

Execution version

Transport for NSW

Rail Corporation New South Wales

Brookfield Office Properties One Carrington
Developer Pty Limited

Sovereign Wynyard Centre Pty Limited as trustee
for the Sovereign Wynyard Centre Unit Trust

BSREP Wynyard Place Retail Landowner Pty Ltd
as trustee for BSREP Wynyard Place Retail
Landowning Trust and BSREP Wynyard Place
Office Landowner Pty Ltd as trustee for BSREP
Wynyard Place Office Landowning Trust

Wynyard Place Delivery Agreement

Contents

1	Definitions	2
2	Key obligations, signing documentation and Development Program	31
2.1	Developer's key obligations	31
2.2	TfNSW's key obligations	32
2.3	Signing Independent Certifier Deed	32
2.4	Development Program	32
2.5	Notice to Proceed	32
2.6	Transit Hall Works Financier's Side Deed	33
2.7	Transit Hall Works Contractor's Side Deed	33
3	Conditions precedent	34
3.1	Conditions precedent to Site Establishment Works	34
3.2	Conditions precedent to Transit Hall Works	34
3.3	Obligations	35
3.4	Sunset Date and right to Rescind	35
3.5	Pending Planning Applications and Modification Applications	36
3.6	Lodgement of a Pending Planning Application or Modification Application	37
3.7	Procedure during assessment of Pending Planning Applications or Modification Application	37
3.8	Refusal and unacceptable conditions of any Pending Planning Applications or Modification Applications	37
3.9	Lodgement of an application for any other Approval	39
3.10	Effective refusal	39
4	Transit Hall Site ownership	40
5	Transit Hall Works obligations and Development Works generally	40
5.1	General	40
5.2	Transit Hall D&C Contract	40
5.3	Compliance with Law, Authority requirements	41
5.4	Environmental management	42
5.5	Services	44
5.6	Training	45
5.7	Delivery Security	45
5.8	Cost to Complete Security Reduction	47
5.9	Redetermination of Delivery Security Amount	48
5.10	Loss of Required Rating	48
6	NSW Code and NSW Guidelines	49
6.1	NSW Code and NSW Guidelines	49
6.2	Primary Obligation	49
6.3	Access and information	49
6.4	Sanctions	50
6.5	Compliance	51

7	Change in Law	51
8	Construction Site, Station Interface Land and Adjoining Land	52
8.1	Access	52
8.2	Management and control of the Construction Site	53
8.3	Extra Land for Developer's use	54
8.4	Loading Dock and Goods Lift	54
8.5	Condition of Construction Site	55
8.6	Information Documents and Materials	55
8.7	Things of value found	56
8.8	Construction Site induction	57
8.9	Contamination	57
8.10	Hazardous Substances	58
8.11	TfNSW's right to access and inspect	60
8.12	Dilapidation Reports	62
8.13	Property damage management	64
8.14	Ausgrid	65
8.15	Sydney Light Rail Project and other TfNSW activities outside the Construction Site	65
9	Design Documents	65
9.1	Developer's design obligations	65
9.2	Review by TfNSW	66
9.3	Copies of Design Documents	67
9.4	Availability of Design Documents	67
9.5	Ownership of Design Documents	67
9.6	Delivery of Design Documents	68
9.7	Moral Rights	68
10	Not used.	69
11	Health and safety	69
11.1	WHS management	69
11.2	Accident and Incident management	70
11.3	Notification of Safety Incidents	70
11.4	Prohibition and improvement notices and on-the-spot fines	70
11.5	WHS reports and records	70
11.6	WHS audit program	71
11.7	Safety audits	71
11.8	Concurrent duty holders	72
11.9	Drug and alcohol testing	72
11.10	Principal Contractor	72
12	AEO Status	72
12.1	General	72
12.2	Developer to ensure that contractors maintain AEO status and compliance with ASA Requirements	72
12.3	Specialist engineering services and disciplines	73
12.4	Management requirements	73

12.5	Audits	73
12.6	Engineering assurance surveillance and audits	73
12.7	Corrective actions and ASA's rights	74
12.8	Modification	74
12.9	AEO Modification Application	75
12.10	Time to determine AEO Modification Applications	75
12.11	CAD Requirements	75
13	Construction	75
13.1	Construction	75
13.2	All work included	76
13.3	Cooperation with Other Contractors	77
13.4	Setting out	79
13.5	Survey	79
13.6	Protection and cleaning up	80
13.7	Existing operations in the vicinity of the Construction Site	80
13.8	Action by TfNSW	81
13.9	Work method	82
13.10	Commissioning and testing	82
13.11	Station Interface Works	82
13.12	Pre investigation for removal of the Columns	84
13.13	Hunter Tunnel Works	85
14	Variations	87
14.1	Proposed Variations	87
14.2	Variation Orders	88
14.3	Notice of Direction constituting or involving a Variation	89
14.4	Valuation	89
14.5	Omissions	90
14.6	Variations requested by Developer	90
14.7	Restriction on Variations	92
15	Quality	92
15.1	Quality of work	92
15.2	Self validation	92
15.3	Ongoing Plan obligations	93
15.4	Requirements for Plan	93
15.5	Directions by TfNSW	93
15.6	Developer to implement and comply	94
15.7	No relief from obligations	94
16	Defects	95
16.1	Defects liability	95
16.2	Defect notification	95
16.3	Rectification of Defect	96
16.4	Claims for correction of Defect	96
16.5	Extension of Defects Rectification Period	97
16.6	Defect rectification by Other Contractor	97

16.7	Rights not affected	97
16.8	Use of defective work or facilities	98
17	Administration of Transit Hall Works	98
17.1	Development Control Group	98
17.2	Development Control Group functions	98
17.3	Development Control Group meetings	98
17.4	Developer's reporting obligations	99
17.5	Media requests	100
17.6	Complaints and notification	100
17.7	Industrial relations	102
17.8	Document management and transmission	103
17.9	Submission for review by TfNSW	104
17.10	Compliance with the Plans	106
17.11	Station Pedestrian Access Plan	107
18	Time and progress	107
18.1	Rate of progress	107
18.2	Developer's programming obligations	108
18.3	Developer not relieved	109
18.4	Acceleration by Developer	109
18.5	Developer to take corrective action	109
18.6	Risk and notice of delay	110
18.7	Entitlement to extension of time	110
18.8	Claim for extension of time	110
18.9	Conditions precedent to extension of time	111
18.10	Extension of time	112
18.11	No entitlement	112
18.12	Unilateral extensions	112
18.13	Delay costs	113
18.14	Suspension	113
19	Payment for Certain Works	114
19.1	Developer's payment entitlements	114
19.2	Payment claims	114
19.3	Payment statements	115
19.4	Tax Invoice	116
19.5	Payment	116
19.6	Payment from Developer to TfNSW	116
19.7	Payment on account	116
19.8	Final Payment Claim	116
19.9	Release after Final Payment Claim	118
19.10	Business Days	118
19.11	Interest	118
19.12	Correction of payment statements	118
19.13	Costs allowed by Developer	119
19.14	Security of Payment Act	119

20	Completion of the Transit Hall Works	121
20.1	Completion	121
20.2	Unilateral Issue of Notice of Completion	122
20.3	Liquidated damages for delay in reaching Completion	122
20.4	Final Completion	123
20.5	Completion and Final Completion binding	124
20.6	Operation of Building Management Statement	124
21	Risk of Site Establishment Works and Transit Hall Works, Insurance and Indemnities	124
21.1	Care of the Transit Hall Works and Site Establishment Works	124
21.2	Indemnity	125
21.3	Rectification of loss or damage	126
21.4	Developer's insurance obligations	127
21.5	Failure to insure	130
21.6	Period of insurance	131
21.7	Notice of potential claim	131
21.8	Procedure upon loss or damage	132
21.9	Cross liability and waiver of subrogation	133
21.10	Occupation before Completion	133
21.11	Loss or damage to third party property	133
21.12	Excluded Loss	134
21.13	Insurance Proceeds Account	135
22	Subdivision and Section 88B Instrument	136
22.1	Subdivision Plan	136
22.2	Title Document Development	136
22.3	Execution and Registration	138
22.4	Building Management Statement	139
22.5	Council	140
22.6	Transit Hall Documentation	141
22.7	Hoarding – initial fitouts	141
22.8	Hoarding – subsequent fitouts	141
22.9	Blade signage	141
22.10	Advertising and signage	141
23	Office Tower Works Notice Regime	141
23.1	Office Tower Works Notice	141
23.2	Effect of issue of an Office Tower Works Notice	142
24	RailCorp restructure	143
24.1	RailCorp restructure	143
25	Intentionally deleted	143
26	Default	143
26.1	Developer's default	143
26.2	Contents of Default Notice	145
26.3	Objection to Default Notice	145

26.4	Rights of TfNSW	145
26.5	TfNSW's entitlements after step-in	146
26.6	TfNSW's rights after termination	146
26.7	Developer's rights after termination	147
26.8	Preservation of rights	147
27	Step-in Events	147
27.1	Step-In	147
27.2	Effect of Step-In	148
28	Alert Event	151
29	Disputes	152
29.1	Notice of dispute	152
29.2	Request for particulars of dispute	152
29.3	Meeting	152
29.4	Arbitration	153
29.5	Expert determination	153
29.6	Survive termination	155
29.7	Continuation of work	155
29.8	Intentionally deleted.	155
29.9	Intentionally deleted.	155
29.10	Intentionally deleted.	155
29.11	Intentionally deleted.	155
29.12	Determination	155
29.13	Executive negotiation	155
29.14	Arbitration rules	156
30	Transit Hall D&C Contract	156
31	Representations, warranties and undertaking	156
31.1	TfNSW's representations and warranties	156
31.2	RailCorp's representations and warranties	157
31.3	Developer's representations and warranties	157
32	Taxes	158
33	GST	158
33.1	Construction	158
33.2	Consideration GST exclusive	158
33.3	Payment of GST	159
33.4	Timing of GST payment	159
33.5	Tax invoice	159
33.6	Adjustment event	159
33.7	Reimbursements	159
33.8	Exchange of non-monetary consideration	160
33.9	No merger	160
34	Representatives	160
34.1	TfNSW's Representative	160

34.2	Replacement of TfNSW's Representative	161
34.3	Delegation of functions	161
34.4	Unlimited discretion	161
34.5	Developer's Representative	161
34.6	Developer's personnel	162
35	General	162
35.1	Notices	162
35.2	Governing law and Jurisdiction	163
35.3	No waiver	163
35.4	Entire agreement	163
35.5	Joint and several liability	163
35.6	Severability	164
35.7	Indemnities	164
35.8	Costs	164
35.9	Effect of Schedules	164
35.10	Further steps	164
35.11	Confidentiality	164
35.12	Public Disclosure	165
35.13	Not used	166
35.14	Variations of document	166
35.15	Interpretation	167
35.16	Exercise of powers	168
35.17	No partnership	168
35.18	Order of precedence	168
35.19	Counterparts	169
35.20	Rights cumulative	169
35.21	Contra proferentum	169
35.22	Survival	169
36	Restrictions of alienation	169
36.1	Developer must not alienate	169
36.2	Encumbering the Developer's interest	169
36.3	Intra-group transactions permitted	170
37	Limitation of Liability	170
37.1	Liability	170
37.2	Limitation of Liability of Retail Lot Purchaser	171
37.3	Limitation of Liability of Office Lot Purchaser	172

Schedule 1 - Building Management Statement	Error! Bookmark not defined.
Schedule 2 - Certificate of Completion	Error! Bookmark not defined.
Schedule 3 - Certificate of Construction Compliance	Error! Bookmark not defined.
Schedule 4 - Construction Management Plan	Error! Bookmark not defined.
Schedule 5 - Construction Traffic Management Plan	Error! Bookmark not defined.
Schedule 6 - Agreed Assumptions	Error! Bookmark not defined.
Schedule 7 – Contact details	Error! Bookmark not defined.
Schedule 8 - Date for Completion	Error! Bookmark not defined.
Schedule 9 - Demolition Management Plan	Error! Bookmark not defined.
Schedule 10 - Development Program	Error! Bookmark not defined.
Schedule 11 - Emergency Management Plan	Error! Bookmark not defined.
Schedule 12 - Environmental Management Plan	Error! Bookmark not defined.
Schedule 13 - Station Retail Access Management Plan	Error! Bookmark not defined.
Schedule 14 - Not used	Error! Bookmark not defined.
Schedule 15 - Independent Certifier Deed	Error! Bookmark not defined.
Schedule 16 - Not used	Error! Bookmark not defined.
Schedule 17 - Notice to Proceed	Error! Bookmark not defined.
Schedule 18 – Station Pedestrian Access Plan	Error! Bookmark not defined.
Schedule 19 - Not used	Error! Bookmark not defined.
Schedule 20 - Confidential Undertaking	Error! Bookmark not defined.
Schedule 21 - Not used	Error! Bookmark not defined.
Schedule 22 - Section 88B Instrument	Error! Bookmark not defined.
Schedule 23 - Not used	Error! Bookmark not defined.
Schedule 24 - Stakeholder and Community Management Plan	Error! Bookmark not defined.
Schedule 25 - Subdivision Plan	Error! Bookmark not defined.
Schedule 26 - Transit Hall Brief	Error! Bookmark not defined.
Schedule 27 - Not used	Error! Bookmark not defined.
Schedule 28 - Transit Hall D&C Contract	Error! Bookmark not defined.
Schedule 29 - Senior Representatives	Error! Bookmark not defined.
Schedule 30 - Transit Hall Works Contractor’s Side Deed	Error! Bookmark not defined.
Schedule 31 - Not used	Error! Bookmark not defined.
Schedule 32 – Order of Precedence	Error! Bookmark not defined.

Schedule 33 - Not used	Error! Bookmark not defined.
Schedule 34 - Wynyard Lane Traffic Management	Error! Bookmark not defined.
Schedule 35 - Developer's Certificates of Design Compliance	Error! Bookmark not defined.
Schedule 36 - Guidelines, standards and codes of practice	Error! Bookmark not defined.
Schedule 37 – Not used	Error! Bookmark not defined.
Schedule 38 - Not used	Error! Bookmark not defined.
Schedule 39 - Not used	Error! Bookmark not defined.
Schedule 40 - Not used	Error! Bookmark not defined.
Schedule 41 - Not used	Error! Bookmark not defined.
Schedule 42 - Statutory declaration	Error! Bookmark not defined.
Schedule 43 - Liquidated damages	Error! Bookmark not defined.
Schedule 44 - Certificate of Final Completion	Error! Bookmark not defined.
Schedule 45 - Not used	Error! Bookmark not defined.
Schedule 46 - Modified Transit Hall Brief	Error! Bookmark not defined.
Schedule 47 – Independent Certifier	Error! Bookmark not defined.
Schedule 48 - Statement of No Objection	Error! Bookmark not defined.
Schedule 49 - Site Establishment Works	Error! Bookmark not defined.
Schedule 50 - Transit Hall Works Financier's Side Deed	Error! Bookmark not defined.
Schedule 51 - Hunter Tunnel	Error! Bookmark not defined.
Schedule 52 - New Coles Storage Area	Error! Bookmark not defined.
Schedule 53 - Sydney Light Rail Project site	Error! Bookmark not defined.
Schedule 54 - Hunter Tunnel Works design	Error! Bookmark not defined.
Schedule 55 – Station Interface Land	Error! Bookmark not defined.
Schedule 56 – Transit Hall Documentation	Error! Bookmark not defined.
Execution	Error! Bookmark not defined.

Date

Parties

Transport for NSW a New South Wales Government agency and corporation constituted by section 3C of the *Transport Administration Act 1988* (NSW) ABN 18 804 239 602 of Level 6, 18 Lee Street, Chippendale New South Wales 2008 (**TfNSW**)

Rail Corporation New South Wales a New South Wales Government agency and corporation incorporated under section 4 of the *Transport Administration Act 1988* (NSW) ABN 59 325 778 353 of Level 20, 477 Pitt Street, Sydney NSW 2000 (**RailCorp**)

Brookfield Office Properties One Carrington Developer Pty Limited ABN 72 169 154 830 of Level 22, 135 King Street, Sydney NSW 2000 (**Developer**)

Sovereign Wynyard Centre Pty Limited ACN 062 235 009 as trustee for the Sovereign Wynyard Centre Unit Trust c/- Brookfield Australia Investments Ltd, Level 22, 135 King Street, Sydney NSW 2000 (**Lessee**)

BSREP Wynyard Place Retail Landowner Pty Ltd ACN 609 116 038 as trustee for BSREP Wynyard Place Retail Landowning Trust (the "**Retail Lot Purchaser**") and **BSREP Wynyard Place Office Landowner Pty Ltd** ACN 609 115 737 as trustee for BSREP Wynyard Place Office Landowning Trust (the "**Office Lot Purchaser**") (together the **Purchaser**)

Background

- A Under the New South Wales Government's unsolicited proposal process, the Developer has made an offer to the NSW Government to develop parts of Wynyard Station and Wynyard Station's surrounds, including amongst other things, the redevelopment of the Transit Hall.
- B Concept Plan Approval for the Concept Plan Application for the Development was granted by the Planning Assessment Commission as delegate of the Minister for Planning on 3 April 2012 and was subsequently modified on 24 March 2014 and 25 September 2015. The Stage 1 (State Significant Development) Application was lodged with the Planning Authority on 14 May 2013 and was granted Approval by the Acting Executive Director (Infrastructure and Industry Assessments, Department of Planning and Environment), as delegate of the Minister for Planning, on 25 September 2015, subject to conditions.
- C Subject to approval of the Subdivision Application, the carrying out of the Transit Hall Works by the Developer will allow the registration of a Subdivision Plan to facilitate the sale by RailCorp to the respective Purchaser of the Retail Lot and the Office Lot to be created on registration of the Subdivision Plan.
- D This document sets out the parties' rights and obligations in respect of the delivery of the Transit Hall Works and the Development generally.

Agreed terms

1 Definitions

In this document, these terms in any form have the following meanings:

285 George Street Lot	Lot 15 in the Subdivision Plan.
Accident and Incident Management Report	<p>A report in relation to the Site Establishment Works and the Transit Hall Works which details:</p> <ul style="list-style-type: none">(a) any incident or occurrence resulting in a near miss, physical injury or harm, or any lost time due to injury; and(b) any unsafe work practice or environment that has the potential to cause physical injury or harm.
Act of Prevention	<p>Any of the following:</p> <ul style="list-style-type: none">(a) a breach of this document by TfNSW or RailCorp;(b) any other act or omission of TfNSW, or its Associates within the Construction Site (other than an act or omission which is permitted under or contemplated by any Transaction Document) delaying the Developer carrying out of the Transit Hall Works; or(c) a Variation the subject of a direction by TfNSW except where the Variation is directed in the circumstances described in clause 16.2(b) or approved under clause 14.6(d), <p>and includes the following:</p> <ul style="list-style-type: none">(d) TfNSW directing the Developer to suspend carrying out of the Transit Hall Works other than a suspension arising as a result of the Developer's failure to carry out its obligations in accordance with this document; and(e) interference with or delay to the Transit Hall Works as a result of any work carried out by an Other Contractor.
Adjoining Land Parties	Any owner, lessee, tenant, licensee or occupier of Adjoining Land (including the Council).
Adjoining Land	The property identified as the 'Adjoining Land' on the plan contained in the Construction Management Plan.

AEO or Authorised Engineering Organisation	An organisation providing a defined engineering service or product that has been issued an ASA Authorisation.
AEO Modification	As to a Concession Application, a notice of concession issued by ASA confirming that the concession the subject of an ASA Modification Application has been granted or such other response, whether conditional or otherwise, to an AEO Modification Application.
Agreed Assumptions	The assumptions contained in Schedule 6 .
Alert Event	<p>An actual or likely event or circumstance which arises in relation to the conduct of activities at Wynyard Station or the Transit Hall Works which in the reasonable opinion of a suitably qualified senior representative of a Rail Entity has or is likely to have a materially detrimental effect on:</p> <ul style="list-style-type: none">(a) the safety or support of rail facilities at Wynyard Station;(b) the safety of railway passengers, Wynyard Station patrons or TfNSW's Associates at Wynyard Station; and(c) the continued operation of the respective transport functions of either TfNSW or RailCorp at Wynyard Station.
Approval	Any licence, permit, consent, approval, determination, authorisation, certificate or permission or exemption from any Authority or under any Law, including the Wynyard Station REF.
Approved Issuer	Any of: <ul style="list-style-type: none">(a) Asset Insure;(b) QBE;(c) Vero;(d) Liberty Australia; or(e) any other issuer with the Required Rating.
ASA	The Asset Standards Authority.
ASA Authorisation	Means a letter of authorisation issued by the ASA for AEO status.
ASA	A Concession Application or another application to

Modification Application	exempt in whole or in part or modifying (other than under a Concession Application) the application of clauses 12.2 to 12.7 .
ASA Requirements	Means the "ASA Requirements" as defined in the document titled "Charter, Assets Standards Authority" as amended or replaced from time to time.
Associate	<p>In relation to any person, any Related Body Corporate of that person and any officer, employee, agent, contractor, consultant, nominee, licensee, advisor, invitee or customer and:</p> <ul style="list-style-type: none">(a) with respect to the Developer, includes the Transit Hall Works Contractor or the Transit Hall Works Contractor's Associates;(b) with respect to TfNSW, does not include the Developer or its Associates;(c) with respect to TfNSW, includes a Rail Entity; and(d) with respect to all parties, does not include the Independent Certifier.
Author	Any person, including a relevant employee of the Developer or a subcontractor or any other contributing person who is the author of any Copyright Works.
Authority	Any governmental or semi-governmental or local government authority, administrative or judicial body or tribunal, department, commission, public authority, agency, Minister, statutory corporation or instrumentality (including RailCorp and TfNSW where they are acting as an authority and not as required by the terms of this document), Planning Authority and any electricity, telecommunications, gas or other utility company having statutory rights in relation to the carrying out of the Development Works.
Base Transit Hall Works	Those works described in the Transit Hall Brief located on the Transit Hall Site.
BCA	Building Council of Australia.
Building Management Statement	The building management statement (the draft form of which is provided at schedule 1), to be registered pursuant to Section 196D of the <i>Conveyancing Act 1919</i> (NSW) with the Subdivision Plan, with or without any changes permitted by this document.
Business Day	Any day other than a Saturday, Sunday or bank holiday

	in Sydney or public holiday in New South Wales.
Carrington Street Retail	The retail area located on the level above the Coles Tenancy.
Certificate of Completion	A certificate in the form of schedule 2 .
Certificate of Construction Compliance	A certificate in the form of schedule 3 .
Certificate of Final Completion	A certificate in the form of schedule 44 .
Claim	<p>Includes any claim for payment of money (including damages), for an extension of time to the Date for Completion or for any other form of relief in any way in connection with:</p> <ul style="list-style-type: none">(a) this document;(b) the Transit Hall Works or the Development Works;(c) any party's conduct prior to or after the date of this document; or(d) otherwise at Law.
Coles	Coles Supermarkets Australia Pty Ltd ACN 004 189 708.
Coles Right of Way	The right to use the right of way contained in the Lease described in paragraph (a) of that definition and shown on plan numbers 5960-10 and 5960-11.
Coles Tenancy	W36 and W37 Upper Concourse, Wynyard Railway Station which is leased or licensed to Coles.
Columns	The columns shown in red on the plan contained in schedule 55 .
Completion	<p>The stage in the execution of the Transit Hall Works when:</p> <ul style="list-style-type: none">(a) the Transit Hall Works are complete in accordance with this document except for minor Defects:<ul style="list-style-type: none">(i) that do not prevent the Transit Hall Works from being Fit for Purpose;(ii) that can be rectified without prejudicing the intended use of the Transit Hall Works;

- and
- (iii) in respect of which the Independent Certifier determines that the Developer has reasonable grounds for not promptly rectifying; and
- (b) the Developer has:
 - (i) carried out and passed all tests that:
 - (A) are required under this document to be carried out and passed before the Transit Hall Works reach Completion; and
 - (B) must necessarily be carried out and passed so that, or to confirm that, the Transit Hall Works are in the condition this document requires the Transit Hall Works to be in at Completion;
 - (ii) obtained all Approvals required under this document to be obtained before Completion and provided these Approvals to the Independent Certifier and to TfNSW;
 - (iii) given to the Independent Certifier and to TfNSW all other Approvals, documents and information:
 - (A) required for the use, operation, maintenance and repair of the Transit Hall Works; and
 - (B) that are to be handed over to the Independent Certifier and to TfNSW under this document before Completion,
 - (iv) including an Occupation Certificate in respect of the Transit Hall;
 - (v) complied with all performance requirements that this document requires to be confirmed before Completion;
 - (vi) provided to the Independent Certifier and TfNSW certification that the items identified in the Transit Hall Brief comply in all respects with the requirements of this document;

- (vii) provided to the Independent Certifier a certificate which complies with **clause 13.5**;
- (viii) provided the Independent Certifier and TfNSW with the Certificate of Completion in the form of **schedule 2** and a copy of the Transit Hall Works Contractor's Certificate of Completion for the Transit Hall Works under the Transit Hall D&C Contract; and

the Developer has done everything else that it is required to do under this document before Completion of the Transit Hall Works.

Concept Plan Application	Major project application No. MP 09_0076 made to the Planning Authority seeking approval under former Part 3A of the EP&A Act of the concept plan for the Development. The Concept Plan Application became a transitional Part 3A project pursuant to the savings and transitional provisions in Schedule 6A of the EP&A Act on the repeal of Part 3A.
Concept Plan Approval	The Approval of the Concept Plan Application granted by the Minister for Planning on 3 April 2012, as modified by the Planning Authority and including, any modification resulting from the Concept Plan Modification Approval and the Approval of the Further Concept Plan Modification Application and any other Modification Application.
Concept Plan Modification Approval	Modification Application number 09_0076 MOD2 made on 16 May 2014 seeking approval under section 75W of the EP&A Act to modify the Concept Plan Approval which was granted Approval by the Acting Executive Director (Infrastructure and Industry Assessments, Department of Planning and Environment), as delegate of the Minister for Planning, on 25 September 2015.
Concession Application	An application using T MU MD 00011 F1 <i>Request for Concession to ASA Requirement</i> .
Concourse Upgrade Works	The works to be carried out by TfNSW including Hazmat removal, reconfiguration of ticket gates, new amenities, fixtures and fittings including lighting, widening of the northern and western concourse, the replacement of fittings, furniture, new signage, painting and replacement of stairs within Wynyard Station.
Confidentiality	The confidential undertaking in the form of

Undertaking	schedule 20.
Construction Management Plan	The document at schedule 4 , as amended in accordance with clause 15.3 .
Construction Only Work	The works described in section 2.1.4.2 of the Transit Hall Brief.
Construction Plant	Equipment, appliances and things used in the execution of the Transit Hall Works but not forming part of the Transit Hall Works.
Construction Site	(a) Those parts of the Stage 1 Development the subject of the Subdivision Plan which are made available to the Developer for the purpose of performing the Development Works from time to time as identified in the Construction Management Plan; and (b) any other land made available to the Developer by TfNSW for the purpose of the Development Works, as identified in the Construction Management Plan and includes the Station Interface Land and the Hunter Tunnel when made available to the Developer.
Construction Traffic Management Plan	The document in schedule 5 , as amended in accordance with clause 15.3 .
Contamination or Contaminated	The meaning given to "Contamination" in the <i>Contaminated Land Management Act 1997</i> (NSW).
Contracts for Sale	The contracts for the sale of land for the Retail Lot and the Office Lot to be entered into between RailCorp and the relevant Purchaser dated on or around the date of this document.
Control	In relation to a corporation includes the direct or indirect power to directly or indirectly: (a) direct the management or policies of the corporation; or (b) control the membership of the board of directors, whether or not the power has statutory, legal or equitable force or is based on statutory, legal or equitable rights and whether or not it arises by means of trusts, agreements, arrangements, understandings, practices, the ownership of any interest in shares or

	stock of the corporation or otherwise.
Control of the Developer	In relation to a part of the Construction Site, when the Developer is provided access under clause 8.1 .
Copyright Works	Any copyright works forming part of the Design Documents or any other documentation, which the Developer is required to provide to TfNSW under this document.
Corporations Act	The <i>Corporations Act 2001</i> (Cth).
Cost to Complete	At any time all unpaid costs to achieve Completion as determined by the Independent Certifier or as otherwise agreed by the Developer and TfNSW. The unpaid costs to achieve Completion will be determined by the Independent Certifier in the same manner and making the same assumptions as contained in clause 5.9(c) .
Council	Council of the City of Sydney.
Cure Plan	A plan prepared by the Developer for approval by TfNSW if either: (a) a breach of contract referred to in clause 26.1(a) has occurred; or (b) a Step-in Event has occurred.
Date of Completion	(a) The date determined in accordance with clause 20.1(e)(i) as the date Completion was achieved; or (b) where another date is determined pursuant to clause 29 as the date upon which Completion was achieved, that date.
Date of Final Completion	(a) The date determined in accordance with clause 20.4(e)(i) as the date Final Completion was achieved; or (b) where another date is determined pursuant to clause 29 as the date upon which Final Completion was achieved, that date.
Date for Completion	The date, or the last day of the period of time, specified in schedule 8 for completion of the Transit Hall Works, as adjusted under this document by: (a) any replacement Development Program provided by the Developer when the Developer issues a Notice to Proceed;

- (b) any extensions of time including:
 - (i) determined by the Independent Certifier under **clause 18.10** or granted by TfNSW under **clause 18.12**; or
 - (ii) final determination of a dispute or difference in relation to an extension of time pursuant to **clause 29**.

Default Notice	A notice under clause 26.1 which complies with the requirements of clause 26.2 .
Defect	Any: <ul style="list-style-type: none">(a) defect, deficiency, fault, error or omission in the Transit Hall Works including subsidence, shrinkage and movement outside the tolerances required by this document; or(b) other aspect of the Transit Hall Works not in accordance with the requirements of this document (including where the Transit Hall Works are not Fit for Purpose on Completion), which was not caused or contributed to, by TfNSW, RailCorp or any Rail Entity or any Other Contractor.
Defects Rectification Period	The period of 12 months after the Date of Completion, as extended by clause 16.5 .
Delivery Security	The unconditional undertakings provided by the Developer to TfNSW under clause 5.7 .
Demolition Management Plan	The document at schedule 9 , as amended in accordance with clause 15.3 .
Design and Construction Works	The works described in section 2.1.4.1 of the Transit Hall Brief.
Design Documents	All design documents (including design standards, design reports, durability reports, construction descriptions, specifications, models, samples, calculations, drawings, digital records, computer software (excluding source codes and third party proprietary software) and all other relevant data) in computer readable and written forms, or stored by any other means, necessary for the Developer to design and construct the Transit Hall Works.

Developer's Certificates of Design Compliance	The document at schedule 35 .
Developer's Representative	The person notified to TfNSW in accordance with clause 34.5(b)(i) as being the Developer's Representative.
Development	The transport interchange, commercial and retail development the subject of the Concept Plan Approval and the Stage 1 Development Consent comprising the Stage 1 Development.
Development Control Group	The group described in clause 17.1 .
Development Program	The document at schedule 10 .
Development Works	The works required to deliver the Stage 1 Development, including the Transit Hall Works, the Site Establishment Works, the Retail Works and the Office Tower Works and includes all things and tasks which the Developer is, or may be required to do to comply with its obligations under this document in relation to the Development Works.
Emergency Management Plan	The document at schedule 11 , as amended in accordance with clause 15.3 .
Environment	All aspects of the surroundings of human beings including: <ul style="list-style-type: none">(a) the physical characteristics of those surroundings such as the land, the waters and the atmosphere;(b) the biological characteristics of those surroundings such as the animals, plants and other forms of life; and(c) the aesthetic characteristics of those surroundings such as their appearance, sounds, smells, tastes and textures.
Environmental Management Plan	The document at schedule 12 , as amended in accordance with clause 15.3 .
EP&A Act	The <i>Environmental Planning and Assessment Act 1979</i> (NSW) and the <i>Environmental Planning and</i>

Assessment Regulation 2000 (NSW).

Excepted Risk	<p>Any one of:</p> <ul style="list-style-type: none">(a) war, invasion, act of foreign enemies, hostilities (whether war is declared or not), civil war, rebellion, revolution, terrorism, insurrection or military or usurped powers, martial law or confiscation by order of any Authority;(b) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel not caused by the Developer or its Associates; and(c) use or occupation by TfNSW or its Associates of any part of the Stage 1 Development Land or the Construction Site.
Excluded Loss	<p>Any loss of opportunity, profit, anticipated profit, business or business opportunities and any failure to realise anticipated savings.</p>
External Administrator	<p>An administrator, controller or managing controller (each as defined in the Corporations Act), trustee, provisional liquidator, liquidator or any other person (however described) holding or appointed to an analogous office or acting or purporting to act in an analogous capacity.</p>
Extra Land	<p>The land identified as "Extra Land" in the Construction Management Plan including land required by the Transit Hall Works Contractor for rock anchors.</p>
Final Completion	<p>The stage in the execution of the Transit Hall Works when:</p> <ul style="list-style-type: none">(a) all Defects Rectification Periods including any extension under clause 16.5 have expired;(b) all Defects have been rectified;(c) the Developer has:<ul style="list-style-type: none">(i) carried out and passed all tests which:<ul style="list-style-type: none">(A) are required under this document to be carried out and passed before the Transit Hall Works reach Final Completion;(B) must necessarily be carried out and passed to confirm that the Transit Hall Works are in the condition this

document requires them to be in at Final Completion;

- (C) obtained all Approvals that it is required under this document to obtain but which were not obtained before Completion or are to be obtained prior to Final Completion, and provided these Approvals to the Independent Certifier and to TfNSW;
- (ii) given to the Independent Certifier and to TfNSW all other documents or information referred to in this document (not otherwise provided at Completion):
 - (A) which are required for the use, operation, maintenance and repair of the Transit Hall Works; or
 - (B) which are required to be handed over to the Independent Certifier and to TfNSW under this document before Final Completion;
- (d) complied with all performance requirements under this document that must be verified before Final Completion;
- (e) the Developer has provided the Independent Certifier and TfNSW with the Certificate of Final Completion and a copy of the Transit Hall Works Contractor's Certificate of Final Completion provided under the Transit Hall Works D&C Contract; and
- (f) the Developer has done everything else which it is required to do under this document before Final Completion.

Final Payment Claim

A payment claim lodged by the Developer with the Independent Certifier in accordance with **clause 19.8**.

Financier

Any financier who is providing finance to the Developer in connection with the Development Works or any security trustee who is acting as trustee for one or more financiers.

Fit for Purpose

Fit for the purpose stated in, or reasonably ascertainable from:

- (a) in respect of the Base Transit Hall Works, the description of those works in the Transit Hall

	Brief;
	(b) in respect of the Design and Construction Works of the Station Interface Works (but not the Construction Only Works), the description contained in section 2.1.4.1 of the Transit Hall Brief; and
	(c) in respect of the Hunter Tunnel Works, the description of those works as approved by TfNSW the subject of clause 13.13 .
Force Majeure Event	(a) Earthquake, cyclone, explosion, fire, flood, malicious damage not caused by or contributed to by the Developer;
	(b) war, invasion, act of foreign enemies, hostilities (whether war is declared or not), civil war, rebellion, revolution, act of terrorism, act of public enemy, insurrection or military or usurped powers, martial law or confiscation by order of any Authority; and
	(c) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel not caused by the Developer.
Further Concept Plan Modification Application	The modification application to be lodged by or on behalf of the Developer or the Lessee with the Planning Authority, seeking approval under section 75W of the EP&A Act to further modify the Concept Plan Approval to:
	(a) amend the proponent of the Development to be the Developer or the Lessee (unless this amendment is sought and obtained by letter from the Department of Planning & Environment or the Planning Authority); and
	(b) incorporate any other modifications to the Concept Plan Approval agreed by the Parties in accordance with this document that relate to or may impact on the Transit Hall or Transit Hall Works (noting that other Modification Applications may be lodged by the Developer or Lessee relating to the Concept Plan Approval that do not relate to, effect or have any implications for the Transit Hall or the Transit Hall Works).
GIPA Act	The <i>Government Information (Public Access) Act 2009</i>

	(NSW).
Goods Lift	The existing goods lift located within the Stage 1 Development Land and shown on the Station Retail Access Management Plan.
Hazardous Substances	<p>Any hazardous materials or substances found or located above or below ground or in any structure, including:</p> <ul style="list-style-type: none">(a) any form of organic or chemical matter whether solid, liquid or gas (including asbestos, toluene, polychlorine biphenyls, lead based paints, glues, solvents, cleaning agents, paints, water treatment chemicals and stone containing silica) that have the capacity to cause personal injury or death, damage to property, create a nuisance or in any way pollute or contaminate the Environment; and(b) without limiting paragraph (a), any material or substance which:<ul style="list-style-type: none">(i) falls within the definition of hazardous chemical in the <i>Work Health and Safety Regulation 2011</i> (NSW) as in place from time to time;(ii) is listed in the online data base called the Hazardous Substances Information System published on the Safe Work Australia website as in force from time to time; or(iii) fits the criteria for a hazardous substance set out in the <i>Globally Harmonised System of Classification and Labelling of Chemicals</i> 3rd Revised Edition, as in force from time to time.
Hunter Tunnel	The area shown on the plan contained in schedule 51 .
Hunter Tunnel Works	The works forming part of the Transit Hall Works to be carried out on the Hunter Tunnel as determined in accordance with clause 13.13 .
Hunter Tunnel Works Application	<p>The application for Approval to enable the Hunter Tunnel Works to be carried out, prepared by the Developer in accordance with:</p> <ul style="list-style-type: none">(a) clause 13.13(e); or(b) clause 13.13(f).

Implementation Plan for Power Supply Works	The plan relating to the relocation of power supplies for RailCorp Retail Tenants currently receiving electricity from the existing electricity substations located within Lot 1 DP 853331 (14 Carrington Street, Menzies Hotel).
Independent Certifier	The party engaged by TfNSW and the Developer to carry out the various roles contemplated by this document.
Independent Certifier Deed	The document so named to be entered into between TfNSW, the Developer and the Independent Certifier substantially in the form set out in schedule 15 .
Industrial Relations Management Plan	The plan to be prepared by the Developer outlining its plan for industrial relations matters and required by clause 17.7 .
Information Documents and Materials	Any information and materials provided by TfNSW, RailCorp or any Rail Entity (whether provided before, on or after the date of this document), including information concerning Wynyard Station, or the Development.
Initial Hoarding Zone	The area within the Transit Hall Lot where the Transit Hall Lot Owner is permitted to install hoardings as shown on the Initial Hoarding Zone Plan.
Initial Hoarding Zone Plan	The plan showing the Hoarding Zone to be agreed between TfNSW and the Developer after the date of this document.
Insolvency Event	In respect of a person, any of the following occurring: <ul style="list-style-type: none">(a) it becomes insolvent within the meaning of section 95A, or is taken to have failed to comply with a statutory demand under section 459F(1), or must be presumed by a court to be insolvent under section 459C(2), or is the subject of a circumstance specified in section 461 (whether or not an application to court has been made under that section) or, if the person is a Part 5.7 body, is taken to be unable to pay its debts under section 585, of the Corporations Act;(b) it is the subject of a Liquidation, or an order or an application is made for its Liquidation;(c) an effective resolution is passed or meeting summoned or convened to consider a resolution for its Liquidation;

- (d) an External Administrator is appointed to it or any of its assets or a step is taken to do so or its Related Body Corporate requests such an appointment;
- (e) if a registered corporation under the Corporations Act, a step is taken under section 601AA, 601AB or 601AC of the Corporations Act to cancel its registration;
- (f) an analogous or equivalent event to any listed above occurs in any jurisdiction; or
- (g) it stops or suspends payment to all or a class of creditors generally.

Institution

Any authorised deposit taking institution holding an authority to carry on banking business in Australia under the *Banking Act 1959* (Cth), regulated by the Australian Prudential Regulation Authority and having at least the Required Rating and having a residence in Sydney, NSW.

Intellectual Property

All rights in copyright, patents, registered and unregistered trademarks or names, registered and registrable designs, trade secrets, and all other protected rights of intellectual property defined in Article 2 of the Convention Establishing the World Intellectual Property Organisation of July 1967.

Law

- (a) Legislation; and
- (b) common law and principles of equity applicable to New South Wales or the Commonwealth of Australia,

but does not mean the terms of a contract.

Leases

The:

- (a) lease with registered number 3828975 between the Lessee and RailCorp as varied by registered Variation of Lease numbers 3828976G and 7925505 and the variation dated on or around the date of this document;
- (b) lease with registered Number 439 Book 2595 as varied by a deed of variation dated 10 December 1990 (No. 133 Bk. 3845) between State Rail Authority of New South Wales, Perpetual Trustees Australia Limited and Lloyds International Limited and as varied by a deed of consent, assignment and variation dated 31

August 2001 (No. 623 Bk. 4322) between THL Wynyard Centre Pty Limited and State Rail Authority of New South Wales and the variation dated on or around the date of this document; and

- (c) lease registered under Book 838 No 2654 as varied by Book 4322 No 624 and the variation dated on or around the date of this document.

Legislation In relation to New South Wales or the Commonwealth of Australia:

- (a) any act of parliament or statute;
- (b) any subordinate legislation, rules, regulations or by-laws; and
- (c) any document, code, standard or policy issued under such legislation or delegated legislation.

