ○ <i>systems integration tests</i> ○ <i>operability and maintainability tests</i> • <i>Site Acceptance Tests</i> 	<i>Each test event</i>
Power Control and Building Management Systems (Exhibit 1, Appendix 29)	<i>Upon completion at each site</i>
Environmental Control Systems (Exhibit 1, Appendix 30)	<i>Upon completion at each site</i>
Fire Services Systems (Exhibit 1, Appendix 31)	<i>Upon completion at each site</i>
Communications Systems (Exhibit 1, Appendix 32)	<i>Upon completion at each site</i>
Ticketing System (Exhibit 1, Appendix 33)	<i>Upon completion at each site</i>
Tunnel Ventilation System (Exhibit 1, Appendix 34) <ul style="list-style-type: none"> • <i>System Integration Tests</i> 	<i>Each test event</i>

Phase / Activity	Minimum Frequency
<i>Low Voltage Distribution and Electrical Building Services (Exhibit 1, Appendix 36)</i>	<i>Upon completion at each site</i>
<i>Bulk Power Supply and High Voltage Reticulation (Exhibit 1, Appendix 37)</i>	<i>Upon completion at each site</i>
<i>Earthing, Bonding, Electrolysis and Electromagnetic Compatibility (Exhibit 1, Appendix 38)</i> <ul style="list-style-type: none"> • <i>Factory Acceptance Testing</i> • <i>Site Acceptance Testing</i> 	<i>Each test event</i>
<i>Traction Power System (Exhibit 1, Appendix 39)</i> <ul style="list-style-type: none"> • <i>Site Tests</i> <ul style="list-style-type: none"> ○ <i>Continuity test</i> ○ <i>Phase rotation test</i> ○ <i>Insulation resistance test</i> ○ <i>Doctor test</i> ○ <i>Operation / functionality test</i> ○ <i>Pantograph running</i> 	<i>Each test event</i>
<i>Hydraulic Services (Exhibit 1, Appendix 40)</i>	<i>Upon completion at each site</i>
<i>Lifts and Escalators (Exhibit 1, Appendix 41)</i> <p><i>Lifts</i></p> <ul style="list-style-type: none"> • <i>lift car interior</i> • <i>walls and ceiling panel removal tests</i> • <i>landing and door strength</i> • <i>landing door construction test</i> • <i>car door construction test</i> • <i>lower door guide test</i> • <i>lower door construction test</i> • <i>door locking strength</i> • <i>horizontal deflection test</i> • <i>door frame impact test</i> • <i>operating panels and indication panel impact tests</i> • <i>lift walls impact test</i> <p><i>Escalators</i></p> <ul style="list-style-type: none"> • <i>balustrade deflection test</i> • <i>balustrade impact test</i> • <i>truss cladding below 2.7m off finished floor impact test</i> 	<i>Each test event</i>
<i>Platform Screen Doors (Exhibit 1, Appendix 42)</i>	<i>Upon completion at each site</i>
<i>Fire and Life Safety (Exhibit 1, Appendix 43)</i>	<i>Upon completion at each site</i>

<i>Phase / Activity</i>	<i>Minimum Frequency</i>
<i>Noise and Vibration (Exhibit 1, Appendix 44)</i>	<i>Each test event</i>
<i>Asset Information System (Exhibit 1, Appendix 47)</i>	<i>Upon completion at each site</i>
<i>System Testing and Commissioning (Exhibit 1, Appendix 56)</i> <ul style="list-style-type: none"> • <i>First Article Inspection Tests of defined unproven items</i> • <i>Type tests of defined unproven items</i> • <i>Factory Inspection tests of define unproven items</i> • <i>Integrated Factory Acceptance Tests for trains, signalling, control systems and platform screen doors</i> • <i>Greenfield Railway Site Tests</i> • <i>Greenfield Railway Initial performance test</i> • <i>Trial Running of Greenfield Railway</i> • <i>ECRL Site Tests</i> • <i>Trial running of NWRL</i> • <i>System Performance Test</i> • <i>Capacity Performance Test</i> • <i>Final Performance Test</i> 	<i>Each test event</i>
<i>FINAL COMPLETION</i>	
<i>Testing and commissioning – Minor Defects</i>	<i>Upon completion per defect</i>

Schedule 4 - Minimum Requirements for Certification and Monitoring Plan

The Certification and Monitoring Plan must, as a minimum, address and detail:

- (a) a description of the of the NWRL project and its objectives;
- (b) a summary of the Services being provided, detailing inputs and outputs and expected deliverables and outcomes;
- (c) a description of the project interfaces between the OTS Independent Certifier and other project participants and stakeholders and how these interfaces will be managed;
- (d) a description of the management and systems governance arrangements for the OTS Independent Certifier;
- (e) a description of how the OTS Independent Certifier will measure and report on its performance, including proposed performance measuring, health checks, client satisfaction, continuous improvement, training and development and corrective actions;
- (f) the strategies (system and risk based), processes and methods for providing the Services for each phase of the NWRL project;
- (g) a detailed schedule of functions, obligations, duties and services which the Relevant Project Agreements contemplate will be discharged by the OTS Independent Certifier, including a list of deliverables;
- (h) the management team structures, positions, nominated personnel and subcontractors to be engaged on and off the Construction Site and the roles and tasks of the nominated personnel and subcontractors;
- (i) organisational charts showing the OTS Independent Certifier's project organisation during the various phases of the Services;
- (j) the minimum skill, expertise, experience levels and relevant qualifications of each position and time-based details of personnel resource levels;
- (k) the OTS Independent Certifier's internal and external lines of authority, communication and reporting, including those with the Other Parties;
- (l) the identification of delegated authorities of the OTS Independent Certifier's personnel, including identification of personnel with delegated authority to execute certificates on behalf of the OTS Independent Certifier;
- (m) all compliance records to be maintained;
- (n) the proposed timing of progressive performance of discrete elements of the Services including the timing for conducting reviews of OpCo's Activities;
- (o) Hold Points and Witness Point requirements, in the form of a schedule, including the identification of all Witness Points and Hold Points required by the OTS Independent Certifier;
- (p) the OTS Independent Certifier's comprehensive plans for:
 - (i) continual observation, monitoring, auditing, reviewing, assessment and testing of OpCo's Activities;

- (ii) without limiting sub-paragraph (i), observation, monitoring, auditing, reviewing, assessment and testing of the quality and durability of the OTS Works to verify OpCo's compliance with the requirements of the OTS Project Deed;
 - (iii) audit and surveillance, including identification of resources, methodology, scope, levels of surveillance, inspection, testing and survey; and
 - (iv) off-site surveillance of critical activities, including rolling stock manufacture, precasting yards, concrete production plants and steel fabrication;
- (q) the OTS Independent Certifier's strategies, processes, methodologies and procedures for:
- (i) reporting protocols, including financial reporting, progress reporting and performance reporting;
 - (ii) reviewing the Delivery Program and the Project Plans;
 - (iii) aligning the delivery of the Services with the Delivery Program;
 - (iv) audit, surveillance and monitoring of OpCo's Activities, including the processes used for determining the levels and scope of surveillance of activities;
 - (v) identifying and managing the Services to be subcontracted, including quality, reporting and communication aspects of the Services;
 - (vi) ensuring that OpCo has addressed all issues of review, comment and consultation with TfNSW in respect of the Design Documentation, the Project Plans and OpCo's Activities; and
 - (vii) risk management of the work covered by sub-paragraphs (ii), (iii) and (iv) above;
- (r) the OTS Independent Certifier's strategies, systems, procedures, processes and methodologies to be applied whereby each of the following requirements will be achieved and satisfied:
- (i) certification of the Design Documentation;
 - (ii) certification of the Project Plans;
 - (iii) certification of the construction of the OTS Works including constructability and durability issues;
 - (iv) certification of the requirements for First Passenger Service;
 - (v) certification of Completion;
 - (vi) certification of the rectification by OpCo of non-conformances and Defects (if required);
 - (vii) certification of Final Completion; and