Liquidation (a) a winding up, dissolution, liquidation, provisional liquidation, administration, bankruptcy or other proceeding for which an External Administrator is appointed, or an analogous or equivalent event or proceeding in any jurisdiction; or

(b) an arrangement, moratorium, assignment or composition with or for the benefit of creditors or any class or group of them.

Loading Dock The existing loading dock located within the Stage 1 Development Land and shown on a diagram in the Station Retail Access Management Plan.

Loss (a) any cost, claim, damage, expense, liability or other amount; and

(b) without being limited by paragraph (a) and only to the extent not prohibited by Law, any fine or penalty,

whether direct, indirect, consequential, present, future, fixed, unascertained, actual or contingent.

LPI Land and Property Information New South Wales.

Modification Application Any application to a Planning Authority to modify either the Concept Plan Approval or the Stage 1 Development Consent which relates to or may impact on the Transit Hall.

Modified Transit Hall Brief The revised version of the Transit Hall Brief contained at **schedule 46** with or without changes permitted by this document.

Monthly Safety Statistics Form	The proforma form for reporting on the Developer's safety statistics including: <ul style="list-style-type: none">(a) lost time injuries/diseases, time lost, WorkCover notices/fines and injuries to the public; and(b) details of safety audits (type, outcomes and non-conformances raised/closed), preventative action, accidents, occurrences and hazards.
Moral Rights	Any of the rights described in Article 6bis of the Berne Convention for the Protection of Literary and Artistic Works 1886 (as amended and revised from time to time), being 'droit moral' or other analogous rights arising under any Law (including the <i>Copyright Act 1968</i> (Cth)) or any other law outside Australia that exist, or that may come to exist anywhere in the world.
New Coles Storage Area	The area shown on the plan in schedule 52 .
New Goods Lift	The new goods lift located within the Retail Lot and shown on the Subdivision Plan.
New Loading Dock	The new loading dock located within the Retail Lot and shown on the Subdivision Plan.
Notice of Completion	A notice issued under clause 20.1(e)(i) by the Independent Certifier stating that Completion has been achieved.
Notice to Proceed	A notice given by the Developer to TfNSW in the form of the document so entitled at schedule 17 .
NSW Guidelines	New South Wales Government's Implementation Guidelines to the New South Wales Government's Code of Practice for the Building and Construction Industry (as published by the NSW Treasury July 2013, as updated from time to time).
NSW Code	New South Wales Government's Code of Practice for the Building and Construction Industry.
Occupation Certificate	An interim or final occupation certificate under section 109C of the EP&A Act issued by a certifying Authority.
Office Lot	Lot 12 in the Subdivision Plan.
Office Tower Works	The works required to deliver the commercial development, the redevelopment of the building formerly known as Shell House (2-12 Carrington Street), the building formerly known as Beneficial House (285 George Street) and the retail component but does not include the Site Establishment Works,

	Retail Works or the Transit Hall Works.
Office Tower Works Notice	A notice issued under clause 23.1(a) .
Other Contractor	Any contractor, consultant, artist, tradesperson or other person engaged by a Rail Entity to do work within the Construction Site, the Station Interface Land or the Hunter Tunnel but does not include the Developer and its Associates.
Other Contractor's Deed	The form of document contained in Annexure Part O of the Transit Hall D&C Contract.
Other Contractor Work	The work to be executed by Other Contractors.
Other Special Event	A special event (other than Special Events) which in the reasonable opinion of a suitably qualified Senior Representative of a Rail Entity requires a need to vary or prevent access to Wynyard Station and the Construction Site resulting from an anticipated unusually high level of demand for train services at Wynyard Station, or for security or safety reasons.
Parent	<p>Of a person means the person directly or indirectly exercising the decision making power of the first mentioned person including:</p> <ul style="list-style-type: none">(a) if the first mentioned person is a corporation, a person who:<ul style="list-style-type: none">(i) controls the composition of the board of directors of the first mentioned person; or(ii) is in a position to cast, or control the casting of, more than one half of the maximum number of votes that might be cast at a general meeting of the first mentioned person; or(iii) holds or has a beneficial interest in more than one-half of the issued share capital of the first mentioned person (excluding any part of that issued share capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital); or(b) if the first mentioned person is a trustee of a unit trust and, in the case of the Developer or Purchaser, its interest in this document is

property subject to that trust, a person who:

- (i) controls the right to appoint the trustee;
 - (ii) is in a position to cast, or control the casting of, more than one half of the maximum number of votes that might be cast at a meeting of holders of units; or
 - (iii) holds or has a beneficial interest in more than one half of the issued units of that trust (excluding any of the issued units that carries no right to participate beyond a specified amount in a distribution of either profits or capital); or
- (c) if the first mentioned person is a trustee of a trust and, in the case of the Developer or Purchaser, its interest in this document is property subject to that trust, a person who:
- (i) is a beneficiary of that trust entitled directly or indirectly to more than one half of the corpus or profits of the trust; or
 - (ii) is entitled to or whose consent is required to:
 - (A) appoint or change the trustee; or
 - (B) give directions to the trustee; or
 - (C) vary the constituent document of the trust; or
 - (D) appoint or remove beneficiaries; or
 - (E) decide to whom any distribution is made or the amount of any distribution.

A person is also a Parent of another person if a part of this definition is satisfied in respect of each trust and company in any chain of trusts or companies connecting that person and the other person.

**Pending
Planning
Applications**

The:

- (a) Subdivision Application;
- (b) Further Concept Plan Modification Application; and
- (c) Section 96 Application.

Planning

The agreement entered into in accordance with section 93F of the EP&A Act between TfNSW, RailCorp, the

Agreement	Developer and the Lessee dated 7 September 2015.
Planning Authority	<p>Any person or body granted power under the EP&A Act to assess and determine:</p> <ul style="list-style-type: none">(a) planning applications made under Parts 3A, 4 and 5 of the EP&A Act; or(b) modifications of development consents or other planning approvals granted under Parts 3A, 4 and 5 of the EP&A Act, <p>including the New South Wales Minister for Planning and his or her predecessors, successors, delegates and assigns and the Planning Assessment Commission of New South Wales constituted under section 23B of the EP&A Act.</p>
Planning Sunset Date	The date one year from the date of this document or another date agreed by the parties.
Plans	<p>The following Plans:</p> <ul style="list-style-type: none">(a) Station Pedestrian Access Plan;(b) Station Retail Access Management Plan;(c) Construction Management Plan;(d) Construction Traffic Management Plan;(e) Demolition Management Plan;(f) Emergency Management Plan;(g) Environmental Management Plan;(h) Self Validation Plan;(i) Monthly Safety Statistics Form;(j) Accident and Incident Management Report;(k) Transit Hall Works Program;(l) WHS Management Plan;(m) Industrial Relations Management Plan.(n) Stakeholder and Community Management Plan;(o) WHS Management Plan; and(p) Wynyard Lane Traffic Management Plan.
Pollution	The meaning given in the <i>Protection of the Environment Operations Act 1997</i> (NSW). Pollute has the same meaning.
Power of	The power of attorney executed by the registered proprietors of any land the subject of the Public

Attorney	Positive Covenant.
Privacy Law	The <i>Privacy Act 1988</i> (Cth) or any applicable privacy legislation or regulation in New South Wales.
Progress Claim	A claim for payment made under clause 19.2 of this document.
Public Positive Covenant	A public positive covenant in favour of TfNSW and RailCorp to be granted by the owner of the former Shell House in respect of Lot 10 DP595978 and the owner of 285 George Street in respect of Lot 22 DP56723 and Lot 23 DP59753 and any other land acquired by a Purchaser or the Lessee which is included in the Subdivision Plan.
RailCorp Retail Tenants	Those retail tenants located in the Wynyard Station unpaid and paid concourse, Coles level and Carrington Street Retail.
Rail Entity	Any Authority which has as its function the ownership, operation or management of railway infrastructure or any private entity which has been engaged by an Authority to carry out the Authority's function of operation or management of railway infrastructure and includes TfNSW and RailCorp and their respective statutory successors.
REF	Review of Environmental Factors under Part 5 of the EP&A Act and clause 228 of the <i>Environmental Planning and Assessment Regulation 2000</i> .
Related Body Corporate	The meaning given to it in the Corporations Act but also includes: (a) any body corporate or unit trust, or the shares or units in any unit trust, of which that body corporate is trustee; and (b) a body corporate which is a related body corporate of a body corporate described in paragraph (a) under section 50 of the Corporations Act.
Reputable Insurer	An insurance company having the Required Rating.
Required Rating	A credit rating of at least A ⁻ by Standard and Poor's (Australia) Pty Limited or A3 by Moody's Investors Service, Inc (or another credit rating as TfNSW may approve in writing) or, if no rating is provided by Standard and Poor's (Australia) Pty Limited or by Moody's Investors Service, Inc, an equivalent rating

	with another reputable rating agency approved by TfNSW acting reasonably.
Rescind	To end this document as from its beginning. Rescission has the same meaning.
Retail Lot	Lot 13 in the Subdivision Plan.
Retail Works	The works required to deliver the retail component on George Street to the perimeter of the Transit Hall Lot within the Hunter Connection Level and along through the site link between George Street and Carrington Street, but does not include the Site Establishment Works, the Office Tower Works or the Transit Hall Works.
Road Lot	Lot 16 in the Subdivision Plan.
Section 88B Instrument	The instrument (a copy of which is at schedule 22) pursuant to sections 88A, 88B, 88D or 88E of the <i>Conveyancing Act 1919</i> (NSW) to be lodged for registration at the LPI with the Subdivision Plan with or without changes permitted under this document.
Section 96 Application	The application (SSD 5428 MOD 1) lodged on behalf of the Lessee on 13 November 2015 seeking approval from the applicable Planning Authority to modify the Stage 1 Development Consent pursuant to section 96(1A) of the EP&A Act.
Self Validation Plan	The plan describing the Developer's self-validation system and procedures.
Senior Representative	The persons described in schedule 29 .
Service	Includes any service or item of public or private infrastructure, including pedestrian and vehicular corridors, water, electricity, gas, fuel, telephone, existing drainage, sewerage, industrial waste disposal and electronic communications service.
Shell House Lot	Lot 11 in the Subdivision Plan.
Site Conditions	Any physical conditions and characteristics of, on, above, below or over the surface or about the Construction Site, the Stage 1 Development Land, any Extra Land or their surroundings, including: <ul style="list-style-type: none">(a) natural and artificial conditions (including heritage and archaeological issues);(b) physical and structural conditions, including buildings, improvements, partially completed

structures and in ground works;

- (c) all improvements, including any artificial things, foundations, existing utility services and other structures installed by or on behalf of a Rail Entity or others;
- (d) ground water, ground water hydrology and the effects of any dewatering;
- (e) Contamination or the existence of any Hazardous Substance or thing or waste;
- (f) topography of the Construction Site, ground surface conditions and geology, including rock and sub-surface conditions or other materials encountered on, above, below or over the surface or about the Construction Site and the Extra Land;
- (g) geological, geotechnical and subsurface conditions or characteristics;
- (h) underground strata;
- (i) systems and facilities, above or below ground and the location of all facilities with which any service or related item of infrastructure including water, electricity, gas, telephone, drainage, sewerage and electronic communications and systems are connected;
- (j) the Environment, water, weather or atmospheric or climatic conditions, or the effects of the Environment, water, weather or atmospheric or climatic conditions (including rain, surface water run-off and drainage, water seepage, wind blown dust and sand, seasons and physical conditions that are a consequence of weather, atmospheric and climatic conditions); and
- (k) any latent conditions.

**Site
Establishment
Works**

The preparatory works for the Development including the following works:

- (a) site accommodation, construction of New Coles Storage Area;
- (b) soft strip out of the Menzies Hotel (14 Carrington Street, Sydney) including HAZMAT;
- (c) soft strip out of southern retail; and
- (d) service relocation/termination,

as further detailed in **schedule 49**.

Special Event

A special event or organised event for which there is anticipated by TfNSW to be on a temporary short-term basis an unusually high level of demand for train services at Wynyard Station or as a result of the special event or organised event for security or safety reasons a need to alter access to and from Wynyard Station and the Construction Site. They are as follows:

- (a) Olympic Games;
- (b) New Year's Eve and New Year's Day;
- (c) Australia Day;
- (d) ANZAC Day;
- (e) Vivid Festival;
- (f) Sydney Festival; and
- (g) Mardi Gras.

**Stage 1
Development**

The development the subject of the Stage 1 Development Consent and located on the Stage 1 Development Land including the following works:

- (a) demolition of the Menzies Hotel (14 Carrington Street, Sydney), 301 George Street and the eastern access ways to Wynyard Station and development above Wynyard Lane;
- (b) construction and use of a 27 storey commercial building on the land between Carrington Street and George Street (which will become the Office Lot);
- (c) partial demolition of Shell House (2-12 Carrington Street, Sydney) and 285-287 George Street and refurbishment of those properties for commercial and retail use (part of which may be included in the Retail Lot);
- (d) the Transit Hall Works which will become the Transit Hall Lot but not including the Hunter Tunnel Works;
- (e) construction of a retail / commercial loading dock and two levels of basement comprising tenant car spaces and end of trip facilities;
- (f) signage zones; and
- (g) public domain upgrades surrounding the Stage 1 Development Land.

Stage 1 Development Application	The State significant development application No. SSD 13_5824 made under Part 4 of the EP&A Act seeking approval for the proposed Stage 1 Development consistent with the Concept Plan Approval.
Stage 1 Development Consent	<p>The Approval granted by the Acting Executive Director (Infrastructure and Industry Assessments, Department of Planning and Environment), as delegate of the Minister for Planning, on 25 September 2015 for the Stage 1 Development Application, including:</p> <ul style="list-style-type: none">(a) any modifications of the Stage 1 Development Application imposed by that consent; and(b) any future modifications of that Approval effected by the determination of any Modification Application.
Stage 1 Development Land	<p>The land to the east of the eastern boundary of Carrington Street, Sydney, comprising:</p> <ul style="list-style-type: none">(a) Lot 1 DP 853331 (14 Carrington Street, Menzies Hotel);(b) Lot 2 DP 853331;(c) Lot 4 DP 853331 (Wynyard Lane);(d) Lot 10 DP 595978 (2 – 12 Carrington Street, (former Shell House)); and(e) Lot 22 DP 56723 and Lot 23 DP 59753 (285 George Street).
Stakeholder and Community Management Plan	The document at schedule 24 , as amended in accordance with clause 15.3 .
Statement of No Objections	The document at schedule 48 to be issued by TfNSW when an approval is requested from TfNSW by the Developer.
Station Interface Land	The area identified as the “Interface Zone” on the plan contained in schedule 55 .
Station Interface Works	<p>The works forming part of the Transit Hall Works to be carried out on the Station Interface Land as described in section 2.1.4 of the Transit Hall Brief being the:</p> <ul style="list-style-type: none">(a) Construction Only Works; and(b) Design and Construction Works, <p>and subject to Approval, as modified under clause 13.12(e).</p>

Station Interface Works Application	<p>The application for Approval to enable the Station Interface Works to be carried out, prepared by the Developer in accordance with:</p> <p>(a) clause 13.11(a)(ii); or</p> <p>(b) clause 13.11(a)(iii).</p>
Station Pedestrian Access Plan	<p>The document in schedule 18, as amended in accordance with clause 15.3.</p>
Station Retail Access Management Plan	<p>The document in schedule 13, as amended in accordance with clause 15.3</p>
Step-in Event	<p>A breach of this document by the Developer in respect of which TfNSW has issued a Default Notice and the Developer has failed to remedy the breach, make arrangements satisfactory to TfNSW in relation to the breach or failed to comply with the terms of a Cure Plan but TfNSW has not terminated this document and has given a Step-In Notice.</p>
Step-In Notice	<p>A notice given by TfNSW under clause 27.1(d).</p>
Subdivision Application	<p>The new development application required to subdivide the Transit Hall Site together with other land to create the Office Lot, Retail Lot, the Transit Hall Lot, the Road Lot, the Shell House Lot and the 285 George Street Lot in accordance with the Subdivision Plan.</p>
Subdivision Plan	<p>The plan of stratum subdivision to be lodged for registration at the LPI with or without changes permitted under this document a draft of which is at schedule 25.</p>
Sunset Date	<p>The date the Stage 1 Development Consent lapses or is surrendered.</p>
Sydney Light Rail Project	<p>The construction of the inner west Light Rail from Central Station to Dulwich Hill and the CBD and south east Light Rail from Circular Quay to Central Station via George Street, and to Randwick and Kingsford via Surry Hills and Moore Park, and includes all relevant activities carried out by Altrac Light Rail Partnership.</p>
Taxes	<p>Income, duty, indirect or other taxes levies, imposts, deductions, charges, duties (including import duty), compulsory loans and withholdings (including financial institutions duty, debits tax or other taxes whether incurred by payable by return or passed on to another</p>

	person) together with interest thereon or penalties, if any, and charges, fees or other amounts made on, or in respect thereof.
Transaction Documents	(a) this document; (b) the Transit Hall D&C Contract; (c) the Transit Hall Works Contractor's Side Deed; (d) the Transit Hall Works Financier's Side Deed; (e) the Independent Certifier Deed; (f) the Delivery Security; (g) the Contracts for Sale; (h) the Subdivision Plan; (i) the Section 88B Instrument; (j) the Building Management Statement; (k) the Planning Agreement; and (l) any other documents in relation to the Transit Hall executed and agreed by TfNSW and the Developer to be a Transaction Document.
Transit Hall	The transit hall at Wynyard Station as described in the Transit Hall Brief.
Transit Hall Brief	The brief at schedule 26 or if a notice is given under clause 23.1 or if clause 26.5(a)(i) applies or if clause 27.4(c) applies, the Modified Transit Hall Brief.
Transit Hall Documentation	Transit Hall Documentation has the same meaning given to that term in the Building Management Statement.
Transit Hall Works Commencement Date	The date on which the last of the conditions precedent contained in clause 3.2 are satisfied.
Transit Hall D&C Contract	The contract approved by TfNSW under clause 5.2 to be entered into between the Developer and Transit Hall Works Contractor for the construction of the Transit Hall Works and which is based on the document at schedule 28 and includes each of the schedules listed in that draft document.
Transit Hall Lot	Lot 14 in the Subdivision Plan.
Transit Hall Site	That part of the Stage 1 Development Land identified as the Transit Hall Site on the plan contained in the

	Transit Hall Brief.
Transit Hall Works	<p>The works (including all Variations permitted in accordance with the terms of this document), comprising:</p> <ul style="list-style-type: none">(a) the Base Transit Hall Works;(b) subject to clause 13.11, the Station Interface Works; and(c) subject to clause 13.13, the Hunter Tunnel Works, but does not include the Site Establishment Works.
Transit Hall Works Contractor	<p>Brookfield Multiplex Constructions Pty Limited ABN 70 107 007 527 of Level 22, 135 King Street, Sydney NSW 2000, or any other replacement contractor to carry out the Transit Hall Works, the Site Establishment Works or both (as the case may be).</p>
Transit Hall Works Contractor's Side Deed	<p>The document in the form of the document at schedule 30 to be executed by TfNSW, the Developer and the Transit Hall Works Contractor and which, amongst other things, appoints the Transit Hall Works Contractor as principal contractor for the Transit Hall Works.</p>
Transit Hall Works Financier's Side Deed	<p>The document substantially in the form of the document at schedule 50.</p>
Transit Hall Works Program	<p>The program prepared and provided by the Developer in accordance with clause 18.2, as developed and updated in accordance with clause 18.2 from time to time.</p>
Variation	<p>Any change:</p> <ul style="list-style-type: none">(a) to the Transit Hall Works including:<ul style="list-style-type: none">(i) any addition or increase to, of decrease, omission or deletion from, the Transit Hall Works; or(ii) any change to the character or quality, or demolition or removal, of any material or work; or(iii) any change to the levels, lines, positions or dimensions of any part of the Transit Hall Works; or(b) to the Transit Hall Brief.

Variation Order	The meaning it is given in clause 14.2 .
WHS	Work, health and safety.
WHS Act	The <i>Work Health and Safety Act 2011</i> (NSW).
WHS Guidelines	The New South Wales Government Work Health and Safety Management Systems and Auditing Guidelines (Edition 5).
WHS Management Plan	The Work, Health & Safety Management Plan prepared by the Developer for the Development Works.
WHS Regulation	The <i>Work Health and Safety Regulation 2011</i> (NSW).
Wynyard Lane	Lot 4 in Deposited Plan 853331.
Wynyard Lane Traffic Management Plan	The document at schedule 34 , as amended in accordance with clause 15.3 .
Wynyard Station	The train station and concourse to the station located at Wynyard.
Wynyard Station REF	The Wynyard Station Upgrade Determination Report dated 18 March 2015 (Ref: 4099942), as modified from time to time.

2 Key obligations, signing documentation and Development Program

2.1 Developer's key obligations

The Developer must in accordance with this document:

- (a) carry out or procure performance of the Transit Hall Works;
- (b) maintain access to and from Wynyard Station including providing safe and convenient public access at all times through routes and in areas and subject to such conditions as set out in the Plans;
- (c) not interfere with the operation of Wynyard Station in carrying out the Development Works (except where otherwise approved by TfNSW or set out in the Plans at the date of this document); and
- (d) keep TfNSW informed in relation to the progress of the Transit Hall Works and the Development Works, acknowledging and having regard to Wynyard Station continuing to operate as a live railway station servicing rail passengers during the conduct of the Transit Hall Works and the Development Works as the case may be.

2.2 TfNSW's key obligations

TfNSW must (and in relation to **clause 2.2(a)**, RailCorp must) in accordance with this document:

- (a) subject to the Leases, provide the Developer with access to the Construction Site to enable the Developer to carry out its obligations or undertake the Development Works;
- (b) pay the Developer the amounts calculated in accordance with this document; and
- (c) carry out its obligations under **clause 22** in relation to subdivision.

2.3 Signing Independent Certifier Deed

- (a) Promptly after the Developer serves the Notice to Proceed, TfNSW and the Developer will appoint an Independent Certifier from the list of Independent Certifiers in **schedule 47**.
- (b) TfNSW and the Developer will jointly engage the Independent Certifier in accordance with the terms of the Independent Certifier Deed.

2.4 Development Program

- (a) The Development Program shows the planned progress of the Transit Hall Works and the Development Works to the extent the Development Works will be carried out on the Construction Site concurrently with the Transit Hall Works.
- (b) When the Developer gives a Notice to Proceed, the Developer must update the Development Program and following the issue of the Notice to Proceed must update the Development Program no less frequently than once each month to show delays and any extensions to the Date for Completion, actual progress made and any other changes to the programmes as it relates to the Transit Hall Works and the balance of the Development Works being carried out currently with the Transit Hall Works on the Construction Site.
- (c) Nothing in this **clause 2** limits or discharges the Developer's obligations in **clause 18.2**.

2.5 Notice to Proceed

- (a) Once TfNSW and RailCorp have received a Notice to Proceed, RailCorp must as soon as practicable:
 - (i) issue demolition notices or termination notices to each tenant or licensee of RailCorp or a Rail Entity on the Stage 1 Development Land and the Station Interface Land other than in respect of the Leases and any licence or lease to Coles; and
 - (ii) promptly provide copies of those notices to the Developer.
- (b) TfNSW and RailCorp must take all actions necessary (which includes enforcement action) to ensure that its tenants and licensees on the Stage 1 Development Land (other than in respect of the Leases and any

licence or lease to Coles) vacate the relevant premises by the date contained in the demolition or termination notice. The Developer indemnifies TfNSW and RailCorp against any Loss it suffers or incurs arising out of or in any way connected with TfNSW, RailCorp or any Rail Entity complying with **clause 2.5(b)** provided that the Developer's liability to indemnify TfNSW and RailCorp or will be reduced proportionally to the extent that a breach or negligent act or omission of TfNSW or RailCorp caused or contributed to the Loss.

- (c) If TfNSW, RailCorp or any Rail Entity issue demolition notices in accordance with **clause 2.5(a)(i)** and the Developer does not satisfy the conditions precedent listed in **clause 3.2** by the date which is six months after the date of the Notice to Proceed then the Developer must indemnify TfNSW, RailCorp or any Rail Entity against:
- (i) any Loss it suffers or incurs arising out of or in any way connected with a claim by a tenant or licensee who received a demolition notice arising out of or in connection with the issue of the demolition notice including any claims for compensation under the *Retail Leases Act 1994* (NSW) provided that the Developer's liability to indemnify TfNSW, RailCorp or any Rail Entity will be reduced proportionally to the extent that a breach or negligent act or omission of TfNSW, RailCorp or any Rail Entity caused or contributed to the Loss; and
 - (ii) any loss of income to the end of a term of a lease or licence as a result of a tenant or licensee which has been disclosed to the Developer prior to the date of this document, vacating pursuant to a demolition notice under the lease or licence so terminated by the demolition notice, subject to an obligation RailCorp or any Rail Entity to use reasonable endeavours to mitigate its loss.

2.6 Transit Hall Works Financier's Side Deed

- (a) The Developer may procure project specific finance for the Transit Hall Works.
- (b) As part of the project specific financing arrangements, the Financier must enter into the Transit Hall Works Financier's Side Deed.
- (c) TfNSW will act reasonably in any negotiation about the form of Transit Hall Works Financier's Side Deed, but the principles forming the basis of the Transit Hall Works Financier's Side Deed will not change.

2.7 Transit Hall Works Contractor's Side Deed

If the Transit Hall Works Contractor is replaced after the date of this document, the Developer must procure any replacement contractor engaged by the Developer to carry out the Transit Hall Works to enter into a builder's side deed in the form substantially similar to the form of the Transit Hall Works Contractor's Side Deed before commencing any Transit Hall Works.

3 Conditions precedent

3.1 Conditions precedent to Site Establishment Works

TfNSW and RailCorp agree that the Developer may commence the Site Establishment Works immediately upon the last to occur of:

- (a) execution and exchange of the Contracts for Sale;
- (b) evidence of an arrangement having been agreed between RailCorp, the Developer and Coles regarding the termination of the Coles Right of Way and use of the Goods Lift, the New Goods Lift, the New Loading Dock and the New Coles Storage Area by Coles until registration of the Subdivision Plan which does not require any payment or other consideration to be made by RailCorp to Coles in consideration for Coles agreeing to the arrangement;
- (c) evidence that the Developer has all Approvals required for the Site Establishment Works;
- (d) execution of a licence by the Lessee and Coles for the New Coles Storage Area which will expire on the date of completion of the Contracts for Sale; and
- (e) execution by all parties of the variations of the Leases.

3.2 Conditions precedent to Transit Hall Works

TfNSW and RailCorp will provide the Developer with access to the Construction Site to carry out the Transit Hall Works immediately upon the last to occur of:

- (a) execution by all parties to the Transit Hall D&C Contract;
- (b) execution by all parties to the Transit Hall Works Contractor's Side Deed and the Independent Certifier's Deed;
- (c) satisfaction of **clauses 3.1(a), 3.1(b), 3.1(d) and 3.1(e)** if not already satisfied;
- (d) registration of the Public Positive Covenant;
- (e) provision of the Power of Attorney to TfNSW;
- (f) provision of the Delivery Security to TfNSW;
- (g) approval by TfNSW in accordance with **clause 17.9** of the following documents:
 - (i) Self Validation Plan;
 - (ii) Monthly Safety Statistics Form;
 - (iii) Accident and Incident Management Report;
 - (iv) Transit Hall Works Program;
 - (v) WHS Management Plan; and
 - (vi) Industrial Relations Management Plan;

- (h) evidence that TfNSW and the Developer have agreed an Implementation Plan for Power Supply Works;
- (i) the satisfaction or waiver of all conditions precedent (except the conditionality of this document) in the Transit Hall D&C Contract;
- (j) the obtaining of Approvals acceptable to all parties for any Pending Planning Applications or Modification Application required for the Transit Hall Works;
- (k) the date being the earlier of:
 - (i) 6 months after the date of service of the Notice to Proceed; and
 - (ii) the obtaining of vacant possession by RailCorp of the premises required to be the subject of the demolition notices referred to in **clause 2.5(a)(i)**; and
- (l) the appointment of an Independent Certifier under **clause 2.3**.

The giving of a Notice to Proceed by the Developer triggers the commencement of the activities and milestones in relation to the Transit Hall Works as set out in the Development Program.

3.3 Obligations

- (a) The Developer has the responsibility to satisfy the conditions precedent in **clauses 3.1** and **3.2** other than **clauses 3.1(a), 3.1(b), 3.1(e), 3.2(b), 3.2(c), 3.2(h)** and **3.2(l)** which are also the responsibility of TfNSW and RailCorp.
- (b) The parties must use their reasonable endeavours to satisfy the conditions precedent in **clauses 3.1** and **3.2** for which they are responsible including, by executing all documents as soon as reasonably practicable.
- (c) Subject to **clauses 13.11** and **13.13**, the Developer must use reasonable endeavours to obtain the Approvals to each of the Station Interface Works Application and the Hunter Tunnel Works Application.

3.4 Sunset Date and right to Rescind

- (a) Before a condition precedent may be waived, TfNSW, RailCorp and the Developer must agree to the waiver in writing.
- (b) TfNSW, RailCorp and the Developer must promptly notify the other parties in writing when either of them considers that a condition precedent has been satisfied.
- (c) If the condition precedent the subject of **clause 3.2(j)** is not satisfied or waived by the Planning Sunset Date then (before such condition precedent has been satisfied or waived):
 - (i) TfNSW, RailCorp or the Developer can Rescind by serving notice to the other parties;

- (ii) no party will have any further obligations to the other under this document except:
 - (A) in relation to breaches of this document prior to the Rescission; and
 - (B) the parties must continue to comply with those clauses which are stated to survive Rescission or termination of this document.
- (d) If the conditions precedent other than **clause 3.2(j)** are not satisfied or are not waived by the Sunset Date then (before such conditions precedent has been satisfied or waived):
 - (i) either TfNSW, RailCorp or the Developer can Rescind by serving notice to the other parties;
 - (ii) no party will have any further obligations to the other under this document except:
 - (A) in relation to breaches of this document prior to the Rescission; and
 - (B) the parties must continue to comply with those clauses which are stated to survive Rescission or termination of this document.

3.5 Pending Planning Applications and Modification Applications

- (a) The Developer will prepare and submit to TfNSW and RailCorp for approval any proposed Pending Planning Applications which relate to or may impact on the Transit Hall Works, including all plans, specifications and reports and other documents forming part of the Pending Planning Applications to be lodged with a Planning Authority in support of the Pending Planning Applications. TfNSW and RailCorp must consider the proposed Pending Planning Application and must advise the Developer in writing of TfNSW's and RailCorp's comments, approval or rejection within 20 Business Days of receipt of the proposed Pending Planning Application and must not unreasonably withhold consent to the proposed Pending Planning Application.
- (b) The Developer cannot lodge any Pending Planning Application which relates to or may impact on the Transit Hall Works with a Planning Authority without the prior written consent of TfNSW and RailCorp in accordance with **clause 3.5(a)**.
- (c) The Developer must consult TfNSW and RailCorp and seek the consent of TfNSW and RailCorp with respect to any Modification Application which relates to or may impact on the Transit Hall Works that it may wish to submit to a Planning Authority.
- (d) TfNSW and RailCorp must consider any proposed Modification Application which relates to or may impact on the Transit Hall Works and must advise the Developer of TfNSW's and RailCorp's written

comments, approval or rejection within 15 Business Days of receipt of the proposed Modification Application, and must not unreasonably withhold consent to the Modification Application.

3.6 Lodgement of a Pending Planning Application or Modification Application

Upon the Developer receiving all necessary consents from TfNSW and RailCorp requested by the Developer under **clause 3.5**, the Developer must lodge the Pending Planning Applications or a proposed Modification Application with the relevant Planning Authority in accordance with the Development Program or no later than any other date agreed by TfNSW and RailCorp in writing.

3.7 Procedure during assessment of Pending Planning Applications or Modification Application

- (a) The Developer must provide TfNSW and RailCorp with copies of all correspondence, received and provided, in connection with any Pending Planning Applications or Modification Application which relates to or may impact on the Transit Hall Works and otherwise keep TfNSW and RailCorp informed in detail of the status of the assessment of any Pending Planning Applications or Modification Application in each case only as the matter relates to or may impact on the Transit Hall Works.
- (b) The Developer must involve TfNSW and RailCorp in all discussions between the Developer and the Planning Authority with respect to any draft conditions of any Pending Planning Applications or Modification Application where those discussions relate to or may impact on the Transit Hall Works.
- (c) The Developer must consult TfNSW and RailCorp with respect to any changes that the Developer may wish to make to any Pending Planning Applications or Modification Application in each case only where the change relates to or may impact on the Transit Hall Works after lodgement but before the grant of Approval of any Pending Planning Applications or Modification Application.
- (d) The Developer may only make changes to a Pending Planning Application or Modification Application which relate to or may impact on the Transit Hall Works after lodgement but before the grant of Approval with the written consent of TfNSW and RailCorp. TfNSW and RailCorp must consider the changes and advise the Developer in writing of TfNSW's and RailCorp's comments, approval or rejection within 15 Business Days of receipt. TfNSW and RailCorp must not unreasonably withhold consent to the requested changes.

3.8 Refusal and unacceptable conditions of any Pending Planning Applications or Modification Applications

- (a) The Developer must, within 5 Business Days of receipt, notify TfNSW and RailCorp in writing of the refusal of or terms of Approval by a

Planning Authority of a Pending Planning Application or Modification Application which relates to or may impact on the Transit Hall Works.

- (b) If the Planning Authority grants an Approval to a Pending Planning Application or Modification Application which relates to or may impact on the Transit Hall Works on terms which are not acceptable to TfNSW, RailCorp or the Developer (each acting reasonably and subject to **clause 3.8(c)** or **clause 3.8(d)**) then each of TfNSW, RailCorp or the Developer (as applicable) must notify each other in writing no later than 15 Business Days after the date on which the Developer provided the written notification under **clause 3.8(a)** identifying the unacceptable terms and the Developer, RailCorp and TfNSW must meet and discuss the unacceptable terms within 5 Business Days of receipt of the notification.
- (c) The Developer is not entitled to find any matter which relates to or may impact on the Transit Hall Works and which is in accordance with the Transit Hall Brief unacceptable in an Approval to a Pending Planning Application or Modification Application.
- (d) TfNSW and RailCorp are not entitled to find any one or more of the following matters unacceptable in an Approval to a Pending Planning Application or Modification Application:
 - (i) any matter which does not relate to or impact on the Transit Hall Works; or
 - (ii) any matter which the Developer requires to be contained in an Approval to ensure that the Developer can comply with its obligations under this document provided there is no adverse impact on TfNSW and RailCorp.
- (e) If the Developer, TfNSW or RailCorp consider that the terms of any Approval of a Pending Planning Application or Modification Application which relates to or may impact on the Transit Hall Works are unacceptable (acting reasonably and subject to **clause 3.8(c)** or **clause 3.8(d)**) or the Planning Authority refuses to grant approval to any Pending Planning Application or Modification Application which relates to the Transit Hall Works (including a deemed refusal), the Developer may, but is not required, to:
 - (i) make an application under section 96 or section 75W of the EP&A Act (as applicable) to modify the terms of the Approval; or
 - (ii) appeal the Planning Authority's decision (including any deemed refusal) to the Land and Environment Court or to any other appellate body having jurisdiction to hear the appeal,within 30 Business Days of the date of the Authority's grant of the Approval or the refusal (or deemed refusal) of the Pending Planning Application or Modification Application.
- (f) The Developer must:

- (i) pay all costs associated with any Pending Planning Application or Modification Application, any application made under **clause 3.8(e)(i)** or appeal commenced under **clause 3.8(e)(ii)**;
 - (ii) prosecute the Pending Planning Application or Modification Application or appeal commenced pursuant to **clause 3.8(e)(ii)** to a conclusion with all due care and diligence; and
 - (iii) keep TfNSW and RailCorp fully informed and involved in any Pending Planning Application or Modification Application, any application made under **clause 3.8(e)(i)** or appeal commenced under **clause 3.8(e)(ii)** which relates to or impacts on the Transit Hall Works.
- (g) Any conditions required to be satisfied prior to commencement of works which are imposed by the Authority under a deferred commencement consent are the responsibility of the Developer.

3.9 Lodgement of an application for any other Approval

- (a) The Developer is not required to seek the consent of TfNSW and RailCorp to the lodgement of any application for any other necessary Approval that does not relate to or will not impact on the Transit Hall Works unless the consent of TfNSW or RailCorp as landowner is required. If so, such consent must not be unreasonably withheld, delayed or denied.
- (b) TfNSW and RailCorp:
 - (i) agree to sign all documents and do all things reasonably required by the Developer within 15 Business Days of receipt of a request from the Developer in respect of any application for any other Approval under this **clause 3.9**, provided that TfNSW and RailCorp agree, acting reasonably, that the application does not relate to or will not impact on the Transit Hall Works; and
 - (ii) are not liable to pay any moneys in respect of the application.

3.10 Effective refusal

If a Planning Authority grants an Approval to any Pending Planning Application or Modification Application which relates to or impacts on the Transit Hall Works and:

- (a) the Developer, TfNSW or RailCorp consider that the terms of any approval to any Pending Planning Application or Modification Application which relates to the Transit Hall Works are unacceptable (each acting reasonably and subject to **clauses 3.8(c) and 3.8(d)**); or
- (b) the Developer is unsuccessful in either an appeal against the terms of the Approval or does not appeal,

then the approval obtained for the purposes of this document is not an Approval and **clause 3.4(c)** and **clause 3.4(d)** will apply (as applicable).

4 Transit Hall Site ownership

The Developer agrees that as at the date of this document, RailCorp is the owner of the Transit Hall Site and that the Transit Hall Site is free from all easements, covenants and other encumbrances, affectations and notifications other than those:

- (a) disclosed in the Contracts for Sale;
- (b) disclosed in the Information Documents and Materials; and
- (c) as may be created without objection by the Purchaser under this document or the Contracts for Sale.

5 Transit Hall Works obligations and Development Works generally

5.1 General

The Developer must carry out:

- (a) the Transit Hall Works; and
- (b) the remaining Development Works,

in accordance with this document.

5.2 Transit Hall D&C Contract

- (a) The Developer must subcontract the performance of the Transit Hall Works to the Transit Hall Works Contractor on the terms of the Transit Hall D&C Contract in form and substance approved by TfNSW (that approval not to be unreasonably withheld), provided that:
 - (i) the Transit Hall D&C Contract is substantially in the form of **schedule 28**;
 - (ii) the schedules to the Transit Hall D&C Contract are complete, and approved by TfNSW (acting reasonably); and
 - (iii) the Transit Hall D&C Contract is amended as follows:
 - (A) **(Definition of ‘qualifying cause of delay’)**: paragraph (a) of the definition of ‘qualifying cause of delay’ must not include any acts or omissions expressly permitted or allowed under the Transit Hall D&C Contract;
 - (B) **(Clause 11.2 – change in legislative requirements)**: the change in legislative requirements position under the Transit Hall D&C Contract must mirror the allocation of risk for change in Law under this document;
 - (C) **(Clause 42.15 – Linked Disputes)**: the determination of disputes under this document must apply to corresponding

- disputes to the extent it relates to the same subject matter under the Transit Hall D&C Contract;
- (D) **(Modified Transit Hall Brief)**: the Transit Hall D&C Contract and the Transit Hall Contractor's Side Deed must provide for the replacement of the Transit Hall Brief with the Modified Transit Hall Brief where the Modified Transit Hall Brief applies; and
- (E) **(Annexure Part A – Contract Particulars)**: the Transit Hall D&C Contract must specify the contract sum and Date for Practical Completion.
- (b) The Developer will be:
- (i) responsible for the Transit Hall Works despite subcontracting the carrying out of any part of the Transit Hall Works; and
 - (ii) liable to TfNSW for all acts, omissions and defaults of the Developer's Associates to the extent not caused or contributed to by a Rail Entity or an Other Contractor.
- (c) The Developer must ensure that any work performed by the Transit Hall Works Contractor is done within the time frames required by, and otherwise complies with, this document having regard to any extensions of time and other obligations of the Developer under this document.
- (d) The Developer's obligations under this document are not lessened or otherwise affected by entering into the Transit Hall D&C Contract.
- (e) The Developer must ensure that TfNSW and RailCorp obtain:
- (i) the benefit of the warranties specified in this document; or
 - (ii) where no warranty is specified, either:
 - (A) a warranty from the Transit Hall Works Contractor on or before Completion in a form and for a period which would normally be provided for similar work to the Transit Hall Works; or
 - (B) a warranty given by the Transit Hall Works Contractor under the Transit Hall D&C Contract.

5.3 Compliance with Law, Authority requirements

- (a) The Developer must in carrying out the Development Works:
- (i) comply with all applicable Law;
 - (ii) give all notices and pay all fees and other amounts which it is required to pay in respect of the performance of its obligations under this document and give TfNSW copies of all notices it gives to Authorities before or at the same time as it submits the notices to Authorities;

- (iii) give TfNSW copies of all material documents (including Approvals and other notices) that Authorities issue to it; and
 - (iv) subject to **clause 12**, conform and comply with, the guidelines, standards and codes of practice set out in **schedule 36** as amended pursuant to **clause 12.9(d)** to the extent that they impact upon the Transit Hall Works.
- (b) The Developer must:
 - (i) obtain all Approvals required for the performance of the Transit Hall Works and the Development Works being carried out on the Construction Site;
 - (ii) comply with, carry out and fulfil the conditions and requirements of all Approvals including those conditions and requirements that TfNSW is required, under the terms of the Approvals to observe provided that TfNSW as landowner provides any assistance, but at no cost to TfNSW, required by the Developer to comply with a condition or requirement imposed on TfNSW promptly upon request;
 - (iii) for the purpose of obtaining all Approvals:
 - (A) prepare all associated studies and reports required to be obtained under the Approvals; and
 - (B) prepare and submit all applications and associated documents to relevant Authorities; and
 - (iv) as a condition precedent to Completion, ensure that it has, in respect of the Transit Hall Works:
 - (A) obtained all Approvals it is required to obtain under this document;
 - (B) complied with, carried out and fulfilled all conditions and requirements of all Approvals the Developer is required to comply with, carry out and fulfil under this document to the extent they are required to be observed prior to Completion; and
 - (C) supplied to TfNSW any information reasonably requested by TfNSW in relation to any Approval,

including any Approvals, conditions or requirements which must be observed to enable TfNSW to use the Transit Hall Works for its intended purpose.
- (c) The Developer must comply with, and must procure the Developer's Associates to comply with, the Plans.

5.4 Environmental management

- (a) The Developer must:

- (i) carry out the Development Works in an environmentally responsible manner so as to protect the Environment and not cause any Pollution or cause, disturb, contribute to or exacerbate any Contamination in breach of any Law or this document;
 - (ii) have in place an Environmental Management Plan that includes an environmental management system;
 - (iii) ensure that the Transit Hall Works Contractor has in place an Environmental Management Plan, relating to the Transit Hall Works, accredited by an agency accredited under the Joint Accreditation System of Australia and New Zealand, including a corporate environmental policy, that:
 - (A) complies with the NSW Government Environmental Management Systems Guidelines;
 - (B) complies with AS/NZS ISO 14001:2004 or an equivalent standard;
 - (C) addresses the organisational structure, planning activities, responsibilities, practices, procedures and resources for developing, implementing, achieving, reviewing and maintaining the Developer's environmental policy; and
 - (D) incorporates any specific obligations under any Approval, including, the Concept Plan Approval and the Stage 1 Development Consent;
 - (iv) comply with all aspects of the Environmental Management Plan;
 - (v) ensure that the Transit Hall Works Contractor appoints an environment manager for the Site Establishment Works and the Transit Hall Works who:
 - (A) has relevant environmental qualifications and has appropriate construction experience;
 - (B) is responsible for administration, co-ordination and managing the Developer's compliance with its obligations under this document in relation to the Environment; and
 - (C) any replacement of the environment manager must be promptly notified to TfNSW and must be approved by TfNSW, that approval not to be unreasonably withheld; and
 - (vi) use, and be able to demonstrate the use of, ecologically sustainable development principles in the design and construction of the Site Establishment Works and the Transit Hall Works.
- (b) The Developer must as soon as possible and in any event within 2 Business Days of becoming aware of any breach or non-compliance or potential breach or non-compliance notify TfNSW in writing of any breach or non-compliance or potential breach or non-compliance with **clause**

5.4(a) in the carrying out of the Site Establishment Works and the Transit Hall Works.

(c) If there is a legal challenge or judicial review proceedings in relation to the assessment or determination of the Development Works under:

- (i) the EP&A Act; or
- (ii) any other Law,

provided it is lawful for it to continue to do so, the Developer must continue to perform its obligations under this document unless, as a result of that legal challenge or judicial review proceedings, it is directed by TfNSW to cease doing so or it is prevented from doing so:

- (iii) by Law; or
- (iv) by an order of a court or tribunal.

5.5 Services

(a) The Developer must:

- (i) except where the Developer and TfNSW have agreed that the Developer will provide a replacement or alternative Service where any interruption may be required as part of the provision of the replacement or alternative Service, not interrupt any Service (including any infrastructure supporting or involving Services located on the Development Land that may interrupt Services) to the Transit Hall, the Transit Hall Site, Wynyard Station or RailCorp's tenants on the Stage 1 Development Land or Adjoining Land unless, subject to **clause 5.5(b)**, in accordance with this document (including the Construction Management Plan);
- (ii) obtain and pay for any Service the Developer needs to perform the Developer's obligations under this document;
- (iii) relocate, remove, modify and replace all Services as is reasonably necessary for the Developer to comply with its obligations under this document;
- (iv) provide and maintain any signage, line marking, flagmen, barriers and other road or pedestrian traffic devices needed by the Developer to comply with its obligations under this document;
- (v) take all practicable steps required to ensure that all Services or facilities on or adjacent to or affecting the Construction Site, or affected by the Development Works are not interfered with or interrupted during normal operating hours by reason of the performance of the Development Works, without the prior approval of their owner;
- (vi) in the event of a Service disruption or in the event of an emergency situation involving Services (in each case arising from the Development Works and which affects the Service to the Transit

Hall, the Transit Hall Site, Wynyard Station or RailCorp tenants on the Stage 1 Development Land or the Adjoining Land), the Developer must immediately notify TfNSW; and

- (vii) indemnify TfNSW, RailCorp and any Rail Entity against any Loss it suffers or incurs arising out of or in any way in connection with any disruption to any Service arising out of or in any way in connection with the Development Works, provided that the Developer's liability to indemnify TfNSW, RailCorp and any Rail Entity will be reduced proportionally to the extent that a breach or negligent act or omission of TfNSW, RailCorp or any Rail Entity or an Excepted Risk caused or contributed to the Loss.
- (b) Where the Developer becomes aware of a Service on or affecting the Construction Site which requires relocation, removal, modification or replacement to enable the Developer to comply with its obligations under this document, the Developer must:
 - (i) within 2 Business Days of becoming aware of the need to relocate, remove, modify or replace a Service give TfNSW notice of the discovery of the Service, including any details with regard to location and purpose of the Service;
 - (ii) relocate, remove, modify or replace the Service; and
 - (iii) where the relocation, removal, modification or replacement is in relation to a Service affecting RailCorp Retail Tenants, in accordance with the Implementation Plan for Power Supply Works.

5.6 Training

The Developer must:

- (a) in relation to the Site Establishment Works and the Transit Hall Works, comply with the New South Wales Government Training Management Guidelines, February 2009 ("Guidelines"); and
- (b) ensure that all persons employed on the Development Works are adequately trained and have the requisite skills, knowledge and experience for the activities, work and tasks that they carry out.

5.7 Delivery Security

- (a) The Delivery Security to be provided under this **clause 5.7** is for the purpose of ensuring the due and proper performance by the Developer of its obligations under this document.
- (b) The Developer must procure for the benefit of TfNSW unconditional undertakings:
 - (i) subject to **clause 5.9**, for a total amount of \$78,000,000 comprising 3 unconditional undertakings for an amount of \$20,000,000 each and 1 unconditional undertaking for an amount of \$18,000,000;

- (ii) on terms acceptable to TfNSW;
 - (iii) in favour of TfNSW;
 - (iv) issued by an Institution or an Approved Issuer as selected by the Developer;
 - (v) without an expiry date.
- (c) Subject to:
- (i) TfNSW's rights to have recourse to the Delivery Security; and
 - (ii) the Developer providing to TfNSW in respect of the Transit Hall Works:
 - (A) a duly signed written statement in a form approved by TfNSW and which complies with the Developer's obligations under section 127 of the *Industrial Relations Act 1996* (NSW), Schedule 2 Part 5 of the *Payroll Tax Act 2007* (NSW) and section 175B of the *Worker's Compensation Act 1987* (NSW) to provide a statement to the 'principal contractor' as contemplated by those Acts; and
 - (B) a statutory declaration by the Developer, or where the Developer is a corporation, by a representative of the Developer who is in a position to know the facts attested to, in the form of **schedule 42**, made out not earlier than the date of the payment claim;
 - (C) a supporting statement in accordance with section 13(7) of the *Building and Construction Industry Security of Payment Act 1999* (NSW); and
 - (D) the Certificate of Completion,

TfNSW must:

~~(iii)~~ ~~(ii)~~ within 10 Business Days after the later of:

- (A) the Date of Completion; and
- (B) completion of the Contracts for Sale,

release or procure the release of so much of the Delivery Security (or any amounts under the Delivery Security to which TfNSW has not had recourse) so that TfNSW retains an amount equal to the higher of:

- (C) the value of likely costs of rectifying any Defects as determined by the Independent Certifier under **clause 20.1(e)(i)**; or
- (D) 2.5% of the value of the Transit Hall D&C Contract;

WOM ~~(iv)~~ ~~(iii)~~ within 10 Business Days after the expiration of all the Defects Rectification Period (excluding any extensions under **clause 16.5**), release so much of the Delivery Security (or any amounts under

the Delivery Security to which TfNSW has not had recourse), to the amount the Independent Certifier determines having regard to the work to which the remaining Defects Rectification Periods (including any extensions under **clause 16.5**) apply; and

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(v) ~~(iii)~~ within 7 Business Days after the Date of Final Completion, release the balance of the Delivery Security (or any amounts under the Delivery Security to which TfNSW has not had recourse to).

- (d) TfNSW:
- (i) may, provided it has given the Developer 24 hours prior written notice, have recourse to the Delivery Security provided under this **clause 5.7** at any time following service of a Default Notice on the Developer under **clause 26.1** and where the Developer has not remedied the default (by or on behalf of the Developer including by payment of compensation) in accordance with **clause 26.3**;
 - (ii) is not obliged to pay the Developer interest on:
 - (A) the Delivery Security; or
 - (B) the proceeds of any Delivery Security if it is converted into cash; and
 - (iii) does not hold the proceeds referred to in **clause 5.7(d)(ii)(B)** on trust for the Developer.
- (e) The Developer must not, take any steps to obtain an injunction or otherwise restrain:
- (i) any issuer of any Delivery Security from paying TfNSW pursuant to the Delivery Security;
 - (ii) TfNSW from taking any steps for the purposes of making a demand under any Delivery Security under this **clause 5.7** or receiving payment under any Delivery Security; or
 - (iii) TfNSW using the money received under any Delivery Security.

5.8 Cost to Complete Security Reduction

- (a) Once the Developer considers that it has completed Transit Hall Works with a value of \$20,000,000 it may give a notice to TfNSW requesting the return of one of the unconditional undertakings with a value of \$20,000,000.
- (b) Upon the giving of a notice by the Developer under **clause 5.8(a)**, the Developer and TfNSW must as soon as is reasonably practicable jointly instruct the Independent Certifier to determine as at the date of the giving of the notice under **clause 5.8(a)** the Cost to Complete.
- (c) If the Cost to Complete, as determined by the Independent Certifier, is less than the amount of the Delivery Security then held by TfNSW and the difference is in excess of \$20,000,000, then TfNSW must, provided the Developer has given TfNSW the statements, statutory declaration

and certification referred to in **clause 5.7(c)(ii)**, return one of the \$20,000,000 Delivery Securities then held by TfNSW.

- (d) The Developer may repeat this process three times until the only unconditional undertaking held by TfNSW is the one for \$18,000,000 which it may continue to hold until the Developer is entitled to the release of that unconditional undertaking subject to the Developer providing a unconditional undertaking which complies with **clause 5.7(c)(i)** ~~5.7(c)(i)~~ **5.7(c)(ii)** *WOM*
- (e) TfNSW is under no obligation to make the return of any of the unconditional undertakings the subject of **clause 5.8(c)** if the Developer is at the time of the giving of the notice under **clause 5.8(a)** or at the time the Developer offers to exchange under **clause 5.8(c)** in breach of a provision of this document and a Default Notice has been given.

5.9 Redetermination of Delivery Security Amount

- (a) If required by TfNSW after service by the Developer of a Notice to Proceed, the amount of the Delivery Security the subject of **clause 5.7(b)(i)** must be determined by the Independent Certifier.
- (b) TfNSW cannot require a determination of the amount of the Delivery Security under **clause 5.9(a)** if a Notice to Proceed is served on TfNSW by the Developer within 12 months of the date of this document.
- (c) The Independent Certifier, in determining the amount of the Delivery Security under this **clause 5.9**, must:
 - (i) make the determination on the same basis as TfNSW has determined the amount of the Delivery Security for the purposes of **clause 5.7(b)(i)**;
 - (ii) determine the cost to achieve Completion including all contingencies, preliminaries and margin, consultants and management fees; and
 - (iii) assume that the Transit Hall Works Contractor will not be Brookfield Multiplex Constructions Pty Limited ABN 70 107 007 527 but a replacement contractor who enters into a contract on the same terms and conditions and with the same scope of work as the Transit Hall D&C Contract.
- (d) The amount determined by the Independent Certifier under this **clause 5.9** will be substituted for the amount stated in **clause 5.7(b)(i)** or another sum inserted in **clause 5.7(b)(i)** as a result of the prior operation of this **clause 5.9**.

5.10 Loss of Required Rating

If at any time the issuer of the Delivery Security does not meet the Required Rating, the Developer, if called on to do so by TfNSW, must within 10 Business Days provide replacement Delivery Security in accordance with **clause 5.7(b)** subject to any reduction under **clause 5.8**.

6 NSW Code and NSW Guidelines

6.1 NSW Code and NSW Guidelines

In addition to terms defined in this document, terms used in this **clause 6** have the same meaning as is attributed to them in the NSW Guidelines and the NSW Code. The NSW Code and NSW Guidelines are available at www.industrialrelations.nsw.gov.au.

6.2 Primary Obligation

- (a) In carrying out the Site Establishment Works and the Transit Hall Works on land owned by RailCorp, the Developer must at all times comply with, and meet any obligations imposed by the NSW Code and NSW Guidelines.
- (b) The Developer must notify the Construction Compliance Unit (**CCU**) and the TfNSW of any possible non-compliance with the NSW Code and NSW Guidelines and of remedial action taken, within 5 Business Days of becoming aware of the possible non-compliance.
- (c) Where, in connection with the Site Establishment Works and the Transit Hall Works being carried out on land owned by RailCorp, the Developer engages a subcontractor or consultant (including the Transit Hall Works Contractor), the Developer must ensure that the contract imposes on the subcontractor or consultant equivalent obligations to those in this **clause 6**, including that the subcontractor or consultant must at all times comply with, and meet any obligations imposed by, the NSW Code and the NSW Guidelines.
- (d) The Developer must not appoint or engage another party in relation to the Site Establishment Works and the Transit Hall Works to be carried out on land owned by RailCorp where that appointment or engagement would breach a sanction imposed on the other party in relation to the NSW Code or NSW Guidelines.

6.3 Access and information

- (a) The Developer must maintain adequate records of compliance with the NSW Code and NSW Guidelines by the Developer and the Developer's Associates.
- (b) The Developer must, prior to the Date of Final Completion, allow, and take reasonable steps to facilitate, authorised personnel (including personnel of the CCU) who have been identified by TfNSW to the Developer as persons authorised to carry out these tasks, to:
 - (i) at reasonable times subject to completion of the Developer or Transit Hall Works Contractor's site induction process, enter and have access to the Construction Site;
 - (ii) inspect any work, material, machinery, appliance, article or facility on the Construction Site;

- (iii) access information and documents in relation to the Site Establishment Works and the Transit Hall Works carried out on the Construction Site;
 - (iv) inspect and copy any record relevant to the Site Establishment Works and the Transit Hall Works carried out on the Construction Site;
 - (v) have access to personnel working on the Construction Site; and
 - (vi) interview any person in relation to the Site Establishment Works and the Transit Hall Works carried out on the Construction Site,
- as is necessary for the authorised personnel to monitor and investigate compliance with the NSW Code and NSW Guidelines, by the Developer, its subcontractors, consultants, and related entities in connection with Site Establishment Works and the Transit Hall Works carried out on the Construction Site.
- (c) The Developer, and its Related Body Corporates, must agree to, and comply with, a request from authorised personnel (including personnel of the CCU) for the production of specified documents in connection with the Development Works by a certain date, whether in person, by post or electronic means.
 - (d) Without limiting **clause 35.12**, this **clause 6.3** does not require the Developer to disclose any information it is prevented from disclosing under Privacy Law or where that information is in the form of internal or external legal advice which needs to remain privileged.

6.4 Sanctions

- (a) The Developer warrants that at the time of entering into this document, neither the Developer, nor any of its Related Bodies Corporate, are subject to a sanction in connection with the NSW Code or NSW Guidelines that would have precluded it from responding to a procurement process for work to which the NSW Code and NSW Guidelines apply.
- (b) If the Developer does not comply with, or fails to in connection with the Site Establishment Works and the Transit Hall Works carried out on the Construction Site meet any obligation imposed by the NSW Code or NSW Guidelines, a sanction may be imposed against the Developer in connection with the NSW Code or NSW Guidelines.
- (c) Where a sanction is imposed:
 - (i) it is without prejudice to any rights that would otherwise accrue to the parties; and
 - (ii) the State of NSW (through its agencies, ministers and the CCU) is entitled to:
 - (A) record and disclose details of noncompliance with the NSW Code or NSW Guidelines and the sanction; and

- (B) take them into account in the evaluation of future procurement processes and responses that may be submitted by the Developer, or the Developer's Associates, in respect of work to which the NSW Code and NSW Guidelines apply.

6.5 Compliance

- (a) Without limiting the provisions of **clause 5.3(a)(iv)**, the Developer bears the cost of ensuring its compliance with the NSW Code and NSW Guidelines, including in respect of any positive steps it is obliged to take to meet its obligations under the NSW Code and NSW Guidelines. The Developer is not entitled to make a claim for reimbursement or an extension of time from TfNSW for such costs.
- (b) Compliance with the NSW Code and NSW Guidelines does not relieve the Developer from responsibility to perform the Site Establishment Works and the Transit Hall Works and any other obligation under this document, or from liability for any Defect in the Transit Hall Works or from any other legal liability, whether or not arising from its compliance with the NSW Code and NSW Guidelines.
- (c) Where a change in this document or works is proposed, and that change may, or may be likely to, affect compliance with the NSW Code and NSW Guidelines, the Developer must immediately notify TfNSW of the change, or likely change and specify:
 - (i) the circumstances of the proposed change;
 - (ii) the extent to which compliance with the NSW Code and NSW Guidelines will be, or is likely to be, affected by the change; and
 - (iii) what steps the Developer proposes to take to mitigate any adverse impact of the change (including any amendments it proposes to the WHS Management Plan),then TfNSW will direct the Developer as to the course it must adopt within 10 Business Days of receiving notice.

7 Change in Law

- (a) If compliance with Law necessitates a change to the Transit Hall Works:
 - (i) the Developer must promptly inform TfNSW in writing with details of the change to the Transit Hall Works and its proposal for performing the Transit Hall Works, which must be consistent with its obligations under this document, the Planning Agreement and the Concept Plan Approval;
 - (ii) the Developer must obtain TfNSW's approval before implementing the proposal, which approval must not be unreasonably withheld and which will in any case be communicated to the Developer

within 20 Business Days of receipt of the notice given under **clause 7(a)(i)**;

- (iii) if TfNSW does not approve its proposal, the Developer must develop the proposal until TfNSW, acting reasonably, approves a revised proposal; and
- (iv) if TfNSW does not approve the proposal within 10 Business Days of receipt of the notice given under **clause 7(a)(i)** then the matter may be referred for resolution under **clause 29**.

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- (b) Subject to the Developer and TfNSW agreeing a Variation as contemplated by **clause 7(c)**, the Developer is not entitled to any Claim for complying with Law or any change in Law (whether before, on or after the date of this document).
- (c) TfNSW and the Developer agree that any change in Law which the Independent Certifier determines is likely to have either a material financial impact:
 - (i) on the Developer's obligations under this document; or
 - (ii) the Retail Lot Purchaser's obligations under the Building Management Statement,

in either case which exceeds 1% of the total amount of the Delivery Security as specified in **clause 5.7(b)(i)**, TfNSW and the Developer must, if the Developer issues a written request to TfNSW meet within 10 Business Days of the date of the Developer's notice to discuss whether it is possible to agree a Variation to minimise the impact of the change in Law. Nothing in this **clause 7** obliges TfNSW to direct a Variation in respect of that impact.

8 Construction Site, Station Interface Land and Adjoining Land

8.1 Access

- (a) Subject to **clause 8.1(g)**, TfNSW and RailCorp will provide the Developer with non-exclusive access to the Construction Site:
 - (i) to perform the Site Establishment Works immediately after the conditions precedent in **clause 3.1** have been satisfied or waived;
 - (ii) to perform the Transit Hall Works immediately after the occurrence of the Transit Hall Works Commencement Date; and
 - (iii) to carry out the Development Works within the Construction Site.
- (b) Access to the Construction Site or any part thereof will only confer on the Developer a right to the control and use of the site, and to enable the Developer to execute after:

- (i) satisfaction of the conditions precedent in **clause 3.1**, the Site Establishment Works; and
 - (ii) satisfaction of the conditions precedent in **clause 3.2**, the Development Works.
- (c) TfNSW is not obliged to provide the Developer with access to those parts of the Construction Site controlled or owned by TfNSW or a Rail Entity until the Developer has:
 - (i) complied with **clauses 8.8(b)** and **8.8(c)**;
 - (ii) effected the insurance policies required under **clause 21**; and
 - (iii) if there are any Other Contractors, complied with **clause 18.2(c)** and the period of 20 Business Days referred to in **clause 18.2(a)** has passed.
- (d) TfNSW is not obliged to carry out any work or provide any facilities to the Developer to enable the Developer to obtain access to the Construction Site.
- (e) Without limiting the other provisions of this document, TfNSW and other Rail Entities may engage Other Contractors to perform work within the Construction Site at the same time as the Developer is carrying out its obligations under this document provided that TfNSW, RailCorp and any Rail Entity are responsible for the acts or omissions of those Other Contractors.
- (f) The Developer obtains access to any part of the Construction Site, the subject of the Contracts for Sale, from the Lessee and the Purchaser after completion of the Contracts for Sale and subject to the Leases.
- (g) The Developer must procure access from the Lessee to enable the Developer to carry out the Developer's obligations under this document and can make no Claim against TfNSW if the Developer fails to do so.

8.2 Management and control of the Construction Site

At all times after being given access to the Construction Site or a part of the Construction Site under **clause 8.1** during the performance of the Development Works:

- (a) without limiting any right of TfNSW under this document, the Developer will be responsible for the management and control of the Construction Site;
- (b) the Developer must control access to, and the security and maintenance of, the Construction Site;
- (c) the Developer must carry out the Development Works in a manner that does not endanger or in any way compromise public safety;
- (d) without limiting the Developer's obligations under this document, the Developer must provide for the safe passage of:

- (i) the public and railway system users on existing access ways affected by the Development Works in accordance with this document except where approved by TfNSW having regard to statutory obligations of any Rail Entity;
- (ii) road users on existing roads affected by the Development Works to the extent practicable,
in accordance with this document (including the Construction Management Plan);
- (e) the Developer must, subject to **clauses 8.2(b)** and **8.12**, and any relevant Law, limit access to the Construction Site to the Developer's Associates, the Transit Hall Works Contractor and the Transit Hall Works Contractor's Associates performing the Development Works or work or consultancy services associated with the Development Works; and
- (f) the Developer must provide all necessary hoardings, fences and other barriers for the separation of working areas from the public areas in accordance with this document (including the Construction Management Plan).

8.3 Extra Land for Developer's use

The Developer must:

- (a) procure for itself, the Developer's Associates and the Transit Hall Works Contractor the occupation or use of or relevant rights over any land (including any Adjoining Land or Extra Land) in addition to the Construction Site, which is necessary or which it may deem requisite or which it may require for the performance of the Development Works; and
- (b) to the extent that it exercises any rights under **clause 8.3(a)** comply with all conditions attaching to any agreement between the Developer and any person in respect of the Extra Land and the Adjoining Land.

8.4 Loading Dock and Goods Lift

- (a) The parties acknowledge that from the date the last conditions precedent in **clause 3.2** are satisfied, the Developer will control access to the Loading Dock and the Goods Lift in accordance with the terms of this document (including the Station Retail Access Management Plan).
- (b) Once demolition of the Loading Dock and the Goods Lift have commenced, RailCorp must provide alternative arrangements for each of the users of the Loading Dock and the Goods Lift being:
 - (i) any Rail Entity operating or using Wynyard Station; and
 - (ii) any retail tenants (including lessees and licensees) of a Rail Entity in Wynyard Station,

until registration of the Subdivision Plan when the New Loading Dock and the New Goods Lift will be available for use in accordance with the terms of the Building Management Statement.

8.5 Condition of Construction Site

- (a) The Developer warrants that prior to the date of this document, the Developer has:
 - (i) examined the Information Documents and Materials;
 - (ii) examined, and relied solely upon its own assessment, skill, expertise and inquiries in respect of all other information relevant to the risks, contingencies and other circumstances having an effect on its obligations under this document; and
 - (iii) undertaken a thorough and detailed visual inspection of the Construction Site and Stage 1 Development Land.
- (b) Subject to the terms of this document, the Developer is responsible for, and assumes the risk of all additional work, increased costs and any Loss or delay (including any delay in achieving Completion) the Developer incurs in connection with the Site Conditions.
- (c) TfNSW and RailCorp make no representation and give no warranty to the Developer in respect of the Site Conditions which are likely to be encountered during the performance of the Transit Hall Works or the carrying out of the Development Works generally.

8.6 Information Documents and Materials

- (a) The Information Documents and Materials:
 - (i) have been provided to the Developer, for the information only of the Developer; and
 - (ii) do not form part of this document.
- (b) No Rail Entity owes any duty of care to the Developer with respect to the Information Documents and Materials.
- (c) To the extent that any Rail Entity is not the author or source of any Information Documents and Materials then the relevant Rail Entity is merely passing those documents on to the Developer.
- (d) A Rail Entity:
 - (i) is not responsible for; and
 - (ii) makes no representation or warranty in respect of, the contents of the Information Documents and Materials including the accuracy, adequacy, suitability or completeness of any reports, data, test results, samples, reports or geotechnical investigations, opinions, recommendations, findings or other information contained in the Information Documents and Materials.
- (e) Where any information or document is referred to and incorporated by reference in any Information Documents and Materials, the Developer must not rely upon any summary of the information or document which appears in any of the Information Documents and Materials.

- (f) No representation or warranty (express or implied) has been made by any Rail Entity (or by anyone on the behalf of a Rail Entity) to the Developer that the Information Documents and Materials are accurate, adequate, suitable or complete for any purpose connected with the Development Works.
- (g) TfNSW and RailCorp enter into this document in reliance upon the acknowledgements and warranties contained in this **clause 8.6**.
- (h) TfNSW and RailCorp will not be liable to the Developer upon any Claim (to the extent permitted by Law) arising out of or any way in connection with:
 - (i) the provision of, or the purported reliance upon, or use of the Information Documents and Materials by the Developer or any of the Developer's Associates to whom the Information Documents and Materials are disclosed by the Developer; or
 - (ii) TfNSW failing to provide any information to the Developer.

8.7 Things of value found

- (a) All valuable minerals, fossils, coins, articles or objects of value or antiquity, and other remains or things of geological, archaeological, anthropological or other special interest found on the Construction Site are, and will as between the Developer and TfNSW and RailCorp be and remain, the property of RailCorp.
- (b) The Developer must:
 - (i) immediately notify TfNSW if any such thing is found;
 - (ii) use reasonable endeavours to ensure that it is protected and not lost, removed, disturbed or damaged; and
 - (iii) comply with any reasonable directions of TfNSW in relation to the thing.
- (c) Without limiting its other obligations under this document, the Developer must:
 - (i) appoint a heritage advisor to provide advice relating to heritage items in connection with the Transit Hall Works and on the Transit Hall Site (including making recommendations in relation to those heritage items);
 - (ii) notify TfNSW of any recommendation of the heritage advisor that the heritage advisor makes in relation to those heritage items;
 - (iii) in relation to any recommendations made by the heritage advisor, seek the consent of TfNSW before implementing any such recommendation of the heritage advisor and TfNSW must advise the Developer of TfNSW's written comments, approval or rejection to the recommendations within 15 Business Days of receipt of the

recommendations and must not unreasonably withhold consent to the implementation of the recommendations; and

- (iv) implement the recommendations made by the heritage advisor as directed by TfNSW.

8.8 Construction Site induction

- (a) The Developer must provide, or procure the Transit Hall Works Contractor to provide, general, safety, environmental and communications site induction for persons nominated by TfNSW as requiring access to the Construction Site, and for all personnel directly or indirectly engaged by, or involved with, the Developer and requiring access to the Construction Site and other areas where the Site Establishment Works and the Transit Hall Works are being performed. The Developer must provide for this induction in the WHS Management Plan, Environmental Management Plan and Stakeholder and Community Management Plan.
- (b) The safety and environmental inductions must be provided by persons with demonstrated competency, experience and training in those areas.
- (c) A safety and environmental competency assessment must be undertaken in respect of each inductee before they are allowed access to the Construction Site. Inductees that do not pass this assessment must be re-inducted and not permitted to access the Construction Site until they have passed the competency assessment.

8.9 Contamination

- (a) The parties acknowledge that there may be Contamination on or adjacent to the Construction Site (which may be in, under or migrating through the Construction Site). The Developer must provide for the management of Contamination in the Environmental Management Plan.
- (b) Prior to commencing and throughout the demolition or construction work on the Construction Site, the Developer must:
 - (i) investigate the relevant part of the Construction Site and identify any likely Contamination on or adjacent to the Construction Site;
 - (ii) notify TfNSW and RailCorp in writing within 2 Business Days of becoming aware of the existence of any Contamination on or adjacent to the Construction Site that requires any action to be taken to ensure that the health of people is protected or that may require notification under section 60 of the *Contaminated Land Management Act 1997* (NSW);
 - (iii) promptly after providing a notice under sub-paragraph (ii), submit to TfNSW and RailCorp under **clause 17.9** details of the steps which the Developer proposes to take to:

- (A) decontaminate, remediate, dispose of, manage, abate, contain or otherwise appropriately deal with the Contamination notified by it; and
 - (B) report (if required by Law) to all relevant Authorities upon the identification of such Contamination, in accordance with Law (if required), this document and the Environmental Management Plan; and
 - (iv) only after TfNSW and RailCorp have had 15 Business Days (or a shorter period as TfNSW and RailCorp may advise the Developer in writing) and have accepted the Developer's notice under subparagraph (iii), take the steps referred to in that notice.
- (c) Except to the extent prohibited by Law, the Developer must indemnify any Rail Entity against any Loss suffered or incurred by TfNSW, RailCorp or any Rail Entity arising out of or in any way in connection with any failure by the Developer to comply with any obligation under this **clause 8.9** provided that the Developer's liability to indemnify any Rail Entity:
- (i) will be reduced proportionally to the extent that a breach or negligent act or omission of any Rail Entity caused the Developer's failure to comply with its obligations under this **clause 8.9**; and
 - (ii) will not extend to any Contamination caused by the Concourse Upgrade Works or an Other Contractor except where that Contamination is disturbed or exacerbated by the Developer as a result of the Development Works, in which case, the Developer must indemnify any Rail Entity against any Loss suffered or incurred as a consequence of the Developer's disturbance or exacerbation of that Contamination.
- (d) The Developer will not be entitled to any payment or to make any Claim:
- (i) in respect of the investigation of the Construction Site or areas adjacent to the Construction Site for Contamination or any actions taken by the Developer to decontaminate, remediate, dispose of, manage, abate, contain or otherwise appropriately deal with the Contamination; or
 - (ii) for an extension of time in respect of any delay arising out of or in connection with any Contamination identified in, on, under or over the Construction Site or the Developer complying with this **clause 8.9**.

8.10 Hazardous Substances

- (a) The Developer must take all necessary measures to ensure that any Hazardous Substances associated with structures at the Construction Site do not Contaminate or Pollute any part of the structure, the Construction Site in general, areas surrounding the Construction Site or the Environment and do not pose a risk to human health.

- (b) If whilst a part of the Construction Site is within the Control of the Developer the Developer discovers any Hazardous Substances associated with any structure at that part of the Construction Site, the Developer must engage an occupational hygienist who must undertake the following activities which are relevant having regard to the nature of the Hazardous Substances:
 - (i) air monitoring;
 - (ii) inspections prior to removal of any Hazardous Substances from that part of the Construction Site or structures at the Construction Site;
 - (iii) clearance inspections; and
 - (iv) final inspections.
- (c) The Developer must:
 - (i) prior to commencing demolition or construction work on the Construction Site carry out, in accordance with the requirements of Law, an assessment of Hazardous Substances in structures at the Construction Site the subject of those works and in the materials and substances to be removed from the Construction Site during the course of those works;
 - (ii) notify TfNSW and RailCorp in writing within 2 Business Days of becoming aware of the existence of any Hazardous Substances in structures at the Construction Site or in materials and substances to be removed from the Construction Site by or on behalf of the Developer, and thereafter promptly provide TfNSW and RailCorp with such further written details concerning the Hazardous Substances as TfNSW and RailCorp may reasonably request; and
 - (iii) take all necessary steps to:
 - (A) remove, dispose of, remediate, contain, manage or abate the risk from the Hazardous Substances; and
 - (B) report to all relevant Authorities about such Hazardous Substances, as required by Law, this document and the Environmental Management Plan.
- (d) If any asbestos or synthetic fibre insulation material or similar Hazardous Substance is located in that part of the Construction Site while under the Control of the Developer, the Developer must:
 - (i) notify TfNSW and RailCorp in writing within 2 Business Days of becoming aware of the existence of any asbestos or synthetic fibre insulation material or similar Hazardous Substance with details of the proposed methodology for the treatment and removal of the materials or substances or to contain, manage or abate the risk from the materials or substances;

- (ii) ensure all persons are protected from exposure to the materials or substances which may present a risk to their health until the nature has been determined; and
 - (iii) ensure that if the materials or substances are removed, that they are removed or disposed of safely and in accordance with the Law.
- (e) The Developer must take proper precautions to keep Hazardous Substances in places secured against access by unauthorised persons.
- (f) Except to the extent prohibited by Law, the Developer must indemnify TfNSW, RailCorp and any Rail Entity against any Loss suffered or incurred by any Rail Entity to the extent that such Loss arises out of or in any way is connected with a failure by the Developer to comply with any obligation under this **clause 8.10** provided that the Developer's liability to indemnify TfNSW, RailCorp and any Rail Entity:
 - (i) will be reduced proportionally to the extent that a breach or negligent act or omission of TfNSW, RailCorp and any Rail Entity caused the Developer's failure to comply with its obligations under this **clause 8.10**; and
 - (ii) will not extend to any Contamination caused by the Concourse Upgrade Works or any Other Contractor except where that Contamination is disturbed or exacerbated by the Developer as a result of the Development Works, in which case, the Developer must indemnify any Rail Entity against any Loss suffered or incurred as a consequence of the Developer's disturbance or exacerbation of that Contamination.
- (g) The Developer will not be entitled to receive payment or to make any Claim:
 - (i) in respect of the investigation of the Construction Site for an assessment of Hazardous Substances associated with structures at the Construction Site and in the materials and substances to be removed from the Construction Site and any subsequent removal or other action undertaken by the Developer in relation to the Hazardous Substances; or
 - (ii) for an extension of time in respect of any delay arising out of or in connection with any Hazardous Substances found in any structure upon the Construction Site or the Developer complying with this **clause 8.10**.

8.11 TfNSW's right to access and inspect

- (a) The Developer must:
 - (i) minimise to the extent practicable, disruption or inconvenience to:
 - (A) TfNSW, occupiers (including railway system or rail passengers and other users), tenants of the Construction

- Site or a part thereof in their occupation or use of, or attendance upon, any part of the Construction Site; and
- (B) others having a right of access to the Construction Site; and
- (ii) at all reasonable times subject to completion of the Developer or Transit Hall Works Contractor's site induction process:
 - (A) give TfNSW and any person authorised by TfNSW reasonable access to the Site Establishment Works and the Transit Hall Works, the Construction Site or other areas where the Site Establishment Works and the Transit Hall Works are being carried out; and
 - (B) provide TfNSW with every reasonable facility necessary for the inspection, including reviewing, testing, surveillance, auditing and examination, of the Site Establishment Works and the Transit Hall Works.
- (b) TfNSW owes no duty or other responsibility to the Developer to:
 - (i) inspect the Site Establishment Works and the Transit Hall Works; or
 - (ii) review any Design Documents or construction for Defects (including errors and omissions) or compliance with the requirement of this document, if it does so inspect.
 - (c) No inspection of the Transit Hall Works or review of any Design Document or construction by TfNSW will:
 - (i) relieve the Developer from or alter its liabilities or obligations under this document (including its warranties under **clause 13.1**) or otherwise according to Law; or
 - (ii) limit or otherwise affect TfNSW's rights against the Developer whether under this document or otherwise according to Law.
 - (d) TfNSW must ensure that any person to whom the Developer gives access to the Construction Site under **clause 8.11(a)(ii)** must comply with the reasonable requirements of the Developer in relation to the safety of persons and property and protection of the Environment.
 - (e) TfNSW must procure TfNSW, and any other person authorised by TfNSW including Other Contractors, when entering the Construction Site to comply with all WHS requirements in place at the Construction Site, including requirements of:
 - (i) the Developer under **clause 8.11(d)**; and
 - (ii) the Transit Hall Works Contractor as principal contractor.

8.12 Dilapidation Reports

- (a) Within 20 Business Days of being given access to the Construction Site and at least 10 Business Days prior to commencing the Development Works, the Developer must:
 - (i) identify all retained existing and adjoining buildings, infrastructure (including rail infrastructure), roads and other property in respect of which pre-construction dilapidation reports are required by the Approvals using a suitably qualified structural engineer;
 - (ii) provide to TfNSW and RailCorp the proposed list of all buildings, infrastructure and roads identified under **clause 8.12(a)(i)** and a draft letter to be sent to all property owners or other interest holders seeking agreement for the Developer to undertake the dilapidation reports; and
 - (iii) in accordance with the Approvals, prepare the pre-construction dilapidation reports for all of the buildings, infrastructure, roads and other property identified by the Developer under **clause 8.12(a)(ii)**, including the joint inspection with RailCorp and TfNSW of the rail infrastructure and property in the vicinity of the Development Works, and submit the dilapidation reports to TfNSW and RailCorp for review and approval.
- (b) The procedures and processes required for the provision of the dilapidation reports must form part of the Environmental Management Plan.
- (c) The Developer must, at least 10 Business Days before the start of any Development Works that potentially put any adjoining buildings, infrastructure (including rail infrastructure), roads and other property at risk, submit to TfNSW and RailCorp for review and approval (such approval not to be unreasonably withheld) the Developer's analysis of the risks and potential for damage and proposed mitigation measures. The Developer must not commence any of those Development Works until it receives TfNSW's or RailCorp's approval.
- (d) The Developer acknowledges and agrees that:
 - (i) TfNSW and RailCorp are relying on the judgment, experience, skill and knowledge of the Developer in assessing and identifying:
 - (A) all buildings, infrastructure (including rail infrastructure), roads and other property which are likely to be affected by the Development Works; and
 - (B) the extent of the risk of damage involved; and
 - (ii) the preparation of dilapidation reports by the Developer will not affect the Developer's liability for damage to property which is caused by the Developer or its Associates under this document.
- (e) The dilapidation reports required by **clause 8.12(a)** must:

- (i) include all property identified, using geotechnical and other appropriate analysis, as being at risk, including from:
 - (A) the impact of the excavation, ground support and foundation construction methods proposed;
 - (B) the excavation and construction sequences and support methods proposed;
 - (C) geological changes across the Construction Site;
 - (D) the impact of ground water levels and the predicted changes in those levels; and
 - (E) predicted changes with time;
 - (ii) include vibration sensitive equipment requiring vibration limits, including limits to the frequency, acceleration, displacement and peak particle velocity with vibration; and
 - (iii) be selected taking into account the vulnerability and condition of the property involved.
- (f) The Developer must keep a database of all the dilapidation reports' results and information prepared under **clauses 8.12 and 8.13**, and make this database available to TfNSW and RailCorp for inspection and copying at all reasonable times.
 - (g) The dilapidation reports must include the investigation, identification and recording of the condition of all buildings, infrastructure (including rail infrastructure), roads and other property in accordance with **clause 8.12(a)** including photographs and videos with a sequential dated log and plan showing the locations of each view.
 - (h) The photographs and video records of all such buildings, infrastructure (including rail infrastructure), roads and other property must be taken by a competent and qualified photographer or cinematographer. The photographic and video images must include a scale reference.
 - (i) All areas that show evidence of existing damage or failure must be photographed and carefully recorded, including the location and extent of the damage and the date when the photograph was taken.
 - (j) The results of each dilapidation report must be embodied in a written report, which must describe and identify the building, infrastructure (including rail infrastructure), road or other property, its owner (with contact details) and its location, detail the existing condition of all such property prior to the commencement of the Development Works, and the activities most likely to cause damage and the monitoring frequency proposed.
 - (k) The relevant part of the applicable dilapidation report record must be submitted by the Developer for inspection to the relevant owner of each property. The Developer must use its reasonable endeavours to obtain

the agreement of each owner that the dilapidation report information and record represents the state of their property, and provide a copy of the agreement and the dilapidation report record to the owner and Council in accordance with the Approvals.