- (viii) determination of any matters required by the Relevant Project Agreements;
- (s) the OTS Independent Certifier strategies, policies and processes for preventing corruption and bribery (including in connection with its employees and subcontractors) in the performance of the Services;
- (t) the basis of the initial Certification and Monitoring Plan in terms of the assumptions relating to OpCo's Activities including:
 - (i) number of design packages anticipated; and
 - (ii) program durations.

Without limiting the scope of the Services, the Certification and Monitoring Plan must include separate sections or sub-plans describing how the OTS Independent Certifier will perform its Services in respect of the various phases of the Services, detailing the information required above, including:

- (a) a general administration sub-plan;
- (b) a Design Phase Services sub-plan;
- (c) a Construction Phase Services sub-plan;
- (d) a Completion Phase Services sub-plan;
- (e) a Final Completion Services Phase sub-plan;
- (f) a quality management sub-plan;
- (g) a document control sub-plan;
- (h) a schedule of Hold Points and Witness Points, including the identification of all Witness Points and Hold Points required by the OTS Independent Certifier;
- (i) flow charts; and
- (j) templates, forms and proforma certificates.

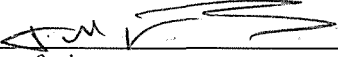
Schedule 5 - Subcontractors

Name of subcontractor	Part of the Services
Certifer	Rolling Stock and Rail Systems
Weston Williamson + Partners	Architecture
Softability Pty Ltd	Systems Engineering and Project Plans

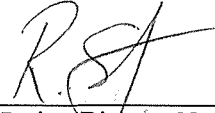
Schedule 6 - TfNSW's Insurance

Executed as a deed.

Executed by Transport for NSW (ABN 18 804 239 602) by its authorised delegate in the presence of:


Signature of witness

STUART SUTHERN-BRUWT
Full name of witness

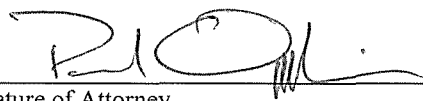

Signature of Project Director, North West Rail Link

Rodd Staples
Name of Project Director, North West Rail Link

Signed, sealed and delivered by NRT Pty Ltd (ACN 166 610 313) (in its personal capacity and as trustee of the NRT Unit Trust) under power of attorney dated 15/09/2014 in the presence of:

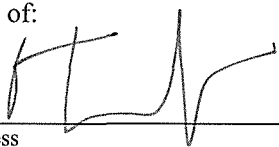

Signature of Witness

Ross McKinnon
Name of Witness in full

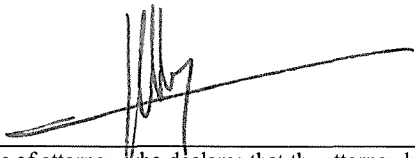

Signature of Attorney

PAUL OPPENHEIM
Name of Attorney

Signed, sealed and delivered for and on behalf of SYSTRA SA (ABN 68 557 615 546) by its attorney under a power of attorney dated 04/09/2014

in the presence of:

Signature of witness

Piém FLORENT
Full name of witness


Signature of attorney who declares that the attorney has not received any notice of the revocation of the power of attorney

JEAN CHARLES VOLCOFF
Full name of attorney

Signed, sealed and delivered for and on behalf of **GHD Pty Limited (ABN 39 008 488 373)** by its attorney under a power of attorney dated 15/09/2014

in the presence of:



Signature of witness

IAN ALEXANDER DAWSON
Full name of witness



Signature of attorney who declares that the attorney has not received any notice of the revocation of the power of attorney

TASOS KATAPODIS
Full name of attorney