- (l) The condition of the property covered by the dilapidation reports must be regularly monitored during the Development Works and the dilapidation reports augmented to address any change in the conditions observed.
- (m) One month after the Date of Completion of the Transit Hall Works or practical completion of any other Development Works the subject of the Approvals, the Developer must:
 - (i) in accordance with the Approvals, prepare post-construction dilapidation reports of any building, infrastructure, road or other property included in the original dilapidation reports, including a joint inspection with TfNSW and RailCorp of the rail infrastructure and property in the vicinity of the Development Works, and confirm:
 - (A) the condition of the building, infrastructure, road or other property relative to that recorded previously; and
 - (B) that any damage and deterioration caused by the Development Works has been or is in the process of being repaired;
 - (ii) provide a copy of the new dilapidation report to each owner and the Council in accordance with the Approvals; and
 - (iii) obtain RailCorp's and TfNSW's written agreement confirming their satisfaction with the post-construction dilapidation reports and/or rectification of any damage relating to any rail infrastructure and property in the vicinity of the Development Works in accordance with the Approvals.
- (n) Unless a property owner otherwise directs, the Developer is responsible for the rectification of any damage to any property contemplated by **clause 8.12(a)** as evidenced by a discrepancy between the conditions described in the dilapidation reports carried out before the commencement of the Development Works and the actual condition of the identified property after completion of the Development Works.

8.13 Property damage management

The Developer must develop, document and implement procedures and processes for assessing and minimising property damage risks, monitoring the condition of property, and preventing, detecting and repairing damage to property caused by the Development Works, in accordance with this document (including the Construction Management Plan).

8.14 Ausgrid

The rights of Ausgrid in respect of any electricity substation on the Office Lot or the Retail Lot may be granted by registering:

- (a) an easement or easements to Ausgrid; and/or
 - (b) a lease or leases in favour of Ausgrid,
- on terms required by Ausgrid.

8.15 Sydney Light Rail Project and other TfNSW activities outside the Construction Site

- (a) The Developer acknowledges that TfNSW and other Rail Entities will be carrying out other activities, projects or operations outside the Construction Site (including the Sydney Light Rail Project), and that TfNSW and the Rail Entities do not have any liability to the Developer under this document in relation to the carrying out of those activities, projects or operations including where the Developer or the Transit Hall Works Contractor may be affected or interrupted by the carrying out of those activities, projects or operations.
- (b) The Developer acknowledges that:
 - (i) the Sydney Light Rail Project has been declared critical State Significant Infrastructure;
 - (ii) Altrac Light Rail Partnership, the project deliverer of the Sydney Light Rail Project, and its contractors are delivering the Sydney Light Rail Project and have been granted access rights to the road reserves and road related areas in the vicinity of the Construction Site; and
 - (iii) the access rights extend not just along George Street but extend as shown on the plan forming **schedule 53**.
- (c) The Developer must, when carrying out the Development Works and performing its other obligations under this document, comply with the conditions of any Approval for the Development Works that might relate to the Sydney Light Rail Project and agrees to use best endeavours not to interfere with or cause damage to any operations, activities, construction or works that form part of the Sydney Light Rail Project in the areas shown on the plan forming **schedule 53**.

9 Design Documents

9.1 Developer's design obligations

The Developer:

- (a) must prepare and complete the design of the Transit Hall Works (including the Design Documents), so that the Transit Hall Works will on Completion, be Fit for Purpose;

- (b) warrants that:
 - (i) it has fully and carefully reviewed the Transit Hall Brief;
 - (ii) it is not aware of any ambiguities, inconsistencies or discrepancies in the Transit Hall Brief;
 - (iii) the Transit Hall Brief is and has been prepared to enable the Developer to carry out the Transit Hall Works in accordance with this document and to satisfy the other warranties in this document, including in this **clause 9.1**;
 - (iv) the completed design of the Transit Hall Works and the Design Documents will:
 - (A) satisfy the requirements of the Transit Hall Brief and the other requirements of this document; and
 - (B) on Completion, the Transit Hall Works will be Fit for Purpose;
 - (v) construction in accordance with the completed design of the Transit Hall Works will satisfy the requirements of the Transit Hall Brief and the other requirements of this document.

9.2 Review by TfNSW

- (a) The Developer must submit all Design Documents progressively to TfNSW:
 - (i) in accordance with this document (including the Construction Management Plan), the Transit Hall Brief and the requirements of **clause 17.9**;
 - (ii) at each instance ensuring that the Design Documents are accompanied by the following documents:
 - (A) the Developer's Certificates of Design Compliance in the form of **schedule 35** and a copy of the Transit Hall Works Contractor's Certificates of Design Compliance;
 - (B) a register of any outstanding design non-conformities and unresolved issues;
 - (C) a register of deficiency notices and evidence of their close out; and
 - (D) a register of concessions granted for non-conforming Design Documents,at the times set out in **clause 17.9**.
- (b) No comment, review, representation, vetting, inspection, testing or approval by TfNSW (including as part of the Development Control Group) in respect of the Design Documents or the Developer's other obligations under this document will lessen or otherwise affect the Developer's obligations under this document.

- (c) TfNSW must, if requested in writing to do so by the Developer, issue a Statement of No Objections to the Developer in relation to the final Design Documents once it has approved those documents as contemplated in **clause 17.9**.
- (d) TfNSW acknowledges that once TfNSW has issued a Statement of No Objection, the Developer is entitled to rely on the Statement of No Objection in accordance with its terms.

9.3 Copies of Design Documents

- (a) The Developer must, in accordance with **clause 17.9**, progressively submit to TfNSW the number of copies specified in the Construction Management Plan of all Design Documents, whether complete or work in progress, which it intends to use for construction purposes.
- (b) The Developer must give TfNSW the number of copies specified in the Construction Management Plan of:
 - (i) all survey information used in the design of the Transit Hall Works; and
 - (ii) all final Design Documents.

9.4 Availability of Design Documents

The Developer must keep available for the use of TfNSW and any person authorised by TfNSW:

- (a) on the Construction Site, at least one complete set of all Design Documents that the Developer is entitled to use for construction purposes pursuant to **clauses 9.2 and 17.9**, and any construction related documents provided by TfNSW; and
- (b) at any area on or off the Construction Site, one copy of the Design Documents for the Development Works.

9.5 Ownership of Design Documents

- (a) Subject to **clause 9.5(c)(iv)**, Intellectual Property in or in relation to the Design Documents prepared by the Developer, or in relation to the Transit Hall Works or any part of the Transit Hall Works, will vest upon its creation for the purposes of this document in the Developer.
- (b) The Developer grants to TfNSW, RailCorp and any Rail Entity, and to the extent that the Developer does not own the Design Documents, the Developer must ensure that TfNSW, RailCorp and any Rail Entity are granted, an irrevocable royalty free perpetual licence to use and reproduce the Design Documents for the purpose of conducting the Transit Hall Works if required including by TfNSW's consultants and subcontractors.
- (c) The Developer:
 - (i) warrants and must ensure that the Design Documents and any methods of working or materials used in carrying out the Transit

Hall Works do not and will not infringe any Intellectual Property or Moral Right;

- (ii) must indemnify TfNSW, RailCorp and any Rail Entity against any Loss suffered or incurred by TfNSW, RailCorp and any Rail Entity arising out of, or in any way in connection with, any actual or alleged infringement of any Intellectual Property or any Moral Rights in connection with the Transit Hall Works, or the Design Documents and any source code or third party software used in undertaking and completing the Transit Hall Works provided that the Developer's liability to indemnify TfNSW will be reduced proportionally to the extent that a breach or negligent act or omission by TfNSW, RailCorp or any Rail Entity caused or contributed to the Loss;
- (iii) must ensure that the Transit Hall D&C Contract and any relevant subcontracts between the Transit Hall Works Contractor and all subcontractors for documentation contain provisions to the same effect as **clause 9.5(a)**; and
- (iv) must use its reasonable endeavours to obtain an assignment to the Developer from any third party who owns any Intellectual Property right in the Design Documents.

9.6 Delivery of Design Documents

If this document is Rescinded or is frustrated or is terminated by TfNSW or the Developer, the Developer must immediately deliver copies of all Design Documents (whether complete or not), including in electronic forms, then in existence to TfNSW, provided that the Developer is entitled to keep one copy of the Design Documents for its records and one copy for the Transit Hall Works Contractor's records.

9.7 Moral Rights

- (a) The Developer must use best endeavours to procure from each Author express agreement that he or she will not enforce any Moral Rights that he or she may have, presently or in the future, in the Copyright Works in a manner that is inconsistent with the licence granted by the Developer under **clause 9.5(b)** including executing any Moral Rights consents required by TfNSW.
- (b) Without limiting **clause 9.7(a)**, the Developer warrants that TfNSW and its successors, assigns and licensees may:
 - (i) exercise the rights granted under **clause 9.5(b)** without identifying any natural person as the individual responsible for creating any particular material comprising the Copyright Works;
 - (ii) change any three dimensional reproduction of those Copyright Works, to the extent permitted under **clause 9.5(b)**, without notice to, or consultation with, the Author.

- (c) The Developer must ensure that any agreement or consent, procured by the Developer under **clause 9.7(a)** is genuinely given and not obtained by duress or by the making of any false or misleading statement.
- (d) TfNSW may give a written direction to the Developer to provide to TfNSW copies of all agreements and consents procured by the Developer under **clause 9.7(a)**.
- (e) The Developer must promptly comply with a direction under **clause 9.7(d)**.

10 Not used.

11 Health and safety

11.1 WHS management

- (a) The Developer must:
 - (i) ensure that the Transit Hall Works Contractor develops, maintains, implements and complies with a WHS management system that as a minimum complies with all Law relating to WHS (including the WHS Act and the WHS Regulations and codes of practice relating to WHS);
 - (ii) ensure that the Transit Hall Works Contractor's WHS management system complies with the WHS Guidelines;
 - (iii) ensure that the Transit Hall Works Contractor's WHS management system contains a drug and alcohol policy which provides for random drug and alcohol testing of workers engaged in the Site Establishment Works and the Transit Hall Works;
 - (iv) ensure that the Transit Hall Works Contractor's WHS management system includes site security management procedures designed to ensure safety of workers and all other persons, including members of the public;
 - (v) carry out and ensure that the Transit Hall Works Contractor carries out the Transit Hall Works and Site Establishment Works in accordance with the Transit Hall Works Contractor's WHS management system; and
 - (vi) carry out and ensure that the Transit Hall Works Contractor carries out the Site Establishment Works and the Transit Hall Works in a safe manner without risk to health and safety of any person and complies with all Law and codes of practice relating to WHS.
- (b) The requirements in this **clause 11.1** and in the WHS Guidelines:
 - (i) are in addition to and not in substitution for, and do not limit any Law;

- (ii) do not relieve the Developer from or alter the Developer's liabilities or obligations; and
- (iii) do not limit or otherwise affect TfNSW's rights against the Developer, whether under this document or otherwise according to any Law.

11.2 Accident and Incident management

The Developer must:

- (a) to the extent it is not prevented by any Law, if an incident or accident occurs, provide to TfNSW a completed Accident and Incident Management Report;
- (b) before commencing the Site Establishment Works or the Transit Hall Works:
 - (i) nominate to TfNSW the persons who will be available and responsible for responding to, recovering from, and investigating accidents and incidents, and initiating corrective actions during and outside normal working hours; and
 - (ii) nominate procedures for contacting the responsible persons, and notify promptly any changes to such nominations and procedures.

Without limiting **clause 35.12**, this **clause 11.2** does not require the Developer to disclose any information it is prevented from disclosing under the Privacy Law.

11.3 Notification of Safety Incidents

The Developer must ensure that the Transit Hall Works Contractor:

- (a) immediately notifies WorkCover of any notifiable incident under the WHS Act and WHS Regulation and promptly provide a copy of that notification to TfNSW; and
- (b) if requested by TfNSW, to supply a written report about the matter to TfNSW in the form directed.

11.4 Prohibition and improvement notices and on-the-spot fines

The Developer must:

- (a) as soon as reasonably practicable notify TfNSW of any notices or on-the-spot fine issued by WorkCover or any other person with power to issue notices or on-the-spot fines in respect of the Transit Hall Works or Site Establishment Works; and
- (b) provide TfNSW with a copy of any notices or fine referred to in **clause 11.4(a)** and written details of the corrective action taken by the Developer to rectify the circumstances which led to the issue of the notice or fine and to prevent recurrence of those circumstances.

11.5 WHS reports and records

The Developer must:

- (a) by the second Business Day of each named month, supply TfNSW with a completed Monthly Safety Statistics Form and include as part of the monthly report required by **clause 17.4(a)**, a report on the WHS status of the Site Establishment Works and the Transit Hall Works; and
- (b) on request, submit copies of relevant manuals, procedures, reports, records and other documents relating to the Site Establishment Works and the Transit Hall Works, including those of the Transit Hall Works Contractor to TfNSW.

11.6 WHS audit program

- (a) The Transit Hall Works Contractor's WHS management system must include an audit program for WHS management, and safety and security performance, covering the Site Establishment Works and the Transit Hall Works. The audit program must include the following as a minimum:
 - (i) three monthly systems audits of the operation of the Transit Hall Works Contractor's WHS Management Plan and regulatory compliance;
 - (ii) monthly on-site site safety condition and compliance audits;
 - (iii) safety compliance audits, initially within four weeks of the Transit Hall Works Contractor's commencement and then in accordance with an audit schedule that suits the performance of the Transit Hall Works Contractor; and
 - (iv) weekly work area audits confirming compliance with method statements, and risk identification and control of hazard procedures.
- (b) The Developer must:
 - (i) make available to TfNSW, on request, all relevant manuals, procedures, reports, records and other documents, including those of the Transit Hall Works Contractor, for the purpose of audit and surveillance; and
 - (ii) provide all reasonable assistance to TfNSW during the audits, including attendance by the Developer.

11.7 Safety audits

TfNSW or its representative may at any time audit the Developer and the Transit Hall Works Contractor's compliance with the obligations imposed under this **clause 11** and the Developer and Transit Hall Works Contractor must cooperate with that safety audit and provide any documents reasonably requested by TfNSW or its representative. In carrying out any safety audit, TfNSW must not cause any delay or damage to the Site Establishment Works and the Transit Hall Works.

11.8 Concurrent duty holders

TfNSW and the Developer acknowledge that they are concurrent duty holders under the WHS Act and they will establish the appropriate mechanisms to consult, cooperate and coordinate activities with each other in relation to health and safety matters, and with any other concurrent duty holders, including the Transit Hall Works Contractor.

11.9 Drug and alcohol testing

The Developer must ensure that the drug and alcohol testing policy referred to in **clause 11.1(a)(iii)** is implemented and ensure that the workers engaged in the Site Establishment Works and the Transit Hall Works submit to that testing if required.

11.10 Principal Contractor

To the extent the Transit Hall Works or the Site Establishment Works constitute a construction project that has been commissioned by:

- (a) TfNSW;
- (b) the Developer; or
- (c) both (as the case may be),

TfNSW, the Developer or both (as the case may be), will:

- (d) engage the Transit Hall Works Contractor as the principal contractor in respect of the relevant works; and
- (e) authorise the Transit Hall Works Contractor to have management and control of each workplace at which the relevant works are to be carried out and to discharge the duties of a principal contractor under the WHS Act and the WHS Regulation.

For the purposes of this **clause 11.10**, the terms 'principal contractor', and 'construction project' have the same meanings assigned to those terms in the WHS Act and WHS Regulation.

12 AEO Status

12.1 General

- (a) Clauses **12.2** to **12.7** are subject to **clause 12.8**.
- (b) For the purposes of this document, ASA is a distinct and separate Authority to TfNSW and RailCorp, and TfNSW and RailCorp cannot bind ASA.

12.2 Developer to ensure that contractors maintain AEO status and compliance with ASA Requirements

- (a) The Developer must and must ensure that the Transit Hall Works Contractor obtains AEO status for all specialist engineering services and disciplines required for the Development and across all asset lifecycle

stages and activities required to deliver the Transit Hall Works as determined by the ASA. Including as to:

- (i) design;
 - (ii) fabrication / manufacturing;
 - (iii) installation;
 - (iv) integration, testing and commissioning;
 - (v) asset maintenance; and
 - (vi) decommission and disposal.
- (b) The Developer must and must procure that its subcontractors:
- (i) cooperate fully with ASA in the performance of ASA's functions and ASA's authorisation procedures;
 - (ii) implement and comply with ASA Requirements; and
 - (iii) comply with decisions, instructions and requirements issued by ASA which decisions, instructions or requirements cannot be the subject of expert determination or dispute under this document.

12.3 Specialist engineering services and disciplines

The Developer must provide formally qualified and experienced personnel to perform the Transit Hall Works in a manner that is consistent with the AEO status.

12.4 Management requirements

The Developer must produce an AEO plan or matrix to show how the specialist engineering services will be assured and integrated.

12.5 Audits

The Developer will be audited on the Developer's continued compliance with the ASA Requirements and AEO authorisation requirements of this **clause 12**.

12.6 Engineering assurance surveillance and audits

- (a) ASA may periodically perform selective assessments and audits of the components of the Developer's engineering assurance process for the services and disciplines for which the Developer has authorisation to ensure that both process and product are compliant with AEO authorisation requirements.
- (b) Audits by ASA may cover processes, products or facilities.
- (c) Audits may be carried out against predetermined criteria defined in standard audit checklists that are developed from the Developer's specific AEO service areas.
- (d) Audits may also be carried out to determine how the Developer assures the Developer's supply chain including possible sample audits of the Developer's contractors who may or may not be AEOs themselves.

- (e) The Developer must ensure that the Transit Hall Works Contractor and any other contractor performing work within the Construction Site maintain records of all audits, including non-conformances and corrective actions. TfNSW will inspect samples of the Developer's audit records as required.

12.7 Corrective actions and ASA's rights

- (a) During the corrective action process, ASA will:
 - (i) identify findings;
 - (ii) include consultation between the parties to agree on corrective action plans; and
 - (iii) set agreed time frames for implementing corrective actions.
- (b) The Developer may propose alternative solutions to the corrective actions proposed by ASA for consideration. These may be adopted if agreed by ASA.
- (c) In the event of consistently poor performance by the Developer in the AEO service area for which it has been authorised, TfNSW may in consultation with ASA consider and implement a range of actions, including:
 - (i) recommend future improvements (where general compliance is adequate); and
 - (ii) require corrective actions (with timescales to implement corrective action).
- (d) In the event of consistently poor performance by the Developer in the AEO service area for which it has been authorised, ASA may consider and implement a range of actions, including:
 - (i) withdraw selected service areas or disciplines or both from the AEO status for a specific project or engagement with TfNSW;
 - (ii) withdraw selected service areas or disciplines or both from the AEO status for all projects/engagements with TfNSW;
 - (iii) withdraw the entire AEO status completely and define supplier corrective actions needed to re-apply for AEO status; and
 - (iv) withdraw the entire AEO status completely on a permanent basis.

12.8 Modification

- (a) **Clauses 12.2 to 12.7** are subject to the Developer being relieved in whole or in part of the Developer's obligations under an AEO Modification.
- (b) Any determination by ASA or any concession granted under this **clause 12** will not be subject to expert determination or dispute resolution under **clause 29**.

12.9 AEO Modification Application

- (a) The Developer can prepare and provide to TfNSW for submission to ASA an AEO Modification Application.
- (b) Prior to the Developer submitting the AEO Modification Application to ASA, TfNSW will facilitate a meeting of the Developer, TfNSW and ASA to agree the details of the information to be provided in the AEO Modification Application;
- (c) The Developer must during the assessment of the AEO Modification Application by ASA:
 - (i) keep TfNSW informed of any correspondence between the Developer and ASA;
 - (ii) consult with the TfNSW on any matters raised by ASA;
 - (iii) invite TfNSW to attend any meetings requested by the ASA, as required.
- (d) Within 10 Business Days of receipt of the AEO Modification, if the Developer wishes to implement the AEO Modification it must, provide written notice to TfNSW advising if any design changes are required to the Transit Hall Works as a result of the AEO Modification. The Developer must update the Transit Hall Brief, Modified Transit Hall Brief and any other relevant Plans affected by any design change of the AEO Modification and provide copies to TfNSW for approval by TfNSW acting reasonably.

12.10 Time to determine AEO Modification Applications

If an AEO Modification is issued after the commencement of the Transit Hall Works and this results in changes to the design of the Transit Hall Works and / or requires variation to the Transit Hall D&C Contract to implement the AEO Modification (such changes and variations to be agreed by TfNSW acting reasonably), the Developer cannot claim an extension of time under **clause 18.8** and/or claim delay costs under **clause 18.13**.

12.11 CAD Requirements

The Developer has progressed and developed the design documentation of the Transit Hall Works in the form required by ASA and will continue to provide the design documentation in a form consistent with the submissions made to TfNSW prior to the date of this document.

13 Construction

13.1 Construction

- (a) The Developer must carry out the Development Works in accordance with this document and:
 - (i) for the Transit Hall Works, in accordance with:

- (A) the Transit Hall Brief and the Design Documents that have been prepared by the Developer in accordance with the requirements of this document and not rejected by TfNSW under **clause 17.9**;
 - (B) any direction of TfNSW given in accordance with a provision of this document;
 - (C) all other requirements of this document; and
 - (D) the Station Pedestrian Access Plan; and
- (ii) so that the Transit Hall Works are on Completion, Fit for Purpose.
- (b) The Developer warrants that the Transit Hall Works will, on Completion, be Fit for Purpose.
- (c) At monthly intervals during the construction work and at the completion of each work package for the Transit Hall Works, the Developer must submit to TfNSW a Certificate of Construction Compliance duly executed by the Developer and a Certificate of Construction Compliance duly executed by the Transit Hall Works Contractor, identifying the work covered, with:
- (i) a register of management plans, method statements, and inspection and test plans;
 - (ii) a register of records of all compliance and other associated test records showing achievement of the acceptance criteria identified in the above inspection and test plans;
 - (iii) a register of deficiency notices; and
 - (iv) a register of concessions granted by TfNSW for non-conforming work.
- (d) When carrying out the Transit Hall Works, the Developer must not vary from the requirements of the Transit Hall Brief.

13.2 All work included

- (a) The Developer:
- (i) warrants the Developer has allowed for the provision of;
 - (ii) must undertake and provide; and
 - (iii) will not be entitled to make any Claim except as otherwise provided for in this document, relating to the provision of,
- all Construction Plant, labour, materials and other work necessary to perform the Transit Hall Works and the Developer's other obligations under this document, whether or not expressly mentioned in this document or anticipated by the Developer and all labour, materials and work described in this **clause 13.2** forms part of the Transit Hall Works.

13.3 Cooperation with Other Contractors

- (a) The Developer must:
 - (i) not unreasonably obstruct Other Contractors from carrying out their work;
 - (ii) act reasonably in cooperating with Other Contractors;
 - (iii) coordinate and interface the Transit Hall Works with the work carried out or to be carried out by Other Contractors acting reasonably having regard to the Development Program; and
 - (iv) carry out the Development Works so as to minimise any interference with, disruption or delay to the work of Other Contractors.
- (b) TfNSW must procure that each Other Contractor contracting with TfNSW, RailCorp or any other Rail Entity as the case may be, contracts on the basis that the Other Contractor must:
 - (i) permit the Developer to carry out the Transit Hall Works;
 - (ii) cooperate with the Developer;
 - (iii) coordinate and interface their work with the Transit Hall Works;
 - (iv) carry out their work so as to minimise any interference with, disruption to or delay to the Transit Hall Works;
 - (v) sign the Transit Hall Works Contractor's form of Other Contractor's Deed; and
 - (vi) comply with the requirements of a principal contractor (as defined in the WHS Regulation) with respect to the WHS who will not be the Transit Hall Works Contractor.
- (c) TfNSW must use its reasonable endeavours to ensure that the requirements set out in **clause 13.3(b)** are complied with by the Other Contractors with whom TfNSW, RailCorp or any other Rail Entity has contracted.
- (d) The Developer acknowledges that:
 - (i) the Development Works interface with the Other Contractor Work;
 - (ii) contractors and agents of TfNSW may be performing work adjacent to the Construction Site, at the same time as the Developer is performing the Transit Hall Works;
 - (iii) TfNSW will require certain input from Other Contractors to coordinate the Transit Hall Works with the Other Contractor Work; and
 - (iv) TfNSW will require the Developer to provide information to it to enable it to coordinate the design of the Other Contractor Work with the Transit Hall Works, and this must be provided in a timely

manner by the Developer subject to receipt of a written request from TfNSW and reasonable notice.

- (e) The Developer must subject to **clauses 13.3(b) and (c)**:
- (i) permit Other Contractors to execute the Other Contractor Work on the Construction Site while the Developer is performing the Development Works, and at the times agreed with the Other Contractor, or failing agreement at the times jointly determined by TfNSW and the Developer having regard to (among other things) the Development Program and for this purpose carry out the Transit Hall Works in a manner that will allow Other Contractors safe access to those parts of the Construction Site required by them for the purpose of carrying out their work;
 - (ii) coordinate and interface the Transit Hall Works with the Other Contractor Work, and for this purpose:
 - (A) make proper allowance in all programs for the Other Contractor Work;
 - (B) review all programs provided by TfNSW concerning the Other Contractor Work;
 - (C) notify TfNSW of any interface or sequence of activities that may affect the commencement, progress or Completion; and
 - (D) provide TfNSW with sufficient information about the current and expected Development Works in order to assist TfNSW to coordinate the Other Contractor Work with the Transit Hall Works;
 - (iii) comply with all cooperation requirements of the Construction Management Plan;
 - (iv) attend coordination meetings chaired by TfNSW with Other Contractors and others fortnightly, or at other reasonable times to be advised by TfNSW, to review current and future interface issues such as the exchange of information, including their status, problems, solutions and newly identified interfaces;
 - (v) when information is required from an Other Contractor, give at least 5 Business Days written notice (except where the circumstances require that the information is provided urgently, in which case information must be given promptly) to TfNSW requesting such information and specifying the date by which such information must be provided;
 - (vi) when any information is requested by TfNSW in connection with any Other Contractor Work, including confirming the compatibility or suitability of the design of, work methods to be used in, or any other aspect of the Development Works:

- (A) provide the information to TfNSW within 5 Business Days (except where the circumstances require that the information is provided urgently, in which case information must be given promptly); and
- (B) ensure that the information provided is accurate; and
- (vii) use reasonable endeavours to resolve any problems, and work closely and iteratively, with TfNSW with respect to Other Contractor Work to achieve the best solution to such problems, related to:
 - (A) the provision of information;
 - (B) the obtaining of information;
 - (C) the adequacy of information provided to, or received from, Other Contractors, in respect of the interface of the Development Works with the Other Contractor Work;
 - (D) the compatibility of the Development Works with the Other Contractor Work and vice versa;
 - (E) cooperation and coordination in accordance with this **clause 13.3**;
 - (F) technical issues with the information provided to, or received from, Other Contractors in respect of the interface of the Development Works with the Other Contractor Work and vice versa; and
 - (G) promptly upon becoming aware, advise TfNSW of all matters arising out of the liaison with Other Contractors that may involve a change to work under this document or otherwise have an adverse effect upon the Development Works.

13.4 Setting out

- (a) The Developer must:
 - (i) set out the Site Establishment Works and the Transit Hall Works in accordance with the requirements of this document;
 - (ii) carry out any survey (including providing all instruments and things) that may be necessary for this purpose; and
 - (iii) for this purpose keep all survey marks in their true positions.
- (b) If the Developer discovers an error in the position, level, dimensions or alignment of any part of the Site Establishment Works and the Transit Hall Works, the Developer must immediately notify TfNSW and, unless TfNSW otherwise directs, the Developer must at its cost rectify the error.

13.5 Survey

The Developer must, as a condition of Completion, submit to the Independent Certifier and to TfNSW a certificate signed by a registered and experienced

surveyor who may be the surveyor responsible for the Subdivision Plan stating that:

- (a) the Transit Hall Works are within the relevant boundaries of the Transit Hall Lot except only for parts of the Transit Hall Works specifically required by this document to be outside those boundaries; and
- (b) the elements of the Transit Hall Brief and Design Documents are in the positions and within the tolerances required by this document, including those specified in the Transit Hall Brief and Design Documents.

13.6 Protection and cleaning up

In carrying out the Development Works, the Developer must:

- (a) protect the Transit Hall Works from any loss or damage;
 - (b) keep the Construction Site and any Extra Land and the Station Interface Land reasonably tidy and free of rubbish, except to the extent such rubbish is caused by an Other Contractor or other third party accessing the Transit Hall Site but only in respect of that area which is open and used by the public;
 - (c) regularly remove rubbish, litter, graffiti and surplus material from the Construction Site, except to the extent such rubbish, litter, graffiti and surplus material is caused by an Other Contractor or other third party accessing the Transit Hall Site but only in respect of that area which is open and used by the public;
 - (d) as a condition of Completion:
 - (i) remove all rubbish, surplus materials and Construction Plant from the part of the Construction Site relevant to the Transit Hall Works except to the extent such rubbish, surplus materials and Construction Plant are caused or owned by an Other Contractor; and
 - (ii) complete a final detailed clean of the Transit Hall Works including:
 - (A) removal of dust, dirt, grime, stains and similar; and
 - (B) a full clean of all glass surfaces and other wall finishes, and washing and polishing of floors, fittings, doors and other equipment,
- to a standard appropriate to a new facility for use by the public.

13.7 Existing operations in the vicinity of the Construction Site

- (a) The Developer acknowledges that while the Development Works are being performed:
 - (i) TfNSW, RailCorp and the Adjoining Land Parties will continue to conduct their respective operations or business from the Construction Site and Adjoining Land;

- (ii) invitees of TfNSW and RailCorp, including members of the public, clients, tenants, employees, contractors and agents of TfNSW, and RailCorp will have access to those parts of the Construction Site and Station Interface Land, identified in the Construction Management Plan at the time identified in that plan,

without limiting the Developer's obligations under this document (including the Construction Management Plan), the Developer must:

- (iii) perform the Development Works in such a manner as to interfere to the least extent possible with the conduct of the business or operations of TfNSW, RailCorp and Adjoining Land Parties and any of their respective invitees on the Construction Site, Adjoining Land and Station Interface Land; and
 - (iv) take all reasonable steps necessary to protect the safety and quiet enjoyment of TfNSW, RailCorp and Adjoining Land Parties and their respective invitees from noise, dust, nuisance and risks to safety caused by the performance of the Development Works.
- (b) The Developer is not entitled to any Claim arising out of the continued operation or businesses at the Construction Site, the Adjoining Land and Station Interface Land by TfNSW and RailCorp.
 - (c) The Developer must indemnify TfNSW, RailCorp and any other Rail Entity against all Loss made by Adjoining Land Parties arising out of, or in any way in connection with, or as a consequence of the performance of the Development Works provided that the Developer's liability to indemnify TfNSW, RailCorp or any other Rail Entity will be reduced proportionally to the extent that a breach or negligent act or omission by TfNSW, RailCorp or a Rail Entity caused or contributed to the Loss.

13.8 Action by TfNSW

- (a) TfNSW may if it reasonably considers that the Developer is not already doing so, take any urgent action necessary to protect the Transit Hall Works, other property or people that the Developer is required to take but does not take, except in circumstances where there is an Alert Event, in which case **clause 28** will apply.
- (b) The amount of any Loss that TfNSW suffers or incurs arising out of or in connection with:
 - (i) taking the action contemplated in this **clause 13.8**; or
 - (ii) the Developer's failure to take that action,

will, except to the extent prohibited by Law, be a debt due from the Developer to TfNSW provided that the Developer's liability will be reduced proportionally to the extent that the Loss arises from or was contributed to by a breach or negligent act or omission of TfNSW, RailCorp or any Rail Entity.

- (c) If time permits TfNSW will give the Developer prior written notice of the intention to take action pursuant to this **clause 13.8** and may only take action under this clause if either:
 - (i) the Developer advises TfNSW that it does not intend to take action; or
 - (ii) TfNSW reasonably considers that the Developer is not taking the necessary action.

13.9 Work method

Whether or not this document prescribes a particular work method or a work method is otherwise a part of this document or reviewed or approved (expressly or impliedly) by TfNSW, the fact that any work method that the Developer adopts or proposes to adopt is impractical or impossible or that the Developer, with or without the approval of TfNSW, uses another work method will:

- (a) not entitle the Developer to make any Claim against TfNSW arising out of or in any way in connection with the work method proving to be impractical or impossible or any change in the work method; and
- (b) not cause this document to be frustrated.

13.10 Commissioning and testing

- (a) The Developer must comply with the Transit Hall Brief in the commissioning of the Transit Hall.
- (b) The Developer must successfully perform the tests set out in the Transit Hall Brief.
- (c) Prior to the Date of Final Completion TfNSW may order that any additional tests be performed in relation to any aspect of the Transit Hall Works. Provided that the results of any additional tests prove that the Developer has complied with its obligations under this document, TfNSW must pay for any additional tests it orders.

13.11 Station Interface Works

- (a) The Developer acknowledges and agrees:
 - (i) the Wynyard Station REF sets out the conditions and requirements to apply to works to be carried out on Wynyard Station;
 - (ii) as soon as reasonably practicable after completion of the testing and investigation the subject of the Column Investigation Plan in **clause 13.12**, the Developer must prepare and submit all relevant materials and information including the detailed plan approved by TfNSW and RailCorp under **clause 13.12(d)** that TfNSW and RailCorp reasonably require in respect of the Station Interface Works to allow TfNSW or RailCorp to assess and determine the Station Interface Works as either:
 - (A) an addendum REF to the Wynyard Station REF; or

- (B) a new REF;
 - (iii) if TfNSW and RailCorp decide that the Station Interface Works should not be assessed and determined pursuant to Part 5 of the EP&A Act, TfNSW and RailCorp will notify the Developer in writing and the Developer must lodge either a:
 - (A) Modification Application; or
 - (B) a new development application,
under Part 4 of the EP&A Act, seeking Approval from the applicable Planning Authority to carry out the Station Interface Works, in which case, **clauses 3.5 to 3.8** of this document will apply to the Modification Application or the new development application (as if it were a Modification Application); and
 - (iv) subject to Approval being obtained for the Station Interface Works in accordance with **clause 13.11(a)(ii)** or **clause 13.11(a)(iii)**, TfNSW and RailCorp must make available the Station Interface Land to enable the Developer to carry out the Station Interface Works.
- (b) Without limiting its other obligations under this document, where the Developer is required to carry out the Station Interface Works pursuant to this **clause 13.11**, the Developer must comply with all of the conditions of any Approvals in respect of the Station Interface Works.
- (c) The parties agree that there are two components to the Station Interface Works being:
- (i) the Construction Only Works; and
 - (ii) the Design and Construction Works.
- (d) In respect of the Construction Only Works:
- (i) TfNSW, RailCorp or another Rail Entity is responsible for design of the Construction Only Works and the Developer is not responsible for the design of the Construction Only Works;
 - (ii) subject to this **clause 13.11**, the Developer is responsible for the Construction Only Works in the same way as the Developer is required to comply with its obligations under this document for the Transit Hall Works;
 - (iii) TfNSW and RailCorp must provide, store and supply everything required for the Developer to carry out the Construction Only Works;
 - (iv) the Construction Only Works are excluded from the Fit for Purpose warranty;
 - (v) these works do not form part of the Transit Hall Works and are excluded from the Retail Lot Purchaser's obligations under the Building Management Statement; and

- (vi) the Developer's only obligation in respect of these works during the Defects Rectification Period is if there is a Defect in the construction work carried out by or on behalf of the Developer.

In relation to **clause 13.11(d)(iii)**, if TfNSW, RailCorp and the Developer agree, the Developer can provide, store and supply some or all of everything required to carry out the Construction Only Works.

- (e) In respect of the Design and Construction Works:
 - (i) the Developer is responsible for these works in the same way as the Developer is required to comply with the Developer's obligations under this document for the Transit Hall Works;
 - (ii) these works (other than in circumstances where the Column removal was procured without access to the Coles Tenancy) must be Fit for Purpose on Completion; and
 - (iii) the Developer must rectify any Defect in these works during the Defects Rectification Period,

provided that TfNSW and RailCorp may not have recourse to the Delivery Security in respect of any failure by the Developer to comply with its obligations under this document to carry out the Station Interface Works.

13.12 Pre investigation for removal of the Columns

- (a) In respect of that part of the Station Interface Works in relation to the removal of the Columns, as soon as reasonably practicable following execution of this document, the Developer must prepare and submit to TfNSW and RailCorp for approval, an investigation plan detailing the testing to be carried out, the methodology and details of access required by the Developer on the basis that the Columns are removed either:
 - (i) without access to the demised premises the subject of the Coles Tenancy; or
 - (ii) with access to the demised premises the subject of the Coles Tenancy.

(the '**Column Investigation Plan**')

- (b) Upon receipt of the Column Investigation Plan, TfNSW and RailCorp must consider the Column Investigation Plan and within a reasonable time after submission of the Column Investigation Plan, advise the Developer in writing of TfNSW's and RailCorp's comments, approval (which may be conditional) in relation to TfNSW's and RailCorp's preferred removal method or rejection. TfNSW and RailCorp must not unreasonably withhold consent to the proposed Column Investigation Plan.
- (c) If TfNSW and RailCorp approve the Column Investigation Plan, TfNSW and RailCorp must give or procure, as soon as reasonably practicable, access to the affected land for the Developer to implement the Column

Investigation Plan and testing in either the Station Interface Land or the Coles Tenancy or both as the case may be.

- (d) As soon as reasonably practicable after completion of the testing and investigation the subject of the Column Investigation Plan, the Developer must submit to TfNSW and RailCorp for approval a detailed plan (including detailed design and construction methodologies) for the removal of the Columns in accordance with the preferred removal method and, within a reasonable time after submission of the detailed plan to TfNSW and RailCorp, TfNSW and RailCorp must advise the Developer in writing of TfNSW's and RailCorp's comments, approval (which may be conditional) or rejection of the detailed plan. TfNSW and RailCorp must not unreasonably withhold consent to the detailed plan.
- (e) If the Developer receives approval to the detailed plan under **clause 13.12(d)**, the Developer:
 - (i) must integrate the removal of the Columns into the Station Interface Works;
 - (ii) must ensure that any Approval obtained for the Station Interface Works includes the removal of the Columns in accordance with the detailed plan approved under **clause 13.12(d)**;
 - (iii) must update the Transit Hall Brief in section 2.1.4 to include the agreed design for the removal of the Columns as "Design and Construct Works" and the Modified Transit Hall Brief and provide a copy to TfNSW and RailCorp.
- (f) TfNSW and RailCorp must procure access to the Coles Tenancy to carry out the Station Interface Works if the method of column removal requires access.
- (g) If the approved method of removal of the Columns requires access to the Coles Tenancy, TfNSW and RailCorp agree that the Developer is not required to indemnify TfNSW or any Rail Entity irrespective of any indemnity that may be contained in this document if TfNSW or any Rail Entity suffers or incurs any Loss as a result of a claim by Coles for breach of the Coles Tenancy lease covenants for derogation of grant, breach of quiet enjoyment or interruption to loss of trade which the Claim arises out of or as a result of the removal of the Columns.

13.13 Hunter Tunnel Works

- (a) As soon as reasonably practicable following execution of this document, the Developer must prepare and submit to TfNSW and RailCorp an investigation plan outlining:
 - (i) the extent of any testing or other investigations proposed to be undertaken on or in the vicinity of the Hunter Tunnel;
 - (ii) the methodology for any such proposed testing or other investigations; and

- (iii) the details of any access required to the Hunter Tunnel, in order to prepare the Hunter Tunnel Works Application, (the '**Hunter Tunnel Investigation Plan**').
- (b) TfNSW and RailCorp must consider the Hunter Tunnel Investigation Plan provided under **clause 13.13(a)** and within a reasonable time of submission advise the Developer in writing of TfNSW's and RailCorp's comments, approval (which may be subject to conditions) or rejection of the Hunter Tunnel Investigation Plan and must not unreasonably withhold consent to the Hunter Tunnel Investigation Plan.
- (c) Subject to TfNSW and RailCorp approving the Hunter Tunnel Investigation Plan under **clause 13.13(b)**, RailCorp must grant access to the Hunter Tunnel for the Developer to implement the Hunter Tunnel Investigation Plan, including any proposed testing.
- (d) As soon as reasonably practicable following the completion of all testing and other investigations in accordance with the approved Hunter Tunnel Investigation Plan, the Developer must as soon as possible prepare and submit to TfNSW and RailCorp a detailed proposal (including detailed design and construction methodologies) for the Hunter Tunnel Works based on the concept design the subject of **schedule 54**.
- (e) Following TfNSW's and RailCorp's review of the detailed proposal provided under **clause 13.13(d)**, TfNSW and RailCorp will notify the Developer in writing within a reasonable time as to whether the Developer is to submit an REF for the Hunter Tunnel Works to allow TfNSW or RailCorp to assess and determine whether the Hunter Tunnel Works can be undertaken pursuant to Part 5 of the EPA Act.
- (f) If TfNSW and RailCorp decide that the Hunter Tunnel Works should not be assessed and determined pursuant to Part 5 of the EP&A Act, TfNSW and RailCorp will notify the Developer in writing and the Developer must lodge either a:
 - (i) Modification Application; or
 - (ii) a new development application, under Part 4 of the EP&A Act, seeking Approval from the applicable Planning Authority to carry out the Hunter Tunnel Works based on the concept design the subject of **schedule 54**, in which case, **clauses 3.5 to 3.8** of this document will apply to the Modification Application or the new development application (as if it were a Modification Application).
- (g) Subject to Approval being obtained for the Hunter Tunnel Works in accordance with **clause 13.13(e)** or **clause 13.13(f)**, RailCorp must make available the Hunter Tunnel to enable the Developer to carry out the Hunter Tunnel Works.
- (h) Without limiting its other obligations under this document, where the Developer is required to carry out the Hunter Tunnel Works pursuant to

this **clause 13.13**, the Developer must comply with all of the conditions of any Approvals in respect of the Hunter Tunnel Works.

- (i) The Developer agrees that in respect of the Hunter Tunnel Works the Developer:
 - (i) is responsible for these works in the same way as the Developer is required to comply with the Developer's obligations under this document for the Transit Hall Works;
 - (ii) these works must be Fit for Purpose on Completion; and
 - (iii) the Developer must rectify any Defect in these works during the Defects Rectification Period.

14 Variations

14.1 Proposed Variations

- (a) Subject to **clause 14.7**, at any time prior to the Date of Completion of the Transit Hall Works (but without limiting **clauses 16, 20.3 and 21.3**) TfNSW may issue a document titled "Variation Proposal Request" to the Developer, which will set out sufficient details to enable the Developer to respond to a proposed Variation that TfNSW is considering.
- (b) Within 15 Business Days of the receipt of a "Variation Proposal Request", or another time as is agreed by the parties acting reasonably the Developer must provide TfNSW with a notice in which the Developer sets out:
 - (i) the value of the work the subject of the Variation Proposal Request including any savings associated with the omission, deletion or deduction of any Transit Hall Works in respect of the proposed Variation and any costs and expenses expected to be incurred by the Developer arising from the Variation delaying the Developer with details of how the amount has been calculated (including detail of the original amount allowed by the Developer for the works the subject of the Variation Proposal Request);
 - (ii) the expected effect that the proposed Variation will have on the Transit Hall Works Program, and the Developer achieving Completion of the Transit Hall Works by the Date for Completion, with details of how the effect has been assessed including the number of days that the Developer will require as an extension of time to the Date for Completion;
 - (iii) a statement that the proposed Variation:
 - (A) does not conflict with or change the requirements of the Transit Hall Brief or involve changes other than those described in the notice; or

- (B) changes the requirements of the Transit Hall Brief or involves changes other than those described in the notice, in which case the Developer must explain all the changes and effects, including providing information on the:
 - (1) scope and limits of the work changes;
 - (2) effect on the Design Documents;
 - (3) assumptions;
 - (4) Approvals affected; and
 - (5) environmental and community impacts;
- (iv) sufficient details to allow TfNSW to review the reasons, and, if desired, reconsider the need for the Variation;
- (v) where required by TfNSW and if reasonably practicable, the additional costs that the Developer anticipates would be reasonably incurred by the Developer if a direction was given under **clause 14.2** to compress the performance of the Transit Hall Works to overcome part or all of any of the anticipated delay in achieving Completion of the Transit Hall Works by the Date for Completion as a result of the Variation outlined in the "Variation Proposal Request";
- (vi) the impact the proposed Variation will have on the:
 - (A) obligations on the Retail Lot Purchaser in relation to the Transit Hall Lot as required by the Building Management Statement and the additional costs the Developer anticipates would be incurred to carry out the requirements of the Retail Lot Purchaser under the Building Management Statement; and
 - (B) Developer's warranties in relation to the Transit Hall Works unless TfNSW agrees in writing that the warranties are modified to the extent of the affect and accepts the terms of the proposed replacement equivalent warranties that the Developer proposes to provide to TfNSW to replace the affected warranties; and
- (vii) any other information concerning the proposed Variation that TfNSW reasonably requires.
- (c) TfNSW will not be obliged to proceed with any proposed Variation that is the subject of a "Variation Proposal Request".

14.2 Variation Orders

Subject to **clause 14.7**, TfNSW may at any time prior to the Date of Completion (but without limiting **clauses 16, 20.3** and **21.3**) direct the Developer to carry out a Variation by issuing a document titled "Variation Order", in which TfNSW will state one of the following:

- (a) the value of the work the subject of the Variation Proposal Request (including any savings associated with the omission, deletion or deduction of any Transit Hall Works) set out in the Developer's notice under **clause 14.1** are agreed; or
- (b) the value of the work the subject of the Variation Proposal Request (including any savings associated with the omission, deletion or deduction of any Transit Hall Works) will be determined under **clause 14.4(b)**, and TfNSW must pay the Developer in accordance with **clause 19**.

14.3 Notice of Direction constituting or involving a Variation

If a direction by TfNSW, other than a "Variation Order" under **clause 14.2**, constitutes or involves a Variation (other than where such direction is given as a result of or in connection with a breach by the Developer or a negligent act or omission of the Developer or its Associates), the Developer must, if it wishes to make a Claim against TfNSW arising out of, or in any way in connection with, the direction:

- (a) within 10 Business Days of receiving the direction and before commencing work on the subject matter of the direction, give notice to TfNSW, identifying the direction and stating that it considers the direction constitutes or involves a Variation and providing brief reasons for its belief;
- (b) continue to carry out the Transit Hall Works in accordance with this document; and
- (c) within 10 Business Days of receipt of a notice under **clause 14.2** TfNSW must issue a notice in writing to the Developer either:
 - (i) agreeing that the direction is a Variation and issuing a Variation Proposal Request under **clause 14.1(a)** following which TfNSW may direct the Developer to carry out the Variation and issue a Variation Order and **clause 14.3** will apply; or
 - (ii) withdrawing the direction.

14.4 Valuation

Subject to **clause 13.8**, and in accordance with **clause 19** TfNSW will pay the Developer in respect of all Variations that have been directed by TfNSW:

- (a) to the extent that **clause 14.2(a)** applies, the agreed amount as specified in the "Variation Order"; or
- (b) to the extent that **clause 14.2(a)** applies subject to sub-paragraph (i) below, the cost of the work, including materials, to be added or omitted as a result of the Variation, valued by the Independent Certifier on the basis of the schedule of rates contained in the Transit Hall D&C Contract:
 - (i) which, where the value of the work the subject of the Variation Proposal Request (including any savings associated with the

omission, deletion or deduction of any Transit Hall Works) is to be an increase, will include the pre-agreed percentage set out in the Transit Hall D&C Contract of the total amount determined under this **clause 14.4(b)** which will be in total satisfaction of all the Developer's overheads and profit;

- (ii) which, where the value of the work the subject of the Variation Proposal Request (including any savings associated with the omission, deletion or deduction of any Transit Hall Works) is to be a decrease, will include the percentage set out in the Transit Hall D&C Contract of the total amount determined under this **clause 14.4(b)** for overheads and profit; or
 - (iii) provided however that in either case, where TfNSW has issued a Variation Proposal Request, the Developer's entitlement under this **clause 14.4(b)** will not be greater than any amount set out in the Developer's notice under **clause 14.1(b)**.
- (c) to the extent that **clause 16.2** applies, the cost of the work, including materials, to be added or omitted as a result of the Variation, either agreed by the parties or valued by the Independent Certifier on the basis of the schedule of allowances contained in the Transit Hall D&C Contract.

14.5 Omissions

If a Variation the subject of a direction by TfNSW requires the omission or deletion of any part of the Transit Hall Works (other than where such direction is given as a result of or in connection with a breach by the Developer or a negligent act or omission of the Developer or its Associates), TfNSW may perform the omitted work itself, or have it done by an Other Contractor, or not, as it sees fit. If TfNSW does have the omitted work carried out then TfNSW agrees that:

- (a) this work is excluded from the Developer's warranties in relation to the Transit Hall Works; and
- (b) if the Work results in an increase to the costs associated with maintaining the Transit Hall Lot as required by the terms of the Building Management Statement or an increase to future capital costs in connection with the Transit Hall Lot then TfNSW will be responsible for those costs.

14.6 Variations requested by Developer

- (a) The Developer may, for its convenience, request TfNSW to direct a Variation.
- (b) Any such request must contain the following details of the Variation proposed:
 - (i) a full description of the proposed Variation;

- (ii) the additional or reduced cost or time or both involved in the Variation and any proposal for sharing any cost savings or increases with TfNSW, including the amount;
 - (iii) any benefits that would flow to TfNSW;
 - (iv) the expected effect upon the future cost of operating and maintaining the Transit Hall Works;
 - (v) the expected effect on the Transit Hall Works Program and the Date of Completion; and
 - (vi) a statement as required by **clause 14.1(b)(iii)**.
- (c) Within 10 Business Days of receiving the Developer's request under **clause 14.6(a)** which complies with **clause 14.6(b)**, TfNSW must give a notice to the Developer:
- (i) rejecting the request; or
 - (ii) approving the request either conditionally or unconditionally.
- (d) TfNSW will not reject the request if the Variation:
- (i) does not result in any Claim by the Developer for additional costs or an extension of time;
 - (ii) does not have a material adverse effect upon the layout, amenity, aesthetics, quality, appearance, functionality or Fit for Purpose of the Transit Hall;
 - (iii) does not affect the Transit Hall Works Program and the Date of Completion;
 - (iv) will not result in a breach of the Approvals or any Law; and
 - (v) there will be no material impact on the nature and extent of the obligations of the Retail Lot Purchaser in relation to the Transit Hall Lot under the Building Management Statement.
- (e) If TfNSW issues a notice under **clause 14.6(c)** approving the Developer's request under **clause 14.6(a)**:
- (i) unless otherwise agreed, the Developer will not be entitled to make, and TfNSW will not be liable upon, any Claim arising out of, or in any way in connection with, the Variation;
 - (ii) if the Developer's request offered to share savings in cost with TfNSW, the amount paid to the Developer by TfNSW will be adjusted to take into account any sharing arrangement and if there are no monies to adjust, then the Developer will reimburse the amount offered in its request, or such other amount as may have been agreed between TfNSW and the Developer prior to any approval under **clause 14.6(c)(ii)** becoming effective, as certified by the Independent Certifier; and

- (iii) the Developer will be responsible for ensuring that all parts of the Transit Hall Works that are in any way affected by the Variation comply with the requirements of this document.

14.7 Restriction on Variations

TfNSW agrees that notwithstanding its rights under this document to direct a Variation, having regard to the Agreed Assumptions, under no circumstances is TfNSW permitted to direct a Variation which requires the Developer to alter the location or dimensions of the ingress/egress tunnel from George Street to Wynyard Station in any way.

15 Quality

15.1 Quality of work

The Developer must use the materials and standard of workmanship required by this document, and otherwise comply with this document in the performance of the Transit Hall Works. In the absence of any other requirement, the Developer must use suitable new materials and ensure that all workmanship and materials are Fit for Purpose.

15.2 Self validation

- (a) The Developer must, regularly during the carrying out of the Transit Hall Works, demonstrate to TfNSW the compliance of the Transit Hall Works with the requirements of this document, using a self-validation system and procedures that:

- (i) comply with the requirements of the Self-Validation Plan; and
- (ii) are described and accommodated in the Construction Management Plan, and

must allow at any time upon reasonable notice, subject to compliance by TfNSW and any person authorised by TfNSW with the Transit Hall Works Contractor's site induction process, TfNSW and any person authorised by TfNSW to:

- (iii) confirm, including test, audit, check and monitor, the Developer's compliance of the Transit Hall Works with the requirements of this document, including compliance with the Transit Hall Brief provided that:
 - (A) if the testing shows that the Transit Hall Works:
 - (1) comply with the requirements of this document, the Developer is entitled to payment of the additional direct and reasonable costs incurred in complying with testing in **clause 15.2(a)(iii)** and is entitled to an extension of time; and
 - (2) do not comply with the requirements of this document, TfNSW is entitled to recover all costs and expenses of

the testing and the Developer is not entitled to an extension of time; and

(B) TfNSW must not:

- (1) carry out destructive testing; and
 - (2) in carrying out its testing, cause any delay to the Transit Hall Works or cause the Developer to incur additional costs as a result of any inspection by TfNSW. If this does occur the Developer will be entitled to make a claim under **clause 18.8** for an extension of time; and
- (iv) access to all information, documents and records related to the Construction Management Plan or the Developer's implementation of and compliance with this document (including the Construction Management Plan).
- (b) The Developer must, subject to compliance by TfNSW with the Transit Hall Works Contractor's site induction process and the restrictions set out in **clauses 15.2(a)(iii)(A)**:
- (i) ensure TfNSW has access to all facilities, documents, records and personnel that are reasonably needed by TfNSW for the inspections referred to in this **clause 15.2**; and
 - (ii) facilitate and assist TfNSW and any person authorised by TfNSW in properly monitoring and auditing the activities relating to the Transit Hall Works.

15.3 Ongoing Plan obligations

The Developer must continue to develop and promptly amend and update the Plans to take into account relevant events and circumstances and as otherwise required by this document, and promptly submit each further version of the Plans to TfNSW as they are further developed, amended or updated in accordance with **clause 17.9**.

15.4 Requirements for Plan

The development of the Plans must comply with this document.

15.5 Directions by TfNSW

- (a) TfNSW, acting reasonably, may provided it does not cause a failure by the Developer to comply with its obligations under this document, an Approval or the terms of the Planning Agreement, at any time by written notice direct the Developer to further develop, update or amend the Plans or any of its parts specifying the reasons why such development, updating or amending is required which must be at all times real and material reasons.
- (b) The Developer may claim an extension of time under **clause 18.8** and may make a claim for delay costs under **clause 18.13** if TfNSW requires

amendments to any Plan that relate to fire, life or safety and that amendment conflicts with the Agreed Assumptions which adversely impacts the Developer's ability to achieve Completion by the Date for Completion.

- (c) The Developer must submit the further developed, updated or amended Plans to TfNSW as soon as reasonably practicable having regard to the requirements of TfNSW's notice referred to in **clause 15.5(a)** for review under **clause 17.9**.
- (d) If the parties are not able to agree upon the further developed, updated or amended Plans under this **clause 15.5** then the matter may be referred for resolution under **clause 29**.

15.6 Developer to implement and comply

The Developer's implementation of and compliance with the Plans does not:

- (a) relieve the Developer from or alter its liabilities or obligations under this document or otherwise according to Law provided that the Developer is permitted to rely on a direction given by TfNSW under **clause 15.5** and TfNSW may not subsequently take any action against the Developer for acting on a direction from TfNSW if the Developer has requested in writing a Statement of No Objection and TfNSW has issued a Statement of No Objection and the Developer has otherwise complied with its obligations under this document; or
- (b) impose additional obligations on TfNSW.

15.7 No relief from obligations

The Developer will not be relieved from any of its liabilities or responsibilities under this document (including under **clause 16**) or otherwise according to Law, nor will the rights of TfNSW whether under this document or otherwise according to Law be limited or otherwise affected, by:

- (a) the implementation of, and compliance with, any management system or plan (including any Plan) by the Developer;
- (b) any release, authorisation, approval or agreement by TfNSW (or any person acting on behalf of TfNSW) in respect of any management system or plan (including any Plan);
- (c) any failure by TfNSW or any person acting on behalf of TfNSW or engaged by TfNSW to detect any Defect, (other than where such a failure is the result of a negligent act or omission); or
- (d) any inspections arranged by TfNSW under **clause 15.2** and carried out in accordance with the obligations in **clause 15.2** or any related discussions between the Developer and TfNSW.

16 Defects

16.1 Defects liability

- (a) Prior to the expiration of any Defects Rectification Period the Developer must rectify all Defects whether or not they are identified and notified by TfNSW.
- (b) The Developer must rectify any Defects in the Transit Hall Works existing at Completion as soon as possible after Completion.
- (c) When rectifying Defects after the Date of Completion, the Developer must do so at times:
 - (i) so as to minimise the impact on the use of the Transit Hall; and
 - (ii) in a manner which causes as little inconvenience as possible to users of the Transit Hall or the public, any Service or any access to the Transit Hall.
- (d) Without limiting the Developer's liability for the Defects, the Developer is not responsible for the work performed by TfNSW or an Other Contractor in rectifying the Defect.

16.2 Defect notification

If at any time prior to the expiration of any Defects Rectification Period TfNSW discovers or believes there is a Defect, TfNSW may give the Developer a direction identifying the Defect and doing one or more of the following:

- (a) requiring the Developer to rectify the Defect, or any part of it, and specifying the reasonable time within which this must occur; or
- (b) requiring the Developer to carry out a Variation to overcome the Defect, or any part of it, and specifying the reasonable time within which this must be carried out; or
- (c) advising the Developer that TfNSW will accept the work, or any part of it, despite the Defect; or
- (d) if the Developer does not rectify a Default within the time specified in **clause 16.2(a)** (as may be extended by TfNSW acting reasonably having regard to the nature of the Default and TfNSW's operational needs) then:
 - (i) TfNSW may give notice to the Developer requiring it to commence, continue or complete (as the case may be) the rectification of the Defect within the time specified in the notice given under this **clause 16.2(d)(i)**;
 - (ii) if the Developer does not diligently proceed to rectifying the Defect then TfNSW may by written notice in writing to the Developer advise that an Other Contractor will be appointed to rectify the Defect;
 - (iii) if TfNSW appoints an Other Contractor to rectify the Defect, it agrees that the work performed by the Other Contractor is

excluded from the Developer's warranties in relation to the Transit Hall Works and TfNSW is responsible for any further rectification works arising out of the Other Contractor's work but the Developer remains liable for Loss suffered or incurred by TfNSW, RailCorp or a Rail Entity from the Defect; and

- (iv) to the extent that the rectification of Defects has been performed by an Other Contractor, TfNSW will inform the Developer of completion of the rectification of the Defects performed by the Other Contractor.

16.3 Rectification of Defect

If a direction is given under **clause 16.2(a)** or **clause 16.2(b)**:

- (a) the Developer must rectify the Defect (or the part of it) notified or carry out the Variation work directed:
 - (i) within the time specified in TfNSW's direction which will generally be limited to the periods during which the operational needs from time to time of TfNSW will allow for access to the Transit Hall or at other times otherwise agreed with TfNSW;
 - (ii) in accordance with the lawful requirements of TfNSW and any other relevant Authority;
 - (iii) so as to minimise the impact on the use of the Transit Hall; and
 - (iv) in a manner which causes as little inconvenience as possible to users of the Transit Hall or the public, any Service or any access to the Transit Hall; or
- (b) if the Developer:
 - (i) does not agree that there is a Defect then the Developer may refer the matter to the Independent Certifier for resolution and will only be required to rectify the Defect if the Independent Certifier determines that there is a Defect; or
 - (ii) is unable to rectify the Defect or carry out a Variation to overcome the Defect in accordance with TfNSW's direction, then the Developer may submit an alternative proposal to TfNSW for rectifying the Defect. If that proposal is accepted the Developer must then rectify the Defect in accordance with the proposal. The parties must use reasonable endeavours to achieve the best solution to any problems and if the parties are unable to agree within 15 Business Days of receipt of a direction under **clause 16.2(a)** or **16.2(b)** the matter shall be referred to the Independent Certifier for resolution.

16.4 Claims for correction of Defect

- (a) Where a proper direction is given under **clause 16.2(a)**, the Developer will not be entitled to make a Claim against TfNSW for rectifying the Defect (or the part notified).

- (b) Where a direction is given under **clause 16.2(b)**, the Developer must be paid by TfNSW in accordance with **clause 14.4**.

16.5 Extension of Defects Rectification Period

If:

- (a) TfNSW gives the Developer a notice under **clause 16.2(a)** or **16.2(b)** during any Defects Rectification Period; and
- (b) the Developer rectifies the Defect (or the part notified) or completes the Variation work,

the relevant Defects Rectification Period for that part of the Transit Hall Works the subject of the notice may be extended by TfNSW up to the period of 3 months commencing upon completion of the rectification of the Defect (or the part notified) or completion of the Variation work (as the case may be) or such longer period as determined by the Independent Certifier.

16.6 Defect rectification by Other Contractor

If **clause 16.2(d)** applies and TfNSW has issued a notice in writing to the Developer requiring rectification of a Defect and the Developer has failed to comply with that notice then:

- (a) the Developer must not impede the Other Contractor who is appointed to rectify the Defect from having sufficient access to the Construction Site to rectify the Defect;
- (b) the Developer acknowledges and agrees that:
 - (i) where an Other Contractor is rectifying a Defect, no act or omission by such Other Contractor in connection with the rectification will, whether or not it causes any delay or disruption to the Transit Hall Works, constitute an Act of Prevention; and
 - (ii) except where the Other Contractor causes damage to the Transit Hall Works while rectifying a Defect, TfNSW will not be liable upon any Claim by the Developer arising out of or in any way in connection with the Other Contractor rectifying the Defect; and
- (c) TfNSW must use reasonable endeavours to ensure that TfNSW obtains a warranty from the Other Contractor in respect of its Defect rectification work which is in a form and for a period which would normally be provided for similar work to the work performed.

16.7 Rights not affected

Neither TfNSW's rights nor the Developer's liability, whether under this document or otherwise according to Law in respect of Defects and whether before, on or after the expiration of any relevant Defects Rectification Period, will be in any way affected or limited by:

- (a) the rights conferred upon TfNSW by this **clause 16** or any other provision of this document;
- (b) the exercise of, or the failure by TfNSW to exercise, any rights; or

- (c) any notice or direction of TfNSW under **clause 16.2**.

16.8 Use of defective work or facilities

Prior to Final Completion, the Developer must advise TfNSW if it reasonably considers that any part of the Transit Hall Works is defective or unsafe and the use of which would threaten the safety of property or persons.

17 Administration of Transit Hall Works

17.1 Development Control Group

The Development Control Group will comprise:

- (a) TfNSW's Representative;
- (b) the Developer's Representative, a senior representative of the Developer not involved in the day to day Transit Hall Works, and any of the Developer's key personnel nominated by the Developer's Representative;
- (c) representatives of the Transit Hall Works Contractor; and
- (d) any other person TfNSW reasonably requires.

17.2 Development Control Group functions

The Development Control Group functions will include the oversight and review of and response to, reports on:

- (a) safety and safety management issues;
- (b) notices or claims issued by the Developer under **clauses 18.6 and 18.8** and mitigation options, including compression;
- (c) the progress of the Transit Hall Works relative to the Transit Hall Works Program, and the performance of the Developer and TfNSW under this document, including identification of possible events which may affect the achievement of Completion;
- (d) issues arising out of community liaison and community concerns;
- (e) the Developer's and TfNSW's compliance or non-compliance with the Plans and this document, and related and consequential issues;
- (f) matters arising from the Design Documents;
- (g) value engineering opportunities and potential cost savings consistent with the maintaining of quality and minimising life cycle costs;
- (h) environmental management issues; and
- (i) disputes that have arisen, or are likely to arise, between TfNSW and the Developer.

17.3 Development Control Group meetings

- (a) The persons nominated in **clause 17.1(b)** must, subject to illness, annual leave or death, attend all Development Control Group meetings.

- (b) Development Control Group meetings will be held:
 - (i) on a monthly basis;
 - (ii) until Final Completion; and
 - (iii) within 5 Business Days of the Developer issuing a notice under **clause 18.6(b)(i)**,
or other intervals as TfNSW and the Developer agree.
- (c) The Development Control Group meetings will be chaired by TfNSW's Representative and the Developer's Representative alternatively.
- (d) The first meeting of the Development Control Group will be held within 10 Business Days of the Transit Hall Works Commencement Date occurring.

17.4 Developer's reporting obligations

The Developer must, following the Transit Hall Works Commencement Date:

- (a) with each claim for payment under **clause 19.2** or, where no claim for payment is made, at least 5 Business Days prior to the next meeting of the Development Control Group, give TfNSW's Representative the number of copies of a written report in a form approved by TfNSW's Representative (acting reasonably), and containing detailed information on the following:
 - (i) the status at the end of the previous calendar month of the Transit Hall Works relative to the current Transit Hall Works Program;
 - (ii) the planned progress of activities over the forthcoming month and quarter;
 - (iii) a description of the progress made on all current activities, including photographs;
 - (iv) the number and categories of personnel and equipment currently engaged by the Developer in carrying out the Transit Hall Works with a comparison with the planned resources;
 - (v) the status of Design Documents, procurement orders, subcontracts, manufacture and general construction;
 - (vi) a Completed Monthly Safety Statistics Form;
 - (vii) any issues and non-conformances with environmental management requirements of this document;
 - (viii) any issues arising from or affecting the Construction Management Plan (or the subject matter of the Construction Management Plan);
 - (ix) records of all corrective and preventative actions taken under, and audits of, the Construction Management Plan and the components thereof; and

- (x) co-operation, coordination, industrial relations and interface issues with Other Contractors;
- (b) provide and maintain a daily record of the status of the work and the conditions on the Construction Site and Station Interface Land involved in the Transit Hall Works, including the resources employed on the Construction Site and Station Interface Land and the issues affecting the progress of the Transit Hall Works, and provide a copy of that record to TfNSW on a weekly basis;
- (c) provide a current projected cash flow, each three months or as reasonably required by TfNSW, including a planned versus actual cash flow comparison (including the estimated versus actual value of work completed for each named calendar month); and
- (d) promptly give TfNSW, when requested to do so, any information that TfNSW reasonably requires (including calculations) in respect of the matters referred to in **clause 17.4(a)**.

17.5 Media requests

- (a) If the Developer receives a request from the media for comment in respect of any aspect of the Site Establishment Works and the Transit Hall Works, the Developer must:
 - (i) promptly provide details of the request to TfNSW;
 - (ii) in relation to the matters contemplated by the Stakeholder and Community Management Plan, respond only in accordance with the requirements of that Plan; and
 - (iii) in relation to matters not contemplated by the Stakeholder and Community Management Plan, not respond except with the prior consent of TfNSW (such consent not to be unreasonably withheld or delayed).
- (b) If a party receives a request from the media for comment in respect of any aspect of the Development Works (not including the Transit Hall Works), the party must:
 - (i) promptly provide details of the request to the other party;
 - (ii) in relation to the matters contemplated by the Stakeholder and Community Management Plan, respond only in accordance with the requirements of that Plan; and
 - (iii) in relation to matters not contemplated by the Stakeholder and Community Management Plan, not respond except with the prior consent of the other party (such consent not to be unreasonably withheld or delayed).

17.6 Complaints and notification

- (a) The Developer must, immediately notify TfNSW as soon as the Developer is aware if any:

- (i) complaint is made or any proceedings are instituted or threatened;
 - (ii) letter of demand is issued; or
 - (iii) order or direction is made,
- by anyone (including any Authority or any landowner, lessee or licensee) against the Developer, or any of its Associates in respect of any aspect of the performance of the Development Works, including:
- (iv) Contamination arising out of, or in any way in connection with, the Development Works;
 - (v) the Developer's non-compliance with the Environmental Management Plan, the Construction Management Plan or any Law regarding the Environment;
 - (vi) the implementation of the Stakeholder and Community Management Plan;
 - (vii) the Developer's use or occupation of the Construction Site or any Extra Land;
 - (viii) loss or damage of the kind referred to in **clauses 8.13** or **21.11**; or
 - (ix) Hazardous Substances in any way connected with the Transit Hall Works.
- (b) The Developer must:
- (i) deal proactively with any complaint, proceedings, letter of demand, order or direction referred to in **clause 17.6(a)**;
 - (ii) take all measures to resolve those matters as soon as possible (including defending any proceedings if in the Developer's or the Developer's insurer's opinion this is the best course of action); and
 - (iii) keep a register of all complaints, proceedings, orders, letters of demand and directions referred to in **clause 17.6(a)**, which:
 - (A) contains full details of:
 - (1) each complaint, proceedings, letter of demand, order and direction; and
 - (2) the action taken by the Developer or the Transit Hall Works Contractor with respect to each complaint, proceedings, letter of demand, order and direction;
 - (B) is promptly updated to take into account any material developments with respect to any complaint, proceedings, letter of demand, order or direction; and
 - (C) may be inspected by TfNSW's Representative whenever TfNSW's Representative reasonably requires subject to the provision of reasonable notice.

- (c) Without limiting **clause 35.12**, this **clause 17.6** does not require the Developer to disclose any information it is prevented from disclosing under Privacy Law or where that information is in the form of internal or external legal advice which needs to remain privileged.

17.7 Industrial relations

The Developer must assume overall responsibility for industrial relations in respect of the Site Establishment Works and the Transit Hall Works, and must procure the Transit Hall Works Contractor, in performing the Site Establishment Works and the Transit Hall Works, to:

- (a) assume sole responsibility for, manage and keep itself fully informed concerning all aspects of industrial relations for the Site Establishment Works and the Transit Hall Works, including ensuring that the Transit Hall Works Contractor manages all aspects of the industrial relations with their employees appropriately;
- (b) ensure that the rates of pay and conditions of employment specified in all relevant industrial, enterprise and project based agreements and awards, and any relevant Law, for all employees engaged by any person in connection with the Site Establishment Works and the Transit Hall Works, are always observed in full;
- (c) keep TfNSW's Representative fully and promptly informed of industrial relations problems or issues the Developer and the Transit Hall Works Contractor is aware of that affect or are likely to affect the carrying out of the Site Establishment Works and the Transit Hall Works, or the delivery of the Transit Hall;
- (d) conduct its industrial relations affairs in accordance with the Industrial Relations Management Plan;
- (e) not commence any work on the Construction Site until the Industrial Relations Management Plan has been updated in accordance with **clause 17.9**;
- (f) submit, before beginning work on the Construction Site, a statement detailing:
 - (i) the location of time and wage records and other documents that are required to be kept to verify ongoing compliance with all employment and legal obligations;
 - (ii) the names of Federal 07 NSW awards that are likely to cover the Developer and the Developer's Associates involved in the Transit Hall Works; and
 - (iii) the names of those responsible for coordinating industrial relations for the Site Establishment Works and the Transit Hall Works;
- (g) use reasonable endeavours to not do, or omit to do, anything in relation to industrial relations on the Construction Site that is, or is likely to be, prejudicial to the delivery of the Transit Hall;

- (h) before beginning work on the Construction Site, submit a statement to TfNSW on the Transit Hall Works Contractor's letterhead and signed by an authorised person, attesting to the Transit Hall Works Contractor's compliance, in the preceding twelve months, with all employment and legal obligations, including:
 - (i) payment of remuneration to employees;
 - (ii) annual leave provisions;
 - (iii) Long Service Leave Payment Scheme registration;
 - (iv) workers' compensation insurance, including self-insurance arrangements,
 - (v) superannuation fund membership and contributions; and
 - (vi) over-award payments such as redundancy fund contributions; and
- (i) continue to provide to TfNSW during the Site Establishment Works and the Transit Hall Works appropriate information to verify compliance with the awards, enterprise and workplace agreements and all other legal obligations relating to the employment of people for the Site Establishment Works and the Transit Hall Works.

The industrial relations requirements contained in this document and the NSW Government Industrial Relations Management Guidelines, December 1999:

- (j) are in addition to, but are not in substitution for, any requirements of Law; and
- (k) do not limit the powers of TfNSW or the liabilities and responsibilities of the Developer.

Without limiting **clause 35.12**, this **clause 17.7** does not require the Developer to disclose any information it is prevented from disclosing under Privacy Law or where that information is in the form of internal or external legal advice which needs to remain privileged.

17.8 Document management and transmission

- (a) The Developer must manage and transmit documents, including using an electronic medium in accordance with the processes, procedures and systems in the Construction Management Plan.
- (b) Documents supplied to the Developer by TfNSW will remain the property of TfNSW and must be returned by the Developer to TfNSW on demand in writing provided that the Developer is entitled to retain one copy of documents for its records and one copy for the Transit Hall Works Contractor's records. The documents must not, without the prior approval of TfNSW, be used, copied or reproduced for any purpose other than the execution of the Transit Hall Works.
- (c) The Developer must, at its cost, keep all the Developer's records relating to the Transit Hall Works in secure storage for 7 years from the Date of Completion or earlier termination of this document.

17.9 Submission for review by TfNSW

- (a) The Developer must submit the updated Plans, the Design Documents, the Transit Hall Works Program and any other document (each of which in this **clause 17.9**, will be referred to as a “**Document**”) required to be submitted to TfNSW under a provision of this document (unless otherwise prescribed):
 - (i) progressively and in timely manner to ensure that the Transit Hall Works are completed by the times required under this document, and by the times or within the periods:
 - (A) identified in the Transit Hall Works Program; or
 - (B) in the absence of a time or period in the Transit Hall Works Program as reasonably required by TfNSW; and
 - (ii) under cover of a written notice entitled “Submit for Review”, which identifies:
 - (A) the Document; and
 - (B) the provision of this document under which the Document is submitted.
- (b) Where the Developer receives any document for its review under the Transit Hall Works D&C Contract from the Transit Hall Works Contractor, it must promptly provide a copy of that document to TfNSW.
- (c) A Document will be deemed not to have been submitted to TfNSW unless and until the Developer has complied with this **clause 17.9**, in addition to any other requirement of this document relating to the submission of that Document.
- (d) TfNSW must, after the submission of a Document which satisfies the requirements of **clause 17.9(a)**:
 - (i) review the Document, or any resubmitted Document, prepared and submitted by the Developer; and
 - (ii) where submitted or resubmitted in accordance with the Transit Hall Works Program which has not been unreasonably rejected by TfNSW, within 5 Business Days (“**Period for Review**”) of submission by the Developer of such Document or resubmitted Document:
 - (A) reject the Document if in its reasonable opinion the Document (or any part) does not comply with the requirements of this document, stating the nature of the non-compliance;
 - (B) make reasonable and proper comments on the Document; or

- (C) notify the Developer in writing prior to the expiry of the Period for Review that it does not intend to reject or make comments on the Document.
- (e) TfNSW must not reject a Document if:
 - (i) the Document complies with the terms of the Transit Hall Brief; and
 - (ii) the Document complies with the requirements of this document; and
 - (iii) the subject matter of the Document complies with BCA requirements; and
 - (iv) the Document contains information which:
 - (A) is within the scope of the Transit Hall Works and does not have an adverse effect on the design features of the Transit Hall; and
 - (B) does not result in an increase to the costs associated with owning or maintaining the Transit Hall Lot other than those costs to be borne by the Retail Lot Purchaser under the Building Management Statement; and
 - (C) does not cause a breach of any Approvals or any Laws; and
 - (D) will not prevent the Transit Hall Works from being, on Completion, Fit for Purpose; and
 - (E) does not adversely affect the Developer's ability to achieve Completion by the Date for Completion; and
 - (F) does not reduce the quality or standard of components of the Transit Hall Works.
- (f) TfNSW will use its reasonable endeavours to exercise its rights under this **clause 17.9** in a period of time which is shorter than the Period for Review.
- (g) If any Document is rejected, the Developer must submit an amended Document to TfNSW within 10 Business Days of the date of receipt of such notice of rejection and this **clause 17.9** will re-apply. If TfNSW rejects a Document on its second submission, the Developer may refer the matter to the Independent Certifier to determine whether or not the Document complies with the requirements of this document and satisfies the requirements for acceptance in **clause 17.9(a)**.
- (h) If any Document is not rejected and TfNSW responds to the submission with comments, the Developer must respond to the comments within 10 Business Days or another other longer period as may be directed by TfNSW acting reasonably.
- (i) If the Developer fails to respond to TfNSW's Representative's comments within the period referred to in **clause 17.9(h)** in a manner satisfactory to TfNSW (acting reasonably) the Document will be deemed to be rejected.

- (j) The Developer must not amend for construction purposes any Document that has:
 - (i) been submitted to TfNSW; and
 - (ii) not been unreasonably rejected, or had comments made about it, under **clause 17.9(d)(ii)**,unless the Developer submits the proposed amendments to TfNSW, in which case this **clause 17.9** will re-apply.
- (k) TfNSW does not assume or owe any duty of care or other responsibility to the Developer to review, or in reviewing, a Document submitted by the Developer, including for errors, omissions or non-compliance with this document.
- (l) The Developer will not be entitled to make, and TfNSW will not be liable upon, any Claim arising out of or in any way in connection with TfNSW not detecting and notifying the Developer of any errors, omissions or non-compliance with the requirements of this document in any Document submitted.
- (m) No review of, comment upon or rejection of, or failure to review or comment upon or reject, a document prepared by the Developer, or any other direction by TfNSW in connection with the Document, will constitute a direction to carry out a Variation pursuant to **clause 14.2**, unless it is in a written document titled "Variation Order" and describes the nature of the Variation in accordance with **clause 14.2**:
 - (i) relieve the Developer from or alter its liabilities or obligations, whether under this document or otherwise according to any Law; or
 - (ii) limit or otherwise affect TfNSW's rights against the Developer, whether under this document or otherwise according to any Law.
- (n) In considering any Document, TfNSW may consult with and take into account any views or requirements of any relevant Authority.

17.10 Compliance with the Plans

- (a) The Developer warrants that compliance with the Plans will ensure that the Development Works (including the Transit Hall Works) are done in accordance with this document.
- (b) If it is not feasible or practicable to carry out the Development Works (including the Transit Hall Works) in accordance with the Plans, the Developer must carry out the Development Works (including the Transit Hall Works) using whatever methodology, as approved by TfNSW, may prove to be necessary to complete the Development Works (including the Transit Hall Works) in accordance with this document.
- (c) The Developer must update the Plans monthly and within the time stipulated in a written direction of TfNSW, to show how the Developer will carry out the Development Works (including the Transit Hall Works).

17.11 Station Pedestrian Access Plan

- (a) The Developer and TfNSW acknowledge and agree that:
 - (i) the Developer will provide:
 - (A) pedestrian access arrangements through the Construction Site as set out in the Station Pedestrian Access Plan in order to ensure the safe and continued operation of Wynyard Station and that these arrangements will be based on the Agreed Assumptions; and
 - (B) in relation to any Development Works carried out in areas outside the Construction Site (including pedestrian access to Wynyard Lane from George Street), pedestrian access arrangements that are safe for pedestrian use;
 - (ii) if at any time during the carrying out of the Development Works TfNSW forms a view that the pedestrian access arrangements to Wynyard Lane from George Street (whether provided for under the Station Pedestrian Access Plan or otherwise) will pose, or is likely to pose, fire, life or safety risks:
 - (A) subject to **clause 14.7**, TfNSW may direct a change to the pedestrian access arrangements to Wynyard Lane from George Street;
 - (B) subject to **clause 14.7**, the Developer must comply with such direction by TfNSW at the Developer's cost; and
 - (C) if the change directed by TfNSW, conflicts with the Agreed Assumptions, then the Developer may make a claim for an extension of time and a claim for delay costs under **clause 18**; and
- (b) The Developer must comply with the Station Pedestrian Access Plan when carrying out the Development Works (including the Transit Hall Works).
- (c) The Developer must not deviate from the requirements of the Station Pedestrian Access Plan without TfNSW's approval.
- (d) To the extent there is any inconsistency between the Station Pedestrian Access Plan and any other document in relation to pedestrian access through the Construction Site, the Station Pedestrian Access Plan takes precedence.

18 Time and progress

18.1 Rate of progress

- (a) The Developer must:
 - (i) regularly and diligently progress the Transit Hall Works;

- (ii) proceed with the Transit Hall Works with due expedition;
 - (iii) subject to the Developer's rights under **clause 18.7**, take all reasonable steps necessary to mitigate any delay including replanning and rescheduling work to mitigate the effects of delay; and
 - (iv) achieve Completion by the Date for Completion.
- (b) Subject to **clause 19.14(f)(ii)** or when an Act of Prevention, an Alert Event or a Force Majeure Event has occurred, the Developer must not suspend the progress of the whole or any part of Transit Hall Works except where directed by TfNSW under **clause 18.14**.
 - (c) Without limiting **clause 18.1(d)** and **clause 18.3**, the Developer must give TfNSW reasonable advance notice of any information, documents or directions required by the Developer.
 - (d) TfNSW will not be obliged to furnish information, documents or directions, earlier than TfNSW should reasonably have anticipated at the Transit Hall Works Commencement Date.

18.2 Developer's programming obligations

The Developer must:

- (a) within 20 Business Days of the giving of a Notice to Proceed prepare and provide a copy of the Transit Hall Works Program in accordance with this document and any reasonable requirements of TfNSW;
- (b) sequence and arrange the Transit Hall Works in accordance with this document (including the Construction Management Plan) and allow for these dates in the Transit Hall Works Program;
- (c) cooperate with Other Contractors in preparing a coordinated installation program for the Transit Hall Works in worksites shared with Other Contractors;
- (d) allow and prepare for any delay or disruption to the carrying out of the Transit Hall Works by Special Events, and the Developer will not be entitled to any extension of time or compensation in connection with such delay or disruption;
- (e) update and revise the Transit Hall Works Program:
 - (i) to show delays, extensions to the Date for Completion, the actual progress made, Variations and any other changes to the Transit Hall Works; and
 - (ii) when reasonably directed to do so by TfNSW, submit any revised Transit Hall Works Program to TfNSW for its review in accordance with **clause 17.9**;
- (f) comply with the reasonable requirements of TfNSW and its other obligations under this document in preparing and using the Transit Hall Works Program, including those in **clause 17.9**; and

- (g) subject to **clause 13.3(b)**, comply with the current version of the Transit Hall Works Program including coordinated installation and commissioning programs prepared in conjunction with Other Contractors, that have been submitted to TfNSW under **clause 17.9** and have not been rejected by TfNSW within 15 Business Days or a shorter period if TfNSW issues a notice under **clause 17.9(d)(ii)(C)**.

18.3 Developer not relieved

Without limiting **clause 17.9**, no submission of, review of or comment upon, acceptance or rejection of, or any failure to review or comment upon or reject, a program (including the Transit Hall Works Program) prepared by the Developer by TfNSW in connection with the program, will:

- (a) relieve the Developer from or alter its liabilities or obligations under this document, including the obligation under **clause 18.1**;
- (b) evidence or constitute the granting of an extension of time to any Date for Completion or a direction by TfNSW to compress, disrupt, prolong or vary any, or all, of the Transit Hall Works; or
- (c) affect the time for the performance of TfNSW's obligations under this document.

The Transit Hall Works Program does not form part of this document and is only to be used where considered appropriate by the Independent Certifier in reviewing the Developer's progress.

18.4 Acceleration by Developer

If the Developer chooses to compress the Transit Hall Works or otherwise accelerate progress:

- (a) TfNSW will not have any obligation to assist the Developer to accelerate progress; and
- (b) the time for carrying out the obligations of TfNSW will not be affected.

18.5 Developer to take corrective action

- (a) If at any time the progress of the Transit Hall Works has fallen behind the progress shown in the Transit Hall Works Program and the Independent Certifier certifies that the Developer is not able to achieve Completion by the Date for Completion, the Developer must at its own cost take the necessary corrective action to ensure that progress is maintained in accordance with this document. The corrective action may include the working of overtime and additional shifts, the application of more resources to carry out the Transit Hall Works and the adjustment and rescheduling of activities. TfNSW may from time to time direct the Developer to provide details of the corrective action it plans to take under this **clause 18.5(a)**.
- (b) If the Developer fails to take corrective action in accordance with **clause 18.5(a)**, the Independent Certifier may direct the Developer as to the

corrective action it must take and the Developer must comply with that direction.

18.6 Risk and notice of delay

- (a) Subject to any provision of this document, the Developer accepts the risk of all delays in the carrying out of the Transit Hall Works and performance of its obligations under this document.
- (b) The Developer must if Completion is likely to be affected:
 - (i) within 5 Business Days of becoming aware or when it ought reasonably to have become aware of an occurrence causing any delay to the Transit Hall Works give TfNSW a preliminary notice of that delay; and
 - (ii) within 10 Business Days of becoming aware or when it ought reasonably to have become aware of an occurrence causing any delay to the Transit Hall Works give TfNSW full written details of the cause and how Completion is likely to be affected (if at all).

18.7 Entitlement to extension of time

- (a) If the Developer is, or will be, delayed prior to the Date for Completion by reason of an Act of Prevention, a Force Majeure Event, an Alert Event not caused or contributed to by the Developer or its Associates, nationwide/statewide industrial delay not caused by the Developer or its Associates, an Other Special Event or a dispute that is resolved in the Developer's favour in a manner that will delay the Developer from achieving Completion, the Developer may claim an extension of time to the Date for Completion.
- (b) If the Developer is, or will be, delayed after the Date for Completion, by reason of an Act of Prevention, a Force Majeure Event, an Alert Event not caused or contributed to by the Developer or its Associates, nationwide/statewide industrial delay not caused by the Developer or its Associates, an Other Special Event or a dispute that is resolved in the Developer's favour in a manner which will delay it in achieving Completion or any other event where this document permits the Developer to claim an extension of time if it is delayed, the Developer may claim an extension of time to the relevant Date for Completion.

18.8 Claim for extension of time

- (a) To claim an extension of time the Developer must:
 - (i) within 20 Business Days of becoming aware or when it ought reasonably to have become aware of the occurrence causing the delay, submit a claim to the Independent Certifier and TfNSW for an extension of time to the Date for Completion, which:
 - (A) gives detailed particulars of:
 - (1) the delay and the occurrence causing the delay; and

- (2) the activities that are critical to the maintenance of progress in the performance of the Transit Hall Works; and
- (B) states the number of day's extension of time claimed together with the basis for calculating that period, including evidence that the:
 - (1) conditions precedent to an extension of time in **clause 18.9** have been met; and
 - (2) occurrence will delay the Developer in achieving Completion in the manner described in **clause 18.7**; and
- (ii) if the effects of the delay continue beyond the period of 20 Business Days after becoming aware or when it ought reasonably to have become aware of the occurrence causing the delay and the Developer wishes to claim an extension of time in respect of the further delay, submit a further claim to the Independent Certifier and TfNSW:
 - (A) every 10 Business Days after the first claim until after the end of the effects of the delay; and
 - (B) containing the information required by **clause 18.8(a)(i)**.
- (b) The Independent Certifier and TfNSW may, within 5 Business Days of receiving the Developer's claim or further claim for an extension of time for Completion, by notice to the Developer, request additional information in relation to the claim or further claim. The Developer must, as soon as practicable and in any event within 5 Business Days of receiving such request provide the Independent Certifier and TfNSW with the information requested.

18.9 Conditions precedent to extension of time

It is a condition precedent to the Developer's entitlement to an extension of time to the Date for Completion that:

- (a) the Developer gives the notices and claims required by **clauses 18.6(b)** and **18.8** as required by these clauses;
- (b) the Developer complies with any request for additional information under **clause 18.8** within the time required;
- (c) the cause of the delay is beyond the reasonable control of the Developer;
- (d) subject to **clause 13.3(b)** the Developer has demonstrated that it has used reasonable endeavours to cooperate and coordinate with Other Contractors in accordance with **clause 13.3** in respect of a claim for an extension of time which is based on an act or omission of an Other Contractor; and

- (e) the Developer satisfies the Independent Certifier that Completion will be delayed by a reason referred to in **clause 18.7(a)**. If the Developer fails to comply with the conditions precedent in this **clause 18.9**:
 - (i) TfNSW will not be liable upon any Claim by the Developer, and
 - (ii) the Developer will be absolutely barred from making any Claim against TfNSW,arising out of or in any way in connection with the event giving rise to the delay and the delay involved.

18.10 Extension of time

- (a) Subject to **clause 18.10(c)**, if the conditions precedent in **clause 18.9** have been satisfied, the Date for Completion will be extended by a reasonable period determined by the Independent Certifier, and notified to TfNSW and the Developer within 20 Business Days after the latest of the:
 - (i) Developer's written claim under **clause 18.8**; and
 - (ii) provision by the Developer of any additional information regarding the claim required under **clause 18.8**.
- (b) A failure of the Independent Certifier to grant a reasonable extension of time to the Date for Completion or to grant an extension of time to the Date for Completion within 20 Business Days will not cause the Date for Completion to be set at large.
- (c) The Independent Certifier will reduce any extension of time to the Date for Completion it would otherwise have determined under **clause 18.10** to the extent that the Developer:
 - (i) contributed to the delay; or
 - (ii) failed to take all steps necessary both to reduce the cause of the delay and (without being required to incur additional costs) to avoid or minimise the consequences of the delay.

18.11 No entitlement

If there is a delay to the Transit Hall Works for which the Developer is not entitled to an extension of time, the Developer:

- (a) must achieve Completion by the Date for Completion;
- (b) does not have any Claim against TfNSW for the delay, including any entitlement to damages for breach of this document; and
- (c) is not relieved of any liability to TfNSW for any failure to achieve Completion by the Date for Completion by reason of the delay, including any liability to pay liquidated damages.

18.12 Unilateral extensions

- (a) Whether or not the Developer has made, or is entitled to make, a claim for an extension of time to the Date for Completion, or is entitled to be, or

has been, granted an extension of time to any Date for Completion, under this **clause 18**, TfNSW may, in its absolute discretion, for any reason and at any time, by written notice to the Developer and TfNSW, unilaterally extend the Date for Completion by any period specified in a notice to the Developer and TfNSW.

- (b) TfNSW is not required to exercise its discretion under this **clause 18.12** for the benefit of the Developer and has no obligation to grant, or to consider whether to grant, an extension of time.
- (c) The discretion to grant an extension of time under this **clause 18.12** may only be exercised by TfNSW and the exercise or failure to exercise that discretion is not a “direction” which may be questioned, reviewed or exercised by any other person in any forum (including any expert, arbitration or litigation proceedings).
- (d) The operation of this **clause 18.12** does not limit or otherwise affect the rights of the Developer under **clause 18.10**.

18.13 Delay costs

- (a) For each day by which the Date for Completion is extended due to an Act of Prevention or any other event where this document provides that the Developer is entitled to make a claim for delay costs, the Developer will be entitled to be paid the costs reasonably incurred by the Developer excluding any such costs which have been recovered by the Developer pursuant to some other provision of this document as a direct result of the delay the subject of the extension of time.
- (b) Without limiting any other provision of this document the amounts payable pursuant to this **clause 18.13** will be a limitation upon TfNSW’s liability to the Developer for any delay or disruption that:
 - (i) the Developer encounters in carrying out the Transit Hall Works; and
 - (ii) arises out of or in any way in connection with an Act of Prevention,

and the Developer will not be entitled to make, nor will TfNSW be liable upon, any Claim in these circumstances other than for the amount which is payable by TfNSW under this **clause 18.13**.

18.14 Suspension

- (a) The Developer may not suspend the Transit Hall Works except pursuant to a statutory right to suspend or where TfNSW directs the Developer to suspend the Transit Hall Works.
- (b) TfNSW may direct the Developer to suspend and, after a suspension has been directed, to re-commence, the performance of all or a part of the Transit Hall Works provided that such direction will not result in the rescission or termination of the Contracts for Sale.
- (c) If the suspension under this **clause 18.14** arises as a result of:

- (i) the Developer's failure to carry out its obligations in accordance with this document (including where any process, procedure, test method, calculation, analysis or report required by this document has resulted in or will result in a non-conformance), the Developer will not be entitled to make any Claim against TfNSW arising out of, or in any way in connection with, the suspension (including any extension of time); or
- (ii) a cause other than the Developer's failure to perform its obligations in accordance with this document:
 - (A) a direction to suspend under this **clause 18.14** will entitle the Developer to:
 - (1) be paid by TfNSW the extra costs reasonably incurred by it as a direct result of the suspension as determined by the Independent Certifier; and
 - (2) an extension of time to the Date for Completion where it is otherwise entitled under **clause 18**;
 - (B) the Developer must take all reasonable steps possible to mitigate the extra costs incurred by it as a result of the suspension; and
 - (C) the Developer will not be entitled to make, and TfNSW will not be liable upon, any Claim arising out of, or in any way in connection with, the suspension other than as allowed under this **clause 18.14(c)(ii)**.

19 Payment for Certain Works

19.1 Developer's payment entitlements

TfNSW must pay the Developer the value of any Variation and any other amounts expressly payable by TfNSW to the Developer under this document, in accordance with the procedure in this **clause 19**.

19.2 Payment claims

- (a) The Developer must give the Independent Certifier (with a copy to TfNSW) a claim for payment on account of any Variation or other amounts expressly payable by TfNSW to the Developer under this document monthly on the day which is 2 Business Days after receipt of a progress claim by the Transit Hall Works Contractor submitted in accordance with the Transit Hall Works D&C Contract.
- (b) Each claim for payment (including the Final Payment Claim) must:
 - (i) be in the form reasonably required by TfNSW;
 - (ii) include all the evidence reasonably required by the Independent Certifier of the amount of work completed in accordance with this document and the amount payable;

- (iii) for each claim pursuant to this **clause 19.2** (a **Progress Claim**), set out the amount claimed for work completed or to be completed from the last day of the previous month to the date being the last day of the month in which the claim is submitted and how the amount has been calculated;
- (iv) add any other amounts that may be payable by TfNSW to the Developer pursuant to a provision of this document;
- (v) be accompanied by:
 - (A) a statutory declaration by the Developer, or where the Developer is a corporation, by a representative of the Developer who is in a position to know the facts attested to, in the form of **schedule 42**, made out not earlier than the date of the payment claim;
 - (B) a supporting statement in accordance with section 13(7) of the *Building and Construction Industry Security of Payment Act 1999* (NSW);
 - (C) certification by the Developer that all of the Transit Hall Works for which payment has been claimed are in accordance with all Approvals; and
 - (D) such further information and evidence in respect of the Progress Claim as is reasonably required by the Independent Certifier.
- (c) The Developer cannot include in any Progress Claim under this **clause 19.2** any amount for a Claim which is barred by any other provision of this document.

19.3 Payment statements

Following receipt of the Progress Claim submitted by the Developer in accordance with **clause 19.2**, the Independent Certifier must, within 10 Business Days, issue to the Developer and TfNSW a payment statement which, where it relates to a Progress Claim, identifies the Progress Claim to which it relates, and which sets out:

- (a) its determination of the value of the Transit Hall Works carried out in accordance with this document up to the end of the month which is the subject of the relevant Progress Claim;
- (b) the amount already paid to the Developer;
- (c) the amount (if any) which the Independent Certifier certifies to be then payable by TfNSW to the Developer on account of any Variations and other amounts expressly payable by TfNSW to the Developer under this document and which TfNSW must pay to the Developer; and
- (d) if the amount in **clause 19.3(c)** is less than the amount claimed in the Progress Claim or Final Payment Claim the reason why the amount in **clause 19.3(c)** is less than the amount claimed in the Progress Claim.

19.4 Tax Invoice

The Developer must give TfNSW a tax invoice for the amount determined by the Independent Certifier under **clause 19.3** within 2 Business Days of receipt of a certificate under **clause 19.3**.

19.5 Payment

TfNSW must pay the Developer the amount certified as being due for payment to the Developer by TfNSW in a certificate issued under **clause 19.3** by the latest of:

- (a) 15 Business Days after receipt by Independent Certifier of the claim under **clause 19.2** or **clause 19.8** (as applicable);
- (b) 5 Business Days after the issue of the certificate under **clause 19.3** or **clause 19.8(h)** (as applicable) (if any);
- (c) 2 Business Days after receipt by TfNSW of a Valid Tax Invoice under **clause 19.4**;
- (d) 2 Business Days after the receipt by TfNSW of the evidence of insurance required by **clause 21**; and
- (e) 2 Business Days after receipt by TfNSW of the information and statements referred to in **clause 19.2(b)(v)**,

but in any event within 15 Business Days of receipt by the Independent Certifier of the claim under **clause 19.2**.

19.6 Payment from Developer to TfNSW

Where a Variation Order is for an omission, deletion or decrease to the Transit Hall Works or any Variation Order results in a saving to the Developer, that saving must be set off against the amount to be paid to the Developer in the next Payment Claim.

19.7 Payment on account

A payment of moneys under **clause 19.4** is not:

- (a) an admission or evidence of the value of work or that work has been satisfactorily carried out in accordance with this document;
- (b) an admission of liability; or
- (c) approval by TfNSW of the Developer's performance or compliance with this document,

but is only to be taken as payment on account.

19.8 Final Payment Claim

- (a) No later than 60 Business Days after the issue of the Notice of Completion, the Developer must lodge with the Independent Certifier (with a copy to TfNSW) a payment claim marked "Final Payment Claim" stating the aggregate of all Variation Orders, all payments received on account of Variation Orders and the balance, if any, due to the

Developer. The Final Payment Claim must be accompanied by such information as the Independent Certifier may reasonably require.

- (b) The Final Payment Claim must identify all Claims for payment of money that the Developer wishes to make against TfNSW in respect of any fact, matter or thing arising out of, or in any way in connection with, the Transit Hall Works or this document.
- (c) The Final Payment Claim must address all facts, matters or things arising out of, or in any way in connection with, the Transit Hall Works or this document.
- (d) Without limiting **clause 19.9** if any Claim for payment of money by the Developer against TfNSW in respect of any fact, matter or thing arising out of, or in any way in connection with, the Transit Hall Works or this document:
 - (i) has been made;
 - (ii) could have been made; or
 - (iii) should have been made,which is not included in the Final Payment Claim will be deemed to have been abandoned by the Developer and is barred.
- (e) Subject to **clauses 19.8(d)** and **19.8(f)**, after lodging the Final Payment Claim the Developer is not entitled to make any further Claim for payment of money whatsoever against TfNSW, and TfNSW will not be liable upon any further Claim for payment of money by the Developer.
- (f) Notwithstanding the preceding **clause 19.8(e)**, if subsequent to the lodgement by the Developer of the Final Payment Claim, a final determination is made under **clause 29** increasing the amount payable to the Developer or otherwise entitling the Developer to the payment of money (including damages), the Developer can lodge an amended Final Payment Claim to take account of the amount of the increase or the payment to which it is entitled. The amended claim must be lodged with the Independent Certifier (with a copy to TfNSW) within 30 Business Days after the final determination is made. If it is not lodged within that time, it is barred.
- (g) The claims and notices required under this **clause 19.8** are in addition to the other notices which the Developer must give to TfNSW under this document in order to preserve its entitlements to make any such Claims.
- (h) The Independent Certifier must, within 10 Business Days of receiving the Final Payment Claim issue to the Developer and TfNSW, a payment statement (**Final Payment Certificate**) which sets out:
 - (i) its determination of the value of the Transit Hall Works carried out in accordance with this document;
 - (ii) the amount already paid to the Developer;

- (iii) the amount (if any) which the Independent Certifier certifies to be then payable by TfNSW to the Developer on account of any Variation or other amount due under this document and which TfNSW must pay to the Developer; and
- (iv) if the amount in **clause 19.8(h)(iii)** is less than the amount claimed in the Final Payment Claim the reason why the amount in **clause 19.8(h)(iii)** is less than the amount claimed in Final Payment Claim.

19.9 Release after Final Payment Claim

The Developer releases TfNSW from, and TfNSW will not be obliged to make any payment to the Developer in connection with, any Claim for payment of money in respect of any fact, matter or thing arising out of, or in any way in connection with, the Transit Hall Works or this document that occurred prior to the date of submission of the Final Payment Claim, except for any Claim for payment of money which:

- (a) has been included in the Final Payment Claim which is given to the Independent Certifier (with a copy to TfNSW) within the time required by, and in accordance with **clause 19.8**; and
- (b) has not been barred under another provision of this document.

19.10 Business Days

For the purposes of this **clause 19** only, 27, 28, 29, 30 and 31 December are not Business Days.

19.11 Interest

- (a) If any moneys due to either party remain unpaid after the date upon which, or the expiration of the period within which, they should have been paid, then interest will be payable from but excluding the date upon which, or the date at the end of the expiration of the period within which, they should have been paid to and including the date upon which the moneys are paid.
- (b) The rate of interest will be the rate from time to time prescribed for judgement debts under the NSW Supreme Court Rules. Interest will be compounded at six monthly intervals.
- (c) This will be the party's sole entitlement to interest, including damages for loss of use or the cost of borrowing money.

19.12 Correction of payment statements

The Independent Certifier may, in any payment statement:

- (a) correct any error; and
- (b) modify any assumptions or allowances made,

in any previous payment statement issued by the Independent Certifier.

19.13 Costs allowed by Developer

The Developer will be deemed to have allowed for and be responsible for the payment of:

- (a) without limiting **clause 32**, all customs duties, tariffs and similar Taxes (other than GST to the extent to which **clause 33** applies) and charges paid or payable on all items that are:
 - (i) intended to be used for, or that are to be incorporated into, the Transit Hall Works; or
 - (ii) otherwise used for the Transit Hall Works;
- (b) any long service leave levy which may be payable in respect of the Transit Hall Works;
- (c) all royalties, licence fees and similar payments for Intellectual Property in respect of:
 - (i) the items that are intended to be used for, or that are to be incorporated into, the Transit Hall Works; and
 - (ii) all Design Documents and any source code or third party software used in the performance of the Transit Hall Works; and
- (d) all fluctuations in the value of the Australian dollar against other currencies.

All of the amounts the Developer has, and is deemed to have, allowed for and is responsible to pay under this **clause 19.13** are deemed to have been allowed for by the Developer. The Developer will have no entitlement to make any Claim against TfNSW in respect of any of those amounts, whatever they may actually be.

19.14 Security of Payment Act

- (a) The Developer must:
 - (i) as soon as practicable and in any event within 24 hours give TfNSW a copy of any notice the Developer receives from the Transit Hall Works Contractor; and
 - (ii) ensure that the Transit Hall Works Contractor immediately gives TfNSW a copy of any notice that the Transit Hall Works Contractor receives from another party,

concerning any suspension of any of the Transit Hall Works under any of sections 15, 16 or 24 of the *Building and Construction Industry Security of Payment Act 1999* (NSW) (in this **clause 19.14** the **Act**).

- (b) If TfNSW becomes aware that the Transit Hall Works Contractor is entitled to suspend work (which forms part of the Site Establishment Works and the Transit Hall Works) under section 27 of the Act, TfNSW may (in its absolute discretion) pay the Transit Hall Works Contractor such money that is due and payable and not the subject of a dispute, to

the Transit Hall Works Contractor in respect of work forming part of the Transit Hall Works, and any amount paid by TfNSW is recoverable from the Developer as a debt due to TfNSW and TfNSW may have recourse to the Delivery Security in satisfaction of the debt due.

- (c) If TfNSW is served with a payment withholding request under section 26A of the Security of Payment Act by the Transit Hall Works Contractor or any other party in connection with any work carried out or material supplied by the Transit Hall Works Contractor to the Developer forming part of the work under the Transit Hall D&C Contract and TfNSW consequently retains money that is or becomes payable by TfNSW to the Developer under this document:
- (i) TfNSW is not in breach of its payment obligations under this document as a result only of the retention of such money in such circumstances;
 - (ii) the Developer waives its rights and releases TfNSW from liability in respect of Loss suffered or incurred by the Developer, and may not terminate, rescind or treat as repudiated this document arising out of or in connection with TfNSW retaining such money in such circumstances; and
 - (iii) to the extent TfNSW is required to make payment to the Transit Hall Works Contractor or any other party in connection with any work carried out or material supplied by the Transit Hall Works Contractor to the Developer forming part of the work under the Transit Hall D&C Contract, any amount paid by TfNSW is recoverable from the Developer as a debt due to TfNSW and TfNSW may have recourse to the Delivery Security in satisfaction of the debt due.
- (d) For the purposes of this **clause 19.14**:
- (i) a reference to the Transit Hall Works Contractor refers to any of the Transit Hall Works Contractor's subcontractors or any other party engaged to carry out work that forms part of the Site Establishment Works and the Transit Hall Works; and
 - (ii) a reference to 'work' means work which the Transit Hall Works Contractor is, or may be, required to do under the Transit Hall D&C Contract and includes equipment, materials, plant, design and other services and temporary works.
- (e) Without limiting TfNSW's right to itself issue a payment schedule under the Act, the Developer agrees and acknowledges that in issuing any payment schedules the Independent Certifier does so as (and is authorised by TfNSW to do so as) the agent of TfNSW.
- (f) Nothing in this document will affect, restrict or limit the Developer's right to:

- (i) refer for adjudication any dispute falling with section 17 of the Act;
or
- (ii) suspend the Transit Hall Works under section 15, 16 or 24 of the Act.

20 Completion of the Transit Hall Works

20.1 Completion

- (a) The Developer must give the Independent Certifier (with a copy to TfNSW) notice at least 2 months before it anticipates achieving Completion of the Transit Hall Works.
- (b) The Independent Certifier and the Developer must, within 20 Business Days before the date the Independent Certifier expects Completion of the Transit Hall Works to occur, jointly inspect the Transit Hall Works at a mutually convenient time. Prior to such inspection the Developer must notify TfNSW of the details of the planned inspection (including any subsequent changes to such arrangements) and must allow TfNSW to be present at the inspection.
- (c) Following the joint inspection under **clause 20.1(b)**, the Independent Certifier must issue a notice to TfNSW and the Developer containing a list of the items, if any, that it believes must be completed before Completion is achieved.
- (d) Upon the Independent Certifier issuing a notice under **clause 20.1(c)**, the Developer must continue to perform the Transit Hall Works to achieve Completion and thereafter when the Developer considers it has achieved Completion, the Developer must notify the Independent Certifier (with a copy to TfNSW) in writing by means of a Developer's Certificate of Completion in accordance with **schedule 2**. Thereafter, the Independent Certifier and the Developer must jointly inspect the Transit Hall Works at a mutually convenient time.
- (e) Prior to an inspection under **clause 20.1(d)**, the Developer must notify TfNSW of the details of the planned inspection (including any subsequent changes to such arrangements) and must allow TfNSW to be present at the inspection. Following the joint inspection under **clause 20.1(d)**, the Independent Certifier must within 5 Business Days of receipt of a notice under **clause 20.1(d)**, or of receipt of a notice under **clause 20.1(e)(ii)(A)** or **20.1(e)(ii)(B)**, issue a notice to TfNSW and the Developer stating whether:
 - (i) if it is satisfied that Completion has been achieved, stating the date on which the Independent Certifier determines Completion was achieved (including the value of any Defects existing at Completion to the extent this amount is reasonably ascertainable); or
 - (ii) if it is not satisfied that Completion has been achieved:

- (A) containing a list of the items which it believes must be completed before Completion is achieved; or
- (B) stating that it believes the Developer is so far from achieving Completion that it is not practicable to issue a list as contemplated by **clause 20.1(e)(ii)(A)**.

If the Independent Certifier issues a notice under **clause 20.1(e)(ii)(A)** or **clause 20.1(e)(ii)(B)**, the Developer must continue to proceed to Completion and thereafter when it considers it has achieved Completion of the Transit Hall Works the Developer must notify the Independent Certifier (with a copy to TfNSW) in writing after which the second and third sentence of **clause 20.1(d)** and **clause 20.1(e)** will reapply.

20.2 Unilateral Issue of Notice of Completion

If at any time a notice required to be given by the Developer to the Independent Certifier under either of **clauses 20.1(a)** or **20.1(d)** is not given by the Developer yet the Independent Certifier is of the opinion that Completion of the Transit Hall Works has been achieved, the Independent Certifier may issue a Notice of Completion under **clause 20.1(e)(i)** for the Transit Hall Works.

20.3 Liquidated damages for delay in reaching Completion

- (a) Subject to **clause 18.11**, if Completion of the Transit Hall Works has not occurred by the Date for Completion, the Developer must pay TfNSW liquidated damages at the rates stated in **schedule 43** for every day after the Date for Completion up to and including:
 - (i) the Date of Completion; or
 - (ii) the date that this document is terminated,whichever is first.
- (b) The liquidated damages provided for by **clause 20.3(a)** represent a genuine pre-estimate of TfNSW's loss arising from the failure of the Developer to achieve Completion of the Transit Hall Works by the Date for Completion.
- (c) If after the Developer has paid or TfNSW has deducted liquidated damages, the Date for Completion is extended, TfNSW must repay to the Developer any liquidated damages paid or deducted in respect of the period up to and including the new Date for Completion. The amount payable by the Developer to TfNSW under **clause 20.3(a)** will be a debt due from the Developer to TfNSW.
- (d) If **clause 20.3(a)** is found for any reason to be void, invalid or otherwise inoperative, so as to disentitle TfNSW from recovering liquidated damages for the Developer's failure to achieve Completion by the Date for Completion, TfNSW is entitled to recover damages from the Developer for such failure under general law, which damages will not be limited to the liquidated damages that TfNSW would otherwise have been entitled to recover from the Developer.

20.4 Final Completion

- (a) The Developer must give the Independent Certifier (with a copy to TfNSW) written notice at least one month before it anticipates completing all the work to be completed prior to achieving Final Completion.
- (b) The Independent Certifier and the Developer must, within 20 Business Days before the date the Independent Certifier expects Final Completion to occur, but no earlier than 20 Business Days before the end of the Defects Rectification Period, jointly inspect the Transit Hall Works at a mutually convenient time. Prior to inspection the Developer must notify TfNSW of the details of the planned inspection (including any subsequent changes to such arrangements) and must allow TfNSW to be present at the inspection.
- (c) Following the joint inspection under **clause 20.4(b)**, the Independent Certifier must issue a notice to TfNSW and the Developer containing a list of the items, if any, that it believes must be completed before Final Completion is achieved.
- (d) Upon the Independent Certifier issuing a notice under **clause 20.4(c)**, the Developer must continue to bring the Transit Hall Works to Final Completion and thereafter when the Developer considers it has achieved Final Completion, the Developer must notify the Independent Certifier (with a copy to TfNSW) in writing by means of a Developer's Certificate of Final Completion in accordance with **schedule 44** and a Transit Hall Works Contractor's Certificate of Final Completion. Thereafter, the Independent Certifier and the Developer must jointly inspect the Transit Hall Works at a mutually convenient time.
- (e) Prior to such inspection the Developer must notify TfNSW of the details of the planned inspection (including any subsequent changes to such arrangements) and must allow TfNSW to be present at the inspection. Following the joint inspection under **clause 20.4(d)**, the Independent Certifier must within 5 Business Days of receipt of a notice under **clause 20.4(d)**, or of receipt of a notice under **clause 20.4(f)**, issue a notice to TfNSW and the Developer stating whether:
 - (i) if it is satisfied that Final Completion has been achieved, stating the date on which the Independent Certifier determines Final Completion was achieved; or
 - (ii) if it is not satisfied that Final Completion has been achieved:
 - (A) a list of the items which it believes must be completed before Final Completion is achieved; or
 - (B) stating that it believes the Developer is so far from achieving Final Completion that it is not practicable to issue a list as contemplated by **clause 20.4(e)(ii)(A)**.
- (f) If the Independent Certifier issues a notice under **clause 20.4(e)(ii)(A)** or **clause 20.4(e)(ii)(B)**, the Developer must continue to proceed to bring

the Transit Hall Works to Final Completion and thereafter when it considers it has achieved Final Completion of the Transit Hall Works the Developer must notify the Independent Certifier (with a copy to TfNSW) in writing after which the second and third sentence of **clause 20.4(d)**, **clause 20.4(e)** and this **clause 20.4(f)** will reapply.

20.5 Completion and Final Completion binding

The parties agree that the Independent Certifier's certification under **clauses 20.1** and **20.2**, with respect to Completion, and **clause 20.4** with respect to Final Completion is final and binding on the parties. No other determination of the Independent Certifier will be final and binding on the parties and the parties may, if they dispute the Independent Certifier's determination, invoke the dispute resolution provisions contained in the Independent Certifier Deed.

20.6 Operation of Building Management Statement

RailCorp, the Retail Lot Purchaser and the Office Lot Purchaser agree that if the Transit Hall Works Contractor achieves practical completion of the Transit Hall Works for the purposes of the Transit Hall D&C Contract prior to the Date of Completion, then the parties will, provided that the Building Management Statement has been developed and finalised as contemplated by **clauses 22.4** and **22.5**, comply with the terms of the Building Management Statement notwithstanding that the Building Management Statement may not have been executed by the parties to it and may not have been registered at the LPI.

21 Risk of Site Establishment Works and Transit Hall Works, Insurance and Indemnities

21.1 Care of the Transit Hall Works and Site Establishment Works

The Developer:

- (a) from and including the earlier of the date of commencement of the Transit Hall Works and Site Establishment Works and the date on which the Developer is given access to the Construction Site, until 4:00pm on the Date of Completion will:
 - (i) be responsible for the care of and will bear the risk of any loss of, or damage to, the Transit Hall Works and Site Establishment Works, including:
 - (A) Construction Plant;
 - (B) unfixed plant and materials (whether on or off the Construction Site) the value of which has been included in a payment statement under **clause 19.3**; and
 - (C) things entrusted to the Developer by TfNSW or brought onto the Construction Site by the Transit Hall Works Contractor or its subcontractors for the purpose of carrying out the Transit Hall Works and Site Establishment Works; and

- (ii) provide the storage and protection necessary to preserve these things; and
- (b) after the time when the Developer ceases to be responsible under paragraph (a) for the care of the Transit Hall Works and Site Establishment Works or any other thing referred to in subparagraph (a)(i), will bear the risk of any loss of or damage to that part of the Transit Hall Works and Site Establishment Works or other thing, arising from:
 - (i) any act or omission of the Developer during the Defects Rectification Period (including any extension under **clause 16.5**) or any other ongoing Transit Hall Works and Site Establishment Works; or
 - (ii) any event which occurred while the Developer was responsible for the care of the relevant part of the Transit Hall Works and Site Establishment Works or other thing under paragraph (a) in connection with the Transit Hall Works and Site Establishment Works.

21.2 Indemnity

- (a) The Developer must indemnify TfNSW and each and every Rail Entity against any Loss, including financial loss and legal costs and expenses on an indemnity basis, suffered or incurred by them arising out of or in connection with breach of this document by the Developer or a negligent act or omission of the Developer and its Associates, including Loss in respect of:
 - (i) any loss of or damage to property of TfNSW, RailCorp and any Rail Entity;
 - (ii) any liability to or claims by a third party in respect of loss of or damage to property, the loss of use of or access to property, or injury to or death of persons; and
 - (iii) without limiting or otherwise affecting **clause 21.2(a)(i)**, any loss or damage to existing property in or upon which the Transit Hall Works are being carried out,

but the Developer's responsibility to indemnify TfNSW and each and every Rail Entity will be reduced proportionally to the extent that a breach or negligent act or omission by TfNSW, RailCorp or any Rail Entity or an Excepted Risk caused the Loss, damage, injury or death.
- (b) The Developer must indemnify TfNSW and each and every Rail Entity against any Loss, including financial loss and legal costs and expenses on an indemnity basis, suffered or incurred by them arising out of or in connection with the Development Works in respect of any liability to or claims by a third party (including a tenant or licensee of any Rail Entity) for loss of or damage to property or the loss of use of or access to property or any other claim arising under a lease or easement.

The Developer's responsibility to indemnify TfNSW and each and every Rail Entity will be reduced proportionally to the extent:

- (i) that a breach or negligent act or omission by TfNSW, RailCorp or any Rail Entity caused the Loss, injury or death; or
- (ii) TfNSW fails to:
 - (A) disclose a tenancy or a licence with RailCorp;
 - (B) provide information in respect of tenancies and licences with RailCorp; or
 - (C) the information provided is inaccurate, incomplete or misleading in any way.
- (c) The indemnity in this **clause 21.2** will not exclude any other right of any Rail Entity to be indemnified by the Developer. The Developer releases TfNSW, RailCorp and any other Rail Entity from any liability or obligation to the Developer, or any person claiming through on or behalf of the Developer, in respect of:
 - (i) physical loss of, or damage to, any real or personal property;
 - (ii) personal injury, disease or illness to, or death of, persons; or
 - (iii) financial loss or expense,

arising out of the performance of the Development Works and the Developer's other obligations under this document except to the extent that a breach or negligent act or omission by any Rail Entity caused the claim, loss, damage, expense, liability, fine or penalty, injury or death.

21.3 Rectification of loss or damage

- (a) During the period during which the Developer bears the risk of loss or damage, and while the Developer is responsible for the Development Works, if loss or damage occurs to anything for which the Developer is responsible under **clause 21.1**, the Developer must:
 - (i) promptly notify TfNSW of the loss or damage including details of the nature and extent of such loss or damage;
 - (ii) subject to paragraph (b), promptly replace or otherwise make good the loss or repair the damage; and
 - (iii) where the loss or damage arises from an Excepted Risk or a negligent act or omission of a Rail Entity, without fault or omission on the part of the Developer, only comply with paragraph (a) to the extent directed by TfNSW.
- (b) The Developer will bear the cost of replacement, making good or repair except to the extent that the loss or damage arises from an Excepted Risk or a negligent act or omission of a Rail Entity, in which event this replacement, making good or repair will, to the extent the loss or damage arises from an Excepted Risk or a negligent act or omission of a Rail

Entity, be treated as if it were a Variation the subject of a direction by TfNSW.

21.4 Developer's insurance obligations

- (a) The effecting of insurance will not limit the liabilities or obligations of the Developer under any other provisions of this document.
- (b) The Developer must, before the Developer commences any Site Establishment Works or Transit Hall Works or as otherwise required by this document and by the relevant dates specified in this document,
 - (i) have in place, or procure that the Transit Hall Works Contractor or any other subcontractor has in place the following insurances with Reputable Insurers and on terms reasonably satisfactory to TfNSW:
 - (A) contract works insurance for the full build value of the Site Establishment Works and before the Developer commences the Transit Hall Works, contract works insurance for the full costs of reinstatement of the Transit Hall Works;
 - (B) third party liability insurance in the sum of \$100,000,000 for any one occurrence in respect of public liability and in the aggregate in respect of all product liability occurrences and unlimited in the aggregate as to the number of occurrences for any one period of insurance;
 - (C) workers' compensation insurance, employer's indemnity insurance or similar insurance, in accordance with Law;
 - (D) an insurance policy covering loss or damage to the Construction Plant not less than current market value for any one item and not less than \$10,000,000 for any one occurrence, any one location;
 - (E) if the Site Establishment Works or the Transit Hall Works include any work involving asbestos or asbestos decontamination, including stripping, encapsulation or removal, asbestos liability insurance for \$10,000,000 which is to be effected and maintained by the subcontractor which is engaged in this work;
 - (F) professional indemnity insurance:
 - (1) which separately covers any legal liability arising out of breach of professional duty (whether owed in contract or otherwise) by the Developer and the Transit Hall Works Contractor in carrying out the Site Establishment Works and the Transit Hall Works;
 - (2) which separately covers the Developer and the Transit Hall Works Contractor for liability to any Rail Entity for a minimum of \$20,000,000 per claim and in aggregate

- for all claims for loss (excluding economic loss or other loss) in a single claim arising from errors or omissions in:
- a. the Design Documents; or
 - b. other professional services, carried out by the Developer; and
- (3) includes at least one automatic reinstatement of the total limit of liability per annum after claims have been paid;
- (G) motor vehicle insurance covering all mechanically propelled vehicles used in connection with the Site Establishment Works and the Transit Hall Works, whether registered or capable of being registered, extended specifically to cover the transportation of items and substances, and including:
- (1) insurance against personal injury or death, as required under all applicable Laws; and
 - (2) in addition to the public liability insurance required under this document, insurance for third party property damage and personal injury or death;
- (H) any insurance that the Developer is required to obtain by virtue of any Law; or
- (ii) ensure the contract works insurance, legal liability insurance, Construction Plant insurance (except for compulsory third party insurance for bodily injury as required by Law, motor vehicle insurance and asbestos liability insurance):
- (A) except in the case of Construction Plant insurance, cover TfNSW, RailCorp, the Developer and the Transit Hall Works Contractor and any subcontractor, for their respective rights and interests, and their liabilities to third parties and liability to each other;
 - (B) cover loss or damage to property and the death of or injury to any person (other than liability which the law requires to be covered under a workers compensation insurance or similar insurance policy), arising out of, or in any way in connection with, the Site Establishment Works and the Transit Hall Works; and
 - (C) includes a cross-liability clause in accordance with **clause 21.9**;
- (iii) procure that its subcontractors have such insurance consistent with the requirements of this **clause 21.4**, to the extent relevant and for amounts to be agreed;

- (iv) subject to **clause 21.4(b)(ii)**, ensure the asbestos liability insurance is in place before any work involving asbestos or asbestos decontamination work commences;
- (v) ensure that the contract works insurance sublimits for expected additional costs following an insurable event are sufficient;
- (vi) ensure that the Transit Hall Works Contractor and its relevant subcontractors effect and maintain appropriate professional indemnity insurance;
- (vii) in relation to the workers compensation insurance or similar insurance:
 - (A) ensure that the Transit Hall Works Contractor has worker's compensation insurance or similar insurance covering its employees and procure that its subcontractors have such workers compensation insurance or similar insurance covering the subcontractor's employees; and
 - (B) ensure it insures against liability for death of or injury to persons employed by the Developer or the Transit Hall Works Contractor as required by any Law;
- (viii) subject to any undertakings of confidentiality to insurers (and only to the extent of the undertakings), in respect of any insurance policy required to be effected under this **clause 21.4**, provide TfNSW with:
 - (A) in respect of the Developer's insurance obligations in **clauses 21.4(b)(i)(A)** and **21.4(b)(i)(B)**, a certified copy of the insurance policy and other evidence reasonably satisfactory to TfNSW that the policy is current and in compliance with the Developer's obligation to insure; and
 - (B) in respect of the Developer's insurance obligations in **clauses 21.4(b)(i)(C)** and **21.4(b)(i)(F)**, a certified copy of the insurance policy other than any professional indemnity policy or workers compensation policy and other evidence reasonably satisfactory to TfNSW that the policy is current and in compliance with the Developer's obligation to insure including a photocopy of the insurer's Certificate of Currency or a licence as a self-insurer or other proof of being a self-insurer under the *Workers Compensation Act 1987* (NSW); and
 - (C) in respect of the Developer's insurance obligations contained in **clauses 21.4(b)(i)(D)**, **21.4(b)(i)(E)**, **21.4(b)(i)(G)** and **21.4(b)(i)(H)** an opportunity to view the original of the certificate of currency and any other evidence which may be reasonably necessary to satisfy TfNSW that the policy is

current and complies with the requirements of this document;

- (ix) inform TfNSW whenever:
 - (A) the Developer receives a notice under or in connection with the insurance policy, including any notice of cancellation; and
 - (B) the Developer gives to any insurer a notice under or in connection with the policy which relates to any material occurrence covered by any policy;

and provide TfNSW with a copy of all such notices.

- (x) ensure that the Developer:
 - (A) does not do anything which prejudices any insurance;
 - (B) where required, rectifies anything which might prejudice any insurance;
 - (C) reinstates an insurance policy if it lapses;
 - (D) except where the insurance policy has been replaced by a policy that the Developer has confirmed to TfNSW, complies with the requirements of this document, does not cancel or allow an insurance policy to lapse without the prior written consent of TfNSW;
 - (E) except where the insurance policy has been replaced by a policy that the Developer has confirmed to TfNSW complies with the requirements of this document, immediately notifies TfNSW of any event that may result in an insurance policy lapsing or being cancelled, and replaces that insurance policy prior to it lapsing or being cancelled;
 - (F) gives full, true and particular information to the insurer of all matters and things the non-disclosure of which might in any way prejudice or affect any such policy or the payment of all or any benefits under the insurance;
 - (G) promptly pays all premiums; promptly pay any applicable deductibles;
 - (H) complies at all times with the terms of each of the insurances; and
 - (I) does everything reasonably necessary to enable TfNSW to claim, and to collect or recover, money due in connection with any insurance policy.

21.5 Failure to insure

- (a) If the Developer fails to:

- (i) provide copies of any certificate of currency as required by **clause 21.4(b)(viii)** together with evidence reasonably satisfactory to TfNSW that the policy is current; or
- (ii) effect or procure to be effected insurance which is with insurers and on terms reasonably satisfactory to TfNSW,

as required by **clause 21.4**, TfNSW may, at its sole discretion and without prejudice to any other rights that it may have, take out that insurance and the cost will be a debt due from the Developer to TfNSW.

- (b) The Developer is not entitled to make a claim for payment under **clause 19.2** until the Developer produces evidence of compliance with insurance obligations under **clause 21.4(b)(viii)** to the satisfaction of TfNSW. The rights given by **clause 21.5** are in addition to any other right.

21.6 Period of insurance

The insurance the parties are required to have in place under this **clause 21** must be maintained:

- (a) in the case of the works insurance and legal liability insurance policies so as to provide cover until the Date of Final Completion provided that during the Defects Rectification Period only damages caused by an insured in complying with its obligations to rectify Defects or where damage occurs during the Defects Rectification Period will be covered;
- (b) in the case of the Construction Plant insurance, until the Developer ceases to bear the risk of loss of or damage to anything under **clause 21.1**, and at least until the Date of Final Completion;
- (c) in the case of workers compensation insurance and motor vehicle insurances, until the Date of Final Completion;
- (d) in the case of professional indemnity insurance, before commencing work covered by the policy until at least 6 years after the Date of Final Completion;
- (e) in the case of asbestos liability insurance for so long as there is a risk that an event covered by the insurance may occur in relation to the Site Establishment Works and the Transit Hall Works; and
- (f) in the case of insurance required under **clause 21.4(b)(i)(H)**, during the period required by any Law.

21.7 Notice of potential claim

- (a) The Developer must:
 - (i) as soon as possible after becoming aware inform TfNSW of any material occurrence that may give rise to a claim under an insurance policy required by this document in connection with the Transit Hall Works and the Site Establishment Works (except for workers compensation insurance and professional indemnity insurance); and

- (ii) keep TfNSW informed of subsequent developments concerning the claim.
- (b) Where TfNSW has effected a policy of insurance, TfNSW will similarly inform the Developer.
- (c) Without limiting **clause 35.12**, this **clause 21.7** does not require the Developer to disclose any information it is prevented from disclosing under Privacy Law or where that information is in the form of internal or external legal advice which needs to remain privileged.

21.8 Procedure upon loss or damage

If loss of or damage to any part of the Site Establishment Works and the Transit Hall Works occurs whilst the Developer bears the risk of loss of or damage to, the Site Establishment Works and the Transit Hall Works under **clause 21.1**:

- (a) the Developer must:
 - (i) make the Site Establishment Works and the Transit Hall Works, the Construction Site and all other things safe and secure;
 - (ii) notify the relevant insurers and TfNSW in the case of insurance effected under **clause 21.4**; and
 - (iii) promptly consult with TfNSW about the steps to be taken to:
 - (A) comply with its obligations under **clause 21**; and
 - (B) ensure that, to the greatest extent possible, the Developer continues to comply with its other obligations under this document; and
- (b) upon settlement of a claim made under the contract works insurance policy maintained by the Transit Hall Works Contractor relating to this loss or damage, the money received from this insurance, excluding any reasonable and proper amount provided for TfNSW's losses and costs (properly incurred) must:
 - (i) be paid to the Developer in accordance with the procedure in this **clause 21.8**, as and when the Developer reinstates the loss or repairs the damage;
 - (ii) be the limit of the Developer's entitlement to payment for reinstatement of such loss or damage; and
 - (iii) if the Developer has not completed reinstatement of the loss or repair of the damage, if requested by either party, be paid into a bank agreed upon by the parties in an account in the joint names of the Developer and TfNSW, and as the Developer proceeds to reinstate the loss or damage, the Independent Certifier must certify payments from the joint account for the cost of reinstatement and repair.

- (c) Without limiting **clause 35.12**, this **clause 21.8** does not require the Developer to disclose any information it is prevented from disclosing under Privacy Law or where that information is in the form of internal or external legal advice which needs to remain privileged.

21.9 Cross liability and waiver of subrogation

Where this document requires insurance to be effected in joint names, the party effecting the insurance must use its reasonable endeavours to ensure that the insurance policy provides that:

- (a) insofar as the policy may cover more than one insured, all insuring documents and endorsements (with the exception of limits of liability) will operate in the same manner as if there were a separate policy of insurance covering each named insured;
- (b) the insurer waives all rights, remedies or relief to which it might become entitled by subrogation against any of the parties covered as an insured;
- (c) failure by any insured to observe and fulfil the terms of the policy will not prejudice the insurance in regard to any other insured;
- (d) any non-disclosure by one insured does not prejudice the right of any other insured to claim on the policy; and
- (e) a notice to the insurer by one insured will be deemed to be notice by all insured parties.

21.10 Occupation before Completion

- (a) If TfNSW or any other person enters into occupation of the Transit Hall Lot and uses the same before Completion then any injury or death of persons and damage to property arising out of or as an incident of carrying out of the remainder of the Transit Hall Works will be at the sole risk of TfNSW except to the extent that such injuries, death or damage was caused by or contributed to by the Developer.
- (b) The insurance required under **clause 21.4** must cover the risks involved with any injury to or death of persons and damage to property arising out of or as an incident of carrying out of the remainder of the Transit Hall Works.

21.11 Loss or damage to third party property

- (a) Without limiting **clauses 21.1** and **21.2**, where any loss of or damage to real or personal property (other than the Site Establishment Works and the Transit Hall Works or Construction Plant) occurs arising out of, or in any way in connection with, the carrying out by the Developer of the Transit Hall Works or a failure by the Developer to comply with its obligations under this document, the Developer must, at its cost, promptly repair any such loss or damage.
- (b) If the Developer fails to carry out any repair work under **clause 21.11(a)**, TfNSW may carry out such work and any Loss so suffered or incurred by TfNSW will be a debt due and payable from the Developer to TfNSW.

21.12 Excluded Loss

- (a) Subject to **clauses 21.12(c)** and **21.12(d)**, but otherwise despite any other provision of this document, the Developer has no liability to TfNSW, RailCorp or any Rail Entity (whether in contract, tort or otherwise), nor will TfNSW, RailCorp or any Rail Entity be entitled to make any Claim against the Developer, in respect of any Excluded Loss incurred or sustained by TfNSW, RailCorp or any Rail Entity as a result of any act or omission of the Developer (whether negligent or otherwise).
- (b) Despite any other provision of this document, TfNSW and RailCorp have no liability to the Developer, the Lessee or the Purchaser (whether in contract, tort or otherwise), nor will the Developer, the Lessee or the Purchaser be entitled to make any Claim against TfNSW or RailCorp, in respect of Excluded Loss incurred or sustained by the Developer, the Lessee or the Purchaser as a result of any act or omission of TfNSW or RailCorp (whether negligent or otherwise).
- (c) **Clause 21.12(a)** does not operate to limit or restrict the Developer's liability to TfNSW, RailCorp or any Rail Entity:
 - (i) to the extent that the Developer has:
 - (A) recovered from a third party (including any subcontractor and whether by way of indemnity or otherwise); or
 - (B) would have recovered from a third party, had it diligently pursued a claim against the third party;an amount in respect of that liability; and
 - (ii) to the extent that any payment is owed to TfNSW, RailCorp or any Rail Entity by the Developer under the Transaction Documents (including liquidated damages);
 - (iii) to the extent that the Developer:
 - (A) is indemnified in respect of that liability by a policy of insurance required under this document; or
 - (B) would have been indemnified in respect of that liability by a policy of insurance required under this document if the Developer had:
 - (1) diligently pursued a claim under that policy of insurance;
 - (2) complied with the terms and conditions of that policy of insurance; or
 - (3) complied with its insurance obligations under this document;
 - (iv) for loss in respect of any liability of TfNSW, RailCorp or any Rail Entity to a third party (including to another Rail Entity), except to the extent that such liability arises in contract;

- (v) for loss arising from any criminal acts or fraud on the part of the Developer or its Associates;
 - (vi) for loss arising from wilful misconduct on the part of the Developer or its Associates; or
 - (vii) to the extent to which, by law, the parties cannot limit or contract out of.
- (d) **Clause 21.2(b)** does not operate to limit or restrict TfNSW, RailCorp or any Rail Entity's liability to the Developer:
- (i) for loss arising from any criminal acts or fraud on the part of a Rail Entity or its Associates as applicable;
 - (ii) for loss arising from wilful misconduct on the part of a Rail Entity or its Associates as applicable;
 - (iii) to pay any amount that is expressly payable under this document; or
 - (iv) to the extent to which, by law, the parties cannot limit or contract out of such liability;
- in respect of which TfNSW, RailCorp or any Rail Entity retains the risk.

21.13 Insurance Proceeds Account

- (a) This **clause 21.13** applies to all amounts received under **clause 21.4(b)(i)(A)**.
- (b) The Developer must:
 - (i) establish an account to be known as the Insurance Proceeds Account;
 - (ii) maintain that account in the name of the Developer and TfNSW with a financial institution nominated by the Developer and approved by TfNSW (such approval not to be unreasonably withheld); and
 - (iii) give details of that account to TfNSW.
- (c) If the Developer has not already carried out any required repair or reinstatement works then, all insurance proceeds must be deposited into the Insurance Proceeds Account otherwise the insurance proceeds will be paid to the Developer in consideration of the repair or reinstatement works already performed.
- (d) Subject to **clause 21.13(e)**, if any moneys are deposited in the Insurance Proceeds Account they may only be applied towards the cost of repair or reinstatement.
- (e) The Developer must give TfNSW records of expenditure from the Insurance Proceeds Account within 30 business days of expenditure.

22 Subdivision and Section 88B Instrument

22.1 Subdivision Plan

- (a) The Developer must as soon as practicable after completion of the structural envelope of the Transit Hall Works, but, in any event, not later than 6 months prior to the Date for Completion:
 - (i) procure a survey of the land the subject of the Subdivision Plan including the Transit Hall Site for the purpose of finalising the Subdivision Plan; and
 - (ii) provide a copy of that survey to TfNSW.
- (b) Subject to paragraph (c), generally, the Developer must ensure that the following survey principles are applied by the surveyor when preparing the survey referred to in **clause 22.1(a)**:
 - (i) horizontal - the lot starts from the centre of the structural slab and includes the ceiling/roof structure up to the lot above;
 - (ii) vertical - the lot extends to the outside structural surface. The cladding (paint, stone, plasterboard) is part of the adjoining/surrounding lot. If there is a vertical rise that is not shared, it will be included in the relevant lot;
 - (iii) for common walls of two internal lots - generally “ad medium filum”.
- (c) The parties agree that the Subdivision Plan will exclude the:
 - (i) awnings;
 - (ii) lift sumps;
 - (iii) structural columns which are external to the building; and
 - (iv) columns which adjoin another lot in the Subdivision Plan,from the Transit Hall Lot and to this extent the survey principles in paragraph (b) do not apply.
- (d) The Developer agrees that any Shared Services (as defined in the Building Management Statement) to be installed within the Transit Hall Lot will be installed above the surface of the ceiling of the Transit Hall Lot and the structural slab unless TfNSW provides its prior written consent.

22.2 Title Document Development

- (a) The Developer must, at its own cost, as soon as practicable after the survey referred to in **clause 22.1(a)** has been carried out, prepare the following documents:
 - (i) the Subdivision Plan; and
 - (ii) the Section 88B Instrument,and provide a copy of those documents to TfNSW for approval identifying all changes to the Subdivision Plan and the Section 88B

Instrument which relate to the Transit Hall Lot or any Services to and from the Transit Hall Lot or any other change which has a detrimental impact on or effect to the Transit Hall Lot (such approval not to be unreasonably withheld or delayed).

- (b) TfNSW must provide its approval or refusal to the documents referred to in **clause 22.2(a)** within 20 Business Days of receipt of those documents from the Developer.
- (c) Subject to the other provisions of this **clause 22**, TfNSW must approve any variation or addition to or exclusion from the Subdivision Plan and the Section 88B Instrument which relate to the Transit Hall Lot or any Services to, from and within the Transit Hall Lot or any other change which has a detrimental impact on or effect to the Transit Hall Lot provided that:
 - (i) any lots shown in the Subdivision Plan generally correspond with the boundaries identified in the Subdivision Plan and any amendments agreed between TfNSW and the Developer to the Subdivision Plan; and
 - (ii) the Subdivision Plan and the Section 88B Instrument comply with the requirements of all relevant Authorities.

TfNSW acknowledges that additional easements and encumbrances may be required by an Approval or to enable the proper construction of the Development in accordance with this document.

- (d) The parties agree that if TfNSW has consented to the installation of a permanent rock anchor in land owned by it as part of the construction process contemplated by this document, the terms of the easement for rock anchors will be as set out in the Section 88B Instrument.
- (e) TfNSW may object to any difference between the Subdivision Plan and the Section 88B Instrument and those contained in **schedule 22** and **schedule 25** respectively if the difference would have an adverse effect:
 - (i) on the use or enjoyment of the Transit Hall Lot by RailCorp or any other Rail Entity or the public, or on the financial obligations of RailCorp or any other Rail Entity under the Section 88B Instrument and Building Management Statement unless RailCorp or TfNSW has accepted the change to the financial obligations as contemplated by this document; or
 - (ii) on the risk allocation as between RailCorp and other owners represented in the Section 88B Instrument and Building Management Statement; or
 - (iii) if the Transit Hall Lot is burdened in any way other than as disclosed in the documents contained in **schedule 22** and **schedule 23**.

- (f) TfNSW may request amendments, requiring conformity to the Approval granted in connection with the Subdivision Application to the Subdivision Plan and the Section 88B Instrument within 10 Business Days after receipt of those documents under **clause 22.1(d)** in order to rectify any issues referred to in **clauses 22.2(c)** and **22.2(e)**.
- (g) The Developer must, at its own cost, lodge another development application if required, for the Subdivision Plan and the Section 88B Instrument amended in accordance with this clause, to the relevant Authority for approval.
- (h) The Developer must, at its cost, lodge the Subdivision Plan and the Section 88B Instrument following their amendment in accordance with this clause, with the LPI for pre-examination and TfNSW and RailCorp must sign all required documents and, subject to approval under this clause, produce all certificates of title for land owned by either of them required for the registration of the Subdivision Plan.
- (i) Subject to **clauses 22.2(d)** and **22.2(f)**, TfNSW and the Developer must accept any changes to the Subdivision Plan and the Section 88B Instrument required as a condition of registration by the LPI and such amendments will be made at the Developer's cost, if TfNSW can object to the Subdivision Plan and the Section 88B Instrument for the reasons set out in **clauses 22.2(d)** and **22.2(f)**.
- (j) The Developer must procure that if any additional land not owned by RailCorp is included in the Subdivision Plan after the date of this document the Developer must:
 - (i) if the Powers of Attorney are either not from the registered proprietor of the additional land or the additional land is not covered by the Powers of Attorney then the Developer must procure that a further power of attorney in substantially the same form as the Powers of Attorney is provided to TfNSW; and
 - (ii) register at the LPI a public positive covenant on the title to the additional land on the same terms as the Public Positive Covenant.

22.3 Execution and Registration

- (a) As soon as practicable, or if required, following the provision of consent to the Subdivision Plan and the Section 88B Instrument the Developer must request all relevant parties to execute or provide written consent to (as applicable) the Subdivision Plan and the Section 88B Instrument.
- (b) Within 5 Business Days of receipt of the Subdivision Plan and the Section 88B Instrument duly executed, the Developer must lodge those documents with the LPI for registration and the Developer must pay all fees relating to such registration.
- (c) RailCorp and the Lessee must promptly produce all necessary title documents where it is the landowner at the LPI to enable the Subdivision Plan and the Section 88B Instrument to be registered.

- (d) RailCorp, the Lessee and the Developer must sign all such documents and do all such things as may be reasonably necessary, and co-operate, to ensure that the Subdivision Plan and the Section 88B Instrument are registered as expeditiously as possible. The Lessee must procure all consents of any party with an interest in the land the subject of the Subdivision Plan owned by the Lessee including any mortgagee and lessee.
- (e) The Developer and TfNSW must keep each other fully apprised of the progress of approval and registration of the Subdivision Plan and the Section 88B Instrument.
- (f) The Developer must advise TfNSW when the Subdivision Plan and the Section 88B Instrument have been registered and provide TfNSW with a copy of the registered Subdivision Plan and Section 88B Instrument.
- (g) If as a result of the registration of the Subdivision Plan a dual entitlement title issues in respect of the Transit Hall Lot, the Lessee, any lodging party of the Lessee and any mortgagee of the Lessee must immediately after registration of the Subdivision Plan give to RailCorp a written authority addressed to the LPI authorising and directing delivery to RailCorp of the certificate of title for the Transit Hall Lot together with a transfer in registrable form for no consideration.

22.4 Building Management Statement

- (a) The Building Management Statement represents the principles agreed between TfNSW, RailCorp and the Developer in relation to the operation, repair and maintenance of the Transit Hall Lot after registration of the Building Management Statement at the LPI.
- (b) The parties acknowledge that there are some amendments, details and schedules which either are not known or cannot at this time be completed or compiled but will be incorporated into the Building Management Statement.
- (c) The Building Management Statement will be prepared for registration with the Subdivision Plan by the Developer but with changes to reflect the further details and schedules referred to in **clause 22.4(b)** including:
 - (i) the grant of Approvals for any Pending Planning Applications or Modification Applications required for the Development Works;
 - (ii) any Variation instructed by TfNSW under this document including completion of any schedule whereby TfNSW agree to pay certain costs as a result of a Variation directed by TfNSW;
 - (iii) agreement regarding the identification of any further Shared Facilities if agreed by TfNSW and RailCorp, noting that there is no allocation of costs for the use of those further Shared Facilities to RailCorp;
 - (iv) preparation of the Loading Dock Management Plan;

- (v) requisitions of the LPI which must be complied with to ensure that the Building Management Statement satisfies the requirements of the *Conveyancing Act 1919 (NSW)*;
- (vi) any change in Law;
- (vii) development of the schedules to the Building Management Statement as contemplated by this document;
- (viii) changes to the Subdivision Plan in accordance with this document (including the disclosure in **clause 22.5** below);
- (ix) expansion of the schedules to the Building Management Statement;
- (x) the specified percentages in **clause 13.17** in respect of insurance; and
- (xi) the determination of voting rights of members clause 37.2,

at any time prior to registration at LPI and that the consent of TfNSW is required in relation to amendments which relate to the Transit Hall Lot or which impact on the owner of the Transit Hall Lot, or the obligations of the Retail Lot Purchaser and Office Lot Purchaser with respect to the Transit Hall Lot. The consent of TfNSW in respect of amendments which relate to the Transit Hall Lot under **clauses 22.4(c)(i), 22.4(c)(ii), 22.4(c)(iv) and 22.4(c)(v)** must not to be unreasonably withheld. All other changes are at the absolute discretion of TfNSW.

- (d) If the Developer amends the Building Management Statement in a manner which does not fall within **clauses 22.4(c)** and **22.5**, the Developer is only required to provide a copy of the Building Management Statement marked to show changes from the version previously provided to TfNSW together with a written explanation as to why the amendments do not fall within **clauses 22.4(c)** and **22.5**.

22.5 Council

- (a) The Developer discloses and TfNSW agrees that the Subdivision Plan has been prepared on the basis that the Council will transfer to the Developer (or its nominee) the land within the Subdivision Plan to which it is the current registered proprietor ("**Council Stratum**") other than land which will be dedicated as public road.
- (b) If Council does not agree to transfer the Council Stratum to the Developer and instead agrees to grant to the Developer (or its nominee) a long term lease of the Council Stratum, the Subdivision Plan will be amended to create an additional lot containing the Council Stratum.
- (c) The parties agree that:
 - (i) amendments will be made to the Building Management Statement to contemplate the additional lot and Council as freehold owner of the Council Stratum and

- (ii) the consent of TfNSW is required to any amendments made as a result of the amendments referred to in **clause 22.5(c)(i)**.

22.6 Transit Hall Documentation

- (a) The parties acknowledge and agree that the Developer will prepare the Transit Hall Documentation which will be developed using the schedule contained in **schedule 56** as a minimum benchmark.
- (b) TfNSW must approve or request changes to the Transit Hall Documentation within 20 Business Days of the giving of a draft of the Transit Hall Documentation to TfNSW.
- (c) The Transit Hall Documentation must be approved by TfNSW, that approval not to be unreasonably withheld if the Transit Hall Documentation is in accordance with the Transit Hall Brief, the Plans and the Developer's design obligations under this document, including under clause 9, or as otherwise reasonably ascertainable from this document, and to the extent that there is an inconsistency, the Plans prevail.

22.7 Hoarding – initial fitouts

- (a) TfNSW and the Developer will negotiate with a view to agree an Initial Hoarding Zone to enable the Developer to carry out initial fitouts of the retail shops within the Retail Lot following the Date of Completion.
- (b) The provisions of this document regarding access apply to the Initial Hoarding Zone to enable the initial fitouts.

22.8 Hoarding – subsequent fitouts

The Developer and TfNSW agree that they will negotiate with a view to agree for TfNSW to grant the Retail Lot Owner a separate licence to enable the subsequent fitouts of the shops within the Retail Lot on reasonable terms.

22.9 Blade signage

The Developer and TfNSW agree that they will negotiate in good faith to agree for TfNSW to grant the Retail Lot Owner a separate licence which permits the installation of the blade signage on reasonable terms.

22.10 Advertising and signage

The Developer and TfNSW must agree in the Building Management Statement an advertising and notice regime for the use by the Retail Lot Owner and/or the Office Lot Owner and/or the Transit Hall Lot Owner as to the awnings, structural columns which are external to the building, and columns which adjoin another lot in the Subdivision Plan. Each party must act reasonably to agree that regime.

23 Office Tower Works Notice Regime

23.1 Office Tower Works Notice

- (a) No later than 9 months after the Developer has commenced the Transit Hall Works, the Developer must give written notice to TfNSW advising

TfNSW whether or not the Developer is going to commence the Office Tower Works by the date provided in the Development Program.

- (b) If the Developer does not give an Office Tower Works Notice within 9 months after commencement of the Transit Hall Works, the Developer will be deemed to have given a notice to the effect that it is going to commence the Office Tower Works by the date provided for in the Development Program.

23.2 Effect of issue of an Office Tower Works Notice

Following the issue of the Office Tower Works Notice stating that the Developer is not going to commence the Office Tower Works by the date provided in the Development Program:

- (a) the Transit Hall Brief will be replaced with the Modified Transit Hall Brief for the purposes of this document and this document will be amended so that any reference to the Transit Hall Brief becomes a reference to the Modified Transit Hall Brief;
- (b) the Transit Hall D&C Contract is automatically amended to reflect the change of scope to the Modified Transit Hall Brief and the consent of TfNSW is not required to any variation to the Transit Hall D&C Contract which is required to reflect the change of scope to the Modified Transit Hall Brief;
- (c) the Developer must ensure that in carrying out the Transit Hall Works all Approvals are complied with and that it applies for and obtains any Modification Application which is required as a result of adopting the Modified Transit Hall Brief;
- (d) the Modified Transit Hall Brief will apply for the purposes of the Independent Certifier certifying that the Developer has complied with its obligations under this document and that Completion has been achieved;
- (e) following Completion and satisfaction of any conditions to completion in the Contracts for Sale, the Developer and RailCorp must still complete the Contracts for Sale;
- (f) TfNSW and the Developer must instruct the Independent Certifier that any certification to be performed by the Independent Certifier must be carried out having regard to the requirements of the Modified Transit Hall Brief;
- (g) the Developer will not be entitled to an extension of time whether or not the Office Tower Works Notice states that the Developer is or is not commencing the Office Tower Works in accordance with the Development Program; and
- (h) if the Developer issues an Office Tower Works Notice stating that the Developer will not commence the Office Tower Works in accordance with the Development Program, it must carry out the Transit Hall Works in accordance with the Modified Transit Hall Brief and the Design

Document in accordance with the requirements of this document and not rejected by TfNSW under **clause 17.9**.

If this **clause 23.2** applies, notwithstanding the replacement of the Transit Hall Brief with the Modified Transit Hall Brief, Section 3: Modified Transit Hall Services of the Modified Transit Hall Brief will be deemed not to be part of the Modified Transit Hall Brief for the purposes of this clause and will be replaced by Section 3 Transit Hall Services of the Transit Hall Brief.

24 RailCorp restructure

24.1 RailCorp restructure

- (a) The Developer, the Lessee and the Purchaser acknowledge and agree that the NSW Government has indicated that it may restructure RailCorp. The restructure of RailCorp may result in RailCorp's assets, rights and liabilities being transferred to other entities.
- (b) The Developer, the Lessee and the Purchaser agree:
 - (i) that this document and any assets, rights or liabilities RailCorp holds in connection with this document may be novated, assigned or otherwise transferred from RailCorp to any other entity;
 - (ii) to undertake all actions reasonably requested by RailCorp to effect such a novation, assignment or other transfer; and
 - (iii) that it is not entitled to make RailCorp or any novatee, assignee or transferee liable for any Claim arising from or in connection with any novation, assignment or transfer contemplated by this **clause 24**.

25 Intentionally deleted

26 Default

26.1 Developer's default

- (a) If the Developer commits a breach of contract referred to in **clause 26.1(d)**, TfNSW agrees that subject to **clause 26.1(c)** prior to giving the Developer a Default Notice it will request a meeting of Senior Representatives and provide a draft of any proposed Default Notice. This meeting must take place within 5 Business Days of the request by TfNSW. If no meeting takes place then TfNSW may at the end of the 5 Business Day period issue a Default Notice.
- (b) Subject to **clause 26.1(c)**, if the Developer has not remedied the breach within 10 Business Days after the meeting or if the breach is not capable of being remedied within a reasonable time, the Developer has not paid any amount of compensation which it agreed to pay at the meeting of

Senior Representatives within the agreed time then TfNSW may issue a Default Notice.

- (c) If the breach of contract is a matter which to fire, life or safety of pedestrians applies, then TfNSW is not required to call a meeting of Senior Representatives prior to issuing a Default Notice.
- (d) The breaches by the Developer to which this clause applies are:
 - (i) not completing the Transit Hall Works by the Date for Completion;
 - (ii) after a Notice to Proceed has been given and all other conditions precedent in **clause 3.2** have been satisfied or waived, subject to any direction to suspend, not commencing or progressing the Transit Hall Works regularly and diligently in accordance with the requirements of this document, in breach of **clause 18.1**;
 - (iii) suspension of work, or failing to proceed with the Transit Hall Works with due expedition, in breach of **clause 18.1**;
 - (iv) failing to provide the Delivery Security, in breach of **clause 5.7**;
 - (v) failing to take out and maintain insurances, in breach of **clause 21.4**;
 - (vi) failing to use the materials or standards of workmanship required by this document, in breach of **clause 15.1**;
 - (vii) not complying with any direction of TfNSW made in accordance with this document;
 - (viii) not complying with the requirements of this document regarding the Construction Management Plan in a material respect, in breach of **clauses 15.3, 15.4, 15.5 or 15.6**;
 - (ix) a Transaction Document is terminated, repudiated, rescinded or revoked except to the extent permitted by TfNSW;
 - (x) the Transit Hall Works Contractor ceases to be the contractor under the Transit Hall D&C Contract, except to the extent permitted in writing by TfNSW or under this document or the Transit Hall Works Contractor Side Deed;
 - (xi) if an Insolvency Event occurs:
 - (A) to the Developer; or
 - (B) where the Developer comprises more than one person, any one of those persons; or
 - (xii) any failure by the Developer to comply with a material obligation under this document but in respect of a breach of **clause 12**, only after the corrective action process the subject of **clauses 12.7(a) to (c)** has been completed and Developer fails to comply.

26.2 Contents of Default Notice

A Default Notice under **clause 26.1** must:

- (a) state that it is a notice under **clause 26.1**;
- (b) specify the alleged breach; and
- (c) specify a reasonable time and date by which the Developer must remedy the breach (which time must not be less than 20 Business Days after the Default Notice is given) or, in the case of a notice by TfNSW where the breach is not capable of being remedied within a reasonable time and date by which the Developer may make other arrangements reasonably satisfactory to TfNSW including the payment of reasonable compensation which the Developer must pay and the time for making that payment (which must not be less than 20 Business Days after the Default Notice is given).

26.3 Objection to Default Notice

If TfNSW gives the Developer a Default Notice:

- (a) the Developer must comply with the Default Notice within the time specified in the Default Notice; or
- (b) if the Developer considers, in good faith, that the time specified in the Default Notice is not reasonable, then:
 - (i) the Developer must promptly deliver to TfNSW a notice stating that in its opinion the time, or amount of compensation, as the case may be specified in the Default Notice is not reasonable, the reasons for that opinion, and the time, remedy or amount of compensation it considers is reasonably required to remedy the alleged breach or to provide a Cure Plan;
 - (ii) the Developer and TfNSW must work together in good faith to develop and agree the Cure Plan;
 - (iii) after agreeing the Cure Plan with TfNSW, the Developer must comply with the requirements of the Cure Plan; or
 - (iv) the Developer does not agree that it is in breach as alleged in the Default Notice then the Developer may refer the matter for resolution under **clause 26.8(b)**.

26.4 Rights of TfNSW

- (a) If:
 - (i) by the time specified in a Default Notice (or, if later, the time notified to TfNSW by the Developer under **clause 26.3**) the Developer has not remedied the breach; or
 - (ii) the Developer has failed to comply with the terms of the Cure Plan; or

- (iii) the Developer has failed to make arrangements reasonably satisfactory to TfNSW to pay reasonable compensation to TfNSW or having agreed on the amount of compensation has failed to pay that compensation by the agreed date,

TfNSW may, by written notice to the Developer;

- (iv) exercise its step-in right in accordance with **clause 26.8(b)**; or
 - (v) terminate this document (but before the breach is remedied).
- (b) Upon giving a notice under **clause 26.1**, TfNSW may suspend payments to the Developer until the date upon which the Developer remedies the breach or makes arrangements satisfactory to TfNSW but must pay the Developer for any Variation which has previously been instructed if the Developer is otherwise entitled to be paid under accordance with **clause 19**.
- (c) If TfNSW exercises the right under paragraph (a), the Developer will not be entitled to any further payment in respect of the work taken out of the hands of the Developer unless a payment becomes due to the Developer under **clause 26.5**.

26.5 TfNSW's entitlements after step-in

- (a) If:
- (i) TfNSW exercises its step-in right under **clauses 26.4** or **clause 27**; and
 - (ii) TfNSW completes the Transit Hall Works in accordance with the requirements of the Modified Transit Hall Brief; and
 - (iii) the Independent Certifier certifies that the Date of Completion has occurred,

the Independent Certifier will ascertain the cost incurred by TfNSW in completing the Transit Hall Works in accordance with the requirements of the Modified Transit Hall Brief and will issue a certificate certifying the amount.

- (b) If the cost incurred by TfNSW is greater than the amount paid to TfNSW as a result of TfNSW making a demand on the Delivery Security, the difference will be a debt due from the Developer to TfNSW. If the cost incurred by TfNSW is less than the amount that would have been paid to the Developer if the Developer had completed the work, the difference will be a debt due to the Developer from TfNSW.

26.6 TfNSW's rights after termination

Subject to **clause 26.8**, if TfNSW gives a notice validly terminating this document under **clause 26.4**, or if the Developer repudiates this document TfNSW will:

- (a) be entitled to require the Developer to remove from the Construction Site or any area affected by the Site Establishment Works and the Transit

Hall Works owned by a Rail Entity, any Construction Plant owned by the Developer and all materials, equipment and other things intended for the Transit Hall Works;

- (b) be entitled to require the Developer to novate to TfNSW or TfNSW's nominee, the Transit Hall D&C Contract between the Developer and the Transit Hall Works Contractor as well as any or all subcontracts (including those relating to the use of Extra Land if they are required for the Transit Hall Works) as required by TfNSW;
- (c) pay the Developer the moneys which it is entitled to be paid under the document up to the date of termination of this document;
- (d) without limiting **clause 5.7(d)(i)** be absolutely entitled to the proceeds of the Delivery Security up to the amount properly incurred by TfNSW in completing the Transit Hall Works in accordance with the Modified Transit Hall Brief;
- (e) be entitled to require the Developer to immediately hand over to TfNSW all copies of:
 - (i) any documents provided by TfNSW to the Developer;
 - (ii) all Design Documents prepared by the Developer to the date of termination (whether complete or not); and
 - (iii) any other documents or information in existence that is to be provided to TfNSW under the terms of this document.

26.7 Developer's rights after termination

If TfNSW repudiates this document and the Developer terminates this document, the Developer will be entitled to the payment of damages for breach of this document.

26.8 Preservation of rights

- (a) Subject to **clause 26.7**, nothing in this **clause 26** or that TfNSW does or fails to do pursuant to this **clause 26** will prejudice the right of TfNSW to exercise any right or remedy (including recovering damages) which it may have where the Developer breaches (including repudiates) this document.
- (b) Nothing in this **clause 26** or that the Developer does or fails to do pursuant to this **clause 26** will prejudice the right of the Developer to exercise any right or remedy (including recovering damages) which it may have where TfNSW breaches (including repudiates) this document.

27 Step-in Events

27.1 Step-In

- (a) If a Step-In Event occurs at any time before the Date of Completion, the Developer must, at its cost, immediately inform and keep TfNSW informed in relation to the Step-In Event and provide sufficient

information to enable an assessment of the nature of the Step-In Event and the likely effect of the Step-In Event.

- (b) The Developer and TfNSW must promptly confer to discuss the Step-In Event and consider how the Step-In Event should be addressed or remedied. The Developer must procure the attendance of the Transit Hall Works Contractor at the conference and its cooperation in respect to the Step-In Event.
- (c) If TfNSW is not satisfied with how the Step-In Event is to be or is being addressed or remedied, or if the Developer and TfNSW agree that TfNSW should address or rectify the Step-In Event, TfNSW may, or if TfNSW and the Developer agree, must address or procure that it is addressed and, if practicable, rectify the Step-In Event as soon as practicable.
- (d) If TfNSW elects to exercise its step-in right under this **clause 27**, it must issue a Step-In Notice to the Developer giving the Developer 5 Business Days' notice of TfNSW's intention to step-in and take over the Transit Hall Works. The Developer must assist TfNSW and subject to the terms of the Transit Hall Works Contractors Side Deed, procure that the Transit Hall Works Contractor assists TfNSW wherever and however possible to ensure that TfNSW is able to exercise its step-in right effectively and expeditiously, including giving TfNSW or its nominees access to the Construction Site and any other Stage 1 Development Land upon which the Transit Hall Works are being carried out.
- (e) If TfNSW exercises its step-in rights under this **clause 27**, TfNSW may cease to exercise that right at any time.
- (f) Where the Step-In Event was caused by or contributed to by the Developer or the Transit Hall Works Contractor, or their respective contractors, agents, employees, licensees or invitees, all costs and any loss suffered or incurred by TfNSW arising out of or in connection with the exercise by TfNSW of its step-in rights under this clause will be a debt due to TfNSW and will be payable by the Developer to TfNSW upon written demand by TfNSW.
- (g) TfNSW's step-in right is without prejudice to TfNSW's other rights in respect of a Step-in Event, including its rights under **clause 26.3**.

27.2 Effect of Step-In

- (a) If TfNSW steps-in under this **clause 27**, and subject to **clause 27.1(e)**:
 - (i) the Transit Hall Brief will be replaced with the Modified Transit Hall Brief for the purposes of this document and this document will be amended so that any reference to the Transit Hall Brief becomes a reference to the Modified Transit Hall Brief;
 - (ii) TfNSW must complete the Transit Hall Works as specified in the Modified Transit Hall Brief;

- (iii) TfNSW must ensure that in carrying out the Transit Hall Works all Approvals are complied with and that TfNSW applies for and obtains any Modification Application which is required as a result of adopting the Modified Transit Hall Brief;
- (iv) the Modified Transit Hall Brief will apply for the purposes of the Independent Certifier certifying that the Developer has complied with its obligations under this document and that Completion has been achieved;
- (v) TfNSW and the Developer must instruct the Independent Certifier that any certification to be performed by the Independent Certifier must be carried out having regard to the requirements of the Modified Transit Hall Brief;
- (vi) ensure that they are on Completion Fit for Purpose; and
- (vii) may only vary the Transit Hall Works in a manner which:
 - (A) does not result in an increase to the costs associated with maintaining the Transit Hall Lot required by the terms of the Building Management Statement or an increase to future capital costs in connection with the Transit Hall Lot;
 - (B) does not cause a breach of the Planning Agreement, Concept Approval, any Approvals or Laws;
 - (C) does not increase the cost of the Transit Hall Works; and
 - (D) does not reduce the quality or standard of components of the Transit Hall Works.
- (b) TfNSW must comply with the Developer's obligations in **clause 22** of this document as part of the carrying out of the Transit Hall Works and may make any changes to the Subdivision Plan, the Section 88 Instrument or the Building Management Statement without the Developer's prior written consent if the change is of the type referred to in **clauses 22.2(c) or 22.4(b)**, otherwise TfNSW will obtain the Developer's consent and such consent will not be unreasonably withheld.
- (c) Following Completion of the Transit Hall Works as required by the Modified Transit Hall Brief and subject to satisfaction of the conditions to completion under the Contracts for Sale, the Purchaser and RailCorp must complete the Contracts for Sale in accordance with their terms.
- (d) TfNSW is not responsible for an act or omission of the Purchaser or any registered proprietors, proposed purchasers or lessees having an interest in the land the subject of the Subdivision Plan other than a Rail Entity or any person interested in any land owned by a Rail Entity for failing to:
 - (i) execute the Subdivision Plan, Section 88B Instrument or the Building Management Statement; or

- (ii) any failure to procure any consent to registration of the Subdivision Plan, Section 88B Instrument or the Building Management Statement by any person having an interest in the land.
- (e) Despite TfNSW exercising its step-in rights, the Developer remains responsible for and must procure the consents from any registered proprietor or person other than a Rail Entity or any person interested in any land owned by a Rail Entity interested in the land the subject of the Subdivision Plan, Section 88B Instrument and the Building Management Statement.
- (f) If TfNSW is unable to procure registration of the Subdivision Plan because the consents from any registered proprietor or person interested in the land the subject of the Subdivision Plan other than a Rail Entity or any person interested in any land owned by a Rail Entity are not obtained, then:
 - (i) RailCorp is not required to complete the Contracts for Sale; and
 - (ii) the Lessee agrees that the lease with registered number 3828975 will be varied so that the covenants contained in the Building Management Statement with respect to the repair and maintenance of the Transit Hall will be covenants and obligations of the Lessee under Lease with registered number 3828975.

27.3 Completion after Step-in

If TfNSW exercises its step-in rights and makes a proper demand on the Delivery Security and uses the proceeds of the Delivery Security to complete the Transit Hall Works in accordance with **clause 26.8(b)** then:

- (a) the breach giving rise to the issue of the Default Notice or the Step-In Notice will be deemed to be cured; and
- (b) the Purchaser is entitled to complete the Contracts for Sale and TfNSW and RailCorp must comply with their obligations in this document (and RailCorp must also comply with its obligations under the Contracts for Sale) so that the title to the Office Lot and the Retail Lot can be transferred to the Purchaser from RailCorp as required by the terms of the Contracts for Sale.

27.4 Failure to Complete

- (a) If:
 - (i) the Developer has commenced the Transit Hall Works and there has been a step-in by TfNSW under this **clause 27**; and
 - (ii) TfNSW fails to reach Completion with due expedition or ceases to exercise its step in rights,

then the Purchaser of either the Retail Lot or the Office Lot may issue a written notice to TfNSW requiring TfNSW to step out so that the relevant Purchaser can Complete the Transit Hall Works.

- (b) On receipt of a written notice from the Purchaser under **clause 27.4(a)**, TfNSW must, subject to any requirements to make the Construction Site safe, cease carrying out the Transit Hall Works within 5 Business Days of receipt of the notice.
- (c) The Purchaser must then complete the Transit Hall Works in accordance with the Modified Transit Hall Brief and comply with the Developer's obligations in **clause 22** of this document. If the Purchaser steps in under this **clause 27** then the Purchaser does so on the same terms set out in **clause 27.2**, except that TfNSW is replaced with Purchaser.

28 Alert Event

- (a) If an Alert Event occurs at any time before the Date of Final Completion, TfNSW must, at its cost, immediately inform and keep the Developer informed in relation to the Alert Event and provide sufficient information of the action the Developer is required to and is able to take, including suspension of work under **clause 18.14**.
- (b) Other than in an emergency, the Developer and TfNSW must promptly confer to discuss the Alert Event and consider how the Alert Event should be addressed or rectified and TfNSW must provide sufficient information of the action the Developer is required to take, including suspension of work under **clause 18.14**. The Developer must procure the attendance of the Transit Hall Works Contractor at the conference and its cooperation in respect to the Alert Event. TfNSW may give directions to the Developer in relation to the Alert Event.
- (c) If TfNSW is not satisfied with how the Developer is implementing its directions under **clause 28(b)**, or if the Developer and TfNSW agree that TfNSW should address or rectify the Alert Event, TfNSW may, or if TfNSW and the Developer agree, must address or procure that it is addressed and, if practicable, rectify the Alert Event as soon as practicable.
- (d) If TfNSW elects to exercise its right under this **clause 28**, or is required to do so because it is not satisfied with the Developer's actions, the Developer must assist TfNSW and procure that the Transit Hall Works Contractor assists TfNSW wherever and however possible to ensure that TfNSW is able to exercise its right effectively and expeditiously, including giving TfNSW or its nominees access to the Transit Hall Site and any other Stage 1 Development Land upon which the Development Works are being carried out.
- (e) If TfNSW exercises its rights under this **clause 28**, TfNSW must cease to exercise its rights once the Alert Event has ceased or been rectified.
- (f) Where the Alert Event was caused by or contributed to by the Developer or the Transit Hall Works Contractor, or their respective contractors, agents, employees, licensees or invitees, all costs and any loss suffered

or incurred by TfNSW arising out of or in connection with the exercise by TfNSW of its rights under this clause will be a debt due to TfNSW and will be payable by the Developer to TfNSW upon written demand by TfNSW.

29 Disputes

29.1 Notice of dispute

- (a) If a dispute or difference arises between the Developer and TfNSW excluding that which will be decided under the Independent Certifier Deed in respect of any fact, matter or thing arising out of, or in any way in connection with, the Site Establishment Works and the Transit Hall Works or this document, or the subject matter of this document including any question concerning its existence, validity, interpretation, performance, breach or termination, or either party's conduct before the date of this document in relation to the subject matter of this document (including any adjudicator's determination under the *Building and Construction Industry Security of Payment Act 1999* (NSW)), the dispute or difference must be determined in accordance with the procedure in this **clause 29**.
- (b) Where such a dispute or difference arises, either party may give a notice in writing to the other party and to TfNSW:
 - (i) identifying the dispute or difference;
 - (ii) including particulars of the party's reasons for being dissatisfied that are sufficient to enable the other party and TfNSW to properly consider the matter, and
 - (iii) identifying the position which the party believes is correct.

29.2 Request for particulars of dispute

Within 10 Business Days after receipt of the notice under **clause 29.1**, a party may request the party that gave the notice to provide further particulars of the dispute or difference if those particulars are necessary to understand the dispute or difference. If a party is requested to provide further particulars of the dispute or difference that party must give those particulars necessary to understand the dispute or difference within 10 Business Days of the request.

29.3 Meeting

If a party gives a notice in writing under **clause 29.1**, within 5 Business Days of:

- (a) the date of receipt of the notice; or
- (b) where further particulars were reasonably requested by a party under **clause 29.2**, the date of receipt by that party of the further particulars,

the dispute or difference is to be referred to the Senior Representatives who must within 5 Business Days after the referral:

- (c) meet and undertake genuine and good faith negotiations with a view to resolving the dispute or difference;
- (d) if they cannot resolve the dispute or difference, endeavour to agree upon a procedure to resolve the dispute of difference; and
- (e) endeavour to agree upon whether the dispute or difference relates solely to a technical building, architectural design or engineering issue.

29.4 Arbitration

Subject to **clause 29.5**, if a dispute or difference is referred for resolution under **clause 29.3** and is not resolved within 15 Business Days after the dispute or difference is referred to the Senior Representatives or within such longer period of time as these persons may agree in writing, then either party may by giving notice in writing to the other party refer the dispute or difference to arbitration.

29.5 Expert determination

- (a) If:
 - (i) a dispute or difference is referred for resolution under **clause 29.3** and is not resolved within 15 Business Days after the dispute or difference is referred to the Senior Representatives; and
 - (ii) the dispute or difference relates solely to a technical building, architectural design or engineering issue including:
 - (A) design sufficiency, adequacy, economy or quality;
 - (B) safety in design;
 - (C) materials sufficiency, adequacy, economy or quality; or
 - (D) workmanship sufficiency, adequacy, economy or quality,the dispute or difference shall be referred to expert determination in accordance with this **clause 29.5**.
- (b) If the Senior Representatives are not able to agree within 15 Business Days after the dispute or difference is referred to the Senior Representatives whether or not the dispute relates solely to a technical building, architectural design or engineering issue, then:
 - (i) either party may refer the question of whether or not the dispute relates solely to a technical building, architectural design or engineering issue to the President of the Institute of Arbitrators & Mediators Australia for final and binding determination;
 - (ii) in the event that the dispute is determined by the President of IAMA (or by agreement of the parties) to be a dispute that relates solely to a technical building architectural, design or engineering issue, each party must nominate within 5 Business Days of the referral to the President of Institute of Arbitrators & Mediators Australia up to three independent nominees that it considers to be

technical experts in the relevant field and provide to the President and to each other curriculum vitae for those nominees.

- (c) The dispute or difference under **clause 29.5** is to be determined by the independent technical expert agreed by TfNSW and the Developer or as nominated by the President of the Institute of Arbitrators & Mediators Australia.
- (d) The expert determination must be made in accordance with the Institute of Arbitrators & Mediators Australia Expert Determination Rules, except to the extent that those rules are inconsistent with this document.
- (e) An expert determination conducted under this **clause 29.5** is not an arbitration and the expert is not an arbitrator. The expert may reach a decision from his or her own knowledge and expertise.
- (f) TfNSW and the Developer acknowledge and agree that expert determination proceedings under this **clause 29.5** may be attended by the Transit Hall Works Contractor as an observer of the proceedings.
- (g) The parties must enter into an agreement with the appointed expert on such terms as the parties and the expert may agree, acting reasonably.
- (h) The expert must:
 - (i) have reasonable qualifications and practical experience in work similar to the Site Establishment Works and the Transit Hall Works; and
 - (ii) disclose to the parties any interest he or she has in the outcome of the determination; and
 - (iii) not communicate with one party to the determination without the knowledge of the other.
- (i) Each party will:
 - (i) bear its own costs in respect of any expert determination; and
 - (ii) pay one-half of the expert's costs.
- (j) Unless otherwise agreed between the parties, the expert must notify the parties of his or her decision upon an expert determination conducted under this **clause 29** within the period set out in the agreement between the parties and the expert referred to in **clause 29.5(g)**.
- (k) The parties must enter into an agreement with the appointed expert on such other terms as the parties and the expert may agree.
- (l) The determination of the expert:
 - (i) must be given to the parties in writing; and
 - (A) will be where appropriate, substituted for the relevant direction of TfNSW; and

- (B) will be final and binding for disputes valued up to \$2,000,000, including upon any arbitrator appointed under **clause 29.14**; and
- (ii) is to be given effect to by the parties unless a notice of appeal is given by one party to the other within 15 days of receipt of the determination.
- (m) If this **clause 29.5** becomes frustrated the provision and any reference to it shall be severed from this document in a manner which:
 - (i) avoids any other provision of this document being frustrated or void;
 - (ii) subject to paragraph (i) above, preserves to the maximum effect possible the enforceability of the provision and any other provision of this document and the original effect and intent of this document.

29.6 Survive termination

This **clause 29** will survive the termination of this document.

29.7 Continuation of work

Despite the existence of a dispute or difference between the parties to this document, the Developer must:

- (a) continue to carry out the Transit Hall Works; and
- (b) otherwise comply with its obligations under this document.

29.8 Intentionally deleted.

29.9 Intentionally deleted.

29.10 Intentionally deleted.

29.11 Intentionally deleted.

29.12 Determination

If a notice of appeal is given under **clause 29.5(I)** the dispute or difference must be determined in accordance with **clause 29.13**.

29.13 Executive negotiation

If a notice of appeal is given under **clause 29.5(I)** the dispute or difference is to be referred to the Senior Representatives who must:

- (a) meet and undertake genuine and good faith negotiations with a view to resolving the dispute or difference; and
- (b) if they cannot resolve the dispute or difference, endeavour to agree upon a procedure to resolve the dispute or difference within 20 Business Days of the notice of appeal under **clause 29.5(I)**, and if no resolution is reached the matter is referred to arbitration.

29.14 Arbitration rules

- (a) An arbitration referred to in **clause 29.3** or **29.13** will be conducted before a sole arbitrator to be:
 - (i) agreed between the parties; or
 - (ii) failing agreement within 10 Business Days after the referral of the dispute or difference to arbitration, appointed by the Australian Centre for International Commercial Arbitration (**ACICA**) under the ACICA Appointment of Arbitrators Rules 2011.
- (b) To the extent that they are not inconsistent with this document, the IAMA Arbitration Rules (as published by Institute of Arbitrators & Mediators Australia) will apply to the arbitration, save and except that Articles 3, 4, 7 to 11, 13 paragraph 4, 14 and 37 of those Rules will not apply.
- (c) The seat of the arbitration will be Sydney, Australia.
- (d) If the arbitral tribunal sustains a challenge under Article 13 of the IAMA Arbitration Rules, a substitute arbitrator shall be appointed or chosen by ACICA under the ACICA Appointment of Arbitrators Rules 2011.
- (e) In the event of the death or resignation of an arbitrator during the course of the arbitral proceedings, a substitute arbitrator shall be appointed or chosen by ACICA under the ACICA Appointment of Arbitrators Rules 2011.
- (f) For the purpose of section 34A(i)(a) of the *Commercial Arbitration Act 2010* (NSW) the parties agree that an appeal may be made under section 34A.

30 Transit Hall D&C Contract

The Developer warrants to TfNSW that the Transit Hall D&C Contract will be in full force and effect upon the satisfaction of the conditions precedent contained in **clause 3.1** of this document (other than the conditionality of this document) and it will not be in breach of any material term of the Transit Hall D&C Contract.

31 Representations, warranties and undertaking

31.1 TfNSW's representations and warranties

TfNSW warrants as at the date of this document and on the date of satisfaction or waiver of the conditions precedent in **clause 3.1** that:

- (a) it is a state owned corporation validly constituted and existing under the *Transport Administration Act 1988* (NSW);
- (b) it will have in full force and effect all authorisations necessary under its constituent Legislation to enter into and perform its obligations under each Transaction Document to which it is a party;

- (c) each Transaction Document to which it is a party constitutes a valid and legally binding obligation of it in accordance with its terms; and
- (d) the execution, delivery and performance of each Transaction Document to which it is a party does not violate any Law, or any document or agreement to which it is a party or which is binding on it or any of its assets.

31.2 RailCorp's representations and warranties

RailCorp warrants as at the date of this document and on the date of satisfaction or waiver of the conditions precedent in **clause 3.1** that:

- (a) it is a state owned corporation validly constituted and existing under the *Transport Administration Act 1988* (NSW);
- (b) it will have in full force and effect all authorisations necessary under its constituent Legislation to enter into and perform its obligations under each Transaction Document to which it is a party;
- (c) each Transaction Document to which it is a party constitutes a valid and legally binding obligation of it in accordance with its terms; and
- (d) the execution, delivery and performance of each Transaction Document to which it is a party does not violate any Law, or any document or agreement to which it is a party or which is binding on it or any of its assets.

31.3 Developer's representations and warranties

- (a) The Developer warrants as at the date of this document and on the date of satisfaction or waiver of the conditions precedent in **clause 3.1** that:
 - (i) it is duly registered and remains in existence;
 - (ii) the execution, delivery and performance of each Transaction Document to which it is a party does not violate its constitution or any law applying to it;
 - (iii) it has taken all corporate and other action required to enter into any Transaction Document to which it is a party and to authorise the execution and delivery of that Transaction Document and the satisfaction of its obligations under it;
 - (iv) each Transaction Document to which it is a party constitutes a valid and legally binding obligation of it in accordance with its terms;
 - (v) the execution, delivery and performance of each Transaction Document to which it is a party does not violate any Law, or any document or agreement to which it is a party or which is binding on it or any of its assets;
 - (vi) it is not in default of its material obligations under any Transaction Document to which it is a party;

- (vii) it does not have immunity from the jurisdiction of a court or from legal process (whether through service of notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise); and
- (viii) no litigation, arbitration, mediation, conciliation, criminal or administrative proceedings are current, pending or, to its knowledge, threatened, which, if adversely determined, would or could have a material adverse effect on its business assets or financial condition, which has not been advised in writing to TfNSW.

32 Taxes

The Developer must pay all Taxes (other than GST) which may be payable in respect of the Transit Hall Works, including any stamp duty, customs duty and primage applicable to imported materials, plant and equipment required for the Transit Hall Works.

33 GST

33.1 Construction

In this **clause 33**:

- (a) unless there is a contrary indication, words and expressions which are not defined in this document but which have a defined meaning in the GST Law have the same meaning as in the GST Law;
- (b) **GST Law** has the same meaning given to that expression in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) or, if that Act does not exist for any reason, means any Act imposing or relating to the imposition or administration of a goods and services tax in Australia and any regulation made under that Act; and
- (c) references to GST payable and input tax credit entitlements include:
 - (i) notional GST payable by, and notional input tax credit entitlements of the Commonwealth, a State or a Territory (including a government, government body, government corporation, authority, agency or instrumentality of the Commonwealth, a State or a Territory); and
 - (ii) GST payable by, and the input tax credit entitlements of, the representative member of a GST group of which the entity is a member.

33.2 Consideration GST exclusive

Unless otherwise expressly stated, all consideration, whether monetary or non-monetary, payable or to be provided under or in connection with this document is exclusive of GST (**GST-exclusive consideration**).

33.3 Payment of GST

If GST is payable on any supply made by:

- (a) a party; or
- (b) an entity that is taken under the GST Law to make the supply by reason of the capacity in which a party acts,

(**Supplier**) under or in connection with this document, the recipient of the supply, or the party providing the consideration for the supply, must pay to the Supplier an amount equal to the GST payable on the supply. However, an amount payable by TfNSW under this **clause 33.3** is limited to the amount of any input tax credit to which TfNSW is entitled in respect of its acquisition of the supply.

33.4 Timing of GST payment

The amount referred to in **clause 33.3** must be paid in addition to the GST-exclusive consideration:

- (a) If the amount is payable by TfNSW, within 5 Business Days after TfNSW has received the benefit of any input tax credit to which it is entitled in respect of its acquisition of the relevant supply (and TfNSW will endeavour to claim any input tax credit to which it is entitled as soon as reasonably practicable provided that all legal requirements for any such claim are satisfied); and
- (b) In any other case, at the same time and in the same manner (without any set-off or deduction) that the GST-exclusive consideration for the supply is payable or to be provided.

33.5 Tax invoice

The Supplier must deliver a tax invoice or an adjustment note to the recipient of a taxable supply before the Supplier is entitled to payment of an amount under **clause 33.3**.

33.6 Adjustment event

If an adjustment event arises in respect of a supply made by a Supplier under or in connection with this document, any amount that is payable under **clause 33.3** will be calculated or recalculated to reflect the adjustment event and a payment will be made by the recipient to the Supplier or by the Supplier to the recipient as the case requires.

However, TfNSW is not required to make any payment under this **clause 33.6** if, at the time the payment would otherwise be required, it is not entitled to claim a corresponding credit or refund in respect of that payment (or would not be so entitled following a payment to the recipient).

33.7 Reimbursements

- (a) Where a party is required under or in connection with this document to pay for, reimburse or contribute to any Loss suffered or incurred by another party or indemnify another party in relation to such Loss

(Reimbursable Expense), the amount required to be paid, reimbursed or contributed by the first party will be reduced by the amount of any input tax credits to which the other party is entitled in respect of the Reimbursable Expense.

- (b) This **clause 33.7** does not limit the application of **clause 33.3**, if appropriate, to the Reimbursable Expense as reduced in accordance with **clause 33.7(a)**.

33.8 Exchange of non-monetary consideration

- (a) To the extent that the consideration provided for the Supplier's taxable supply to which **clause 33.3** applies is a taxable supply made by the recipient of that supply (**Recipient Supply**), the amount that would otherwise be payable by the recipient (or party providing consideration for the taxable supply) to the Supplier under **clause 33.3** must:
 - (i) if the Supplier is TfNSW, be reduced by the amount of any input tax credit to which TfNSW is entitled in relation to its acquisition of the Recipient Supply, but the Developer must fund the amount of the input tax credit to the extent to which there is any delay between the time TfNSW is required to account for GST on its taxable supply and the time it is able to claim the input tax credit in whole or in part; and
 - (ii) in any other case, be reduced by the amount of GST payable by the recipient on the Recipient Supply.
- (b) The recipient must issue to the Supplier an invoice for any Recipient Supply on or before the time at which the recipient (or party providing consideration for the taxable supply) must pay an amount under **clause 33.3** in accordance with **clause 33.4** (or the time at which such an amount would have been payable in accordance with **clause 33.3** but for the operation of **clause 33.8(a)**).

33.9 No merger

This **clause 33** does not merge on the completion, rescission or other termination of this document or on the transfer of any property supplied under this document.

34 Representatives

34.1 TfNSW's Representative

- (a) TfNSW must ensure that at all times until Final Completion there is a TfNSW Representative. TfNSW's Representative will give directions and carry out all its other functions under this document as the agent of TfNSW and not as an independent certifier, assessor or valuer.
- (b) The Developer must comply with any reasonable direction by TfNSW's Representative given under a provision of this document. TfNSW's

Representative may give a direction to the Developer concerning any aspect of the Transit Hall Works.

- (c) Except where this document otherwise provides or in the case of emergency, TfNSW's Representative may give a direction orally but will as soon as practicable confirm it in writing.

34.2 Replacement of TfNSW's Representative

- (a) TfNSW may at any time replace TfNSW's Representative, in which event TfNSW must appoint another person as TfNSW's Representative and notify the Developer of that appointment.
- (b) Any substitute TfNSW's Representative appointed under this **clause 34.2** will be bound by anything done by the former TfNSW's Representative to the same extent as the former TfNSW's Representative would have been bound.

34.3 Delegation of functions

- (a) TfNSW's Representative may:
 - (i) by notice to the Developer appoint persons to exercise any of TfNSW's Representative's functions under this document;
 - (ii) not appoint more than one person to exercise the same function under this document; and
 - (iii) revoke any appointment under **clause 34.3(a)(i)** by notice to the Developer.
- (b) TfNSW's Representative may continue to exercise a function under this document despite appointing another person to exercise the function under **clause 34.3(a)(i)**.

34.4 Unlimited discretion

Any approval or consent referred to in, or required under, this document from TfNSW or RailCorp may be given or withheld, or may be given subject to any conditions, as TfNSW thinks fit unless this document expressly provides otherwise.

34.5 Developer's Representative

- (a) The Developer must ensure that at all times until Final Completion there is a Developer's Representative. Any direction under **clause 34.1(b)** will be deemed to have been given to the Developer if given to the Developer's Representative. Matters within the knowledge of the Developer's Representative will be deemed to be within the knowledge of the Developer.
- (b) The Developer may:
 - (i) by notice to TfNSW appoint persons to exercise any of the Developer's Representatives functions under this document;

- (ii) not appoint more than one person to exercise the same function under this document; and
- (iii) revoke any appointment under this **clause 34.5** by notice to TfNSW's Representative.

34.6 Developer's personnel

- (a) The Developer must:
 - (i) notify TfNSW's Representative of the name of the Developer's Representative and of any subsequent changes;
 - (ii) provide personnel knowledgeable, experienced and skilled in their roles in performing the Developer's obligations under this document; and
 - (iii) ensure that the Developer's personnel as a team carry out the Development Works in a manner that is professional and co-operative, and recognises the interests and needs of the public and other stakeholders in the delivery of the Transit Hall.
- (b) TfNSW may, at its absolute discretion, by notice direct the Developer to remove any person from the Construction Site and the Development Works. The Developer must then appoint, or procure the Transit Hall Works Contractor to appoint (as is relevant), a replacement for the purposes of the Transit Hall Works.
- (c) The Developer must ensure that any person the subject of a direction under **clause 34.6(b)** is not again employed in the Transit Hall Works unless the Developer or Transit Hall Works Contractor is ordered by the Industrial Relations Tribunal to return that person to their position.

35 General

35.1 Notices

- (a) Any notices, directions, decisions, certificates, demands, requests, requirements, determinations, rejections, consents, approvals, agreements, Claims or notices of satisfaction or other communication under or with respect to this document must be in writing and delivered to the relevant Representative at the address or sent to the facsimile number shown in **schedule 7** (or to any new address or facsimile number that a party notifies to the others).
- (b) A notice sent by prepaid ordinary mail within Australia will be taken to have been received on the date that is 2 Business Days after the date of posting. If any notice is delivered on a day that is not a Business Day, after 5pm on that day in the place of the party to whom it is sent, it is to be treated as having been given or made at the beginning of the next Business Day.

- (c) A notice sent by facsimile will be taken to have been received on the next day after the day shown on the transmission record showing the number of the person to whom it is addressed in accordance with paragraph (a), which is a Business Day.
- (d) A notice, direction, determination, rejection, consent, approval or notice of satisfaction received, made or allowed by or given to the Developer by or to TfNSW will be deemed for all purposes to be a notice given, received, made, or allowed by or to the Lessee and the Purchaser.
- (e) Any notice, direction, determination, rejection, consent, approval or notices of satisfaction or communication under this **clause 35.1** otherwise affected to the person and address for TfNSW in **schedule 7** is of no effect.
- (f) A notice direction, determination, rejection, consent, approval or notice of satisfaction received, made or allowed by or given to TfNSW by or to the Developer will be deemed for all purposes to be a notice given, received, made, or allowed by or to RailCorp.

35.2 Governing law and Jurisdiction

- (a) This document and the transactions contemplated by it are governed by and will be construed according to the laws of New South Wales.
- (b) The parties irrevocably submit to, the non-exclusive jurisdiction of its courts and courts of appeal from time to time the parties will not object to the exercise of jurisdiction by those courts on any basis.

35.3 No waiver

The fact that a party fails to do, or delays in doing, something the party is entitled to do under this document, does not amount to a waiver of any obligation of, or breach of obligation by, another party. A waiver by a party is only effective if it is in writing. A written waiver by a party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

35.4 Entire agreement

The Transaction Documents to which both TfNSW and the Developer are parties contains everything to which the parties have agreed in relation to the matters this document deals with as at the date of execution. No party can rely on an earlier document, or anything said or done by another party, or by a director, officer, agent or employee of that party, except as permitted by Law.

35.5 Joint and several liability

Except as otherwise set out in this document, any agreement, covenant, representation or warranty under this document by two or more persons binds them jointly and each of them individually, and any benefit in favour of two or more persons is for the benefit of them jointly and each of them individually.

35.6 Severability

If a clause or part of a clause of this document can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this document, but the rest of this document is not affected.

35.7 Indemnities

- (a) Each indemnity in this document is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, Completion or expiration of this document.
- (b) Nothing in this **clause 35.7** prevents any other provision of this document, as a matter of interpretation also surviving the termination of this document.
- (c) It is not necessary for a party to incur expense or make any payment before enforcing a right of indemnity conferred by this document,
- (d) TfNSW holds for itself and on trust for each Rail Entity the benefit of each indemnity and release in this document.

35.8 Costs

The parties agree that each party will pay its own costs in respect of the drafting, negotiation and execution of this document.

35.9 Effect of Schedules

The parties agree to comply with any terms contained in Schedules to this document as if those terms were included in the operative part of the document.

35.10 Further steps

Each party must promptly do whatever any other party reasonably requires of it to give effect to this document and to perform its obligations under it.

35.11 Confidentiality

- (a) Subject to **clause 35.12**, the parties must not disclose:
 - (i) information about the terms of the Transaction Documents;
 - (ii) information about the terms of payment or performance in respect of any obligation under the Transaction Documents at any particular time; and
 - (iii) any information of the kind described in section 275(1) of the PPS Act, including:
 - (A) information about the Transaction Documents including any copies of them; or

- (B) information about an obligation created by or under any Transaction Document and the terms of any payment or performance at any time,

except:

- (iv) to its officers, employees, legal and other advisers and auditors;
 - (v) with the consent of the other party;
 - (vi) to potential tenants in connection with timing of creation of the Office Lot, the Retail Lot, the Shell House Lot or the 285 George Street Lot;
 - (vii) to potential investors in the Development;
 - (viii) to the extent it is necessary for either party to disclose information to comply with any applicable law, the rules of any securities or stock exchange or an order of a court or tribunal and the other party is given prior notice of the disclosure; or
 - (ix) in the case of TfNSW, required by or made in a House of Parliament, a Committee of a House of Parliament or for any legitimate government purpose.
- (b) The Developer must:
- (i) ensure that all employees of the Developer that have access to the information described in the Confidentiality Undertaking are aware of their obligations under the terms of the Confidentiality Undertaking; and
 - (ii) ensure that the Transit Hall Works Contractor and if TfNSW reasonably so directs each of its subcontractors execute and submit a Confidentiality Undertaking in the form of **schedule 20** and provide this to TfNSW within 5 Business Days of the engagement of the Transit Hall Works Contractor or its subcontractors.

35.12 Public Disclosure

- (a) TfNSW may publish or disclose (on the internet or otherwise):
 - (i) the terms and conditions of this document; and
 - (ii) any document or information arising under, out of or in connection with this document or relating to the performance of this document, provided TfNSW redacts any commercially sensitive information.
- (b) Disclosures regarding the Development by any Rail Entity or other Authority may be required:
 - (i) under law, including the GIPA Act or any similar or replacement legislation; or

- (ii) to satisfy the disclosure requirements of the Auditor General and to satisfy the requirements of Parliamentary accountability.
- (c) Subject to **clause 35.12(e)**, the Developer must use its best endeavours to assist any Rail Entity or other Authority in meeting their public disclosure obligations in connection with the Development Works.
- (d) In accordance with section 121(1) of the *Government Information (Public Access) Act 2009* (NSW), but subject to section 121(2) of that Act, the Developer agrees to allow TfNSW and/or RailCorp immediate access to the following information contained in records held by the Developer:
 - (i) information that relates directly to the delivery of the Transit Hall Works by the Developer;
 - (ii) information collected by the Developer from members of the public in respect of the Transit Hall Works; and
 - (iii) information received by the Developer from TfNSW and/or RailCorp to enable the Developer to deliver the Transit Hall Works.
- (e) Except as permitted under **clause 17.5** and for notices which the Developer is required to disclose to any recognised stock exchange, the Developer must:
 - (i) not make any public announcements or statements in relation to the Development (including by posting any information relating to the Development on any website) without TfNSW's prior consent (such consent not to be unreasonably withheld);
 - (ii) give TfNSW a draft of any proposed media release relating to the Development and obtain TfNSW's approval of the media release before distributing it (such approval not to be unreasonably withheld);
 - (iii) prior to release, revise the wording and timing of all media releases, public announcements and statements by the Developer or its Associates relating to the Development as reasonably requested by TfNSW; and
 - (iv) ensure that its Associates comply with the requirements referred to in this **clause 35.12**.

35.13 Not used

35.14 Variations of document

- (a) The parties agree that this document may be reviewed or modified and that any review or modification of this document will be conducted in the manner determined by the parties.
- (b) No modification or review of this document will be of any force or effect unless it is in writing and signed by the parties to this document.

35.15 Interpretation

Unless expressed to the contrary, in this document:

- (a) words in the singular include the plural and vice versa;
- (b) any gender includes the other genders;
- (c) if a word or phrase is defined its other grammatical forms have corresponding meanings;
- (d) a reference to 'including', 'include' or 'includes' must be dealt with as if followed by (without limitation);
- (e) if the day on or by which any act, must be done under this document is not a Business Day, the act must be done on or by the next Business Day;
- (f) '\$' or 'dollars' is a reference to Australian currency all amounts payable under this document are payable in Australian dollars;
- (g) a reference to "direction" in the definition of "Claim" in **clause 35.15** or in any of **clauses 13.1(a)(i)(B), 34.1** and **17.9(m)** will be read as also including certificate, decision, demand, determination, instruction, notice, order, rejection, request or requirement;
- (h) a reference to 'costs' or 'expenses' incurred by the Developer will include:
 - (i) the Developer's overheads (both on-site and off-site); and
 - (ii) if applicable, the amount of interest and other bank charges and any additional interest rate hedging costs,
- (i) a reference to a standard, codes guideline or similar document (including Australian Standards, the Building Code of Australia, any New South Wales or other government code or guideline, and any Rail Entity rules, procedures or other publication) will be read as a reference to that document as amended, updated, revised, superseded or replaced; and
- (j) a reference in this document to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision;
- (k) a reference in this document to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced;
- (l) a reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this document;
- (m) an expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency;

- (n) a reference to a party to this document includes a reference to the servants, agents and contractors of the party, and the party's successors and assigns;
- (o) any Schedules and Annexures form part of this document;
- (p) headings do not affect the interpretation of this document; and
- (q) a reference to any Authority, institute, association or body is:
 - (i) if that Authority, institute, association or body is reconstituted, renamed or replaced or if the powers or functions of that Authority, institute, association or body are transferred to another organisation, deemed to refer to the reconstituted, renamed or replaced organisation or the organisation to which the powers or functions are transferred, as the case may be; and
 - (ii) if that Authority, institute, association or body ceases to exist, deemed to refer to the organisation which serves substantially the same purposes or objects as that Authority, institute, association or body.

35.16 Exercise of powers

- (a) Nothing in this document will be considered as fettering the proper exercise of discretion by any relevant Authority.
- (b) The Developer acknowledges and agrees that:
 - (i) there are many Authorities with jurisdiction over aspects of the Developer's Works, parts of the Construction Site and areas affecting and affected by the Transit Hall Works;
 - (ii) authorities noted in **clause 35.16(b)(i)** may from time to time in the proper exercise of their statutory functions and powers disrupt, interfere with or otherwise affect the Transit Hall Works or the Development Works; and
 - (iii) the Developer bears the full risk of all occurrences of the kind referred to in **clause 35.16(b)(ii)** and will not be entitled to make any Claim upon TfNSW arising out of such occurrences.

35.17 No partnership

This document is not intended to create a partnership, fiduciary relationship, joint venture, agency relationship or trust between the parties.

35.18 Order of precedence

In the event of any inconsistency, ambiguity or discrepancy between the various documents comprising this document:

- (a) the interpretation which prescribes or requires the highest standard, quality or quantum will take precedence; and

- (b) where the inconsistency, ambiguity or discrepancy is not resolved by the application of the principle in paragraph (a), the order of precedence in **schedule 32** applies.

35.19 Counterparts

This document may consist of a number of counterparts and, if so, the counterparts taken together constitute one document.

35.20 Rights cumulative

Except as expressly stated otherwise in this document, the rights of a party under this document are cumulative and are in addition to any other rights of that party.

35.21 Contra proferentum

In the interpretation of this document, no rule of contract interpretation applies to the disadvantage of one party on the basis that it put forward this document or any part of it.

35.22 Survival

Clauses 9.5, 9.6, 9.7, 21.1, 21.4, 29, 35.11, 35.12 and any indemnity contained in this document will survive termination of this document.

36 Restrictions of alienation

36.1 Developer must not alienate

Subject to **clauses 36.2** and **36.3**:

- (a) the Developer must not assign, transfer, grant rights in connection with, enter into a joint venture regarding or otherwise deal with its interest under this document in any way;
- (b) a person must not become or cease to become the Parent of the Developer; and
- (c) a change in Control of Developer must not take place,

without the consent of TfNSW (which in the case of **clause 36.1(a)** may be withheld in the sole and unfettered discretion of TfNSW until the end of the Defects Rectification Period and otherwise such consent not to be unreasonably withheld or delayed). As a condition of consent, TfNSW can require entry into a deed between TfNSW and the relevant third party.

36.2 Encumbering the Developer's interest

- (a) The Developer must not mortgage, charge or otherwise encumber the Developer's interest in this document without the prior written consent of TfNSW (such consent not to be unreasonably withheld).
- (b) The Developer must not mortgage, charge or otherwise encumber any land owned by TfNSW or RailCorp.

36.3 Intra-group transactions permitted

Despite any other provision of this document, any of the Developer, the Lessee and the Purchaser may assign, transfer, grant rights in connection with their interest in this document and will not be in breach of **clause 36.1** and consent is not required from TfNSW or RailCorp provided that:

- (a) all times, the legal interest in the Developer, the Lessee and the Purchaser, as the case may be, is held by:
 - (i) one or more entities, each of which is a Related Corporation of Brookfield Asset Management Inc.; or
 - (ii) a custodian, trustee, responsible entity or fund manager directed to hold the interest on behalf of any entity referred to in **clause 36.3**; and
- (b) the assignment, transfer or grant of rights is the subject of a deed between TfNSW, RailCorp, the Developer, the Lessee and the Purchaser and the relevant entity or entities referred to in **clause 36.3(a)**.

No change in Control of the Developer will be deemed to have occurred provided that the legal interest in those entities continues to be held by one or more entities, each of which is a Related Corporation of Brookfield Asset Management Inc..

37 Limitation of Liability

37.1 Liability

- (a) The Lessee enters into this document only in its capacity as trustee of the Sovereign Wynyard Centre Unit Trust (**Lessee Trust**).
- (b) Subject to **clause 37.1(c)**:
 - (i) a liability arising under or in connection with this document (or the transactions contemplated by it) is limited and can be enforced against the Lessee only to the extent to which it can be satisfied out of property of the Lessee Trust out of which the Lessee is actually indemnified for the liability; and
 - (ii) the limitation in **clause 37.1(b)(i)** applies despite any other provisions of this document.
- (c) Subject to **clause 37.1(d)** no party shall:
 - (i) sue the Lessee in any capacity other than as trustee of the Lessee Trust;
 - (ii) seek to appoint or take any steps to procure or support the appointment of a receiver, a receiver and manager, a liquidator, a provisional liquidator, an administrator or similar person to the vendor or prove in any liquidation, administration or arrangement

of or affecting the Lessee (except in relation to property of the Lessee Trust);

- (iii) enforce or seek to enforce any judgment in respect of any liability arising under or in connection with this document (or the transactions contemplated by it) against any property of the Lessee other than property held by the Lessee as trustee of the Lessee Trust.
- (d) The limitations in **clauses 37.1(a), 37.1(b) and 37.1(c)** do not apply to any liability of the Lessee to the extent that the liability is not satisfied because, under the constitution of the Lessee Trust or by operation of law there is a reduction in the extent of the Lessee's indemnification out of the assets of the Lessee Trust, as a result of the Lessee's fraud, negligence or breach of trust (involving its wilful default or lack of good faith).

37.2 Limitation of Liability of Retail Lot Purchaser

- (a) The Retail Lot Purchaser enters into this document only in its capacity as trustee of the BSREP Wynyard Place Retail Landowning Trust (**Retail Lot Purchaser Trust**).
- (b) Subject to **clause 37.2(d)**:
 - (i) a liability arising under or in connection with this document (or the transactions contemplated by it) is limited and can be enforced against the Retail Lot Purchaser only to the extent to which it can be satisfied out of property of the Retail Lot Purchaser Trust out of which the Retail Lot Purchaser is actually indemnified for the liability; and
 - (ii) the limitation in **clause 37.2(b)(i)** applies despite any other provisions of this contract.
- (c) Subject to **clause 37.2(d)** no party shall:
 - (i) sue the Retail Lot Purchaser in any capacity other than as trustee of the Retail Lot Purchaser Trust;
 - (ii) seek to appoint or take any steps to procure or support the appointment of a receiver, a receiver and manager, a liquidator, a provisional liquidator, an administrator or similar person to the vendor or prove in any liquidation, administration or arrangement of or affecting the purchaser (except in relation to property of the Retail Lot Purchaser Trust);
 - (iii) enforce or seek to enforce any judgment in respect of any liability arising under or in connection with this contract (or the transactions contemplated by it) against any property of the Retail Lot Purchaser other than property held by the Retail Lot Purchaser as trustee of the Retail Lot Purchaser Trust.

- (d) The limitations in **clauses 37.2(a), 37.2(b) and 37.2(c)** do not apply to any liability of the Retail Lot Purchaser to the extent that the liability is not satisfied because, under the constitution of the Retail Lot Purchaser Trust or by operation of law there is a reduction in the extent of the purchaser's indemnification out of the assets of the Retail Lot Purchaser Trust, as a result of the Retail Lot Purchaser's fraud, negligence or breach of trust (involving its wilful default or lack of good faith).

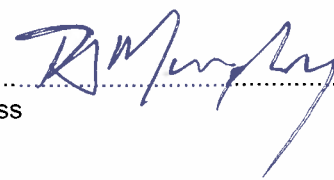
37.3 Limitation of Liability of Office Lot Purchaser


- (a) The Office Lot Purchaser enters into this contract only in its capacity as trustee of the BSREP Wynyard Place Office Landowning Trust (**Office Tower Lot Trust**).
- (b) Subject to **clause 37.3(d)**:
 - (i) a liability arising under or in connection with this document (or the transactions contemplated by it) is limited and can be enforced against the Office Lot Purchaser only to the extent to which it can be satisfied out of property of the Office Tower Lot Trust out of which the Office Lot Purchaser is actually indemnified for the liability; and
 - (ii) the limitation in **clause 37.3(b)(i)** applies despite any other provisions of this document.
- (c) Subject to **clause 37.3(d)** no party shall:
 - (i) sue the Office Tower Lot in any capacity other than as trustee of the Office Tower Lot Trust;
 - (ii) seek to appoint or take any steps to procure or support the appointment of a receiver, a receiver and manager, a liquidator, a provisional liquidator, an administrator or similar person to the vendor or prove in any liquidation, administration or arrangement of or affecting the Office Lot Purchaser (except in relation to property of the Office Tower Lot Trust);
 - (iii) enforce or seek to enforce any judgment in respect of any liability arising under or in connection with this document (or the transactions contemplated by it) against any property of the Retail Lot Purchaser other than property held by the Retail Lot Purchaser as trustee of the Office Tower Lot Trust.
- (d) The limitations in **clauses 37.3(a), 37.3(b) and 37.3(c)** do not apply to any liability of the Office Lot Purchaser to the extent that the liability is not satisfied because, under the constitution of the Office Tower Lot Trust or by operation of law there is a reduction in the extent of the Office Tower Lot's indemnification out of the assets of the Office Tower Lot Trust, as a result of the Office Lot Purchaser's fraud, negligence or breach of trust (involving its wilful default or lack of good faith).

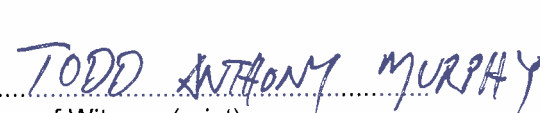
Execution


Executed as a deed.

Executed by the Secretary of the)
Department of Transport for and on)
behalf of **Transport for NSW** (ABN 18)
804 239 602))


.....
Witness


.....
Signature of Secretary


.....
Name of Witness (print)


.....
Name of Secretary 2/6/16

Executed for and on behalf of)
Transport for NSW (ABN 18 804 239)
602) by its authorised delegate:)

.....
Witness

.....
Signature of Delegate

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Name of Witness (print)

.....
Name and title of Delegate (print)

Executed for and on behalf of **Rail**)
Corporation New South Wales (ABN)
59 325 778 353) by its authorised)
delegate:



Irene Ann Rusak
.....
Witness

.....
Signature of Delegate

IRENE ANNE RUSAK
.....
Name of Witness (print)

*HOWARD PAUL COLLINS
A/CHIEF EXECUTIVE*
.....

.....
Name and title of Delegate (print)

Executed by Brookfield Office)
Properties One Carrington Developer)
Pty Limited

.....
Company Secretary/Director

.....
Director

.....
Name of Company Secretary/Director
(print)

.....
Name of Director (print)

Executed for and on behalf of)
Transport for NSW (ABN 18 804 239)
602) by its authorised delegate:)

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Witness

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Signature of Delegate

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Name of Witness (print)

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Name and title of Delegate (print)

Executed for and on behalf of **Rail**)
Corporation New South Wales (ABN)
59 325 778 353) by its authorised)
delegate:

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Witness

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Signature of Delegate

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Name and title of Delegate (print)

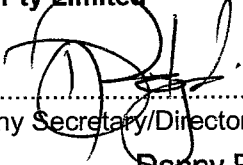
Executed by **Brookfield Office**)
Properties One Carrington Developer)
Pty Limited

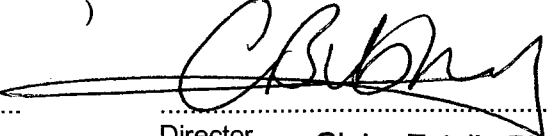
.....
Company Secretary/Director
Danny Poljak
.....
Director
Name of Company Secretary/Director
(print)

.....

Director **Claire Estelle Bible**
Director
.....
Name of Director (print)

Executed by Sovereign Wynyard
Centre Pty Limited)


.....
Company Secretary/Director
Danny Poljak
.....
Name of Company Secretary/Director
(print)

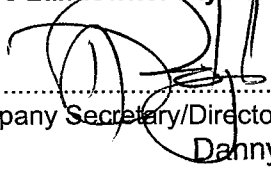

.....
Director
Claire Estelle Bibby
.....
Name of Director (print)

Executed by BSREP Wynyard Place
Retail Landowner Pty Ltd)


.....
Company Secretary/Director
Danny Poljak
.....
Name of Company Secretary/Director
(print)


.....
Director
Claire Estelle Bibby
.....
Name of Director (print)

Executed by BSREP Wynyard Place
Office Landowner Pty Ltd)


.....
Company Secretary/Director
Danny Poljak
.....
Name of Company Secretary/Director
(print)


.....
Director
Claire Estelle Bibby
.....
Name of Director (print)